



**WESTERN
AUSTRALIAN
GOVERNMENT
Gazette**

ISSN 1448-949X (print)

ISSN 2204-4264 (online)

PRINT POST APPROVED PP665002/00041



PERTH, TUESDAY, 13 DECEMBER 2016 No. 223 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 9.00 AM

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ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT
ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE
PROCEDURES 2016**

ENVIRONMENTAL PROTECTION ACT 1986**ENVIRONMENTAL IMPACT ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE PROCEDURES 2016****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 2016*.

Operation and transition

The Environmental Protection Authority will follow the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016* from the gazettal date for proposals currently being assessed to the extent that it is appropriate and practicable.

If application of these procedures is neither appropriate nor practicable, the administrative procedures applying at the time the decision was made on the level of assessment for the proposal will apply to that proposal.

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ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE PROCEDURES 2016**

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. Part IV Division 2 of the EP Act provides for 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 2016* (**Administrative Procedures**) form part of the EPA's hierarchy of EIA procedures under Part IV of the EP Act (Figure 1). The scope of the Administrative Procedures is the procedures that the EPA and the Office of the EPA administrator, either as a decision-maker or a delegate of a decision-maker. This includes procedures relating to changes to proposals and conditions after an implementation statement (Ministerial Statement) is issued.

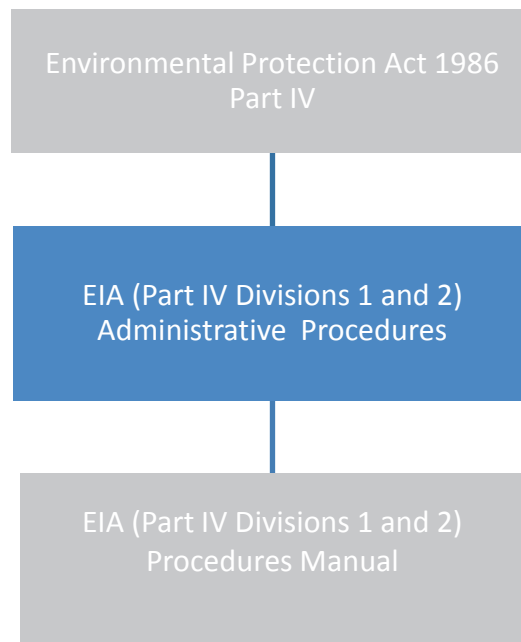


Figure 1—Hierarchy of EIA procedures under Part IV (Divisions 1 and 2) of the EP Act

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)
- Stage 2** EPA to decide whether or not to assess a referred proposal (s. 38A to s. 39B)
- Stage 3** Assessment of proposals (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. 45 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 *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual* (*Procedures Manual*).

PROCEDURES

Division 1—Referral and assessment of proposals

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

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 where there is any uncertainty, 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 how they intend to apply the mitigation hierarchy, to avoid (and minimise if avoidance is not possible) environmental impacts (see **Stage 3—Assessment of proposals**, Section 3.1.2).

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

1.2 Referral of proposal (s. 38)

Subsections 38(1) to 38(5) of the EP Act allow different entities to refer particular types of proposals to the EPA—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).
- Only a proponent *may* refer a strategic proposal (s. 38(3)).
- 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(4)).
- As soon as a decision-making authority has notice of a proposal that appears to be a significant proposal or a proposal of a prescribed class, it *must* refer that proposal to the EPA (s. 38(5)).
- The EPA *may* require either a proponent or decision-making authority to refer a significant proposal, a proposal of a prescribed class or a proposal under an assessed scheme (s. 38(5c) and s. 38(5e))—commonly referred to as **call-in** power.

The referral *must* be in writing (s. 38(5i)). Specific requirements for a referral are outlined in the *Procedures Manual*.

See **Stage 2—EPA to decide whether to assess a referred proposal**, Section 2.7 for the procedures relating to proponent nomination (s. 38(6) to s. 38(9)).

For guidance on “significance”, see the EPA’s *Statement of principles, factors and objectives* as part of the EPA’s Framework for environmental considerations in EIA.

1.3 EPA decides if referral is valid

While not specified in the EP Act, on receipt of a referral the EPA determines whether the referral is valid. The EPA considers—

- the type of proposal referred (significant, strategic etc)
- whether the referrer can refer that type of proposal
- whether the proposal has previously been referred. Under s. 38(5j), a proposal cannot be referred to the EPA more than once, unless it was terminated under s. 40A.

If the EPA does not have sufficient information to determine whether the referral is valid, the EPA *may* also request additional information (s. 38A, see Section 2.1).

The EPA *will* decide 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.

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

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

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

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

2.1 Request for further information (s. 38A)

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

- (a) whether or not to assess the proposal
- (b) whether or not to agree to a request to declare a proposal to be a derived proposal, or
- (c) on the level of assessment if the proposal is going to be assessed,

it may request any person (including the proponent, government agencies and/or decision-making authorities) to provide it with information about the proposal. The request *will* be a written notice specifying when a response is required.

The statutory timeframe for the EPA to make a decision about a proposal (s. 39A(3), see Section 2.2) does not start until (s. 38A(2))—

- the notice is complied with (i.e. the EPA receives a satisfactory response to the request for additional information), or
- the period specified in the notice for complying with that notice (i.e. the response period) has expired, if the notice was sent to a person other than the referrer.

In some cases, the EPA *may* need to request additional information about the proposal if it does not have sufficient information to decide whether the referral is valid (see Section 1.3).

2.2 EPA to decide whether to assess a referred proposal (s. 39A)

The EPA is required to make a decision as to whether or not to assess a validly referred proposal (s. 39A(1)).

The EPA's decision is based on the following information—

- information submitted in or with the referral (s. 39A(2)(a))
- information provided in response to any requests by the EPA for further information under s. 38A (s. 39A(2)(a))
- information derived from the EPA's own investigations and inquiries (s. 39A(2)(b)), including but not limited to, relevant public comment on the referral (see Section 2.2.1)
- the EPA's consideration of the significance of the proposal.

The EPA *is to* give written notice (s. 39A(3)) of its decision within 28 days of receipt of a validly referred proposal (unless the EPA requests further information (see Section 2.1)) to—

- (a) the proponent
- (b) the referrer, if the proposal was not referred by the proponent and
- (c) any relevant decision-making authority.

If, for any reason, a relevant decision-making authority is not given notice as required by s. 39A(3)(c) that a proposal is going to be assessed, the EPA may give written notice to the decision-making authority under s. 39A(4).

The notice under s. 39A(4) 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 a report on the proposal is given to the Minister under s. 44.

2.2.1 Public comment on referred proposals

Under s. 39A(2)(b), the EPA's decision on whether to assess a proposal may be based on information derived from the EPA's own investigations and inquiries. This includes relevant public comment on the referral. Prior to 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 agrees (see Section 2.6). See also **Derived proposals**, Section 2.5.

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

Specific requirements for submitting public comments are outlined in the *Procedures Manual*.

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 3.4)
- constrain a proponent from implementing a proposal (s. 41A, see Section 3.5).

2.3 Decision to assess (s. 39A(6))

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

When the EPA decides to assess a proposal it begins the assessment as soon as practicable after the EPA gives the notices under s. 39A(3) (see **Stage 3**).

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 3.4) and any person is prohibited from implementing the proposal (see Section 3.5).

2.3.1 Level of assessment

At the time of its decision to assess a proposal under s. 39A, the EPA also decides on the level of assessment. As the EP Act does not prescribe what a **level of assessment** is, the EPA defines it as—

“the proposal-specific requirements that the EPA determines are necessary to assess the proposal”.

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. 38A, if required
- information derived from the EPA’s investigations and inquiries under s. 39A(2)(b), if required.

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 requirements in the **level of assessment** in the record required by s. 39(1)(b) (see section 2.6)—

- **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).
- **Whether any of the additional assessment information is made available for public review**, which *may* include the proponent’s report on the environmental review (Environmental Review Document) (see Section 3.1.3).

Refer to the *Procedures Manual* for details on the level of assessment requirements.

2.4 Decision not to assess (s. 39A(7))

Where the EPA determines that the likely effect of the proposal on the environment is not so significant as to warrant assessment, the EPA will record its decision not to assess a proposal.

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. 39A(7)).

2.4.1 Appeals on EPA decision not to assess

The decision of the EPA not to assess a proposal *is* appealable within 14 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) 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 *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 *shall* report on the relevant appeal to the Minister (s. 107(1)).

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

2.5 Derived proposals (s. 39B)

If a proposal is referred to the EPA under s. 38 of the EP Act, the proponent *may* request in writing that the EPA declare the referred proposal to be a derived proposal (s. 39B).

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 declares a referred proposal to be a derived proposal if it considers that—

- (a) the referred proposal was identified in the strategic proposal that has been assessed by the EPA (s. 39B(3)(a)) and
- (b) it was agreed or decided under s. 45 that the referred proposal could be implemented, or could be implemented subject to conditions (s. 39B(3)(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 when the strategic proposal was assessed (s. 39B(4)(a))

- (b) there is significant new or additional information that justifies the reassessment of the issues raised by the proposal (s. 39B(4)(b))
- (c) there has been a significant change in the relevant environmental factors since the strategic proposal was assessed (s. 39B(4)(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—

- *Will* record the declaration in the public record required by s. 39(1) (s. 39B(5)(a)).
- *Will* give written notice of the declaration to the Minister (s. 39B(5)(b)).
- *May* provide advice to the Minister as to which implementation conditions should apply to the derived proposal (in those circumstances where the strategic proposal agreement or decision 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).
- Does not assess the proposal except for those cases where the EPA decides to conduct an inquiry under s. 46(4) as to whether or not any of the implementation conditions relating to the proposal should change (s. 39B(6)) (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. 45A).

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—

- *will* give written notice of the refusal to the proponent (s. 39B(7)) and
- *may* include the notice in the notice given under s. 39A(3)(a) (s. 39B(8)).

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 keeps a public record of all referrals. The EPA *shall* record its decision on whether or not to assess a proposal (s. 39(1)(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 *shall* also record the level of that assessment (see Section 2.3.1) and such other details as are prescribed. (s. 39(1)(b)).

The other details are prescribed in Regulation 3 of the *Environmental Protection Regulations 1987*. The EPA *must* in a public record of a proposal kept by it under s. 39(1) of the EP Act set out—

- (a) the title or number or other means of identification of the proposal
- (b) the name of, or the office or position held or acted in by, the proponent of the proposal.

Confidential information

A proponent *may* request that the EPA keep any part or the whole proposal confidential in the public record (s. 39(2)).

If a request is made, the EPA *will not* release the information until it has dealt with the request (s. 39(3) and s. 39(4)). Once the EPA has dealt with the request it either—

- *agrees* that the information is of a confidential nature and does not include it in the public record, or
- *disagrees* that the information is of a confidential nature and includes it in the public record.

2.7 Nomination of proponent (s.38(6) to s. 38(9))

2.7.1 Nomination of proponent

Except where a public authority is responsible for a proposal, the Minister, after consulting the EPA, *will* nominate a person responsible for a proposal referred to the EPA, for proposals which the EPA considers should be assessed (s. 38(6)).

The nomination will be made by notice in writing to (s. 38(6))—

- (a) the person concerned
- (b) the EPA
- (c) any relevant decision-making authority.

2.7.2 Change of proponent

If the person nominated under s. 38(6) ceases to have responsibility for a proposal, that person is to give the EPA written notice advising the name of the person to whom or which responsibility for the proposal will pass or has passed (s. 38(6a)).

The Minister *may* also revoke a current nomination and nominate another person responsible for a proposal, after consulting the EPA. The revocation of nomination will be made by notice in writing to (s. 38(7))—

- (a) the person to whom or which that nomination relates
- (b) the EPA
- (c) any relevant decision-making authority.

The procedure is *usually* applied when the EPA decides to assess a proposal, as s. 38(9) provides that the person who gets a notice under s. 39A(3)(a) is regarded as having been nominated under s. 38(6).

However, this procedure may apply at any time, unless the proposal has been terminated under s. 40A (s. 38(7a)).

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(1)) and issues the required notices under s. 39A(3), or
2. publishes its decision whether to declare a proposal to be a derived proposal (s. 39B(5)) and issues the required notices under s. 39B.

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

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

3.1 Assessing referred proposals (s. 40)

The EPA's assessment begins as soon as practicable after the notices are given under s. 39A(3) (s. 39A(6)).

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 (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 made available for public review (s. 40(4)) and *may* exclude confidential information from public review (s. 40(5)). 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)). The proponent *must* also provide copies of the Environmental Review Document as required by s. 40(6)(a). 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 *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) or (b), or s. 40(6)(b), the EPA *may* terminate the assessment (s. 40A(1)(b), see Section 3.2).

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 on hold for the period specified by the EPA.

The proponent *must* request in writing when it wishes to restart its assessment. The EPA *may* progress to termination (see Section 3.2) if the proponent fails to provide the required information under s. 40 after the suspension period agreed to by the EPA.

Bilateral Agreement with the Commonwealth

The Commonwealth of Australia and the State of Western Australia have a *Bilateral Agreement* under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The EPA has functions and powers to facilitate the implementation of a bilateral agreement (s. 16(aa) and s. 17(4)).

Where the *Bilateral Agreement* is applied, the EPA *will* assess a controlled action under the EPBC Act on behalf of the Commonwealth. The EPA *will* consult with the Commonwealth during the assessment according to the Administrative Arrangements between the Commonwealth and the State.

For the purposes of assessment under the *Bilateral Agreement*—

- a level of assessment (in the record required by s. 39(1)(b)) which includes the requirement for an environmental review with a public review period for the Environmental Review Document of at least 14 days, is equivalent to the Assessment on Proponent Information category A as defined in the *Bilateral Agreement*. As noted in the *Bilateral Agreement*, this assessment approach is taken to correspond to assessment on preliminary documentation under Division 4 of Part 8 of the EPBC Act.
- a level of assessment (in the record required by s. 39(1)(b)) which includes the requirement for an environmental review with a public review period for the Environmental Review Document of at least 20 business days, is equivalent to the Public Environmental Review as defined in the *Bilateral Agreement*. As noted in the *Bilateral Agreement*, this assessment approach is taken to correspond to assessment by public environment report under Division 5 of Part 8 of the EPBC Act.

If the EPA's assessment requirements, for whatever reason, means the assessment is not accredited under the *Bilateral Agreement*, the EPA's assessment requirements may be individually accredited by the Commonwealth Government.

Following the EPA's assessment, the Commonwealth Environment Minister will decide whether or not to approve the proposal and, if so, issue any conditions.

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* 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.

The first three steps are optional. The EPA—

- *will* specify if any or all of them are required as the **level of assessment** (see Section 2.3.1) in the public record required by s. 39(1) and
- *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.

Specific details on timeframes for an assessment 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
- **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 an Environmental Scoping Document.

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 s. 40(2)(b) (specified in the level of assessment, in the record required by s. 39(1)(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.

Application of mitigation hierarchy, including offsets

The EPA expects proponents to demonstrate the following during the environmental review and in the Environmental Review Document—

- evidence of the application of the mitigation hierarchy to 1) avoid impacts, 2) minimise impacts (where avoidance is not possible) and 3) rehabilitate impacts and
- if the proponent's view is that a significant residual impact may remain after applying the first three steps of the mitigation hierarchy—
 - evidence of consultation on offsets with relevant stakeholders
 - identification of offsets, if appropriate.

The EPA *may* require that the proponent produce Environmental Management Plans to demonstrate how proposed management measures will reduce environmental impacts to an acceptable level.

The EPA *will* have regard to the *WA Environmental Offsets Policy* and the *WA Environmental Offsets Guidelines* through the EIA process.

Other additional assessment information

The EPA *may* require other additional assessment information to be provided, if specified in the level of assessment in the record required by s. 39(1)(b), or if requested by written notice during the assessment.

Peer Review

Under s. 40(2)(a), the EPA 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.

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

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

- The proponent *must* make the information or report available, 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, either when—

1. **the EPA decides to assess a proposal**, if the information required for the assessment is the referral information (specified in the level of assessment, in the record required by s. 39(1)(b)), or
2. **the EPA accepts additional assessment information** (including an Environmental Review Document) 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 accepts the proponent's response to any 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 including but not limited to—
 - referral information (and request/s for further information, if required)
 - additional assessment information, including an Environmental Review Document (specified in the level of assessment in the record required by s. 39(1)(b))
 - 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 Environmental Management Plans provided during the assessment are adequate.
- consider whether conditions are necessary and if so, *will* develop draft conditions.
- prepare a 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 and approve 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 the additional information it needs to complete its assessment and will reconsider the draft assessment report.

3.2 Termination of assessment (s. 40A)

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

- (a) the proponent agrees with the termination, or
- (b) the proponent has failed to comply with a requirement under s. 40(2)(a), s. 40(2)(b), s. 40(6)(a) or s. 40(6)(b), within a timeframe the EPA considers to be reasonable, or
- (c) a decision-making authority has refused to approve the proposal (and 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 a proposal, if the proponent progresses the same proposal, or a revision of the proposal, the proponent should refer the proposal to the EPA (see s. 38(5)).

3.3 Assessment of strategic proposal (s. 40B)

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

3.4 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, or has been required to refer, a proposal to the EPA (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, unless the strategic proposal is itself a significant proposal (s.40B(3)).

While decision-making authorities are constrained from making a decision 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 other legislation.

Parallel processing enables the decision-making authority to consider the application before it, but not decide whether or not 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 *may* refuse to approve a proposal, in which case the EPA *may* terminate the assessment of the proposal (s. 40A(1)(c), see Section 3.2).

3.4.1 Investigation work

Decision-making authorities *may* approve investigation work necessary to inform the EPA's decision to assess a proposal or its assessment of a proposal, or to inform the design or planning that does not involve implementing 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, it *may* require referral to the EPA.

3.5 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—

1. a statement is published under s. 45(5)(b) that the proposal may be implemented, or
2. a notification is given under section 45(8) that the proposal may not be implemented.

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

3.5.1 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)).

3.6 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 *will* incorporate the findings of the public inquiry in its assessment report required by s. 44 (s. 42(2)).

3.7 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 proposal referred to it under s. 38 should not be assessed by it, or
- (b) during or after the assessment by the EPA of a proposal referred to it under s. 38,

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) prescribes which sections of the EP Act apply to the assessment or reassessment of a proposal directed by the Minister under s. 43(1).

The Minister *may* apply the direction power as a result of an appeal against the EPA's decision not to assess a proposal (s. 101(1)(c)) or against the EPA's assessment report (s. 101(1)(d)(i)).

3.8 Changes to proposals during assessment (s. 43A)

The EPA *may* consent to the proponent making changes to a proposal without a revised proposal being referred to the EPA. The EPA may only consent to a change to a proposal if the change is unlikely to significantly increase any impact that the proposal may have on the environment (s. 43A).

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 prepares a report on the outcome of its assessment of a proposal (assessment report) and gives 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 (refer to s. 40B of the EP Act).

The EPA *may* include other information, advice and recommendations in the assessment report (s. 44(2a)). This *may* include, but not be 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 decides that a proposal may be implemented, that the Ministerial approval should include appropriate conditions.

If any substantial relevant new issues arise during the preparation of the EPA's assessment report that require substantial changes to the assessment report, the EPA will revise the assessment report (see Stage 3, Step 4) and reconsider the assessment report and any conditions (see Stage 3, Step 5), then restart this stage.

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 specified by the Minister (s. 44(2c) and (2d)).

The Minister causes the 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)).

Although not specified in the EP Act, 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 14 days of the publication of the report under s. 44(3)(a), against the content and recommendations in an assessment report (see **Stage 5**, Section 5.1.1).

4.2 Implementation conditions and procedures

The EPA—

- *Will* recommend conditions that are relevant to, and should mitigate, the detrimental impact on the environment which the unconditioned implementation of the proposal may or would cause.
- *May* recommend an appropriate offset condition/s, where a significant residual impact remains (which is able to be offset) after the application of the mitigation hierarchy.

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, prior to 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. 45 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 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), the proposal shall not be implemented while the appeal is pending (s. 45(6)(a)).

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 *shall* report on the relevant appeal to the Minister (s. 107(1)).

Refer to Part VII of the EP Act for the procedures the 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 a 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(1)

Any proponent that disagrees with any conditions or procedures agreed under section 45(1) may lodge an appeal with the Minister under s. 100(3) within 14 days of the publication of the statement under section 45(5).

When an appeal is lodged under s. 100(3), sections 106, 109 and 110 apply to and in relation to the appeal as if the appeal were an appeal from a decision of the Minister.

If the Minister receives an appeal under s. 100(3) on any conditions or procedures agreed or decided under s. 45, the proposal shall not be implemented while the appeal is pending (s. 45(6)(b)).

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 *shall* report on the relevant appeal to the Minister (s. 107(1)).

When an appeal is lodged under s. 100(3) against any conditions or procedures, the Minister shall allow or dismiss the appeals in accordance with the recommendations of the appeals committee (s. 109(3)).

5.2 Duties of proponents after service of s. 45 statement (s. 47)

If a statement has been served under s. 45(5) 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)).

After a Ministerial Statement has been issued, the CEO *may* require, by written notice, that the proponent provide reports and information about the implementation of the proposal and compliance with implementation conditions (s. 47(2)). 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(2) (s. 47(3)).

If a notification has been given under s. 45(8) (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(4)).

The proponent also commits an offence if the proponent does not comply with the requirements under s. 47(1) and 47(4). Schedule 1 of the EP Act contains the penalties for offences under s. 47(1), 47(3) and 47(4).

5.3 Changes to proposals after s. 45(5) statement issued (s. 45C)

Proponents *may* request a change to a proposal by writing to the Minister.

The Minister *may* approve of a proponent changing a proposal after a Ministerial Statement is issued, without referring a revised proposal to the EPA (s. 45C(1)).

The Minister *must not* give approval under s. 45C(1) if the Minister considers that the change or changes to the proposal might have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal (s. 45C(2)).

The Minister either—

- *approves* a change to a proposal if the Minister considers that the change or changes to the proposal is *unlikely* to have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal or
- *does not approve* a change to a proposal if the Minister considers that the change or changes to the proposal *might* have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal.

If the Minister does not approve a change to proposal, the proponent *may* refer the change to proposal to the EPA under s. 38.

5.4 Changing implementation conditions (s. 46)

If the Minister considers that the implementation condition(s) relating to a proposal should be changed, the Minister *may* request that the EPA inquire into and report on the matter, within the timeframe requested (s. 46(1)).

The Minister's request to the EPA may be initiated by any person (including the proponent, the EPA or the public) 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.

Alternatively, if a proposal is declared under section 39B to be a derived proposal, the EPA may initiate an inquiry (s. 46(4)).

The EPA—

- *Will* record any request under s. 46(1) in the public record required by s. 39(1) (s. 46(2)).
- *Will* 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 declared derived proposal should be changed (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)).
- *Will* 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, should be changed and
 - any other recommendations.

The Minister—

- causes the report to be published (s. 46(7))
- decides if any or all of the implementation conditions should be changed (s. 46(8))
- may change any of the implementation conditions and if so, serves a statement under s. 45(5) to change the implementation conditions (s. 46(9)).

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(1) as applied by s. 46(8) (see Section 5.1.2.1).

5.5 Other procedures related to implementation conditions (s. 46A, s. 46B and s. 46C)

Refer to the EP Act for the procedures that the Minister administers in relation to implementation conditions—

- Interim conditions and procedures (s. 46A).
- Amendment of implementation conditions by assessment (s. 46B).
- Minor changes to implementation conditions (s. 46C).

5.6 Control of implementation of proposals (s. 48)

After a Ministerial Statement has been issued, the CEO *may* monitor the implementation of a proposal or require that it is 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, is to report the non-compliance to the Minister.

Refer to—

- s. 48(2) and s. 48(2a) for the procedures that a decision-making authority administers
- s. 48(3), s. 48(4) and s. 48(5) for the procedures that the Minister administers
- s. 48(6) for the duty of the proponent.

Definitions

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.

Accredited assessment	Process where the Commonwealth accredits the State assessment process on a case-by-case basis and the State assesses the controlled action on behalf of the Commonwealth
Additional assessment information	The assessment information the EPA requires under s. 40 to assess a proposal.
Assessment information	Referral information (s. 38 and where applicable, s. 38A and/or s. 39A(2)(b) and/or additional information (s. 40) that the EPA uses to assess a proposal (see also Referral information and Additional assessment information)
Assessment report	The report on the outcome of an assessment given by the EPA to the Minister under s. 44
Bilateral Agreement	<i>Bilateral agreement made under section 45 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) relating to environmental assessment (2014) between the Commonwealth of Australia and the State of Western Australia, or any subsequent updates or replacements</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 their delegate
Controlled action	As defined in the <i>Environment Protection and Biodiversity Conservation Act 1999</i>
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)
Environmental factors	Segments of the environment the EPA uses for environmental impact assessment. See also EPA's <i>Statement of Principles, Factors and Objectives</i>
Environmental Review Document	Proponent's report on an environmental review under s. 40(2)(b)
Environmental Scoping Document	The document that defines the form, content, timing and procedure of the environmental review under s. 40(3)
EP Act	<i>Environmental Protection Act 1986</i>
EPA	Environmental Protection Authority, defined as the Authority in Part I, s. 3 of the EP Act, or their delegate.
Future proposal	A proposal identified in a strategic proposal

Investigation work	Activity carried out to inform the EPA's decision to assess a proposal or its assessment of a proposal, or to inform design or planning that does not involve implementing the proposal
In writing	Any form of communication in writing, including but not limited to, letter, email etc (see also Written notice)
Key environmental factors	The environmental factors that the EPA reports on under s. 44
Level of assessment	Proposal-specific requirements that the EPA determines are necessary to assess the proposal
Minister	The WA Minister for the Environment, or their delegate
Ministerial Statement	Statement issued under s 45 (or under s 45 as applied by section 46(8)) of the EP Act (which may include implementation conditions)
Minor or preliminary work	Work associated with the implementation of a proposal that is not of a scale or significance that would compromise the EPA's assessment or the Minister's future decisions
Mitigation hierarchy	Strategies to reduce the impacts of a proposal on the environment (as defined in the <i>WA Environmental Offsets Guidelines</i>)
Office of the EPA	Office of the Environmental Protection Authority, Department of the Public Service of the State responsible for the administration of Part IV of the EP Act
Preliminary key environmental factors	The environmental factor/s that may be significantly impacted by the proposal (that the EPA identifies when it decides to assess a proposal, identifies in the Environmental Scoping Document, or identifies at any time during its assessment)
Referral information	The information provided at referral (s. 38), and where applicable, from requests for further information (s. 38A) and/or from information derived from the EPA's investigations and inquiries (s. 39A(2)(b))
Revised proposal	A proposal that is revised after implementation conditions have been agreed or decided
Statement of principles, factors and objectives	<i>Statement of environmental principles, factors and objectives</i> (EPA, 2016) or any subsequent updates or replacements
Validly referred proposal	A proposal recorded by the EPA as a valid referral
WA Environmental Offsets Guidelines	<i>WA Environmental Offsets Guidelines</i> (Government of Western Australia, 2014) or any subsequent updates or replacements
WA Environmental Offsets Policy	<i>WA Environmental Offsets Policy</i> (Government of Western Australia, 2011) or any subsequent updates or replacements
Written notice	Any form of notice in writing, including but not limited to, letter, email etc