



WESTERN  
AUSTRALIAN  
GOVERNMENT  
**Gazette**

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

5979



PERTH, FRIDAY, 26 NOVEMBER 2010 No. 223 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

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ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT ASSESSMENT  
ADMINISTRATIVE PROCEDURES 2010**

**Preamble**

The Environmental Protection Authority undertakes the environmental impact assessment of some proposals referred to it under Part IV of the *Environmental Protection Act 1986*. Environmental impact assessment is a systematic and orderly evaluation of a proposal and its impact on the environment. The assessment includes considering ways in which the proposal, if implemented, could avoid, reduce and ameliorate the impacts on the environment, including its alternatives.

The Environmental Protection Authority has prepared these Administrative Procedures for the purposes of establishing the principles and practices of environmental impact assessment within the context of Part IV of the *Environmental Protection Act 1986*.

**Citation**

These procedures may be cited as the *Environmental Impact Assessment Administrative Procedures 2010*.

**Transition**

The Environmental Protection Authority gives notice that proposals being assessed prior to gazettal of the *Environmental Impact Assessment Administrative Procedures 2010* will continue to be assessed under the processes described in the *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002*.

All proposals referred to the Environmental Protection Authority after gazettal of the *Environmental Impact Assessment Administrative Procedures 2010* will be assessed under the procedures described in the *Environmental Impact Assessment Administrative Procedures 2010*.



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## ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPRINT ASSESSMENT  
ADMINISTRATIVE PROCEDURES 2010****1. PURPOSE AND SCOPE**

Part IV of the *Environmental Protection Act 1986* (the Act) provides for the referral and environmental impact assessment of proposals likely, if implemented, to have a significant impact on the environment, strategic proposals and statutory planning schemes.

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

The *Environmental Impact Assessment Administrative Procedures 2010* establishes the principles and practices in relation to—

1. the referral of a proposal;
2. the setting of the level of assessment of a proposal;
3. environmental review and public consultation; and
4. environmental impact assessment.

The *Environmental Impact Assessment Administrative Procedures 2010* also provides additional information regarding the administration of Part IV of the *Environmental Protection Act 1986* more generally.

For more detailed guidance in relation to the practice, procedures, and requirements to be met by participants engaged in the operation of Part IV of the Act, the EPA also prepares Environmental Assessment Guidelines. The Environmental Assessment Guidelines provide guidance to proponents, consultants, other decision-making authorities and the public about the specific procedures, methodologies and requirements adopted by the EPA when dealing with other matters under Part IV of the Act.

**2. DEFINITIONS**

**Act** means the *Environmental Protection Act 1986* (WA).

**Assessment on Proponent Information (API) document** is the report prepared by the proponent and submitted to the EPA following the environmental review undertaken in accordance with section 40(2)(b) of the Act where an API level of assessment has been determined.

**API guidance** is the document prepared by the EPA which sets out the EPA's determination as to the form, content, timing and procedure of the environmental review required to be undertaken by the proponent under section 40(2)(b) of the Act where the API level of assessment has been determined by the EPA.

**Assessed scheme** is defined in section 3 of the Act.

**Critical asset** represents the most important environmental assets in the State that must be fully protected and conserved for—

- the State to fulfil its statutory and policy requirements;
- the State to remain sustainable in the longer term; and
- the EPA to comply with its general principles for advice and decision-making.

**Cumulative impact** means an impact on the environment that results from the incremental impact of a proposal, when added to other past, present and reasonably foreseeable future proposals.

**Decision-making authority (DMA)** is defined in section 3 of the Act.

**EIA** refers to environmental impact assessment.

**Environment** is defined in section 3 of the Act.

**Environmental impact assessment (EIA)** means an orderly and systematic process for evaluating a proposal or scheme (including its alternatives), and its effects on the environment, and mitigation and management of those effects.

**Environmental value** is defined in section 3 of the Act.

**Environmental Scoping Document (ESD)** is the document prepared either by the EPA, or by the proponent in conjunction with the EPA, which sets out the EPA's determination as to the

form, content, timing and procedure of the environmental review required to be undertaken by the proponent under section 40(2)(b) of the Act where the PER level of assessment has been determined by the EPA.

**EPA** is a reference to the Environmental Protection Authority defined as the Authority in the Act.

**EPA Report** means the assessment report prepared by the EPA for the Minister, on the outcome of its assessment of a proposal, under section 44 of the Act.

**EPA website** is [www.epa.wa.gov.au](http://www.epa.wa.gov.au)

**Information product** means any item that has been derived from spatial datasets, databases or other information to meet a specific purpose (e.g. maps, area statistics, species lists or modelled environmental impacts).

**Mitigation** in an environmental context, means a sequence of proposed actions designed to help manage adverse environmental impacts, and which includes (in order of preference)—

1. avoidance—avoiding the adverse environmental impact altogether;
2. minimisation—limiting the degree or magnitude of the adverse impact;
3. rectification—repairing, rehabilitating or restoring the impacted site as soon as possible;
4. reduction—gradually eliminating the adverse impact over time by preservation and maintenance operations during the life of the action; and

**Offsets** in an environmental context means undertaking activities that counterbalance an adverse, residual environmental impact, after the mitigation sequence has been exhausted.

**PER document** is the report prepared by the proponent and submitted to the EPA following the environmental review undertaken in accordance with section 40(2)(b) of the Act where a PER level of assessment is determined.

**Proposal** is defined in section 3 of the Act.

**Significant proposal** is defined in section 37B of the Act.

**Strategic proposal** is defined in section 37B of the Act.

### 3. OBJECTIVES OF EIA<sup>1</sup>

The objectives of EIA are set out below—

1. To fulfil the object of the Act, being to protect the environment, having regard to the precautionary principle and the principles of intergenerational equity; conservation of biological diversity; ecological integrity; improved valuation, pricing and incentive mechanisms; and waste minimisation<sup>2</sup>.
2. To ensure decisions are made in relation to the implementation of a proposal following the provision of timely and sound advice as to the environmental impacts of the proposal.
3. To engage communities surrounding a proposal, the public generally and other relevant decision-making authorities in consideration of the environmental impacts of a proposal.
4. To ensure that the proponents of proposals take primary responsibility for protection of the environment relating to their proposals.
5. To promote continuous improvement in EIA through learning and knowledge gained through the EIA process.
6. To provide a basis for ongoing environmental management and improvement, including through the results of monitoring.

### 4. PRINCIPLES OF EIA FOR THE EPA

1. Provide guidance on the types of proposals likely to attract assessment and the levels of assessment.
2. Provide guidance as to the form, content and procedure of the environmental review which proponents will be required to undertake.
3. Negotiate with key participants to set an assessment timetable on a proposal-specific basis and use best endeavours to meet these timeframes.
4. Ensure that the total and cumulative effects of using or altering community environmental assets receive due consideration.
5. Seek and promote public comment relating to proposals.
6. Ensure predicted environmental impacts are monitored, the results assessed and feedback provided to improve ongoing environmental management of proposals.
7. Monitor the efficacy and efficiency of the environmental impact assessment processes and management to allow for continuous improvement.
8. Review and improve processes and tools to help minimise uncertainty and delays.

<sup>1</sup> The objectives of EIA, as stated in these Administrative Procedures, adopt, in part, the national approach to EIA considered by the Ministers of the Australian and New Zealand Environment and Conservation Council (ANZECC).

<sup>2</sup> See Section 4A of the Act.

## 5. PRINCIPLES OF EIA FOR THE PROPONENT

1. Proponents will use best practicable measures<sup>3</sup> and genuine evaluation of options or alternatives in siting, planning and designing their proposals to mitigate detrimental impacts on the environment.

2. Proponents will refer a proposal to the EPA as a strategic proposal where it identifies a future proposal which will be likely, if implemented, to have a significant effect on the environment, the siting, design, servicing, utilities and infrastructure of which are still in the planning and feasibility phase of the proposal's development.

3. Consult other DMAs and the community as early as possible in the planning of the proposal; during the environmental review and assessment of the proposal; and where necessary during the life of the proposal.

4. Incorporate environmental factors in the initial stages of planning the proposal. The onus is on proponents to describe the environmental impacts of their proposals, and to use their best endeavours to demonstrate that the unavoidable impacts are environmentally acceptable, taking into account cumulative impacts in the region.

5. In planning and discussing with the EPA, the timing, content and scope of their environmental review, consider—

- (a) the activities, investigations (consequent authorisations) required to undertake the environmental review;
- (b) the efficacy of the investigations to produce sound scientific baseline data about the receiving environment;
- (c) the documentation and reporting of investigations; and
- (d) the likely timeframes in which to complete the environmental review;

and use best endeavours to meet special review timetables.

6. In their environmental review identify—

- (a) best practicable measures and procedures to mitigate, monitor and manage environmental impacts; and
- (b) responsible corporate environmental policies, strategies and management practices,

which demonstrate how the proposal can be implemented to meet the EPA's environmental objectives<sup>4</sup>.

## 6. PRINCIPLES OF EIA FOR THE PUBLIC

1. Participate in consultation by offering advice, expressing opinions, identifying omitted relevant data/information, providing local knowledge and proposing alternatives.

2. Engage as early as possible in the process. For example, participate in associated and strategic policy and planning as appropriate, since these influence the development and evaluation of proposals.

3. Be informed of the administration and outcomes of EIA.

4. Take a responsible approach to opportunities for engagement in EIA, including being informed of objective information about the issues.

## 7. CONCEPT OF SIGNIFICANCE

A decision by the EPA as to whether a proposal is likely to have a significant effect on the environment is made using professional judgement, which is gained through knowledge and experience in the application of EIA. In determining whether a proposal is likely to have a significant effect on the environment, the EPA may have regard to the following—

- (a) the values, sensitivity and quality of the environment which is likely to be impacted;
- (b) the extent (intensity, duration, magnitude and geographic footprint) of the likely impacts;
- (c) the consequence of the likely impacts (or change);
- (d) resilience of the environment to cope with change;
- (e) the cumulative impact with other projects;
- (f) level of confidence of the impacts predicted;
- (g) objects of the Act, policies, guidelines, procedures and standards against which a proposal can be assessed;
- (h) the public concern;
- (i) presence of strategic planning policy framework; or
- (j) the extent to which other statutory decision-making processes meet the EPA's objectives and principles for EIA.

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<sup>3</sup> Best practicable measures is defined in EPA Guidance Statement No. 55 available on the EPA website.

<sup>4</sup> The EPA will maintain a guideline on the generic environmental factors and associated broad environmental objectives on the EPA website.

## PROCEDURES

### 8. DECISION ON REFERRED PROPOSAL

#### 8.1 Referral of a proposal to the EPA and request for further information

Section 38 of the Act provides for the referral of significant proposals, proposals under assessed schemes and strategic proposals to the EPA. The EIA process begins when a proposal is properly referred, in writing, to the EPA.

The EPA has prepared referral forms to be used by proponents and DMAs referring a proposal to it. To ensure that the EPA is able to determine, in a timely manner, whether the proposal should be assessed, and if so, the level of the assessment, the EPA requires the use of the Referral Forms prepared by the EPA and available on the EPA website.

DMAs, proponents and other persons must consider the significance of the likely impacts of a proposal on the environment, when determining whether a proposal should be referred to the EPA.

Prior to referring their proposals, proponents are encouraged to engage with the EPA, relevant government agencies, the community and DMAs (where possible) to allow protection of the environment to be considered as part of the proponent's planning process. Early consideration of the environment generally means a proposal can be designed to mitigate many detrimental environmental impacts, and reduce ongoing costs of environmental management, rehabilitation and restoration.

Where the EPA determines that it does not have enough information about a proposal to decide whether to assess the proposal and, if so, the level of assessment (for example, where the referral form is not used or is incomplete), the EPA may request additional information from a proponent or any person. Until a satisfactory response to a request for additional information is provided, the EPA is not required to make a decision about whether or not to assess the proposal or level of assessment within the statutory timeframe referred to in section 38A of the Act.

The EPA is not required to accept a referral of a proposal which is clearly not significant. The EPA from time to time provides guidance on what is significant<sup>5</sup>.

Once the EPA has enough information about a referred proposal, the EPA will publish the referral information on the EPA website. The EPA will provide a 7-day public comment period on each referred proposal before it proceeds to make a decision on whether or not to assess the proposal, and if so the level of assessment. Comments on the referral information must be made using the Referral Comment Form available on the EPA website.

The referral information should not contain information that is confidential, as the referral information will be published.

Proponents and DMAs are to provide an electronic copy of the referral information submitted to the EPA, at the time the proposal is referred, to enable the information to be readily uploaded onto the EPA website.

If a proposal has previously been referred to the EPA it cannot be referred again<sup>6</sup>.

#### 8.2 Decision on whether or not to assess

Section 39A of the Act provides the basis for the EPA to decide whether or not to assess a proposal referred to it.

The EPA makes its decision on whether or not to assess a proposal based on the potential impact(s) of the proposal on the environment, with reference to the information in the referral form, and any further information it has obtained from the proponent, relevant government agencies or any other person.

The EPA has 28 days to advise the proponent, the person who referred the proposal (if it was not the proponent) and DMAs of its decision on whether or not to assess the proposal, once all requests for information have been met to the EPA's satisfaction.

The EPA will publish its decision on whether or not to assess a proposal, and if so the level of assessment. The EPA will also keep a public record of each proposal referred to it.

##### Decision not to assess

Where the EPA decides not to assess a proposal, it will record as part of that decision, one of the descriptors outlined below.

- (a) Not Assessed—no advice given.

The EPA will not provide any advice on the proposal.

- (b) Not Assessed—public advice given.

The EPA will provide advice to a DMA and proponent on the environmental aspects of the proposal. This advice is not legally binding on the DMA or proponent. The EPA's advice will be available to the public, and will be forwarded on request.

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<sup>5</sup> A memoranda of understanding between the EPA and other government agencies currently operates as a guide to these agencies in relation to determining significance and is available on the EPA website.

<sup>6</sup> See section 38(5j) of the Act. This does not apply to situations where the assessment of the proposals has been terminated under section 40A or where there is an change to implementation conditions by assessment where the proposed change is considered by the Minister and any DMA to be a major change: see section 46B(2) of the Act.

- (c) Not Assessed—managed under Part V of the Act (Clearing).

The EPA considers that the proposal could be managed under Part V of the Act. This includes provisions for clearing of native vegetation.

Where the EPA decides that a proposal can be managed under Part V of the Act (Clearing), the EPA will consult with the Department of Environment and Conservation prior to making this decision.

Where the EPA decides not to assess a proposal, the EPA nevertheless expects proponents and DMAs to ensure that appropriate measures are taken to meet the objects of the Act.

#### Decision to assess

Where the EPA decides to assess a proposal, it will determine which of the following two levels of assessment will apply—

- (a) Assessment on Proponent Information (API); or
- (b) Public Environmental Review (PER).

Where the EPA has decided to assess a strategic proposal, it will record as part of that decision—assessment of a strategic proposal.

Where a proposal is referred, and it is apparent that the proposal is clearly environmentally unacceptable, it will be assessed at the API level.

The levels of assessment are outlined in detail in section 10 of these Administrative Procedures. The EPA will begin the assessment as soon as possible, after the notices on the level of assessment have been given.

## **9. DECISION-MAKING AUTHORITIES**

A DMA is constrained by section 41 of the Act from making a decision that could have the effect of causing or allowing the proposal to be implemented<sup>7</sup>, if—

- (a) it has referred, or has been required to refer, a proposal to the EPA; or
- (b) it has received a notice from the EPA that the proposal will be assessed.

Section 41 of the Act does not apply to strategic proposals, unless a future proposal identified in the strategic proposal proceeds to be implemented ahead of the initial plan for implementation and is itself a significant proposal which must be referred.

The Minister is required to consult and reach agreement with relevant DMAs as to whether or not a proposal may be implemented, and if so, under what conditions.

While section 41 constrains relevant DMAs from making a decision which could cause or allow a proposal being assessed to be implemented, the scheme of the Act contemplates parallel processing of other approvals under other legislation. That is, the scheme of the Act contemplates that other DMAs, while not able to make a decision, will however have administered and considered the proposal and for the Minister for Environment, in consultation and agreement with other relevant Ministers and/or decision-making authorities, to determine whether the proposal should be implemented. While the Minister (in consultation with other Ministers and DMAs) is bound to consider the Authority's report, the Minister is not necessarily bound to support any recommendations and the consultation with other DMAs provides for the consideration of social and economic aspects of the proposal<sup>8</sup>.

## **10. LEVELS OF ASSESSMENT**

Section 40 of the Act provides the basis for the EPA to undertake an EIA for the proposal. Where the EPA decides to undertake an EIA, it will adopt one of two levels of assessment. The level of assessment will establish the general form, content, timing and procedure for the environmental review to be conducted by the proponent for the proposal.

### **10.1 Assessment on Proponent Information (API)—no public review**

The API level of assessment provides for assessment of a proposal where the environmental acceptability or unacceptability of the proposal is apparent at the referral stage.

A public review period is not considered necessary either because the proponent has appropriately and effectively consulted with the stakeholders during the preparation of the proposal, or further consultation through a public review process is unlikely to identify additional stakeholders or raise additional significant environmental issues.

The EPA will apply an API level of assessment where the proponent has provided sufficient information about the proposal, its environmental impacts and proposed management, and the proposal is consistent with either category A or category B criteria listed below.

Where a proponent believes its proposal should be assessed at the API level, the proponent should demonstrate conformance with category A, and discuss this with the EPA prior to referring the proposal. Discussions would confirm the information requirements for the proposal if it was to be assessed at the API level.

<sup>7</sup> Note a DMA may refuse to approve a proposal, in which case the EPA may terminate the assessment of the proposal: section 40A(1)(c) of the Act.

<sup>8</sup> *Coastal Waters Alliance of Western Australia Inc v Environmental Protection Authority & Anor; Ex parte Coastal Waters Alliance of Western Australia* (1996) 90 LGERA 136

### Category A

For a referred significant proposal to be assessed at an API level of assessment all of the following criteria must be met—

- (a) the proposal raises a limited number of significant environmental factors that can be readily managed, and for which there is an established condition-setting framework;
- (b) the proposal is consistent with established environmental policy frameworks, guidelines and standards;
- (c) the proponent can demonstrate that it has conducted appropriate and effective stakeholder consultation; and
- (d) there is limited, or local, interest only in the proposal.

### Category B (environmentally unacceptable)

For a referred significant proposal to be assessed at Category B API level of assessment, the following criteria must apply—

- (a) the proposal is inconsistent with established environmental policy frameworks, guidelines or standards; or
- (b) the proposal is likely to have a significant impact on an environmental value; or
- (c) the proposal raises one or more significant environmental factors or issues that do not meet the EPA's environmental objectives and principles; and
- (d) the proposal could not be reasonably modified to meet the EPA's environmental objectives and principles.

The assessment procedure that would apply to an API level of assessment is provided in schedule 1 of these Administrative Procedures.

## **10.2 Public Environmental Review (PER)**

The EPA would apply a PER level of assessment to proposals which meet any one of the following criteria outlined below—

- (a) the proposal is of regional and/or State-wide significance;
- (b) the proposal has several significant environmental issues or factors, some of which are considered to be complex or of a strategic nature;
- (c) substantial and detailed assessment of the proposal is required to determine whether, and if so, how the environmental issues could be managed; or
- (d) the level of interest in the proposal warrants a public review period.

The assessment procedure that would apply to a PER level of assessment is provided in schedule 2 of these Administrative Procedures.

## **11. STRATEGIC PROPOSALS**

Section 40B of the Act provides the basis for the EPA to assess a strategic proposal. This can be a policy, plan, program or development.

Assessment of a strategic proposal provides for greater certainty to local communities and proponents over future development, improved capacity to address cumulative impacts at the landscape level and flexible timeframes commencing early in the planning process. The desired objective of assessing a strategic proposal is to identify all potential significant environmental impacts and management as early as possible, and thus avoid further assessment of future individual proposals by the EPA.

The environmental impact assessment of a strategic proposal may apply to one or more future proposals which may be significant individually or in combination.

A strategic proposal can only be referred to the EPA by the proponent.

Assessment of a strategic proposal by the EPA will follow the provisions set out under Part IV (Divisions 1 and 2) of the Act. This means that the EPA will report on the environmental factors relevant to the strategic proposal and may recommend conditions that should apply to the strategic proposal and any future proposals. Following release of the EPA Report on a strategic proposal, the Minister will decide whether the strategic proposal can be implemented, and if so whether any implementation conditions are required.

Strategic proposals are normally assessed by the EPA at the level of PER, and therefore will follow the steps set out in schedule 2. This involves a scoping phase, public review of a document prepared by the proponent, and the proponent's responses to the issues raised, prior to the EPA submitting its Report to the Minister.

When a future proposal is referred to the EPA under section 38 of the Act, the proponent may also request that the EPA declare the proposal to be a derived proposal (i.e. derived from a strategic proposal) under section 39B of the Act. The EPA will publish this request on its website. The EPA will provide a 7-day public comment period on the information provided by the proponent as part of their request that the proposal be declared a derived proposal.

When a future proposal is brought forward, the EPA will consider it as a derived proposal if—

- (a) the proposal was identified in the strategic proposal that has been assessed by the EPA;
- (b) a decision was made that the strategic proposal could be implemented;
- (c) the environmental issues raised have been adequately addressed;

- (d) there is no significant new or additional information that justifies reassessment of the issues raised by the proposal; and
- (e) there has been no significant change in the relevant environmental factors since the strategic proposal was assessed.

The EPA will publish the reasons for the declaration of a derived proposal on its website.

A proposal declared as a derived proposal would not require further assessment by the EPA, except for the purposes of conducting an inquiry as to whether or not the implementation conditions relating to the proposal, or any of them, should change. A notice will be issued to the proponent of the derived proposal allowing implementation of the proposal, and the notice may specify which conditions in the implementation decision would apply.

## 12. PUBLIC INQUIRY

Section 40(2)(c) of the Act allows the EPA, with the approval of the Minister, to conduct a public inquiry for the purposes of assessing a proposal.

A public inquiry may be conducted in such manner as the EPA determines through its terms of reference. The *Royal Commissions Act 1968* applies to and in relation to any public inquiry conducted by the EPA<sup>9</sup>.

## 13. COMMONWEALTH ASSESSMENT OF PROPOSALS

The Bilateral Agreement between the Commonwealth and the State of Western Australia aims to minimise duplication of EIA processes between the Commonwealth and the State. This is achieved by the Commonwealth accrediting particular EIA processes, which in effect, delegates responsibility for assessment of these processes under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) to the EPA. The agreement is subject to periodic review.

An action<sup>10</sup> which is part of a proposal that has been referred to the EPA may also require referral to the Commonwealth Environment Minister under the EPBC Act for a decision on whether it is a "controlled action". If the Commonwealth Minister decides that the action is likely to have a significant impact on a matter of national environmental significance (i.e. it is a controlled action), the action will need to undergo a formal assessment and approval process under the EPBC Act.

Where the Commonwealth Environment Minister decides that the controlled action can be assessed by the State through the Bilateral Agreement, the EPA will consult with the Commonwealth regarding the acceptability of the form, content, timing and procedure of the environmental review. The EPA will assess the environmental impacts of the controlled action using the accredited EIA process.

The EPA encourages proponents to refer any proposal to the Commonwealth Environment Minister that is likely to require approval under the EPBC Act early in the process, so that the Bilateral Agreement can apply where appropriate. If the proposal is referred to the EPA, but the proponent delays referral to the Commonwealth, it may be too late to apply the Bilateral Agreement, and the proponent may need to pursue separate State and Commonwealth processes.

## 14. EPA REPORT

Under section 44 of the Act the EPA is to report to the Minister on the outcome of its assessment of a proposal. The EPA Report to the Minister will normally include the following—

- (a) a summary description of the proposal and its key characteristics;
- (b) a description of the environmental setting;
- (c) the identification of and reporting on the key environmental factors;
- (d) consideration of the principles of environmental protection;
- (e) recommendations as to whether or not the proposal should be implemented;
- (f) recommended conditions and procedures that the proposal (with or without modifications) should be subject to, if it were to be implemented; and
- (g) other advice and recommendations considered relevant by the EPA.

The EPA may consider information from any of the following sources in assessing the proposal—

- (a) information in the referral form;
- (b) information in an environmental scoping document (ESD), API guideline, PER document or API document;
- (c) issues raised in public submissions or meetings;
- (d) proponent's proposed management measures and response to submissions;
- (e) reports from a public inquiry;
- (f) advice from DMAs and other government agencies;
- (g) additional information provided by the proponent, including peer reviews;
- (h) expert advice commissioned by the EPA;
- (i) relevant environmental policies, guidelines and standards;

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<sup>9</sup> Section 42 of the Act.

<sup>10</sup> An action includes a project, a development, an undertaking, an activity or series of activities, or an alteration to any of these things.

- (j) the EPA's own investigations and expertise; or
- (k) any other information considered relevant by the EPA.

Notwithstanding the procedure for a PER assessment described in these Administrative Procedures, there may be circumstances during the assessment of a proposal where the EPA amends the procedure in the following manner—

1. if after an ESD has been released for public review and submissions have been received, the EPA may form the view that it has adequate information to complete the assessment, and submit the EPA Report on the outcome of the assessment to the Minister, without receiving the proponent's response to the public's submissions on the ESD or a PER document; or
2. if after a PER document has been released for public review and submissions have been received, the EPA may form the view that it has adequate information to complete the assessment, and submit the EPA Report on the outcome of the assessment to the Minister, without receiving the proponent's response to the submissions on the PER document.

Where the EPA amends the assessment procedure, the EPA will inform the proponent, in writing, of its intention to submit the EPA Report to the Minister.

## 15. CONDITIONS

When the EPA assesses a proposal and provides advice to the Minister, it may also recommend conditions and procedures which regulate the implementation of the proposal. The Minister, in consultation with other relevant decision-making authorities, determines whether or not the proposal should be implemented and if so, the conditions and procedures which regulate the implementation of the proposal.

The Minister's decision or agreement in relation to the implementation of the proposal is provided by way of a statement issued under section 45(5) of the EP Act. A proponent who does not ensure that any implementation of the statement is carried out in accordance with the implementation conditions and procedures, commits an offence.

The EPA's preference is to recommend outcome-based conditions. That is, conditions and procedures which focus on the ultimate objective that is to be achieved (in contrast to prescriptive conditions with detailed requirements regarding "how" to achieve the objective). The outcome-based approach to condition-setting will aim to regulate "what" to achieve, not "how" to achieve it.

During the assessment process proponents, relevant government agencies or DMAs may wish to identify to the EPA issues which they believe should be subject to conditions. Proponents, government agencies or DMAs may also wish to propose management measures that they believe would protect the environment. Issues requiring conditions may also be raised in public submissions. The EPA will consider these suggestions when preparing its report.

The EPA may seek comment from the proponent in relation to the draft recommended conditions, prior to finalising the EPA Report in regard to the following—

- (a) to correct any errors;
- (b) to confirm the conditions are technically feasible;
- (c) to confirm the conditions are clear and relevant to the proposal;
- (d) to identify any practical opportunities for strengthening the environmental outcome(s) of the condition(s); or
- (e) any other reasons considered necessary by the EPA.

The EPA may also consult with key decision-making agencies for a proposal, in relation to the draft recommended conditions, prior to finalising the EPA Report.

This process of consultation is not intended to provide for a negotiation of environmental outcomes for the proposal. It is intended to provide rigor and clarity to condition-setting.

The provision of the draft recommended conditions to the proponent and key government agencies would be on the basis that strict confidentiality is maintained, until the EPA publishes the EPA Report.

The outcome of consultation with the proponent and key government agencies on the draft recommended conditions and the EPA's response to those comments will be included in the EPA Report.

## 16. CHANGES TO PROPOSAL BEFORE EPA REPORT RELEASED

Section 43A of the Act empowers the EPA to consent to the proponent making changes to a proposal without a revised proposal being referred to the EPA. The EPA can only consent to a change to a proposal under this provision if it considers the change is unlikely to significantly increase any impact that the proposal may have on the environment. In determining whether a change is unlikely to significantly increase any impact of the proposal, the EPA will have regard to the intensity and context of the existing impacts and the intensity and context of the change (see section 7 above).

A proponent wanting to change a proposal before the EPA's report is released and without a revised proposal being referred to the EPA, must provide the EPA with the following information—

1. details of the proposed change;
2. statement of the significance of the change having regard to the matters outlined in section 7 above; and
3. rationale for the change.

Before determining whether to consent to a change, and depending at what stage in the EIA process the application to change the proposal is made, the EPA may consult with other DMAs or the public.

#### 17. TERMINATION OF ASSESSMENT

Section 40A of the Act provides that the EPA may terminate an assessment if—

- (a) the proponent agrees with the termination;
- (b) the proponent has failed to comply with a requirement to provide information, prepare an environmental review of its proposal or ensure availability of its environmental review documentation during the public review period, within such period as the EPA considers to be reasonable; or
- (c) a DMA has refused to approve the proposal.

In circumstances where a proponent has failed to comply with a requirement referred to in clause b) above, the EPA will notify the proponent, in writing, that the assessment of the proposal has been suspended, and request compliance with the requirement within a specified timeframe or confirmation that the proponent agrees to terminate the assessment.

If the proponent fails to respond to this notice or agrees to terminate the assessment, the EPA will terminate the assessment of the proposal.

A proponent may request, in writing, that the EPA suspend the assessment of its proposal at any time.

Following termination, any subsequent plan to progress the proposal through the EIA process would require referral to the EPA.

#### 18. ASSESSMENT OF SCHEMES

Division 3 of Part IV of the Act provides the basis for the EPA to assess planning schemes.

The intent of the 1996 amendments to the *Environmental Protection Act 1986* and the planning legislation was to ensure that environmental factors are considered early in the planning process, as part of the scheme formulation or rezoning process. This requires all planning schemes (including scheme amendments) to be referred by the responsible authority to the EPA for a decision on whether or not the scheme or scheme amendments should be formally assessed. The process set out in Division 3 of Part IV of the Act includes statutory timelines for schemes.

These administrative procedures do not deal with the principles and procedures of EIA for schemes.

#### 19. CHANGE TO PROPOSAL AFTER ASSESSMENT

Section 45C of the Act allows the Minister to approve changes to a proposal after the Minister has issued a statement that the proposal may be implemented. Section 45C of the Act may only be used where the Minister considers that the change(s) to the proposal is unlikely to have a significant detrimental effect on the environment that is different from or additional to the effect of the original proposal.

The Minister has delegated her powers under section 45C of the Act to the Chairman of the EPA.

In determining whether the relevant change or changes “might have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal”, the Minister will evaluate the following—

- (a) the content of the original proposal;
- (b) the content of the relevant change or changes and whether it or they involve a revision of the original proposal;
- (c) whether the original proposal has had or will have any detrimental effect on the environment and, if so, what. The Minister will take into account the implementation conditions;
- (d) whether the change or changes to the original proposal might (in the Minister’s opinion) have any detrimental effect on the environment and, if so, what;
- (e) whether the detrimental effect (if any) which the change or changes in question might have on the environment is additional to, or different from, the detrimental effect (if any) which the original proposal has had or will have; and
- (f) whether any detrimental effect which the change or changes to the original proposal might have on the environment, which is additional to, or different from, any detrimental effect which the original proposal has had or will have, is significant.

Proponents wanting to change a proposal will need to address these matters in the information they submit to the OEPA.

In the assessment of a proposed change to a proposal under section 45C of the Act, there are no provisions for public consultation.

The EPA will maintain a published guideline on its website regarding the procedure followed for giving consideration to changes proposed to a proposal after the Minister has issued a statement that the proposal may be implemented. Proponents should prepare their application for a change to an assessed proposal in accordance with this guideline.

## 20. CHANGE TO CONDITIONS AFTER ASSESSMENT

Section 46 of the Act provides the basis for changes to be made to conditions, after the Minister has issued a statement that the proposal may be implemented.

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

A section 46 inquiry is initiated by the Minister. This may occur following a request to the Minister from either the EPA or the proponent. For the purposes of conducting an inquiry, the EPA has all the powers conferred on it by Division 1 of Part IV of the Act, in relation to a proposal.

In the assessment of a proposed change to a condition(s) under section 46 of the Act, there is no requirement for public consultation.

On completing its inquiry, the EPA will submit a Report to the Minister that includes a recommendation on whether or not the implementation condition(s) to which the inquiry relates should be changed, and any other recommendations that it thinks appropriate.

Section 46B(2) of the Act provides the basis for a proposed change to conditions that are a major change to be referred to the EPA as a new proposal.

## 21. PROPONENT INFORMATION

### 21.1 Adequate information

Section 40(2) of the Act provides the basis for the EPA to require any person, including a proponent, to provide it with information for the purpose of assessing a proposal. This information may include, but is not limited to documents, information products, spatial datasets and databases containing the results of surveys and investigations.

Well prepared accurate information provided by proponents in a timely manner is essential to an efficient EIA process.

The EPA has administrative timelines to review a proponent document. The EPA will prepare and maintain a published guideline (available at [www.epa.wa.gov.au](http://www.epa.wa.gov.au)) regarding timelines for proposals that are assessed.

A document is considered adequate for review if it meets the following criteria—

- (a) it addresses the matters identified in an ESD or API scoping guideline;
- (b) it is written and presented in a style that is readable, understandable, accurate and concise, and does not have typographical or grammatical errors such that it limits the capacity of the reader to understand the environmental issues raised by the proposal;
- (c) it addresses relevant environmental policies, guidelines and standards;
- (d) it is complete, particularly in relation to the inclusion and referencing of technical appendices, tables and legible figures;
- (e) it is technically sound and does not contain errors of fact;
- (f) it is signed off by a senior representative of the proponent to ensure quality assurance; and
- (g) it does not include statements or information purported to be the views of others where this information is not supported by appropriate references or correspondence.

The other forms of information are considered adequate for review if they meet the following criteria—

- (a) information products are clear and legible with appropriate references to source data;
- (b) spatial datasets conform to the quality principles outlined in standards adopted by the EPA; and
- (c) databases are complete, with adequate documentation regarding structure and content provided.

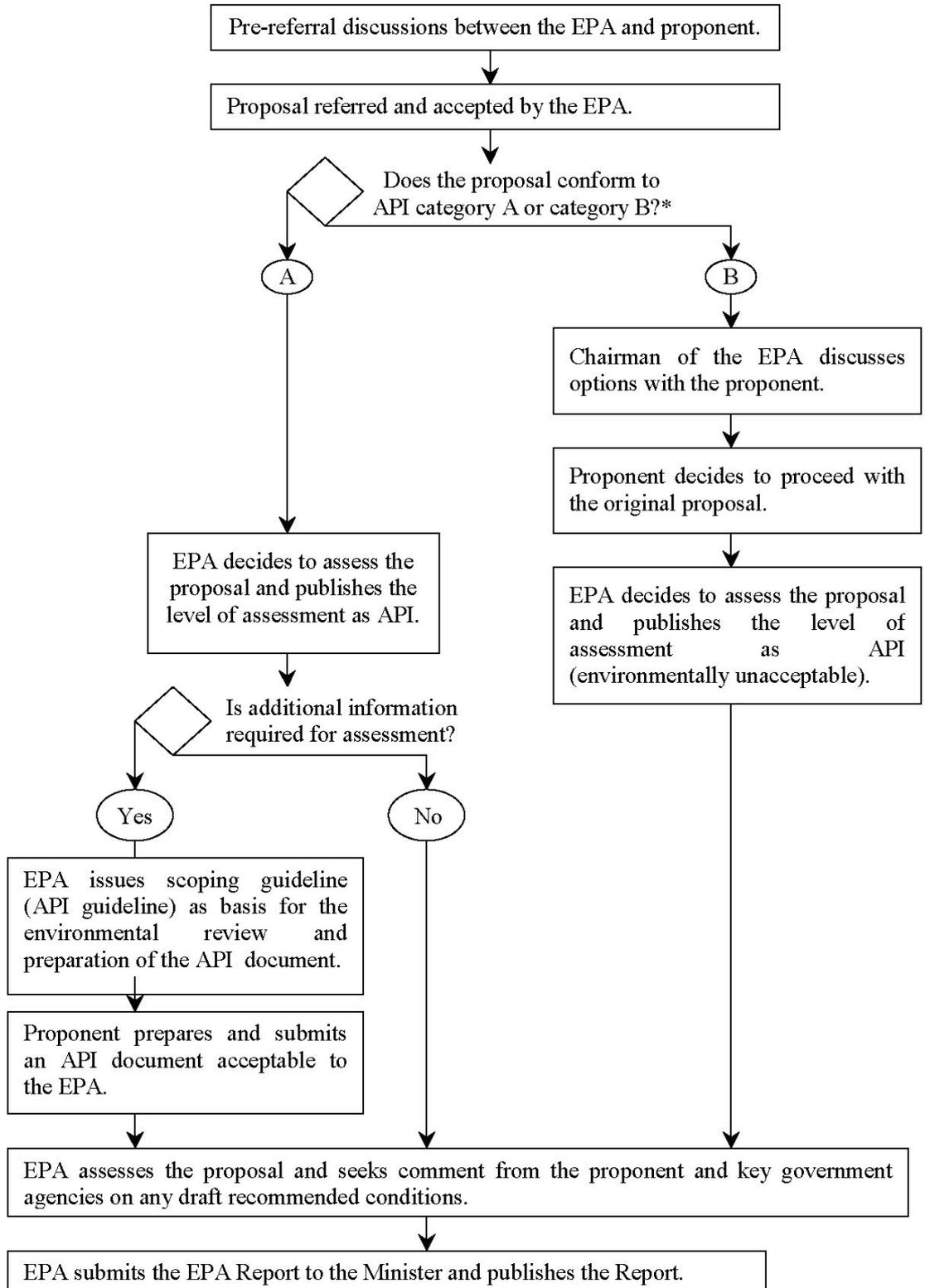
Following review of the proponent's information, the EPA will determine the acceptability of the information for use in the next phase of the assessment process.

The EPA requires that proponents make their documents, including referral information, API document, ESD, PER document and response to submissions (subject to matters that are confidential) publicly available during the EIA process, until the Minister issues a final decision on the proposal. The EPA may make information used in the assessment of a proposal (subject to matters that are confidential) publicly available.

### 21.2 Peer reviews

The EPA may require the findings and conclusions of a particular environmental survey or investigation, which is required to be undertaken by the proponent, to be peer reviewed. The reviewer must be considered authoritative by the EPA. This would normally be required where the survey or investigation relates to an environmental issue or factor which is considered by the EPA to be of key significance to the assessment.

SCHEDULE 1  
ASSESSMENT PROCEDURE FOR API



Legend  
 ◇ Decision point  
 ○ Option  
 □ Action

\* See overleaf for details on category A and category B.

Figure 1: Outline of procedure for an API assessment

### **1. Procedure for an API assessment**

The API level of assessment provides for assessment of a proposal where the environmental acceptability or unacceptability of the proposal is apparent at the referral stage. A public review period is not considered necessary either because the proponent has appropriately and effectively consulted with the stakeholders during the preparation of the proposal, or further consultation through a public review process is unlikely to identify additional stakeholders or raise additional significant environmental issues.

The EPA will apply an API level of assessment where the proponent has provided sufficient information in the referral about the proposal, its environmental impacts and proposed management, and the proposal is consistent with either category A or category B criteria listed below.

#### Category A

For a referred significant proposal to be assessed at an API level of assessment all of the following criteria must be met—

- (a) the proposal raises a limited number of significant environmental factors that can be readily managed, and for which there is an established condition-setting framework;
- (b) the proposal is consistent with established environmental policy frameworks, guidelines and standards;
- (c) the proponent can demonstrate that it has conducted appropriate and effective stakeholder consultation; and
- (d) there is limited, or local, interest only in the proposal.

#### Category B (environmentally unacceptable)

For a referred significant proposal to be assessed at Category B API level of assessment, the following criteria must apply—

- (a) the proposal is inconsistent with established environmental policy frameworks, guidelines or standards; or
- (b) the proposal is likely to have a significant impact on a critical asset; or
- (c) the proposal raises one or more significant environmental factors or issues that do not meet the EPA's environmental objectives; and
- (d) the proposal could not be reasonably modified to meet the EPA's environmental objectives.

If the EPA considers that there is sufficient information in the referral, it will not require the proponent to prepare an environmental review document (API document). The EPA will proceed to set the level of assessment and then submit its report to the Minister. This will ensure that timely advice is provided to the Minister, and the expense and time involved in preparing an API document is avoided. This process includes proposals that are referred to the EPA, and on examination of the referral information, cannot meet the EPA's environmental objectives and could not be reasonably modified to do so.

If the EPA considers that additional information is required in order to carry out the assessment, the EPA will set the level of assessment as API and issue a scoping guideline (API guideline) to the proponent. The proponent would be required to undertake an environmental review in accordance with the API guideline and prepare a report thereon to the EPA (API document) consistent with the API guideline. The EPA will then assess the proposal and submit its report to the Minister.

### **2. Assessment procedure for API conforming to category A**

Where a proponent believes its proposal should be assessed at the API level, the proponent should demonstrate conformance with API category A, and discuss this with the EPA prior to referring the proposal. Discussions would confirm the information requirements for the proposal if it was to be assessed at the API level.

#### Information requirements for an API

The referral should contain the following information to enable the EPA to assess the proposal at the API level—

- (a) description of the proposal and alternatives considered, including alternative locations with a view to minimising environmental impacts;
- (b) description of the receiving environment, its conservation values, and key ecosystem processes, and discussion of their significance in a regional setting. This description should focus on those elements of the receiving environment likely to be adversely affected by the proposal;
- (c) identification of the key issues (and a list of the environmental factors associated with these issues) and their relative significance;
- (d) discussion and analysis of the direct and indirect impacts of the proposal, in a local and regional context, including cumulative impacts;
- (e) findings of the surveys and investigations undertaken (and technical reports provided as appendices);
- (f) identification of management measures to mitigate significant adverse impacts;
- (g) identification of any offsets, where appropriate, after all other steps in the mitigation sequence have been exhausted;
- (h) spatial datasets, information products and databases required;

- (i) demonstration that the expectations for EIA identified in section 5 of these Administrative Procedures have been addressed;
- (j) demonstration that the proposal conforms with relevant environmental policies, guidelines, standards and procedures; and
- (k) details of stakeholder consultation. Proponents are expected to engage in consultation with State and local government agencies and stakeholders who are interested in or affected by their proposal, including the local community. Proponents should ensure that people are informed about the proposal and its impacts, and there are opportunities for public participation. Proponents should identify, in their documentation, how issues raised during the stakeholder consultation have been responded to, and any subsequent adjustments made to their proposals.

#### Assessment procedure for an API

The assessment procedure that would apply to proposals that meet category A for an API level of assessment is set out in Figure 1 and outlined below—

- (a) The EPA publishes the level of assessment as API.
- (b) If sufficient information is provided in the referral, the EPA assesses the proposal and submits the EPA Report to the Minister.
- (c) If insufficient information is provided, and additional information is required for assessment, the EPA issues a scoping guideline to the proponent, as the basis for the conduct of an environmental review and report thereon (API document).
- (d) The proponent consults with stakeholders and submits an API document.
- (e) The EPA assesses the proposal and submits its Report to the Minister.

#### API scoping guideline

Early scoping can be achieved for a proposal that has been adequately defined at the referral stage and conforms to API category A. The EPA will issue a scoping guideline (API guideline) to the proponent shortly after it publishes its decision on the API level of assessment. The objectives are to clearly articulate to the proponent the following—

- (a) environmental issues or factors of key significance to the assessment;
- (b) stakeholders to be consulted during the environmental review and preparation of the API document; and
- (c) EPA's expectations in relation to the form, content, procedure and timing of the environmental review and the preparation of the API document and studies and investigations that need to be carried out.

The EPA may consult with the key government agencies and DMAs during preparation of the scoping guideline.

#### Environmental review document (API document)

The proponent is required to conduct an environment review in accordance with the EPA scoping guideline, and ensure that its report on the environmental review (the API document) focuses on the environmental issues or factors of key significance. The EPA will maintain a published guideline on the generic environmental factors and associated broad EPA environmental objectives (available at [www.epa.wa.gov.au](http://www.epa.wa.gov.au)), as a guide for preparation of an API document.

The EPA may request relevant government agencies to provide advice to it on a draft API document, particularly in relation to the key environmental issues or factors.

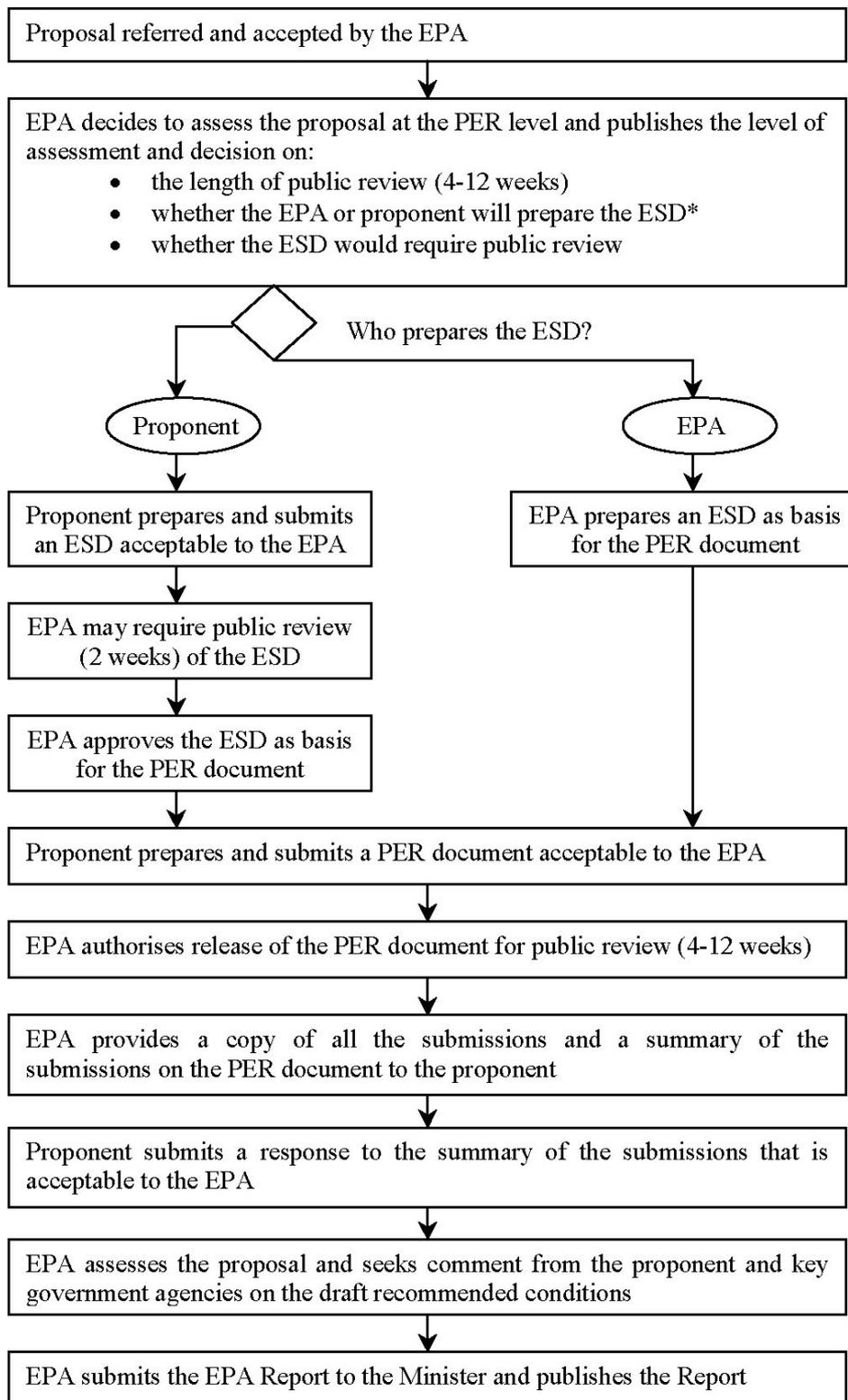
As noted in Schedule 1, one of the purposes of the API document is to demonstrate in some detail that the proposal meets all the criteria of Category A. If the API document demonstrates that the proposal does not achieve this, the EPA may reconsider its initial decision on the environmental acceptability of the proposal and in such cases may report that the proposal is environmentally unacceptable.

### **3. Assessment procedure for API conforming to category B (environmentally unacceptable)**

The assessment procedure that would apply to proposals that meet category B for an API level of assessment is outlined below—

- (a) Based on the referral information, the EPA considers that there is adequate information to demonstrate that the proposal is environmentally unacceptable.
- (b) The Chairman of the EPA advises the proponent on the likely outcome of the assessment and encourages the proponent to no longer proceed with the proposal and/or submit a new, significantly modified proposal (in terms of project design and/or location).
- (c) If the proponent decides to proceed with the original proposal, the EPA publishes the level of assessment as API (environmentally unacceptable).
- (d) The EPA assesses the proposal and submits the EPA Report to the Minister.

SCHEDULE 2  
ASSESSMENT PROCEDURE FOR PER



Legend  
 ◇ Decision point  
 ○ Option  
 □ Action

\* See overleaf for explanation of which ESD process applies.

Figure 2: Outline of procedure for a PER assessment

## **1. Procedure for a PER assessment**

A PER level of assessment will apply to proposals that have regional and/or State-wide impact, raise several significant environmental issues, some of which are considered to be complex or of a strategic nature, and/or require substantial and detailed assessment to determine whether, and if so how, they can be managed in an environmentally acceptable manner, and/or have a level of interest that warrants a public review period.

Once the level of assessment is set as PER, the EPA will advise the proponent whether the EPA or the proponent will prepare the environmental scoping document (ESD). If the proponent is to prepare the ESD, the EPA may require the proponent to make the ESD available for public review for two weeks, and to modify the document based on submissions as appropriate.

The proponent will then be required to prepare a PER document in accordance with the approved ESD, and the general requirements outlined in this schedule. When the EPA is satisfied that the PER document has addressed all of the environmental factors and studies identified in the ESD, the proponent will be required to release the document for a public review period normally between 4 and 12 weeks.

The EPA will provide a copy of the submissions (with the names of private individuals removed) to the proponent soon after the close of the public review period. The EPA will summarise the pertinent issues raised in the submissions on the PER document and provide these to the proponent. The proponent will be required to provide a response to the issues raised in the summary of the submissions, to the satisfaction of the EPA.

The EPA will then assess the PER document, submissions and the proponent's response to the submissions, obtain advice from any other person it considers appropriate, and submit its Report to the Minister.

The EPA may provide advice to the Minister on any strategic environmental factors or issues raised by the proposal at any time during the assessment process, including prior to its completing the assessment and providing the EPA Report to the Minister.

Notwithstanding the procedure for a PER assessment described in this schedule, during the assessment of a proposal, there may be circumstances where the EPA shortens the procedure in the following manners—

1. if after an ESD has been released for public review and submissions have been received, the EPA may form the view that it has adequate information to complete the assessment, and submit the EPA Report on the outcome of the assessment to the Minister without receiving the proponent's response to the submissions on the ESD or a PER document; or
2. if after a PER document has been released for public review and submissions have been received, the EPA may form the view that it has adequate information to complete the assessment, and submit the EPA Report on the outcome of the assessment to the Minister without receiving the proponent's response to the submissions on the PER document.

## **2. Form and content of the Environmental Scoping Document (ESD)**

### ESD prepared by the proponent

For complex proposals, with considerable public interest, the EPA would require the proponent to undertake an environmental review, the form, content, timing and procedure of which is detailed in the ESD. The EPA will maintain a published guideline for the preparation of an ESD (available at [www.epa.wa.gov.au](http://www.epa.wa.gov.au)). Proponents should prepare their documents in accordance with this guideline.

Proponents should have discussions with relevant government agencies during preparation of their ESD regarding issues the agencies consider should be addressed, and any specific requirements they may have.

The EPA will advise the proponent on its acceptance of the ESD, and specifically the proposed scope of works.

The EPA will advise the proponent whether the ESD will be subject to a public review period at the time of publishing the level of assessment.

### ESD prepared by the EPA

For simpler proposals, where the environmental factors are more easily understood, the EPA will prepare and issue the ESD to the proponent. The EPA will consult with the proponent regarding the details of the proposal, its environmental setting and the environmental surveys and investigations required.

The EPA will consult with the relevant government agencies, including DMAs during the preparation of the ESD.

ESDs prepared by the EPA will not be subject to a public review period. These ESDs will be available on the EPA website and will be publicly available when the PER document is released for public review.

### Environmental scoping document (ESD)

The purpose of the ESD is to—

- develop proposal-specific guidelines to direct the proponent on the key environmental issues for the proposal that should be addressed in preparing the PER document; and
- identify the necessary impact predictions for the proposal, and the information on the environmental setting required to carry out the assessment.

The ESD should focus on the scope of works, and may include—

- (a) a concise description of the proposal and its environmental setting;
- (b) the identification of the key environmental factors and other environmental factors relevant to the proposal,
- (c) the identification of the existing policy context relevant to each factor;
- (d) the preliminary identification of the potential environmental impacts;
- (e) a scope of works, setting out the proposed studies and investigations designed to identify or predict the direct and indirect environmental impacts of the proposal, including timeline for completion. The studies and investigations should be clearly linked to the identified environmental impacts and factors;
- (f) the identification of an environmental management program required;
- (g) the identification of the spatial datasets, information products and databases required;
- (h) a list of people, if necessary, proposed to provide peer review of the scope, methodologies, findings and/or conclusions of the surveys and investigations; and
- (i) stakeholder consultation requirements.

The EPA will maintain a published guideline on the generic environmental factors and associated broad environmental objectives (available at [www.epa.wa.gov.au](http://www.epa.wa.gov.au)), as a guide to proponents for preparation of an ESD.

The EPA may request relevant government agencies to provide advice to it on an ESD, particularly in relation to the key environmental issues or factors.

ESDs usually include timelines for the assessment process, which are agreed to between the proponent and the EPA. Timelines for the assessment of a proposal respond to the complexity of the environmental issues and the agreed capacity of the proponent to address the requirements of the assessment. Timelines are unique to each proposal and are therefore administrative. Proponents are expected to meet the agreed timelines, and in doing so, provide adequate information to inform the assessment. Where timelines are not met for any reason, or the information is inadequate, subsequent steps may need to be renegotiated.

### **3. Form and content of the PER document**

The EPA will maintain a published guideline on the form and content of a PER document (available at [www.epa.wa.gov.au](http://www.epa.wa.gov.au)). The proponent should undertake its environmental review as required by the ESD and report thereon to the EPA. The proponent report is presented in the form of a PER document which is to be prepared in accordance with this guideline, the approved ESD and the requirements outlined in this schedule.

Proponents should consult as early as possible with the relevant government agencies, environmental non-government organisations and the community to seek advice and, where relevant, agreement on issues, management measures, standards, criteria and procedures that may apply to the proposal during the preparation of the PER document.

Environmental management plans may be required for the environmental factors of key significance to the proposal. These plans should define the performance objectives, describe the management measures and outline the monitoring and reporting procedures for achieving the objectives. Together, a group of plans may constitute an environmental management program. The program would provide an overall context for the proposal and the proponent's management of environmental impacts.

Proponents should ensure that the PER document focuses on the environmental issues or factors of key significance. The document should include the following—

- (a) description of the proposal and alternatives considered, including alternative locations, with a view to minimising environmental impacts;
- (b) description of the receiving environment, its conservation values and key ecosystem processes, and discussion of their significance in a regional setting. This should focus on those elements of the environment that may affect or be affected by the proposal;
- (c) identification of the key issues (and a list of the environmental factors associated with these issues) and their relative significance. The document should concentrate on the more significant, or key, issues and factors, including potential 'fatal flaws';
- (d) discussion and analysis of the direct and indirect impacts of the proposal, in a local and regional context, including cumulative impacts;
- (e) findings of the surveys and investigations undertaken (and technical reports provided as appendices);
- (f) identification of the measures proposed to mitigate significant adverse impacts;
- (g) identification of any offsets, where appropriate, after all other steps in the mitigation sequence have been exhausted;
- (h) environmental management program;
- (i) demonstration that the expectations for EIA identified in section 5 of these Administrative Procedures have been addressed; and
- (j) details of stakeholder and government agency consultation, how comments received have been responded to, and any subsequent modifications to the proposal.

#### 4. Public release of the ESD and PER document

The EIA process is designed to be transparent and accountable, and comprises specific stages for public involvement. These stages include the public review of all PER documents and some ESDs prepared by the proponent.

The public review of the proponent's documents ensures that the stakeholders, including the community and government agencies, are informed about a proposal, have the opportunity to comment, and that their comments are considered by the proponent and the EPA, before the EPA Report is submitted to the Minister and a decision is made on the proposal.

PER documents will be subject to a public review period, prior to the EPA preparing its Report to the Minister. Issues may arise in the submissions that necessitate the provision of information additional to that provided in the PER document.

Not all ESDs will be subject to public review. The EPA will advise the proponent at the time of publishing the level of assessment, whether public review of the ESD is needed. If public review of an ESD is required, the document will be released for two weeks.

The length of public review of a PER document will be determined by the EPA based on the environmental significance and complexity of the proposal and the level of public interest, on a case-by-case basis. The PER document would be released for a public review period normally between 4 and 12 weeks, but the EPA may determine a longer length of public review for proposals that have a high level of public interest. The EPA will advise the proponent at the time of publishing the level of assessment what the length of the public review period will be.

The proponent shall not publicly distribute an ESD or PER document required by the EPA for review without approval of the EPA. The proponent shall submit a draft ESD or draft PER document to the EPA for it to decide whether the document is suitable for public release and review.

The EPA may circulate a draft ESD or draft PER document to key stakeholders, including government agencies, for comment before deciding on the acceptability of the document for public release and review.

The EPA will decide on the acceptability of a PER document for public release based on the criteria identified in section 18.1 of these Administrative Procedures, in particular—

- (a) whether the requirements in the ESD have been adequately addressed;
- (b) whether the document is technically sound;
- (c) whether the document is understandable; and
- (d) whether the format, content and style are appropriate.

The EPA may require the proponent to modify and submit a revised draft of the PER document if it does not meet the above criteria.

When the EPA considers that the ESD or PER document is suitable for public release, it will advise the proponent.

The EPA will maintain a published guideline on the public release of an ESD and PER document (available at [www.epa.wa.gov.au](http://www.epa.wa.gov.au)). The proponent shall advertise the availability of the ESD or PER document, and ensure the document is available to the public for comment throughout the review period in accordance with the EPA's guideline. Proponents should also note the requirement identified in section 18.1 of these Administrative Procedures that all proponent documents (subject to matters that are confidential) be made publicly available during the EIA process, until the Minister issues a final decision on the proposal.

The proponent shall advertise, in a form and content approved by the EPA, the availability of the ESD or PER document in the news section of the main local newspaper, and a State-wide daily newspaper. The advertisement should appear at the commencement of the public review period and, for a PER, again two weeks prior to the close of the public review period.

The EPA will announce the availability of the ESD or PER document and the review period on its website.

Proponents should make their document available on the Internet and are encouraged to make it available on Compact Disc or other suitable electronic storage media. The proponent shall not charge fees (including postage and packaging) that are greater than \$10.00 for an ESD or PER document and \$10.00 for a stand-alone set of appendices.

The proponent may make public presentations and hold open days on the content of the ESD or PER document during the public review period.

The EPA may request relevant government agencies and experts to provide comment on the ESD or PER document during the public review period.

The EPA shall acknowledge receipt of all submissions received by it within the public review period.

Under certain situations the EPA may consider extending the public review period, or accepting submissions beyond the review period. These situations include—

- (a) the review period coincides with public holiday periods (e.g. 2 weeks will be added to public review periods which occur over the Christmas break);
- (b) the proponent has requested an extension to the public review period;
- (c) the receipt of public comments are delayed for reasons beyond the submitter's control;
- (d) the proponent has failed to make the ESD or PER document, or significant parts thereof, reasonably available during the review period; or
- (e) the EPA considers it necessary.

The information in the submissions shall be deemed public information, unless a request for confidentiality of the submission is made in writing to the EPA, and accepted by the EPA. The identification of submissions with their authors where they are private individuals remains confidential, unless the submitter agrees to be identified. Access to public submissions will, however, be subject to the access applications under the *Freedom of Information Act 1992*. Submissions from government agencies are deemed public information.

#### **5. Proponent's response to submissions on the ESD and PER document**

The EPA will provide a copy of the submissions (with the names of private individuals removed) to the proponent soon after the close of the public review period. The EPA will summarise the pertinent issues raised in the submissions and provide these to the proponent.

The proponent will be required to prepare a written response to the issues raised in the summary of the submissions to the satisfaction of the EPA. This is an opportunity for the proponent to clarify, review or modify aspects of the proposal to address issues raised in the submissions. Any amendments to the original proposal or management measures should be clearly stated in the proponent's response to submissions.

The EPA will review the response to submissions prepared by the proponent for a PER, and request the proponent to consider any comments provided by the EPA in the finalisation of the response to submissions.

The proponent shall ensure that the response to submissions for a PER is prepared, and is publicly available at no cost, in accordance with the requirements of the EPA, at the time of the release of the EPA Report.

Where required, the EPA will consult with relevant government agencies, including DMAs in relation to additional information provided in the proponent's response to submissions.

The EPA may commence preliminary preparation of the EPA Report during the assessment process. However the EPA will only formally commence the assessment and preparation of the EPA Report once it is satisfied with the proponent's response to submissions for a PER.

If an adequate response to the submissions is not forthcoming from the proponent, the EPA may proceed to complete its Report to the Minister provided that a reasonable period has elapsed after the provision of the submissions to the proponent, and a written notice has been given by the EPA to the proponent. In this case the EPA will take a precautionary approach to the assessment based on the information available.

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