

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 (CTH)

Policy Statement

Change of person proposing to take an action; Change of proponent; Transfer of approvals: Sections 78(5), 145B and 156F of the EPBC Act

Overview

This Policy Statement concerns the processes for changing the person proposing to take an action and for transfers of approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The relevant provisions of the EPBC Act are:

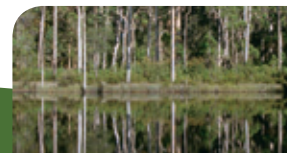
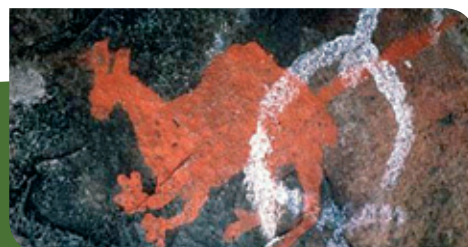
- (1) section 78(5) allows the Minister responsible for administering the EPBC Act or their delegate (the Minister) to change the **designated proponent** to another person where the Minister believes that the first proponent is no longer an appropriate person to be so designated;
- (2) section 156F allows for the **person proposing to take an action** to be changed after the relevant action has been referred for approval, but before a decision to approve or refuse the action has been made; and
- (3) section 145B allows for an approval to take an action to be transferred from the **approval holder** to another person, subject to the Ministers consent.

The EPBC Act does not require the Minister to change the proponent or transfer an approval in any particular circumstances. Change of person happens automatically when valid notice is received.

This Policy Statement has been prepared to:

- outline the processes under the relevant sections of the EPBC Act for changing the proponent, the person proposing to take an action or the approval holder,
- assist in determining if the legal identity of the person proposing to take an action, the proponent or approval holder has changed so that it has become a different 'person' for the purposes of the EPBC Act, and
- assist in determining whether the person proposing to take the action should be changed, or the approval transferred, for the relevant referral or approval.

Annex A summarises the changes required at different stages of the referral and assessment process.



Definitions

Person proposing to take the action: This term refers to the person who is proposing to take the action at any stage between when a referral is made under Div 1, Part 7 until an approval decision is made under s 133.

Designated proponent: This term refers to the person who the Minister designates as the proponent of the action under s 75(3) when deciding that an action is a controlled action.

The **person proposing to take the action** and the **designated proponent** are *not necessarily the same person*. While in most cases the Minister will designate the person proposing to take the action as the proponent, this will not always be the case.

There are different processes for changing the identity of the person proposing to take the action and the identity of the proponent. Changing the identity of one will not automatically change the identity of the other.

Approval holder: This refers to the person who is the holder of an approval granted by the Minister.

When will a change need to be made?

Sections 78(5), 145B and 156F provide a means for another person to take over an action covered by a referral or an approval without submitting an entirely new referral.

Section 145B provides a mechanism to avoid repeating an assessment process where another person proposes to take the action, for example where land is sold and the person who has purchased the land proposes to undertake the approved action.

Sections 78(5) and 156F similarly provide a mechanism to avoid the need for a re-referral where responsibility for the project is transferred.

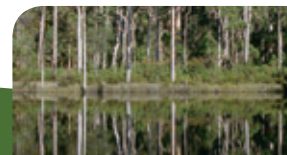
The question of whether the proponent or person proposing to take an action should be changed, or an approval transferred, may also arise in situations involving a change to that person's identity, including, but not limited to, where:

- a company changes its Australian Company Number; or
- a statutory body is abolished and replaced by another body through a legislative amendment.

The need to change the identity of the proponent, the person taking the action or the approval holder may be drawn to the department's attention by:

- providing notice under s 156F (see below for details);
- the proponent, the person proposing to take the action or the approval-holder informing the department of a likely change in corporate structure or governance arrangements; or
- the department becoming aware of a change in the corporate structure of the proponent, the person proposing to take the action or the approval-holder.
- In the latter two cases the department will advise the proponent, the person proposing to take the action or the approval holder of the necessary steps to change the person taking the action or the proponent, or to transfer the approval.

Annex B contains a variety of scenarios addressing changes to the legal identity of a person taking the action.



Identify the relevant 'person'

The approvals and assessment processes under the EPBC Act operate in response to a referral by a 'person' proposing to take an action. A person may be an individual or a body corporate (e.g. a company or incorporated association).

Individuals

An individual (e.g. Bob Smith) may clearly be a 'person' proposing to take an action. More than one person (e.g. Bob Smith and Jane Smith) may also be a 'person' jointly proposing to take an action.

Companies—Australian Company Number

The Australian Company Number (ACN) should be used as the primary means for establishing the legal identity of a company. An ACN is a unique 9-digit identifier issued by the Australian Securities and Investments Commission (ASIC) to companies registered under the *Corporations Act 2001* (Cth). A company registered with ASIC is not required to register a company name, but may use its ACN as its name. Information about ASIC and company searches is available at www.asic.gov.au. Only a company can obtain an ACN.

Note that a change in a company's name (e.g. 'XYZ Ltd' to 'ABC Ltd') does not, by itself, mean that there has been a change of legal entity. As long as the company's ACN remains the same, the legal entity is the same despite any name change.

Australian Business Numbers

Legal entities (e.g. incorporated associations, companies or individuals) may have an Australian Business Number (ABN). An ABN is a single identifier for use in business dealings with the Australian Taxation Office (ATO) and other

government agencies. If a company has an ACN, its ABN is based on its ACN but has 2 additional leading digits (11 digits in total). An entity receives one ABN, regardless of the number of commercial activities or enterprises it undertakes. As such, it is also a useful secondary identifier for a company or individual.

However, the fact that a business or other entity has an ABN does not mean that it is a legal 'person' for the purposes of the EPBC Act. (This status derives from their separate legal identity.)

It is also important to note that not all entities will have an ABN. Only those that are required to register for GST need an ABN. A particular entity may not have an ACN or an ABN (e.g. an incorporated association does not require an ABN).

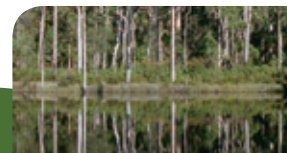
Business Names

A business name is simply a name or title under which a person or other legal entity may conduct its business. The registration or use of a business name does not create a 'person' (i.e. a legal identity). If an individual, corporation or incorporated association wishes to carry on business under a different name, that person or entity must register the business name under relevant state or territory law. The 'person' for the purpose of the EPBC Act is still the relevant individual, corporation or incorporated association.

Simply changing a business name will not change the legal identity of the relevant person.

Unincorporated associations

Associations such as social, recreational, sporting and political associations can choose to incorporate or remain unincorporated. An unincorporated association does not have a separate legal identity from its members. *That means it cannot be a 'person' for the purposes of the EPBC Act (though its individual members may).*



Incorporated associations

An incorporated association (i.e. one that is incorporated under the relevant state or territory associations incorporation legislation) is recognised as a corporate entity, which means it can be a 'person' for the purposes of the EPBC Act. Most states and territories maintain registers of incorporated associations.

Joint ventures

A 'joint venture' is not of itself a legal entity. A 'joint venture' typically refers to a number of corporate entities that have joined together (e.g. under a joint venture agreement) in a common business enterprise. If a joint venture is involved in a transfer of approval, an appropriate legal 'person' or persons should be identified as the subject of the possible transfer.

Person's history in relation to environmental matters

A poor environmental history would provide strong support for a decision not to consent to a change of proponent under section 78(5) or a transfer of approval under section 145B, which are discussed further in Policy Statement: Consideration of a Person's Environmental History when making Decisions under the EPBC Act. There is no requirement to consider a person's environmental history when changing the person proposing to take the action.

Change of *designated proponent* (section 78(5))

If the Minister believes that the person (the **first proponent**) designated under section 75 of the EPBC Act as the proponent of the action is no longer an appropriate person to be so designated, the Minister may revoke the designation and designate

another person (the **later proponent**) as proponent of the action.

The proponent may need to be changed if the department has received valid notice of a change to the **person proposing to take the action** under s 156F.

The department may become aware of a change of responsibility for the action. If the department determines that the proponent needs to change, then the person proposing to take the action may also need to change. Since this change is made through the current person proposing to take the action and the new person proposing to take the action issuing notice under s 156F, the two persons will be contacted and instructed on the process as below.

Where there is a change of the legal entity taking the action, see **Appendix A** for further instructions.

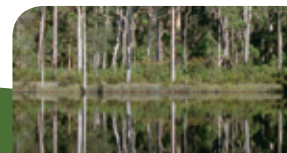
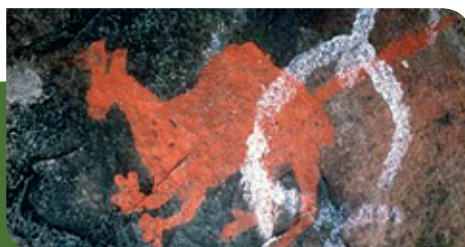
Step 1: Consent of first and later proponent

The Minister may only designate another person as proponent of the action if:

- the other person (the later proponent) consents to it and the person proposing to take the action (the first proponent) agrees (section 78(6)(a)); or
- the other person (the later proponent) *is* the person proposing to take the action (section 78(6)(b)).

Any such consent or agreement, where applicable, should be in writing. This may take the form of a paper-based or electronic written record, such as an email.

If the department has already received valid notice of a change to the person taking the action, then the requirement of 78(6)(b) will be satisfied, and the department will not need to seek consent to change the proponent.



Step 2: Minister revokes designation and makes new designation

The Minister may revoke in writing the designation of a person as proponent of the action and designate another person as the designated proponent of the action, if the Minister believes that the current proponent is no longer the appropriate person to be the designated proponent of the action.

The meaning of “*appropriate person*” in section 78(5) of the EPBC Act is not defined. The Macquarie Dictionary defines “*appropriate*” to mean “*suitable or fitting for a particular purpose*”.

Section 78(5) should be interpreted as providing the Minister power to ensure that a person is designated as a proponent for the purposes of an action referred under the EPBC Act who is appropriate, being a suitable person to progress the action in accordance with the requirements of the EPBC Act having regard to the nature and status of the particular action and the details of both the existing proponent and new proponent.

To enable the Minister to form a view as to whether a person is no longer the appropriate person to be the designated proponent of an action, the following matters are relevant:

- the details of the new proponent and its environmental history and the details of the existing proponent, including company names and ACN's where relevant; and
- the circumstances of the action, such as whether the new proponent is the person proposing to take the action.

To affect a change of proponent, the Minister will revoke in writing the original designation of the first proponent and designate the later proponent (section 78(7)).

Step 3: Advise first and later proponents

The first and later proponents will be advised of the effect of the new designation including that:

- the provisions of Chapter 4 of the EPBC Act that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent;
- for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and
- for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

Step 4: Record the change of proponent and publish the notice

The change of proponent will be recorded on relevant departmental information management systems and published on the department's internet site.

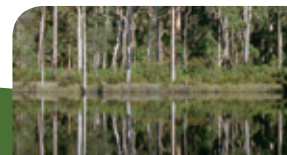
Change of person proposing to take an action (section 156F)

Section 156F of the EPBC Act provides for changes to the person proposing to take the action. At any time after a referral has been received and before the Minister has approved, or refused to approve, the taking of the action, the person proposing to take the action can be changed.

This may occur in two ways:

- the department receives notice of a change of person; or
- the current person proposing to take the action seeks advice on how to change the person taking the action.

In order to change the person taking the action, the person proposing to take the action (the **first person**) and the person who will take it instead (the **second person**) must notify the Minister in writing



that the first person no longer proposes to take the action, and the second person proposes to take the action instead (section 156F(1) of the EPBC Act).

The department will confirm the notice is valid (if notice has been received) or advise whether valid notice can be given (if requested).

Step 1: Confirm notice can be given

A notice under section 156F(1) can only be validly given if all of the following conditions are satisfied:

- the action has been referred under Division 1 of Part 7 of the EPBC Act;
- the Minister has not made a decision under section 133 to approve or not approve the action;
- the Minister has not made a decision under section 74A to not accept the referral;
- the Minister has not made a decision under section 75 that the action is not a controlled action; and
- the notice given under section 77 did not identify a particular manner for taking the action (section 77A, section 156F(2)).

The Department will notify both parties if a notice is received which does not meet any of the above conditions and explain why the notice has no effect.

Step 2: Confirm valid form of notice

Pursuant to regulation 5.10 of the EPBC Regulations, the notice must contain:

- the identification number of the action, as allocated by the Department;
- a brief description or a descriptive title of the action;
- the location of the action;
- the name of the person who originally proposed to take the action; and
- the name of the person proposing to take that action instead of that person.

If a valid notice is received and the conditions under Step 1 are satisfied, the notice takes effect from the date it is received (by the Department or the Minister, whichever is first).

Step 3: Determine whether proponent also needs to be changed

In most cases, where there is a valid change to the person taking the action, the proponent will also need to be changed under s 78(5).

Step 4: Notify first person and second person

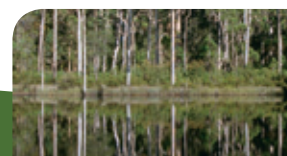
The Department will write to both persons to explain the effect of the change, which is that:

- the provisions under Chapter 4 of the EPBC Act that applied to the first person in relation to the action cease to apply to that person, and start to apply to the second person;
- the second person is taken to be named in the referral as the person proposing to take the action;
- the second person is taken to have done anything the first person did in relation to the action; and
- anything done in relation to the first person in relation to the action is taken to have been done in relation to the second person (section 156F(4)).

If the conditions set out under Step 1 are satisfied, but the notice is invalid (i.e. does not meet the requirements of regulation 5.10 of the EPBC Regulations), the Department will contact the two persons and explain why the notice is invalid and what is required for a valid notice.

Step 5: Publish notice within 10 business days

Within 10 days after receiving a valid notice under section 156F(1), a copy of the notice (ie the *two letters*: one from the first person and one from the second person) will be published on the Department's website (section 156F(5) of).



Transfer of *approval holder* (section 145B)

The holder of an approval can seek to transfer the approval to another person. Section 145B of the EPBC Act provides for an approval to take an action (issued under section 133) to be transferred from one person to another person. The following steps should be followed.

Step 1: Parties written agreement (section 145B(1))

The holder of the approval and the other person make a written agreement to transfer the approval from the approval holder to that other person. While the EPBC Act does not specify any particular form that the written agreement must take, this would typically take the form of an exchange of letters or a deed of agreement between the two parties, and the department should be provided with a copy of this documentation.

Step 2: Minister's consent to transfer

Under section 145B(2), the written agreement does not take effect until the Minister consents in writing to the transfer. The Minister will be briefed on the relevant circumstances relating to the transfer of approval by the Department, including details of company names and ACNs, where applicable, and other details relevant to a change of proponent decision, including the environmental history of the later proponent.

In deciding whether or not to consent, the Minister may consider:

- whether the transferee would be a suitable person to be granted the approval, having regard to (paragraph 145B(4)(a));
- their history in relation to environmental matters;
- if a body corporate, the history of its executive officers in relation to environmental matters; and

- if the transferee is a body corporate that is a subsidiary of another body or company (the parent body), the history of the parent body and its executive officers in relation to environmental matters; and
- whether the transferee can comply with the conditions attached to the approval (paragraph 145B(4)(b)).

Step 3: Copy of consent to transferor and transferee

The Minister will give a copy of the consent to both the transferor and transferee (section 145B(5) of the EPBC Act).

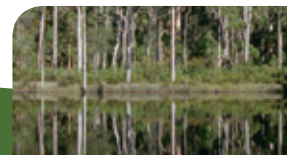
The covering letter, attaching the copy of the consent, will explain the effect of the consent to transfer the approval: that the approval is taken to have been revoked in relation to the original approval-holder, and the transferee is taken to have been approved to take the action and is subject to the conditions of that approval (section 145B(3) of the EPBC Act).

Step 4: Record the change of approval holder and publish notice

Although not a statutory requirement, a notice of the decision to transfer the approval will be published on the Department's website. The change of approval holder will be recorded on the relevant departmental information management systems.

If not granting consent to transfer

If the decision is made not to consent to the transfer the Department will send a letter to both the transferor and the transferee notifying them of the decision and clearly outlining the reasons for the decision.



Annex A: Summary of changes required at different points

The following table provides a summary of what changes are required at different stages in the referral process.

	Necessary change	Assessment stage	Relevant part(s) of Act	Notes
Original proponent and person proposing to take the action are the same organisation (typical case)	Where the person (who is or will be both the designated proponent and the person taking the action) needs to be changed (typical case)	Before decision on controlled action	Section 156 F	Section 156F applies at any time after a referral under Division 1 of Part 7. At this time no proponent has been designated, so s. 156F is the only applicable section. At the time of the controlled action decision, if a CA decision is made, the new 'person proposing to take the action' is then designated as the proponent. Not necessary if the proposal is likely to be a not controlled action (NCA).
		After proposal is deemed a controlled action (and before final decision on approval)	Section 156F and Section 78(5)	Both the designated proponent and the person proposing to take the action need to be changed from Person A to Person B.
		After final approval is given (change of approval holder)	Section 145B	Only approval holder (under s.145B) may be changed at this stage.
	Change of person proposing to take the action only (and the person who referred the action will remain the designated proponent)	After referral (and before final decision on approval)	Section 156F	Only s. 156F applies in the case where the person who referred the action is no longer proposing to take the action, but wishes to continue undertaking the assessment. For example if a local council refers a highway bypass, but the state roads agency decides to take up the responsibility of building the road.
Original proponent and person proposing to take the action are different organisations (rarely the case)	Change of designated proponent only	After decision on controlled action (and before final decision on approval)	Section 78(5)	
	Change of person proposing to take the action only	After referral (and before final decision on approval)	Section 156F	
	Change of approval holder	After final approval is given	Section 145B	Only approval holder (under s.145B) may be changed at this stage.

Annex B: Scenarios

The following Annex provides a summary of what is required to change the person proposing to take the action, the proponent and the approval holder in a variety of different scenarios (i.e. with different kinds of ‘person’), at various stages in the assessment process:

- the *referral stage*, i.e. after person has made a referral under s 68, but before the minister has made a controlled action decision has been made under section 74C or s 75,
- the *assessment stage*, i.e. after the Minister has made a controlled action decision under s 75 but before the Minister has made an approval decision under s 133; and
- the *post-approval stage*, i.e., after the Minister has granted an approval under s 133.

Scenario	Change required		
	Change of <u>person proposing to take the action</u> (Referral and assessment stages)	Change of <u>proponent</u> — (Assessment stage <i>only</i>)	Change of approval holder (Post-approval)
Change of directorship	<p>A company exists as a separate legal entity to its directors, and remains in existence until such time as it is deregistered. Therefore, no action is required at either the assessment or the referral stage when a company’s directorship changes, including where:</p> <ul style="list-style-type: none"> • the company’s directorship changes from one individual to another, and • new directors are added or taken away from the company. <p>Where an individual director, as opposed to the company, has been listed as the person proposing to take the action, the Minister can change the person proposing to take the action under s 156F. It would be preferable to change the person proposing to take the action to the company rather than another individual director, to avoid further changes. Section 156F would require the individual director and the company to give notice of the change of person proposing to take the action.</p>	<p>A company exists as a separate legal entity to its directors, and remains in existence until such time as it is deregistered. Therefore, if the company is the designated proponent, no action should be required when a company’s directorship changes, including where:</p> <ul style="list-style-type: none"> • the company’s directorship changes from one individual to another, and • new directors are added or taken away from the company. <p>Where an individual director, as opposed to the company, is the designated proponent, the Minister can change the designated proponent under s 78(5). It would be preferable to change the designated proponent to the company rather than another individual director, to avoid further changes. Section 78(6) requires the consent of the new proponent and the person undertaking the action.</p>	<p>A company exists as a separate legal entity to its directors, and remains in existence until such time as it is deregistered. Therefore, if the company’s name is on the approval then no action should be required when a company’s directorship changes, including where:</p> <ul style="list-style-type: none"> • the company’s directorship changes from one individual to another, and • new directors are added or taken away from the company. <p>Where an individual director, as opposed to the company, is the designated approval holder, the Minister can change the approval holder can be changed under s 145B. It would be preferable to change the designated proponent to the company rather than another individual director, to avoid further changes. Section 145B requires a written agreement between the current approval holder and the new approval holder, and the Minister’s consent.</p>

Change required			
Scenario	Change of <u>person proposing to take the action</u> (Referral and assessment stages)	Change of <u>proponent</u> — (Assessment stage only)	Change of approval holder (Post-approval)
Change of company structure from Pty Ltd to Ltd	<p>The change from Pty Ltd to Ltd should not change the legal obligations and rights of the company, therefore no action is required from the Minister at either the assessment or the referral stage.</p> <p>The company should inform the Minister of the change of structure and all new documentation should reflect the new structure.</p>	<p>The change from Pty Ltd to Ltd should not change the legal obligations and rights of the company, therefore no action is required from the Minister.</p> <p>The company should inform the Minister of the change of structure and all new documentation should reflect the new structure.</p>	<p>The change from Pty Ltd to Ltd should not change the legal obligations and rights of the company, therefore no action is required from the Minister.</p>
Change of company name	<p>A change of name does not affect the existing rights/obligations of a company or create a new legal entity (section 161(1), <i>Corporations Act 2001</i> (Cth)). No action is required from the Minister at either the assessment or the referral stage</p> <p>The company should notify the Minister of the change of name and all new documentation should reflect the new name.</p>	<p>A change of name does not affect the existing rights/obligations of a company or create a new legal entity (section 161(1), <i>Corporations Act 2001</i> (Cth)). Therefore not action is required from the Minister.</p> <p>The company should notify the Minister of the change of name and all new documentation should reflect the new name.</p>	<p>A change of name does not affect the existing rights/obligations of a company or create a new legal entity (section 161(1), <i>Corporations Act 2001</i> (Cth)). Therefore not action is required from the Minister.</p>
A company's shareholding changes	<p>A change to a company's shareholding does not create a new legal entity, therefore no action is required from the Minister at either the assessment or the referral stage.</p>	<p>A change to a company's shareholding does not create a new legal entity, therefore no action is required from the Minister.</p>	<p>A change to a company's shareholding does not create a new legal entity, therefore no action is required from the Minister.</p>

Change required			
Scenario	Change of <u>person proposing to take the action</u> (Referral and assessment stages)	Change of <u>proponent—(Assessment stage only)</u>	Change of approval holder (Post-approval)
A company is taken over by another company	<p>In this scenario, the ACN remains the same, and all that changes is the shareholding. A change to a company's shareholding does not create a new legal entity.</p> <p>Referral stage</p> <p>No action is required from the Minister.</p> <p>Assessment stage</p> <p>The company should inform the Minister of the takeover. At the assessment stage the Minister may take into account the environmental history of the parent body and its executive officers (s 134(6)). If the Minister becomes aware of the takeover and considers he or she needs more information about the parent company, the Minister can request further information from the person proposing to take the action or the proponent (s 132).</p>	<p>In this scenario, <u>the ACN and business name remain the same</u>, and all that changes is the shareholding. A change to a company's shareholding does not create a new legal entity. However, where the person proposing to take the action is a body corporate that is a subsidiary of another company, the Minister may take into account the history of the parent body (and its executive officers) in relation to environmental matters (section 136(4) of the EPBC Act).</p> <p>The Minister should therefore be notified that the company has become a subsidiary of the company in question so that this may be taken into account during the assessment.</p>	<p>In this scenario, the ACN and business name remain the same, and all that changes is the shareholding. A change to a company's shareholding does not create a new legal entity. No action is required from the Minister.</p>
A Pty Ltd company merges with another Pty Ltd company	<p>A merger results in a new ACN and new company structure. The original company therefore ceases to exist at the time of the merger.</p> <p>A change of person at the assessment stage requires written notification from both the original person proposing to take the action (the first person) and the new person proposing to take the action (the second person). Where a company's ACN changes, the first person has ceased to exist, which means valid notice cannot be given under s 156F.</p> <p>If this situation arises, please contact the Community Information Unit for advice.</p>	<p>A merger results in a new ACN and new company structure. The original company therefore ceases to exist at the time of the merger.</p> <p>Please contact the Community Information Unit for guidance if this issue arises.</p>	<p>A merger results in a new ACN and new company structure. The original company therefore ceases to exist at the time of the merger. Transfer of the approval in this scenario will be problematic once the merger has occurred, because the approval holder identified on the approval no longer exists, and therefore cannot enter into an agreement under s 145B. A new referral may need to be made.</p> <p>Please contact the Community Information Unit for guidance if this issue arises.</p>

Change required			
Scenario	Change of <u>person proposing to take the action</u> (Referral and assessment stages)	Change of <u>proponent</u> — (Assessment stage <i>only</i>)	Change of approval holder (Post-approval)
A Ltd company demergers and forms two Ltd/Pty Ltd companies	<p>If a company demergers and forms two new companies, the outcome will depend on who will be responsible for taking the action forward.</p> <p>If the company with the same ACN is still proposing to take the action, then no change is required at either the referral or the assessment stage.</p> <p>If the newly demerged company with a new ACN is now proposing to take the action, then the person changing the action will need to be changed under s 156F by both companies giving notice of the change to the person proposing to take the action.</p> <p>The <u>original</u> person proposing to take the action may withdraw the referral in accordance with section 170C of the EPBC Act.</p> <p>This is likely to be a complex situation, so contact the Community Information Unit for further advice if required.</p>	<p>If a company demergers and forms two new companies, the outcome will depend on who will be responsible for taking the action forward.</p> <p>If the company with the same ACN is still proposing to take the action, then no change is required.</p> <p>If the new company with a new ACN now wishes to be the proponent, the proponent's details can be changed by the Minister under s 78(5) with the consent of the new proponent and the person proposing to take the action. If the new company will also be taking the action, it will be easier to change the identity of the person proposing to take the action first. The new company can then give its consent to being the new proponent.</p> <p>If both companies have a new ACN, or there is any confusion about the identity of the companies, please contact the Community Information Unit for assistance.</p>	<p>If a company demergers and forms two new companies, the outcome will depend on who will be responsible for taking the action forward.</p> <p>If the company with the same ACN is still taking the action, then no action is required.</p> <p>If the new company with a new ACN now wishes to be the approval holder, then the companies will need to make an agreement under s 145B to transfer the approval, and seek the Minister's consent.</p> <p>For information about dealing with the interim period, please contact the Community Information Unit.</p> <p>If both companies have a new ACN, please contact the Community Information Unit for assistance.</p>
Part of a company is sold to another party	<p>The outcome in terms of a Referral will depend on who will be responsible for the proposed action moving forward.</p> <p>If the original company still intends to take the action, no changes are required.</p> <p>If the new party proposes to take the action, the original company and the new party should notify the Minister of the change of person proposing to take the action under s 156F and all new documentation should reflect the change of person.</p> <p>The <u>original</u> person proposing to take the action may withdraw the referral in accordance with section 170C of the EPBC Act.</p>	<p>Whether or not the Minister needs to change the proponent need will depend on who will be responsible for the proposed action moving forward.</p> <p>If the <u>original company</u> still intends to take the action, no changes are required.</p> <p>If the <u>new party</u> proposes to take the action, the original company should notify the Minister. The proponent's details can be changed by the Minister under s 78(5) according to the procedure in the Policy Statement.</p> <p>Note: If the new party will also be taking the action, it will be easier to change the identity of the person proposing to take the action first.</p>	<p>Whether or not the Minister needs to change the proponent need will depend on who will be responsible for the proposed action moving forward.</p> <p>If the original company still intends to take the action, no changes are required.</p> <p>If the new party proposes to take the action then the companies will need to make an agreement under s 145B to transfer the approval, and seek the Minister's consent.</p> <p>For information about dealing with the interim period, please contact the Community Information Unit.</p>

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Scenario	Change of <u>person proposing to take the action</u> (Referral and assessment stages)	Change of <u>proponent</u> — (Assessment stage <i>only</i>)	Change of approval holder (Post-approval)
A company is in liquidation, is insolvent or is in receivership	There is no requirement under Chapter 4 of the EPBC Act for a company to inform the Minister if it goes into liquidation, becomes insolvent or goes into receivership. There are no grounds in these circumstances for the Minister to decide not to assess or approve an action. Should this situation arise, please contact the Community Information Unit for assistance.	There is no requirement under the Chapter 4 of the EPBC Act for a company to inform the Minister if it goes into liquidation, becomes insolvent or goes into receivership. There are no grounds in these circumstances for the Minister to decide not to assess or approve an action. Should this situation arise, please contact the Community Information Unit for assistance.	No action is required. Any new party proposing to continue with the action will need to make a new referral.
A company is liquidated	A company ceases to exist on deregistration.	A company ceases to exist on deregistration.	A company ceases to exist on deregistration. Any new party proposing to continue with the action will need to make a new referral.
A partnership changes	A partnership may change when a partner leaves the partnership, or a new partner is added. The consequences of a partnership change will depend a variety of factors. For example: Has the original partnership been dissolved/wound up and a new partnership created? Did the departing partner retire? Another factor to consider is whether the partnership is an incorporated limited partnership. If so, partners should be able to leave and join the partnership without this affecting the legal status of the partnership. Due to the range of factors involved in a change of partnership, please contact the Community Information Unit for advice on a particular case.	A partnership may change when a partner leaves the partnership, or a new partner is added. The consequences of a partnership change will depend a variety of factors. For example, has the original partnership been dissolved/wound up and a new partnership created? Did the departing partner retire? Another factor to consider is whether the partnership is an incorporated limited partnership. If so, partners should be able to leave and join the partnership without this affecting the legal status of the partnership. Due to the range of factors involved in a change of partnership, please contact the Community Information Unit for advice on a particular case.	A partnership may change when a partner leaves the partnership, or a new partner is added. The consequences of a partnership change will depend a variety of factors. For example, has the original partnership been dissolved/wound up and a new partnership created? Did the departing partner retire? Another factor to consider is whether the partnership is an incorporated limited partnership. If so, partners should be able to leave and join the partnership without this affecting the legal status of the partnership. Due to the range of factors involved in a change of partnership, please contact the Community Information Unit for advice on a particular case.

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Scenario	Change of <u>person proposing to take the action</u> (Referral and assessment stages)	Change of <u>proponent</u> — (Assessment stage only)	Change of approval holder (Post-approval)
An individual dies and their beneficiary or another person wishes to continue with the action	<p>During the referral and assessment process a change of person proposing to take the action can only be effected in accordance with s 156F. Section 156F requires written notice from the current person listed as the person proposing to take the action and the new person proposing to take the action.</p> <p>If the currently listed person is dead, they cannot give notice. Therefore, the new person proposing to take the action will need to make a new referral.</p> <p>The original referral cannot be withdrawn under s 170C, because only the person proposing to take the action can withdraw a proposal.</p>	<p>During the assessment a change of person proposing to take the action can only be effected in accordance with s 156F. Section 156F requires written notice from the current person listed as the person proposing to take the action and the new person proposing to take the action.</p> <p>If the currently listed person is dead, they cannot give notice. Therefore, the new person proposing to take the action will need to make a new referral.</p> <p>The original referral cannot be withdrawn under s 170C, because only the person proposing to take the action can withdraw a proposal.</p>	An approval granted under s 133 cannot be transferred to another person where the approval holder dies. A person would need to make a new referral.
A government corporation is privatised	<p>The outcome in terms of a referral or assessment will depend on the legislation governing the privatisation, which will differ between cases.</p> <p>Should this situation arise, please contact the Community Information Unit for assistance.</p>	<p>What actions are required for a change of proponent at the assessment stage will depend on the legislation governing the privatisation, which will differ between cases.</p> <p>Should this situation arise, please contact the Community Information Unit for assistance.</p>	<p>What actions are required for a change of approval holder at the assessment stage will depend on the legislation governing the privatisation, which will differ between cases.</p> <p>Should this situation arise, please contact the Community Information Unit for assistance.</p>
AN agency's ABN and/or name changes	<p>An agency's ABN and/or name may change as a result of a government restructure.</p> <p>Non-statutory government agencies are simply acting as 'the Crown', i.e. a particular government. The 'person' who made the referral is therefore the particular government—the Commonwealth, the State of Victoria etc. In these cases a change of agency name or ABN does not change the person making the referral, therefore there is no consequence under the EPBC Act. Therefore the only action required is updating contact details.</p>	<p>An agency's ABN and/or name may change as a result of a government restructure.</p> <p>The Minister will need to consider who the person is who made the referral.</p> <p>Non-statutory agencies are simply acting as 'the Crown', i.e. a particular government. In these cases the 'person' who made the referral is the particular government—the Commonwealth, the State of Victoria etc. In these cases a change of agency name or ABN does not change the person making the referral, therefore there is no consequence under the EPBC Act. There is only an administrative task of updating contact details.</p>	<p>An agency's ABN and/or name may change as a result of a government restructure.</p> <p>The Minister will need to consider who the person is who made the referral.</p> <p>Non-statutory agencies are simply acting as 'the Crown', i.e. a particular government. In these cases the 'person' who made the referral is the particular government—the Commonwealth, the State of Victoria etc. In these cases a change of agency name or ABN does not change the person making the referral, therefore there is no consequence under the EPBC Act. There is only an administrative task of updating contact details.</p>

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Scenario	Change of <u>person proposing to take the action</u> (Referral and assessment stages)	Change of <u>proponent</u> — (Assessment stage <i>only</i>)	Change of approval holder (Post-approval)
Local councils are amalgamated	<p>What changes are required for a referral will depend on the legislation governing the local councils and amalgamation in question, which will differ between cases.</p> <p>Should this situation arise, please contact the Community Information Unit for assistance.</p>	<p>What actions are required for a change of proponent at the assessment stage will depend on the legislation governing the local councils and amalgamation in question, which will differ between cases.</p> <p>Should this situation arise, please contact the Community Information Unit for assistance.</p>	<p>What actions are required for a change of proponent at the assessment stage will depend on the legislation governing the local councils and amalgamation in question, which will differ between cases.</p> <p>Should this situation arise, please contact the Community Information Unit for assistance.</p>
A statutory corporation's underlying statute changes	<p>If the statutory corporation continues to exist, then no action is required, as the legal person remains the same.</p> <p>If the statutory corporation ceases to exist, please contact the Community Information Unit for assistance in these cases.</p>	<p>If the statutory corporation continues to exist, then no action is required.</p> <p>If the statutory corporation ceases to exist, please contact the Community Information Unit for assistance in these cases.</p>	<p>If the statutory corporation continues to exist, then no action is required.</p> <p>If the statutory corporation ceases to exist, please contact the Community Information Unit for assistance in these cases.</p>
A state department becomes an office	<p>Non-statutory government agencies are simply acting as 'the Crown', i.e. a particular government. The 'person' who made the referral is the particular government—the Commonwealth, the State of Victoria etc. In these cases a change of a Department to an Office does not change the person making the referral, therefore there is no consequence under the EPBC Act.</p> <p>Contact details may need to be updated.</p>	<p>Many agencies are simply acting as 'the Crown', i.e. a particular government. In these cases the 'person' who made the referral is the particular government—the Commonwealth, the State of Victoria etc. In these cases a change of a Department to an Office does not change the person making the referral, therefore there is no consequence under the EPBC Act.</p> <p>Contact details may need to be updated.</p>	<p>Non-statutory agencies are simply acting as 'the Crown', i.e. a particular government. In these cases the 'person' who made the referral is the particular government—the Commonwealth, the State of Victoria etc. In these cases a change of a Department to an Office does not change the person making the referral, therefore there is no consequence under the EPBC Act.</p> <p>Contact details may need to be updated.</p>

