



Transitional Arrangements Interim Guidance

Implementing the EPA's revised procedures suite to enact the EP Amendment Act 2020

Environmental Protection Authority

October 2021

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As EPA documents are updated from time to time, users should consult the EPA website (www.epa.wa.gov.au) to ensure they have the most recent version.

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i. Purpose

The purpose of this interim guidance is to communicate transitional arrangements and expectations for the implementation of the Environmental Protection Authority's (EPA's) revised Environmental Impact Assessment (EIA) procedures suite, and other EIA processes, as a result of recent amendments to the *Environmental Protection Act 1986* (EP Act).

ii. Introduction

Amendments to the EP Act were passed by the Western Australian Parliament in November 2020.

The amendments will come into force through the staged proclamation of the *Environmental Protection Amendment Act 2020*, with Stage 1 being proclaimed on 3 February 2021, Stage 2 being proclaimed 22 October 2021 and Stage 3 scheduled to be proclaimed in late 2022. The majority of amendments relating to Part IV of the EP Act are captured through Stage 1 and 2 proclamations.

To implement the amendments to the EP Act and provide guidance for proponents and the public, the EPA has revised its procedures suite.

The revised procedures suite includes the EPA's *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures (2021)*, *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual (2021)* and other documents to support EIA. The other documents include the: *Statement of Environmental Principles, Factors, Objectives and Aims of EIA*; a number of Interim Guidance documents; and a series of Instructions, Forms and Templates (a full list of these documents can be found in the EPA's Procedures Manual). The revised procedures suite will be made available around the same time as the proclamation of Stage 2.

iii. Transitional arrangements

The EP Act amendments specify the transitional arrangements which apply for some applications, including:

- Significant amendments: new section 40AA of the EP Act will apply to the assessment of all revised proposals which have not been decided at the date of commencement of Stage 2.
- Changes to proposals during assessment: amended section 43A of the EP Act will apply to all applications which have not been decided at the date of commencement of Stage 2.
- Changes to proposals post Ministerial statement: existing section 45C of the Act applies to all applications which are received up to the date of commencement of Stage 2.

All other EP Act amendments (where there is no transitional arrangement specified) will apply to the ongoing assessment of all proposals (from the date the amendments are proclaimed), for example:

- consideration of cumulative effects
- consideration of statutory decision-making processes which can mitigate the potential impacts of a proposal in the environment.

The EP Act does not specify transitional arrangements for the application of the EPA's revised procedures suite. The EPA's general expectation is that the revised EPA procedures suite will apply to all proposals and EIA processes at the time of publication.

The EPA acknowledges that proponents will be in various stages of preparation of EIA documentation at the time of publication, and in certain circumstance it may not be practicable to use the EPA's revised procedures suite.

In those cases, the EPA Chair has a discretion in the application of the revised procedures suite.

The EPA has prepared guidance on how changes to the EP Act and the revised EPA's procedures suite may affect proponents and the public through ten possible scenarios. More specific guidance has been prepared in relation to transitional arrangements for the implementation of each of the EPA's revised procedures suite documents (Attachment 1).

iv. Agreement on alternative procedures

If proponents are seeking to use the EPA's procedures suite applicable prior to Stage 2 proclamation (documents published prior to 22 October 2021), they must:

- apply to the EPA Chair for agreement to do this
- demonstrate to the satisfaction of the EPA Chair that there is a material practical difficulty with using the EPA's revised procedures suite
- demonstrate that using the EPA's procedures suite applicable prior to Stage 2 proclamation (documents published prior to 22 October 2021) will not reduce:
 - the effectiveness of the EIA process to assess whether the EPA's environmental protection objectives for environmental factors will be met
 - transparency
 - the likelihood of achievement of the EPA's environmental protection objectives for environmental factors
- consider and propose opportunities to use the EPA's revised procedures suite, or satisfy the information needs detailed in them, later in the EIA process.

v. Assessment Scenarios

The following scenarios have been provided to assist proponents with the potential change management of current and future assessments.

1. New proposal

Scenario 1: I have a new project which might have a significant effect on the environment.

- The EPA's revised procedure suite will apply to your project. The procedures suite calls projects "proposals"
- Consider the EPA's guidance on whether your proposal is likely to be significant - see the EPA's *Statement of environmental principles, factors, objectives and aims of EIA*
- Consider all the elements of your proposal which have the potential to have a significant effect on the environment, including infrastructure needs.
- Proposals cannot be split up into separate parts for approval purposes – the EPA needs to be able to assess the proposal as a whole
- Prepare for pre-referral meeting by considering:
 - proposal alternatives
 - proposal options to avoid impacts
 - proposal options to minimise impacts
 - likely environmental impacts
 - what environmental outcomes you aim to achieve (and whether these are consistent with the EPA's objectives for environmental factors)
- Consider engaging with other government agencies and stakeholders

2. New proposal

Scenario 2. I have a new proposal that I want to refer to the EPA

- The EPA's revised procedure suite will apply to your proposal
- Prepare referral document by considering:
 - proposal alternatives
 - proposal options to avoid impacts
 - proposal options to minimise impacts
 - likely environmental impacts
 - significance of likely impacts
 - what environmental outcomes you aim to achieve (and whether these are consistent with the EPA's objectives for environmental factors)
- Use of the revised *Instruction and form - Referral of a proposal under section 38*, or see further information in section iv - Agreement on alternative procedures and Attachment 1
- Prepare a Proposal Content Document (PCD) using the *Instruction and form for how to identify the content of a proposal*
- Include all elements of your proposal, including infrastructure needs
- Liaise with government agencies about whether their processes can mitigate the specific environmental impacts of your proposal, and include this in the referral

3. ESD setting stage

Scenario 3. My proposal is being formally assessed, I am currently completing the ESD (Environmental Scoping Document)

- The EPA's revised procedure suite will likely apply to your proposal. See further information in Attachment 1 and liaise with the EPA Services,

Department of Water and Environmental Regulation (DWER), if you believe the new ESD elements of the EPA's revised procedure suite are not practical and should not apply

- The revised *Instruction and template – How to prepare an Environmental Review Document* (ERD) now sets out the mandatory requirements of all ERDs, these will apply to your proposal (so there is no need to repeat them in the ESD)
- Prepare scoping document focussing on the specific information which is needed for your proposal
- You cannot make changes to your proposal in the ESD. If you need to make proposal changes, seek approval under section 43A of the EP Act.
- Note: the EPA has the power to require additional information outside the ESD if it needs this to assess your proposal. To avoid the EPA needing to require this extra step, ensure the ESD is comprehensive and will meet the EPA's assessment needs.

4. ERD stage

Scenario 4. My proposal is being formally assessed, I am currently completing the ERD (Environmental Review Document)

- The EPA's revised procedure suite will likely apply to your proposal. See further information in section iv – Agreement on alternative procedures and Attachment 1. Liaise with the EPA Services, DWER, if you believe the new ERD elements of the EPA's revised procedures suite should not apply.
- Continue to prepare the ERD in accordance with your ESD and the new requirements for ERDs. Liaise with the EPA Services, DWER, if these requirements are inconsistent with your ESD.
- Prepare ERD by considering:
 - proposal alternatives
 - proposal options to avoid impacts
 - proposal options to minimise impacts
 - likely environmental impacts
 - significance of likely impacts
 - what environmental outcomes you aim to achieve (and whether these are consistent with the EPA's objectives for environmental factors)
 - if there are likely to be any significant impacts and you are proposing offsets, include assessment of whether the offsets are likely to counter-balance the significant residual impact
- Continue consultation processes
- Liaise with government agencies to establish whether their processes can mitigate the specific environmental impacts of the proposal
- You cannot make changes to your proposal in the ERD. If you need to make proposal changes, seek approval under section 43A of the EP Act.

5. Minor and preliminary works

Scenario 5. I want to carry out, minor and preliminary works what should I do?

- The EP Act amendments have not changed the statutory process for this, but the EPA has clarified that minor or preliminary works cannot be approved if the works, which would involve substantial implementation of the proposal, would be of a scale or significance that would compromise the EPA's assessment or the Minister's future decision

- Use the revised *Instruction and form – Request for EPA consent to undertake minor and preliminary work under section 41A* to prepare an application for the works
- Liaise with government agencies to establish whether their processes can mitigate the environmental impacts of the minor and preliminary works
- If you are seeking approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), note that there is no similar power approve minor and preliminary works under the EPBC Act

6. Assessment phase

Scenario 6. I am in the assessment phase and have some proposal amendments I want to make

- Use the revised *Instruction and form – Amend proposal during assessment under section 43A of the EP Act* to complete an application.
- Once the EP Act amendments to section 43A come into force (22 October 2021), the amendments will apply to any existing applications.
- Consider:
 - proposal change alternatives
 - proposal change options to avoid impacts
 - proposal change options to minimise impacts
 - likely environmental impacts, including when combined with existing proposal likely impacts
 - significance, including when combined with existing proposal impacts
 - what environmental outcomes you aim to achieve (and whether these are consistent with the EPA’s objectives for environmental factors)
- Liaise with government agencies to establish whether their processes can mitigate the environmental impacts of the changes to the proposal
- Consult with other stakeholders if they are relevant to the amendment you’re seeking

7. Change to proposal

Scenario 7. I want to make a change to my existing approved proposal

- The Minister (or EPA Chair under delegation) will have the power to approve changes to existing approved proposals (and conditions) under section 45C of the EP Act, as long as the changes are not “significant amendments”
- The EP Act amendments to section 45C will only apply to applications which are submitted after the amendments are in force (22 October 2021)
- Significant amendments are:
 - for existing approved proposals – proposal amendments which are likely, if implemented, to have a significant effect on the environment
 - for existing implementation conditions – a proposed amendment to implementation conditions relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions
- Use the revised *Instruction and form – Request to amend proposal and/or implementation conditions under section 45C of the EP Act* to prepare an application
- Prepare a Proposal Content Document for your existing approved proposal, and show the changes you are seeking

- include references to proposal content from original referral documents and changes approved since then
- Consider:
 - proposal change alternatives
 - proposal change options to avoid impacts
 - proposal change options to minimise impacts
 - likely environmental impacts, on their own and in the context of your existing approved proposal likely impacts
 - significance, of the amendment on its own and including in the context of your existing approved proposal impacts
 - what environmental outcomes you aim to achieve (and whether these are consistent with the EPA's objectives for environmental factors)
- Provide information about compliance status and environmental performance of existing approved proposal
- Consult with other stakeholders if they are relevant to the amendment you are seeking
- Liaise with government agencies to establish whether their processes can mitigate the environmental impacts of the changes
- If you are only seeking a change to your proposal – consider whether the existing approval conditions might need to change too and include this in the application (if you don't, the EPA may not be able to approve your application)
- If the proposal change is not approved under section 45C of the EP Act, you can make an application for the change to be considered as a significant amendment – see scenario 8
- If the condition change is not approved under section 45C of the EP Act, you can make an application for the change to be considered under section 46 of the EP Act. To do this, you need to apply to the Minister to ask the EPA to inquire into your conditions
 - The Minister also has the power to agree with other decision-making authorities that the proposed condition amendment needs to be referred as a significant amendment – see scenario 8 below.

8. Significant proposal expansion

Scenario 8: I want to do a significant proposal expansion or make a significant change to my existing approved proposal or conditions

- Once the EP Act amendments come into force (22 October 2021), they will apply to the assessment of all significant amendments referred to the EPA, and any revised proposals referred to the EPA before this time which have not been determined
- Significant amendments are:
 - for existing approved proposals – proposal amendments which are likely, if implemented, to have a significant effect on the environment
 - for existing implementation conditions – a proposed amendment to implementation conditions relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions.
- Significant amendments need to be assessed by the EPA in the context of the approved proposal. The impacts of the significant amendment can't be considered alone

- The EPA must have regard to the combined effect that the approved proposal and the significant amendment might have on the environment. It can't consider the impacts of the significant amendment alone
- The EPA may inquire into and report on the existing implementation conditions when assessing a significant amendment
- Significant amendments to proposals may be referred under section 38 of the EP Act
- Significant amendments to conditions alone may be able to be considered under section 46 of the EP Act. You need to apply to the Minister to ask the EPA to inquire into your conditions.

9. Third party referral

Scenario 9. I am a third party and want to refer a proposal

- The EPA requests the referral include as much information as possible about the proposal and whether it is likely to have a significant effect on the environment
- The EPA needs sufficient information about the proposal to decide whether or not to assess it
- The EPA requests you use of the revised *Instruction and form - Referral of a proposal under section 38 of the EP Act*
- The EPA needs information about:
 - the proposal content
 - likely environmental impacts
 - likely environmental outcomes
 - whether other government agencies can (or cannot) mitigate the potential environmental effects of the proposal on the environment

10. EPA and EPA Chair decisions

Scenario 10. I want to understand why the EPA made a decision

- EPA decision whether to assess (section 38G of the EP Act), see the public record of the EPA decision on the EPA website
- EPA decision to approve change to proposal during assessment (section 43A EP Act). The EPA will usually provide (on the EPA website) a summary of reasons for its decision.
- EPA report and recommendation on a proposal (section 44 of the EP Act). See the EPA report for the proposal on the EPA website.
- EPA Chair's decision (under delegation, if provided by the Minister) to approve an amendment to an approved proposal and / or implementation conditions that are not significant amendments (section 45C of the EP Act). The EPA Chair will usually provide (on the EPA website) a summary of reasons for the decision.

Attachment 1

Transitional arrangements for the EPA's revised procedures suite.

Stage of EIA	Procedure/Instruction	Type and summary of Changes	Transitional Arrangements
All stages	Administrative Procedures	The revisions reflect technical EP Act amendments and facilitate implementation of the key principles of EIA.	<p>The Administrative Procedures closely follow the amended EP Act and as such will be required to be followed once the relevant sections are proclaimed.</p> <p>Where not affected by the EP Act amendments themselves, the EPA Chair may exercise discretion for existing applications and assessments, see section iv - Agreement on alternative procedures.</p>
All stages	Procedures Manual	The revisions include procedures relating to Act amendments, outline information requirements and procedures for EIA processes, and implement the key principles of EIA.	<p>Elements that relate to the EP Act amendments will be required to be followed once the relevant sections are proclaimed.</p> <p>Where not affected by the EP Act amendments themselves, the EPA Chair may exercise discretion for existing applications and assessments, see section iv - Agreement on alternative procedures.</p>
All stages	Statement of Environmental Principles, Factors, Objectives & Aims of EIA	The revisions define EIA, include guidance on the key principles of EIA (including cumulative and holistic assessment), aims of EIA for the EPA, and for proponents and the public.	<p>New proposal referrals and applications to change proposals and/or conditions are expected to follow the revised Statement of Principles, Factors and Objectives.</p> <p>Where not affected by the EP Act amendments themselves, the EPA Chair may exercise some discretion, see section iv - Agreement on alternative procedures.</p>

Stage of EIA	Procedure/Instruction	Type and summary of Changes	Transitional Arrangements
<p>Pre-referral</p> <p>Referral (including s38C changes)</p> <p>Assessment (s43A changes)</p> <p>Post Assessment (s45C changes)</p>	<p>Instruction and Template for how to identify the content of a proposal</p> <p>[Replaces <i>Instruction: How to define the key characteristics of a proposal</i>]</p>	<p>Establishes Proposal Content Documents (PCD) to be prepared by proponents, including changes approved over time.</p> <p>Clarifies information requirements about proposals when seeking amendments to proposals (s38C, s43A, s45C).</p>	<p>Proponents are expected to follow the new Instruction and Template, including preparation of a PCD for new referrals, and new requests to amend proposals under s38C, s43A, or s45C.</p> <p>The EPA Chair may exercise discretion where proponents can demonstrate material practical difficulty in following the new Instruction and Template at the time of referral, or at the time a request to amend a proposal is submitted, see section iv - Agreement on alternative procedures.</p> <p>Proponents should note that if the EPA or EPA Chair is not provided with sufficient information before its assessment is complete, the EPA or EPA Chair may request such information, and this may affect expected (non-statutory) assessment timelines.</p> <p>For existing referrals where no s43A request is made, the EPA Chair may request the preparation of a PCD as part of the EIA process.</p>
<p>Referral</p>	<p>Instruction and Form – Referral of a proposal under section 38 of the EP Act</p> <p>[Replaces s.38 <i>Referral Instruction and Form</i>]</p>	<p>The revised Instruction and Form implement key EIA principles and addresses EP Act amendments relating to ‘significant amendments’ (previously ‘revised proposals’).</p>	<p>Proponents are expected to use the revised Referral and Instruction and Form for new referrals, unless proponents can demonstrate material practical difficulty in doing so, see section iv - Agreement on alternative procedures.</p> <p>In such cases the EPA Chair may exercise discretion, however, proponents should note that if the EPA is not provided with sufficient information before its assessment is complete, the EPA may request such information, and this</p>

Stage of EIA	Procedure/Instruction	Type and summary of Changes	Transitional Arrangements
			may affect expected (non-statutory) assessment timelines.
Referral	Instruction and Form - Amending a referred proposal under section 38C of the EP Act [no equivalent previous instruction]	This new instruction provides guidance for seeking amendments to the proposal before a decision about whether to assess is made – this is a new provision of the EP Act amendments.	Proponents must use the new s38C Instruction and Form.
Assessment	Instruction and Template – Proponent prepared Environmental Scoping Document (ESD) [Replaces <i>ESD – Instructions on how to prepare an Environmental Scoping Document</i>]	The revised Instruction and Template incorporate some minor EP Act changes, including the requirement to publish indicative timing of the environmental review in accordance with section 40(3). The revised Instruction and Template simplify ESDs by requiring all ERDs contain standard assessment information, remove duplication with ERD requirements and focus on proposal specific ESD matters only.	If an ESD has not yet been submitted, proponents are expected to follow the revised Instruction and Template. If an ESD is already submitted or approved, the EPA Chair may require additional information if needed to address the requirements of the EP Act amendments.
Assessment	Instruction and Template- How to prepare an Environmental Review Document (ERD) [Replaces <i>ERD – Instructions on how to prepare an Environmental Review Document</i>]	The revised Instruction and Template incorporate some EP Act changes, including new instructions relating to how the EPA will take other statutory decision-making processes into account, and implement key EIA principles.	If an ERD has not yet been submitted, proponents are expected to follow the revised ERD Instruction and Template in addition to the requirements of their ESD. The EPA or EPA Chair may revise the ESD or require additional information to clarify or resolve any potential inconsistency. Any potential inconsistency should be raised with EPA Services, DWER, as soon as practical.

Stage of EIA	Procedure/Instruction	Type and summary of Changes	Transitional Arrangements
		<p>The revised Instruction and Template also outline the ERD requirements for significant amendments.</p>	<p>The EPA Chair may exercise discretion and allow an existing ERD process to continue if:</p> <ul style="list-style-type: none"> ○ an ESD has already been approved ○ the proponent can demonstrate substantial work has commenced on the ERD and ○ the ERD will be submitted prior to 31 March 2022 <p>See section iv - Agreement on alternative procedures to apply for this arrangement.</p> <p>The EPA Chair may also require additional information if needed to address the requirements of the EP Act amendments before its assessment is complete.</p>
Assessment	<p>Instruction and Form – Request for EPA to undertake minor and preliminary work under section 41A(3) of the EP Act</p> <p><i>[Revises section 41A(3) - Minor and preliminary work – Instruction and checklist]</i></p>	<p>Changes reflect existing law and are designed to ensure EPA Chair has information required to make a reasonable decision.</p>	<p>Proponents are expected to follow the revised Instruction and Checklist for new requests for minor and preliminary works.</p> <p>The EPA Chair may exercise discretion for existing applications, however proponents may be required to provide any additional information required in the revised Instruction prior to a decision being made.</p>
Assessment	<p>Instruction and Form – Amend proposal during assessment under section 43A of the EP Act</p> <p><i>[No previous guidance]</i></p>	<p>The revised Instruction and Form provides guidance for seeking amendments to the proposal during assess under a revised section 43A of the EP Act.</p>	<p>Proponents must use the revised Instruction and Form for all new applications.</p> <p>The EPA Chair will consider existing applications but may request further information if needed to address the requirements of the EP Act amendments.</p>
Assessment	<p>Interim Guidance – Environmental outcomes and outcome-based conditions</p>	<p>Environmental outcomes are an important consideration at all stages of EIA.</p>	<p>Proponents are encouraged to apply the new Interim Guidance, however see section iv - Agreement on alternative procedures which can</p>

Stage of EIA	Procedure/Instruction	Type and summary of Changes	Transitional Arrangements
	[No previous guidance]		apply to allow the EPA Chair to exercise discretion if: <ul style="list-style-type: none"> ○ an ESD has been approved ○ substantial work has commenced on the ERD, and ○ the ERD will be submitted prior to 31 March 2022.
Post assessment	Instruction and Template – Request to amend proposal and/or implementation conditions under section 45C of the EP Act [Replaces <i>Instructions for a change to proposal under section 45C</i>]	The revised Instruction and Template provides guidance for seeking amendments to the approved proposal or implementation conditions which are not significant amendments.	Applications submitted after proclamation must follow the revised Instruction and Template. Applications submitted prior to proclamation will be assessed in accordance with the requirements of the EP Act in force at the time of application. Existing applications can be withdrawn and re-submitted.