



Taking decision making processes into account in EIA

Interim Guidance

Environmental Protection Authority

October 2021

Version	Change	Date
1.0	Initial version	22 October 2021

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.

Environmental Protection Authority 2021, *Interim Guidance- Taking decision-making processes into account in EIA*, EPA, Western Australia.

This document is available in alternative formats upon request.

National Relay Service

TTY: 133 677

(To assist persons with hearing and voice impairment)

More information

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

e: info.epa@dwer.wa.gov.au w:

www.epa.wa.gov.au

1 Purpose

The purpose of this Interim Guidance is to provide guidance to decision-making authorities (DMA), proponents and the public on matters the Environmental Protection Authority (EPA) may consider when taking into account other statutory decision-making processes which can mitigate the potential impacts of a proposal on the environment.

This Interim Guidance is being provided following amendments to the *Environmental Protection Act 1986* (the EP Act) in 2020. The Guidance is provided as “interim” as the EPA is working with DMAs to develop agreed standard processes for when the EPA may take into account another DMA process that can mitigate potential environmental impacts. Any agreed standard processes will be made publicly available.

2 Introduction

The amendments to the EP Act in 2020 expressly provide for the EPA or the Minister for Environment to take account of other statutory decision-making processes which can mitigate the potential impacts of a proposal on the environment in the following circumstances:

- section 38G(4): In making its decision whether to assess a referred proposal, the EPA may take into account other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment.
- section 44(2AA): In considering key environmental factors and any recommendations that may be included in its assessment report on a proposal, the EPA may take into account other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment.
- section 47A(3)(b): In considering whether to withdraw a Ministerial Statement, the Minister can consider whether the impacts of the implementation of the proposal can be satisfactorily mitigated by way of licensing or some other form of regulatory control under the EP Act or another written law.

It should be noted that the above provisions do not represent a delegation of the EPA or Minister’s powers or responsibilities under the EP Act to other decision-making processes. This EPA Interim Guidance does not cover the Minister’s powers under section 47A(3)(b).

3 Consideration of other processes

In applying sections 38G(4) or 44(2AA) of the EP Act, the EPA may take into account whether there is another statutory decision-making process, what that process is, and whether that process can mitigate the potential impacts of the proposal on the environment in a manner that is consistent with the EPA’s environmental objectives.

In considering these matters, the EPA may take into account:

- 1. The ability** of the DMA to consider the impact of the proposal. For example:
 - Are there any restrictions on the DMA's consideration of a proposal's activities?
 - Is the decision-making process constrained to particular geographical locations?
 - Does the decision-making process only consider a particular type of impact?
- 2. The process** that the DMA uses to assess the potential impacts of the activity on the environment, including:
 - Is the assessment on a case by case, or activity category, basis?
 - What opportunity does the public have to comment in/about the decision-making process?
 - What appeal rights are there about the decision-making process?
 - What effect do the DMA's policies and procedures have on its statutory decision-making process?
- 3. The relevant considerations** which the DMA can take into account in decision making.
 - Can and does the DMA take the EPA's factor objectives (or related objectives and principles) into account in decision making?
 - What elements of the environment are relevant to the decision-making?
 - Are there any potential environmental impacts outside the scope of the DMA's decision making?
- 4. The conditions** that may be applied as a result of the decision-making process.
 - Are there standard conditions relating to the environment that are imposed in all cases?
 - What special conditions relating to the environment can the DMA authority impose? In what circumstances? Does the DMA have sufficiently broad powers to impose conditions, including those provided for in section 45A of the EP Act?
 - What compliance monitoring of environmental conditions is carried out?
 - What review of whether the environmental conditions achieve environmental outcomes is carried out?
- 5. Likely outcomes**
 - Are the EPA's objectives for environmental factors likely to be met through the other decision-making process?
- 6. Overall conclusion**
 - Is there a statutory decision-making process which can mitigate the potential impacts of the proposal on the environment?

The EPA will consider other decision-making processes under sections 38G(4) and 44(2AA) on a case by case basis.

In each case where section 38G(4) has been applied, the EPA will include in the notice published pursuant to section 39 (the 'notice of decision') that the other decision-making process has been taken into account, if relevant to a decision not to assess.

In each case where section 44(2AA) has been applied, the EPA will include in the report to the Minister pursuant to section 44(1) that the other decision-making process has been taken into account.

4 Ongoing engagement with DMAs

The EPA has commenced engagement with DMAs with the aim of developing agreed standard processes that can adequately mitigate the potential impacts of proposals on the environment.

Potential outcomes of this engagement include agreed standard processes and/or conditions that may be applied in certain situations, with the aim of efficient assessment processes which protect the environment under Part IV of the EP Act.

Any arrangements that eventuate from this engagement will retain the ability for specific consultation between the EPA and other statutory DMAs as required.