

**Process Summary of Environmental  
Impact Assessment**  
*Under the Environmental Protection  
Act 1986 (Part IV Divisions 1 and 2)*

DRAFT FOR CONSULT

**Environmental Protection Authority**

April 2021

DRAFT FOR CONSULT

## EIA Process Overview

Environmental impact assessment (EIA) is an orderly process for evaluating a proposal and its effects on the environment. It also considers opportunities for avoidance, minimisation, rehabilitation and offset of environmental effects.

The EIA process extends from the initial concept of a proposal (including proposal alternatives) through implementation to completion, and where appropriate, decommissioning.

The EPA conducts EIA in five stages:

1. Referral of a proposal to the EPA
2. EPA decision to assess a referred proposal
3. Assessment of the proposal
4. EPA report on assessment of the proposal
5. Ministerial decision on the proposal.

### Stage 1 – Referral

The main reason proposals are referred to the EPA is because someone thinks the proposal is likely, if implemented, to have a significant effect on the environment.

#### ***What is a proposal?***

Proposals include developments, projects, plans, programs, policies, operations, undertakings, changes in land use, or amendments of any of these.

Planning schemes are assessed by the EPA under a different EIA process.

#### ***Who can refer a proposal?***

The person who wants to carry out the proposal (called the proponent) usually refers the proposal if they think it will have a significant effect on the environment.

Any person can also refer a proposal to the EPA for assessment if they think it will have a significant effect on the environment (and if the proponent has not already referred it).

Government agencies with a decision-making function about proposals also have an obligation to refer proposals if they think it will have a significant effect on the environment, or if the proposal is “prescribed” in regulations. Prescribed proposals include hydraulic fracking proposals, and proposals which involve significant emissions or discharges.

The Minister for the Environment can also refer a proposal, and the EPA can sometimes require a proposal to be referred too.

### ***Are there any restrictions on what can be referred?***

Proposals can only be referred once unless they are withdrawn or terminated.

Proposals under local planning schemes that have been referred to the EPA can generally only be referred by the proponent, or by the relevant local government if it considers the environmental issues raised by the development are likely to be significant but were not assessed by the EPA when it considered the local planning scheme.

Third party referrals of mining proposals cannot usually be referred until after a mining lease (for land tenure) has been granted and a mining proposal is developed detailing the mining works proposed on the land.

### ***What information is required with a referral?***

Referrals must be in writing. The *EPA Instruction for the referral of a proposal to the EPA under s38 of the EP Act 1986* <insert hyperlink> sets out the information required. In summary, this includes:

- Proposal elements – all the parts of a proposal which have the potential to have a significant effect on the environment.
- proposal alternatives.
- proposal options to avoid impacts.
- proposal options to minimise impacts.
- likely environmental impacts.
- significance of likely impacts.
- what environmental outcomes are expected and whether the environmental outcomes are consistent with the EPA's objectives for environmental factors. The *EPA Statement of Environmental Principles, Factors, Objectives and Aims of EIA* <insert hyperlink> includes these objectives.
- whether other decision-making processes can mitigate the potential environmental impacts of the proposal.

### ***Can a referral be changed?***

The proponent can ask the EPA to approve changes to a proposal which has been referred to the EPA. The EPA encourages changes which can reduce the environmental impact of the proposal, such as impact avoidance.

## Stage 2 - EPA decision to assess referred proposal

Once a proposal is referred, the EPA considers whether the referral is valid. This involves the EPA considering whether the proposal can legally be referred (for example, because it has not already been referred), and whether it is likely to have a significant effect on the environment.

If a referral is valid, the EPA must then decide whether or not to formally assess the proposal and what level of assessment to apply.

### **Public comment**

If the referral is valid, the EPA publishes the referral on its website and seeks public comment for seven days. Any person can subscribe to the EPA website or EPA Consultation Hub to receive updates about new referrals that are published and for which public comment is sought.

### **EPA decision whether to assess the proposal**

The EPA then decides whether or not to assess the proposal. In making this decision, the EPA considers what the environmental impacts of the proposal are likely to be, whether they are likely to be significant or prescribed, and whether the proposal impacts are likely to be consistent with the EPA's environmental principles and objectives.

The EPA *Statement of Environmental Principles, Factors, Objectives and Aims of EIA* <insert hyperlink> outlines the EPA's environmental principles and objectives, and what things it may consider in gauging significance. These include:

- the values, sensitivity, and quality of the environment likely to be impacted.
- the extent (intensity, duration, magnitude, and geographic footprint) of likely impacts.
- the resilience of the environment to cope with the impacts or change.
- the consequence of the likely impacts (or change), including off-site and indirect impacts, and the likely environmental outcome.
- the consequence of the application of the "mitigation hierarchy" to the proposal; Can impacts be avoided, minimised, rehabilitated or (as a last resort), offset?
- the cumulative environmental impacts of the proposal – past, present, and future activities.
- holistic environmental impacts – the connections and interactions between individual parts of the environment that inform impacts to the environment as a whole.
- the object and principles of the Environmental Protection Act 1986 (EP Act).
- all stages and components of the proposal, including infrastructure.
- the level of confidence in the prediction of residual impacts and the success of proposed mitigation.
- public interest in the likely effect of the proposal or scheme, if implemented, on the environment, and public information that informs the EPA's assessment.

In making its decision, the EPA may also take into account whether other statutory decision-making processes can mitigate the potential impacts of the proposal on the environment.

The EPA's decision on whether or not to assess is published on its website. Any person can subscribe to the EPA website to receive updates about its decisions on referrals.

### ***Appeals on the EPA's decision***

Any person may appeal to the Minister for the Environment if the EPA refuses to assess a proposal. The Appeals Convenor publishes information about how to lodge an appeal to the Minister. An appeal should state the reasons for the appeal and provide evidence about why the EPA's decision is wrong. An appeal should also set out what the EPA should have decided instead, and what the Minister should now decide.

An appeal about the EPA's decision does not change the decision in the meantime.

Appeals cannot be made against the EPA's decision to assess a proposal.

Appeals cannot be made about the EPA's decision not to assess a proposal if the EPA's decision includes a recommendation that the proposal be dealt with under the native vegetation clearing provisions of the EP Act.

The Appeals Convenor publishes the Minister's Appeal Determination which includes a summary of reasons.

### ***Can the proposal go ahead if the EPA decides to assess it?***

If the EPA decides to assess a proposal, then:

- the proponent cannot start works on the proposal. The only exception to this is minor or preliminary works which the EPA consents to.
- government agencies cannot issue approvals to the proponent to start works on the proposal.

### ***EPA decision about "level" of assessment for the proposal***

If the EPA decides to assess a proposal, it will also set the "level of assessment" for the proposal. The level the EPA sets depends upon whether the EPA considers:

- that there needs to be public consultation in the assessment process.
- it has adequate information in the referral to do its assessment or needs some additional information to do its assessment.
- it needs a consolidated "environmental review document" to obtain further information on the impacts of the proposal, or how those impacts can be avoided, minimised, rehabilitated or offset.
- it needs expert advice.

## Stage 3 – Assessment of a proposal

### ***Environmental scoping document***

Environmental scoping documents (ESDs) set out the form, content, indicative timing, and procedure of environmental review documents required by the EPA. ESDs are usually prepared by the proponent but must be approved by the EPA. They should also be in accordance with the EPA's *Instructions on how to prepare an ESD* <insert hyperlink>.

The EPA may decide the ESDs needs to be open to public comment. This usually takes two weeks and occurs before the document is approved.

The EPA can also decide at any stage during the assessment process that it needs information than what is included in the ESD.

### ***Environmental review document***

Environmental review documents (ERDs) are a consolidated way for the EPA to gain further information on the impacts of the proposal, or how those impacts can be avoided, minimised, rehabilitated or offset. These are prepared by the proponent and must be prepared in accordance with any ESD approved for the proposal. They must also be in accordance with the EPA *Instruction on how to prepare an ERD* <insert hyperlink>.

### ***Public Review***

The EPA may decide that the ERD needs to be open to public submissions, usually for between two to 12 weeks. If this is the case, the proponent must respond to the public submissions.

### ***EPA's environmental principles, factors, objectives and aims***

The EPA uses environmental principles, factors, objectives and aims as the basis for assessing a proposal's impact on the environment. These are contained in the *Statement of Environmental Principles, Factors, Objectives and Aims of EIA* <insert hyperlink>.

Any assessment, and public submissions during assessment, should consider whether the environmental outcomes likely from the proposal are likely to be consistent with the EPA's environmental principles, factors, objectives and aims.

### ***Can a proposal be changed during assessment?***

The proponent can ask the EPA to approve changes to a proposal. The EPA encourages changes that can reduce the environmental impact of the proposal, such as impact avoidance.

The EPA usually summarises its decision about proposal changes on its website.



## Stage 4 – EPA report on assessment of proposal

Once the EPA is satisfied the proponent has completed the assessment as required, it prepares its report on the assessment of the proposal. The report sets out:

- what the EPA considers to be the key environmental factors.
- whether or not the EPA recommends the proposal should be implemented.
- the conditions the EPA recommends the proposal should be subject to.
- any other information, advice or recommendations related to the environment that the EPA considers relevant.

The EPA's report is published on its website. Any person can subscribe to the EPA website to receive alerts about the EPAs published reports.

### ***Social and economic impacts – what can the EPA consider?***

The EPA's role is to assess and report on factors affecting the environment. The word "environment" is defined as living things, their physical, biological and "social surroundings" and interactions between these.

The EPA's report can consider many of the same subjects that are relevant in Stage 2 - *EPA decision whether to assess the proposal*.

"Social surroundings" of humans are the aesthetic, cultural, economic, and other social surroundings to the extent that they directly affect or are affected by physical or biological surroundings. The EPA's assessment of proposals can therefore consider economic or social impacts in areas directly affected by the physical or biological impact of the proposal. An example of this might be the impact of a marine dredging proposal on the social and economic impacts of fishing and tourism in the area effected by the proposed dredging. However, it is beyond the EPA's scope to report on the general economic benefits that may result from a proposal proceeding, or on any effect on the proponent or third parties should the proposal not proceed.

### ***Appeals***

Any person may appeal to the Minister for the Environment on the content of, or any recommendation in, the EPA's report. The Appeals Convenor publishes information on its website about how to lodge an appeal to the Minister. An appeal should state the reasons for the appeal and provide evidence about why the EPA's decision is wrong. An appeal should also set out what the EPA should have decided instead, and whether the Minister should ask the EPA to undertake further assessment or vary its recommendations.

The appeal can result in any of the following:

- The Minister agrees with the EPA's report and recommendations
- The Minister believes the EPA should undertake further assessment or re-assessment and/or
- The EPA should have recommended different conditions.

The EPA must comply with any decision by the Minister to undertake further assessment.

An appeal against the EPA's report does not affect the report until the Minister makes a decision.

The Appeals Convenor publishes the Minister's Appeal Determination which includes a summary of reasons.



## Stage 5 – Ministerial decision on the proposal

Once the EPA report is published, and any appeals are resolved, the Minister will consult with other Ministers or government agencies who the Minister thinks have a key statutory role in the proposal. Agreement will be sought on whether the proposal can proceed, and, if so, on what conditions.

If any of the other Ministers do not agree with the Minister for the Environment, the decision may need to go to Cabinet.

If it is agreed that the proposal can proceed, the Minister issues an approval (known as a Ministerial statement with implementation conditions), and other government agencies are then able to make their own decisions about the proposal.

### **Appeals**

No one can appeal a decision to allow a proposal to proceed.

A proponent can appeal the conditions but cannot implement the proposal until the appeal is resolved.

### **Amendments to approved proposals and Ministerial statement implementation conditions**

(FOR HOLD: depends on delegation decisions from Minister]

Proponents can seek amendments to approved proposals. They can also seek amendments to the implementation conditions of Ministerial statements.

The EPA's process and information requirements for decisions about proposal and condition amendments depend on the nature, scale, and impact of the amendments. If the amendments are likely to have a significant effect on the environment, they will need to be referred as a new proposal.

The EPA usually summarises its decision about proposal and condition changes on its website.

The Minister can also ask the EPA to inquire into the implementation conditions of Ministerial statements. The EPA then publishes its report to the Minister about this, and the Minister decides whether to amend the conditions.

### **Legal and procedural links** <insert hyperlinks>

- *Environmental Protection Act 1986* (WA) (EP Act)
- EIA (Part IV Divisions 1 and 2) Administrative Procedures 2021
- EIA (Part IV Divisions 1 and 2) Procedures Manual 2021
- Procedures suite (Instructions and Templates)

#### **Important disclaimer:**

This summary is for general information purposes. Important details have been omitted to provide a brief overview. If you require specific information, please refer to the Administrative Procedures 2021 <insert hyperlink> or Procedures Manual 2021 <insert hyperlinks>.

### **Enquiries:**

EPA Services  
Department of Water and Environmental Regulation  
Prime House, 8 Davidson Terrace  
Joondalup WA 6027

Locked Bag 10  
Joondalup DC WA 6919

p: 08 6364 7000  
p: 08 6364 0896  
e: [info.epa@dwer.wa.gov.au](mailto:info.epa@dwer.wa.gov.au)  
w: [www.epa.wa.gov.au](http://www.epa.wa.gov.au)