



Environmental Defenders Office

Environmental Impact Assessment under the *Environmental Protection Act 1986 (WA)*

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We note that in December 2023, the WA Government announced that it would make changes to the EP Act and Environmental Impact Assessment processes. Some of the foreshadowed changes were introduced into Parliament on 15 August 2024 in the Environmental Protection Amendment Bill 2024, and the Bill will effect some of the matters in this factsheet.

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Introduction to Environmental Impact Assessment

Part IV of the *Environmental Protection Act 1986 (WA)* (**EP Act**) provides the public with a right to participate in Environmental Impact Assessment - a systematic process that evaluates the likely effects development proposals on the environment and considers how to mitigate and manage them.¹

This factsheet provides a general overview of the Environmental Impact Assessment process undertaken by the Environmental Protection Authority of Western Australia (**EPA**). You can find more detailed information, guidelines and other resources at the links below.

Visit: [EPA website – About environmental impact assessment](#)

[Environmental Impact Assessment Procedures Manual](#) (**Procedures Manual**)

[Environmental Impact Assessment \(Part IV Divisions 1 and 2\) Administrative Procedures 2021](#) (**Administrative Procedures**)

¹ Environmental Protection Authority, Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual Requirements under the Environmental Protection Act 1986 (Manual, 23 March 2022) 7 (**Procedures Manual**).

Stages of EIA

The process has four stages:

1. Referral of a proposal to the EPA.²
2. EPA decision on whether to assess a referred proposal (including level of assessment).³
3. EPA assesses proposal⁴ and submits a report on the assessment to the Minister for the Environment (**Minister**).⁵
4. Minister's decision on implementation.⁶

Stage 1: Referral to the EPA

One of the EPA's functions is to assess significant proposals. A proposal is significant if it is, '...likely, if implemented, to have a significant effect on the environment'.⁷ Significant proposals can be referred by:

- the Decision Making Authority (a public authority empowered by law or agreement to make decisions in respect of that proposal) (**DMA**);⁸
- proponents (i.e. the person or company undertaking the proposal such as a mining company);⁹
- any member of the public;¹⁰ or
- the Minister for Environment.¹¹

N.B Opportunity for intervention: referral of a significant proposal

Any member of the public can refer a proposal likely to have a significant effect on the environment to the EPA for an environmental impact assessment.

If a DMA receives notice of a significant proposal, it must refer it to the EPA as soon as it has notice of the proposal.¹² Once a proposal has been referred to the EPA, the DMA is not allowed to make any decision which would cause or allow the proposal to go ahead (such

² EP Act s 38F.

³ EP Act s 39A(1).

⁴ EP Act s 40.

⁵ EP Act s 44(1).

⁶ EP Act s 45.

⁷ EP Act s 37B(1).

⁸ EP Act s 38(4). A DMA is a public authority empowered by law or agreement to make decisions in respect of that proposal: EP Act s 3.

⁹ EP Act s 38(1).

¹⁰ Ibid.

¹¹ EP Act s 38(3).

¹² EP Act s 38(4).

as issuing a mining lease).¹³ This is will change if the *Environmental Protection Amendment Bill 2024* is passed.¹⁴

The Minister may (but is not obliged to) refer a proposal if there is public concern about the likely effect of a proposal, if implemented, on the environment.¹⁵

‘Proposals’ are defined in the EP Act to include a development, project, plan, programme, policy, operation, undertaking, change in land use, or an amendment of any of these things.¹⁶ This definition is wide enough to allow the EPA to assess some government plans and policies if they will impact on the environment.

The EPA can also assess ‘strategic proposals’ which are future proposals that, if implemented, are likely to have a significant impact on the environment.¹⁷ Only a proponent can refer a strategic proposal.¹⁸

Where there has been an assessment of a strategic proposal, and the Minister has set conditions about that proposal, a proponent can ask that the EPA declare a new proposal to be a ‘derived proposal’.¹⁹ The EPA can refuse to declare a proposal to be a derived proposal if there are environmental issues which were not adequately assessed with the strategic proposal, if there is significant new or additional information that justifies reassessment, or if there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.²⁰

The EPA cannot assess:

1. a derived proposal (unless it is conducting an inquiry into the amendment of conditions);²¹
2. proposals which have already been referred to the EPA.²²

¹³ EP Act s 41.

¹⁴ The Bill proposes to remove the general prohibition on parallel approvals by other DMAs while an EPA assessment is underway (including decisions under the EP Act to grant clearing permits, licences and works approvals; and decisions under the *Aboriginal Heritage Act 1972 (WA)*), with only those decisions specified in regulations to be paused. A proponent will still need to wait for the Minister’s approval under the EP Act before taking action.

¹⁵ EP Act s 38(3).

¹⁶ EP Act s 3.

¹⁷ Section 37B(1).

¹⁸ EP Act s 38(7).

¹⁹ EP Act s 38E, Procedures Manual page 24. Examples of potential derived proposals include an industrial development identified within an industrial precinct assessed as a strategic proposal or a fish farm identified in a plan for an aquaculture development zone assessed as a strategic proposal.

²⁰ EP Act s 38E(5) and

²¹ EP Act s 38E(7).

²² EP Act s 38(5).

Calling in a proposal

The EPA can also ‘call in’ proposals themselves.²³

If the EPA considers a proposal to be significant or of a prescribed class, and it has not been referred, then they can require either the proponent or the DMA to refer it.²⁴ The proponent or DMA must refer the proposal to the EPA within the time specified.²⁵

‘Significance’

The terms ‘significance’, ‘significant impact’ and ‘significant effect’ are not defined in the EP Act, so the ordinary or everyday meanings of these terms apply.

N.B

The EPA will refer to its [Statement of environmental principles, factors, objectives and aims of EIA](#) when assessing significance.

Stage 2: EPA decides whether to assess the referred proposal

The EPA has a broad discretion to decide whether to assess a proposal.

Once a proposal has been referred the EPA has 28 days to decide whether to assess and at what level.²⁶ If the EPA does not believe it has sufficient information to decide whether a project should be assessed or not, it can request further information from the proponent, a DMA, or any person.²⁷ 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 the level of assessment.²⁸

When making its decision, the EPA will have regard to matters including:²⁹

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

²³ EP Act s 38A(1).

²⁴ EP Act s 38A(1).

²⁵ EP Act s 38A(3).

²⁶ EP Act s 38G(1).

²⁷ EP Act s 38F.

²⁸ EP Act s 38F(3).

²⁹ Administrative Procedures, 2.2 page 4804.

The EPA may also consider other statutory decision-making processes, meaning the processes and requirements of other legislation, for example legislation about water or cultural heritage that can mitigate the proposal's potential impacts on the environment.³⁰

N.B Opportunity for intervention: commenting on whether a proposal should be assessed

Any person or organisation can comment about whether a proposal should be assessed. The EPA publishes the referrals which it receives on its website and gives any person 7 days to make submissions about whether or not the EPA should assess the proposal and the applicable level of assessment.³¹

Comments made to the EPA should focus on the significance of the proposal because of things such as the environmental values in the area, the resilience of the environment, the scope and potential effect of the proposal, and the public interest.

Decision to assess & level of assessment

When the EPA makes a decision to assess, it must publish that decision in a public record document.³² That document will set out what the EPA considers to be the 'preliminary key environmental factors'. For an example, see the [public record for the North West Shelf Project Extension Proposal](#) which records marine environment quality, air quality and social surroundings as key environmental factors relevant to that proposal. We discuss environmental factors later in this factsheet.

At the time the EPA decides to assess a proposal, it will also decide on the level of assessment. The EPA will usually set one of the following levels of assessment (see page 22 of the Procedures Manual):

- referral information alone;
- referral information (with additional information);
- referral information with public review;
- environmental review – no public review; and
- public environmental review.

If the EPA has decided to assess the proposal, the proposal cannot be implemented until the Minister publishes a statement setting out an implementation agreement.³³

³⁰ EP Act s 38G(4).

³¹ Administrative Procedures, 2.2.1 p 4805.

³² EP Act s 39.

³³ EP Act s 41A(1).

Assessment on referral information

Referral information alone - where the EPA determines that it has enough information to assess the proposal from the referral information obtained under s 38. This level of assessment does not provide any opportunity for public engagement as the EPA believes the proponent has appropriately and effectively consulted with the stakeholders, or further consultation through a public review process is unlikely to identify additional stakeholders or raise additional significant environmental issues.

Referral information with additional information - where the EPA determines that the referral information is insufficient and additional information is needed. Any additional information will be required by a separate notice under s 40(2)(a) and can include information about the results of additional targeted consultation.

Referral information with public review - where the EPA determines that the information it has from the referral information (and additional information where relevant) should be made available for public review (see further below).

Environmental review

Environmental review without public review – where the EPA determines that the referral information is insufficient, and an environmental review is required. If the EPA requires the proponent to undertake an environmental review, either the EPA or the proponent will prepare an Environmental Scoping Document (**ESD**).

An ESD specifies the form, content, indicative timing and procedure of the environmental review. The ESD outlines the preliminary key environmental factors, any specific work required and key areas of focus for the environmental review.³⁴

Visit: [Instructions: How to prepare an environmental scoping document](#) for further information on the content of ESDs.

N.B Opportunity for intervention: ESD available for public review

Where the ESD is available for public review, the EPA will authorise release of the draft ESD and allow the public an opportunity to comment. The EPA may then provide a summary of the submissions on the ESD to the proponent. The proponent will submit a revised version for the EPA's approval of the ESD.

³⁴ Procedures Manual 22.

Even where the ESD is available for public review, the EPA may not make the environment review report (known as an Environmental Review Document or **ERD**) available for public comment.

An ERD outlines the proponent's consideration of stakeholder consultations, legislative context, how the proposal aligns with the objects and principles of the Act, as well as the environmental factors, offsets, matters of national environmental significance and the projects holistic impacts.

Public Environmental Review - where the EPA determines that an environmental review is required and the ERD is to be made available for public review.³⁵

N.B Opportunity for intervention: public review

Where the EPA makes information or a report available for public review:

- the EPA will specify the period within which, the extent to which and the manner in which public authorities or persons may make submissions to the Authority in respect of the information or report;³⁶
- the proponent must publish notice of that information or report being available for public review and provide copies of the information or report free of charge;³⁷ and
- the proponent may be required to respond to submissions made to the EPA as part of the public review process.³⁸

Preliminary key environmental factors

As set out above, as part of the EPA's assessment, the proponent must address the preliminary key environmental factors. In an ERD, a proponent must discuss the:

- EPA environmental factor objective;
- relevant policy and guidance;
- receiving environment and environmental values;
- potential environmental impacts;
- mitigation;
- assessment and significance of residual environmental impact; and
- environmental outcome.

³⁵ EP Act s 40(2)(b) and 40(5).

³⁶ EP Act s 40(5)(b)

³⁷ EP Act s 40(6)(a).

³⁸ EP Act s 40(6)(b).

The EPA has published a list of the environmental factors and objectives it considers when undertaking assessment:³⁹

Visit: [EPA Statement of Environmental Principles, Factors and Objectives](#)

The EPA also publishes guidance related to each of the environmental factors:

Visit: [Environmental Factor Guidelines](#)

Decision not to assess

If the EPA decides not to assess a proposal, it can still give informal advice and recommendations to the proponents on the environmental aspects of the proposal.⁴⁰ The *Environmental Protection Amendment Bill 2024* proposes to remove this right of appeal.

N.B Opportunity for intervention: appeal against EPA's refusal to assess proposal

Any person may appeal to the Minister for the Environment against a refusal by the EPA to assess a proposal.⁴¹ To do this, the person must lodge an appeal to the Minister in writing, setting out the grounds of the appeal.⁴² The appeal must be lodged within 21 days of the EPA's decision being placed on its public record.⁴³ A letter can be sent to the Minister directly, or an appeal can be lodged through the website of the Office of the Appeals Convenor.⁴⁴

Stage 3: Assessment of proposals

Preparation of EPA's draft assessment report

Once the steps relevant to each proposal have been completed the EPA will prepare a draft assessment report. The target timeframe for the EPA to prepare a draft assessment report is six weeks, but this can vary.

³⁹ Environmental Protection Authority, [Statement of Environmental Principles, Factors and Objectives](#), June 2018.

⁴⁰ EP Act s 38G(7).

⁴¹ Section 100(1)(a)

⁴² Section 110(1).

⁴³ Section 100(3a)(a).

⁴⁴ <https://www.appealsconvenor.wa.gov.au/Types-of-appeal/Decisions-and-reports-of-the-EPA>.

The draft assessment report will address whether the proposal may be implemented and any conditions that may be required.⁴⁵ For a full list of what the EPA will consider and include in its draft assessment report, see the [Appendix](#).

One of the matters the EPA will consider is the preliminary key environmental factors, and whether these are the final key environment factors.

Completion of EPA's assessment

The assessment is completed when the EPA considers the draft assessment report and any conditions and:⁴⁶

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

Stage 4: Report to Minister & Minister's decision on implementation

Once the EPA's assessment report has been completed it will be submitted to the Minister. This report outlines the key environmental factors and the EPA's recommendation on whether or not the proposal should be implemented, along with the recommended conditions if the proposal is approved.

The EP Act provides proponents, DMAs, responsible authorities, and third parties with an ability to review the content of or recommendations contained in the assessment report.⁴⁷

Read: **Opportunity for intervention: appeal against content, recommendations or proposed conditions**

[Public Merits Review under Part VII of the *Environmental Protection Act 1986* \(WA\)](#)

If the Minister decides that the proposal may be implemented, he or she must publish a 'Ministerial Statement' setting out the implementation conditions.⁴⁸ Examples of implementation conditions are at s 45A of the EP Act.

⁴⁵ Environmental Protection Authority, *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual Requirements under the Environmental Protection Act 1986* (Manual, 23 March 2022) 39-40

⁴⁶ Administrative Procedures 4810.

⁴⁷ EP Act s 100(1)(d).

⁴⁸ EP Act s 45(8)(b).

N.B Opportunity for intervention: judicial review of Minister’s decision

A decision of the Minister to implement a proposal cannot be appealed. Instead, if a third party is aggrieved by the Minister’s decision, the only avenue available to challenge the decision is through judicial review.

Judicial review proceedings are undertaken in the Supreme Court and are usually complex, time-consuming and costly. Before commencing judicial review proceedings, an applicant should obtain legal advice.

Compliance and enforcement

Once the Ministerial Statement is published, the proponent must ensure that implementation of the proposal is carried out in accordance with the implementation conditions.⁴⁹ The Department of Water and Environmental Regulation monitors compliance with the Ministerial Statement.

N.B Opportunity for intervention: report of non-compliance

If you believe a proponent is not complying with the implementation conditions, you can report this to the Department of Water and Environmental Regulation through their [Environment Watch](#) service.

Changes to conditions

Where the Minister considers the implementation conditions should be amended, the Minister can ask the EPA to inquire into and report on the matter.⁵⁰

N.B Opportunity for intervention: request for Minister to direct s 46 inquiry

Potential amendments to implementation conditions are commonly raised by proponents or by third parties through correspondence to the Minister (even though the EP Act doesn’t expressly provide for this).

⁴⁹ EP Act s 47(1).

⁵⁰ EP Act s 46.

APPENDIX

Factors EPA will consider and include content about in its draft assessment report:⁵¹

- the proposal content, including amendments approved by the EPA under s. 43A
- whether the preliminary key environmental factors are the final key environmental factors
- how the proponent has applied the mitigation hierarchy to the proposal
- the residual environmental impacts of the proposal including:
 - impacts on key environmental factors and environmental values
 - cumulative environmental impacts
 - if the proposal is a significant amendment, the combined impacts with the existing approved proposal
- assessment of residual environmental impacts and consideration of the significance of residual impacts
- whether the likely environmental outcomes, after the application of conditions, are consistent with the EPA's objectives for the final key environmental factors
- whether any offsets (if proposed) are likely to counterbalance any significant residual environmental impacts
- assessment of holistic impacts
- consideration of Matters of National Environmental Significance, where the EPA assesses the proposal under a bilateral agreement or as an accredited assessment
- whether the proposal may be implemented (see Stage 4 EPA report) and, if so, whether:
 - any or all of the proposal elements should be limited through conditions
 - any other conditions should be recommended (with a preference for outcomes-based conditions)
 - any offsets are required
 - any conditions are required to ensure that the proposal's environmental impacts are monitored, that the monitoring results are reviewed and reported, and that contingency measures are implemented
 - any conditions are required to ensure the ongoing and continual improvement of the proposal's environmental management, including adaptive management
 - there are other statutory decision-making processes that can mitigate the proposal's potential impacts on the environment
 - whether compliance with environmental management plans should be recommended as a condition, and whether to require the proponent to amend any environmental management plans.

⁵¹ Procedures Manual, 39-40.

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