



Australian Government

Department of the Environment and Energy

Environment Protection and Biodiversity Conservation Act 1999 (Cth) Policy Statement

Statements of reasons



© Commonwealth of Australia, 2019.



EPBC Act Policy Statement—Statements of reasons is licensed by the Commonwealth of Australia for use under a Creative Commons Attribution 4.0 International licence with the exception of the Coat of Arms of the Commonwealth of Australia, the logo of the agency responsible for publishing the report, content supplied by third parties, and any images depicting people. For licence conditions see: <http://creativecommons.org/licenses/by/4.0/>

This report should be attributed as ‘*EPBC Act Policy Statement—Statements of reasons*, Commonwealth of Australia 2019’.

The Commonwealth of Australia has made all reasonable efforts to identify content supplied by third parties using the following format ‘© Copyright, [name of third party]’.

Disclaimer

The views and opinions expressed in this publication are those of the authors and do not necessarily reflect those of the Australian Government or the Minister for the Environment and the Minister for Energy.

Cover images

(Front) Rainforest Fruits, © Copyright Wet Tropics Management Authority and Department of the Environment and Energy.
(Back) Sunset over the ancient landforms of the Kununurra region in Western Australia

Contents

Overview	4
Legislative framework	4
Which decisions require a statement of reasons?	4
Policy approach	5
Who is entitled to a statement of reasons?	5
Process for determining if a person is entitled to a statement of reasons	5
What are the timeframes for preparing statements of reasons?	5
Statutory basis for refusing to provide statements of reasons	6
The form and content of a statement of reasons	6
Overview	6
Style of a statement of reasons	7
Structure of a statement of reasons	7
Certain information not to be included in a statement of reasons	9
Change of person holding office	9
Request for further information	10
Publication of statements of reasons	10
Processes for legal action following the issue of decisions and statements of reason	10
Note to Table 1—extended standing for judicial review under sections 487 and 488 of the EPBC Act	14

Overview

This Policy Statement is designed to indicate how the Department will prepare statements of reasons for decisions made under the *Environment Protection and Biodiversity Conservation Act 1999* ('the EPBC Act').

Statements of reasons give persons affected by decisions under the EPBC Act the opportunity to have these decisions fully explained to them, and then to make informed decisions about whether to exercise any rights of review and appeal that they may have.

Publication of certain statements of reasons is a mandatory requirement under the EPBC Act—see Table 1. In other cases, and consistent with the government's policies on transparency in government decision-making, statements of reasons requested under other provisions of the EPBC Act should also be published on the Department's website.

This Policy Statement focuses on statements of reasons concerning decisions in respect of:

- whether a referral is a controlled action (i.e. a controlled action/not a controlled action/or a protected matter);
- whether an action is clearly unacceptable; and
- whether to approve or not approve the taking of an action.

Legislative framework

The legislative requirements to provide statements of reasons for particular decisions under the EPBC Act are set out under:

- particular provisions of the EPBC Act
- section 28 of the *Administrative Appeals Tribunal Act 1975* (the AAT Act), and
- section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act).

These Acts define:

- which decisions will or may require statements of reasons to be prepared;
- the persons entitled to receive statements of reasons; and
- the timeframes within which statements of reasons must be prepared.

Which decisions require a statement of reasons?

EPBC Act

Table 1 details the decisions under the EPBC Act for which the Minister or the Minister's delegate is required to provide statements of reasons. Table 1 also sets out the decisions for which statements of reasons are always required to be provided as part of the decision-making process, and those for which a statement is required on request.

AAT Act

Under subsection 28(1) of the AAT Act, a person affected by a decision, who has a right to a review of the merits of that decision by the AAT, may request the decision-maker to provide a statement of reasons.

A right to merits review only exists if specified in relevant legislation. **Table 2** sets out where the EPBC Act provides persons with a right to merits review. These rights apply only to decisions made by a Ministerial delegate, and not to Ministerial decisions.

ADJR Act

Subsection 13(1) of the ADJR Act enables a 'person aggrieved', who has a right to a judicial review under section 5 of that Act, to make a written request to the decision-maker to provide a statement of reasons.

These rights apply only to administrative decisions that are substantive, final or operative.

Policy approach

Who is entitled to a statement of reasons?

The Department generally provides statements of reasons to any person who requests one, regardless of their specified rights to receive a statement of reasons under Commonwealth legislation.

The Department's approach is consistent with the government's broader policies on improving citizens' access to information on government decision-making.

Process for determining if a person is entitled to a statement of reasons

When providing a statement of reasons, it is necessary to ascertain whether a person is legally entitled to receive a statement of reasons under the AAT, ADJR, and EPBC Acts.

The test for determining entitlement under the AAT Act is discussed at 2.4 and 2.5. The test for determining entitlement under the ADJR Act is at 2.6.

EPBC Act

Table 1 sets out where persons are entitled to receive a statement of reasons for particular decisions under the EPBC Act, including persons specified under sections 487 and 488 of that Act.

Sections 487 and 488 extend the meaning of the term 'person aggrieved' under the ADJR Act, to individuals and organisations engaged in the protection, conservation or research into the environment within Australia and its territories.

This standing is subject to the requirements specified in subsections 487(2) and 487(3). Subsections 487(2) and (3) specify requirements relating to the individual's citizenship or residency and the individual's involvement in environmental activities, and, in the case of organisations and associations, their specified objects and purposes.

Individuals, organisations and associations frequently request statements of reasons under sections 487 and 488.

What are the timeframes for preparing statements of reasons?

EPBC Act

Statements of reasons must be prepared within the timeframes specified by the EPBC Act. Table 1 sets out the relevant timeframes.

AAT Act

Decision-makers must provide statements of reasons requested under subsection 28(1) of the AAT Act as soon as practicable, and in any case within **28 calendar days** of the receipt of a request from an applicant.

ADJR Act

Decision-makers must provide statements of reasons requested under subsection 13(2) of the ADJR Act as soon as practicable, and in any case within **28 calendar days** of the receipt of a request from an applicant.

Statutory basis for refusing to provide statements of reasons

In limited circumstances, decision-makers may refuse to prepare and provide statements of reasons.

Under subsection 28(1) of the AAT Act, and subsection 13(5) of the ADJR Act, a decision-maker may refuse to provide a statement if an applicant does not make a request within 28 days of receiving the decision, or within a reasonable time after the decision was made (if the applicant did not receive notice of the decision).

Under section 13A of the ADJR Act, a decision maker may not have to provide a statement if it contains certain confidential information discussed at 4.2, and the statement would be false or misleading without that information.

Under subsection 28(2) of the AAT Act, a decision-maker may, in rare circumstances, refuse to provide a statement of reasons on the grounds of public interest immunity. Public interest immunity may be invoked when the Attorney-General certifies that the disclosure of any matter would be contrary to the public interest by:

- prejudicing Australia's security, defence, or international relations;
- disclosing Cabinet deliberations; or
- prejudicing a claim by the Commonwealth in a judicial proceeding.

A decision-maker's refusal to provide a statement of reasons may be challenged in the Federal Court.

The form and content of a statement of reasons

Overview

Under section 25D of the *Acts Interpretation Act 1901*, written reasons for decisions must also set out:

- the evidence or other material on which those decisions were based;
- the findings on material questions of fact.
- (Section 28(1) of the AAT Act and section 13(1) of the ADJR Act impose a similar requirement)

For example, a decision may have been made that an action is a controlled action under section 75 of the EPBC Act. The statement of reasons would cite the evidence on which this decision was based including reports, documents, referral information, and briefing to the Minister. A material finding of fact might, for example, include the finding that the proposed action will have an impact on 'X' identified matters of national environmental significance (MNES), and that this impact is likely to be significant. The reason for the decision would be that there is, or is likely to be, a significant impact on MNES.

If a statement of reasons does not address the material facts, and follow a logical sequence to demonstrate the reasoning behind the ultimate decision, then the AAT or the Federal Court may require a more complete statement to be provided. Statements of reasons can be used as evidence in a Federal Court challenge against a decision.

All decisions and the reasoning processes underlying them would be fully documented by the Department. This documentation will be used by the Department in the preparation of statements of reasons—and statements will generally include references to the recommendation to decision-makers on particular decisions.

To promote transparency and accountability, statements of reasons should reliably document the real findings on material questions of fact, and the actual reasons relied upon by the decision-maker when making a decision. The process of reasoning that led to the decision, linking facts to the decision and the relevant legislative provisions, relevant case law if applicable, policy statements, guidelines, other agency practices and other relevant matters would be fully documented. Statement of reasons should be drafted in clear and plain English.

Departmental advice to the Minister concerning decisions under the EPBC Act is drafted to reflect the Minister's prerogative to either adopt the Department's reasoning, or to substitute an alternative reasoning. The Minister may adopt reasons drafted by departmental officers as the basis for his or her decision. However, if the

Minister does not adopt the reasons drafted by the Department, the statement of reasons will document the alternative reasons for the Minister's decision.

Style of a statement of reasons

A statement of reasons should be drafted in the first person to reflect that it is a statement of reasons

of the Minister, rather than of the Department.

A statement of reasons would not, therefore, use words such as 'us', 'we' or 'our decision'. The statement of reasons and all external correspondence relating to it would refer to the decision made by the Minister, the Secretary or the delegate in the first person e.g. 'My decision was made ...'.

Structure of a statement of reasons

1. Authority to make a decision and issue a statement of reasons

Decision-makers must state their name, position and their legal authority (including their Delegation if a departmental officer) to make a particular decision, within the statement of reasons. This helps the person requesting the statement identify who the decision-maker was, and understand the grounds on which the decision was made.

2. Background section of the statement of reasons

The 'background' section of the statement of reasons should provide context for the decision made and demonstrate that the correct legislative procedures have been followed. The repetition of facts, material findings of fact and reasons for decisions that are included within other sections should be avoided.

3. Legislative provisions

The statement of reasons must refer to the relevant provisions of the EPBC Act that authorised the decision, and any other relevant provisions, such as those setting out relevant considerations in making the decision, or conditions that must be satisfied before making the decision.

For example, where a decision to grant approval for a particular action is based on the Minister's consideration of matters protected under Part 3 of the EPBC Act, as required by paragraph 136(1)(a), and the requirement for the Minister to take into account the principles of ecologically sustainable development, as required by paragraph 136(2)(a), the statement of reasons should include these provisions, and the considerations about them relevant to the approval decision.

These considerations would include any significant impacts of the action on these matters, and the relationship of the action to the principles of ecologically sustainable development, including the precautionary principle.

This information will assist the person requesting the statement to understand the decision-maker's obligations under the EPBC Act at the time the decision was made.

4. Evidence or other material on which findings were based

The statement of reasons must refer to evidence on which each 'material finding of fact' is based.

The statement of reasons should identify evidence that was considered relevant, credible and significant in relation to each finding of fact. Each finding of material fact should be demonstrated by the evidence.

Evidence will be sufficiently referenced within the statement of reasons to show that there is an adequate basis for the findings of fact which have been derived from this evidence, but should not include excessive detail.

Evidence on which findings were based will usually be contained in the documents included in the briefing package provided to the decision-maker, reports or submissions and any other information the decision-maker already had, that were relevant to the decision.

Conversations relevant in making a decision, should be recorded and included in a statement of reasons.

5. Findings on material questions of fact

A material fact is a fact that is required to establish the factual basis for a decision. Therefore, the decision-maker's findings on material facts are those that support the decision, based on the decision-maker's consideration of all relevant evidence. Some facts are material if the relevant legislative

provision requires them to be taken into account, such as the issue of whether an impact is considered as significant or not in making a decision under section 75 of the EPBC Act. Only those findings of fact that were material to a decision need to be included within a statement of reasons. The statement of reasons should document all relevant findings.

A finding of material fact can be direct (a primary fact) or inferred (an ultimate fact). When a finding of fact is inferred, the statement of reasons should document the primary facts and the process of

inference for the indirect ultimate facts. The findings are the decision-maker's conclusions about both kinds of material facts, based on the information available to the decision-maker, and on which the decision was based.

If any recommendations, submissions or reports were not accepted by the decision-maker these should be referenced, and the reasons they were rejected should be included in the statement. If there is conflicting evidence, the statement should state which evidence was preferred and the reasons for the preference.

6. The reasons for the decision

In this section, decision-makers would state their conclusions on the decisions that they reached, the reasons for these conclusions and the ultimate decision made.

Findings of fact would not usually be repeated in this section.

For instance, if a decision relates to a controlled action decision (section 75), then the reason for this decision will be based on the material fact (presented in the findings on material questions of fact section) that the relevant impacts the proposed action has, will have, or is likely to have on MNES are significant. Evidence of this fact may have been provided through ecological surveys or species profile information, contained in recommendations to the Minister—and presented in the section detailing 'evidence or other material on which findings were based'.

Certain information not to be included in a statement of reasons

Confidential personal or business information

Section 13A of the ADJR Act provides that personal or business affairs of someone other than the person making the request do not need to be disclosed if:

- the information was supplied in confidence;
- the publication of the information would reveal a trade secret; or
- the publication of the information would breach a statutory duty to keep the information confidential.

Note that a statement does not need to be provided if the statement, without the confidential information, would be false or misleading.

The use or disclosure of personal information by Commonwealth agencies may be made for a purpose authorised under law. However, a statement of reasons must comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* (the Privacy Act). In particular, Principle 10 sets limits on the use of personal information by Commonwealth agencies and Principle 11 sets limits on the disclosure of this information by these agencies.

Section 6 of the Privacy Act defines ‘personal information’ as including information or an opinion about an individual whose identity is apparent or can be reasonably ascertained, from the information or opinion.

In the AAT Act, there are no similar rules relating to confidential information. Once proceedings have begun however, the Tribunal has power under sections 35(2) and 37 of the AAT Act to prohibit or restrict the disclosure of confidential material. It is therefore open to a decision maker at that stage to ask the tribunal to restrict the disclosure of confidential information included in a statement of reasons.

Legal professional privilege

Legal professional privilege, also known as client legal privilege, may attach to legal advice and other communications with the Department’s Legal Section or an external legal provider including requests for legal advice. Legal professional privilege protects

the confidentiality of communications between a lawyer and their client. If the party claiming privilege (the client) has acted inconsistently with maintaining confidentiality, a court may determine that legal professional privilege has been waived and order the disclosure of the relevant legal advice.

Generally, a reference in a statement of reasons to legal advice on an administrative issue such as the timing of a decision or the interpretation of a provision in particular legislation will not waive privilege. However, in cases where the decision maker has relied on the legal advice in making the decision and the statement of reasons reveals the substance of the legal advice, either expressly or by implication, privilege may be waived.

Change of person holding office

Under section 17 of the ADJR Act, where a person made a reviewable decision under the ADJR Act in the performance of the duties of an office and that person no longer performs the duties of that office, the person currently holding that office (their successor, or the person acting in the position) should prepare the statement of reasons.

For example, if the relevant primary decision-maker was the Minister and he or she had vacated their position due to a machinery of government change, then the new Minister can prepare the statement of reasons.

Request for further information

After the Minister provides a statement of reasons to a person, that person may seek further information.

Section 13(7) of the ADJR Act allows the Federal Court or the Federal Magistrates Court to order the Minister to furnish to the requestor an additional statement containing “*further and better particulars*” where the Court considers that the SoR does not contain:

- i. adequate particulars of findings on material questions of fact;
- ii. an adequate reference to the evidence or other material on which those findings were based; or
- iii. adequate particulars of the reasons for the decision.

Therefore, if a person provided with a statement of reasons seeks further information, the decision maker would usually consider whether the original statement of reasons provided adequate particulars. If it did not, a more detailed statement of reasons may be provided.

If a person requests documents referred to in the statement of reasons, the Department will usually:

- First, contact the requestor to ascertain whether they consider that the reference to evidence or other material in the statement of reasons was inadequate. If this is the issue, and the Minister agrees, a more detailed statement of reasons should be provided.
- Second, if the person wants the documents referred to in the statement of reasons, and those documents are not publicly available, the Department would assess whether any information in the document is likely to be sensitive in any way. In particular, is any of the information legal-in-confidence or commercial-in-confidence. If none of the information is likely to be sensitive, then the Department may release the documents.
- Third, if the Department considers that any of the information in the documents requested could be sensitive, the requestor may put in an FOI request, in order that the Department can properly assess FOI exemptions.

Publication of statements of reasons

As detailed in Table 1, the publication of certain statements of reasons is a mandatory requirement under the EPBC Act. In other cases, and consistent with the government’s policies on transparency in government decision-making, statements of reasons requested under other provisions of the EPBC Act should also be published on the Department’s website.

Once the Minister has provided a person with a statement of reasons, the person is able to deal with it in whatever manner the person feels is appropriate, subject to any restrictions on confidentiality of information contained in it,

including commercial-in-confidence and/or personal information. It is the responsibility of the person to consider and comply with those restrictions.

Processes for legal action following the issue of decisions and statements of reason

Regardless of whether the decision maker provides a statement of reasons, certain persons have rights of review of decisions under the EPBC Act. However, if a statement of reasons is provided for such a decision, the time for a person to bring proceedings to review the decision may be affected.

Depending on the particular decision made under the EPBC Act, the following rights of review may be available to a person affected by the decision:

- Internal merits review;
- External merits review; and
- Judicial review.

Table 1: Specific provisions in the EPBC Act that require a statement of reasons

EPBC Act provision	Statement of reasons is required when	When required	Who is entitled to a statement of reasons?	What is the timeframe for providing a statement of reasons?
Subsection 45(4)	Minister or delegate (‘the decision-maker’) enters into a bilateral agreement with a State or Territory.	Always required	Published statement—no specific recipient	As soon as practicable after entering into the Agreement
Subsection 57(3)	The decision-maker decides if a bilateral agreement has been contravened and what action should be taken in relation to the contravention.	Always required	Published statement—no specific recipient	Not specified
Subsection 59(5)	The decision-maker gives notice of suspension or cancellation of a bilateral agreement to a State or Territory Minister.	Always required	State or Territory Minister. Statement must also be published as soon as practicable after notice of suspension or cancellation provided	Statement of reasons must be provided to state or territory Minister with notice of suspension or cancellation
Subsection 63(5)	The decision-maker suspends or cancels bilateral agreement at request of other party.	Always required	Published statement—no specific recipient	As soon as practicable after suspension or cancellation
Subsection 74C(2)	The decision-maker decides that an action a person is proposing to take is clearly unacceptable.	Always required	The person proposing to take an action and (if different) the person who referred the action	As soon as practicable after making the decision
Subsection 77(4)	The decision-maker decides whether or not an action is a controlled action, and the person proposing to take an action or the designated proponent who received notice of the decision requests reasons for that decision.	Upon request	The person proposing to take an action or a proponent designated by the Minister	Within 28 days of a request (if the request is made within 28 days of being given notice of the Minister’s decision)
Subsection 78C(4)	The decision-maker reconsiders a decision about an action, if the person requesting the reconsideration, person proposing to take the action or the designated proponent request reasons.	Upon request	The person who requested the reconsideration see sections 78C(2)(a), (b) and (c); (who may be any person other than a Minister of a state or self-governing territory) the person proposing to take an action; or a proponent designated by the Minister	Within 28 days of a request (if the request is made within 28 days of being given notice of the Minister’s decision to reconsider an action)
Subsection 79(3)	The decision-maker reconsiders decision about an action on request by a State or Territory.	Always required	The Minister who requested the reconsideration	Within 20 business days of receiving a request from a state or territory Minister
Subsection 158(7)	The decision-maker grants an exemption, under section 158, from Part 3 or from Chapter 4 of the EPBC Act.	Always required	Published statement in accordance with regulations—no specific recipient	Within 10 business days of making a notice of exemption
Subsection 194Q(8)	The decision-maker decides not to include an item in a Subdivision A List (Threatened Species and Ecological Communities).	Required if an item was nominated by a person under section 194E(1)	A person who nominated an item in response to a notice under section 194E(1)	Within 10 business days of making a decision
Subsection 269AA(9)	The decision-maker decides to have an initial recovery plan and any subsequent recovery plan decisions.	Always required	Published statement in accordance with regulations—no specific recipient	Not specified

EPBC Act provision	Statement of reasons is required when	When required	Who is entitled to a statement of reasons?	What is the timeframe for providing a statement of reasons?
Subsection 270A(8)	The decision-maker decides to have a threat abatement plan.	Always required	Published statement in accordance with regulations—no specific recipient	Not specified
Subsection 283A(2)	The decision-maker revokes a recovery plan for a listed threatened species or listed threatened ecological community.	Always required	Published statement in accordance with regulations—no specific recipient	Not specified
Subsection 303A(7)	The decision-maker grants an exemption from Chapter 5 Part 13 under section 303A.	Always required	Published statement and copy provided to the person specified in the notice	Within 10 business days of making a notice of exemption
Subsection 324JJ(8)	The decision-maker decides not to include assessed place in Natural Heritage List.	Always required	Advise the person who nominated the place which includes the assessed place under section 324(J)	Within 10 business days of making the decision
Subsection 324L(3)(b)	The decision-maker removes all or part of a place or part of the National Heritage values of a place from the National Heritage List.	Always required	Publish notice in the Gazette that includes statement of reasons for removal and publish a copy of notice on the internet	No specified time for publication in the gazette—internet publication to be made within 10 business days of the publication of the notice in the Gazette
Subsection 341JI(9)	The decision-maker decides not to include any part of a place in the Commonwealth Heritage List.	Always required	A person responding to a notice under section 341(H)1 of the decision and the reasons for it	Within 10 business days of making the decision
Subsection 341L(4)	The decision-maker removes all or part of a place or Commonwealth Heritage values of a place from the Commonwealth Heritage List.	Always required	Publish notice in the Gazette that includes statement of reasons for removal and publish a copy of notice on the internet	No specified time for publication in the gazette—internet publication to be made within 10 business days of the publication of the notice in the Gazette
Subsection 364(5)	Resolving disagreement between Director and Board over the implementation of a plan—the decision-maker receives report and recommendations from the Director National Parks and Board of Management and then gives directions for a Commonwealth reserve implementation plan.	Always required	Director of National Parks and Boards of Management for national parks	No specified time for providing a statement of reasons
Subsection 369(5)	Resolving disagreement between Director and Board in a planning process—the decision-maker receives report and recommendations from Board of National Parks and Director of National Parks and then gives directions over the planning process.		Director of National Parks and Boards of Management for national parks	

EPBC Act provision	Statement of reasons is required when	When required	Who is entitled to a statement of reasons?	What is the timeframe for providing a statement of reasons?
Section 472	A delegate of the Minister gives notice of advice under Chapter 6 Part 17 Division 13 to a person who is not a Commonwealth agency, notice must include statement that person may seek merits review under the AAT Act and that the person may request a statement of reasons under section 28 of the AAT Act.	Persons proposing to take action which the person believes may contravene a conservation order may request a statement of reasons	The person requesting the statement of reasons	Within 28 calendar days of the receipt of a request from an applicant
Section 514YA(3)	A decision is made on an application for reconsideration of a fee.	Always required	The applicant of the reconsideration of a fee	Within 30 business days of the receipt of the application
Subsection 518(2)	One or more things required under the Act or Regulations is not done within period required.	Always required	Both houses of parliament	As soon as practicable after the end of the financial year

Please note that this list is not intended to be exhaustive of the obligation to provide a statement of reasons under the EPBC Act. Administrative decisions made that are substantive, determinative, final or operative may be subject to a requirement to prepare and provide a statement of reasons.

Note to Table 1—extended standing for judicial review under sections 487 and 488 of the EPBC Act

487 Extended standing for judicial review

- (1) This section extends (and does not limit) the meaning of the term person aggrieved in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:
 - (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations; or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.
- (2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the individual is an Australian citizen or ordinarily resident in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.
- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment; and

- (c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment.
- (4) A term (except person aggrieved) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

488 Applications on behalf of unincorporated organisations

- (5) A person acting on behalf of an unincorporated organisation that is a person aggrieved (for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*) by:
 - (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations; or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations;may apply under that Act for a review of the decision, failure or conduct.
- (6) The *Administrative Decisions (Judicial Review) Act 1977* applies in relation to the person as if he or she were a person aggrieved.

Table 2: Rights of merits review under the EPBC Act

EPBC Act reference	Applicant may apply to the AAT for merits review when a delegate of the Minister:
Section 206A	Makes a decision about a permit under Chapter 5 Part 13 Division 1 Listed threatened species and ecological communities.
Section 221A	Makes a decision about a permit under Chapter 5 Part 13 Division 2 Migratory species.
Section 243A	Makes a decision about a permit under Chapter 5 Part 13 Division 3 Whales and other cetaceans.
Section 263A	Makes a decision about a permit under Chapter 5 Part 13 Division 4 Listed marine species.
Section 303GJ	Makes a decision about a permit under Chapter 5 Part 13 International movement of wildlife specimens; the Secretary makes a determination about the marking of a specimen under section 303EU; or a decision to make, refuse, vary or revoke a declaration under section 303FN, 303FO or 303FP is made by a delegate of the Minister.
Section 472	Gives notice of advice under Chapter 6 Part 17 Division 13 Conservation orders to a person who is not a Commonwealth agency, the notice must include statement that person may seek merits review under the AAT Act and that the person may request a statement of reasons under section 28 of the AAT Act.
Section 473	Makes a decision to give advice under Chapter 6 Part 17 Division 13 Conservation orders to a person who is not a Commonwealth agency.

environment.gov.au

