

# ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 (CTH)

## Policy Statement

### Expiry Dates for Approvals

#### Overview

In accordance with paragraph 133(2)(e) of the EPBC Act, an approval must specify the period for which the approval has effect (the **approval period**). This Policy Statement provides information relevant to determining an appropriate approval period for actions approved under the EPBC Act.

#### Approval periods for projects

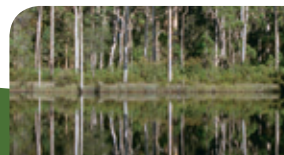
There is no standard approval period that is applied to all projects under the EPBC Act. As a guide, the approval period would cover the expected duration of the action (or the part of the action that will impact on the relevant controlling provision(s)), as well as the expected timeframe to implement actions required as conditions of approval.

In determining an appropriate approval period, consideration would be given to the following factors:

- (a) the expected duration of the action.  
Departmental officers will consider both the construction, operational and decommissioning (if relevant) phases of the action. Where impacts on controlling

provisions are limited to the construction phase only, it may not be necessary for the approval period to also encompass the operational phase;

- (b) the expected duration of any remediation, mitigation, offset, monitoring and reporting actions that are required as conditions of approval. See further information about offsets 'in-perpetuity' below;
- (c) administrative efficiency. Longer approval periods may reduce the number of requests for extension (and therefore the associated recommendations and decision-making). It will, however, clearly be necessary to balance this consideration against the environmental benefits which could be derived from ensuring that approval periods only extend for as long as is necessary for the action to be undertaken, to minimise environmental impacts;
- (d) the need to provide certainty to the proponent. A proponent may seek a longer approval period than strictly necessary to give confidence to their shareholders/ stakeholders and to avoid the need to seek extensions to the approval period (and the risks associated with a possible refusal to extend the approval period);



- (e) approval periods of other actions. It may be convenient to align the approval periods of component or related actions; and
- (f) the duration of other approval periods related to the action. It may be convenient to align the approval period of the action with related state and local government approvals.

Departmental officers will check the referral form and other details provided by the proponent for information about the expected duration of the action. Expected timeframes may change during the assessment phase, so departmental officers will check this information with the proponent (including establishing if there have been any project delays) prior to finalising the approval decision.

If there have been substantial changes to the expected duration from what was outlined in the referral documentation a formal variation of the proposal may be required.

For complex or lengthy projects, or where there is some uncertainty about expected timeframes, it may also be sensible for the approval period to extend beyond the expected timeframe for the action so that possible project delays may be accommodated.

Details of the reasoning behind the recommended approval period would be included in the proposed approval decision recommendation package.

At the time that comments are sought on the proposed decision (under section 131AA of the EPBC Act) departmental officers would discuss the proposed approval period (included in the draft decision notice) with the proponent.

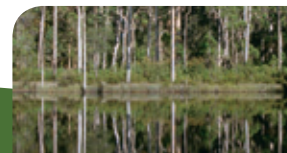
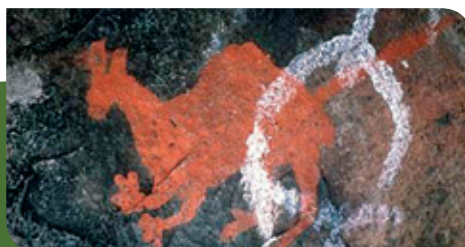
## Ongoing actions/impacts

In some cases the impact/s (or potential impact/s) of an action may continue indefinitely (for example the operation of a major road causing fragmentation and edge effects on grassland). Given the ongoing nature of the action and the associated impacts, it may be difficult to determine an appropriate approval period. In these situations:

- (a) measures to reduce the scale or severity of the ongoing impact/s (or the risk of a potential impact) may be put in place up front as conditions of approval (e.g. buffer zones). As discussed above, the approval period would (at a minimum) cover the expected timeframe to implement these measures and satisfy the conditions of approval; and
- (b) the approval period may be extended prior to expiry (section 145C of the EPBC Act) (it will be necessary to continue to extend the approval period for as long as the action will have or is likely to have a significant impact on a matter protected by the EPBC Act).

The holder of an approval may apply, in writing, to extend their approval period (section 145C of the EPBC Act). An extension can only be sought prior to the expiration of the approval period (paragraph 145C(2)(b) of the EPBC Act).

The approval period can only be extended if the Minister, or delegate, is satisfied, under subsection 145D(2), that the extension will not have a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action has or will have, or is likely to have on a matter or matters protected by Part 3 of the EPBC Act. Under subsection 145D(3), the Minister or delegate must consider (so far as they are not inconsistent with any other requirements of Division 5) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect, and economic and social matters.



## Where conditions of approval require an offset 'in-perpetuity'

Approval conditions that involve offsets may require that an area of land is protected and managed 'in perpetuity'. However, it is not possible for an approval to have effect in perpetuity. In these cases, the approval period would cover the timeframe required to put in place the required contracts, agreements or covenants that will give effect to the conditions of approval.

## Approval decision notice

The expiry date for the approval must be included in the approval decision notice issued under paragraph 133 (2) (e). The notice must specify a date (i.e. day, month, year). It is not sufficient to only specify the year of expiry.

## After the expiry date has passed

After the nominated approval period has passed, the approval ceases to apply to the action. Therefore, if the action will continue beyond the approval period specified in the approval notice and will have, or is likely to have, a significant impact on a matter protected under Part 3 of the EPBC Act, it will be necessary for the proponent to seek an extension to the approval period prior to the expiry date, or to re-refer the action (or that part of the action that is going to continue beyond the expiry date).

If the approval has expired and the action is continuing it is necessary to re-refer the action. As conditions are attached to the approval it may be difficult to require the proponent to implement these conditions after the approval has expired.

