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ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT
ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE
PROCEDURES 2012**

ENVIRONMENTAL PROTECTION ACT 1986**ENVIRONMENTAL IMPACT ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE PROCEDURES 2012****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 an orderly and systematic process for evaluating a proposal (including its alternatives) and its effects on the environment. The assessment includes considering ways in which the proposal, if implemented, could avoid, reduce and ameliorate the impacts on the environment.

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 Divisions 1 and 2 of the *Environmental Protection Act 1986*.

Citation

These procedures may be cited as the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012*.

Transition

The Environmental Protection Authority applies the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012* to proposals currently being assessed to the extent that it is appropriate and practicable. If application of these procedures is neither appropriate nor practicable, the administrative procedures applying at the time the decision was made on the level of assessment for the proposal will apply to that proposal.

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ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL IMPACT ASSESSMENT
(PART IV DIVISIONS 1 and 2)
ADMINISTRATIVE PROCEDURES 2012****1 Purpose and Scope**

Part IV Division 1 of the *Environmental Protection Act 1986* (the Act) provides for the referral and environmental impact assessment (EIA) of proposals likely, if implemented, to have a significant effect on the environment and of strategic proposals. Part IV Division 2 of the Act provides for the implementation of proposals after they have been assessed under Division 1.

Section 122 of the Act allows the Environmental Protection Authority (EPA) to draw up administrative procedures for the purposes of the Act and in particular for the purposes of establishing the principles and practices of EIA.

The *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012* establishes the principles and practices in relation to—

1. the referral of a significant proposal or strategic proposal;
2. the setting of the level of assessment of a significant proposal or strategic proposal;
3. environmental review and consultation; and
4. EIA of a significant proposal or strategic proposal.

These procedures do not deal with the principles and procedures for the EIA of schemes under Part IV Division 3 (Assessment of schemes) of the Act.

These procedures provide additional information regarding the administration of Part IV of the Act more generally. For more detailed guidance on 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, Post Assessment Guidelines and Environmental Protection Bulletins, available on the EPA website.

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 (category A) has been determined.

API scoping guideline is the document prepared by the EPA which sets out the form, content and timing 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 (category A) has been determined.

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

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.

Environment is defined in section 3 of the Act.

Environmental factor for the purpose of these administrative procedures means the part of the environment that may be affected by a proposal aspect and for which the EPA has set an environmental objective.

Environmental Impact Assessment (EIA) means an orderly and systematic process for evaluating a proposal (including its alternatives) and its effects on the environment, and mitigation and management of those effects. The process extends from the initial concept of the proposal through implementation to completion, and where appropriate, decommissioning.

Environmental offset means an action or actions undertaken to counterbalance adverse environmental impacts from implementation of a proposal. The action(s) are taken after all reasonable mitigation measures have been applied and a significant environmental risk or impact remains.

Environmental review is the process required under section 40(2)(b) of the Act, whereby the proponent analyses the environmental issues or factors for their proposal and prepares a report thereon in accordance with the EPA's requirements.

Environmental Scoping Document (ESD) is the document prepared either by the EPA or the proponent, which sets out the EPA's determination as to the form, content and timing 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.

Environmental value is defined in section 3 of the Act.

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

EPA objectives for environmental factors for the purpose of these administrative procedures means the desired goal for each environmental factor, which, if met, will indicate that the proposal is environmentally acceptable. The EPA has published guidance on the environmental objectives for environmental factors, available on the EPA website.

EPA website is 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; and
4. reduction—gradually eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.

Other government agency for the purpose of these administrative procedures means an agency that does not have a decision-making responsibility related to implementation of a proposal, but has an important management, regulation and/or advisory role on a technical matter regarding the proposal.

Proposal is defined in section 3 of the Act.

Proposal aspect is an activity or element of a proposal that interacts with, or may cause potential impacts to, an environmental factor.

Public Environmental Review (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 has been determined.

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

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

3 AIMS of EIA¹

1. To fulfil the object of the Act², 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.
2. To provide independent, timely and sound advice about the environmental impacts of a proposal to enable the Government to make an informed decision in relation to the implementation of the proposal.
3. To provide opportunities for public participation and input from DMAs and other relevant government agencies in the assessment of the environmental impacts of a proposal before decisions are taken.
4. To ensure that proponents take primary responsibility for the protection of the environment relating to their proposals.
5. To promote adaptive environmental management, positive environmental outcomes and continuous improvement through learning and knowledge gained through the EIA process and project implementation.
6. To promote education and awareness in environmental issues.

4 Principles of EIA for the EPA

The principles of EIA for the EPA are to ensure that—

1. there is published guidance on the types of proposals likely to require assessment, the levels of assessment and the form, content and timing of the environmental review required;
2. assessment timelines, negotiated with the proponent and other key participants, are proposal-specific, reasonable and achievable;

¹ The aims of EIA adopt, in part, the National Approach to EIA in Australia considered by the Ministers of the Australian and New Zealand Environment and Conservation Council (ANZECC, 1991).

² Section 4A of the Act.

3. the total and cumulative effects of using or altering environmental assets receive due consideration;
4. public comment relating to proposals is sought and promoted, where appropriate;
5. advice is sought from relevant DMAs and other government agencies, where appropriate, in relation to the environmental impacts of a proposal;
6. the process is procedurally fair and that all relevant EPA policies, guidelines and procedures are publicly available and are applied fairly and consistently;
7. proponents have an opportunity to respond to the substance of information provided to the EPA where this information is credible, significant and relevant to the decision or recommendation to be made by the EPA, and where the preliminary view of the EPA is that its decision or recommendation is likely to be adverse to the interests of the proponent;
8. predicted environmental impacts are monitored, the results assessed and feedback provided to improve ongoing environmental management of proposals; and
9. there is continuous review of the EIA process to improve efficiency and effectiveness and to promote the use of best practice.

5 Principles of EIA for the Proponent

The principles of EIA for the proponent are to—

1. consult with all stakeholders, including the EPA, DMAs³, other relevant government agencies and the local community as early as possible in the planning of their proposal, during the environmental review and assessment of their proposal, and where necessary during the life of the project;
2. ensure the public is provided with sufficient information relevant to the EIA of a proposal to be able to make informed comment, prior to the EPA completing the assessment report;
3. use best practicable measures⁴ and genuine evaluation of options or alternatives in locating, planning and designing their proposal to mitigate detrimental environmental impacts and to facilitate positive environmental outcomes and a continuous improvement approach to environmental management;
4. identify the environmental factors likely to be impacted and the aspects likely to cause impacts in the early stages of planning for their proposal. The onus is on the proponent through the EIA process to demonstrate that the unavoidable impacts will meet the EPA objectives for environmental factors and therefore their proposal is environmentally acceptable;
5. consider the following, during project planning and discussions with the EPA, regarding the form, content and timing of their environmental review—
 - (a) the activities, investigations (and 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 assessment timelines; and
6. identify in their environmental review, subject to the EPA's guidance—
 - (a) best practicable measures to avoid, where possible, and otherwise minimise, rectify, reduce, monitor and manage impacts on the environment; 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 for environmental factors.

6 Principles of EIA for the Public

The public are encouraged to—

1. participate in consultation by offering advice, identifying omitted relevant data/information, providing local knowledge and proposing alternatives;
2. participate in strategic policy and planning as appropriate, since engagement at these earlier stages may influence the development and evaluation of future proposals;
3. be informed of the administration and outcomes of EIA; and
4. take a responsible approach to opportunities for engagement in the EIA process, including being informed of objective information about the environmental issues.

7 Significance Test

The EPA makes a decision about whether a proposal is likely to have a significant effect on the environment 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, whether the proposal would meet the EPA's objectives for environmental factors and

³ Where a DMA is a Government Minister, it is recognised that for practical purposes, consultation should occur with the appropriate government agency, rather than the Minister.

⁴ Best practicable measures is defined in EPA Guidance Statement No. 55 available on the EPA website.

consequently whether or not a referred proposal should be assessed, some of the matters to which the EPA may have regard to include—

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

PRACTICES

8 Referral

8.1 Referral of a proposal and request for further information

Section 38 of the Act provides for the referral of significant proposals (i.e. proposals likely to have a significant effect on the environment, if implemented) and strategic proposals to the EPA. 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 significant⁵. Anyone can refer a significant proposal to the EPA. However, as soon as a DMA has notice of a significant proposal, it must refer that proposal to the EPA.

The EIA process begins when a proposal is properly referred, in writing, to the EPA. The EPA has prepared referral forms, available on the EPA website, to be used by proponents, DMAs and third parties. 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 relevant referral form.

If referring their proposal, the proponent is encouraged to engage with the EPA, relevant DMAs and other government agencies and the community, so that protection of the environment may 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 and rehabilitation.

Proponents are to identify, in their referral form, the activities of their proposals and potential environmental impacts that are regulated by other government agencies under other statutes. Proponents are to identify the relevant agencies and statutes and acknowledge the need to comply with these. This will assist the EPA in identifying the DMAs for the proposal and in considering the key environmental factors or issues for the proposal.

Where the EPA determines that it does not have enough information about a proposal to decide whether or not to assess it 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 the level of assessment within the statutory timeframe referred to in section 38A of the Act, which is 28 days.

Once the EPA has enough information about a referred proposal, the EPA publishes the referral information on the EPA website. Any confidential information is to be clearly identified by the proponent and this information may be removed prior to publication of the referral. The EPA provides a public comment period of seven days on each referred proposal before making a decision on whether or not to assess the proposal. The EPA may increase the comment period on a case-by-case basis where it can be demonstrated that there is a need. The public comments should be in relation to whether or not the proposal should be assessed by the EPA and, if so, the level of assessment based on the likely effect of the proposal, if implemented, on the environment. The EPA considers the public comments in making its decision on whether or not to assess the proposal. The EPA also considers whether the proposal is likely to have a significant effect on the environment as described in clause 7 of these procedures. Public comments on the referral information must be made using the referral comment form available on the EPA website.

Proponents and DMAs are to provide an electronic copy of the referral information submitted to the EPA at the time they refer a proposal, 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 again⁶.

⁵ Memoranda of understanding between the EPA and other government agencies operate as guides to these agencies in relation to determining significance and are available on the EPA website.

⁶ Section 38(5j) of the Act. This does not apply where the assessment of a proposal has been terminated under section 40A of the Act.

8.2 Decision on whether or not to assess a referred proposal

Section 39A of the Act provides the basis on which the EPA decides whether or not to assess a proposal referred to it. The EPA makes this decision based on the potential impact(s) of the proposal on the environment, with reference to the information in the referral form, any public comments on the referral information and any further information it has obtained from the proponent, relevant DMA or other government agency 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 publishes its decision on whether or not to assess a proposal and, if so, the level of assessment. The EPA also keeps a public record of each proposal referred to it.

Decision not to assess

The EPA carries out some investigations and inquiries before deciding not to assess a proposal. In deciding not to formally assess a proposal, the EPA has in fact determined that no further assessment is required by the EPA.

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

- (a) Not Assessed—no advice given.

The EPA does not provide any advice on the proposal.

Any person may lodge an appeal with the Minister against this decision of the EPA⁷ to not assess the proposal.

- (b) Not Assessed—public advice given.

The EPA provides advice to a DMA and proponent on an environmental aspect(s) of the proposal. This advice is not legally binding on the DMA or proponent. The EPA's advice is published at the same time that the decision is published.

Any person may lodge an appeal with the Minister against this decision of the EPA⁸ to not assess the proposal.

- (c) Not Assessed—dealt with under Part V Division 2 of the Act (Clearing).

The EPA recommends that the proposal be dealt with under Part V Division 2 of the Act, which regulates clearing of native vegetation.

The EPA consults with the Department of Environment and Conservation prior to making this decision.

This decision of the EPA does not have a right of appeal⁹. However, the decision and conditions of a clearing permit may be appealed by any person.

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

Decision to assess

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

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

The two levels of assessment are outlined in detail in clause 10 of these procedures. The EPA begins the EIA of the proposal as soon as possible after the notices on the level of assessment have been issued to the proponent, referrer (if the proposal was not referred by the proponent) and DMAs.

Where the EPA decides to assess a strategic proposal, it records this decision together with the level of assessment that will apply.

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

The decision of the EPA to assess a proposal formally and the level of assessment do not have a right of appeal.

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 a proposal to be implemented, 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.

This constraint on DMAs does not apply to strategic proposals, unless the strategic proposal is itself a significant proposal or 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 referred¹⁰.

⁷ Section 100(1)(a) of the Act.

⁸ Section 100(1)(a) of the Act.

⁹ Section 100(1)(a) of the Act.

¹⁰ Section 40B(3) of the Act.

After the EPA has completed the assessment of a proposal and submitted the assessment report to the Minister under section 44 of the Act, the Minister is to consult and reach agreement with the relevant DMAs as to whether or not the proposal may be implemented, and if so, under what conditions.

While section 41 of the Act constrains relevant DMAs from making a decision which could cause or allow a proposal being assessed to be implemented, it is contemplated that parallel processing of other approvals under other legislation will occur. That is, while DMAs are not able to make a decision that would allow a proposal to be implemented, they can administer and consider the proposal so they are able to consult with the Minister and other relevant Ministers and/or DMAs, to determine whether the proposal should be implemented. A DMA may refuse to approve a proposal, in which case the EPA may terminate the assessment of the proposal¹¹.

Proponents are not constrained from carrying out investigation works and DMAs may approve such works. Investigation works are activities carried out to inform the assessment or inform design or planning and are not associated with the implementation of the proposal. Assessment by the EPA is not required for investigation works, unless those works are likely to have significant impact on the environment, in which case they may need to be referred to the EPA.

Proponents may carry out minor or preliminary works with the consent of the EPA under section 41A(3) of the Act. A proponent of a proposal under assessment is to demonstrate that any minor or preliminary work meets the following criteria when making an application to the EPA—

- (a) the work is associated with the implementation of the proposal;
- (b) the potential environmental impacts of the work is less than that which would normally require formal EIA;
- (c) the work will not irreversibly lead to substantial implementation of the proposal; and
- (d) the work is justified in extent and timing.

10 Levels of Assessment

Section 40 of the Act provides the basis for the EPA to undertake an EIA of a proposal. Where the EPA decides to assess a proposal it also determines which level of assessment will apply.

Where the EPA decides to assess a proposal, it prepares an assessment report that sets out the key environmental factors and recommendations as to whether or not the proposal should be implemented. To enable the EPA to do this, it has established environmental objectives for various environmental factors. The primary purpose of EIA for the proponent is to demonstrate how their proposal, including the mitigation and any offsets of the potential impacts can meet the EPA's environmental objectives. The EPA has a guideline on the environmental factors and objectives available on the EPA website.

Consultation

Proponents are expected to consult with stakeholders who are interested in or affected by their proposals. This includes the DMAs, other relevant State and local government agencies, environmental non-government organisations and the local community. Proponents should consult as early as possible with the stakeholders to seek advice and, where relevant, agreement on issues, management measures, and environmental standards, criteria and procedures that may apply to their proposals.

The EPA strongly encourages proponents to consult with the relevant DMAs and other government agencies that have management or regulatory responsibilities related to their proposals. The EPA may seek advice from these agencies during the assessment and where proponents have adequately and effectively consulted with the agencies it often streamlines the process.

Appropriate and effective consultation can be demonstrated by the proponent when the stakeholders are—

- (a) kept informed and provided with sufficient information about the proposal and its potential direct and indirect impacts on the environment;
- (b) included in the consultation process and there are opportunities for public participation;
- (c) able to make their concerns in regard to impacts on the environment known to the proponent;
- (d) given well informed responses to concerns raised; and
- (e) able to have meaningful input into the proponent's mitigation of the impacts on the environment.

Proponents should identify in their documentation the consultation process and outcomes, including any subsequent adjustments made to their proposals and future plans for consultation.

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 is apparent at the referral stage.

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

¹¹ Section 40A(1)(c) of the Act.

10.1.1 Criteria for API category A and category B

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

Category A

- (a) The proposal raises a limited number of key 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 policies, guidelines and standards;
- (c) the proponent can demonstrate that it has conducted appropriate and effective stakeholder consultation, in particular with DMAs; and
- (d) there is limited or local concern only about the likely effect of the proposal, if implemented, on the environment.

Category B (environmentally unacceptable)

- (a) The proposal is inconsistent with established environmental policies, guidelines and standards; or
- (b) the proposal is likely to have a significant detrimental impact on an environmental value; or
- (c) the proposal raises one or more key environmental factors or issues that do not meet the EPA's environmental objectives, having regard to the object and principles of the Act¹²; and
- (d) the proposal could not be reasonably modified or mitigated so as to ameliorate the issues raised in (a), (b) or (c).

A proposal may be assessed at the API level (category B) if there is potential for serious, wide-spread or irreversible environmental consequences from its implementation, (even if the likelihood of this happening is low) and the consequences could not be mitigated.

10.1.2 Assessment procedure for API category A

During the API category A process, the proponent should have discussions with the relevant DMAs and other government agencies regarding issues the agencies consider should be addressed, and any specific requirements they may have. The assessment procedure that applies to proposals that meet the criteria for an API level of assessment (category A) is outlined below and in Figure 1.

1. The proponent has pre-referral discussions with the EPA, relevant DMAs and other government agencies. Discussions are to identify the preliminary key environmental factors and issues, stakeholders to be consulted and information requirements, if the proposal was to be assessed at the API level (category A).
2. The proponent submits the referral form.
3. Seven days public comment period on the referral information.
4. The EPA decides it has enough information to set the level of assessment and publishes the level of assessment as API category A.
5. If appropriate and effective consultation has been undertaken and sufficient information is provided in the referral, the EPA assesses the proposal and submits the assessment report to the Minister.
6. If further consultation is required or insufficient information is provided in the referral for the EPA to carry out the assessment, the EPA issues an API scoping guideline to the proponent, as the basis for the conduct of an environmental review and report thereon (API document).

The purpose of the API scoping guideline is to—

- develop a proposal-specific guideline to direct the proponent on the preliminary key environmental factors or issues that should be addressed during the environmental review and preparation of the API document;
- identify any studies and investigations to be carried out and associated timelines for completion; and
- confirm the stakeholders to be consulted during the environmental review and preparation of the API document.

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

7. The proponent consults with the stakeholders, including the DMAs and submits an API document in accordance with the API scoping guideline that is acceptable to the EPA. The API document must demonstrate that the proposal meets all of the criteria of category A.
8. The EPA assesses the proposal and seeks comment from the proponent and relevant DMAs and other government agencies on any draft recommended conditions.
9. The EPA submits the assessment report to the Minister on the key environmental factors and whether or not the proposal may be implemented, and if so, any conditions.

Based on the information provided by the proponent and discussions with the DMAs and other government agencies, the EPA decides to assess what it considers to be the key environmental factors for a proposal. In considering a proposal, the EPA makes a determination as to whether the

¹² See section 4A of the Act.

environmental objectives for those key factors have been met. All of the other environmental factors for the proposal that were not so significant as to warrant assessment by the EPA may still require assessment and/or regulation by another government agency.

10.1.3 Information Requirements for Environmental Review (API Category A)

The referral information or API document on which the EPA's assessment of the proposal is based is to include the following—

- (a) description of the proposal and provision of spatial datasets, information products and databases required;
- (b) details of the consultation process and outcomes (see clause 10);
- (c) relevant information on the receiving environment and its conservation values in a regional and local setting;
- (d) identification of the limited number of preliminary key environmental factors and demonstration that the potential direct, indirect and cumulative impacts on the environment for each factor can be readily managed to meet the EPA's environmental objectives. The findings of any surveys and investigations undertaken to support this assessment should be included, with the technical reports provided as appendices;
- (e) assessment of the degree of certainty with which the environmental impacts can be predicted;
- (f) identification of other potential impacts or activities of the proposal that can be regulated by other government agencies, under other statutes and an acknowledgement of the need to comply with these; and
- (g) justified statement of how the object of the Act (see clause 3, paragraph 1) and Principles of EIA for the Proponent (see clause 5) have been addressed and how the proposal meets all of the criteria for API category A.

The proponent should also describe any unforeseen environmental impacts or issues that studies and investigations may discover during the environmental review. This includes any significant new or additional information about an identified key environmental factor or a new environmental factor for the proposal.

The EPA may request relevant DMAs and other government agencies to provide advice to it on the referral information or API document.

10.1.4 Assessment Procedure for API Category B

In some instances it is possible for the EPA to make a judgement that the proposal is fundamentally and fatally flawed, based on the proponent's referral information, specialist advice sought by the EPA, the EPA's own knowledge and experience in dealing with similar environmental risks and impacts, and the application of the precautionary principle.

The assessment procedure that applies to proposals that meet the criteria for an API level of assessment (category B) is outlined below and in Figure 2.

1. The proponent has pre-referral discussions with the EPA and relevant DMAs and other government agencies.
2. The proponent submits the referral form.
3. Seven days public comment period on the referral information.
4. The preliminary view of the EPA is that the proposal is environmentally unacceptable.
5. The EPA notifies the proponent of this preliminary view and provides the proponent with—
 - the reasons for this preliminary view;
 - the substance of any new information that is credible, significant and relevant to this preliminary view;
 - an opportunity to respond; and
 - an opportunity to provide further information as to the level of assessment or to modify the proposal, including the proposed mitigation of the impacts on the environment.
6. Where the proponent decides to proceed with the original proposal, or further information does not demonstrate that the proposal is environmentally acceptable, the EPA publishes its decision to assess the proposal and the level of assessment as API category B (environmentally unacceptable). If the proponent decides to no longer proceed with the proposal, the proponent may request the EPA to terminate the assessment of the proposal under section 40A of the Act.
7. The EPA assesses the proposal and submits the assessment report to the Minister.
8. If further information submitted by the proponent shows that the proposal could be environmentally acceptable, or further detailed assessment is required, the EPA reconsiders its preliminary view.

10.2 Public Environmental Review (PER)

10.2.1 Criteria for PER

The EPA applies a PER level of assessment to proposals which meet any one of the following criteria—

- (a) the proposal is of regional and/or State-wide significance;
- (b) the proposal has several key environmental factors or issues, some of which are 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 public concern about the likely effect of the proposal, if implemented, on the environment, warrants a public review period.

10.2.2 Assessment Procedure for PER

The assessment procedure that applies to proposals that meet the criteria for a PER level of assessment is outlined below and in Figure 3.

1. The proponent has pre-referral discussions with the EPA, relevant DMAs and other government agencies.
2. The proponent submits the referral form.
3. Seven days public comment period on the referral information.
4. The EPA decides to assess the proposal and publishes the level of assessment as PER and advises the proponent whether the EPA or the proponent will prepare the environmental scoping document (ESD).
5. The EPA or the proponent prepares the ESD. If the proponent prepares the ESD it may be released for public review.
6. The proponent prepares a PER document, that is acceptable to the EPA, in accordance with the approved ESD.
7. The EPA releases the PER document for public review.
8. The EPA provides a copy of the submissions to the proponent after the close of the public review period. The EPA summarises the pertinent issues raised in the submissions on the PER document and provides these to the proponent.
9. The proponent provides a response to the issues raised in the summary of the submissions to the satisfaction of the EPA.
10. The EPA assesses the proposal, the submissions and the proponent's response to the submissions and seeks comment from the proponent and relevant DMAs and government agencies on any draft recommended conditions.
11. The EPA submits the assessment report to the Minister on the key environmental factors and whether or not the proposal may be implemented, and if so, any conditions.

At any time during the assessment process, the EPA may provide advice to the Minister on any strategic environmental factors or issues raised by the proposal.

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—

- (a) 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 assessment report to the Minister, without receiving the proponent's response to the public submissions on the ESD or receiving a PER document; or
- (b) 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 assessment report 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 informs the proponent, in writing, of its intention to submit the assessment report to the Minister.

10.2.3 Form and Content of the ESD

The form, content and timing for an environmental review for a PER level of assessment is to be outlined in an ESD.

For proposals that are particularly complex, with considerable public interest, the EPA requires the proponent to prepare the ESD. The proponent is to prepare the ESD in accordance with the EPA's guideline for the preparation of an ESD available on the EPA website. The proponent is to have discussions with the relevant DMAs and other government agencies regarding issues the agencies consider should be addressed, and any specific requirements they may have, to inform the preparation of the ESD. The EPA approves the ESD and advises the proponent on its acceptance of the document. The ESD forms the basis for the EPA's determination as to the form, content and timing for the environmental review under section 40(3) of the Act.

For proposals where the environmental factors are more easily understood, the EPA prepares the ESD and issues it to the proponent. In preparing the ESD, the EPA consults with the proponent regarding the details of the proposal, its environmental setting and the environmental surveys and investigations required.

The purpose of the ESD is to—

- develop proposal-specific guidelines to direct the proponent on the preliminary key environmental factors or issues that should be addressed during the environmental review and preparation of the PER document; and
- identify the studies and investigations that need to be carried out. Where surveys and investigations have commenced prior to submission of the ESD, proponents are to demonstrate during the scoping process that these surveys and investigations will provide the appropriate information required by the EPA.

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

- (a) a concise description of the proposal, its environmental setting, the preliminary key environmental factors or issues, including any matters of national environmental significance, and the policy context relevant to each factor;
- (b) the identification of the spatial datasets, information products and databases required;
- (c) the identification of other potential impacts or activities that can be regulated by other government agencies under other statutes, and an acknowledgment of the need to comply with these;
- (d) a scope of works, setting out the proposed surveys and investigations designed to identify or predict the direct, indirect and cumulative impacts, including timeline for completion. The surveys and investigations should be clearly linked to the identified preliminary key environmental factors or issues;
- (e) a list of people, if necessary, proposed to provide peer review of the scope, methodologies, findings and/or conclusions of the surveys and investigations;
- (f) the identification of the use of mitigation measures to manage adverse environmental impacts and an environmental management program, if required;
- (g) the preliminary identification of the potential environmental impacts, and the need to offset any significant residual impact(s) or risks; and
- (h) the stakeholder consultation requirements.

The EPA may request relevant DMAs and other government agencies to provide advice to it on an ESD.

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 depend on 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 administrative, rather than statutory. Proponents are expected to meet the agreed timelines, and in doing so, provide adequate information to inform the assessment. Where timelines are not met, or the information is inadequate, the timeline for subsequent steps may need to be renegotiated.

10.2.4 Information Requirements for the Environmental Review (PER)

The proponent is required to conduct an environmental review in accordance with the ESD. The proponent should ensure that its report on the environmental review (the PER document) focuses on the environmental factors or issues of key significance.

The PER document should include the following—

- (a) description of the proposal and alternatives considered, including alternative locations, with a view to avoiding or minimising environmental impacts;
- (b) details of the consultation process and outcomes (see clause 10);
- (c) 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;
- (d) provision of spatial datasets, information products and databases required;
- (e) identification of the preliminary key environmental factors or issues for the proposal and potential direct, indirect and cumulative impacts on the environment;
- (f) assessment of the degree of certainty with which the environmental impacts can be predicted;
- (g) evidence of mitigation measures to avoid, minimise, rectify and reduce impacts and environmental offsets (if necessary) to demonstrate how the potential impacts for each key environmental factor can meet the EPA's environmental objectives. This includes assessment of potential 'fatal flaws' and if the bilateral agreement applies, matters of national significance (see clause 14). The findings of surveys and investigations undertaken to support this assessment should be included, with the technical reports provided as appendices.

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;

- (h) the identification of other potential impacts or activities that can be regulated by other government agencies under other statutes, and an acknowledgment of the need to comply with these; and
- (i) justified statement of how the object of the Act (see clause 3, paragraph 1) and Principles of EIA for the Proponent (see clause 5) have been addressed along with other relevant environmental policies, guidelines and standards.

The EPA may request relevant DMAs and other government agencies to provide advice to it on a draft PER document.

The EPA has a published guideline on the form and content of an environmental review, which provides more information for proponents on the preparation of a PER document.

10.2.5 Public Review of the ESD and PER document

The EIA process is designed to be transparent and accountable and comprises specific stages for public involvement. This includes the public review of all PER documents and in some cases, ESDs prepared by proponents. The public review of the proponent's documents gives stakeholders including government agencies and the community the opportunity to become informed about and comment on a proposal. These comments are considered by the proponent and the EPA before the assessment report is submitted to the Minister and a decision is made on the proposal.

ESDs prepared by the EPA are available on the EPA website for information purposes, but are not available for formal public review.

Not all ESDs prepared by the proponent are available for public review. The EPA advises 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 is released for two weeks.

All PER documents are available for public review prior to the EPA preparing the assessment report. Issues may arise in the submissions that necessitate the provision of information additional to that provided in the PER document. The length of public review of a PER document is 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 is available for a public review period normally between four and twelve weeks. This may be varied by the EPA depending on the complexity of the proposal and the level of public interest. The EPA advises the proponent at the time of publishing the level of assessment on the length of the public review period.

The proponent is to submit a draft ESD or draft PER document to the EPA for it to decide whether the document is suitable for public review. The EPA may circulate a draft ESD or draft PER document to key stakeholders, including relevant DMAs and other government agencies for comment before deciding on the acceptability of the document for public review.

The EPA decides on the acceptability of an ESD or PER document for public review based on the relevant criteria identified in clause 21.1 of these procedures and whether the format, content and style are appropriate. The EPA may require the proponent to modify and submit a revised draft of the ESD or PER document if it does not meet these criteria. When the EPA considers that the ESD or PER document is suitable for public review it will advise the proponent.

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 document, again two weeks prior to the close of the public review period.

The EPA announces the availability of the ESD or PER document for public review and the length of the review period on the EPA 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 public meetings in relation to 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.

Under certain situations the EPA may extend the public review period, or accept submissions beyond the review period. These situations include—

- (a) the review period coincides with public holiday periods (e.g. two 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) other exceptional circumstances.

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 is also subject to applications under the *Freedom of Information Act 1992*. Submissions from government agencies are deemed public information.

Where new and significant information relating to the key environmental factors for a proposal has been obtained by the proponent, after the public release of a PER document, the EPA may require the proponent to make this information publicly available.

The EPA has a published guideline on the public review of an ESD and PER document, which provides more information.

10.2.6 Proponent's response to submissions on the ESD and PER document

The EPA provides 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 also summarises the pertinent issues raised in the submissions and provides these to the proponent.

The proponent is 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 and may need to be consented to by the EPA under section 43A of the Act.

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

Where required, the EPA consults with the relevant DMAs and other government agencies in relation to additional information provided in the proponent's response to submissions.

The proponent shall ensure that the response to submissions for a PER is prepared and is publicly available, at no cost, at the time of the release of the assessment report. If additional time is required to prepare the assessment report, the EPA may require the proponent to make the response to submissions publicly available prior to release of the report. The availability of the response to submissions in this instance is for public information only and not for further comment.

If an adequate response to the submissions is not forthcoming from the proponent, the EPA may proceed to complete the assessment 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 takes a precautionary approach to the assessment based on the information available.

11 Strategic Proposals

A strategic proposal identifies one or more future proposals that may, individually or in combination, have a significant effect on the environment. A strategic proposal can only be referred to the EPA by the proponent.

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 for consideration of environmental issues. The desired objective of assessing a strategic proposal is to identify all potential significant environmental impacts and management as early as possible, and for more streamlined consideration of future 'derived' proposals that fall within the parameters of the strategic proposal.

Strategic proposals are normally assessed by the EPA at the PER level, and therefore the steps set out in clause 10.2 of these procedures would apply. This involves a scoping phase, public review of a document prepared by the proponent, and the proponent's response to the issues raised, prior to the EPA submitting its assessment report to the Minister. In the assessment report the EPA sets out the key environmental factors identified during the assessment and recommends whether or not the future proposals identified in the strategic proposal may be implemented. If the EPA recommends that the future proposals identified in the strategic proposal may be implemented, it also recommends any conditions that should apply to those future proposals.

If it is agreed that a strategic proposal may be implemented, a Ministerial Statement for the strategic proposal is published. Then, when a significant proposal that has been identified in the strategic proposal is referred to the EPA under section 38 of the Act, the proponent may 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 publishes any such request on the EPA website. The EPA provides a 7-day public comment period on the information submitted by the proponent with their request that the proposal be declared a derived proposal. The public comments should be made in relation to whether or not the proposal is to be declared as a derived proposal.

When a future proposal is referred, the EPA considers it as a derived proposal if—

- (a) the proposal was identified in the strategic proposal that has been assessed by the EPA;
- (b) the Ministerial Statement for the strategic proposal allows the proposal to be implemented, subject to any conditions;
- (c) the environmental issues raised by the referred proposal were adequately addressed when the strategic proposal was assessed;
- (d) there is no significant new or additional information that justifies reassessment of the issues raised by the proposal; and
- (e) there have not been any significant changes in the relevant environmental factors since the strategic proposal was assessed.

Where the EPA decides to declare a referred proposal as a derived proposal, it publishes the reasons for the declaration on the EPA website.

A proposal declared as a derived proposal will 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 is 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 EPA¹³.

13 Environmental Offsets

Environmental offsets are required when all reasonable mitigation measures have been applied and a significant environmental risk or impact remains.

Where offsets are required for a proposal, they should be considered early in the assessment process to ensure transparency and accountability. Where a proponent refers a proposal and expects that the EPA will assess as an API level of assessment, the proponent should include the relevant information about offsets as part of their referral information (or API document). For a PER level of assessment, the proponent is to recognise the need to address offsets in the ESD. An outline of the significant residual environmental impacts and proposed offsets should be presented in the PER document for public review. The EPA encourages proponents to achieve an overall net benefit to the environment through the application of offsets.

In the assessment report the EPA recommends to the Minister whether the proposed offsets are adequate, and if so, what related conditions are to apply.

The EPA has prepared an Environmental Assessment Guideline for *Environmental Offsets* which provides more information on the consideration of offsets in EIA.

14 Commonwealth Assessment of Proposals

An action which is part of a proposal that has been referred to the EPA may also require referral to the Commonwealth Environment Minister under the *Environment Protection and Biodiversity Conservation Act 1999* (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 significance¹⁴ (i.e. it is a controlled action), the action will need to undergo a formal assessment and approval process under the EPBC Act.

The Commonwealth of Australia and the State of Western Australia have a Bilateral agreement relating to environmental impact assessment, under section 45 of the EPBC Act. The agreement aims to minimise duplication of EIA processes and strengthen intergovernmental cooperation between the two jurisdictions. This is achieved by the Commonwealth accrediting particular EIA processes, which in effect, delegates responsibility for assessment of these processes under the EPBC Act to the EPA. The accredited EIA processes are the PER level of assessment described in these procedures and the Environmental Review and Management Programme level of assessment described in the *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002*. The API level of assessment is not accredited.

Where the Commonwealth Environment Minister decides that the controlled action can be assessed by the State through the bilateral agreement, the EPA consults with the Commonwealth regarding the acceptability of the form, content, timing and procedure of the environmental review. The EPA assesses the environmental impacts of the controlled action using the accredited EIA process and consults with the Commonwealth on any draft recommended conditions for the proposal. Following assessment by the EPA, the Commonwealth Environment Minister needs to make a decision about whether or not to approve the proposal and, if so, issue any conditions.

The EPA strongly 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 (i.e. prior to the scoping phase), 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 EIA processes.

15 EPA Assessment Report

Section 44 of the Act provides the basis for the EPA to prepare a report on the outcome of its assessment of a proposal and to give this report to the Minister. The assessment report normally includes 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 object and principles of the Act¹⁵;
- (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) referral form;
- (b) API scoping guideline, ESD, API document or PER document;

¹³ Section 42 of the Act.

¹⁴ Refer to www.environment.gov.au for the matters of national environmental significance.

¹⁵ Section 4A of the Act.

- (c) issues raised in public submissions or meetings;
- (d) proponent's proposed mitigation measures to avoid, minimise, rectify and reduce environmental impacts 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;
- (j) the EPA's own investigations and expertise; or
- (k) any other information considered relevant by the EPA.

Any person may lodge an appeal with the Minister against the content and recommendations in an assessment report¹⁶.

16 Recommended 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 the DMAs, determines whether or not the proposal should be implemented and if so, the conditions and procedures that are to apply.

The Minister's decision in relation to the implementation of the proposal is provided by way of a statement issued under section 45(5) of the Act. If a proponent does not implement the proposal in accordance with the conditions and procedures identified in the statement, the proponent commits an offence.

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

During the assessment process the proponent, DMAs or other government agencies may wish to identify to the EPA environmental issues that they believe should be subject to conditions. Proponents, DMAs or other government agencies may also wish to propose mitigation measures that they believe would protect the environment. Issues requiring conditions may also be raised in public submissions. The EPA considers these suggestions when preparing its assessment report.

The EPA may seek comment from the proponent, relevant DMAs and other government agencies on a draft of the statement, prior to finalising the assessment report. The draft statement includes the recommended conditions, key proposal characteristics table and figures. Comments are sought 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.

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 statement to the proponent and relevant DMAs and other government agencies would be on the basis that strict confidentiality is maintained, until the EPA publishes the assessment report.

17 Change to Proposal During Assessment

Section 43A of the Act allows the EPA to consent to the proponent making changes to a proposal without a revised proposal being referred to it. The EPA can only consent to a change to a proposal if the change is unlikely to significantly increase any impact that the proposal may have on the environment. In determining whether a change is unlikely to significantly increase any impact of the proposal, the EPA has regard to the intensity and context of the previously proposed impacts and that of the change¹⁷.

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

- (a) details of the proposed change;
- (b) statement of the significance of the change, having regard to the matters outlined in clause 7 of these procedures; and
- (c) 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 the relevant DMAs, other government agencies or the public.

¹⁶ Section 100(1)(d) of the Act.

¹⁷ See clause 7 of these administrative procedures.

18 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 decided to refuse to approve the proposal and any opportunity to appeal that decision has closed or any appeal made dismissed.

In circumstances where a proponent fails to comply with a requirement referred to in clause (b) above, the EPA notifies the proponent, in writing, that the assessment of the proposal has been suspended, and requests 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 terminates the assessment of the proposal.

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

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

19 Change to Proposal After Assessment

Section 45C of the Act allows the Minister to approve of the proponent changing their 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/are unlikely to have a significant detrimental effect on the environment that is different from or additional to the effect of the original proposal.

In determining whether the relevant change(s) “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(s) 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(s) 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(s) 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 may request a change to a proposal by writing to the EPA. The request is to be accompanied by a completed section 45C checklist—Guideline for preparing a section 45C request, available on the EPA website.

In the assessment of a proposed change to a proposal under section 45C of the Act, there are no provisions for public consultation. However, the EPA may seek advice from the relevant DMAs and other government agencies on the proposed change.

The EPA has prepared a published guideline for changes to proposals after assessment, which provides more information on the procedure for assessing such changes.

20 Change to Conditions After Assessment

Section 46 of the Act provides 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. However, the EPA may seek advice from the relevant DMAs and other government agencies on the proposed change. The EPA may also seek comment from the proponent, relevant DMAs and other government agencies on the draft changes to the recommended conditions, as described in clause 16 of these procedures.

On completing its inquiry, the EPA submits its assessment 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. The contents and recommendations in the assessment report do not have a right of appeal.

Section 46B(2) of the Act provides 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 and Public Availability of Information

Section 40(2) of the Act provides 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.

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

- (a) it provides the necessary information to adequately address 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 or omission of information that may affect the assessment or the recommended conditions;
- (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 determines 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. The availability of EIA-related information in the public domain will also assist proponents in the identification and assessment of cumulative impacts for their proposals.

The EPA has a published guideline on the EIA timelines for proposals on the EPA website, which outlines the administrative timelines for the EPA to review a document submitted by the proponent.

21.2 Peer Review

The EPA may require the proponent to commission a peer review of the findings and conclusions of a particular environmental survey or investigation. 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***LEVEL OF ASSESSMENT PROCESS FLOWCHARTS**

Target timelines for the steps identified in this schedule are provided in Environmental Assessment Guideline no. 6 *EIA Timelines for Proposals*, available on the EPA website.

Figure 1—Outline of procedure for API level of assessment (category A)

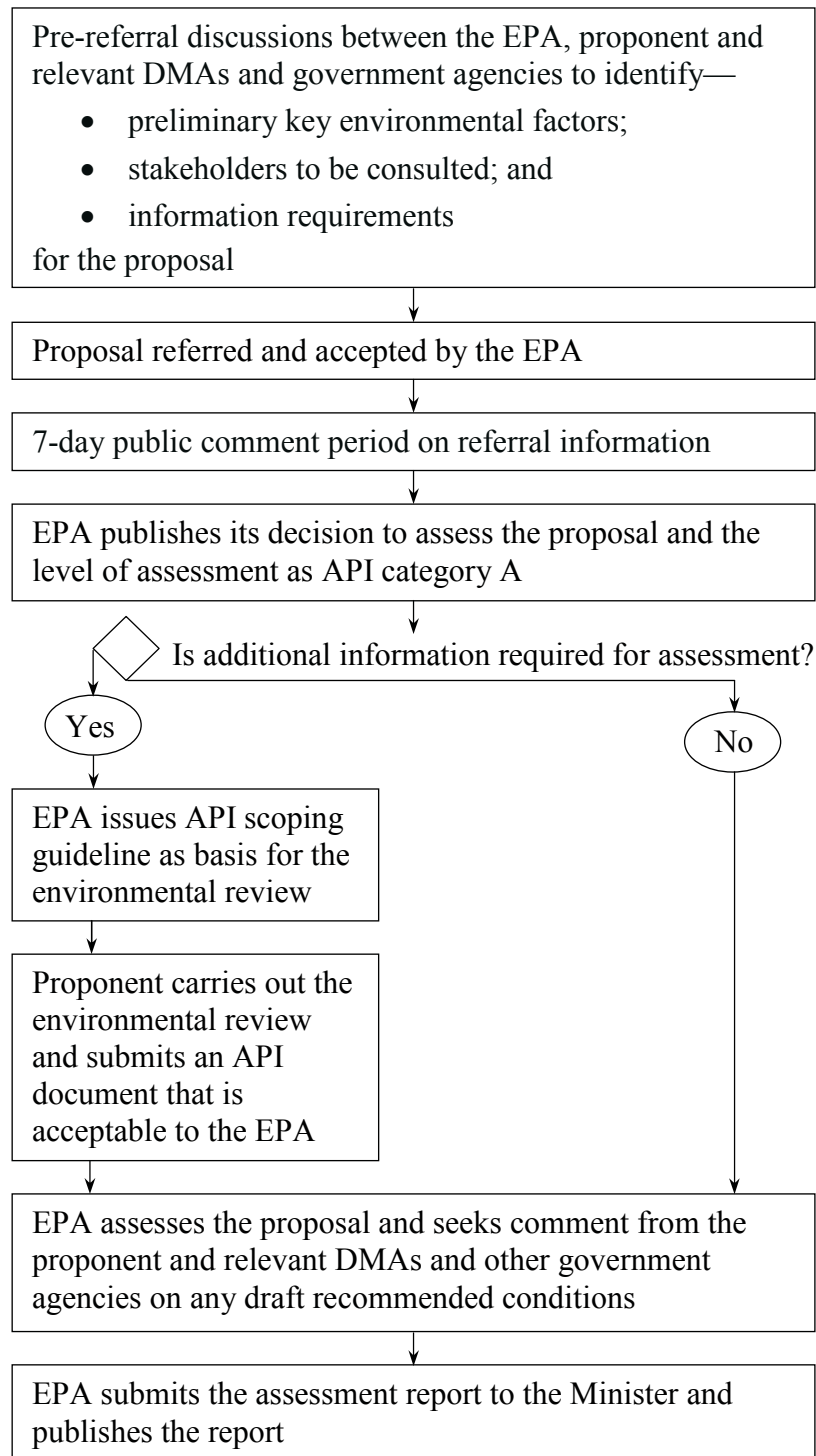
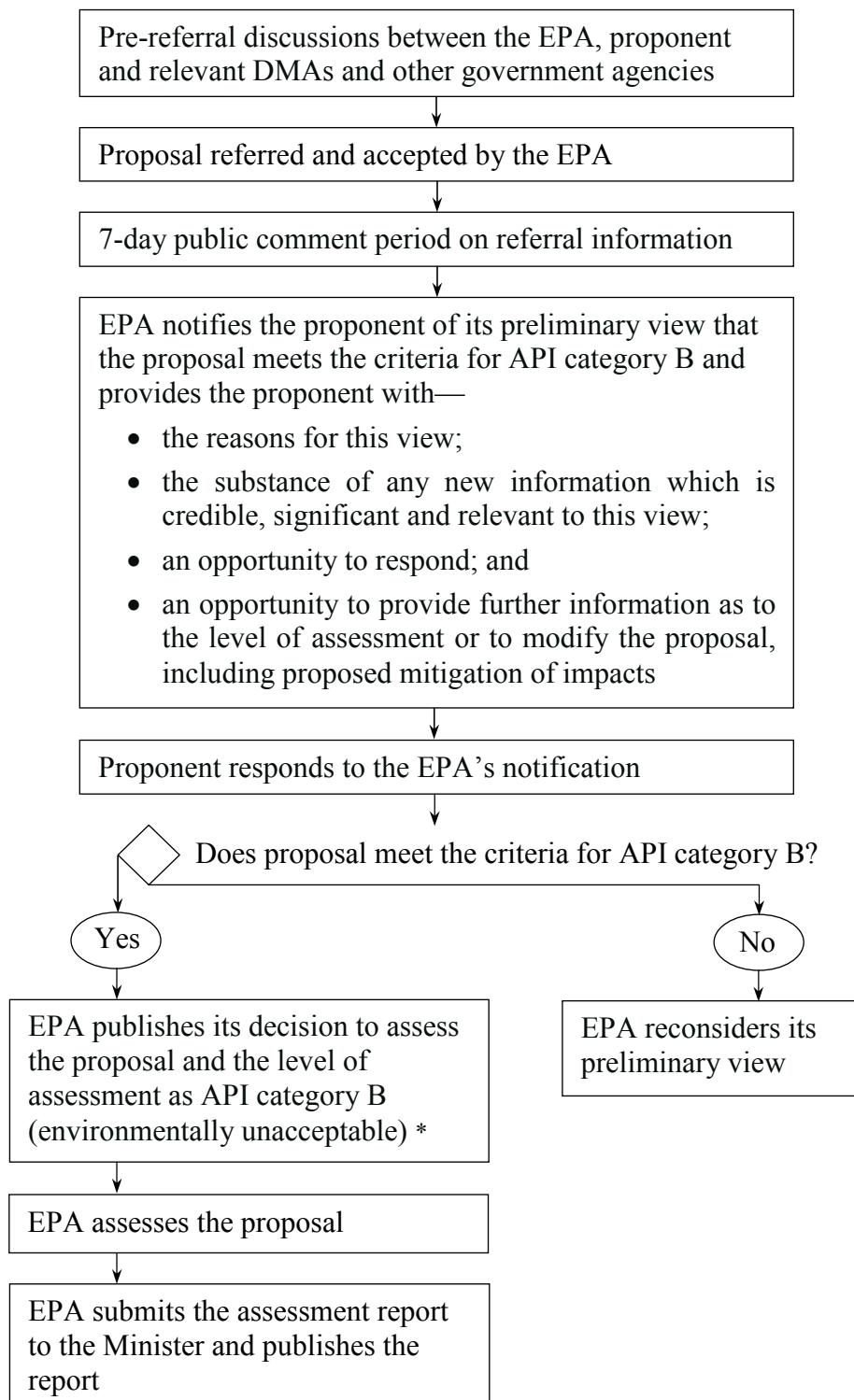


Figure 2—Outline of procedure for API level of assessment (category B)

* The proponent may request the EPA to terminate the assessment of the proposal under section 40A of the Act after the EPA has published its decision on the level of assessment.

Figure 3—Outline of procedure for PER level of assessment