



Environmental Protection Authority Evaluation Program

Review of the effectiveness of public advice for proposals that are not assessed under section 38 of the *Environmental Protection Act 1986*

Environmental Protection Authority Report

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Executive Summary

This report outlines the methodology and key findings of an evaluation into the effectiveness of public advice issued under section 39A of the *Environmental Protection Act 1986* (EP Act).

When the Environmental Protection Authority (EPA) decides not to assess a proposal referred under section 38, it may provide to any person or authority advice about the environmental aspects of the proposal under section 39A.

Over the past decade the EPA has given public advice for approximately 300 proposals. Of these, six were chosen for this evaluation project based on a prescribed selection process. The proposals selected included a sample from a variety of industry groups and geographical regions in Western Australia.

A qualitative evaluation methodology was applied, which included: desktop analysis of information held by the EPA; public information and reports obtained from the proponent and decision making authorities (DMAs); proponent and DMA interviews; and site visits.

Each proposal evaluated was measured against five criteria: proponent awareness of the public advice issued by the EPA; application of the public advice by the proponent; application of the public advice by relevant DMAs; the appropriateness of the public advice in relation to the environmental outcomes sought; and an analysis of the effectiveness of the public advice in achieving environmental outcomes.

Key Findings

The key findings of the evaluation were:

- Public advice is an effective method for advising proponents and DMAs on how to protect the environment and meet the EPA's objectives;
- In each proposal examined, the proponents and DMAs applied the recommendations of the public advice;
- Proponents outlined timing, certainty of process and efforts to reduce regulatory overlap as key focus areas for improving public advice;
- Interviewed proponents perceived a greater focus on the administration of environmental impact assessment processes than on environmental outcomes.

Relationship to EPA Strategic Plan

The EPA has a program to evaluate its functions and products against its responsibilities under the EP Act. Initiated in 2015, it addresses the EPA's Key Strategy 5 – **Evaluate Outcomes** in its 2013-2016 Strategic Plan. The EPA has continued its commitment to evaluation in its 2016-2019 Strategic Plan under Strategy 2 – **Provide robust advice**, and Strategy 3 – **Provide transparent advice**.

The evaluation includes review of the effectiveness of public advice for proposals not assessed under section 38 of the EP Act. This report documents the program's key findings.

Background

When the EPA decides not to assess a proposal, it determines that the likely effect on the environment is not so significant as to warrant assessment. It forms a decision based on referral information, public comment on the referral information, and any further information obtained from the proponent, relevant DMAs, agencies and individuals. However, the EPA expects that proponents and DMAs will take appropriate measures to meet the object and principles of the EP Act. One way it seeks to achieve this is by providing public advice.

Under section 39A(7) of the EP Act, 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. It is important to note that this advice is not legally binding and there is no requirement under the EP Act to release it publicly. The EPA refers to it as 'public advice' because it makes the advice available to the public.

In the five financial years to 2014–15 the EPA has on average decided not to assess 70% of all referred proposals. It has issued advice on half of these and has uploaded that advice to its website since 2012.

Introduction

The EPA has provided public advice on approximately 300 proposals during the past decade. The 2015 evaluation program involved a case study analysis of a select number of proposals where public advice was issued under section 39A(7) of the EP Act. Its aim was to determine the level of uptake by proponents and DMAs, and rate the effectiveness of the advice.

The following evaluation criteria were used:

Criterion 1: Was the proponent aware of the public advice issued by the EPA?

Criterion 2: Did the proponent apply the public advice in implementing the project?

Criterion 3: Did the relevant DMAs apply the public advice?

Criterion 4: Was the public advice appropriate?

Criterion 5: Were environmental outcomes achieved as a result of the EPA's advice?

Methodology

The effectiveness of public advice was evaluated by applying the following methodology:

i. Project Scope

The following filters were applied for a representative sample of proposals:

- the EPA determined that the level of assessment was 'Not Assessed – Public Advice Given';
- the level of assessment was set in the past five to ten years;
- the proposal should be partially or fully implemented;
- the proposal received some public interest, such as submission of public comments and/or appeals;
- the proposal should have an adequate level of accessible/available information;

- the proponent should not currently have an active assessment/referral; and
- proponents should be willing to participate in the evaluation without this impacting operations.

ii. Sections of sample group

Approximately 20 proposals were identified using this filter. The scope was then broadened to include proposals of specific industry groups and geographical regions that aligned with the EPA's current assessment portfolio. The proposals were further narrowed and six cases chosen (Table 1).

Table 1: Proposals selected for evaluation

Proposal Number	Proposal Type
Proposal 1	Drilling Program
Proposal 2	Upgrade of Access Corridor
Proposal 3	Maintenance Dredging
Proposal 4	Boating Facility
Proposal 5	Landfill Facility
Proposal 6	Iron Ore Project

Two other proposals (a sand quarry and a resort development) were also initially identified for review, but the proponents were unable to participate due to other business commitments.

iii. Desktop Analysis

A desktop analysis of the eight proposals was conducted using information held by the EPA, publicly available information, and information provided by relevant DMAs.

iv. Proponent Interviews and site visits

The evaluation criteria were used as the basis for developing questionnaires for the proponent. Appendix A includes a sample of these. Site visits were also conducted for the more complex proposals.

v. Proposal scorecards

The evaluation criteria were also used to develop 'proposal scorecards' which itemise the intent (or instruction) in the EPA's advice and scores the implementation of that intent out of 100%. These are provided in Appendix B.

Results

The 300 proposals issued with public advice in the past decade are described below.

Approximately 20% (60 proposals) were appealed and of these 58 were dismissed. The remaining two had their appeals upheld with the proposals remitted back to the EPA. In both instances, the same decision was made with additional advice issued.

About 29% of the proposals were in the Perth metropolitan area, 25% in the Southwest, 14% in the Pilbara and 8% in the Midwest. The proposals ranged from land-use change such as subdivision and residential developments (33%), mineral developments – both exploration and mining – (21%), and marine developments (9%).

Proponents were forthcoming with requests for information during interviews and site visits.

As a measure of public interest in the six proposals chosen for detailed evaluation:

- One project was appealed (Proposal 1). The three appeals came from third parties. The Minister for Environment dismissed each appeal.
- Proposals 1 and 4 received three and 192 submissions respectively.

Interview and scorecard results are presented in Table 2. The results are presented for each evaluation criteria to give an overall effectiveness rating. A traffic light analysis was applied to present the level of effectiveness for each proposal against each evaluation criteria, with green indicating that an effectiveness criteria was achieved, yellow indicating mostly achieved and red (not required for this analysis) indicating that an effectiveness criteria was not achieved. It is important to note that the effectiveness rating does not represent the proposal's overall environmental effectiveness, but instead represents whether the proposal met the evaluation criteria applied.

Table 2: Effectiveness of public advice for each proposal

Evaluation Criteria	Evaluation Method	Proposal 1	Proposal 2	Proposal 3	Proposal 4	Proposal 5	Proposal 6	Overall Effectiveness Rating
1	Proponent interview	Green	Green	Green	Green	Green	Green	Green
2	Proposal scorecard criterion 2	Green	Green	Yellow	Green	Green	Green	Yellow
3	Proposal scorecard criterion 3	Green	Green	Green	Yellow	Green	Green	Yellow
4	Proponent interview (Part A Question 4)	Yellow	Green	Green	Green	Green	Green	Yellow
5	Proponent interview (Part B Question 6-8)	Green	Green	Green	Green	Green	Yellow	Green
Total	Effectiveness Rating	Yellow	Green	Yellow	Yellow	Green	Yellow	Yellow

Key: Green = Achieved, Yellow = Mostly achieved, Red = Not achieved

Proposals 1, 3, 4 and 6 had one criteria each that was not fully achieved, represented by yellow in Table 2. These are discussed further in the Discussion section.

Discussion

Overall, public advice was effective.

This section discusses the overall effectiveness of public advice as measured against the evaluation criteria for each proposal.

Criterion 1: Awareness

All proponents interviewed reported a good level of awareness of the public advice. Of all the evaluation criteria this scored highest.

During the selection phase of the project, the resort development proposal was investigated for its potential for evaluation. Some years after the proposal was issued with public advice, the proponent wrote to the EPA seeking a variation to the recommendations outlined in the advice. This indicated a level of uncertainty about the process following a decision not to assess and has been identified as a potential area for improvement.

Criterion 2: Proponent application of public advice

Overall this evaluation criterion scored well.

Proposal 3 was the only proposal that did not fully implement the public advice. The monitoring results (relating to dredge water quality) were not published by the proponent as specified. The proponent acknowledged this and explained it was due to a contractual issue with a consultant. Overall, most proponents implemented the public advice.

Although not specifically investigated for this evaluation, proponents reported a general preference for assessment over public advice. They explained that the assessment pathway was perceived to be more structured with measurable timelines and provided a tangible deliverable for business, in the form of a Ministerial Statement.

Criterion 3: DMA application of public advice

Public advice for the evaluated proposals included a recommendation that the proponent seek secondary approvals administered by other DMAs, such as the Department of Environment Regulation, Department of Mines and Petroleum, and the Department of Water. In each instance, the DMA applied the public advice. Secondary approvals in this context include native vegetation clearing permits, programme of works, works approvals, licences and/or licence to take water.

Some proponents - such as the proponent for the Proposal 4 - reported difficulties engaging with DMAs in this process. The proponent suggested the EPA become more involved in secondary approval processes in the future. Comments from proponents on DMAs applying public advice are summarised below.

- Proponent perception that there is regulatory overlap with DMA approvals.
- Inconsistency in the approval processes and timing by different DMAs for similar environmental impacts, which can lead to "DMA shopping" for project approval by proponents.
- Perception of DMA bias manifested in stricter conditions or longer approval timelines for small-scale projects and/or small-to-medium sized proponents.

In reviewing spatial data of the proposals evaluated, variations in the development envelope - between what was referred and what was implemented - were noted. DMAs advised that this common occurrence could be explained by changes due to other DMA requirements or modifications as the projects advanced from the pre-feasibility to operational phase of development. In each instance the variation in development envelope was determined to be a non-significant environmental impact.

Criterion 4: Appropriateness of public advice

The focus here was whether public advice was effective in mitigating the residual environmental impacts of proposal implementation. In each instance the proponent reported that the public advice provided was adequate in addressing residual impacts.

However, the proponent for Proposal 1 suggested seasonal aerial photography was a more effective mechanism for monitoring and identifying vegetation health than the photo monitoring recommended in public advice. This proponent also indicated that further consultation with DMAs and clarification on how the EPA expects public advice to be applied by DMAs could improve environmental outcomes. Particularly when public advice is written in a prescriptive manner, which can limit the application of adaptive management conditions or measures by DMAs or proponents.

Criterion 5: Environmental outcomes

This criterion scored well for each proposal. The proponent for Proposal 1 reported an improved environmental outcome for flora and vegetation. In implementing the proposal, clearing of vegetation was avoided where drilling equipment could transverse vegetation without damage to equipment.

Although not specifically addressed in the public advice for Proposal 6, the proponent stated that the relocation program was unsuccessful for the northern quoll (*Dasyurus hallucatus*) and that the northern quoll kept returning to the operational area. The relocation program is managed by conditions administered by the then Commonwealth Department of Sustainability, Environment, Water, Population and Communities under the *Environment Protection and Biodiversity Conservation Act 1999*.

Adaptive management based public advice may enable proponents and DMAs to adjust environmental management measures that once implemented do not meet specified environmental outcomes.

Other observations - Timing

Some of the proponents interviewed reported concerns about the time taken for the EPA to make a decision on the level of assessment for proposals.

Some proponents stated their preference for the transparency, certainty and timeframe of an assessment pathway. One reason for this was the longer timeframe of some secondary approvals.

Conclusion

The results of the study indicate that public advice is an effective tool that assists the EPA to meet its objectives.

For future evaluation projects the following elements of the methodology could be improved:

- Refining the selection criteria for proposals (the original criteria was too broad and did not reflect the outcomes sought);
- Engaging with community groups and non-government organisations to broaden the range of feedback on public advice.

Appendix A: Standard Proponent Interview Questions

Part 1: Questions specific to the public advice issued

When a proposal is referred to the EPA it must decide if the implementation of the proposal will result in significant environmental impacts and if so what level of assessment to apply to the proposal. In instances where there is no perceived significant environmental impacts but the EPA thinks it relevant to provide advice to a proponent, it will issue Public Advice. This Part of the interview relates to the Public Advice issued to PROPONENT for the PROPOSAL referred DATE.

1. Did the proposal get modified during the referral process prior to the release of the Public Advice?
2. Did you (and the organisation you represent) have knowledge of the Public Advice?
3. Was the Public Advice applied? If not, why not? i.e. Did the Public Advice influence the environmental management of the proposal
4. Was the Public Advice appropriate for the associated environmental impact, or could the Public Advice been improved? i.e. was there a more cost efficient / effective way to manage the environmental impacts of the proposal?
5. Can you confirm that the map provided contains the proposal referred and implemented? You may be asked to provide a current map (and spatial data) of the proposal for comparison / analysis?

Part 2: Feedback on proposal implementation

This part of the interview is seeking information on the implementation of the proposal and whether the Public Advice contributed to achieving good environmental outcomes.

6. Were the predicted environmental impacts of the proposal an accurate reflection of the actual environmental impacts experienced in implementing the proposal? If not why not?
7. Were there any environmental impacts in implementing the proposal that were not identified in the referral information?
8. The EPA is seeking to improve the mitigation measures applied in Public Advice to achieve good environmental outcomes. Do you have any examples of environmental management practices or procedures to achieve good environmental outcomes that the EPA could apply to similar proposals in the future? i.e. examples to reduce time, costs, resources and administrative requirements.

Appendix B: Summary scorecards for DMA interviews

This Appendix outlines the percentage score (out of 100%) that proponents and appropriate decision-making authorities (DMA) had adhered to the Public Advice issued by the EPA.

Public Advice Intent – Drilling Program	Responsibility	Status
Flora and Vegetation Management Plan	Proponent	100
Flora and Vegetation Monitoring Plan	Proponent	100
Informal non-compliance notification	Proponent	100
Programme of Works licence	Proponent	100
Set conditions consistent with EPA Guidance Statement 6 – Rehabilitation of Terrestrial Ecosystems	DMP	100
		Score 100%

Public Advice Intent – Access Corridor	Responsibility	Status
Noise Management	Proponent	100
Contaminated Sites – Lead Sampling	Proponent	100
Native Veg Clearing Permit	Proponent	100
		Score 100%

Public Advice Intent – Maintenance Dredging	Responsibility	Status
Noise Management Plan	Proponent	100
Public disclosure of monitoring plan and results	Proponent	100
		Score 100%

Public Advice Intent – Boating Facility	Responsibility	Status
Adherence to Concept Design	Proponent	100
Spring Survey – prior to construction	Proponent	100
Native Veg Clearing Permit	Proponent	100
No noise activities between May - Nov	Proponent	100
No additional loss to seagrass – seagrass monitoring	Proponent	100
Marine water and sediment quality monitoring plan	Proponent	100
Adherence with Marine Park Management Plan	Proponent	100
		Score 100%

Public Advice Intent - Landfill	Responsibility	Status
Native Veg Clearing Permit	Proponent	100
Works Approval	Proponent	100
Landscaping – protection of Bibbulmum Track	Proponent	100
Windblown rubbish – waste management	Proponent	100
	Score	100%

Public Advice Intent – Iron Ore Project	Responsibility	Status
Mine Closure Plan	Proponent	100
Works Approval	Proponent	100
Native Veg Clearing Permit	Proponent	100
	Score	100%

