

ENVIRONMENTAL PROTECTION ACT 1986

ENVIRONMENTAL IMPACT ASSESSMENT (PART IV DIVISION 1) ADMINISTRATIVE PROCEDURES 2002

The Environmental Protection Authority gives notice that the Environmental Impact Assessment Administrative Procedures 1993 issued on 17 December 1993 and Environmental Impact Assessment Administrative Procedures Amendment 1999 issued on 23 July 1999 are hereby revoked and replaced with the Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002.

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1. PRELIMINARY

1.1 Citation

These procedures may be cited as the *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002* (the Administrative Procedures).

1.2 Purpose of procedures

Part IV of the *Environmental Protection Act 1986* (the Act) establishes provisions for the Environmental Protection Authority (EPA) to carry out environmental impact assessment in Western Australia.

These Administrative Procedures set out the procedures adopted by the EPA for dealing with referrals and in the assessment of proposals covered by Division 1 of Part IV of the Act.

They do not address the procedures for the setting of, amendment to and compliance with environmental conditions which are the responsibility of the Minister under Division 2 of Part IV of the Act. Nor do these Administrative Procedures address

Divisions 3 and 4 of Part IV of the Act, which relate to the assessment and implementation of Schemes.

The *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002* are established under Section 122 of the *Environmental Protection Act 1986*.

1.3 Interpretation

In these procedures:

“Act” means the *Environmental Protection Act 1986*;

“assessment report” means the report prepared by the Authority for the Minister under section 44 of the Act;

“Authority” means the Environmental Protection Authority; *

“decision-making authority” means public authority empowered by or under —

- (a) a written law; or
- (b) any agreement —
 - (i) to which the State is a party; and
 - (ii) which is ratified or approved by an Act,

to make a decision in respect of any proposal and, in Division 2 of Part IV of the Act, includes, in relation to a particular proposal, any Minister prescribed for the purposes of this definition as being the Minister responsible for that proposal; *

“environment”, means living things, their physical, biological and social surroundings, and interactions between all of these. The social surroundings of man are his aesthetic cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings; *

“environmental impact assessment” means an orderly and systematic process for evaluating a proposal including its alternatives and its effect on the environment including the mitigation and management of those effects. The process extends from the initial concept of the proposal through implementation to commissioning and operation and, where appropriate, decommissioning;

“Minister” means the Minister for the Environment;

“proponent”, in relation to a proposal, means person who or which is nominated under Section 38 of the Act as being responsible for the proposal; *

“proposal” means project, plan, programme, policy, operation, undertaking or development or change in land use, or amendment of any of the foregoing; *

“public” means the general public including any individual or group;

“social surroundings” of man are his aesthetic cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings; *

** definitions contained in Section 3 of the Act.*

2. OBJECTIVES OF ENVIRONMENTAL IMPACT ASSESSMENT

Division 1 of Part IV of the Act enables the EPA to carry out environmental impact assessment (EIA) of development proposals that it considers are likely to have a significant effect on the environment.

Where a proposal is subject to formal EIA, it is the responsibility of the proponent, through the EIA process, to demonstrate that:

- i) best practicable measures have been taken in planning and designing the proposal to avoid, and where this is not possible, to minimise impacts on the environment; and*
- ii) the unavoidable impacts of the proposal should be found to be environmentally acceptable, taking into account cumulative impacts which have already occurred in the region, and principles of sustainability.*

To ensure these requirements are met, proponents should ensure that potential environmental impacts and constraints are identified early in the planning and design of a proposal, and that adequate time and resources are devoted to carrying out environmental surveys and investigations as part of preparing the environmental review document.

Proponents are also encouraged to engage in consultation with State and local government authorities and members of the public who may be interested or affected by their proposal early in the EIA process, to ensure that people are informed about the proposal and its impacts, and to enable the proponent to respond to issues and make appropriate adjustments to their proposals during planning and design.

2.1 Objectives

The Authority's objectives for environmental impact assessment are:

- (a) to ensure that proponents take primary responsibility for protection of the environment influenced by their proposals;
- (b) to ensure that best practicable measures are taken to minimise adverse impacts on the environment, and that proposals meet relevant environmental objectives and standards to protect the environment, and implement the principles of sustainability;
- (c) to provide opportunities for local community and public participation, as appropriate, during the assessment of proposals;

- (d) to encourage proponents to implement continuous improvement in environmental performance and the application of best practice environmental management in implementing their proposal; and
- (e) to ensure that independent, reliable advice is provided to the Government before decisions are made.

3. REFERRAL OF PROPOSALS

Section 38 of the Act provides the basis for proposals to be referred to the Authority for a decision on whether or not they should be subject to environmental impact assessment. Specifically:

- “38.(1) A proposal that appears likely, if implemented, to have a significant effect on the environment, or a proposal of a prescribed class —*
- (a) subject to section 48I, shall, in the case of a proposal other than a proposal under an assessed scheme, be referred in writing to the Authority by a decision-making authority as soon as that proposal comes to the notice of the decision-making authority; and*
 - (b) may be referred in writing to the Authority by —*
 - (i) the proponent; or*
 - (ii) in the case of a proposal other than a proposal under an assessed scheme, any other person.*
- (2) If it appears to the Minister that there is public concern about the likely effect of a proposal, if implemented, on the environment, the Minister may refer in writing the proposal to the Authority.*
- (3) The Authority shall, if —*
- (a) it considers that a proposal is likely, if implemented, to have a significant effect on the environment; and*
 - (b) in the case of a proposal under an assessed scheme, the Authority did not, when it assessed the assessed scheme under Division 3 of this Part, have sufficient scientific or technical information to enable it to assess the environmental issues raised by that proposal,*

or if a proposal is of a prescribed class, require in writing a decision-making authority or proponent to refer in writing the proposal to the Authority within such period as is specified in that requirement.”

The environmental impact assessment process begins formally when a proposal is referred in writing to the Authority. However, informal discussions with the Authority prior to referral are encouraged and are often a useful way of identifying issues and opportunities early in the development of a proposal.

The Authority and decision-making authorities must, and proponents and other persons should, take into consideration the environmental significance of a proposal when determining whether a proposal should be referred to the EPA.

Contact with the Authority at an early stage is recommended to allow protection of the environment to be considered as part of the proponent's planning process. Early consideration of the environment generally means a project can be designed to avoid or minimise adverse environmental impacts and reduce ongoing costs of environmental management.

3.1 Referral of Proposals

- 3.1.1 The Authority will require adequate information about a proposal to enable it to decide:
- (a) whether or not to assess the proposal; and
 - (b) the level of assessment if the proposal is going to be assessed.
- 3.1.2 Referral of a proposal by a proponent or a decision-making authority (DMA) under section 38(1) is to be made on the form established by the EPA for that purpose.
- 3.1.3 If the Authority considers that a referral does not contain adequate information it may request any person to provide it with the required information about the proposal before proceeding further.
- 3.1.4 The 28 day period set by section 40(1) shall not be regarded as having begun in relation to a referral until all requests for required information have been met to the Authority's satisfaction.
- 3.1.5 Where the EPA considers that a proposal set out in a referral:
- a) has previously been referred to the Authority;
 - b) is a proposal under an assessed scheme;
 - c) has already been implemented; or
 - d) is not likely, if implemented, to have any effect, or have only a minor effect, on the environment;
- the Authority may refuse to accept the referral.

3.2 Memorandum of Understanding and Guidelines for Referral of Proposals

The Authority may enter into Memoranda of Understanding or establish guidelines with other government agencies. The purpose of any Memorandum or guidelines may be to identify those types of proposals that the Authority expects to be referred and those proposals which need not be referred provided agreed environmental conditions are applied by the other agency. At all times, the Memorandum and guidelines do not remove or reduce the powers and obligations of the Authority under Part IV of the Act.

- 3.2.1 The Authority may develop Memoranda of Understanding or guidelines with decision-making authorities to provide guidance on the environmental impact assessment of proposals under Division 1 of Part IV of the Act.
- 3.2.2 A Memorandum of Understanding may include guidelines on:
- (a) specific categories of proposals which must be referred to the Authority;
 - (b) proposals which are not likely to require referral; and
 - (c) the application of environmental conditions by others to ensure that proposals are unlikely to have a significant effect on the environment and consequently, would not need to be referred to the Authority.
- 3.2.3 The Authority may release Memoranda of Understanding in draft form for public comment and shall ensure that all signed Memoranda are publicly available.

4. DECISION ON WHETHER OR NOT TO ASSESS A PROPOSAL

Section 40(1) of the Act provides for the EPA to decide whether or not a proposal which has been referred to it should be assessed.

The Act requires the Authority to:

- “40.(1) When a proposal is referred to the Authority under section 38, the Authority shall —*
- (a) if it considers that the proposal should not be assessed by it under this Part, so inform in writing within 28 days after that referral —*
 - (i) the proponent;*
 - (ii) if the proposal is not so referred by the proponent, the person by which or whom it is so referred; and*
 - (iii) any relevant decision-making authority,*
but may nevertheless give advice and make recommendations to the proponent, any relevant decision-making authority or any other relevant person on the environmental aspects of the proposal; or
 - (b) if it considers that the proposal should be assessed by it under this Part —*
 - (i) so inform in writing within 28 days after that referral —*
 - (A) the proponent;*
 - (B) if the proposal is not so referred by the proponent, the person by which or whom it is so referred; and*
 - (C) any relevant decision-making authority;*
 - and*
 - (ii) assess the proposal.”*

4.1 Decision on Whether or Not to Assess a Proposal

The EPA makes its decision on whether or not to assess a proposal based on the information in the referral and any additional information it has obtained from the proponent, relevant government agencies or interest groups. Where the EPA decides not to assess a proposal (40(1)(a)), the Authority nevertheless expects the proponent and relevant agencies to ensure the appropriate measures are taken to minimise the environmental impact.

For many proposals, the Authority may consider that the potential environmental impacts of the proposal will not be significant. However, through the provision of publicly available advice, the Authority can indicate what action it believes decision-making authorities and other agencies should take to address environmental issues.

Where the Authority decides not to assess a proposal because there is sufficient control under Part V of the Act, there are public appeal provisions in relation to environmental conditions set by the Department.

As provided for under Section 100 (1) of the Act, any person may lodge an appeal with the Minister for the Environment against the EPA's decision that a proposal should not be assessed, within 14 days of the public recording of the decision.

- 4.1.1 The Authority shall, within 28 days of receipt of the referral of the proposal or within 28 days of receipt of additional information requested in accordance with clause 3.1.3, decide that:
- (a) the proposal will not be assessed by the Authority under Part IV of the Act; or
 - (b) the proposal will be assessed by the Authority under Part IV of the Act.
- 4.1.2 The Authority will take into consideration the environmental significance of a proposal when deciding whether the proposal will be assessed. This will include:
- i) the extent and consequence of biophysical impacts;
 - ii) the environmental values of the area affected;
 - iii) the extent of emissions and their potential to unreasonably interfere with the health, welfare, convenience, comfort or amenity of people;
 - iv) the potential for biophysical impacts of the proposal to significantly and adversely change people's social surroundings;
 - v) the extent and rigour to which potential impacts have been investigated and described in the referral, and the confidence in the reliability of predicted impacts;
 - vi) the extent to which the proposal implements the principles of sustainability;
 - vii) the ability of DMAs to place conditions on the proposals to ensure required environmental outcomes are achieved; and
 - viii) the likely level of public interest, and the extent to which the proponent has consulted with interested and affected people and responded to issues raised.
- 4.1.3 Where the Authority decides that the proposal will not be assessed, it will also record as part of that decision that:

- (a) no advice will be given by the Authority (proposals in this category will be advertised as "Not Assessed - no advice given"); or
- (b) advice will be given by the Authority to a relevant decision-making authority or proponent (proposals in this category will be advertised as "Not Assessed - public advice given"); or
- (c) the EPA considers that the proposal is capable of being managed under Part V of the Act (proposals in this category will be advertised as "Not Assessed - managed under Part V"),

In accordance with section 40(1)(a) of the Act, advice given under clause 4.1.3(b) is not legally binding on decision-making authorities or proponents. The Authority's advice shall be available to the public for information, and will be forwarded on request.

- 4.1.4 Where the Authority decides that a proposal will be assessed, the Authority will determine that one of the levels of assessment outlined in clause 5. of these procedures will apply to the proposal.
- 4.1.5 The proponent, the person who referred the proposal, and any relevant DMAs shall be advised in writing by the Authority within 28 days whether the proposal will or will not be assessed.
- 4.1.6 When a DMA has referred a proposal to the EPA or has been advised by the Authority that a proposal has been referred to it, the DMA shall not make any decision that could have the effect of causing or allowing the proposal to be implemented until:
 - (a) it has been informed that the EPA has decided not to assess the proposal and there have been no appeals, or any appeals have been determined; or
 - (b) the Minister's authority has been served on it under section 45(7) of the Act advising that the proposal may be implemented.

4.2 Recording of Referred Proposals

The Authority is required under section 39 of the Act to keep a public record of proposals referred and its decisions on level of assessment.

- 4.2.1 The Authority shall keep a record of proposals referred and decisions on level of assessment for each referral.
- 4.2.2 The Authority shall ensure that the record:
 - (a) is available for public inspection;
 - (b) includes a brief description of the proposal and location details; and
 - (c) includes the Authority's decision on whether the proposal is being assessed and, if so, the level of assessment.
- 4.2.3 The Authority shall publish, as soon as possible, its decision whether to assess a proposal, and if so, the level of assessment, in a statewide daily newspaper.

5. LEVELS OF ASSESSMENT AND ASSESSMENT PROCEDURES

Section 40 of the Act set out the powers and requirements of the Authority for assessing proposals. In particular sections 40(2) and 40(3) provide for the EPA to require a proponent to undertake an environmental review, and for the Authority to determine the form, content, timing and procedure of the environmental review. The EPA normally adopts one of five levels of assessment for assessing proposals and this sets the general form, content, timing and procedure. The five levels of assessment are:

- (a) Assessment on Referral Information (ARI);*
- (b) Proposal Unlikely to be Environmentally Acceptable (PUEA);*
- (c) Environmental Protection Statement (EPS);*
- (d) Public Environmental Review (PER); and*
- (e) Environmental Review and Management Programme (ERMP).*

The assessment process for these levels of assessment is set out generally in Figures 1 to 5 of Schedule 1 of these procedures.

In addition, the EPA may with the approval of the Minister conduct a public inquiry in accordance with the provisions of the Act.

“40(2) The Authority may, for the purposes of assessing a proposal under subsection (1)(b) –

- (a) require any person to provide it with such information as is specified in that requirement;*
- (b) require the proponent to undertake an environmental review and to report thereon to the Authority; or*
- (c) with the approval of the Minister and subject to section 42, conduct a public inquiry in such manner as it sees fit or appoint a committee consisting of –*
 - i) Authority members;*
 - ii) Authority members and persons other than Authority members; or*
 - iii) persons other than Authority members,*

to conduct a public inquiry and report to the Authority on its findings on the public inquiry,

or take any 2 or all 3 of the courses of action set out in paragraphs (a) to (c) and may make such other investigation and inquiries as it thinks fit.

40(3) Subject to any direction made under section 43, the Authority shall determine the form, content, timing and procedure of any environmental review required to be undertaken under subsection (2) (b).”-

As provided for under Section 100 (1) of the Act, any person may lodge an appeal with the Minister for the Environment against the EPA’s decision on the level of assessment of a proposal, within 14 days of the public recording of the decision.

5.1 Assessment on Referral Information (ARI)

5.1.1 This level of assessment will typically be applied to proposals which raise one or a small number of significant environmental factors which can be readily managed, but where it is considered that environmental conditions under Part IV of the Act are required to ensure the proposal is implemented and managed in an environmentally acceptable manner, and this cannot be appropriately achieved through conditions set by DMAs.

5.1.2 In determining whether a proposal should be assessed at this level the EPA will consider the information included in the referral and may seek further information from the proponent, any DMAs or other agencies, and relevant stakeholders, in accordance with clause 3.1.3 of these procedures.

5.1.3 When the Authority sets this level of assessment for a proposal, it will normally release its report to the Minister in accordance with section 44 of the Act, setting out the conditions and procedures which it considers should be applied to the proposal, at the same time that it publishes its decision on the level of assessment.

5.2 Proposal is Unlikely to be Environmentally Acceptable (PUEA)

5.2.1 When some proposals are referred to the EPA it will rapidly become evident during examination of the proposal that it cannot meet the EPA’s environmental objectives. This level of assessment will apply to proposals that are clearly in contravention of established or applicable environmental policy, standards or procedures, could not be reasonably modified to meet the EPA’s environmental objectives, or are proposed in a special environmental area.

5.2.2 When the PUEA level of assessment is likely, the EPA Chairman may have discussions with the proponent to try and achieve a better project location and/or design, prior to deciding on this level of assessment. At any stage prior to the PUEA level of assessment being advertised a proponent may withdraw the proposal or may refer a new proposal to the EPA for assessment.

5.2.3 The following is a summary of the assessment procedure that will apply to this level of assessment:

1. The proposal is referred to the EPA.
2. When the EPA is of the view that the proposal is clearly in contravention of established or applicable environmental policy, standards or procedures, or could not be reasonably modified to meet the EPA's environmental objectives, or is proposed in a special environmental area, the Chairman may meet with the proponent to indicate that the assessment level is likely to be set at PUEA and to encourage the proponent to withdraw the proposal and/or submit a new, significantly modified proposal (in terms of project design and/or location).
3. If the proponent decides to proceed with the original proposal, EPA sets level of assessment as PUEA.
4. When the level of assessment is advertised, the EPA makes public the referral as well as a statement of reasons, as to why the proposal is unlikely to be found environmentally acceptable.

5.2.4 If an appeal on level of assessment is upheld by the Minister, the proposal would be referred back to the EPA by the Minister as required under section 43 of the EP Act to be assessed more fully or more publicly. In order to comply with the request to assess more fully or more publicly the EPA would require a PER or ERMP level of assessment; the proposal could not proceed to an EPS assessment.

5.2.5 If all appeals on level of assessment are dismissed, the EPA would provide its Report under section 44 to the Minister.

5.3 Environmental Protection Statement (EPS)

5.3.1 This level of assessment will typically be applied to proposals of local interest that raise a number of significant environmental factors which can be readily managed, where it is considered that environmental conditions under Part IV of the Act are required to ensure the proposal is implemented and managed in an environmentally acceptable manner, and where in the judgement of the Authority, a formal public review period may be unnecessary because the proponent has adequately consulted with stakeholders.

5.3.2 The following is a summary of the assessment procedure that will apply to this level of assessment.

1. The proponent refers the proposals to the EPA. Based on the information contained in the referral, the EPA determines that it may be appropriate to assess the proposal through the EPS process. The Chairman of the EPA discusses this with the proponent and where the proponent agrees to proceed with assessment through the EPS process, the EPA provides guidance, where appropriate, on the further information required in an EPS document. The EPA may also provide suggestions about the people or groups that the proponent should contact for consultation purposes.

2. The EPA will advertise its intention to set an EPS level of assessment on the proposal and indicating:
 - That the level of assessment for the proposal has not yet been set by the EPA;
 - That there are no appeal rights until the level of assessment has been set;
 - That anyone interested in the proposal should contact the proponent if they require information or wish to be part of the consultation process; and
 - Whether the EPS document will need to cover all environmental issues/factors, or only the few key issues/factors.
3. Proponent prepares EPS document in consultation with stakeholders and other interested parties.
4. Proponent submits the final EPS document.
5. EPA sets level of assessment as EPS and releases the EPA Report under section 44 of the Act together with conditions and procedures which it considers should be applied to the proposal. EPA advertises the EPS level of assessment and the availability of the EPA Report.
6. Proponents make the EPS document available for public inspection, as required by the EPA.

5.3.3 Where proponents have been given an indication that this level of assessment may be appropriate, they should consult with DMAs, other relevant agencies and identified stakeholders in the preparation of the EPS document. For some types of proposals, preparing an EPS should be straightforward. However, because of the necessity to consult with stakeholders and the public in the preparation of satisfactory EPS documentation, the fact that a proponent has undertaken to prepare an EPS should not be taken as a prior commitment by the EPA that this level of assessment will be applied when the proposal is finally referred.

For this level of assessment to be set, a proponent's EPS document will need to demonstrate to the EPA that:

- (a) the community and key stakeholders, including DMA's, have been adequately consulted and their views taken into account;
- (b) all necessary studies have been undertaken in a competent manner;
- (c) the results of studies have been incorporated into the design and intended operation and management of the proposal;
- (d) the proposal conforms with applicable environmental guidelines, policies, standards and procedures;
- (e) the required environmental factors have been adequately addressed; and
- (f) appropriate environmental management commitments have been made;

5.3.4 Once engaged in the EPS process, a proponent would have the right to withdraw from the EPS process at any time to engage in an alternative level of assessment, and could do so by formally notifying the EPA.

5.4 Public Environmental Review (PER)

- 5.4.1 This level of assessment will typically be applied to proposals of local or regional significance that raise a number of significant environmental factors, some of which are considered complex and require detailed assessment to determine whether, and if so how, they can be managed. The EPA considers that such proposals should be subject to a formal public review period, and the setting of environmental conditions under Part IV of the Act to ensure they are implemented and managed in an environmentally acceptable manner.
- 5.4.2 Where the EPA sets this level of assessment it will require the proponent to prepare an Environmental Scoping document setting out the environmental factors raised by the proposal and the proponent's intended environmental studies, in accordance with clause 6.1 of these procedures, if the proponent has not submitted one with the referral.
- 5.4.3 The proponent will then be required to prepare an environmental review document (the 'Public Environmental Review' (PER) document) in accordance with the Environmental Scoping document agreed with the EPA, and the general requirements of clause 6.3 of these procedures.
- 5.4.4 When the EPA is satisfied the PER document has adequately addressed all of the environmental factors and studies identified in the Environmental Scoping document, the proponent will be required to release it for a public review period, normally between 4 and 8 weeks.
- 5.4.5 The EPA will provide copies of the submissions (with the names of private individuals removed) to the proponent. The proponent will be required to prepare a summary of the pertinent issues and matters raised in the submissions. The proponent will then be required to respond to issues and matters raised in submissions on the PER document to the satisfaction of the Authority.
- 5.4.6 The Authority will assess the PER document, submissions, proponent's response to submissions, and obtain advice from any other persons it considers appropriate and submit its report to the Minister in accordance with section 44.

5.5 Environmental Review and Management Programme (ERMP)

- 5.5.1 This level of assessment will typically be applied to proposals of State interest that raise a number of significant environmental issues, many of which are considered to be complex or of a strategic nature, and require substantial assessment to determine whether, and if so how, they can be managed in an acceptable manner. The EPA considers that such proposals should be subject to extensive public review.
- 5.5.2 Where the EPA sets this level of assessment it will require the proponents to prepare an Environmental Scoping document setting out the environmental factors raised by the proposal and the proponent's intended studies, in accordance with clause 6.1 of these procedures, if the proponent has not submitted one with the referral. The EPA may

require the proponent to make the Environmental Scoping document available for public review for two weeks and to modify the document based on submissions as appropriate.

- 5.5.3 The proponent will then be required to prepare an environmental review document (the 'Environmental Review and Management Programme' (ERMP document) in accordance with the Environmental Scoping document agreed with the EPA, and the general requirements of clause 6.3 of these procedures.
- 5.5.4 When the EPA is satisfied the ERMP document has addressed all of the environmental factors and studies identified in the Environmental Scoping document, the proponent will be required to release it for a public review period normally between 10 and 12 weeks.
- 5.5.5 The EPA will provide copies of the submissions (with the names of private individuals removed) to the proponent. The proponent will be required to prepare a summary of the pertinent issues and matters raised in the submissions. The proponent will then be required to respond to issues and matters raised in submissions on the ERMP document to the satisfaction of the Authority.
- 5.5.6 The Authority will assess the ERMP document, submissions, proponent's response to submissions, and obtain advice from any other persons it considers appropriate and submit its report to the Minister in accordance with section 44. The EPA may stage its assessment and report to the Minister on any strategic environmental factors raised by the proposal, before reporting on the overall proposal.

5.6 Public Inquiry

Section 40 (2)(c) allows the Authority to seek agreement from the Minister to conduct a Public Inquiry in relation to the assessment of a proposal and sets out the powers that a public inquiry has.

- 5.6.1 The Authority may initiate a Public Inquiry, with the approval of the Minister, to assist in the assessment of a proposal which is very complex and of intense public interest or such other reason determined by the Authority.

6. FORM AND CONTENT OF ENVIRONMENTAL SCOPING DOCUMENTS AND ENVIRONMENTAL REVIEW DOCUMENTS

For proposals that are being assessed at the level of PER or ERMP, the proponent will be required to prepare;

- (i) an Environmental Scoping document; and*
- (ii) a Public Environmental Review document or Environmental Review Management Programme document.*

6.1 Environmental Scoping Document

6.1.1 Where the EPA sets the level of assessment for a proposal as PER or ERMP it will require the proponent to prepare an Environmental Scoping document for the assessment, if one has not been submitted with the referral.

6.1.2 An Environmental Scoping document shall include:

- i) a summary description of the project;
- ii) a summary description of the environment which places the proposal in a regional biophysical and social context;
- iii) a preliminary impact assessment with identification of the environmental issues/factors arising from the project and their relative significance. In doing this, the proponent should have preliminary discussions with DMAs and any other relevant agencies, regarding issues/factors they consider should be addressed, and any specific requirements they may have;
- iv) a Scope of Works setting out the proposed environmental surveys/investigations to be carried out as part of the EIA for preparation of the PER/ERMP. The surveys/investigations should be clearly linked to the environmental issues/factors identified from the preliminary impact assessment, and be aimed at demonstrating that:
 - (a) best practicable measures have been taken in planning and designing the proposal to avoid, and where this is not possible, to minimise impacts; and
 - (b) unavoidable impacts should be found to be environmentally acceptable, taking into account cumulative impacts which have already occurred in the region;
- v) a list of the people, if any, proposed to provide peer review of findings and conclusions of the environment surveys/investigations;
- vi) a planned program of consultation with the public, key stakeholders and relevant government agencies, as appropriate; and
- vii) a proposed timetable for undertaking the environmental surveys/investigations and submission of the draft PER/ERMP.

6.1.3 The Authority will maintain a publicly available database of generic environmental factors, and associated broad EPA environmental objectives, as a guide to proponents for preparing their Environmental Scoping document and PER/ERMP.

6.1.4 The EPA will advise the proponent on its acceptance of the Environmental Scoping document and specifically the proposed Scope of Works.

6.2 Peer Review

6.2.1 The EPA may require a proponent to engage a person, who is considered to be authoritative by the Authority, to undertake a peer review of the findings and conclusions of a particular environmental survey/investigation which is required to be undertaken by the proponent in accordance with the agreed Environmental Scoping document. This would normally be required where the survey/investigation relates to an

environmental issue/factor which is considered by the Authority to be of major significance to the assessment.

6.2.2 Where the EPA considers that peer review of a proposed survey/investigation is required, it may nominate a number of people to the proponent who it considers have appropriate expertise, for the proponent to make arrangements for engagement of a person (s) to carry out the review, prior to submission of the PER/ERMP. Alternatively, the proponent may nominate one or more people which it considers have appropriate expertise, and the EPA will advise on its concurrence on this person (s).

6.3 Environmental Review Document

6.3.1 The EPA will maintain a set of publicly available generic guidelines for the form and content of environmental review documents.

6.3.2 The proponent shall prepare the environmental review document (PER or ERMP) in accordance with the EPA's generic guidelines for form and content of environmental reviews, and the agreed Environmental Scoping document.

6.3.3 The proponent should consult as early as possible with DMAs and other relevant agencies to seek advice and, where relevant, agreement on issues, management commitments, standards, criteria and procedures that may apply to the proposal during the preparation of an environmental review document, and should include any advice from these agencies regarding acceptability of the proposal in the environmental review document.

6.3.4 The proponent shall ensure that the environmental review document is written and is presented in a style that is readily understandable, accurate and concise.

6.3.5 The proponent should ensure that an environmental review focuses on addressing the more significant environmental issues/factors and should include but not be limited to:

- (a) a description of the proposal and any alternatives considered, including alternative locations with a view to minimising environmental impacts;
- (b) a description of the receiving environment and key ecosystem processes, and discussion of their significance in a regional setting. This should focus on those elements of the environment that may affect or be affected by the proposal;
- (c) placing the proposal in a regional setting in relation to existing biophysical impacts and potential for future cumulative impacts.
- (d) identification of the key issues (and list the environmental factors associated with these issues) and their relative significance. The environmental review should concentrate on the more significant issues/factors, including potential 'fatal flaws';
- (e) discussion of the impacts of the proposal, both of the footprint and in the context of the regional setting, and description of the management arrangements and commitments to ameliorate those impacts to the most practical extent possible;

- (f) provision of information as to the extent that best practice will be adopted in the pursuit of the proposal and discussion of how the principles of sustainability have been incorporated, where appropriate;
- (g) details of public and government agency consultation and how comments received have been responded to; and
- (h) a synthesis of the environmental costs and benefits of the proposal with the aim of achieving an overall net environmental benefit;
- (i) presenting a case as to why the EPA should find the proposal environmentally acceptable, and demonstration that the proposal would be implemented adopting best practicable measures to minimise the impacts on the environment.

6.3.6 The environmental review shall also include an audit table with environmental management commitments that will form part of the conditions of approval and will become legally binding and be audited if the proposal is implemented.

6.4 Assessment of Proposals by the Commonwealth Government or other State Governments

An action which is part of a proposal which has been referred to the EPA may be required to be referred to the Federal Minister for the Environment under the Environment Protection and Biodiversity Conservation, Act 1999 for a decision on whether it is a 'controlled action', and if so, the way it will be assessed under the Act. One of the ways the Federal Minister may choose to assess the 'controlled action' is by accrediting the State environmental impact assessment process.

Further, the Ministers of the Australian and New Zealand Environment and Conservation Council (ANZECC) have endorsed the Basis for a National Agreement on Environmental Impact Assessment (1997) as a general framework for the administration of environmental impact assessment processes for proposals which involve, or are likely to involve, more than one jurisdiction.

6.4.1 Where the Federal Minister for the Environment accredits the State's environmental impact assessment process for a proposal being assessed by the EPA, the Authority will consult with Environment Australia regarding the acceptability of the Environmental Scoping document before it is agreed by the Authority. The Authority will also consider submissions and assess relevant impacts of the controlled action (s).

6.4.2 Where another State Government has a decision-making role in relation to a proposal that is also being assessed by the Authority, the Authority will endeavour to establish:

- (a) agreed assessment guidelines(this will normally be via the Environmental Scoping document);
- (b) a common environmental review document; and
- (c) a common public review period,

according to the Basis for a National Agreement on Environmental Impact Assessment (ANZECC 1997).

7. PUBLIC RELEASE OF ENVIRONMENTAL REVIEW DOCUMENT

All Public Environmental Review and Environmental Review and Management Programme documents will be subject to a public review period prior to the Authority preparing its report and recommendations to the Minister. Issues may be raised in public or technical comment that necessitate the provision of information additional to that provided in the environmental review document.

- 7.1 The proponent shall not publish or publicly distribute an environmental review document required by the Authority for review without the approval of the Authority.
- 7.2 The proponent shall submit a draft of an environmental review document to the Authority for it to decide whether the document is suitable for public release and review.
- 7.3 The Authority may circulate the draft environmental review document to relevant decision-making authorities and Government agencies for comment before deciding on the acceptability of the document.
- 7.4 The Authority will decide upon the acceptability of an environmental review document for public release and review on the basis of the following criteria:
 - (a) whether the environmental issues/factors in the Environmental Scoping document have been adequately addressed;
 - (b) whether the document appears technically sound;
 - (c) whether the document is understandable;
 - (d) the acceptability of the document to relevant decision-making authorities and other government agencies; and
 - (e) whether the format, content and style are appropriate.
- 7.5 The Authority may require the proponent to modify and resubmit a draft of the environmental review document if it does not meet the above criteria.

8. REVIEW OF ENVIRONMENTAL REVIEW DOCUMENTS BY THE COMMUNITY, RELEVANT DECISION-MAKING AUTHORITIES AND GOVERNMENT AGENCIES

The environmental impact assessment process is designed to be transparent and accountable, and includes specific points for public involvement, including opportunities for public review of environmental review documents. The public review of the proponent's document ensures that the community, decision-making authorities and government agencies are informed about a proposal, have the opportunity to comment, and that their comments are considered by the Authority, before a decision is made by the State Government. Sections 40(4) and (6) provide the power for the seeking of comment on environmental review documents.

- 8.1 The Authority will require the proponent at the commencement of the public review period to:
 - (a) advertise the availability of the environmental review document;
 - (b) ensure the environmental review document is available to the public; and
 - (c) supply copies of the environmental review document at no cost to specified government agencies, libraries and public interest groups;in accordance with the requirements of the Authority.
- 8.2 The proponent shall advertise, in a form and content agreed by the Authority, the availability of the environmental review document in the news section of the main local newspaper, and a statewide daily newspaper. The advertisement should appear at the commencement of the public review period and again two weeks prior to the closure of the public review period.
- 8.3 The Authority shall also advertise the availability of the environmental review document and the review period in a statewide daily newspaper.
- 8.4 The proponent shall ensure the environmental review document is available to the public throughout the review period, in accordance with the requirements of the Authority. Proponents are encouraged to make the environmental review document available on the Internet and/or Compact Disc.
- 8.5 The proponent shall not charge fees (including postage and packaging) that are greater than \$10.00 for a Public Environmental Review or Environmental Review and Management Programme and \$10.00 for stand alone set of appendices.
- 8.6 The proponent may make public presentations and hold open days on the environmental review during the public review period.
- 8.7 The Authority may request relevant government agencies and expert persons to provide comments on the environmental review document within a specified time.
- 8.8 The Authority shall accept all submissions received by it within the public review period if made in writing or such other form as determined acceptable by the Authority.
- 8.9 The Authority may extend the public review period or accept submissions beyond the review period where:
 - (a) the review period coincides with lengthy public holiday periods;
 - (b) the receipt of public comments may be delayed because of infrequent mail services;
 - (c) there are delays in the environmental review document being reasonably available;or
 - (d) the Authority considers it necessary.
- 8.10 The information in submissions shall be deemed public information, unless a request for confidentiality of the submission is made in writing to and accepted by the Authority but

the identity of private individuals remains confidential to the Authority, unless the submitter agrees to be identified. Access to public submissions will, however, be subject to the Freedom of Information Act.

- 8.11 Written submissions from government agencies are deemed public information unless that agency specifically requests that the submission be confidential. Access to Government agency submissions will, however, be subject to Freedom of Information Act.

9. AUTHORITY ASSESSMENT AND REPORT TO THE MINISTER

The Authority is required to report to the Minister under Section 44 of the Act.

“44.(1) Subject to subsection (2), the Authority shall, within 6 weeks after completing its assessment or reassessment of a proposal referred to it under section 38, and may, at any time before completing that assessment or re-assessment, prepare a report on —

- (a) the environmental factors relevant to that proposal; and*
- (b) the conditions and procedures, if any, to which any implementation of that proposal should be subject,*

and may make such recommendations in that report as it sees fit, and shall give the prescribed number of copies of that report to the Minister.”

Section 43 of the Act enables the Minister to direct the Authority to assess or reassess a proposal during or after the assessment of a proposal while Section 44(2) provides further powers of direction on reporting by the Authority to the Minister.

9.1 Persons to Provide Information

Section 40(2)(a) provides for the Authority to “require any person to provide it with such information as is specified in that requirement;”

- 9.1.1 The Authority may request any person to provide information to assist the Authority in the assessment of a proposal within a specified time.
- 9.1.2 The Authority may engage expert persons to provide advice to the Authority and conduct investigations on specific matters associated with a proposal to assist the Authority in its assessment.

9.2 Proponent’s Response to Issues

The proponent will be required by the Authority to provide a written response to issues raised during the public review. This is an opportunity for the proponent to clarify or review and modify aspects of the proposal to address environmental issues and to meet the Authority’s environmental objectives.

- 9.2.1 The proponent will be required to prepare a summary of the pertinent issues raised in public and government agency submissions.
- 9.2.2 The proponent shall then respond in writing to the summary of issues and any other issues the Authority may consider need to be addressed and where appropriate, amend the proposal and change environmental commitments.
- 9.2.3 The Authority may consider a substantially changed proposal a new proposal requiring a new assessment unless the change(s) has clearly resulted in a better environmental outcome. Where the proposal is considered by the Authority to have substantially changed and a new assessment is required, the Authority will require that that proposal is referred under Section 38(3).
- 9.2.4 The Authority may complete its assessment and report to the Minister without the proponent's response to the issues, provided that:
- (a) a reasonable period has elapsed after the provision of the summary of issues to the proponent; and
 - (b) written notice has been given by the Authority to the proponent.
- 9.2.5 The proponent shall ensure that the response to issues:
- (a) is prepared; and
 - (b) is available publicly and at no cost at the publication of the Authority's assessment report, in accordance with the requirements of the Authority.

9.3 Public Inquiry

- 9.3.1 In accordance with Section 42(2), the Authority will incorporate the findings resulting from a public inquiry in its report to the Minister.

9.4 Information used in the Authority's Assessment

- 9.4.1 The Authority may consider information from one or more of the following sources in assessing the proposal:
- (a) referral form;
 - (b) Environmental Scoping document;
 - (c) the environmental review document;
 - (d) issues raised in public submissions or meetings;
 - (e) reports from any public inquiry;
 - (f) advice from DMAs and relevant government agencies;
 - (g) proponent's commitments, proposed management measures and response to issues;
 - (h) additional information including peer reviews provided by the proponent;
 - (i) expert advice commissioned by the Authority;
 - (j) relevant environmental policies, standards and criteria; and
 - (k) the Authority's own investigations and expertise, or

- (l) any other information considered relevant by the Authority.

9.5 The Authority's Assessment Report to the Minister

The Authority is required under Section 44 of the Act to report to the Minister on the environmental factors relevant to that proposal, conditions and procedures to which any implementation of the proposal should be subject, and any recommendations that it sees fit.

- 9.5.1 The Authority's report to the Minister will normally include the following:
- (a) summary description of the proposal and its key characteristics;
 - (b) the identification of relevant environmental issues/factors;
 - (c) a description of each relevant environmental issues/factors;
 - (d) an assessment of the environmental acceptability of the proposal;
 - (e) conditions and procedures required if the proposal (with or without modifications) was implemented; and
 - (f) other advice and recommendations considered relevant by the Authority.

10. SUSPENSION OR TERMINATION OF ASSESSMENT

- 10.1 The EPA may suspend or terminate the assessment of a proposal if:
- (a) the proponent agrees with the suspension or termination;
 - (b) the proponent has failed to comply with a requirement made under Section 40 (2) (a) or (b) or (6) of the Act within 12 months of it being made; or
 - (c) a DMA has refused to approve the proposal, and any appeal rights in respect of that decision have been discharged.
- 10.2 The EPA may cause the assessment of a proposal that has been suspended to be recommenced, where adequate information has been provided to enable the EPA to further assess the proposal.

11. PUBLICATION OF THE AUTHORITY'S REPORT

The Minister publishes and circulates the report of the Authority as soon as the Minister is reasonably able to do so after receiving it, in accordance with Section 44 (3).

As provided for under Section 100(2) of the Act, any person may lodge an appeal with the Minister for the Environment against the contents and/or recommendations of the Authority's assessment report within 14 days of the publication of the report.

SCHEDULE 1

ENVIRONMENTAL IMPACT ASSESSMENT PROCESS FLOWCHARTS

Figure 1. Outline of Procedure for Assessment on Referral Information (ARI)

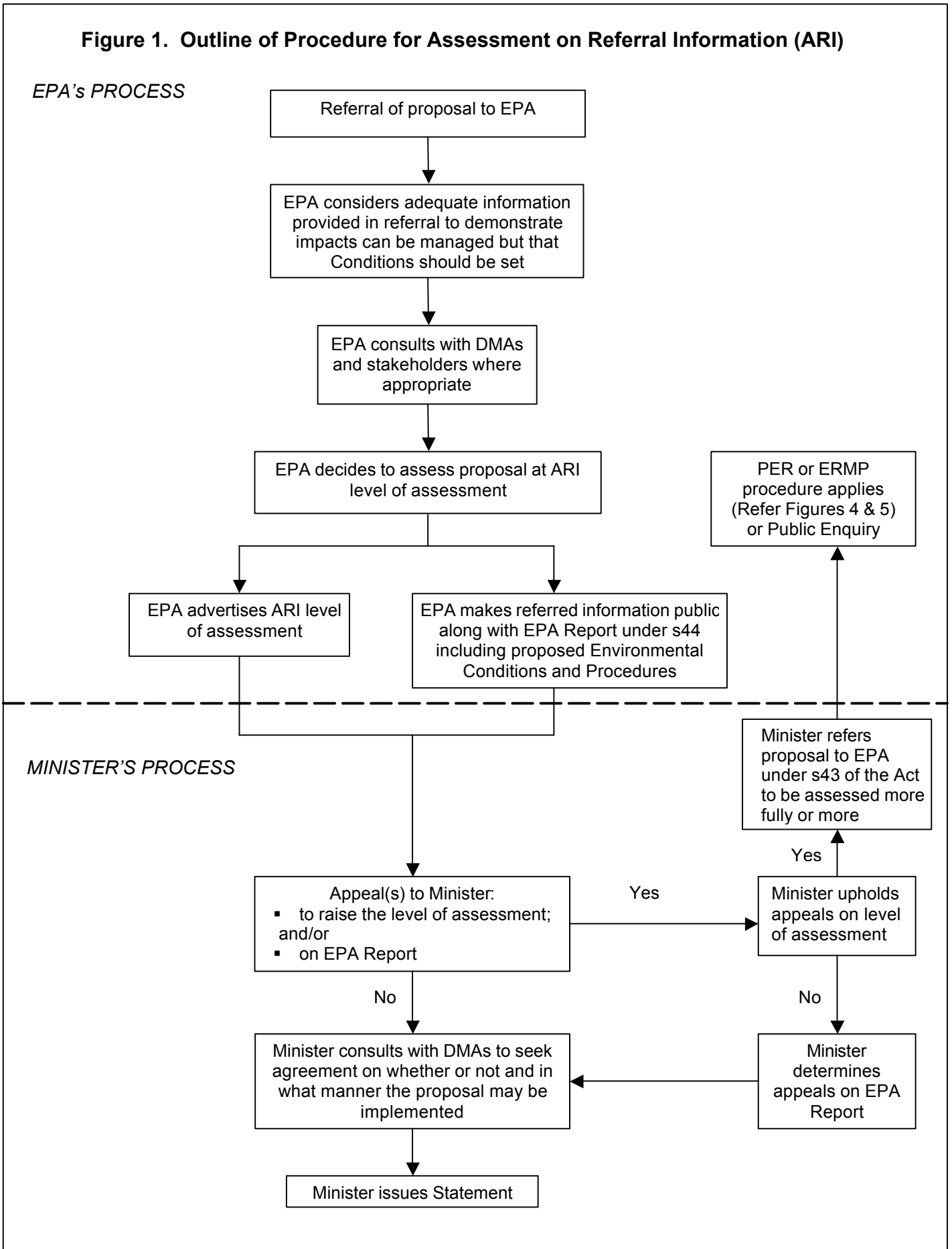


Figure 2. Outline of Procedure for Proposal Unlikely to be Environmentally Acceptable

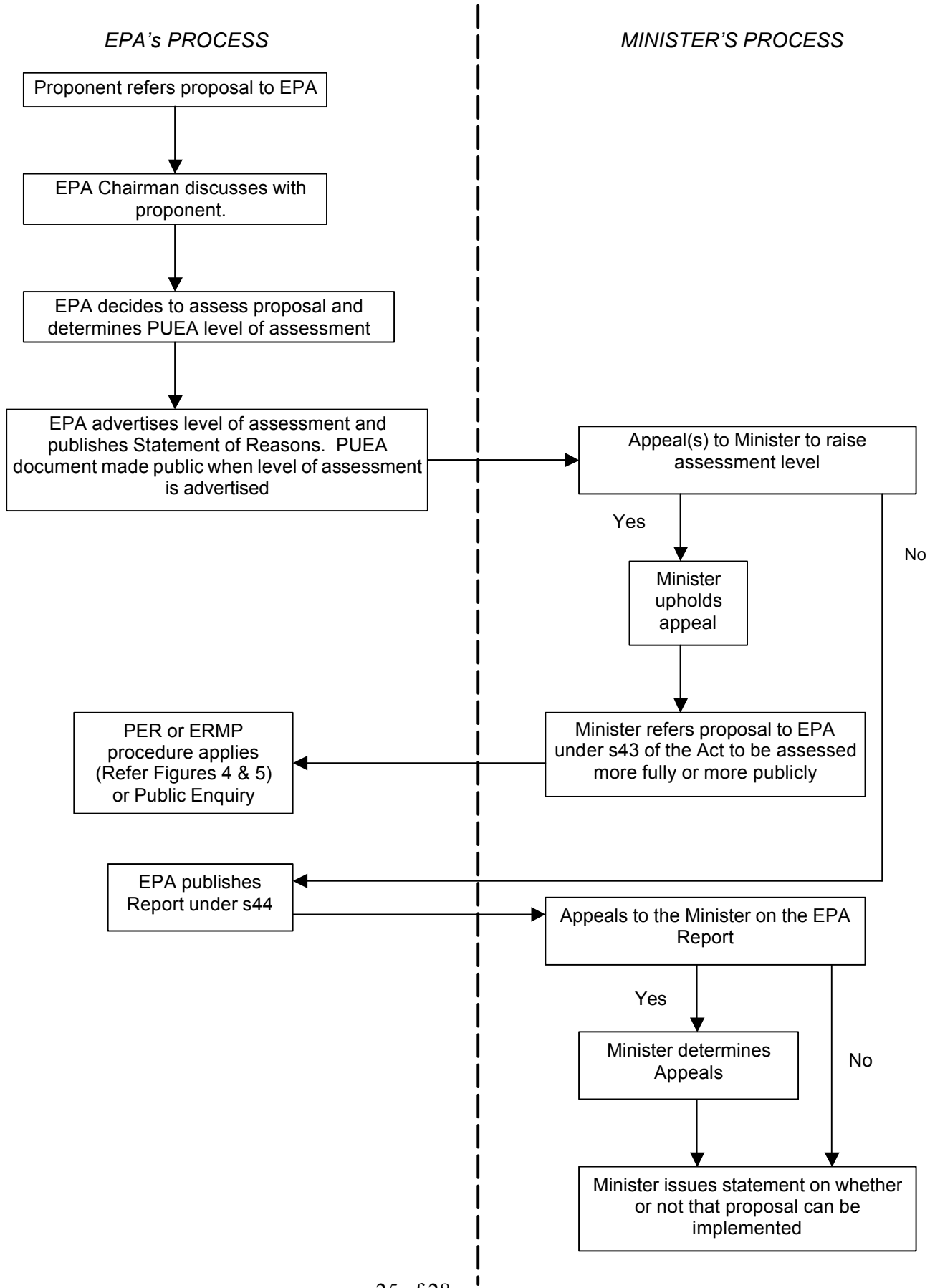


Figure 3. Outline of Procedure for Environmental Protection Statement (EPS)

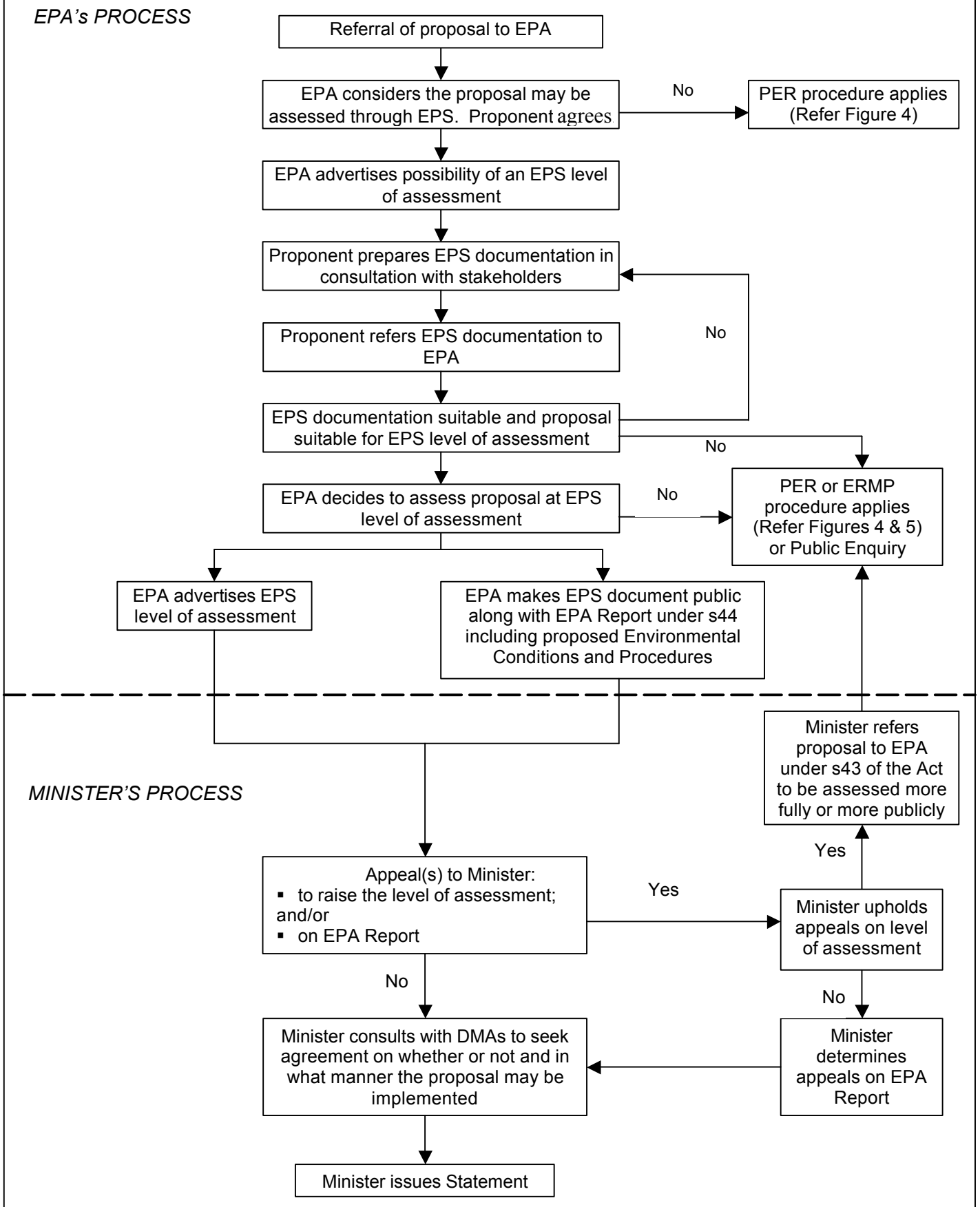


Figure 4. Outline of Procedure for PER Assessment

EPA's PROCESS

MINISTER'S PROCESS

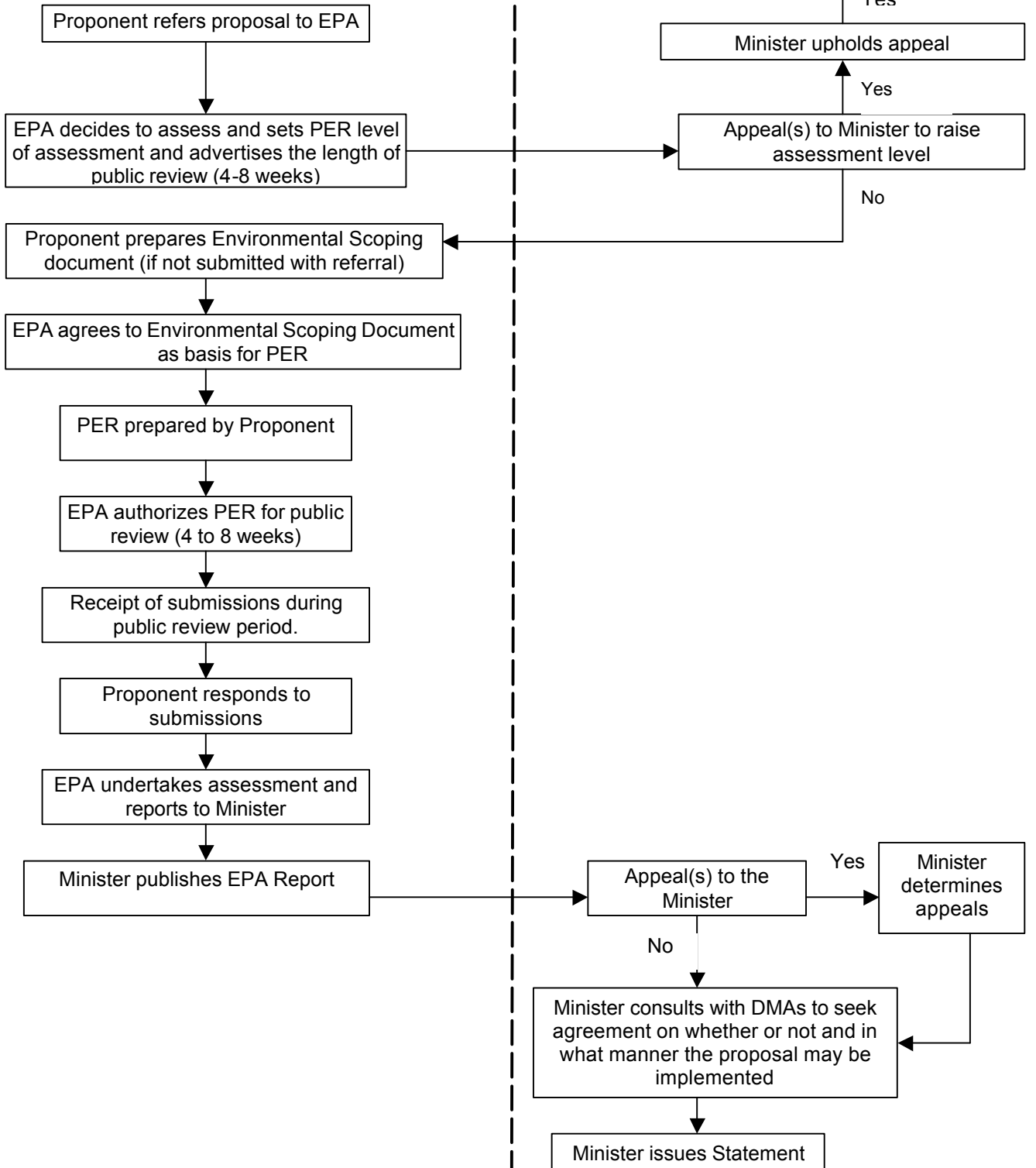


Figure 5. Outline of Procedure for ERMP Assessment

EPA's PROCESS

MINISTER'S PROCESS

