



PERTH, FRIDAY, 22 OCTOBER 2021 No. 180 **SPECIAL**

PUBLISHED BY AUTHORITY GEOFF O. LAWN, GOVERNMENT PRINTER
© STATE OF WESTERN AUSTRALIA

ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT
ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE
PROCEDURES 2021**

ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE PROCEDURES 2021****Preamble**

The Environmental Protection Authority has prepared these administrative procedures for the purposes of establishing the practices of environmental impact assessment under Part IV Divisions 1 and 2 of the *Environmental Protection Act 1986*.

Citation

These procedures may be cited as the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2021*.

Operation and transition

The Environmental Protection Authority will follow the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2021* from the gazettal date for proposals currently being assessed to the extent the EPA determines that it is appropriate.

If the EPA determines the application of (some or all) of these procedures is not appropriate, the administrative procedures applying at the time the EPA decided to assess the proposal will apply to that proposal.

CONTENTS

Purpose and scope	
Stage 1—Referral of a proposal to the EPA (<i>s. 38 to s. 38D</i>)	4802
1.1 Pre-referral process	4802
1.2 Referral of proposal (<i>s. 38</i>)	4802
1.3 Calling in a proposal (<i>s. 38A</i>)	4802
1.4 Referral requirements (<i>s. 38B</i>)	4802
1.5 Amending a referred proposal (<i>s. 38C</i>)	4803
1.6 Not proceeding with a referred proposal (<i>s. 38D</i>)	4803
1.7 EPA considers if referral is valid	4803
Stage 2—EPA to decide whether to assess a proposal (<i>s. 38E to s. 39</i>)	4804
2.1 Request for further information—Requisition (<i>s. 38F</i>)	4804
2.2 EPA to decide whether to assess a referred proposal (<i>s. 38G</i>)	4804
2.2.1 Public comment on referred proposals	4805
2.3 Decision to assess	4805
2.3.1 Level of assessment	4805
2.4 Decision not to assess (<i>s. 38G(7)</i>)	4805
2.4.1 Appeals on EPA decision not to assess	4806
2.5 Derived proposals (<i>s. 38E</i>)	4806
2.5.1 Public comment on request to declare a derived proposal	4806
2.5.2 EPA to decide whether to declare a derived proposal	4806
2.6 Record of referred proposals (<i>s. 39</i>)	4806
2.7 Nomination of proponent (<i>s. 38H</i>)	4807
2.8 Change of proponent (<i>s. 38I</i>)	4807
Stage 3—Assessment of proposals (<i>s. 40 to s. 43A</i>)	4808
3.1.1 Step 1. Scoping the proponent’s environmental review	4809
3.1.2 Step 2. Preparation of additional assessment information (including an Environmental Review Document)	4809
3.1.3 Step 3. Public review of additional assessment information (including an Environmental Review Document)	4810
3.1.4 Step 4. Preparation of EPA’s draft assessment report	4810
3.1.5 Step 5. Completion of the EPA’s assessment	4810
3.2 Assessment of significant amendments (<i>s. 40AA</i>)	4811
3.3 Termination of assessment (<i>s. 40A</i>)	4811
3.4 Strategic proposals and strategic assessments (<i>s. 40B</i>)	4811
3.5 Decision-making authority not to approve proposal until certain events occur (<i>s. 41</i>)	4811
3.5.1 Investigation work that is not part of the proposal	4811
3.6 Proposal not to be implemented before action under <i>s. 45</i> taken (<i>s. 41A</i>)	4811
3.6.1 Minor or preliminary work	4812
3.7 Conduct of public inquiries under <i>s. 40(2)(c)</i> (<i>s. 42</i>)	4812
3.8 Minister to direct the EPA to assess a proposal (<i>s. 43</i>)	4812
3.9 Amendments to proposals during assessment (<i>s. 43A</i>)	4812
Stage 4—EPA report on the assessment of a proposal (<i>s. 44</i>)	4813
4.1 Assessment report	4813
4.2 Recommended conditions and procedures	4813
Stage 5—Decision on proposal and implementation of proposals (<i>s. 44A to s. 48</i>)	4814
5.1 Procedure for deciding if assessed proposal may be implemented (<i>s. 45</i>)	4814
5.1.1 Appeals on EPA Assessment report	4814
5.1.2 Agreement or decision on whether proposal may be implemented	4814
5.2 Implementation conditions (<i>s. 45A</i>)	4814
5.3 Implementation of derived proposal (<i>s. 45B</i>)	4814
5.4 Duties of proponents after service of Ministerial statement (<i>s. 47</i>)	4814
5.5 Amending approved proposals or implementation conditions without inquiry or assessment (<i>s. 45C</i>)	4815
5.6 Division or consolidation of proposals and issue of separate or combined Ministerial statements (<i>s. 45D</i>)	4815
5.7 Amending implementation conditions after inquiry (<i>s. 46</i>)	4815

5.8 Interim conditions and procedures (<i>s. 46A</i>).....	4816
5.9 Duration and withdrawal of Ministerial statement (<i>s. 47A</i>)	4816
5.10 Control of implementation of proposals (<i>s. 48</i>).....	4817
Definitions of and guidance on terms	4818

ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE PROCEDURES 2021**

Purpose and scope

Part IV Division 1 of the *Environmental Protection Act 1986* (EP Act) provides for the referral and assessment of significant and strategic proposals, and proposals of a prescribed class. Part IV Division 2 of the EP Act provides for decision-making regarding the implementation of proposals, and regulation of the implementation of proposals after it is decided that a proposal may be implemented.

Under *s. 122* of the EP Act, the Environmental Protection Authority (EPA) may draw up administrative procedures for the purposes of the EP Act and in particular for the purposes of establishing the principles and practices of environmental impact assessment (EIA).

The *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2021 (Administrative Procedures)* set out administrative procedures for the purposes of establishing the principles and practices of EIA conducted under Part IV of the EP Act. They form part of the EPA's hierarchy of EIA procedures (Figure 1).

The EP Act has primacy of EIA procedures in this hierarchy. The Administrative Procedures is next in the hierarchy and establishes principles and practices for EIA procedures. The *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual 2021 (Procedures Manual)* then follows in the hierarchy and provides details and guidance on EIA procedures. The Procedures Manual is however a non-statutory policy document and does not form part of the Administrative Procedures or the EP Act.

The scope of the Administrative Procedures is the procedures that the EPA, the Chair (or Deputy Chair) of the EPA, and the Department of Water and Environmental Regulation (where relevant) administer. This includes procedures relating to the referral, assessment and reporting of proposals, and amendments to proposals and implementation conditions after an implementation agreement or decision (Ministerial statement) is issued. For completeness and where the Chair of the EPA has a delegation from the Minister, information has been provided for sections in Part IV of the EP Act for which the Minister is the decision-maker.

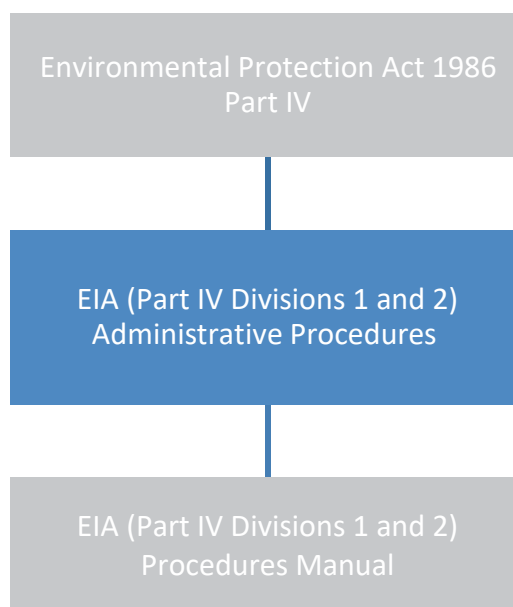


Figure 1—Hierarchy of EIA procedures under Part IV (Divisions 1 and 2) of the EP Act

The **Administrative Procedures** set out the essential procedures in relation to the provisions of Part IV, Divisions 1 and 2 of the EP Act, grouped according to the following key stages—

- Stage 1** Referral of a proposal to the EPA (*s. 38 to s. 38D*)
- Stage 2** EPA to decide whether or not to assess a referred proposal (*s. 38E to s. 39*)
- Stage 3** Assessment of proposals and significant amendments (*s. 40 to s. 43A*)
- Stage 4** EPA report on the assessment of a proposal (*s. 44*)
- Stage 5** Decision on proposal and implementation of proposals (*s. 44A to s. 48*).

For more detailed guidance on the procedures and process for EIA under Part IV of the EP Act, refer to the EPA's **Procedures Manual**. Detailed guidance on other issues relevant to EIA is also included in other non-statutory EPA documents, such as the EPA's Statement of environmental principles, factors, objectives and aims of EIA. These non-statutory policy documents provide further details and guidance, but do not form part of the Administrative Procedures or the EP Act.

PROCEDURES
Division 1—Referral and assessment of proposals

Stage 1—Referral of a proposal to the EPA (s. 38 to s. 38D)

Stage 1 – Referral of a proposal starts with either:

1. pre-referral discussion (optional), or
2. referral of a proposal to the EPA.

1.1 Pre-referral process

While not specified in the EP Act, where a proposal is likely to have a significant impact on the environment, or is a proposal of a prescribed class, or where there is any uncertainty about this, the EPA encourages proponents to have pre-referral discussions with the EPA and to consult with decision-making authorities and other relevant government agencies and stakeholders as early as possible.

This provides an opportunity for proponents to discuss proposal alternatives, how they intend to apply the mitigation hierarchy to reduce the impacts of a proposal on the environment, and the likely environmental outcomes of the proposal.

For guidance on “significance” and “the mitigation hierarchy”, refer to the EPA’s Statement of environmental principles, factors, objectives and aims of EIA.

The EPA also encourages pre-referral discussions for future proposals identified in a strategic proposal before a proponent requests that the EPA declare a referred proposal to be a derived proposal.

1.2 Referral of proposal (s. 38)

Subsections 38(1) to 38(7) of the EP Act allow or require different entities to refer particular types of proposals to the EPA—including significant proposals, strategic proposals, proposals of a prescribed class and proposals under an assessed scheme—

- Any person *may* refer a significant proposal (s. 38(1)).
- Only a proponent or a responsible authority *may* refer a proposal under an assessed scheme (s. 38(2) and s. 48I).
- The Minister *may* refer a proposal where there is public concern about the likely effect of a proposal, if implemented, on the environment (s. 38(3)).
- As soon as a decision-making authority has notice of a proposal that appears to it to be a significant proposal or a proposal of a prescribed class, it *must* refer that proposal to the EPA (s. 38(4)) unless the proposal has already been referred or if there are statutory exceptions such as those in section 6 of the *Mining Act 1978*.
- Only a proponent *may* refer a strategic proposal (s. 38(7)).

For guidance on “significance”, refer to the EPA’s Statement of environmental principles, factors, objectives and aims of EIA.

1.3 Calling in a proposal (s. 38A)

If a proposal has not been referred to the EPA under s. 38, the EPA *must* require either a proponent or decision-making authority to refer the proposal, if the EPA considers that it is a significant proposal or a proposal of a prescribed class (s. 38A(1)). The requirement *must* be in writing and *must* specify the period within which it has to be complied with (s. 38A(2)). The proponent or decision-making authority *must* refer the proposal to the EPA within the period specified in the requirement (s. 38A(3)).

The EPA can only require the referral of a proposal under an assessed scheme if it did not have sufficient scientific or technical information to enable it to assess the environmental issues raised by the proposal when it assessed the assessed scheme under Division 3 (s. 38A(4)).

1.4 Referral requirements (s. 38B)

The referral *must* be in writing (s. 38B(1)). The *Procedures Manual* sets out the information that is required to enable the EPA to deal with the referral.

A proposal cannot be referred to the EPA more than once unless (s. 38B(2))—

- (a) under section 38D, a referral of the proposal is taken to have been withdrawn; or
- (b) under section 38F(4), a referral of the proposal has been declared to have been withdrawn; or
- (c) under section 40A, assessment of the proposal has been terminated; or
- (d) under section 47A, a Ministerial statement relating to the proposal has been withdrawn or is taken to have been withdrawn.

1.5 Amending a referred proposal (s. 38C)

At any time before the EPA decides whether or not to assess a referred proposal, the proponent *may*, by written notice, request that the EPA approve of the proposal being amended (s. 38C(1)). The EPA *may*, at its discretion, approve or refuse the request (s. 38C(2)). If the EPA approves the amendment, the amended proposal is taken to have been referred under s. 38 (s. 38C(3)).

1.6 Not proceeding with a referred proposal (s. 38D)

If at any time before the EPA has decided whether or not to assess a referred proposal the EPA receives written notice from the proponent that the proponent does not wish to proceed with the proposal, the referral of the proposal is taken to have been withdrawn (s. 38D(1)). Section 38D(1) of the EP Act applies whether or not the proposal was referred by the proponent (s. 38D(2)).

1.7 EPA considers if referral is valid

While not specified in the EP Act, on receipt of a referral the EPA considers whether the referral is valid. In considering validity, the EPA considers matters such as—

- the form and type (significant, proposal of a prescribed class, strategic etc) of proposal referred
- whether the referrer can refer that form and type of proposal
- whether the proposal has previously been referred and if so, whether it meets the referral requirements under s. 38B.

If the EPA does not have sufficient information to consider whether the referral is valid, the EPA *may* also request additional information during Stage 1 or Stage 2 (s. 38F), see Section 2.1.

The EPA *will usually* consider either—

1. the referral is valid—the EPA records that the referral is valid, or
2. the referral is not valid—the EPA notifies the referrer that it is not a valid referral, stating the reason why it is not a valid referral.

(Note: Information which the EPA considers in Stage 2 may require the EPA to re-consider whether the referral is valid.)

Stage 1 – Referral of a proposal ends when the EPA either:

1. records that a referral is considered valid, or
2. notifies the referrer that it is not a valid referral.

Stage 2—EPA to decide whether to assess a proposal (s. 38E to s. 39)

Stage 2 – EPA to decide whether to assess a referred proposal starts when the EPA records that a referral is considered valid.

2.1 Request for further information—Requisition (s. 38F)

If the EPA considers that it does not have enough information to enable it to decide—

- (a) whether or not to assess the proposal, or
- (b) whether or not to agree to a request to declare a proposal to be a derived proposal under s. 38E

it *may*, by written notice (a requisition), request any person (including the proponent, government agencies and/or decision-making authorities) to provide it with additional information about the proposal. It *may* also require the additional information be provided before the end of a period specified in the notice (the compliance period) (s. 38F(2)).

In determining whether the statutory timeframe for the EPA to make a decision about a proposal (s. 38G(1), see Section 2.2) has ended, the EPA has to disregard (s. 38F(3))—

- (a) if a requisition is complied with within the compliance period—the period from the day on which it was issued until the day on which it was complied with, or
- (b) if a requisition is not complied with within the compliance period—the compliance period.

If a requisition in relation to a proposal is issued to the person who referred the proposal and the compliance period ends without the requisition having been complied with, the EPA *may*, by written notice to the person, declare the referral to have been withdrawn (s. 38F(4)). Under s. 38F(5), if the proposal was not referred by the proponent, the EPA *must* obtain the consent of the proponent before giving notice under s. 38F(4).

In some cases, the EPA *may* also need to request additional information about the proposal if it does not have sufficient information to decide whether the referral is valid (see Section 1.7).

2.2 EPA to decide whether to assess a referred proposal (s. 38G)

The EPA *must* decide whether or not to assess a validly referred proposal within 28 days after the referral of a proposal (s. 38G(1)(a)).

The EPA *is to* give written notice of the decision (s. 38G(1)(b)) to—

- i. the proponent
- ii. the referrer, if the proposal was not referred by the proponent and
- iii. any decision-making authority determined by the EPA to be a relevant decision-making authority in relation to the proposal.

Subsection 38G(1) of the EP Act does not apply if the proposal is withdrawn under s. 38D or s. 38F(4), or the proposal is declared under s. 38E to be a derived proposal (s. 38G(2)).

The EPA's decision under s. 38G(1) is based on—

- any information submitted to it when the proposal was referred (s. 38G(3)(a))
- any additional information provided in response to any requests by the EPA for further information under s. 38F (s. 38G(3)(b))
- information derived from the EPA's own investigations and inquiries (s. 38G(3)(c)), including but not limited to, relevant public comment on the referral (see Section 2.2.1)

In making its decision, the EPA will have regard to matters including—

- the potential impacts of the proposal on the environment;
- the significance of those impacts having regard to the EP Act environmental principles and the EPA's objectives for environmental factors;
- whether the implementation of the proposal is likely to be consistent with the EPA's objectives for environmental factors.

In making its decision, the EPA may have regard to—

- other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment (s. 38G(4)).

For guidance on “significance”, and the EP Act environmental principles and the EPA's objectives for environmental factors, refer to the EPA's Statement of environmental principles, factors, objectives and aims of EIA.

With respect to strategic proposals, the EPA will have regard to the above matters when it considers the future proposals identified in that strategic proposal.

If, for any reason, a relevant decision-making authority is not given notice as required by s. 38G(1)(b) that a proposal is going to be assessed, the EPA may give written notice to the decision-making authority under s. 38G(5).

The notice under s. 38G(5) may be given by the EPA of its own motion or at the request of the decision-making authority, and may be given at any time before the Assessment report on the proposal is given to the Minister under s. 44(1) (s. 38G(6)).

2.2.1 Public comment on referred proposals

Under *s.* 38G(3)(c), the EPA's decision on whether to assess a proposal must be based on information submitted with the proposal, information provided in response to a requisition and information derived from the EPA's own investigations and inquiries. This includes relevant public comment on the referral.

Before making a decision on whether or not to assess a proposal, the EPA *will* publish referral information on the EPA website for public comment for a period of seven days. This excludes information about the proposal that the proponent requests be treated as confidential and the EPA considers satisfies the criteria in the *Environmental Protection Regulations Amendment (Publication and Confidentiality) 2021*. See also **Derived proposals**, Section 2.5.

The EPA *may* increase the length of the public comment period on a case-by-case basis.

The EPA *may* also publish an amendment to a referred proposal for public comment if the EPA receives an application for an amendment to a referred proposal under *s.* 38C.

In certain circumstances, the EPA may not publish referral information for public comment if it needs to make a decision urgently, for example to—

- constrain a decision-making authority from making a decision (*s.* 41, see Section 3.5)
- constrain a proponent from implementing a proposal (*s.* 41A, see Section 3.6).

2.3 Decision to assess

The decision of the EPA to assess a proposal is *not* appealable (see *s.* 100(1) of the EP Act).

Where the EPA determines that it will assess the proposal, the EPA *must* record its decision (*s.* 39(a)).

Effect of decision to assess

Except if the proposal is solely a strategic proposal, once the EPA has recorded a decision to assess a proposal, relevant decision-making authorities are constrained from making a decision which would cause or allow the proposal to be implemented (see Section 3.5) and any person is prohibited from implementing the proposal (see Section 3.6).

2.3.1 Level of assessment

At the time of its decision to assess a proposal under *s.* 38G, the EPA also decides on the level of assessment, which is required under *s.* 39(b) to be set out in the public record of referred proposals (see section 2.6). As the EP Act does not prescribe what a **level of assessment** is, the EPA defines it as—

“the proposal-specific level of information, public review and other requirements that the EPA determines are required to assess the proposal”.

The level of assessment set by the EPA commonly depends on whether additional assessment information (including an environmental review document) is required, and whether any information is required to be made available for public review.

The EPA determines whether it has enough information before it to assess the proposal, from—

- the referral information obtained under *s.* 38
- information provided from a request/s for further information under *s.* 38F
- information derived from the EPA's investigations and inquiries under *s.* 38G(3)(c). This may include relevant public comment on the referral.

If the EPA does not have enough information before it from the information above (referred to as **referral information**) to undertake its assessment of the proposal, the EPA will determine what **additional assessment information** under *s.* 40 (see Section 3.1) it requires.

The EPA *will* include the following in the public record of the **level of assessment** for a proposal—

- **Information required for the EPA's assessment**, which is either—
 - referral information, or
 - additional assessment information, which *may* include a proponent environmental review (see Section 3.1.2).
- **Any additional assessment information which is to be made available for public review**, which may include the proponent's report on the environmental review (Environmental Review Document) (see Section 3.1.3).

The EPA *may* also decide it requires other additional information for the purposes of assessing the proposal after the level of assessment decision. The EPA may make this decision at any time before the EPA's Assessment report is published under *s.* 44 of the EP Act and may use its powers under *s.* 40 to require or obtain this information.

2.4 Decision not to assess (*s.* 38G(7))

Where the EPA determines that it will not assess a proposal, for example, because it considers that the likely effect of a proposal which has been referred as a significant proposal is not so significant as to warrant assessment, the EPA *must* record its decision not to assess a proposal (*s.* 39(a)).

When the EPA decides not to assess a proposal, the EPA *may* give advice and make recommendations on the environmental aspects of the proposal to the proponent or any other relevant person or authority (*s.* 38G(7)).

2.4.1 Appeals on EPA decision not to assess

The decision of the EPA not to assess a proposal *is* appealable within 21 days of the public record of the decision not to assess (s.100(3a)(a)), *except* when the decision includes a recommendation that the proposal be dealt with under Part V Division 2 (Clearing) (s. 100(1)(a) of the EP Act). However, the decision to grant and conditions of a Part V clearing permit may be appealed by any person.

If an appeal is lodged under s. 100(1)(a), the Appeals Convenor *must* request that the EPA report to the Minister on the appeal (s. 106(1)(a)).

On receiving a request under s. 106(1)(a), the EPA *must* report on the relevant appeal to the Minister. Refer to Part VII of the EP Act for the procedures the Appeals Convenor and Minister administer in relation to appeals.

2.5 Derived proposals (s. 38E)

If there has been an assessment under Division 1 (the strategic assessment) of a strategic proposal and a Ministerial statement has been published in relation to the strategic proposal (s. 38E(1)), the proponent of a referred proposal may request in writing that the EPA declare the referred proposal to be a derived proposal (s. 38E(2)) and may include the request in the referral (s. 38E(3)).

2.5.1 Public comment on request to declare a derived proposal

While not specified in the EP Act, the EPA *will* publish the referral information and the proponent's request that the proposal be declared a derived proposal for a period of seven days. The EPA *may* increase the comment period on a case-by-case basis. See also Section 2.2.1.

2.5.2 EPA to decide whether to declare a derived proposal

The EPA *must* declare a referred proposal to be a derived proposal if it considers that—

- (a) the referred proposal was identified in the strategic proposal (s. 38E(4)(a)) and
- (b) in the statement mentioned in s. 38E(1)(b), it was agreed or decided under s. 45 that the referred proposal could be implemented, or could be implemented subject to conditions (s. 38E(4)(b)).

The EPA *may* refuse to declare the referred proposal to be a derived proposal if it considers that—

- (a) the environmental issues raised by the referred proposal were not adequately assessed in the strategic assessment (s. 38E(5)(a))
- (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal (s. 38E(5)(b))
- (c) there has been a significant change in the relevant environmental factors since the strategic assessment was completed (s. 38E(5)(c)).

The decision of the EPA to declare a proposal to be a derived proposal or to refuse to declare a proposal to be a derived proposal is *not* appealable (see s. 100(1) of the EP Act).

2.5.2.1 Decision to declare a derived proposal

If the EPA *declares* the referred proposal to be a derived proposal, the EPA—

- *Must* record the declaration in the public record required by s. 39(1) (s. 38E(6)(a)).
- *Must* give written notice of the declaration to the Minister (s. 38E(6)(b)).
- *May* provide advice to the Minister as to which implementation conditions should apply to the derived proposal (in those circumstances where the statement mentioned in s. 38E(1)(b) relates to two or more future proposals) (not specified in the EP Act).
- *May* publish the reasons for the declaration on the EPA website (not specified in the EP Act).
- Cannot decide to assess the proposal except for the purposes of conducting an inquiry under s. 46(4) as to whether or not any of the implementation conditions relating to the proposal should change (s. 38E(7)) (see **Stage 5 Decision on proposal and implementation of proposals**, Section 5.2).

Once the Minister receives the EPA's notice of declaration, the Minister issues a notice that the strategic proposal implementation agreement has effect—this allows the implementation of the referred proposal. The notice *may* specify which conditions from the implementation agreement apply to the derived proposal (s. 45B).

2.5.2.2 Decision to refuse to declare a derived proposal

If the EPA refuses to declare the referred proposal to be a derived proposal, the EPA—

- *must* give written notice of the refusal to the proponent (s. 38E(8)) and
- *may* include the notice in the notice given under s. 38G(1)(b)(i) (s. 38E(9)).

The EPA *may* process the referral as a significant proposal. The EPA encourages the proponent to discuss options for modifying the proposal.

2.6 Record of referred proposals (s. 39)

The EPA *must* keep a public record of each referred proposal. The EPA *must* record its decision on whether or not to assess a proposal (s. 39(a)) and *will* publish its decision on the EPA website (not specified in the EP Act).

If the EPA decides to assess the proposal, the EPA *must* also record the level of assessment (s. 39(b)) (see Section 2.3.1).

The *Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021* make provision for maintaining confidentiality in respect of documentation.

2.7 Nomination of proponent (s. 38H)

Except where a public authority is responsible for a proposal, the EPA *must* nominate a person responsible for a proposal referred to the EPA, for proposals which the EPA decides should be assessed (s. 38H(2)).

Written notice of a nomination under s38H(2) must be served on (s. 38H(4))—

- (a) the person nominated, and
- (b) any decision-making authority given notice of the EPA's decision to assess the proposal under s. 38G(1)(b)(iii) or (5).

2.8 Change of proponent (s. 38I)

If the person nominated under s. 38H(2) proposes to transfer responsibility for the proposal, that person *must* give written notice advising the name of that other person to the EPA, or to the Minister if a statement relating to the proposal has been published under s. 45(8)(b) (s. 38H(1)).

The EPA (where a Ministerial statement relating to the proposal *has not* been published) or Minister (where such a Ministerial statement *has* been published) *may* revoke a nomination under s. 38H(2) and nominate another person under s. 38H(2) in relation to a proposal (s. 38I(2)).

The power to change a proponent may be exercised even if a notice has not been received from the current proponent (s. 38I(3)(a)). Further, if such a notice has been provided, the EPA or Minister may nominate a proponent other than the proponent identified in the notice (s. 38I(3)(a)).

Stage 2 – EPA to decide whether to assess a referred proposal ends when the EPA:

1. publishes its decision whether or not to assess a proposal (s. 39(a)) and issues the required notices under s. 38G(1)(b), or
2. publishes its decision whether to declare a proposal to be a derived proposal (s. 38E(6)) and issues the required notices under s. 38E.

Stage 3—Assessment of proposals (s. 40 to s. 43A)

Stage 3 – Assessment of proposals starts when the EPA publishes its decision to assess a proposal (s. 39(a)) and issues the required notices under s. 38G(1)(b).

3.1 Assessing referred proposals (s. 40)

While not specified in the EP Act, the EPA's assessment usually begins as soon as practical after the notices are given under 38G(1)(b).

If the EPA needs additional information to assess a proposal, under s. 40(2), the EPA *may*—

- require any person to provide it with information, as specified in the EPA's request (s. 40(2)(a))
- require a contaminated sites auditor's report (s. 40(2)(aa))
- require the proponent to undertake an environmental review and provide a report to the EPA (s. 40(2)(b))
- with the approval of the Minister and subject to s. 42, conduct a public enquiry (s. 40(2)(c)).

The EPA *may* also make other investigations and inquiries (s. 40(2a)). This includes requests for advice from relevant decision-making authorities and other government agencies in relation to, but not limited to, impacts of the proposal and how those impacts may be controlled through conditions. See Section 3.1.2 for the procedures related to **preparation of additional assessment information**.

If the EPA requires a proponent to undertake an environmental review under s. 40(2)(b), the proponent *must* provide a report on the environmental review to the EPA. The EPA refers to this report as the **Environmental Review Document** (see Section 3.1.2).

If the EPA requires an environmental review under s. 40(2)(b), the EPA *must* determine the form, content, timing and procedure of the environmental review and publish an indicative outline of the timing of the environmental review (s. 40(3)). The EPA refers to this as scoping the environmental review and refers to the scoping document as the **Environmental Scoping Document**. See Section 3.1.1 for the procedures related to **scoping**.

The EPA *may* cause any information or report provided in compliance with s. 40(2)(a), s. 40(2)(aa) or any report provided in compliance with s. 40(2)(b) to be published (s. 40(4)). When publishing information or a report under s. 40(4), the EPA *may* declare that it is to be available for public review, *may* specify the period within which, the extent to which and the manner in which submissions may be made (s. 40(5)) and *may* exclude confidential information from public review. The *Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021* make provision for maintaining confidentiality in respect of documentation.

The proponent *must* publish notice of the information or report being available for public review and provide copies of the information or report (including an Environmental Review Document) as required by s. 40(6)(a). The EPA *may* also require the proponent to respond to any submissions on any information or report that is made available for public review (s. 40(6)(b)). See Section 3.1.3 for the procedures related to **public review**.

Failure to comply with a requirement

A proponent *must* comply with s. 40(6)(a) and under s. 40(9) a proponent or other person (depending upon the section) *has to* comply with any requirement imposed under s. 40(2)(a), (aa), or (b), or s. 40(6)(b).

If a proponent fails to comply with s. 40(6)(a) or a requirement under s. 40(2)(a), (aa) or (b), or s. 40(6)(b), the EPA *may* terminate the assessment (s. 40A(1)(b), see Section 3.3).

Suspension of assessment

While not specified in the EP Act, a proponent *may* request in writing at any time, that the EPA suspend the assessment of its proposal. Where the EPA agrees to suspend its assessment, the EPA *will* write to the proponent confirming that its assessment is formally suspended until further notice, until a particular event occurs or for some other period described by the EPA.

The proponent *must* request in writing when it wishes to restart its assessment. The EPA *may* progress to termination (see Section 3.3) if the proponent fails to provide the required information under s. 40 after the suspension period agreed to by the EPA.

Bilateral Agreements with the Commonwealth

The *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act) provides for bilateral agreements to be made between Commonwealth and State Governments to reduce duplication between Commonwealth and State environmental assessment and approval processes.

Where a bilateral agreement is in effect, a proponent may apply for a proposal (action) to be dealt with as a bilateral matter under the EP Act in accordance with the *Environmental Protection (Bilateral Agreements) Regulations 2021* (s.124D.) This will ordinarily be done at the time the proponent refers the proposal to the EPA.

The EPA, *may* exercise its functions under Part IV the EP Act in respect of a bilateral matter in a manner that is consistent with, and enables the implementation of, a bilateral agreement (s. 124E(1)).

For example, the EPA *may*, in relation to a proposal (s. 124E(3))—

- (a) have regard to requirements made by a bilateral agreement when making requirements or taking other action under section 40
- (b) require the proponent to do anything necessary to give effect to a bilateral agreement
- (c) make its assessment and report in a manner that satisfies the requirements of a bilateral agreement.

Where a proposal is assessed under an assessment bilateral agreement, following the EPA's assessment, the Commonwealth Minister will decide whether or not to approve the proposal and, if so any conditions in accordance with the requirements of the EPBC Act.

Where a proposal is assessed under an approval bilateral agreement, following the EPA's assessment, the Minister *may* rely on a report of the EPA, including any part of the report relating to matters of national environmental significance under the EPBC Act, and impose implementation conditions for the purpose of the implementation of a bilateral agreement (s. 124E(4)).

Key assessment steps

The process for the EPA's assessment of the different types of proposals, including significant and strategic proposals (see Section 1.2) is the same.

There are **five key steps that may occur** during **Stage 3 Assessment of proposals**—

1. Scoping the proponent's environmental review.
2. Preparation of additional assessment information (including an Environmental Review Document).
3. Public review of additional assessment information (including an Environmental Review Document).
4. Preparation of the EPA's draft assessment report.
5. Completion of the EPA's assessment.

Steps 4 and 5 are required for each assessment. Whether or not steps 1 to 3 are required for assessment of a proposal is decided for each proposal on a case by case basis. The EPA *will* specify which steps are required for the assessment of a proposal in the public record of the level of assessment (required by s. 39(b) (see Section 2.3.1).

The EPA—

- *will* give the proponent or relevant persons written notice under s. 40 if the EPA requires any of them as additional information at any time during its assessment.
- *will* also give the proponent or relevant persons written notice under s. 40 if the EPA requires other additional information at any other time during its assessment.

Specific details on key assessment steps are outlined in the *Procedures Manual*.

3.1.1 Step 1. Scoping the proponent's environmental review

The EPA uses an **Environmental Scoping Document** to define the following proposal-specific requirements of the proponent's environmental review, as required by s. 40(3)—

- **form** of the report on the environmental review (Environmental Review Document)
- **content** of the environmental review, including—
 - the preliminary key environmental factors that the proponent needs to address
 - the required work (including studies and investigations) that the proponent needs to carry out
- **indicative timing** of the environmental review
- **procedure** as to how the proponent should undertake the review, which may include making the Environmental Review Document available for public review (if specified in the in the public record required by s. 39(1)).

Refer to the *Procedures Manual* for details on the procedural requirement for an Environmental Scoping Document.

The EPA *will* publish the Environmental Scoping Document once it is approved.

3.1.2 Step 2. Preparation of additional assessment information (including an Environmental Review Document)

Environmental Review Document

Where the EPA requires an environmental review as the additional assessment information under 40(2)(b) (specified in the level of assessment required by s. 39(b))—

- the proponent *must* carry out an **environmental review** in accordance with the Environmental Scoping Document and
- the proponent *must* prepare and submit an **Environmental Review Document** to the EPA.

Refer to the *Procedures Manual* for details on the procedural requirements of an Environmental Review Document.

Other additional assessment information

The EPA *may* require other additional assessment information to be provided, if specified in the level of assessment required by s. 39(b), or if requested by written notice during the assessment.

Peer Review

Under *s. 40(2)(a)*, the EPA may require any person to provide it with such information as is specified in that requirement. The EPA *may* commission, or *may* require the proponent to commission, a peer review of assessment information including, but not limited to, the findings and conclusions of a particular environmental survey, investigation, scientific report or technical advice.

The EPA *may* require a peer review if there is a critical environmental issue and/or there is conflicting scientific information and/or advice.

The EPA *must* consider that the reviewer is an authoritative expert on the particular subject.

Under *s. 40(4)*, the EPA *may* cause any additional assessment information (including the Environmental Review Document) to be published.

3.1.3 Step 3. Public review of additional assessment information (including an Environmental Review Document)

Under *s. 40(5)* the EPA *may* declare the additional assessment information to be available for public review (*s. 40(5)(a)*) and *may* specify the period and manner to which submissions are to be made (*s. 40(5)(b)*).

Where the EPA declares the additional assessment information (including an Environmental Review Document) to be available for public review—

- The proponent *must* publish notice of the information or report being available for public review, as specified by the EPA (*s. 40(6)(a)*).
- The EPA *may* require the proponent to respond to any submissions (*s. 40(6)(b)*).

Specific requirements relating to public review are outlined in the *Procedures Manual*.

3.1.4 Step 4. Preparation of EPA's draft assessment report

The EPA starts to prepare a draft assessment report when it has adequate information that meets its requirements. This is either when—

1. **the EPA decides to assess a proposal**, if the only information required for the assessment is the referral information (specified in the level of assessment record required by *s. 39(b)*), or
2. **the EPA accepts additional assessment information** (including an Environmental Review Document, or information requested by written notice) provided during an assessment, if public review of that information is not required, or
3. **the public review period closes** (on an Environmental Review Document or other additional assessment information), if public review of that information is required and the EPA does not require the proponent to respond to submissions, or
4. **the EPA decides that it can proceed to prepare its draft assessment report after receipt of the proponent's response to submissions** (on an Environmental Review Document or other additional assessment information), if public review of that information is required and the EPA requires the proponent to respond to submissions.

The EPA *will*—

- assess the proposal, based on information that includes but is not limited to—
 - referral information (and request/s for further information, if required)
 - additional assessment information, including an Environmental Review Document
 - information requested by written notice
 - submissions (if information is made available for public review) and the proponent's response to any submissions, if required
 - additional assessment information obtained during the assessment, including the EPA's own investigations and inquiries (*s. 40(2a)*)
- consider whether conditions are necessary and if they are, *will* develop draft conditions.
- consider whether Environmental Management Plans required during the assessment are adequate.
- prepare a draft assessment report.

If any substantial relevant new issues arise during the preparation of the draft EPA's assessment report that require substantial changes, the EPA will revise the draft assessment report.

3.1.5 Step 5. Completion of the EPA's assessment

The EPA **completes its assessment** when the EPA considers the draft Assessment report and any conditions and—

- agrees on the key environmental factors identified in the course of the assessment
- agrees to recommend whether or not the proposal may be implemented
- agrees to adopt the draft assessment report as the basis for the EPA's (final) Assessment report
- resolves that the EPA prepare the (final) Assessment report and give that report to the Minister, pursuant to *s. 44*.

If the EPA does not agree to the above, the EPA will revise the draft assessment report based on any additional information it needs to complete its assessment and will reconsider the draft assessment report.

3.2 Assessment of significant amendments (s. 40AA)

If the EPA assesses a significant amendment of an approved proposal, the EPA *must* assess the significant amendment in the context of the approved proposal and have regard to the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment (s. 40AA(2)).

When assessing a significant amendment, the EPA *may* also inquire into and report on the implementation conditions relating to the approved proposal (s. 40AA(3)).

3.3 Termination of assessment (s. 40A)

The EPA *may* terminate an assessment (s. 40A(1)) if—

- (a) the proponent agrees with the termination, or (aa) the EPA receives written notice from the proponent that the proponent does not wish to proceed with the proposal, or
- (b) the proponent has failed to comply with a requirement under s. 40(2)(a), s. 40(2)(aa), s. 40(2)(b), s. 40(6)(a) or s. 40(6)(b), within a timeframe the EPA considers to be reasonable in the circumstances, or
- (c) a decision-making authority has refused to approve the proposal (Note: In practice, the EPA will generally wait until any opportunity to appeal that decision has closed, or any appeal or review of the refusal decision upheld the refusal decision).

Once the EPA has terminated assessment of a proposal, the procedures for a new referral of a proposal to the EPA apply (see s. 38B(2)(c)), if—

- the proponent progresses the same proposal, or
- the proponent progresses a revision of the proposal, or
- the proposal is referred again under the procedures set out in section 1.2.

3.4 Strategic proposals and strategic assessments (s. 40B)

Section 40B of the EP Act describes how s. 41, s. 41A, s. 44, s. 45 and s. 45A apply in relation to a strategic proposal.

3.5 Decision-making authority not to approve proposal until certain events occur (s. 41)

A decision-making authority is constrained from making a decision that could have the effect of causing or allowing a proposal to be implemented, *if*—

- it has referred a proposal to the EPA under s. 38, or has been required to refer a proposal to the EPA under s. 38A(1) (s. 41(2)), or
- it has received a notice from the EPA that the proposal will be assessed (s. 41(3)).

This constraint on decision-making authorities does not apply to strategic proposals, except to the extent that a strategic proposal is itself a significant proposal (s.40B(3)).

This constraint applies until—

- the decision-making authority is informed under section 38G(1)(b)(iii) that the EPA is not going to assess the proposal and the period within which an appeal against that decision has expired without lodging of such an appeal or, if such an appeal has been lodged within that period, that appeal has been determined; or
- the decision-making authority has been served with an authority under section 45(12).

While decision-making authorities are constrained from making a formal or final decision under a written law or State Agreement which could cause or allow a proposal being assessed to be implemented, the EP Act does not prevent the parallel processing of approval processes by decision-making authorities under the relevant written law or State Agreement.

Parallel processing enables the decision-making authority to consider the application before it (including gathering relevant information), but not decide to approve it. This is important because it means that the relevant decision-making authority is ready to consult and reach agreement with the Minister for Environment under s. 45, if required.

A decision-making authority that is bound by section 41 *may* however refuse to approve a proposal, in which case the EPA *may* terminate the assessment of the proposal (s. 40A(1)(c), see Section 3.3).

3.5.1 Investigation work that is not part of the proposal

Decision-making authorities bound by section 41 with respect to a proposal *may* approve investigation work necessary to inform the EPA's decision to assess a proposal or its assessment of a proposal, if it is not likely to have a significant impact on the environment.

If the investigation work is likely to have significant impact on the environment or be a proposal of a prescribed class, the proponent or any person may refer the proposal to the EPA and the proposal must be referred to the EPA by any decision maker that has notice of it.

3.6 Proposal not to be implemented before action under s. 45 taken (s. 41A)

A person commits an offence if during the EPA's assessment they do anything to implement the proposal (s. 41A(1)) before either—

- a statement is published under s. 45(8)(b) that the proposal may be implemented, or
- a notification is given under section 45(13) that the proposal may not be implemented.

This also applies to proposals that the EPA terminates under s. 40A and any new proposal referred to the EPA in place of the terminated proposal (s. 41A(2)).

3.6.1 Minor or preliminary work

Proponents may carry out minor or preliminary work associated with the proposal with the consent of the EPA (s. 41A(3)) and the relevant decision-making authorities have granted other necessary approvals, permits or licences (where required).

3.7 Conduct of public inquiries under s. 40(2)(c) (s. 42)

If the EPA conducts a public inquiry, or appoints a committee to conduct a public inquiry under s.40(2)(c), the *Royal Commissions Act 1968* applies (s. 42(1)).

The EPA *must* incorporate the findings of the public inquiry in its Assessment report (s. 42(2)).

3.8 Minister to direct the EPA to assess a proposal (s. 43)

Under s. 43(1), the Minister may—

- (a) if the EPA considers that a referred proposal should not be assessed by it, or
- (b) during or after the assessment by the EPA of a proposal referred to it under that section,

and after consulting the EPA, direct the EPA to assess that proposal, or assess or reassess that proposal more fully or more publicly or both.

The options available to the EPA for its assessment under s. 40 are subject to any direction from the Minister, and the EPA *must* comply with that direction (s. 43(1)).

The direction is treated as a referral under s. 38 (s. 43(2)) and s. 43(2) specifies which sections of the EP Act apply to the assessment or reassessment of a proposal directed by the Minister under s. 43(1).

A direction can be given under s. 43(1) even if the Minister has dismissed an appeal under s.100(1)(a) against a decision by the Authority that the proposal is not to be assessed (s. 43(3A)).

The Minister *may* also apply the direction power as a result of an appeal under s. 100(1)(a) against the EPA's decision not to assess a proposal (s. 101(1)(e)) or as a result of an appeal under s. 100(1)(d) against the content of, or any recommendation in, the EPA's Assessment report (s. 101(1)(d)(i)).

The Minister may not give a direction under s. 43(1) if a statement has been served under s. 45(8)(a) or a notification has been given under s. 45(13) (s. 43(3)).

A direction will be given to the EPA and published by the Minister (s. 43(4)).

3.9 Amendments to proposals during assessment (s. 43A)

While a proposal is being assessed, the proponent may, by written notice advise the EPA that the proponent wishes to amend the proposal and request that the EPA approve of the assessment of the proposal being completed for the proposal as amended (s. 43A(1)).

The EPA *may*, at its discretion, give or refuse to give approval under s. 43A(1)(b) (s. 43A(2)). If the EPA gives approval under s. 43A(1)(b), the amended proposal is taken to have been referred to the EPA under s. 38 and without limiting s. 40, the EPA may perform, or perform again any functions in respect of the proposal (s. 43A(3)).

Stage 3 – Assessment of proposals ends when:

1. the EPA completes its assessment, or
2. the EPA terminates the assessment.

Stage 4—EPA report on the assessment of a proposal (s. 44)

Stage 4 – EPA report on the assessment of a proposal *starts* when the EPA completes its assessment.

4.1 Assessment report

If the EPA assesses a proposal, the EPA *must* prepare a report on its assessment of a proposal (Assessment report) and give this report to the Minister (s. 44(1)).

The Assessment report *must* set out (s. 44(2))—

- (a) what the EPA considers are the key environmental factors identified in the course of the assessment and
- (b) the EPA’s recommendations as to whether or not the proposal may be implemented, and the conditions and procedures, if any, to which implementation should be subject.

Where the proposal is a strategic proposal, the EPA will recommend whether or not the future proposals, identified in the strategic proposal, may be implemented in the event of the future proposals being declared to be derived proposals (refer to s. 40B (2) of the EP Act).

In considering key environmental factors and any recommendations that may be included in the Assessment report, the EPA *may* take into account other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment (s. 44(2AA)).

The EPA *may*, if it thinks fit, include other information, advice and recommendations in the Assessment report (s. 44(2a)). This *may* include, but is not limited to, the following—

- advice, if required, to any person (including the proponent or decision-making authorities) on key issues associated with the proposal
- advice to the Minister that if, contrary to the EPA’s recommendation, the Minister and decision-making authorities decide that a proposal may be implemented, the types of conditions that the Ministerial approval should include.

The EPA *must* give the Assessment report to the Minister either—

- so far as is practicable, no later than six weeks after the EPA completes its assessment or reassessment (s. 44(2b)), or
- within a period or before a date specified by the Minister (s. 44(2c) and (2d)).

The Minister *must*, as soon as the Minister is reasonably able to do so after receiving it, cause the Assessment report to be published and copies of the report to be given to concerned Ministers, decision-making authorities, the proponent and the referrer (s. 44(3)).

The EPA *will* publish the Assessment report on its website after the Minister has caused the report to be published.

Any person may lodge an appeal with the Minister under s. 100(1)(d) within 21 days of the publication of the report under s. 44(3)(a) (s. 100(3a)(b)), against the content of, and recommendations in, an Assessment report (see **Stage 5**, Section 5.1.1).

4.2 Recommended conditions and procedures**Recommended conditions**

The EPA *will* recommend conditions to which implementation should be subject (s. 44(2)(b)), and these conditions will relate to, and should protect, abate, restore or mitigate, the detrimental impact on the environment which the implementation of the proposal may or would cause.

Section 45A sets out (but does not limit (s.45(9))) things the proponent of the assessed proposal can be required to do under implementation conditions. The EPA *may* recommend conditions that fall within s. 45A.

If the EPA recommends that the assessed proposal may be implemented only if it is implemented in two (2) or more stages, the EPA *may* include implementation conditions specifying requirements in relation to the implementation of a stage of the proposal that must be met to the satisfaction of the CEO before the implementation of the next stage can take place (s. 45A (3)).

The EPA *may* also recommend a condition that requires the proponent to pay fees or charges payable under s. 48AA(1) in relation to the assessed proposal (s. 45A(4)).

Consultation on conditions

The EPA *may* seek comment on the draft recommended conditions from the proponent, relevant decision-making authorities and other relevant government agencies, before finalising its report to—

- correct any errors of fact
- confirm the conditions are clear and relevant to the proposal
- confirm that the conditions are technically feasible and can be complied with
- identify any practical opportunities for strengthening the environmental outcomes of the conditions.

Stage 4 – EPA report on the assessment of a proposal *ends* when the Minister causes the EPA’s Assessment report to be published.

PROCEDURES
Division 2—Implementation of proposals

Stage 5—Decision on proposal and implementation of proposals (s. 44A to s. 48)

Stage 5 – Decision on proposal and implementation of proposals starts when the Minister causes the EPA’s Assessment report to be published.

5.1 Procedure for deciding if assessed proposal may be implemented (s. 45)

5.1.1 Appeals on EPA Assessment report

If the Minister receives an appeal under *s. 100(1)(d)* on the EPA’s Assessment report (Section 4.1), an implementation issue cannot be agreed or decided while the appeal is pending (*s. 45(10)(b)(i)*). This prevents a decision being made on whether the assessed proposal may be implemented, or on the conditions that should be applied to that proposal, until the appeal is resolved. If the decision on appeal is to remit the assessed proposal to the EPA for further assessment or reassessment, then an implementation issue cannot be agreed or decided until that further assessment or reassessment has been published (*s. 45(10)(b)(ii)*).

If an appeal is lodged, the Appeals Convenor *shall* request that the EPA report to the Minister on the appeal (*s. 106(1)(a)*).

On receiving a request under *s. 106(1)(a)*, the EPA *will* report on the relevant appeal to the Minister.

Appeals cannot be lodged on EPA reports which inquire into conditions under *s. 46*.

Refer to Part VII of the EP Act for the procedures the Appeals Convenor and Minister administers in relation to appeals.

5.1.2 Agreement or decision on whether proposal may be implemented

Refer to *s. 45* of the EP Act for the procedures for agreeing or deciding whether an assessed proposal may be implemented. The EPA does not have a decision-making role in these procedures.

5.1.2.1 Appeals on conditions or procedures agreed under section 45(3) or (4)

Any proponent that disagrees with any conditions or procedures agreed under section 45(3) or (4) may lodge an appeal with the Minister under *s. 100(3)* within 21 days of the publication of the Ministerial statement.

If the Minister receives an appeal under *s. 100(3)*, the lodging of an appeal on any conditions or procedures agreed under *s. 45* prevents the implementation of the proposal concerned until the appeal is resolved (*s. 101(3)(c)*).

When an appeal is lodged under *s. 100(3)* against any conditions or procedures, the Minister *must* appoint an appeals committee (*ss. 100(1a), 106(2b)*) and allow or dismiss the appeals in accordance with the recommendations of the appeals committee (*s. 109(3)*).

5.2 Implementation conditions (s. 45A)

Section 45A sets out things the proponent of the assessed proposal can be required to do under implementation conditions. However, as provided for under *s. 45(9)*, this does not prevent any other implementation condition from being agreed or decided.

5.3 Implementation of derived proposal (s. 45B)

Refer to *s. 45B* of the EP Act for the procedures the Minister administers. The EPA does not have a decision-making role in these procedures.

5.4 Duties of proponents after service of Ministerial statement (s. 47)

If a Ministerial statement has been published and the proponent does not ensure that any implementation of the proposal to which the statement relates is carried out in accordance with the implementation conditions, the proponent commits an offence (*s. 47(1)*). This does not apply to an implementation condition mentioned in section 45A(1)(a) (requiring that the proponent substantially commence implementation of the proposal within a specified period or before a specified date) (*s. 47(2)*).

To enable the CEO to assess compliance with the implementation conditions in a Ministerial statement, the CEO *may* require, by written notice, that the proponent provide reports and information about the implementation of the proposal and undertake tests, surveys, investigations, monitoring or other work and give the CEO reports and information about the tests, surveys, investigations, monitoring or work. (*s. 47(3)*). This may include reports and information regarding the implementation of Environmental Management Plans required as a condition.

The proponent commits an offence if, without reasonable excuse, the proponent refuses or fails to comply with a requirement made under *s. 47(3)* (*s. 47(4)*).

If a notification has been given under *s. 45(13)* (that the proposal may not be implemented) and the proponent does anything to implement the proposal to which the notification relates, the proponent commits an offence (*s. 47(5)*).

Schedule 1 of the EP Act contains the penalties for offences under *s. 47(1), 47(4)* and *47(5)*.

5.5 Amending approved proposals or implementation conditions without inquiry or assessment (s. 45C)

The Minister, after receiving a written request from the proponent to do so, *may* (s. 45C(1))—

- (a) approve an amendment to an approved proposal, or
- (b) amend implementation conditions relating to an approved proposal, or
- (c) approve an amendment to an approved proposal and amend implementation conditions relating to the approved proposal.

The Minister *may*, by written notice, request the proponent provide additional information about an amendment to enable the Minister to decide whether or not to approve or make the requested amendment (s. 45C(2)).

The Minister *must not* approve or make an amendment requested under s. 45C(1) if the Minister considers that the requested amendment is a significant amendment (s. 45C(3)).

As defined under s. 3, a significant amendment includes an amendment to an approved proposal which is likely, if implemented, to have a significant effect on the environment.

A significant amendment also includes a proposed amendment to implementation conditions relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions.

For guidance on “significance”, refer to the EPA’s Statement of environmental principles, factors, objectives and aims of EIA.

Whether or not there has been a request under s. 45C(1), the Minister *may* amend an approved proposal if the Minister considers that the amendment is of a minor nature and is necessary and desirable to make certain corrections in the description of the proposal (s. 45C(4)).

Whether or not there has been a request under s. 45C(1), the Minister *may* amend implementation conditions relating to an approved proposal, if the amendment is minor, to standardise, make certain corrections, or make an administrative change to the implementation conditions (s. 45C(5)). Details of the types of amendments that are authorised are set out in s. 45C(4) and s. 45C(5).

Under s. 45C(6), the Minister *must* cause notice of amendments approved or made under s. 45C(1), (4) or (5)—

- (a) to be given in writing to (i) the EPA, (ii) each decision-making authority that was consulted under this Act in relation to the implementation conditions and (iii) the proponent of the proposal
- (b) be published.

If the Minister refuses to approve or make an amendment as requested under s. 45C(1), the Minister *must* give written notice of the refusal to the proponent and the proponent *may* refer the requested amendment to the EPA under s. 38 as a significant amendment of an approved proposal (s. 45C(7)).

Where notice has been given under s. 45C(7) in relation to a requested amendment of implementation conditions, the Minister *may* then also request that the EPA inquire into and report on the matter under section 46(1), whether or not the Minister considers that the implementation conditions, or any of them, should be changed. Alternatively, the Minister *may* then also agree with any decision-making authority (that was consulted under the EP Act in relation to the existing implementation conditions) that the proposed amendment to conditions is a significant amendment that must be referred by the decision-making authority under s. 38(4) as a significant proposal (s. 45C(8)).

If the Minister approves an amendment to the proposal, the implementation conditions then apply to the amended proposal.

If the Minister approves an amendment to implementation conditions, the amended conditions then apply to the proposal (or amended proposal).

5.6 Division or consolidation of proposals and issue of separate or combined Ministerial statements (s. 45D)

Without limiting s. 45C, an amendment approved or made under s. 45C(1) by the Minister may comprise or include the division of an approved proposal (and Ministerial statement) into separate proposals (and Ministerial statements) (s. 45D(1)(a)) or the consolidation of approved proposals (and Ministerial statements) into a consolidated proposal (and Ministerial statement (s. 45D(1)(b))). If s. 45D(1)(a) applies, the Ministerial statements relating to the separate proposals supersede the previous Ministerial statement relating to the approved proposal (s. 45D(2)). If s. 45D(1)(b) applies, the Ministerial statement relating to the consolidated proposal supersedes the previous Ministerial statements relating to the approved proposal (s. 45D(3)).

5.7 Amending implementation conditions after inquiry (s. 46)

If the Minister considers that the implementation condition(s) relating to an approved proposal should be amended, whether because of an amendment to the proposal approved under 45C or any other reason, the Minister *may* request that the EPA inquire into and report on the matter, within the timeframe requested (s. 46(1)).

Any person (including the proponent, the EPA or members of the public) may invite the Minister to request the EPA to inquire into and report upon amendment of implementation conditions for any reason including, but not limited to—

- implementation of a proposal (including if changes to the proposal are proposed, requirements of any or all of the implementation conditions have been met and/or are no longer necessary)
- issues related to compliance with conditions
- public concern.

The EPA—

- *Must* record any request from the Minister under *s. 46(1)* in the public record required by *s. 39(1) (s. 46(2))*.
- *Must* carry out an inquiry in accordance with a request made under *s. 46(1) (s. 46(3))*.
- *May* inquire into whether or not the implementation condition(s) relating to a proposal declared under *s. 38E(4)* to be a derived proposal should be amended (*s. 46(4)*).
- Has all the powers conferred on it by Division 1 in relation to a proposal, for the purposes of an inquiry under *s. 46(3)* or *s. 46(4) (s. 46(5))*.
- *Must* prepare and give the Minister a report on completing the inquiry which includes (*s. 46(6)*)
 - a recommendation on whether or not the implementation condition(s) to which the inquiry relates, or any of them, should be amended and
 - any other recommendations that it thinks appropriate.

The Minister—

- *must* cause the report to be published (*s. 46(7)*)
- *must* decide if the implementation conditions to which the report relates, or any of them, should be amended (*s. 46(8)*)
- *may* amend any of the implementation conditions to which the report relates, and if so, serves a statement under *s. 45(8)* to change the implementation conditions (*s. 46(9)*).

The Minister's obligations under *s. 45(3)* or (4) as applied by *s. 46(8)* do not extend to a decision-making authority unless the Minister considers that the EPA's report under *s. 46(6)* recommends an amendment to an implementation condition that would, if made, affect the decision-making functions of that decision-making authority (*s. 46(8A)*).

The EPA's report (including recommendations) to the Minister is *not* appealable under *s. 100*. However, under *s. 100(3)* the proponent may appeal the conditions agreed under *s. 45(3)* or *s. 45(4)* as applied by *s. 46(8)* (see Section 5.1.2.1).

If the Minister receives an appeal under *s. 100(3)*, the lodging of an appeal on any conditions or procedures agreed under *s. 45* does not prevent the implementation, or continued implementation, of the proposal concerned subject to the implementation conditions until the appeal is resolved ((*s. 101(3)(d)*)).

5.8 Interim conditions and procedures (*s. 46A*)

Under *s. 46A*, the Minister may, with the consent of the proponent and subject to *s. 46A(3)*, issue interim conditions and procedures to have effect, until the EPA completes its inquiry and a statement is published under *s. 45(8)(b)* as applied by *s. 46(8) (s. 46A(1))*.

The Minister is not to issue interim conditions and procedures if the Minister considers that: implementation of the proposal under those interim conditions and procedures might have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal might have if implemented under the implementation conditions (*s. 46A(3)*).

Refer to the EP Act for other procedures that the Minister administers in relation to interim conditions and procedures (*s. 46A*).

5.9 Duration and withdrawal of Ministerial statement (*s. 47A*)

The Ministerial statement relating to an approved proposal continues to have effect unless it is withdrawn or taken to have been withdrawn under *s. 47A (s. 47A(10))*.

The Minister may withdraw the Ministerial statement of an approved proposal if the Minister considers that it is appropriate to do so (*s. 47A(4)*), and—

- the CEO gives the Minister and the proponent of the proposal written notice that, in the CEO's opinion, a commencement condition (mentioned in *45A(1)*) has not been complied with (*s. 47A(2)*), or
- the proponent of an approved proposal requests the Minister in writing, to withdraw the Ministerial statement relating to the proposal (*s. 47A(3)*) and the Minister is satisfied—
 - (a) that the proposal has been implemented and that the implementation conditions, if any, have been complied with or no longer need to be complied with; or
 - (b) that the impacts of the implementation of the proposal can be satisfactorily mitigated by way of licensing or some other form of regulatory control under this Act or another written law.

Refer to *s. 47A(5)* and *s. 47A(6)* for the procedures the Minister administers in relation to the withdrawal of a Ministerial statement.

If the Ministerial statement relating to an approved proposal specifies that it has effect for a specified period, it is taken to have been withdrawn when that period ends (*s. 47A(7)*). If a Ministerial statement is withdrawn or taken to have been withdrawn under this section, the statement has no further effect (*s. 47A(8)*).

5.10 Control of implementation of proposals (*s. 48*)

After a Ministerial statement has been issued, the CEO *may* monitor the implementation of an approved proposal, or cause it to be monitored, to determine whether the implementation conditions are being complied with (*s. 48(1)*).

If the CEO finds that any of the implementation conditions is not being complied with, the CEO—

- (a) *may* exercise any power in respect of the non-compliance that is exercisable by the CEO under a written law
- (b) in any event, *must* report the non-compliance to the Minister.

Refer to—

- *s. 48(4)* and *s. 48(5)* for the powers that may be exercised by a decision-making authority or other public authority
- *s. 48(6)*, *s. 48(7)* and *s. 48(8)* for the powers that may be exercised by the Minister
- *s. 48(9)* for the duty of the proponent to comply with notices issued by the Minister.

Definitions of and guidance on terms

Words and expressions used in these Administrative Procedures shall have the same respective meanings as provided for in the EP Act or as provided for below.

Additional assessment information	Any assessment information the EPA requires under <i>s. 40</i> to assess a proposal, which is required in addition to the Referral information.
Amended proposal	Proposal as amended by a proponent and approved under section 38C, 43A or 45C of the EP Act, or as amended after consideration under s40AA.
Assessment information	Referral information (<i>s. 38</i> and where applicable, <i>s. 38F</i> and/or <i>s. 38G(3)(c)</i>) and/or additional information (<i>s. 40</i>) that the EPA uses to assess a proposal (see also Referral information and Additional assessment information)
Assessment report	The report given by the EPA to the Minister under <i>s. 44</i>
CEO	The Chief Executive Officer of the Department of the Public Service of the State responsible for the administration of the <i>Environmental Protection Act 1986</i> , or the CEO's delegate
Decision-maker	The Minister, EPA or the CEO, who have specific powers and duties under the EP Act (see also Delegate)
Delegate	Person or public authority who, by instrument of delegation made under sections 18, 19 or 20 of the EP Act, is authorised to perform all or any of the powers or duties under the EP Act of the decision maker (being either the Minister, the EPA or the CEO)
Department of Water and Environmental Regulation	Department of the Public Service of the State responsible for the administration of Part IV of the EP Act
Environmental factors	Features or characteristics of the environment that may be impacted or affected by, or are otherwise relevant to the assessment of, a proposal that the EPA uses as an organising principle for environmental impact assessment. For guidance on these see the EPA's <i>Statement of environmental principles, factors, objectives and aims of EIA</i>
Environmental Review Document	Proponent's report on an environmental review under <i>s. 40(2)(b)</i>
Environmental Scoping Document	The document that defines the form, content, timing and procedure of the environmental review under <i>s. 40(3)</i>
EP Act	<i>Environmental Protection Act 1986</i>
EPA	Environmental Protection Authority, defined as the Authority in Part I, <i>s. 3</i> of the EP Act, or the EPA's delegate.
Future proposal	A proposal identified in a strategic proposal
In writing	Any form of communication in writing, including but not limited to, letter, email etc where there is some proof of the communication, and subject to the <i>Electronic Transactions Act 2011</i> (see also Written notice)
Key environmental factors	The environmental factors that the EPA reports on under <i>s. 44</i>
Level of assessment	Proposal-specific level of information, public review and other requirements that the EPA determines are required to assess the proposal
Minister	The WA Minister for Environment, or their delegate
Mitigation hierarchy	Strategies to reduce the impacts of a proposal on the environment For guidance on the mitigation hierarchy, see the EPA's <i>Statement of environmental principles, factors, objectives and aims of EIA</i>
Preliminary key environmental factors	The environmental factor/s that the EPA identifies on a preliminary basis as key environmental factors (when it decides to assess a proposal, publishes an Environmental Scoping Document, otherwise identifies at any time during its assessment)
Prescribed class	Types of proposals as specified in the <i>Environmental Protection Regulations 1987</i> , for example a proposal with a significant discharge of waste or emission of noise, odour or electromagnetic radiation into the environment.
Referral information	The information provided at referral (<i>s. 38</i>), and where applicable, from requests for further information (<i>s. 38F</i>) and/or from information derived from the EPA's investigations and inquiries (<i>s. 38G(3)(c)</i>)

Significance significant	/ For guidance on “significance” and “significant”, see the EPA’s <i>Statement of environmental principles, factors, objectives and aims of EIA</i> . The terms “significance”, “significant impact” and “significant effect” are not defined in the Act. Therefore, the ordinary or everyday meanings of these terms apply.
Statement of environmental principles, factors, objectives and aims of EIA	<i>Statement of environmental principles, factors, objectives and aims of EIA</i> (EPA, 2021) or any subsequent updates or replacements
Validly referred proposal	A proposal recorded by the EPA as a valid referral
Written notice	Any form of notice in writing, including but not limited to, letter, email etc where there is some proof of the communication, and subject to the <i>Electronic Transactions Act 2011</i> (see also In writing)