

Environmental Impact Assessment

(Part IV Divisions 1 and 2)

Procedures Manual

Requirements under the *Environmental Protection Act 1986*

Environmental Protection Authority

October 2021

Version	Change	Date
1.0	(Initial version)	17 November 2016
1.1	Add text to section 4.2.3.2 - legal obligations relating to environmental management plans.	23 February 2017
1.2	Add text to sections 3.1.2.2 and 4.2.5 – offsets for revised proposals. Add text to section 3.1.3 – accepting response to submissions.	1 May 2017
1.3	Amend section 5.4 – changing implementation conditions (s.46) by including reference to Proponent Instructions. Amend section 5.5 – other procedures related to implementation conditions (s. 46A, s. 46B and s. 46C) by providing guidance when s. 46A, s. 46B and s. 46C are used. Add text section 5.4 – six weeks from receipt of adequate information.	17 October 2017
2.0	Amendments throughout document to update departmental name, position titles and address details. Add text to sections 1.2.3 and 3.1.2.2 – IBSA requirements. Add text to section 2.3.1 – consideration of significance. Amend sections 2.3.1.2 and 5.3.1 – clarifying considerations for public review. Add text to section 3.1 – delegation to Chairman for form, content, procedures and timing. Amend section 3.1.1.3 – public review of ESDs.	30 April 2018
3.0	Additions of text to sections 1.2.3 and 3.1.2.2 to reflect the addition of the Index of Marine Surveys for Assessment (IMSA) process. Amendments to sections 1.2.3 and 3.1.2.2 to reflect the new process of submitting IBSA data packages to the IBSA submissions Portal. Amendments throughout the document to reflect the Department of Mines, Industry Regulation and Safety's (DMIRS) <i>Statutory Guideline for Mine Closure Plans and Mine Closure Plan Guidance - how to prepare in accordance with the statutory guidelines</i> , which has replaced the joint DMP/EPA 2015 Guidelines for Preparing Mine Closure Plans. Additions of text to sections 3.1.1.1 and 3.1.2.2 to reflect the requirement that for proposals in the Pilbara IBRA Region, the EPA may require preparation of an Impact Reconciliation Procedure.	30 March 2020
4.0	Amendments throughout document to reflect 2020 <i>Environmental Protection Act 1986</i> amendments.	22 October 2021
4.1	Minor edits and corrections	23 March 2022

As Environmental Protection Authority (EPA) documents are updated from time to time, users should consult the EPA website ([www.epa.wa.gov.au](http://www.epa.wa.gov.au)) to ensure they have the most recent version.

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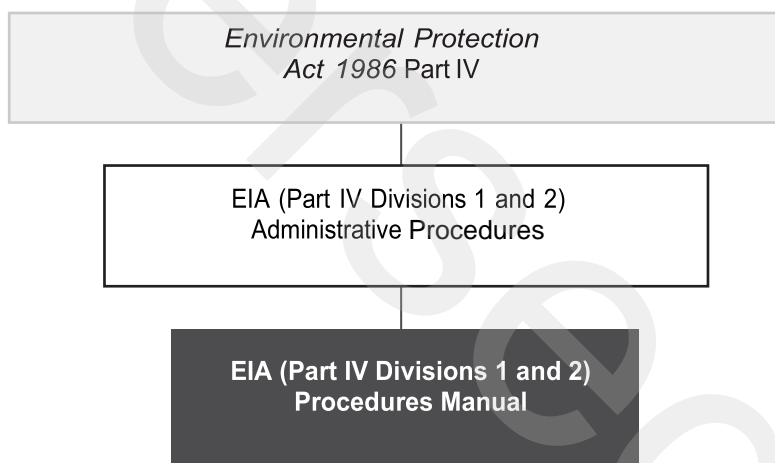
## Introduction

### Purpose and scope

In general terms, environmental impact assessment (EIA) is an orderly and systematic process to evaluate a proposal (including its alternatives) and its effects on the environment, as well as to consider the mitigation and management of those effects. The process extends from the proposal's initial concept through implementation to completion and, where appropriate, decommissioning.

In Western Australia, EIA is regulated under Part IV of the *Environmental Protection Act 1986* (EP Act), with Divisions 1 and 2 dealing with proposals and Divisions 3 and 4 dealing with planning schemes. This document relates to assessments of proposals (Division 1 and 2) only.

The EP Act sets out the essential requirements of EIA but does not explain the specific practices of EIA. This is covered in the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures (2021)* (the *Administrative Procedures*). The Environmental Protection Authority (EPA) and the officers of the Department of Water and Environmental Regulation (DWER) support the EPA carry out the EIA procedures. To do this, they follow the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual (2021)* (Procedures Manual). The Procedures Manual forms part of a hierarchy of three documents dealing with EIA under Part IV of the EP Act (Figure 1). The EP Act and the [Administrative Procedures](#) are statutory documents and the Procedures Manual is non-statutory guidance. The Procedures Manual provides further detail on the procedures set out in the Administrative Procedures.



**Figure 1: Hierarchy of EIA procedures under Part IV (Divisions 1 and 2) of the EP Act**

The Procedures Manual is designed to be read with the [Administrative Procedures](#). The Procedures Manual does not form part of the [Administrative Procedures](#).

Several other non-statutory documents provide additional guidance and advice to support the EIA process. Notably, the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#), environmental factor guidelines and technical guidance documents.

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## Document structure

The procedures in the Procedures Manual are grouped according to the same stages as the [Administrative Procedures](#):

- Stage 1** Referral of a proposal to the EPA (s. 38 to s. 38D)
- Stage 2** EPA to decide whether or not to assess a referred proposal (s. 38E to s. 39)
- Stage 3** Assessment of proposals (s. 40 to s. 43A)
- Stage 4** EPA report on the assessment of a proposal (s. 44)
- Stage 5** Decision on proposal and implementation of proposals (s. 44A to s. 48).

## Other EPA documents

See below for other non-statutory documents to support EIA (note these do not form part of the Administrative Procedures):

- [Interim guidance: Environmental outcomes and outcomes-based conditions](#)
- [Interim guidance: Taking decision making processes into account in EIA](#)

## Instructions, forms and templates

The EPA has developed a series of instructions, forms and templates designed to streamline the EIA process and to provide advice related to specific steps in the process. These are listed below.

- [Instructions and form: Referral of a proposal under s. 38](#)
- [Instructions and form: Amending a referred proposal under s. 38C](#)
- [Instructions and template: How to identify the content of a proposal \(for a Proposal Content Document\)](#)
- [Instructions and forms: Change nominated proponent under s. 38I](#) (before and after publication of Ministerial statement)
- [Instructions and template: Proponent-prepared Environmental Scoping Document](#)
- [Instructions and template: How to prepare an Environmental Review Document](#)
- [Instructions and template: How to prepare Part IV environmental management plans](#)
- [Instructions and form: Advertising requirements and release of a document for public review](#)
- [Instructions and checklist: Request for EPA consent to undertake minor or preliminary work under s. 41A](#)
- [Instructions and form: Amend proposal during assessment under s. 43A](#)
- [Instructions and form: Request to amend proposal and/or implementation conditions under s. 45C](#)
- [Instructions and forms: Division and consolidation of an approved proposal under s. 45D](#)
- [Instructions and form: Amend implementation conditions after inquiry under s. 46](#)
- [Instructions and form: Ministerial statement termination or withdrawal under s. 47A](#)
- [Instructions and templates: Preparing data packages for the Index of Biodiversity Surveys for Assessments \(IBSA\)](#)
- [Instructions, templates and form: Preparing data packages for the Index of Marine Surveys for Assessments \(IMSA\)](#)
- [Instructions, templates and form: Preparing impact reconciliation procedures and impact reconciliation reports](#)
- [WA Offsets template and Residual Impacts Significance Model table template](#)

## Other processes

### Bilateral Agreement

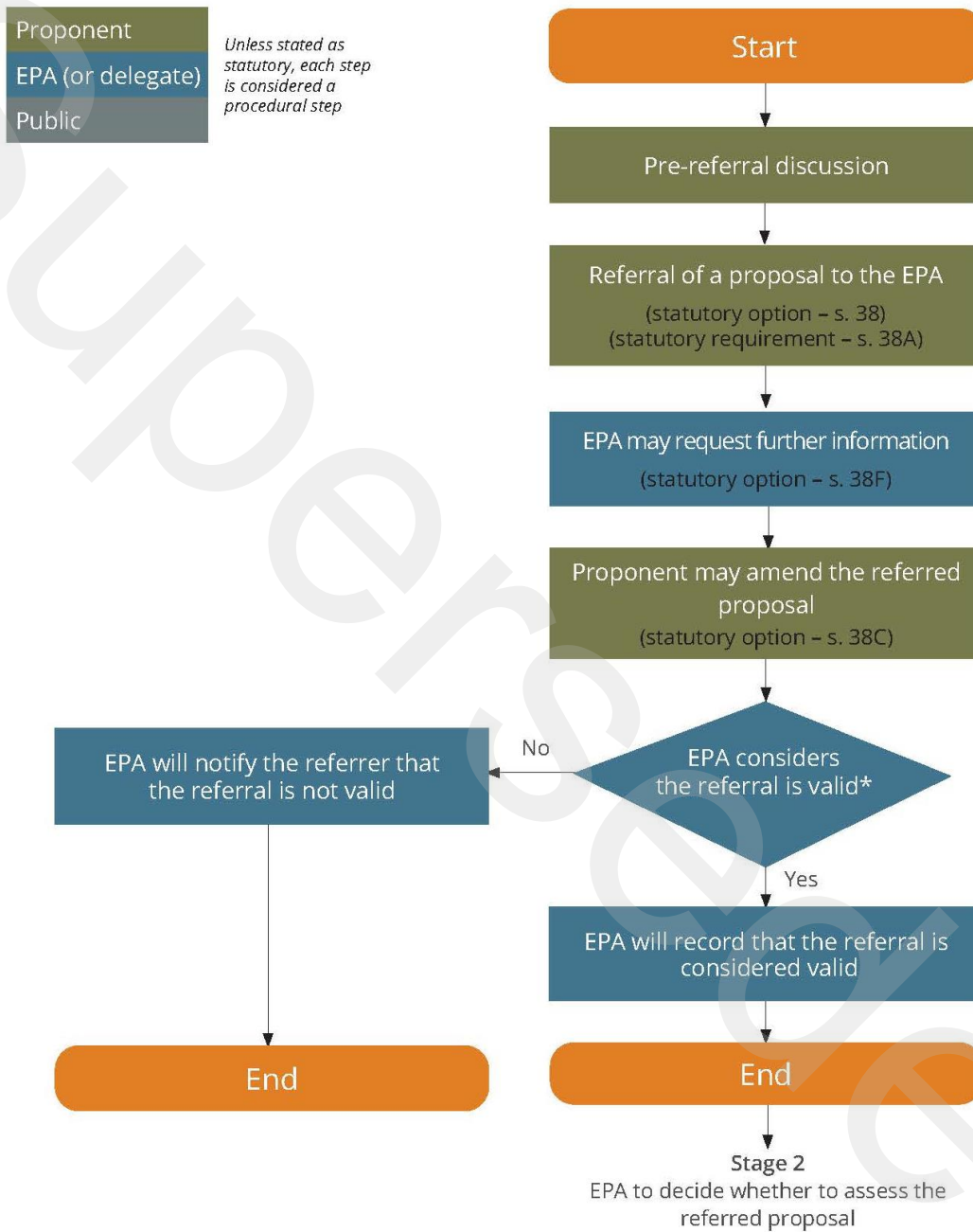
Some proposals will need to be assessed through the Commonwealth *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act) as they raise Matters of National Environmental Significance. The EPBC Act provides for the State and Commonwealth to enter bilateral agreements to streamline environmental assessment and approval processes. The existing (2014) Assessment Bilateral Agreement between the State of Western Australia and the Commonwealth no longer operates in relation to the EPA's assessment of proposals under Part IV of the EP Act. However, the Commonwealth currently accredits EPA assessments on a case-by-case basis. This process is referred to as an accredited assessment. Based on current practice, the steps for an accredited assessment are the same as the requirements under the 2014 Assessment Bilateral Agreement. The steps for both an Assessment Bilateral Agreement and an accredited assessment are outlined in the Procedures Manual. The Procedures Manual will be updated to reflect the requirements of any new or updated bilateral agreement between the State and Commonwealth under the EPBC Act as necessary.

### Cost Recovery

The EP Act now allows for the costs associated with EIA to be recovered from proponents. If the State Government progresses cost recovery for Part IV, Division 1 and 2, the Regulations will be updated to reflect this.

## Stage 1 – Referral of a proposal to the EPA (s. 38 to s. 38D)

See Figure 2 for a summary of the procedures for **Stage 1 – Referral of a proposal**. There are separate procedures to amend a proposal after referral to the EPA – see Figure 3 in section 1.5.



\* The EPA may consider validity any time, up to deciding on whether to assess the referred proposal

**Figure 2: Stage 1 – Referral of a proposal**

**Stage 1 – Referral of a proposal** starts with either:

1. pre-referral discussions (optional), or
2. referral of a proposal to the EPA.

## 1.1 Pre-referral process

### 1.1.1 Proponent referrals

When a proponent intends to refer a proposal, or the proposal has a 'prescribed class', the EPA encourages the proponent to request a pre-referral meeting with DWER to discuss the proposal. This may be to:

- identify possible preliminary key environmental factors
- recommend stakeholder consultation
- explore proposal alternatives
- identify potential environmental impacts, including those on Matters of National Environmental Significance
- identify holistic impacts
- identify cumulative environmental impacts
- discuss application of the mitigation hierarchy
- undertake preliminary consideration of the significance of environmental effects
- consider the environmental outcomes and the EPA's objectives for environmental factors
- discuss potential assessment pathways for the proposal, including possible level of assessment requirements (see section 2.3.1) if the EPA is likely to assess the proposal
- put forward the aims of EIA.

See the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#) for the EPA's objectives for environmental factors, and for guidance on the mitigation hierarchy and the aims of EIA.

Where a proponent aims to provide sufficient information with the referral (at the referral stage) to enable the EPA to set Referral Information as the level of assessment (see section 2.3.1), the proponent may:

- prepare one or more supplementary reports as supporting documentation for the referral (see section 1.4 for referral requirements) following the requirements of an Environmental Review Document (ERD) (see section 3.1.2)
- ask the EPA to review the draft supplementary report before referral.

## 1.2 Referral of proposal (s. 38)

### 1.2.1 Types of proposals

#### Proposals

The EP Act defines a proposal as a project, plan, program, policy, operation, undertaking, development or change in land use but not a planning scheme.

#### Significant proposals

Most referrals that the EPA receives under s. 38 of the EP Act are **significant proposals**. For guidance on 'significance', see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

#### Significant amendments

A significant proposal includes the significant amendment of an approved proposal (see section 3.2). A significant amendment means:

- a proposal that is or includes an amendment to an approved proposal which is likely (if implemented) to

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have a significant effect on the environment; or

- a proposed amendment to the implementation conditions of an approved proposal (if implemented) is likely to have a significant detrimental effect on the environment in addition to, or different from, the existing implementation conditions.

To determine whether a proposal includes an amendment to an approved proposal, the EPA will need to consider whether the proposal is related to or connected with the approved proposal. The EPA will consider matters such as whether the significant amendment will cause any change to an approved proposal (including extending the life of the proposal) or whether there are new elements (or expansions to existing elements) of the approved proposal.

If there is any uncertainty about whether a proposal is a significant amendment or a new proposal, the EPA encourages proponents to request a meeting with DWER to discuss the proposal.

### Strategic proposals

A proponent may refer a **strategic proposal**, which is a future proposal or a proposal that could have a significant effect on the environment. A strategic proposal can only be referred by the proponent. Examples of strategic proposals may include:

- a plan for the future staged development of an industrial precinct
- a structure plan for the future staged urban development of land
- options for alignments of future infrastructure
- a plan for the future staged development of an aquaculture zone.

### Proposal under an assessed scheme

As noted above, assessment of planning schemes is not included in this Procedures Manual, although a proposal under an assessed planning schemes can be subject to a Division 1 and 2 assessment. Planning schemes allow for future proposals, notably subdivision and development. Normally, an assessment of a planning scheme will take into account likely environmental impacts which can then be managed by the planning process.

Occasions may arise where a proposal under an assessed planning scheme may have significant effects on the environment, and:

- these effects were not considered at the time of the scheme assessment, or
- the proposal is not consistent with the assessed scheme.

In these cases, the relevant decision-making authority must refer that proposal to the EPA (s48J(3)). Alternatively, the decision-making authority could refuse to approve that proposal.

## 1.3 Calling in a proposal (s. 38A)

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to call in a proposal (under s. 38A) that could be considered a significant proposal, if it hasn't already been referred.

If the EPA uses this power, a proponent or decision-making authority must refer the proposal to the EPA.

If the EPA calls in a proposal, the procedures set out the process for proponents or decision-making authorities to refer a proposal.

## 1.4 Referral requirements (s. 38B)

A referral must be in writing. The EPA has developed a s38 referral form (see [Instructions: Referral of a proposal under s. 38 and form: Referral of a proposal under s. 38](#)) for the provision of referral content.

The form is used for significant proposals, strategic proposals, proposals of a prescribed class and proposals under an assessed scheme.

The EP Act sets out who may or must refer (see also section 1.2 and 1.3 of the Administrative Procedures).

Where a proponent refers a proposal, the EPA requires enough information to enable it to decide whether to assess the proposal. The referral should include the information in section 1.4.1. It is the proponent's responsibility to identify the content of their proposal. While the EPA will assess the significance of a referred

proposal and may (if it assesses that the proposal) recommend limits on a referred proposal, the EPA is not responsible for identifying or defining the content of a proposal as referred to it.

The EPA requires that proposals, when referred, are identified in their entirety. Identifying and referring only part of a proposal or referring parts of a larger proposal as separate referrals, should be avoided.

The content of a proposal can be amended after referral (s. 38C), during assessment (s. 43A) or after assessment (s. 45C).

Where a proposal is referred by someone who is not the proponent, the referral must include the content in section 1.4.1 below, as far as possible, and should include enough information so that the EPA can decide whether to assess the proposal.

#### 1.4.1 Content of the referral

Referrers are required to complete the information listed below which is set out in detail in the [Instructions and form: Referral of a proposal under s. 38](#). The EPA also requires referrers to identify the proposal according to the [Instructions and template: How to identify the content of a proposal](#).

Referral information:

- Part A: proposal information, including:
  - proposal type
  - proposal content: including a proposal content document that follows the [Instructions and template: How to identify the content of a proposal](#), which should identify the key proposal elements (the elements most likely to cause significant environmental effects)
  - to the extent reasonably practicable, a description of any feasible alternatives to the proposal, including a comparative description of the environmental impacts of each alternative, and enough detail to make it clear why any alternative is preferred to another.
- Part B: Environmental impacts, including:
  - environmental factors
  - likely environmental impacts relevant to environmental factors and environmental values
  - likely cumulative environmental impacts
  - likely holistic impacts
  - application of the mitigation hierarchy
  - assessment of residual environmental impacts, including whether there are significant residual environmental impacts
  - likely environmental outcomes and the consistency of these with EP Act principles and the EPA's objectives for environmental factors
  - consultation: whether consultation has been undertaken, a summary of the process and outcomes, or justification if no consultation has occurred
- Part C: Other approvals and regulation, including:
  - other statutory decision-making processes, including those which can mitigate the potential impacts of the proposal on the environment
  - a request that the proposal be dealt with as a bilateral matter under a **bilateral agreement**, or that the assessment be undertaken as an **accredited assessment**.

The information provided on the referral form (with any supporting documents) should be appropriate for the:

- elements of a proposal that have the potential to have a significant effect on the environment (proposal elements)
- relevant environmental factors and the proposal's stage of development.

The quality of information provided to the EPA during the referral stage about the proposal elements, and their likely environmental effects, may affect expected (non-statutory) timeframes, as well as the EPA's

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decision on whether to assess a proposal. The EPA may also request further information (requisition) (see section 2.1) if it does not have enough information to decide whether to assess the proposal.

The EPA requires spatial data for proposal boundaries. The proponent is required to provide either a proposal footprint (location within which the physical proposal elements will occur) and/or development envelope (the maximum areas within which the proposal footprint will be located). A development envelope provides flexibility for the location of the physical elements of a proposal. Should the proponent choose to provide a development envelope, the EPA expects them to assess (and conduct surveys) of the environmental impacts of all areas that may be impacted, not just the indicative footprint within the larger development envelope.

The EPA expects the proposal content and likely environmental outcomes to be well understood and articulated for those seeking an assessment based on referral information. The additional time and processes associated with a Public Environmental Review (PER) (when compared with an assessment on referral information) provide more flexibility for proponents that may not have a full understanding of the proposed environmental effects of a proposal. Those expecting a PER may seek to make amendments to the proposal during assessment (see section 3.9) and provide more detailed assessment of the environmental effects of the proposal in their ERD.

When proponents submit supplementary report/s with their referral forms, the EPA encourages them to follow the relevant guidance (section 3.1.2), including:

- Instructions and template: How to prepare an Environmental Review Document.
- Instructions and template: How to prepare Part IV environmental management plans.
- Interim guidance: Environmental outcomes and outcomes-based conditions.
- Department of Mines, Industry Regulation and Safety's (DMIRS) *Statutory guideline for mine closure plans* and *Mine closure plan guidance – how to prepare in accordance with the statutory guidelines* (for mining proposals).

For each terrestrial biodiversity survey report, proponents should submit an Index of Biodiversity Surveys for Assessment (IBSA) data package via the online submissions portal – following the instructions and form for IBSA data packages. Similarly, when proponents submit a marine survey report, it must be accompanied by an Index of Marine Surveys for Assessment (IMSA) data package as part of the supporting documentation, following the instructions and form for IMSA data packages.

#### 1.4.2 Supporting information for a significant amendment

In addition to the information required in section 1.4.1, referrals of significant amendments are also required to have information about:

- The approved proposal, so the environmental effects of the significant amendment may be considered in the context of the approved proposal.
- The combined effects that implementation of the approved proposal and the significant amendment might have on the environment.
- Whether the significant amendment relates to an amendment of the approved proposal, an amendment to the implementation conditions of an approved proposal, or both.
- The existing implementation conditions relating to the approved proposal and whether the proponent considers they should be inquired into. This should include consideration of whether the existing implementation conditions are adequate to ensure the proposal's ongoing elements are consistent with the EPA's environmental factor objectives.

#### 1.4.3 Supporting information for request for derived proposal

Applications for requests for derived proposals must have enough information to enable the EPA to decide whether to make that declaration (see [Administrative Procedures](#) relating to s. 38E of the EP Act and section 2.5).

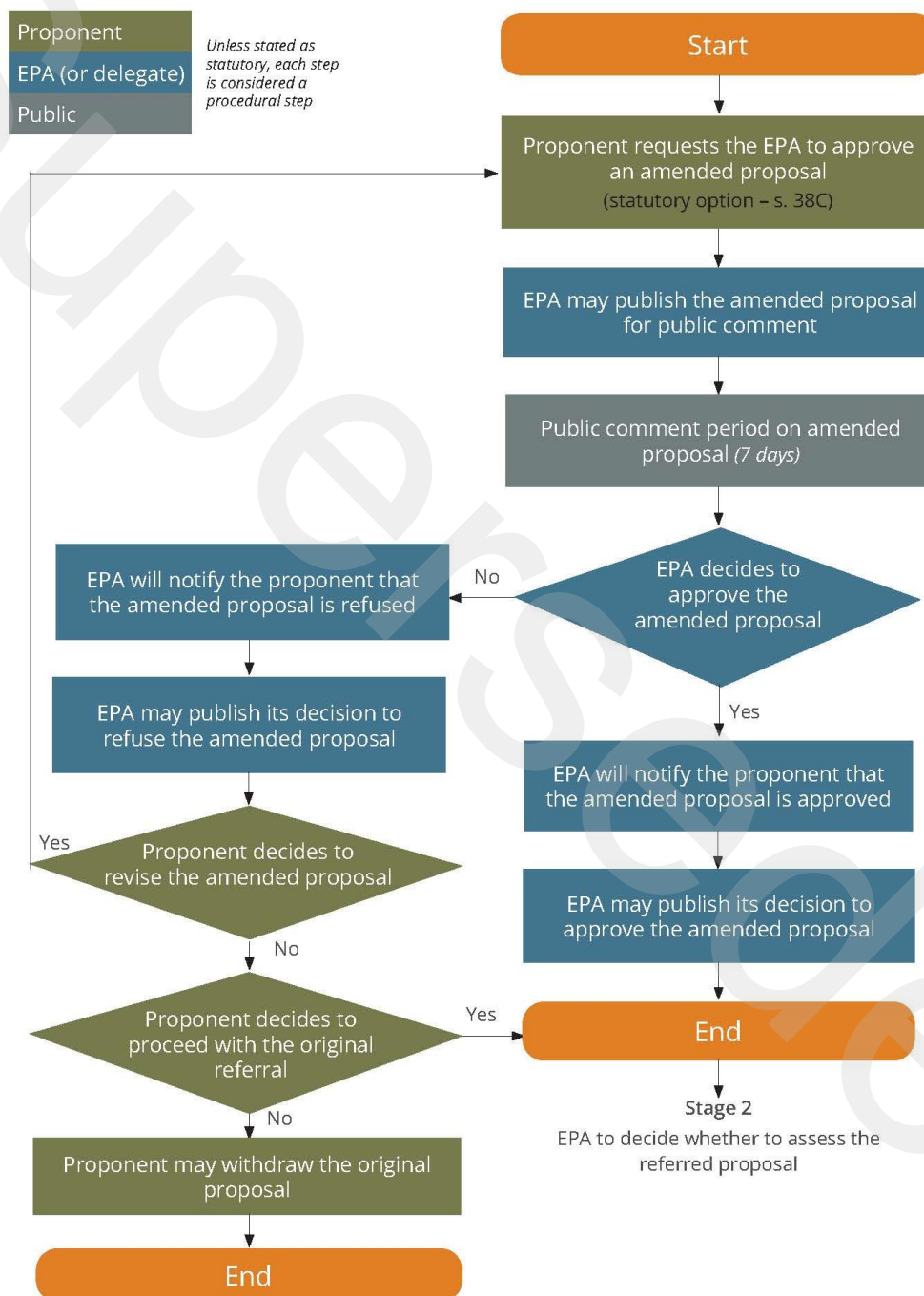
The proponent's supporting information needs to demonstrate how the proposal will meet the environmental outcomes defined through the assessment of the strategic proposal (see section 3.4), including any conditions in the Ministerial statement.

The EPA requires proponents to consult with relevant stakeholders and provide evidence of this in the

documentation accompanying their request.

### 1.5 Amending a referred proposal (s. 38C)

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to determine to approve, or refuse to approve, a proponent's request to amend a proposal before the EPA decides whether to assess the proposal (s. 38C).



**Figure 3: Stage 1 and 2 – Referral of a proposal: Amend referred proposal**

Applications for changes to a proposal during referral (s 38C) will usually be made public, subject to the Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021.

Section 1.5.1 sets out the information the EPA needs to decide whether to approve the proposed

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amendment. The necessary level of detail depends on the nature of the amendment and its potential impacts on the environment.

The quality of information in the request about the nature of the proposal elements, as well as the likely environmental effects of the proposed amendment, may affect the expected (non-statutory) timeframes. It may also affect the EPA's decision on whether to approve the proposed amendment. There may also be delays to expected (non-statutory) timeframes if adequate information is not provided and the EPA requires further information.

Note: An application under 38C restarts the 28 days that the EPA has to decide whether or not to assess a proposal. See section 2.1 for more information.

### 1.5.1 Process to request EPA approval for an amendment to a proposal

The process to request EPA approval for an amendment to a proposal is:

- proponents should identify the need to amend a referred proposal as early as possible in the referral process
- proponents must request an amendment of a referred proposal in writing, according to the [Instructions and form: Amending a referred proposal under s. 38C](#)
- the EPA may release the proposal as requested to be amended, and associated information for public comment before making its decision to assess the proposal
- the EPA will decide whether to approve the request, considering in particular:
  - whether the amended proposal will still be substantially the same character as the original proposal
  - the significance of the proposed amendment (for guidance on significance, see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#)).

If the EPA's view is, if the proposal were approved, and the amendment was considered significant, then the EPA may refuse the amendment and require a fresh referral of the new significant proposal.

If the EPA approves the amendment, the amended proposal will be considered to be the referred proposal. The EPA is then required to decide whether or not to assess it.

If the EPA refuses the proposed amendment, the proponent may:

- decide not to proceed with the amendment, OR
- revise the amendment to reduce the environmental effect of the proposed amendment and resubmit the request, OR
- withdraw the referred proposal (see section 1.6) and refer a new one.

Once the EPA has made its decision it:

- will notify the proponent in writing of its decision to approve or refuse the request for an amendment of a referred proposal
- will usually publish its decision on the EPA's website, and
- will usually publish a summary of reasons for its decision on the EPA website.

### 1.5.2 Content of the request for EPA approval for an amendment to a proposal

The EPA requires the proponent to provide information following the Instructions and template: Amending a referred proposal under s. 38C, including:

#### 1. Reason for and content of proposed amendment

- The reasons for the proposed amendment.
- The content of the proposed amendment (including consolidated updated proposal content document).
- Proposal alternatives.

## 2. Regulatory information

- Referral details.
- Any changes to decision-making authorities or statutory processes and whether they can mitigate the potential impact of the proposal on the environment.

## 3. Identification of environmental factors and environmental effects

- Identify relevant environmental factor/s and identify likely environmental effects.
- Whether any additional information is needed to enable the EPA to continue processing the referral (see 5 and 6).

## 4. Consultation

- Whether any consultation has been undertaken, including decision-making authorities and any targeted consultation
- Summarise the consultation process and outcomes
- Justify if consultation has not been undertaken.

## 5. Additional surveys, investigations, and other information (if needed)

- Discuss and provide additional information that has been obtained since the original referral, such as surveys, investigations and other information about the proposed amendment.

## 6. Discussion of significance (if needed)

- Discuss whether a significant effect on the environment is likely (including cumulative environmental impacts and holistic impacts).
  - from the effects of the proposed amendment on its own
  - from the whole proposal if the amendment were approved, in the context of the original proposal.
- Discuss any change in likely environmental outcomes, and the consistency of these outcomes with the EP Act principles and the EPA's objectives for environmental factors, in the context of the original proposal.

## 1.6 Not proceeding with a referred proposal (s. 38D)

Where the EPA receives written notice that a proponent does not wish to proceed with the referred proposal:

- The EPA will write to the proponent and acknowledge that the referred proposal has been withdrawn under s. 38D (1).
- The EPA may publish the proponent's notice on its website, as well as information that the referred proposal is withdrawn.

## 1.7 EPA considers if referral is valid

While not specified in the EP Act, the EPA can consider that a referral is not valid. The matters relevant to this consideration are set out in section 1.7 of the [Administrative Procedures](#).

Note: Information which the EPA considers in Stage 2 may require it to reconsider whether the referral is valid.

**Stage 1 – Referral of a proposal ends when the EPA either:**

1. records that a referral is considered valid, or
2. notifies the referrer that it is not a valid referral.

## Stage 2 – EPA to decide whether to assess a referred proposal (s. 38E to s. 39)

See Figure 4 (significant and strategic proposals) and Figure 5 (derived proposals) for a summary of the procedures for Stage 2 – EPA to decide whether to assess a referred proposal relating to s. 38E to s. 39 of the EP Act.

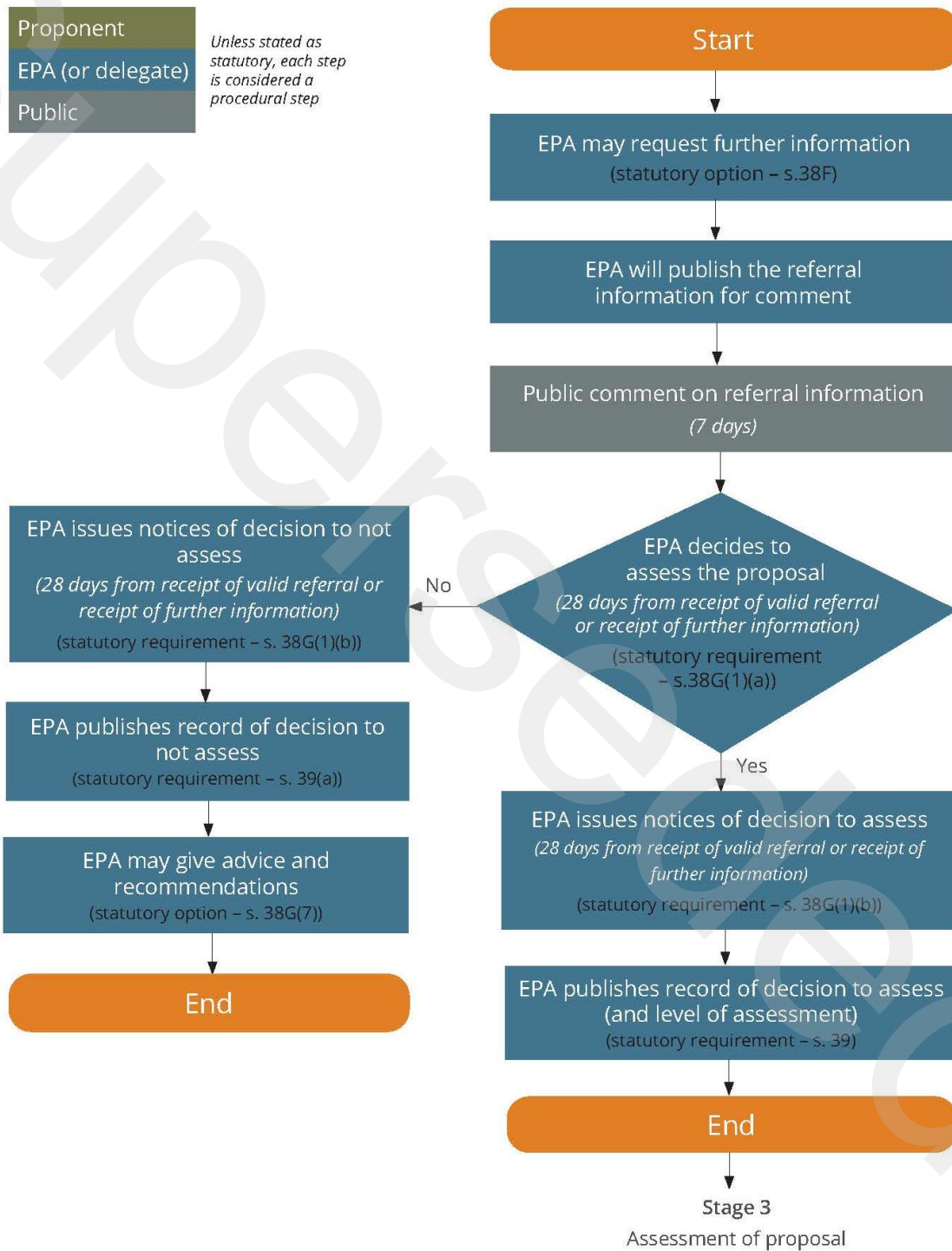
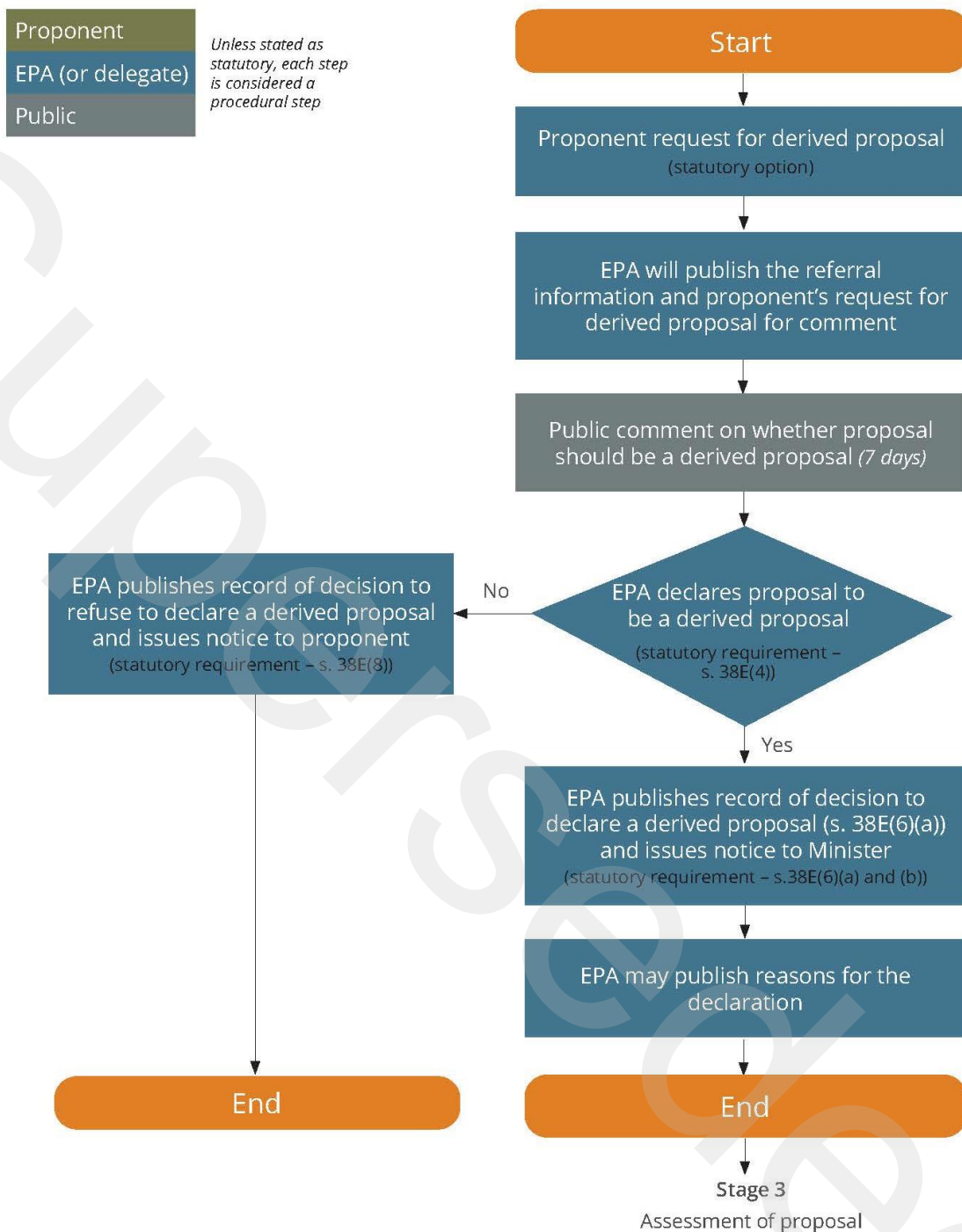


Figure 4: Stage 2 – EPA to decide whether to assess a proposal (significant and strategic proposals)



**Figure 5: Stage 2 – EPA to decide whether to assess a proposal (derived proposals)**

**Stage 2 – EPA to decide whether to assess a referred proposal** starts when the EPA records that a referral is considered valid.

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## 2.1 Request for further information – requisition (s. 38F)

The EP Act requires the EPA to decide whether to assess a proposal within 28 days of receipt of that referral. However, the EPA can stop this 28 day 'clock' if it considers it doesn't have enough information about the proposal to decide if it should be assessed (s.38F). If it decides it doesn't have enough information, then it will issue a requisition seeking that additional information and set a deadline (compliance period) for its supply. Requisitions will stop the 28-day clock and it will only restart once the EPA is satisfied it has received the requested information. Subsequent requisitions will follow the same process. For example:

- Day 1: Proponent (or third party) refers a proposal – the EPA reviews the referral and considers the proposal to be a valid proposal
- Day 7: EPA releases the referral for seven-day public comment
- Day 14: Public comment period closes
- Day 21: EPA considers further information is required and sends a requisition with a set compliance period (usually two to four weeks depending on the complexity of the request) to the proponent – the clock stops
- Day 22: the proponent provides the information within the compliance period, the EPA reviews the information provided and considers that the information satisfies the requisition – the clock restarts
- Day 28: the EPA publishes its decision

The EPA will endeavour to limit the number of information requests, noting its ability to do this is affected by the quality and adequacy of the proponent's information.

If a requisition is issued to the person who referred the proposal and the compliance period ends without them responding, the EPA may, by writing to the person, declare the referral has been withdrawn (s 38F (4)).

Where a proposal has been referred by a third party and a proponent has not complied with a requisition within the compliance period (s. 38F(4)), the EPA is not able to declare the referral withdrawn without the proponent's consent.

Before making a decision on whether to assess a proposal, the EPA will consider whether any information it intends to use to make the decision is adverse to the proponent. If any information which the EPA may rely on may be adverse to the proponent and the proponent has not had an opportunity to comment, the EPA will give the proponent an opportunity to comment on the substance of this information.

## 2.2 EPA to decide whether to assess a referred proposal (s. 38G)

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties in s. 38G(1)(a) to decide whether to assess a proposal.

The Executive Director of the EPA Services Directorate of the DWER has a delegation from the EPA to exercise the powers and duties in s. 38G(1)(b) and s. 38G(5) to issue the required notices relating to the EPA's decision.

See the [Administrative Procedures](#) for the procedures which apply to the EPA's decision whether to assess a proposal.

When deciding whether to assess a proposal, the EPA will consider its significance and may also consider other matters. For guidance on how the EPA determines 'significance', see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

The EPA may also consider whether there are other statutory decision-making processes that can mitigate the proposal's impacts on the environment (s. 38G(4)). If the EPA does so, it will consider the proposal's potential impacts and whether the EPA's objectives for relevant environmental factors are likely to be met through the decision-making processes. For further details on the matters the EPA may consider, see the [Interim guidance for taking decision-making processes into account in EIA](#).

In addition to considering information submitted with the referral, the EPA may carry out its own investigations and inquiries before deciding whether to assess a proposal. The extent of the investigations and inquiries depends on the quality of information provided with the referral and the nature of the proposal and its likely environmental effects. The EPA may also request further information under s. 38F, usually from the proponent and/or relevant decision-making authorities and other government agencies.

In some cases, information obtained in these processes may require the EPA to reconsider whether the referral is valid.

### 2.2.1 Public comment on referred proposals

While it is not a statutory requirement, members of the public are invited to comment on whether or not the EPA should assess a proposal and, if so, the level of assessment (see section 2.3.1) that should apply. The EPA may also invite public comment on amendments to referred proposals (which the proponent has requested) before it makes its decision whether to assess.

The EPA may use any relevant information obtained from public comments to consider the proposal's likely impacts on the environment, and to gauge the level of public interest about the likely effect of the proposal, if implemented, on the environment.

If the proposal may impact on Matters of National Environmental Significance (as a potential controlled action), the EPA may ask the Commonwealth to provide advice on the adequacy of referral documentation, in parallel with the public comment period.

#### 2.2.1.1 Making a submission to the EPA

The EPA prefers that submissions throughout the EIA process are made electronically via the EPA's Consultation Hub at [consultation.epa.wa.gov.au](https://consultation.epa.wa.gov.au). The Consultation Hub enables the EPA to track and acknowledge submissions.

Alternatively, submissions can be:

- **posted to:** Environmental Protection Authority, Locked Bag 10, Joondalup DC WA 6919
- **delivered to:** Environmental Protection Authority, Prime House, 8 Davidson Terrace, Joondalup WA 6027

The EPA cannot guarantee receipt of submissions delivered by other methods.

Submitters may ask the EPA to treat their personal contact details as confidential. A request for confidentiality does not make a submission automatically exempt from disclosure.

A submission (or part thereof) may still be disclosed if required under the *Freedom of Information Act 1992*, under court order, for procedural fairness purposes or under any other applicable law.

The EPA *will not* accept submissions received after the closing date unless there are exceptional circumstances.

## 2.3 Decision to assess

See the [Administrative Procedures](#) for procedures that apply when the EPA decides to assess a proposal.

### 2.3.1 Level of assessment

See the [Administrative Procedures](#) for the procedures that apply to the EPA's decision about the level of assessment.

When deciding the level of assessment and the requirements for the proponent, the EPA *may* have regard to matters relevant to its decision whether to assess (see section 2.2), and matters such as:

- the nature of the proposal and number and complexity of preliminary key environmental factors relevant to the proposal
- whether any environmental impacts likely to arise from the proposal are well understood and there is an established condition-setting framework available to mitigate those impacts
- the level of public interest in the likely effect of the proposal, if implemented, on the environment.

The EPA records the level of assessment (as required by s. 39(b)) by:

- referring to the type of information the proponent is required to provide for its assessment
- outlining whether any of the additional assessment information is required to be made available for public review, and
- specifying the section/s of the EP Act that any requirements relate to.

The EPA will usually set one of the levels of assessment below:

**Referral Information (s. 38, and where applicable s. 38C, s. 38F and/or s. 38G(3)(c)):** where the EPA determines that it has enough information to assess the proposal from the referral information obtained under s. 38 (and where applicable, information provided as part of an amended proposal under s. 38C, from a request/s for further information under s. 38F, and/or from the EPA's investigations and inquiries under s. 39G(3)(c)).

**Referral Information (with additional information) (s.40(2)(a)):** where the EPA determines that it needs information in addition to the information it has from the referral information. Any additional information will be required by a separate notice under s. 40 (2) (a) and can include information about the results of additional targeted consultation.

**Referral Information (with or without additional information) with public review (s.40(2)(a) and s.40 (5)):** where the EPA determines that the information it has from the referral information (and additional information where relevant) should be made available for public review. Any additional information will be required by a separate notice under s. 40 (2) (a).

**Environmental review – No Public Review (s. 40(2)(b))** – where the EPA determines that an environmental review is required under s. 40(2)(b), but the report on the environmental review (Environmental Review Document) will not be made public.

**Public Environmental Review (s. 40(2)(b) and s. 40(5))** – where the EPA determines that an environmental review is required under s. 40(2)(b) and the Environmental Review Document is to be made available for public review under s. 40(5).

The EPA *may* also include other information with the level of assessment (in the record required by s. 39(b)), as the EPA has a discretion under s. 40 of the EP Act to determine the information which it requires for its assessment.

Example – other descriptor of level of assessment:

If a proposal has a technical issue relating to one preliminary key environmental factor, the EPA may decide that it needs additional information for its assessment, rather than the proponent undertaking an environmental review. The additional information required is a technical report and an independent peer review of that technical report. The EPA may also determine that the technical report and peer review should be made available for public review. For this example, the level of assessment would be:

**Technical report and peer review of technical report** – public review required (s. 40(2)(a) and s. 40(5)).

### 2.3.1.1 Type of information required for the EPA's assessment

The type of information the EPA requires for its assessment is initially set out in the level of assessment decision.

The EPA may also decide it requires other information for the purposes of assessing the proposal after its level of assessment decision. The EPA may make this decision at any time before the EPA Assessment report is published under s. 44 of the EP Act. And it may use its powers under s. 40 to obtain this information.

#### **Environmental review document**

The EPA often requires the proponent to undertake an environmental review (under s. 40(2)(b)) and provide an Environmental Review Document (ERD) as the report on the environmental review.

Where an environmental review is required, the EPA *will* include information related to scoping of the ERD with the level of assessment (see section 3.1.1). This involves the preparation of a separate Environmental Scoping Document (ESD) which outlines the preliminary key environmental factors, any specific work required and key areas of focus for the environmental review.

There are two matters that the EPA considers with respect to the ESD:

- whether the EPA or the proponent will prepare the ESD, and
- whether the ESD will be released for public review and, if so, the public review period, which is *usually* two weeks.

The EPA will usually require the proponent to prepare the ESD for proposals. The proponent is then required to must then prepare the ERD in accordance with the ESD. The EPA may prepare an ESD for proposals that are particularly complex and/or where there is considerable public interest.

#### Other information or reports

In some circumstances, the EPA may require other information or reports under s. 40 instead of, or in addition to, an ERD. For example, the EPA may require a scientific report, an independent peer review of an existing scientific report or the results of targeted consultation.

The EPA has wide discretion under s. 40 of the EP Act to determine the other information it needs for its assessment.

#### 2.3.1.2 Whether any information is made available for public review

Under s. 40, the EPA *may* make information or reports provided to it for the assessment available for public review. This usually takes the form of the ERD but can also include additional information described in the level of assessment decision. The EPA *may* also specify public review of other information or reports described by s. 40 at any time before publishing its assessment report under s. 44 of the Act. The EPA *may* also make any referral information (provided under s. 38, s. 38C and s. 38F) available for public review.

Where the EPA identifies a need for the public review of this information, for proposals subject to an assessment, the length of the public review period for the ERD (or other additional assessment information) will be included with the level of assessment. The review period for an ERD is usually two to 12 weeks.

The key considerations for the EPA in deciding whether to make information available for public review and the length of the public review period include, but are not limited to:

- the level of public interest in the likely effect of the proposal, if implemented, on the environment
- whether the public interest is at a local, regional or broader scale
- the significance of the potential impacts on the environment
- the nature of the proposal, and its potential impacts on the environment
- likely environmental outcomes and the consistency of these with the EP Act principles and the EPA's objectives for environmental factors.

In certain circumstances the EPA may extend the public review period. These circumstances *may* include the following:

- the review period coincides with public holiday periods (two weeks will be added to public review periods which occur over the Christmas break)
- the EPA is unable to receive submissions through the Consultation Hub
- the proponent requests an extension to the public review period
- parts or all of the documents are unavailable during the review period
- other exceptional circumstances.

## 2.4 Decision not to assess (s. 38G(7))

See the [Administrative Procedures](#) for the procedures that apply when the EPA decides not to assess a proposal. In deciding not to formally assess a proposal, the EPA determines that no further assessment by the EPA is required. In deciding not to assess a proposal, the EPA *may* carry out its own investigations and inquiries, in addition to considering information submitted with the referral. The extent of the investigations and inquiries depends on the quality of information provided with the referral, and the nature of the proposal and its likely environmental effects. The EPA *may* also request further information under s. 38F, usually from the proponent and/or relevant decision-making authorities and other government agencies.

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The EPA may also consider whether there are other statutory decision-making processes that can mitigate the potential impacts of the proposal on the environment (s. 38G(4), such as Part V Division 2 of the EP Act dealing with clearing of native vegetation. Where the EPA considers that the proposal can be dealt with under another statutory decision-making process, it may liaise with relevant decision-making authorities before making the decision.

The EPA will also decide whether to give advice and make recommendations on the environmental aspects of the proposal. If the EPA gives advice and/or recommendations under s. 38G(7), it may provide advice at the time of its decision, including, but not limited to the following formats:

- written advice directly to the proponent or any other relevant person or authority
- public advice published on the EPA website.

If the EPA decides not to assess a proposal, the Executive Director, EPA Services Directorate of the DWER has a delegation from the EPA to exercise the powers and duties in s. 38G(7) to give advice and make recommendations on the environmental aspects of the proposal.

#### 2.4.1 Appeals on EPA decision not to assess

In many cases, the decision of the EPA to not assess a proposal can be appealed. If the 'not assessed' decision relates to a clearing proposal and the EPA decides that the potential environmental impacts can be mitigated by the EP Act Part V clearing permit process, that decision is not appealable.

Where an appeal is lodged, the Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to report to the Minister on an appeal, as requested by the Appeals Convenor under s. 106(1)(a).

In addition to the procedures set out in the Administrative Procedures, where the Minister remits the proposal to the EPA following an appeal, the EPA *will* publish the remittal on the EPA website.

If the EPA receives a remittal from the Minister, it will apply the procedures of the stage relevant to the remittal, subject to any direction of the Minister included in the remittal.

## 2.5 Derived proposals (s. 38E)

A proponent *may* request that a referred proposal be declared as a derived proposal where:

- there has been a strategic assessment of a strategic proposal and a Ministerial statement has been issued in relation to a strategic proposal, and
- the referred proposal is identified in that Ministerial statement.

Examples of potential derived proposals include:

- an industrial development identified within an industrial precinct assessed as a strategic proposal
- a plan of subdivision identified in a structure plan assessed as a strategic proposal
- options for alignments of future infrastructure
- a fish farm identified in a plan for an aquaculture development zone assessed as a strategic proposal.

#### 2.5.1 Public comment on request to declare a derived proposal

Members of the public are invited to comment on whether or not the referred proposal should be declared a derived proposal.

The procedures for public comment on a request to declare a proposal a derived proposal are the same as the procedures for public comment on a referred proposal (see section 2.2.1).

#### 2.5.2 EPA to decide whether to declare a derived proposal

To decide whether to declare a derived proposal, consistent with the requirements of s. 38E(4) and s. 38E(5) (see the [Administrative Procedures](#)) the EPA may require proponents to submit some or all of the plans and other relevant documents that the conditions in the strategic proposal Ministerial statement may specify (see section 4.2.6).

## 2.6 Record of referred proposals (s. 39)

### 2.6.1 Record of decision to assess

If the EPA decides to assess a proposal, the EPA *will* include the following in the record (usually published as the Chair's Determination on the EPA website):

- proposal and referral details
- decision to assess
- level of assessment, as required by s. 39(b) and scoping and/or public review information (see section 2.3.1).

The EPA *may* also include other information, such as:

- referrer details
- the potential significant effects of the proposal, including environmental impacts that integrate across a proposal, such as mine closure
- the preliminary key environmental factors for the assessment
- explanation of the EPA's decision.

### 2.6.2 Record of decision not to assess

If the EPA decides not to assess a proposal, the EPA *will* include the following in the record:

- proposal and referral details
- decision not to assess and one of the following descriptors:
  - Referral Examined, preliminary investigations and inquiries conducted. Proposal not to be assessed under Part IV of the EP Act – no advice given.
  - Referral Examined, preliminary investigations and inquiries conducted. Proposal not to be assessed under Part IV of the EP Act – advice given.
  - Referral Examined, preliminary investigations and inquiries conducted. Proposal not to be assessed under Part IV of the EP Act – dealt with Under Part V Division 2 of the EP Act (Clearing).
  - Referral Examined, preliminary investigations and inquiries conducted. Proposal not to be assessed under Part IV of the EP Act – dealt with under other statutory decision-making process.

The EPA *may* also include other information, such as:

- referrer details
- the potential effects of the proposal
- explanation of the EPA's decision.

### 2.6.3 Confidential information

The Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021 make provision for maintaining the confidentiality of certain documents.

A proponent may, at the time of referral or at any subsequent time, ask the EPA to keep any part or the whole proposal confidential in the public record of referred proposals.

If a request is made, the EPA will not release the information until it has dealt with the request. Once the EPA has done so it will either:

- agree the information satisfies the criteria for confidentiality and will not include it in the public record (i.e. does not publish the information on the EPA website), or
- disagrees the information is confidential and includes it in the public record (i.e. may publish the information on the EPA website).

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## 2.7 Nomination of proponent (s.38(H))

The proponent is the person or public authority responsible for the proposal. A proponent may be an individual, a corporation or an association of persons, whether incorporated or not.

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA for all of the powers and duties conferred or imposed under s. 38H, which is to nominate the proponent.

The EPA *will* nominate the proponent:

- *usually* when the EPA decides whether to assess a proposal, in the notice under s. 38G(1)(b), or
- at any time, by notice under s. 38H(4).

## 2.8 Change of proponent (s. 38I)

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA for all of the powers and duties conferred or imposed under s. 38I, which is to nominate a change of proponent.

A proponent can be changed at any stage of assessment or implementation after assessment, even if a report on the proposal has been published under s. 44(3) or a statement has been published under section 45(8)(b). The power to change a proponent before the publication of a Ministerial statement is exercised by the EPA; if a Ministerial statement has been published that power is exercised by the Minister. See the [Instructions and forms– Change of nominated proponent under s. 38I \(before and after publication of Ministerial statement\)](#) for further guidance.

In addition to the procedures set out in the [Administrative Procedures](#), when a proponent requests a change of proponent, the existing proponent is to give written notice (by using the [change of proponent form](#)). They must give the person's name to whom they propose to transfer responsibility for the proposal and other information relevant to the EPA's decision on whether to approve the change (s. 38I(1)).

The existing proponent must make the notification before the transfer of responsibility can take place. They should submit the change of proponent form at least 30 days before proposing to cease responsibility for the proposal. The person nominated by the EPA under s. 38H(2) as being responsible for the proposal is still the nominated proponent until the EPA has considered the notice of a change of proponent and nominated the new proponent.

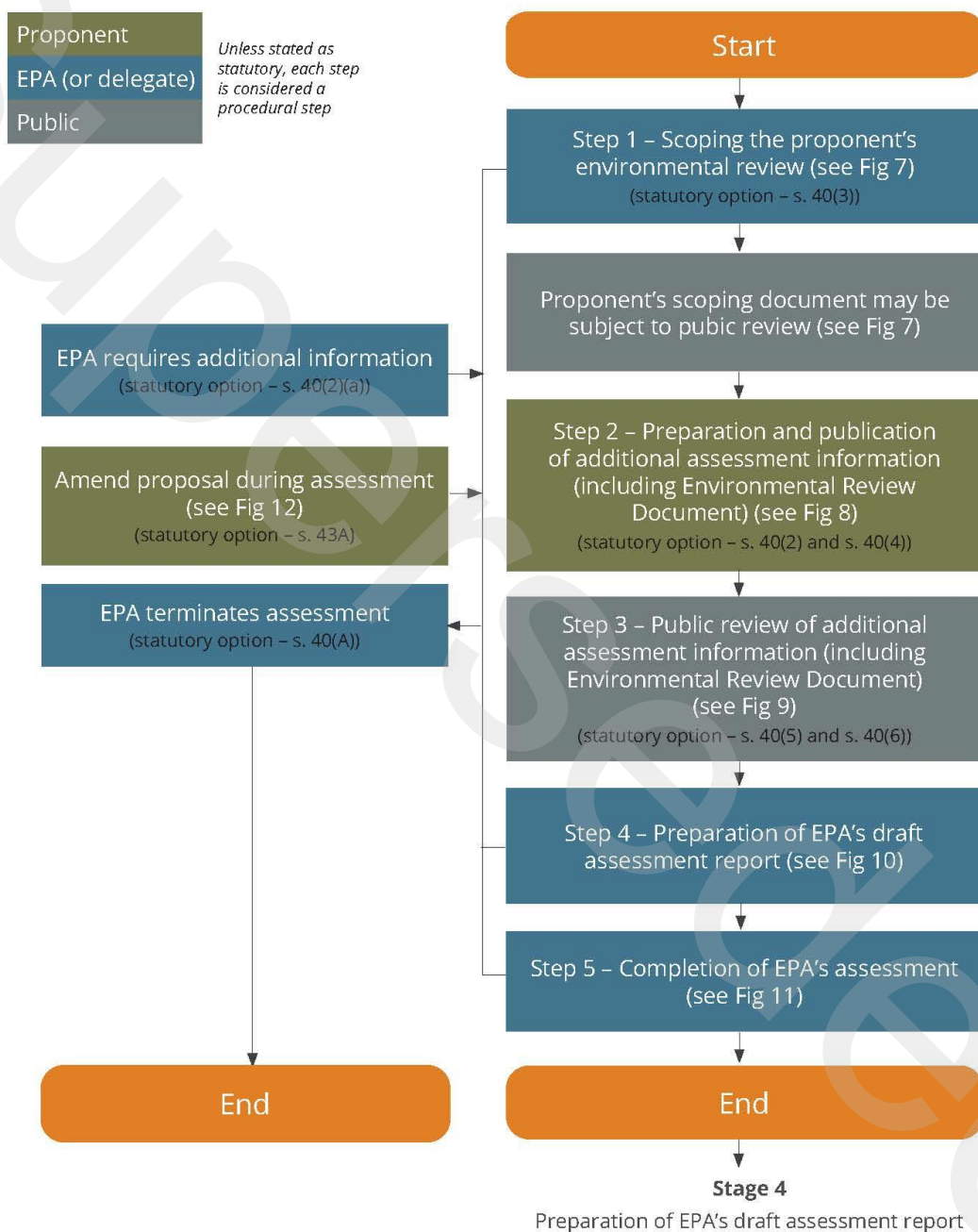
In making a decision to nominate a new proponent, the EPA will usually consider who has the operational control to implement the proposal and comply with the implementation conditions.

**Stage 2 – EPA to decide whether to assess a referred proposal ends** when the EPA:

1. publishes the record of its decision whether or not to assess a proposal (s. 39(a)) and issues the required notices under s. 38G(1)(b), or
2. publishes its decision whether to declare a proposal to be a derived proposal (s. 38E(6)) and issues the required notices under s. 38E.

## Stage 3 – Assessment of proposals (s. 40 to s. 43A)

See Figure 6 below for a summary of the key assessment steps for Stage 3 – assessment of proposals for s. 40 of the EP Act. See figures 7 to 11 in sections 3.1.1 to 3.1.5 for the procedures of the key steps within s. 40. See Figure 12 in section 3.9 for the procedures to amend a proposal during assessment.



**Figure 6: Stage 3 – Assessment of proposals**

**Stage 3 – Assessment of proposals** starts when the EPA publishes its decision to assess a proposal (s. 39a) and issues the required notices under s. 38G(1)(b). There are five steps in the assessment of proposals under s. 40 as well as several other related matters.

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### 3.1 Assessing referred proposals (s. 40)

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties in assessing referred proposals, notably:

- s. 40(2)(a) to require any person to provide it with information
- s. 40(2)(aa) to require the proponent to provide a contaminated sites auditor's report on the proposal
- s. 40(2a) to make other investigations and inquiries
- s. 40(2)(b) to require an environmental review
- s. 40(3) to determine the form, content, indicative timing and procedure of any environmental review
- s. 40(4)(a) and (b) to cause information or a report to be published
- s. 40(5) to declare information or a report published under s. 40(4) to be available for public review and specify the period, manner and extent in which submissions may be made
- s. 40(6)(b) to require the proponent to respond to submissions.

The Executive Director of the EPA Services Directorate of DWER has a delegation from the EPA to administer:

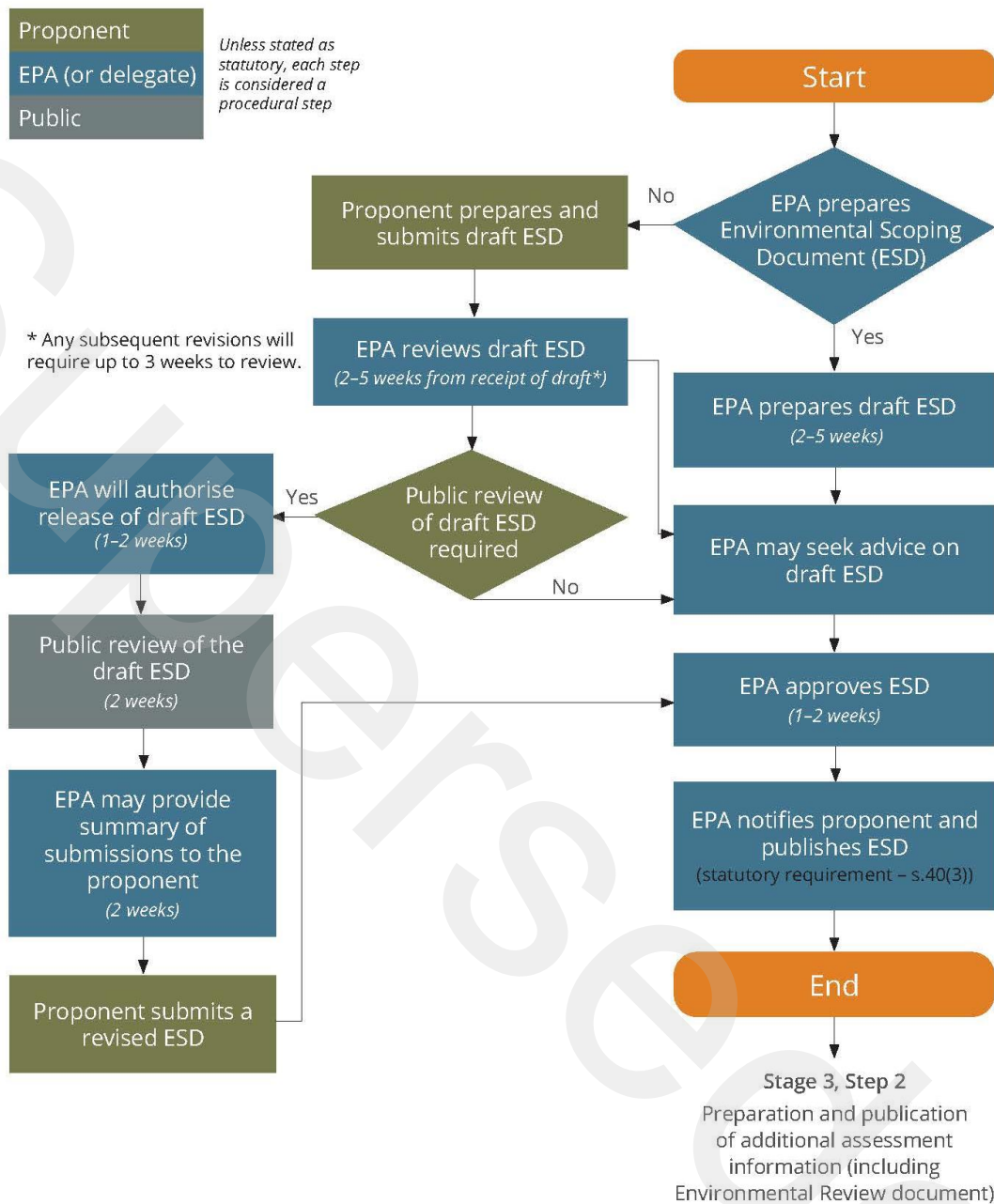
- s. 40(4)(a), s. 40(4)(b) and s. 40(6)(b), as described above.

The same assessment procedures apply to the EPA's assessment of significant and strategic proposals.

The quality of information provided to the EPA during the assessment stage about the proposal elements, as well as the likely environmental effects, may affect the expected (non-statutory) timeframes. It may also affect other processes that the EPA decides to administer under s. 40. For example, the EPA may decide it requires information under s. 40(2)(a) in addition to the information initially set out in the record of the level of assessment (see section 2.3.1) to assess a proposal. Such a request may be made at any time until the Minister causes the assessment report to be published under s. 44 of the EP Act.

#### 3.1.1 Stage 3, Step 1. Scoping the proponent's environmental review

**Stage 3, Step 1 – Scoping the proponent's environmental review** starts when the EPA begins its assessment, where an environmental review is required.



**Figure 7: Stage 3, Step 1 – Scoping**

Where an environmental review is required under s. 40(2)(b), the EPA uses an ESD to set out the primary form, content, indicative timing and procedure of the proponent’s environmental review required under s. 40(3).

The Chair (under delegation from the EPA) will specify the requirement for an ESD, and whether it is to be prepared by the EPA or the proponent, when it publishes the s. 39 record on the level of assessment (see section 2.3).

The EPA *may* also decide it requires other additional information to assess a proposal at any time until the EPA Assessment report is published under s. 44 of the EP Act.

### 3.1.1.1 Content of the Environmental Scoping Document

The EPA uses the ESD template for the preparation of an ESD. For ESDs being prepared by the proponent, the EPA requires them to follow the [Instructions and template: Proponent-prepared Environmental Scoping Document](#) for their ESD.

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The ESD outlines the preliminary key environmental factors, any specific work required and key areas of focus for the environmental review.

The ESD also requires the ERD to be prepared following the [Instructions and template: How to prepare an Environmental Review Document](#), which outlines the form and content requirements for *all* ERDs.

An ESD must include the following information:

### 1. Introduction

- Form, content, indicative timing and procedure of the environmental review.

### 2. Required work

- Any work required for the assessment which was not completed as part of the referral process.
- Any work specific to the proposal required to be included in the ERD.
- That all work in the [Instructions and template: How to prepare an Environmental Review Document](#) (which applies for all ERDs) is required.

### 3. Decision-making authorities

- Outline of decision-making authorities, and decision-making processes that can mitigate the specific potential impacts of the proposal on the environment.

The ESD includes an indicative outline of the timing of the environmental review (indicative timeline), which the EPA is required to publish under s. 40(3).

Where there are major changes to the indicative timeline during the assessment, the EPA:

- *will* update the indicative timeline in consultation with the proponent
- *will* notify the proponent in writing
- *will* publish the updated indicative timeline on the EPA website.

The ESD will usually require that the entire proposal become subject to environmental review, even if the proponent has already completed some parts of the environmental review (e.g., surveys). However, where a supplementary report is provided with the referral that adequately addresses some (but not all) of the preliminary key environmental factors, the EPA may instead require the ESD to cover only the factors that require further work.

For mining proposals, the EPA may require that work relating to mine closure is included in the environmental review (e.g., rehabilitation of native vegetation, management of pit lakes), such as preparation of a mine closure plan following the DMIRS *Statutory guideline for mine closure plans* and *Mine closure plan guidance – how to prepare in accordance with the statutory guidelines* (for mining proposals).

For proposals in the Pilbara Interim Biogeographic Regionalisation for Australia (IBRA) region, the EPA may require, as part of the environmental review, the preparation of an impact reconciliation procedure following the [Instructions: Preparing impact reconciliation procedures and impact reconciliation reports](#).

#### 3.1.1.2 Preparation and EPA review of the Environmental Scoping Document

The final ESD needs to be approved by the EPA (see section 3.1.1.4).

During preparation of the draft ESD by either the EPA or the proponent:

- the EPA and the proponent will consult with relevant stakeholders (including relevant decision-making authorities and other government agencies) on the content of the ESD
- the EPA will confirm the preliminary key environmental factors having regard to the matters of significance in the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#) and the nature of the proposal
- the EPA may seek advice from relevant decision-making authorities and other government agencies (including the Commonwealth, if the proponent has sought assessment of the proposal under a bilateral agreement or as an accredited assessment)
- the EPA *will* consider advice received and:
  - *may* amend the draft EPA-prepared ESD, or

- *may* request that the proponent amend the proponent-prepared ESD.

The EPA will usually only seek advice once from relevant decision-making authorities and other government agencies (including the Commonwealth) during the scoping stage.

### 3.1.1.3 Public review of an Environmental Scoping Document

Where a public review of an ESD is specified in the level of assessment required by s. 39(b):

- the EPA *will* authorise the release of the draft ESD for public review, for the period specified (in the level of assessment required by s. 39(b)) (see section 2.3.1)
- the EPA *will* release the draft ESD for public review on its Consultation Hub at [consultation.epa.wa.gov.au](http://consultation.epa.wa.gov.au)
- any person or public authority (including decision-making authorities and other government agencies) can make a submission on the ESD
- the EPA *may* acknowledge the persons who have made a submission
- the EPA *may* provide a summary of submissions to the proponent
- where the EPA receives any comments and/or information that may be adverse to the proponent, the EPA *will* give the proponent the opportunity to respond to the substance of the information
- the EPA *may* require that the draft ESD is amended to address relevant comments received during the public review.

See section 2.2.1.1 for procedures relating to making a submission to the EPA.

### 3.1.1.4 Approval of the Environmental Scoping Document

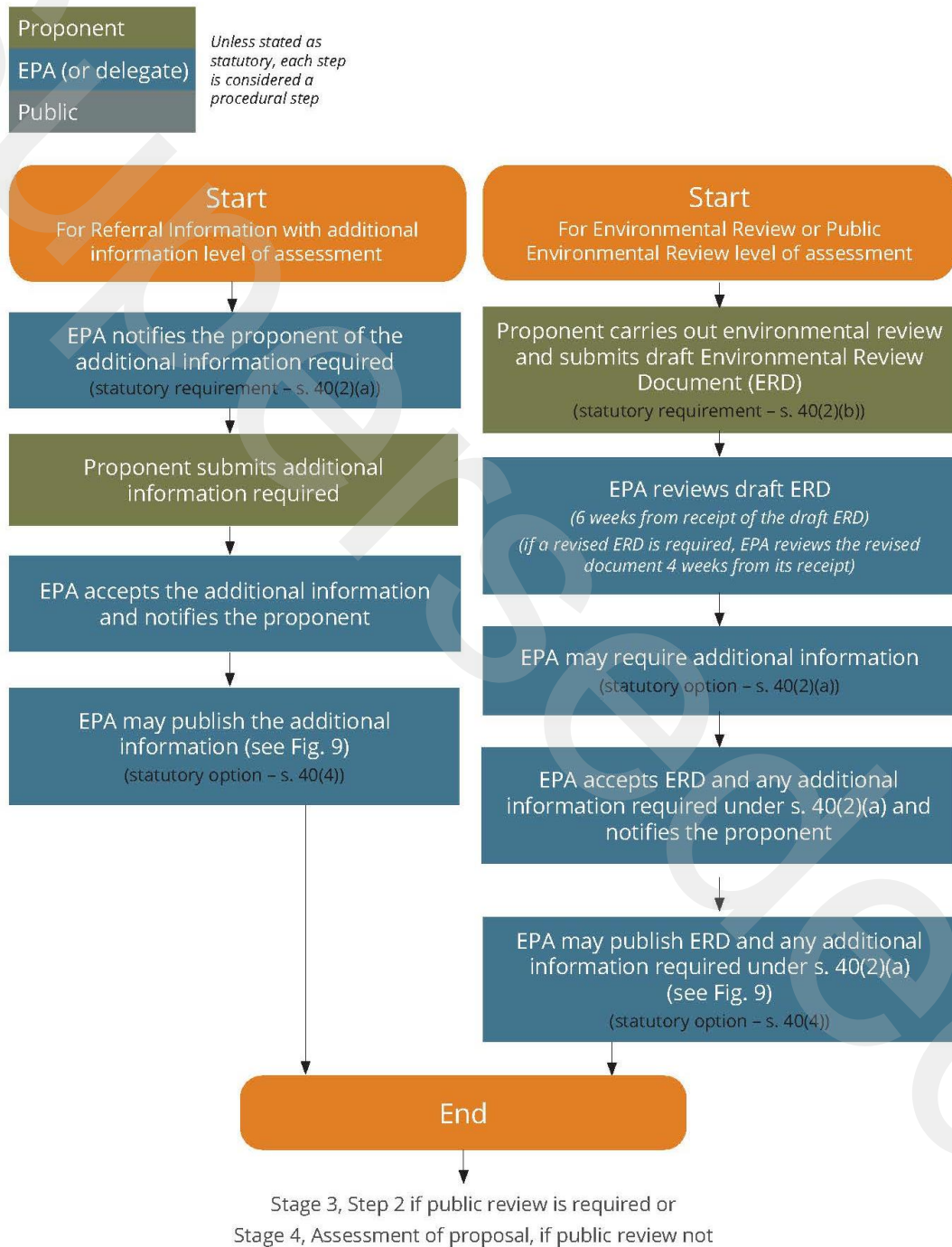
The EPA *will*:

- consider the draft ESD
- approve the ESD, once it is satisfied the ESD is a suitable basis for the environmental review
- notify the proponent in writing once the EPA has approved the ESD
- send the approved ESD to the Commonwealth if the EPA assesses the proposal under an assessment bilateral agreement or as an accredited assessment
- publish the approved ESD on its website, which includes the indicative timing of the environmental review, as required by s. 40(3).

**Stage 3, Step 1 – Scoping the proponent’s environmental review** ends when the EPA approves and publishes the Environmental Scoping Document.

### 3.1.2 Stage 3, Step 2. Preparation of additional assessment information (including an ERD)

**Stage 3, Step 2 – Preparation of additional assessment information** starts when the EPA approves and publishes the Environmental Scoping Document, where an environmental review is required.



**Figure 8: Stage 3, Step 2 – Preparation of additional assessment information**

### 3.1.2.1 Preparation and EPA review of the Environmental Review Document

#### Preparation of the Environmental Review Document

Proponents:

- *Must* conduct the environmental review to, as a minimum, meet the requirements of [Instructions and template: How to prepare an Environmental Review Document](#) and the approved ESD (and Schedule 4 of the Environmental Protection and Biodiversity Conservation Regulations 2000, if the EPA is assessing the proposal under an assessment bilateral agreement or as an accredited assessment).
- *Must* include any additional information the EPA has required, including requests for information under s. 40(2)(a).
- *May* include additional information relevant to the environment that would help the EPA prepare its report under s. 44 of the EP Act.
- *Must* assess the proposal as defined by the [Instructions and template: How to identify the content of a proposal](#); the proposal which the EPA decided to assess; and any approved amendments under s. 43A.
- *Should* specify proposed environmental outcomes according to the [Interim guidance: Environmental outcomes and outcomes-based conditions](#).
- *May* prepare environmental management plans as part of the mitigation measures for the key environmental factors. This is where a particular impact may be significant without those measures and is unlikely to be managed by an environmental outcome or limitation on the extent of the proposal. In deciding whether to prepare environmental management plans, proponents should, however, note the EPA's preference for outcomes-based conditions where practical.
- *Must* prepare an environmental management plan/s as part of the environmental review, if required in the ESD.
- *Must* follow the [Instructions and template: How to prepare Part IV environmental management plans](#) when preparing environmental management plans.
- *May* be required to follow the DMIRS *Statutory guideline for mine closure plans* and *Mine closure plan guidance – how to prepare in accordance with the statutory guidelines* (for mining proposals) when preparing a mine closure plan.
- *Should* consider offsets as early as possible in the assessment process.
- *Must* follow the relevant offset guidance. If the proposal relates to a significant amendment of an approved proposal, current offsets practice applies. Current guidance is:
  - Biodiversity factors: [WA Environmental Offsets Policy](#) and the [WA Environmental Offsets Guidelines](#), and complete the WA Environmental Offsets template and the WA Residual Impacts Significance Model table template
  - Greenhouse gas emissions factor: Government of Western Australia's *Greenhouse gas emissions policy for major projects* and EPA's *Environmental factor guideline – Greenhouse gas emissions*.
- *Must* follow the [Instruction, templates and form: Preparing impact reconciliation procedures and impact reconciliation reports](#) when preparing impact reconciliation procedures.
- *Must* follow the Instruction: IBSA packages and Instruction: IMSA data packages when preparing the IBSA and IMSA data packages.
  - *Must* provide an IBSA data package via the IBSA Submissions portal for each terrestrial biodiversity survey report and provide an IMSA data package for each marine survey report.

#### EPA review of the Environmental Review Document

The EPA:

- *may* seek advice from relevant decision-making authorities and other government agencies (including the Commonwealth, if the EPA is assessing the proposal under an assessment bilateral agreement or as an accredited assessment)

- *may* identify new preliminary environmental factors and/or other environmental factors and matters
- *will* consider whether the assessment has been carried out for environmental impacts in all areas which may be affected by the proposal's implementation (For example, if an indicative footprint has been proposed to enable flexibility to decide on the proposal's exact location during implementation, the EPA will consider whether the assessment has covered the environmental impacts in all areas which may be subject to a final footprint, not just within any indicative footprint.)
- *will* consider advice received and may request that the proponent amend the draft ERD, including with additional information.
- *will* give the proponent the opportunity to respond to the substance of any comments and/or information the EPA receives that may be adverse to the proponent.

The EPA will *usually* only seek advice once from relevant decision-making authorities and other government agencies on the ERD during its assessment. Where public review of the ERD is required, the EPA will usually seek advice on the final ERD that is released for public review (see Step 3, section 3.1.3).

### 3.1.2.2. Content of the Environmental Review Document

The EPA requires proponents to follow the [Instruction and template: How to prepare an Environmental Review Document](#). An ERD must include the following information:

#### 1. Proposal

- Proposal content:
  - including a proposal content document following the [Instruction and template: How to identify the content of a proposal](#)
- Proposal alternatives:
  - to the extent reasonably practicable, describe any feasible alternatives to the proposal, including a comparative description of the environmental impacts of each alternative, and enough detail to make it clear why any alternative is preferred to another.

#### 2. Legislative context

- Provide information on decision-making authorities, statutory decision-making processes and other approvals.

#### 3. Stakeholder engagement

- List or provide information on stakeholders engaged.
- Set out consultation undertaken:
  - whether any consultation has been undertaken, including decision-making authorities and any targeted consultation
  - summarise the consultation process and outcomes
  - justify if consultation has not been undertaken.

#### 4. Object and principles of the EP Act

- Apply these to the proposal.

#### 5. Environmental factors

For each preliminary key environmental factor, discuss the:

- EPA environmental factor objective
- relevant policy and guidance
- receiving environment and environmental values
- potential environmental impacts, including:
  - cumulative environmental impacts
  - impacts in all areas which may be affected by the proposal's implementation.

- mitigation
  - apply the mitigation hierarchy
  - discuss whether another statutory decision-making process can mitigate the proposal's potential impacts on the environment (If yes, explain how the proposal's specific potential impacts can be mitigated and whether the EPA's objectives for the relevant environmental factors are likely to be met through the decision-making processes. For further details on the matters the EPA may consider, see [Interim guidance: Taking decision-making processes into account in EIA](#)).
- assessment and significance of residual environmental impacts
  - identify whether any residual impacts exist after applying the mitigation hierarchy and whether these are significant.
  - assess impacts in all areas which may be affected by the proposal's implementation (For example, if a development envelope has been proposed to enable flexibility as to the location of the ultimate proposal footprint, the environmental impacts for the whole development envelope must be assessed, not just those within any indicative proposal footprint.)
- environmental outcome
  - specify the proposed environmental outcomes
  - discuss whether the proposed environmental outcomes are consistent with the EPA's objectives for the relevant environmental factors
  - discuss whether and how the environmental outcome could be regulated by another decision-making authority
  - include proposed monitoring to measure the environmental outcomes.

#### 6. Other environmental factors or matters

- Discuss any other environmental matters that are relevant to the assessment and not covered as part of the preliminary key environmental factors discussion

#### 7. Offsets

- Consideration of any offsets, where a significant residual environmental impact remains, including assessment of whether offsets are likely to counterbalance significant residual environmental impacts.

#### 8. Matters of National Environmental Significance

#### 9. Holistic impacts

##### 3.1.2.3 EPA acceptance of the Environmental Review Document

The EPA *will*:

- accept the ERD, when it meets the requirements of the approved ESD and the requirements in the [Instruction and template: How to prepare an Environmental Review Document](#), and the EPA is satisfied at the time that it does not need additional information
- notify the proponent in writing once the EPA has accepted the ERD
- send the accepted ERD to the Commonwealth, if the EPA assesses the proposal under an assessment bilateral agreement or as an accredited assessment
- publish the accepted ERD.

##### 3.1.2.4 Additional assessment information (separate to Environmental Review Document)

Where the EPA requires additional assessment information other than an ERD (for example, a technical report or peer review), the EPA:

- *will* inform the proponent in writing that the EPA requires this information
- *will* provide proposal-specific instructions to the person who will prepare the information

- 
- *may* seek advice on the information from relevant decision-making authorities and other government agencies (including the Commonwealth, if the EPA assesses the proposal under an assessment bilateral agreement or as an accredited assessment)
  - *will* provide the information to the proponent, if the person preparing the information is not the proponent
  - *will* consider advice received and may request the proponent or any other person amends the information
  - *will* give the proponent the opportunity to respond to the substance of information, where the EPA receives any comments and/or information that may be adverse to the proponent
  - *will* notify the person in writing, when the EPA accepts the additional assessment information
  - *will* publish the additional assessment information on the EPA website.

**Stage 3, Step 2 – Preparation of additional assessment information** ends when the EPA accepts the Environmental Review Document (and/or other additional assessment information, if required) and publishes it.

3.1.3 Stage 3, Step 3. Public review of additional assessment information (including a proponent ERD)



Figure 9: Stage 3, Step 3 – Public review of additional assessment information – including an Environmental Review Document

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**Stage 3, Step 3 – Public review of additional assessment information** starts when the EPA declares the Environmental Review Document (and/or other additional assessment information, if required) is available for public review.

Where a public review of an ERD is specified in the level of assessment (in the record required by s. 39(b)):

- the EPA *will* declare that the ERD (and other additional assessment information, if relevant) is available for public review (for the period specified in the record required by s. 39(b))
- the proponent *will* publish notice that the ERD (and other additional assessment information, if relevant) is available for public review (s. 40(6)(a)(i)) (see [Instructions and form: Advertising requirements and release of a document for public review](#))
- any person or public authority (including decision-making authorities and other government agencies) can make a submission
- the EPA *may* request that relevant government agencies and/or experts provide advice (including the Commonwealth, if the EPA assesses the proposal under an assessment bilateral agreement or as an accredited assessment)
- the EPA *may* acknowledge the person(s) who has made a submission
- the EPA *may* provide a copy of the submissions and a summary of the key issues raised in the submissions to the proponent after the close of the public review period
- the EPA *may* require the proponent to respond to any submissions (s. 40(6)(b)), and may also require the proponent to provide additional information under s. 40 (2) (a) of the EP Act
- the EPA *will* notify the proponent in writing if the EPA decides the proponent's response to submissions is adequate to enable the EPA to prepare its draft assessment report
- The EPA *may* publish the proponent's response to any submissions on the EPA's website before release of the EPA's assessment report, for information only.

If the proponent does not provide an adequate response to submissions, the EPA may decide it can proceed to prepare its draft assessment report. A reasonable period must have lapsed after the EPA sent the submissions to the proponent and they confirmed, in writing, that they had no further response. In this case, the EPA will take a cautious approach in completing its assessment based on the information available.

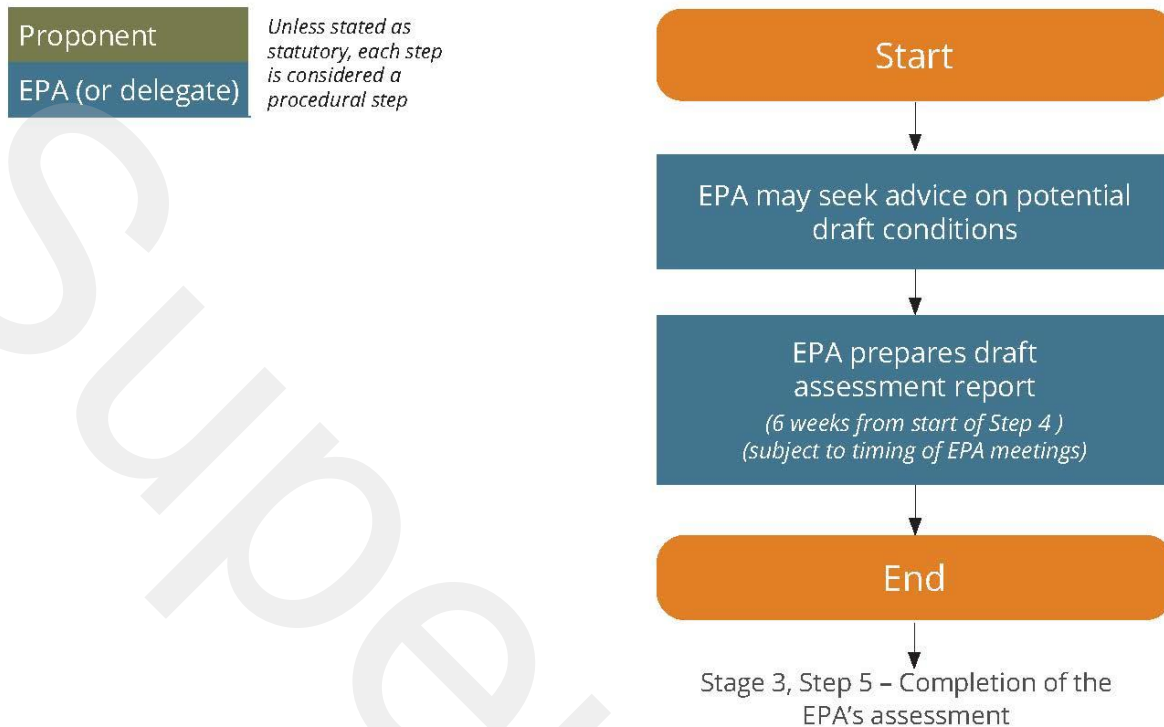
See section 2.2.1.1 for the procedures to make a submission to the EPA.

The procedures for the public review of other additional assessment information are the same as the procedures for the public review of an ERD.

**Stage 3, Step 3 – Public review of additional assessment information** ends when either:

1. the public review period closes if the EPA does not require the proponent to respond to submissions, or
2. the EPA decides it can proceed to prepare its draft assessment report after receipt of the proponent's response to submissions (if the EPA requires the proponent to respond to submissions).

## 3.1.4 Stage 3, Step 4. Preparation of draft assessment report



**Figure 10: Stage 3, Step 4 – Preparation of EPA’s draft assessment report**

**Stage 3, Step 4 – Preparation of EPA’s draft assessment report** starts when either:

1. the EPA decides to assess a proposal, if the information required for the assessment is the referral information, or
2. the EPA approves additional assessment information (including an ERD), if public review of that information is not required, or
3. the public review period closes, if public review of information is required and the EPA does not require the proponent to respond to submissions, or
4. the EPA decides it can proceed to prepare its draft assessment report after receipt of the proponent’s response to submissions (if the EPA requires the proponent to respond to submissions).

## 3.1.4.1 Preparation and content of draft assessment report

In preparing its draft assessment report, the EPA will consider and include content about:

- the proposal content, including amendments approved by the EPA under s. 43A
- whether the preliminary key environmental factors are the final key environmental factors
- how the proponent has applied the mitigation hierarchy to the proposal
- the residual environmental impacts of the proposal including:
  - impacts on key environmental factors and environmental values
  - cumulative environmental impacts
  - if the proposal is a significant amendment, the combined impacts with the existing

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approved proposal

- assessment of residual environmental impacts and consideration of the significance of residual impacts
- whether the likely environmental outcomes, after the application of conditions, are consistent with the EPA's objectives for the final key environmental factors
- whether any offsets (if proposed) are likely to counterbalance any significant residual environmental impacts
- assessment of holistic impacts
- consideration of Matters of National Environmental Significance, where the EPA assesses the proposal under a bilateral agreement or as an accredited assessment
- whether the proposal may be implemented (see **Stage 4 EPA report**) and, if so, whether (see section 4.2):
  - any or all of the proposal elements should be limited through conditions
  - any other conditions should be recommended (with a preference for outcomes-based conditions)
  - any offsets are required
  - any conditions are required to ensure that the proposal's environmental impacts are monitored, that the monitoring results are reviewed and reported, and that contingency measures are implemented
  - any conditions are required to ensure the ongoing and continual improvement of the proposal's environmental management, including adaptive management
  - there are other statutory decision-making processes that can mitigate the proposal's potential impacts on the environment
  - whether compliance with environmental management plans should be recommended as a condition, and whether to require the proponent to amend any environmental management plans.

In preparing its draft assessment report, the EPA may seek advice from relevant decision-making authorities, other government agencies and the proponent on potential draft conditions (including the Commonwealth, if the EPA assesses the proposal under an assessment bilateral agreement or as an accredited assessment).

#### 3.1.4.2 Additional content of draft assessment report

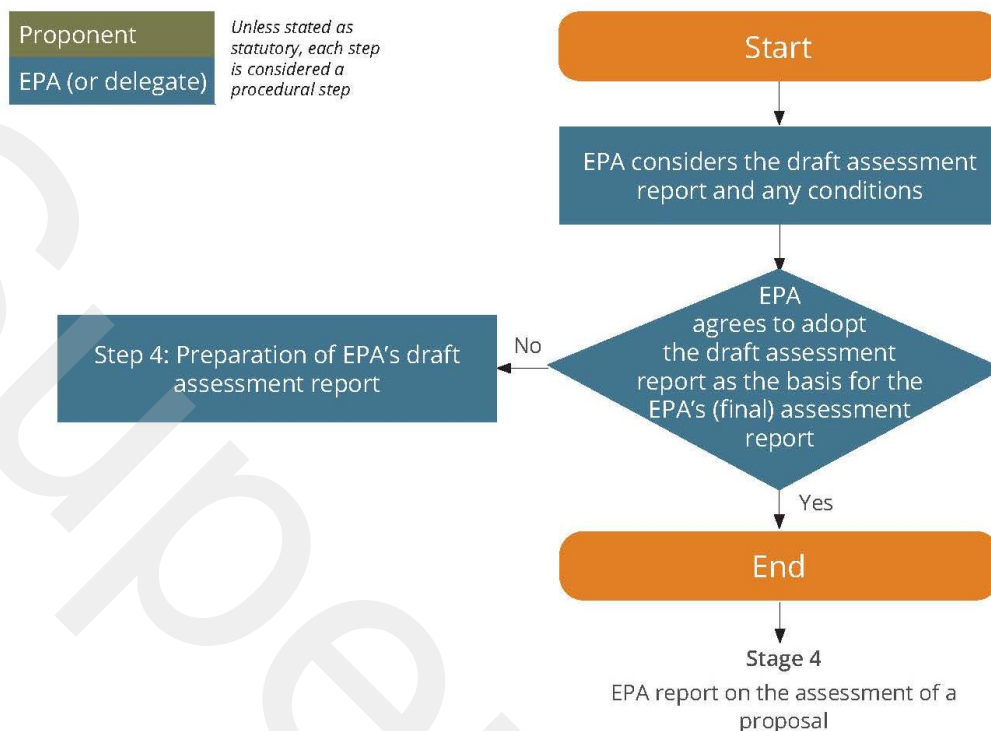
In addition to the requirements for the EPA's assessment report set out in s. 44 (see section 4.1) and the content of the draft assessment report in 3.1.4.1, the EPA may include information relating to the proposal's assessment, such as the following:

- discussion of other environmental factors, not considered to be key environmental factors
- advice from relevant decision-making authorities, other government agencies, and from the Commonwealth (if the EPA assesses the proposal under an assessment bilateral agreement or as an accredited assessment)
- other information, advice and recommendations related to the environment.

The target timeframe for the EPA to prepare a draft assessment report is six weeks. In practice, this timeframe varies, as the EPA usually considers a draft assessment at an EPA meeting (see Step 5) held monthly. The EPA's target timeframe to prepare the draft assessment report (six weeks) and finalise the report and give it to the Minister (six weeks) is 12 weeks (see also Stage 4).

**Stage 3, Step 4** – Preparation of EPA's draft assessment report *ends* when the EPA prepares a draft assessment report.

### 3.1.5 Stage 3, Step 5. Completion of the EPA's assessment



**Figure 11: Stage 3, Step 5 – Completion of the EPA's assessment**

As outlined in the [Administrative Procedures](#), the EPA completes its assessment when it agrees to adopt the draft assessment report as the basis for its (final) assessment report. Alternatively, the EPA will revise the draft assessment report based on the additional information it needs to complete its assessment and will reconsider the draft assessment report. When the EPA agrees to adopt the draft assessment report as the basis for its (final) assessment report, it will resolve that the EPA prepare the (final) assessment report and give that report to the Minister, as required by s. 44 (see section 4).

The EPA usually considers the draft assessment report at an EPA meeting. The EPA may invite the proponent to attend the EPA meeting.

## 3.2 Assessment of significant amendments (s. 40AA)

### 3.2.1 Significant amendment of approved proposal

The procedures for the assessment of a significant amendment of an approved proposal are the same for the assessment of any new significant proposal. The EPA *must* also assess the significant amendment in the context of the approved proposal and consider the possible combined effect of the approved proposal's implementation and the significant amendment on the environment, as required by s. 40AA(2).

The EPA's assessment of a significant amendment of an approved proposal *may* also include an inquiry into and report on the implementation conditions relating to the approved proposal, as permitted under s. 40AA(3). It will usually consider the implementation conditions that should be applied to manage the combined and ongoing impacts of the amended proposal consistent with the EPA's environmental factor objectives.

Proponents should review whether the approved implementation conditions are adequate to meet contemporary standards or are achieving the expected environmental outcomes, and whether they need revising as part of the significant amendment application.

In assessing significant amendments to proposals, the EPA will usually consider the procedures, instructions and guidance which are current at the time of assessment, as related to any combined and ongoing impacts of the significant amendment and existing approved proposal.

Specific requirements for proponents when they refer significant amendments of approved proposals are

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outlined in the [Instructions and form: Referral of a proposal under s. 38](#) (see also section 1.4).

If it is agreed or decided that a significant amendment of an existing approved proposal may be implemented, the proposal is then known as the amended proposal.

If it is agreed or decided that a significant amendment may not be implemented, the existing approved proposal may continue to be implemented.

### 3.2.2 Significant amendment of implementation conditions

The procedures for the assessment of significant amendments to implementation conditions depend on whether the amendments are:

- referred to the EPA under s. 38 as a significant proposal and the subject of an EPA decision to assess; or
- the subject of a Ministerial request under s. 46 for the EPA to inquire into and report on the proposed amendments.

In assessing significant amendments to conditions, the EPA will usually consider the objectives, procedures, instructions and guidance which are current at the time of assessment. If it is agreed or decided that a significant amendment to conditions cannot be implemented, the approved proposal may continue to be implemented subject to the existing implementation conditions.

## 3.3 Termination of assessment (s. 40A)

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties in s. 40A in relation to the termination of a proposal.

A proponent may request in writing, at any time, that the EPA terminate the assessment of its proposal. The EPA *will* consider the request and terminate the assessment if it is appropriate to do so. The EPA may also terminate assessment of a proposal if any of the other criteria in s. 40A(1) are met.

Where a proponent fails to comply with a requirement contained in s. 40A(1)(b), before exercising its powers the EPA:

- *will* notify the proponent of its intention to terminate the assessment and give the proponent an opportunity to respond as to why the EPA should not exercise that power
- *will* have regard to the proponent's response before exercising its powers.

If the EPA terminates an assessment, the EPA:

- *will* notify the proponent in writing
- *may* publish the notice of termination on the EPA website.

## 3.4 Strategic proposals and strategic assessments (s. 40B)

The EPA recognises that detailed design of a future proposal identified in a strategic proposal may not be available when the EPA assesses a strategic proposal (strategic assessment).

However, the EPA expects proponents will provide it with sufficient information about the strategic proposal and conduct an environmental review to the extent necessary to enable the EPA to complete its assessment and provide a report to the Minister (see Stage 4).

The information from the proponent or obtained by the EPA in the assessment of a strategic proposal should enable the EPA to define the overall environmental outcomes that must be achieved through implementation of any future derived proposals.

In addition to the EPA's assessment procedures outlined in section 3.1, the EPA's strategic assessment *will* also:

- define, as far as possible, the nature and extent of the future proposals
- define the maximum extent or limits to the scope of any future proposals
- identify the key environmental factors associated with the future proposals, at a scale commensurate with the nature and extent of those future proposals, define the maximum disturbance (impact) footprint

of the future proposals (terrestrial, marine and air) and the envelope within which any future proposals will occur

- define the potential maximum cumulative environmental impacts and/or risks from the future proposals.

### 3.5 Decision-making authority not to approve proposal until certain events occur (s. 41)

See the Administrative Procedures for details about when and how decision-making authorities may be constrained from making a decision that could have the effect of causing or allowing a proposal to be implemented.

#### 3.5.1 Investigation work

**Investigation work** is an activity carried out to inform the EPA's decision on whether to assess a proposal or for the EPA's assessment of a proposal. This work does not involve implementing the proposal.

Investigation work that informs the EPA's assessment of a proposal may include:

- environmental investigations such as biological surveys, and sampling for acid sulfate soils
- design investigations such as geotechnical work for determining proposal design and definition drilling of an ore body
- clearing of native vegetation to provide access for surveys.

In relation to proposed investigation work:

- EPA consent is *not* required for investigation work that does not involve the proposal's implementation
- proponents *will* need to obtain separate approvals, permits or licences from relevant decision-making authorities for the investigation work, if required
- decision-making authorities *may* seek advice from the EPA if they are unsure whether the proposed work is implementing the proposal
- decision-making authorities *may* approve investigation work that is not implementing the proposal.

If the investigation work is likely to have significant impact on the environment (e.g., if the proposed work is located in an Environmentally Sensitive Area), the proponent may refer the proposal to the EPA and any decision-maker that has notice of the proposal must refer it to the EPA.

### 3.6 Proposal not to be implemented before action under s. 45 taken (s. 41A)

The proponent is prohibited from implementing their proposal or any part of it until the Minister has given the final approval and issued a Ministerial statement. However, some minor works may be allowed in certain circumstances.

#### 3.6.1 Minor or preliminary work

**Minor or preliminary work** is work associated with a proposal's implementation that is unlikely to have a significant impact on the environment and does not have the scale or significance that would compromise the EPA's assessment or the Minister's future decisions. This includes any activities that a proponent would normally undertake if it were not prevented under s. 41A(1) from doing anything to implement the proposal but does not include substantial implementation of the proposal.

Minor or preliminary work may include the construction of infrastructure for the proposal in an area that is unlikely to have a significant environmental impact. An example of this might be for an airstrip for survey access on previously cleared pastoral land.

##### 3.6.1.1 Criteria for EPA consent to undertake minor or preliminary work

Proponents must demonstrate the following criteria for the EPA to consent to the minor or preliminary work:

1. The work is minor or preliminary.
2. The work must be associated with the proposal's implementation.
3. The potential environmental impacts of the work are not likely to be significant.

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### 3.6.1.2 Content of the request for EPA consent for minor or preliminary work

The EPA *requires* that proponents follow the [Instructions and checklist: Request for EPA consent to undertake minor or preliminary work under s. 41A](#).

The request *must* include information about the proposed minor or preliminary work, including:

- details of the proposed work
- information to demonstrate that the work is associated with the implementation of the proposal
- justification why the work is minor or preliminary and is not substantial implementation of the proposal
- details of the potential environmental impacts likely to be caused by the work
- details of any decommissioning or rehabilitation work which would be carried out should the proposal not be approved for implementation
- information to demonstrate that the impact can be reversed, for example through rehabilitation
- environmental justification for the work
- justification why the works and their effects are not of a scale or significance that would compromise the EPA's assessment or the Minister's future decisions.

### 3.6.1.3 Process for the request for EPA consent to undertake minor or preliminary work

The Chair (or the Deputy Chair if the Chair is absent) has delegation from the EPA to exercise the powers and duties in s. 41A(3); that is, to give consent that minor or preliminary works can occur.

The process for the request for EPA consent under s. 41A(3) to undertake minor or preliminary work is:

- proponents *must* submit a request for consent to the EPA for minor or preliminary work
- the EPA *will* consider the request
- the EPA *will* notify the proponent in writing of its decision to consent to or refuse the request to undertake the minor or preliminary work
- the EPA *may* publish its decision on the EPA's website
- proponents *may* carry out the requested minor or preliminary work once the EPA has granted consent and the relevant decision-making authorities have granted other necessary approvals, permits or licences (where required).

## 3.7 Conduct of public inquiries under s. 40(2)(c) (s. 42)

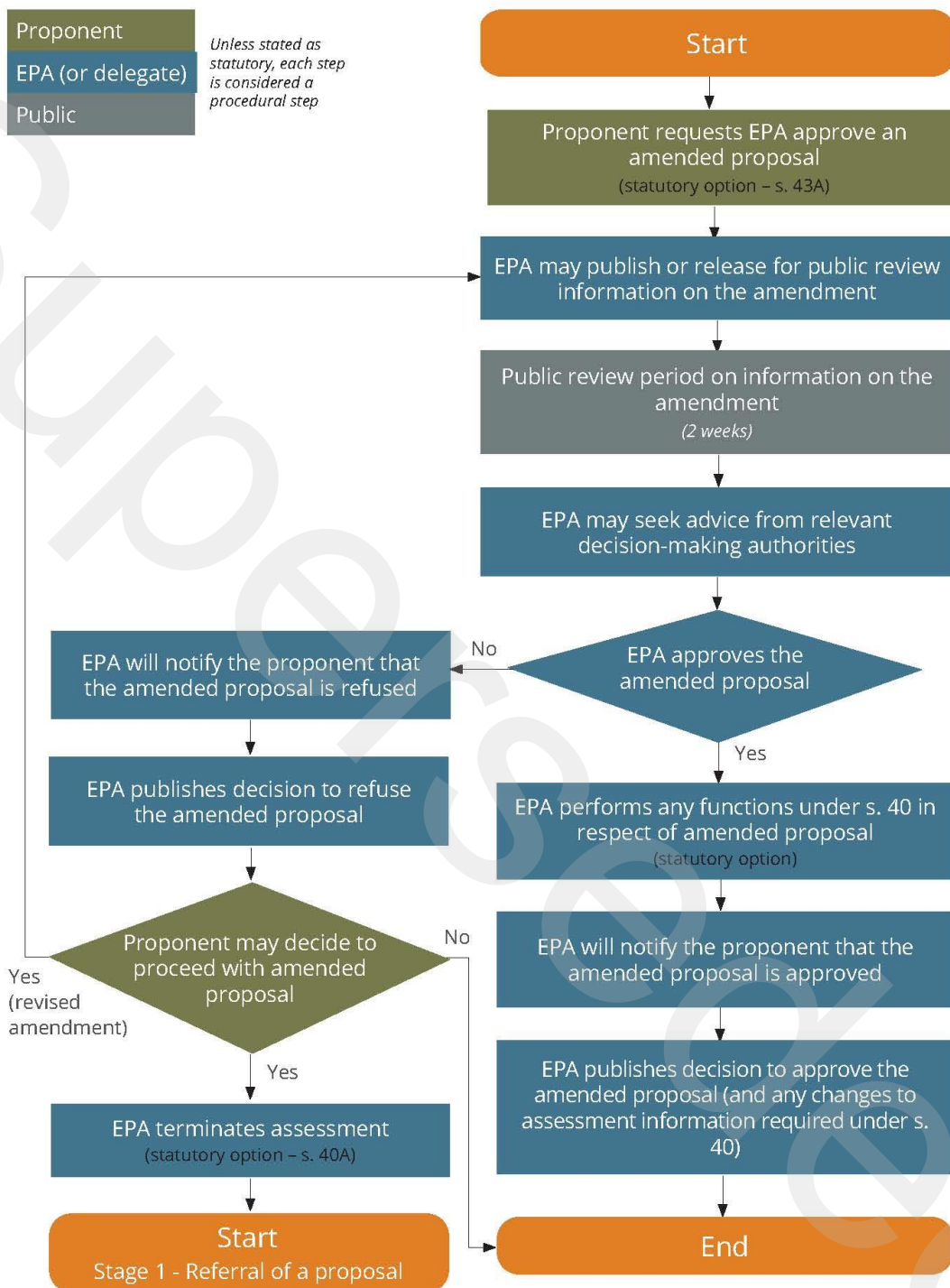
This section of the EP Act allows the EPA to conduct a public inquiry or establish a committee to carry out a public inquiry.

## 3.8 Minister to direct the EPA to assess a proposal (s. 43)

The Minister can direct the EPA to:

- assess a referred proposal where the EPA decided not to assess the proposal
- reassess a proposal more fully during or after an assessment of a proposal
- assess a proposal more publicly.

### 3.9 Amendments to proposals during assessment (s. 43A)



**Figure 12: Stage 3 – Assessment of proposals: amending a proposal during assessment (s. 43A)**

Under s. 43A, the EPA *may*, at its discretion, give or refuse approval for a proposal to be amended while it is being assessed. Applications will usually be made public.

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties in s. 43A, which is a discretion whether to approve an amendment.

Section 3.9.1 sets out the information the EPA requires, to decide whether to approve the proposed amendment. The level of detail of the information the EPA requires depends on the nature of the amendment and its potential impacts on the environment.

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The quality of information provided to the EPA about the proposal elements and the likely environmental effects of the proposed amendment may affect the expected (non-statutory) timeframes. It may also affect the EPA's decision whether to approve the proposed amendment. There may be delays to expected (non-statutory) timeframes if adequate information is not provided, and the EPA may also require further information.

### 3.9.1 Content of the request for EPA approval for an amendment to proposal

The EPA requires the proponent to submit information following the [Instructions and form: Amend proposal during assessment under s. 43A](#), including:

#### 1. Reason for and content of proposed amendment

- The reasons for the proposed amendment.
- The content of the proposed amendment (including consolidated updated proposal content document).
- Proposal alternatives.

#### 2. Regulatory information

- Assessment details, and any proposed change to assessment form, content, indicative timing or procedure as a result of the amendment.
- Any changes to decision-making authorities or statutory processes and whether they can mitigate the potential impact of the proposal on the environment.

#### 3. Identification of environmental factors and environmental effects

- Identify relevant environmental factor/s and identify likely environmental effects.
- Whether any additional information is needed to enable the EPA to continue assessing the proposal (see steps 5 and 6).

#### 4. Consultation

- Whether any consultation has been undertaken, including decision-making authorities and any targeted consultation.
- Summarise the consultation process and outcomes.
- Justify if consultation has not been undertaken.

#### 5. Additional surveys, investigations and other information (if needed)

- Discuss and provide additional information that has been obtained since the referral, such as surveys, investigations and information in relation to the proposed amendment.

#### 6. Discussion of significance (if needed)

- Discuss whether there is likely to be a significant effect on the environment (including cumulative environmental impacts and holistic impacts):
  - from the effects of the proposed amendment on its own
  - from the whole proposal if the amendment were approved, in the context of the original proposal.
- Discuss any change in likely environmental outcomes, and the consistency of these outcomes with the EP Act principles and the EPA's objectives for environmental factors, in the context of the original proposal.

### 3.9.2 Process for requesting EPA approval for an amendment to proposal

The process to request EPA approval of an amendment to a proposal is as follows:

1. Proponents must send a written notice to the EPA to request the approval of an amendment to a proposal. Proponents must provide the information using the [Instructions and form: Amend proposal during assessment under s. 43A](#).
2. The EPA may release information on the proposed amendment for public information or review, usually where the potential for a significant impact exists.

3. The EPA may seek advice from relevant decision-making authorities and other government agencies and will consider the advice received.
4. The EPA will decide whether to approve the request, considering in particular:
  - whether if it approved the change, it should perform any function that it could have performed, or has already performed, in respect of the proposal
  - whether the amended proposal will still be substantially the same character as the original proposal
  - the significance of the proposed amendment (for guidance on significance, see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#)).
5. If the EPA's view is that, if the proposal was already approved, the amendment would be a significant amendment, the EPA may refuse the amendment.
6. The EPA *may* perform any function in respect of the proposal without limiting s. 40. For example, it may require further additional assessment information or require public review of any additional assessment information (s. 43A(3)(b)).
7. The EPA *will* notify the proponent in writing of its decision to approve or refuse the request for an amendment to a proposal.
8. The EPA *will usually* publish its decision (including any changes to the additional assessment information it requires for its assessment) on the EPA's website.
9. The EPA *will* usually publish a summary of reasons for its decision on the EPA website.

The EPA *may* consider the following in deciding whether consultation or public review in relation to the proposed amendment is necessary:

- the nature of the proposed amendment
- the stage of the assessment process, such as whether information has been released for public review
- the currency, relevance and reliability of the information that exists, including any submissions
- the degree to which the proponent has consulted about the proposal and proposed amendment
- the level of public interest in the proposal.

If amendments which have the potential to have a significant environmental effect are approved under s.43A after public review, the EPA will usually require additional public review.

The EPA would usually expect there to be a s. 43A change to reflect any changes to the proposal which have been identified as likely to reduce its environmental effects.

If approved, the amended proposal is taken to be the referred proposal which the assessment process then applies to.

If the EPA refuses a proposed amendment, the proponent may:

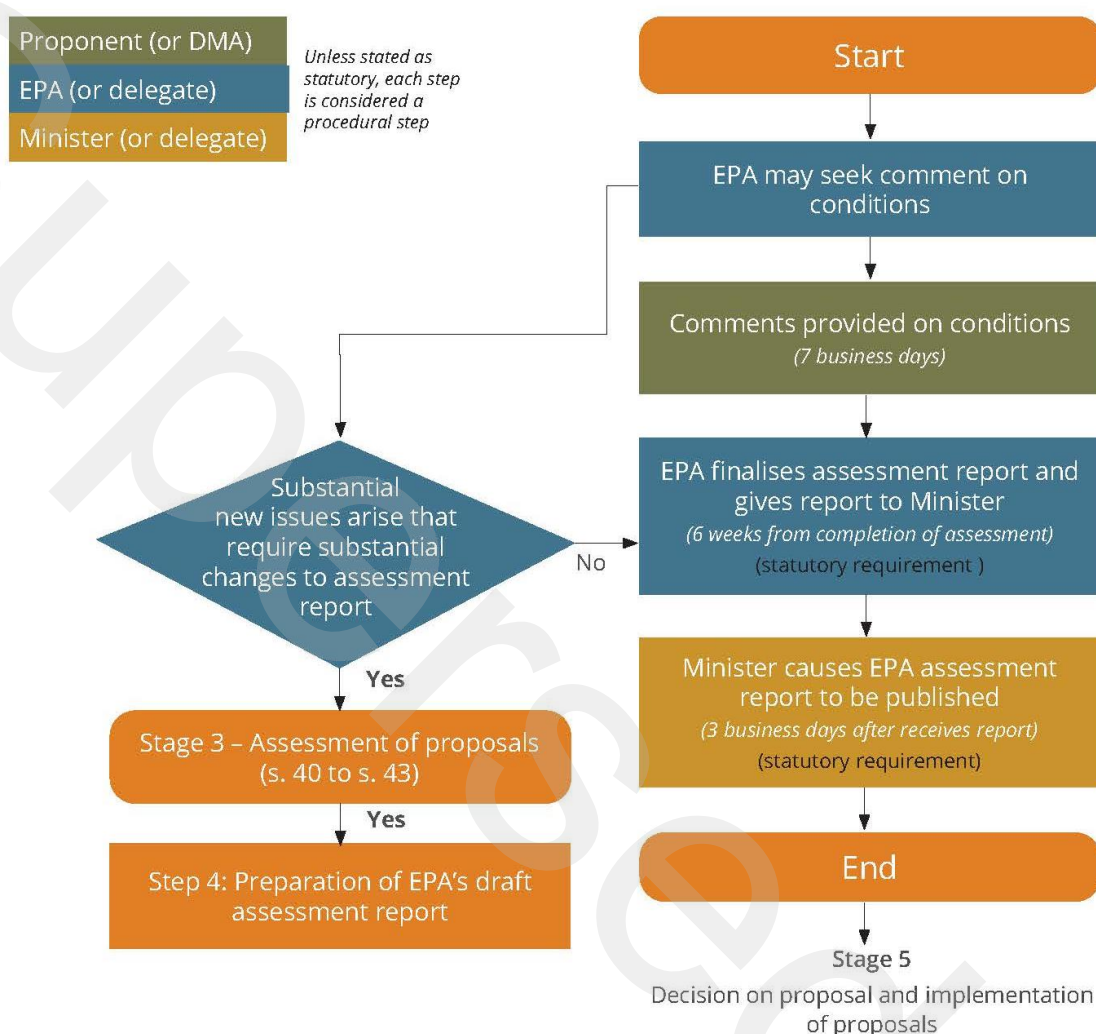
- decide not to proceed with the amendment, OR
- revise the amendment to reduce the environmental effect of the proposed amendment so it is not a significant amendment and resubmit the request, OR
- advise the EPA that they do not wish to proceed with the proposal and ask the EPA to terminate the assessment of the current proposal (see section 3.3) and refer the amended proposal as a significant amendment under s. 38.

**Stage 3 – Assessment of proposals** ends when:

1. the EPA completes its assessment, or
2. the EPA terminates the assessment.

## Stage 4 – EPA report on the assessment of a proposal (s. 44)

See Figure 13 below for a summary of the procedures for **Stage 4 – EPA report on the assessment of a proposal** relating to s. 44 of the EP Act.



**Figure 13: Stage 4 – EPA report on the assessment of a proposal**

**Stage 4 – EPA report** on the assessment of a proposal *starts* when the EPA completes its assessment.

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties in the following sections:

- s. 44(1) in relation to the report to the Minister
- s. 44(2a) in relation to other information, advice and recommendations in the Assessment report, only when the EPA resolves that the Chair (or Deputy Chair) prepares and approves the final Assessment report and gives that report to the Minister (see section 3.1.5).

The Chair (or the Deputy Chair if the Chair is absent) has delegation from the Minister to exercise the powers and duties in s. 44(3) to cause the report to be published.

## 4.1 Assessment report

As outlined in the [Administrative Procedures](#), the Assessment report the EPA gives the Minister under s. 44(2) must set out the key environmental factors it has identified in the course of the assessment and its recommendations as to whether or not the proposal may be implemented and, if so, any conditions and procedures that should apply.

The (final) assessment report is based on the draft assessment report (see section 3.1.4) and *may* also include the advice and recommendations set out in section 4.1 of the [Administrative Procedures](#).

## 4.2 Recommended conditions and procedures

If the EPA recommends that the proposal may be implemented, the EPA *may* recommend conditions and procedures which should apply to the proposal's implementation.

The EPA *may* also consider whether there are other statutory decision-making processes that can mitigate the proposal's potential impacts on the environment (s. 38G(4)). In doing so, the EPA will consider the potential impacts of the specific proposal and whether the EPA's objectives for relevant environmental factors are likely to be met through the decision-making processes. For further details on the matters the EPA may consider, see [Interim guidance: Taking decision making processes into account in EIA](#). The EPA may recommend that the mitigation of the impact is regulated through another decision-making process. An example of this might be an EP Act Part V environmental licence.

If the EPA does not recommend that the proposal be implemented, it *may* still provide advice – should the Minister decide the proposal may be implemented – that appropriate conditions be included in any Ministerial statement.

### 4.2.1 Types of conditions

The EPA *usually* recommends three types of conditions:

1. Limit on proposal extent or capacity.
2. Proposal-specific environmental conditions.
3. Standard matter conditions.

The EPA may recommend other environmental conditions, including those relating to any of the examples of things under s. 45A that a proponent can be required to do. These include conditions to:

- substantially begin implementation of a proposal
- take environmental protection, abatement or restoration measures
- contribute moneys to be used for the purpose of taking environmental protection, abatement or restoration measures
- give an environmental undertaking
- arrange for an environmental protection covenant to be given
- prepare, implement and adhere to environmental management systems, environmental management plans and environmental improvement plans
- arrange for audits as to whether or not the implementation conditions have been complied with.

The EPA is not limited to recommending the conditions listed in s. 45A.

### 4.2.2 Limit on proposal extent or capacity

The EPA *may* recommend whether any proposal elements need to be limited or controlled and, if so, will usually include a table (and figures) of the limit of proposal elements (including physical and operational elements). Limits may be specified where:

- An element is environmentally significant, such as extent of clearing within a development envelope.
- An outcome-based condition is not practical to achieve consistency with an EPA environmental factor objective(s), but a limit on proposal extent or capacity is suitable to achieve consistency with the objective.

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- A potential environmental outcome needs to be limited to achieve consistency with an EPA environmental factor objective. An example of this might be where a proponent proposes groundwater abstraction of 20 GL/year, but the EPA recommends it is limited to 15 GL/year.

Ministerial statements will usually state that a proposal as described in a proponent's proposal content document may be implemented, subject to the conditions in the Ministerial statement. If those conditions include limits on the proposal's extent or capacity, it may then only be implemented to the limit set out in the conditions.

### 1. Proposal-specific environmental conditions

The EPA will recommend environmental conditions (see section 4.2.3) if, at the end of its assessment, a condition/s is required to give confidence that a significant impact on an environmental factor/s will not occur.

### 2. Standard matter conditions

The EPA will recommend conditions relating to standard matters including, but not limited to:

- notification of change of proponent contact details
- time limit for proposal implementation
- compliance reporting
- public availability of data
- environmental management plans, including compliance, amendment and review requirements
- reports relevant to the environmental performance of the proposal.

#### 4.2.3 Proposal-specific environmental condition types

The EPA uses three types for proposal-specific environmental conditions, where the EPA's view is that regulatory control is required to mitigate the proposal's potential impacts on the environment:

1. **Prescriptive conditions** – which contain specified actions or procedures.
2. **Outcomes-based conditions** – which contain a measurable environmental outcome that must be met.
3. **Objectives-based management plan conditions** – which contain a requirement for a management plan to achieve an environmental objective. May also contain the plan components required to meet that environmental objective.

The EPA uses the condition types as a guide and may recommend a hybrid of the types or depart from the types where a case-specific approach is needed.

The EPA's preference is for outcomes-based conditions where practical.

##### 4.2.3.1 Prescriptive conditions

Prescriptive conditions prescribe the required actions directly in the condition.

The EPA may recommend prescriptive conditions where the actions represent standard practice for a particular environmental issue common to many proposals, for example:

- actions to minimise noise impacts on marine fauna from pile-driving
- actions to minimise impacts on terrestrial fauna from trenching.

##### 4.2.3.2 Outcomes-based conditions

Outcomes-based conditions specify a measurable environmental outcome to be met, without prescribing how that outcome is to be achieved. This provides certainty and transparency, is consistent with adaptive environmental management and continuous improvement, and is recognised as regulatory best practice.

Outcomes-based conditions can directly prescribe an environmental outcome that must be met. They can also include a 'surrogate outcome' that is performance based. A surrogate is a physical, chemical, or biological characteristic that supports an aspect of the environment. For example, water quality could be a surrogate for the habitat condition of an aquatic species.

An outcomes-based condition may be expressed as:

- An impact that must be avoided. For example, there is no disturbance to a threatened ecological

community in a defined area.

- A level of impact that must not be exceeded. For example, groundwater drawdown must not exceed X metres below ground level outside a defined area.
- A level of protection that must be achieved. For example: maintain water quality parameters (pH, salinity, water temperature and dissolved oxygen concentration) of an individual surface water site to pre-disturbance levels or a suitable reference site; or maintain water quality in area X consistent with the environmental quality criteria for the 'high level of ecological protection of ecosystem health' established in the [State Environmental \(Cockburn Sound\) Policy 2015](#).

An outcomes-based condition will:

- be associated with achievement of one or more of the EPA's objectives for environmental factors
- be measurable and achievable
- have a clear boundary, size, extent or limit.

The EPA will consider information the proponent provides during the assessment (including but not limited to baseline information, discussion of mitigation hierarchy and environmental outcomes) to determine whether an outcomes-based condition is practical.

For any recommended outcome-based condition/s, the EPA may also recommend a condition where the proponent must monitor, review and report against the environmental outcomes, and adopt adaptive management approaches, to ensure they achieve the environmental outcome. The EPA may recommend an outcomes-based management plan for this requirement.

If an outcomes-based management plan (e.g. for monitoring and adaptive management and reporting) is appropriate, the EPA will usually require the proponent to prepare management plans that follow the [Instructions and template: How to prepare Part IV environmental management plans](#). The instructions include detail on outcomes-based components.

#### 4.2.3.3 Objectives-based management plan conditions

The EPA will consider recommending objectives-based management plan conditions when outcome-based conditions are not practical.

While the EPA's preference is for outcome-based conditions, the EPA may decide objectives-based management plan conditions are appropriate in some cases, such as for new industries.

Objectives-based management plan conditions specify an environmental objectives/s, which is a desired state for a key environmental factor/s. The plan objective/s will be a specific objective associated with one or more of the EPA's objectives for environmental factors. The environmental objective will generally be expressed in terms such as 'minimise impacts as far as practicable' on an element of the environment such as flora, vegetation or fauna.

If an objectives-based management plan condition is appropriate, the EPA will usually require a management plan that follows the [Instructions and template: How to prepare Part IV environmental management plans](#). The instructions include detail on objectives-based components.

Proponents may not have to prepare management plans that follow the instructions when those management plans are required by other legislation (and have specific requirements), such as mine closure plans required under the *Mining Act 1978* and cultural heritage management plans required by Comprehensive Agreements under the *Aboriginal Heritage Act 1972*.

#### 4.2.3.4 Specific requirements for management plans (outcomes-based and objectives-based)

Where the EPA recommends either an outcomes-based or objectives-based management plan condition, it will usually recommend a condition to either:

- implement a management plan it received during an assessment which it considers acceptable, or
- prepare and implement a management plan.

A management plan required for an implementation condition is a legally enforceable document. Proponents must comply with the components set out in the management plan. The plan's components should be as precise as possible so that proponents can fully understand their legal obligations in relation to the implementation condition and make them clearly auditable (by the CEO). Management plans should therefore not include information that DWER does not need.

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Any failure to implement the required components in a management plan constitutes a non-compliance with the implementation conditions, which may become subject to enforcement by the CEO (see [Administrative Procedures](#) section 5.4).

#### 4.2.4 Case-specific conditions

The conditions may also include case-specific matters.

##### 4.2.4.1 Baseline conditions

One case-specific condition that the EPA may recommend is a baseline survey.

In relation to the baseline survey:

- it will define the physical, chemical or biological characteristics of the existing environment as a reference for proposed monitoring and/or other activities
- the scope will be limited to the work necessary to be able to evaluate, through ongoing monitoring, performance against the requirements of the condition
- the results may be used to decide whether other parts of the condition are triggered.

The EPA will not recommend a baseline condition option that requires ongoing EIA.

##### 4.2.4.2 Offset conditions

The EPA may recommend an offset condition; for example, to counterbalance any significant residual environmental impact.

A condition which relates to offsets may require the proponent to implement a measure, including undertaking one or more of the following measures:

- at the proponent's expense, take environmental protection, abatement or restoration measures usually on other land to directly or indirectly offset the proposal's impacts on the environment
- funding by the proponent directly to a third party to undertake environmental protection, abatement or restoration measures on other land.
- contributions by the proponent to a fund for the purpose of taking environmental protection, abatement or restoration measures
- an environmental undertaking which is given in relation to other land.

The EPA may recommend that a proponent must undertake any activities listed under s. 45A of the EP Act relating to offsets. The EPA is not limited to (or required to impose) the conditions in this list.

Where the EPA recommends an offset condition/s, the EPA will have regard to offsets guidance which is relevant:

- Biodiversity factors: [WA Environmental Offsets Policy](#) and the [WA Environmental Offsets Guidelines](#),
- Greenhouse gas emissions factor: State Emissions Policy and Environmental factor guideline – Greenhouse gas emissions.

The EPA's preference is to recommend specific offset conditions to the Minister. However, in some cases the EPA may recommend that a condition be imposed where the proponent must develop an offset plan post-approval, which the Minister or another decision-maker approves. In such cases the EPA will usually recommend that the proposal elements which are likely to have a significant residual environmental impact and require counterbalancing by the offsets, do not begin until the offsets plan has been approved.

When considering significant amendments, the EPA must assess the amendment in the context of the approved proposal and consider the combined effect of the approved proposal's implementation and the significant amendment on the environment. The EPA will also usually consider the implementation conditions relating to the existing approved proposal when considering significant amendments.

In assessing significant amendments, the EPA will usually consider the objectives, procedures, instructions, and guidance (including offsets practice) current at the time of assessment, including any ongoing combined impacts of a significant amendment and the existing approved proposal. The EPA will not, however, apply offsets to existing environmental impacts which have already occurred as a result of the approved proposal's implementation. For example, the EPA will not require offsets for clearing of native vegetation which has already taken place.

#### 4.2.4.3 Mine closure conditions

Where the EPA assesses the environmental impacts relating to mine closure, the EPA:

- will recommend a condition relating to mine closure for mining proposals that are not subject to the *Mining Act 1978*. The condition:
  - will usually require that the proponent implement (or prepare and implement) a mine closure plan and/or
  - may specify other proposal-specific requirements.
- *may* recommend a condition relating to mine closure for other mining proposals, noting that it is a requirement under the *Mining Act 1978* that a mine closure plan is prepared following the DMIRS *Statutory guideline for mine closure plans* and *Mine closure plan guidance – how to prepare in accordance with the statutory guidelines* (for mining proposals).

#### 4.2.4.4 Strategic proposal conditions

The EPA *will* recommend conditions for future derived proposals that require proponents to demonstrate how they will meet the outcomes defined through the strategic proposal assessment. This could include recommended conditions that require the development of plans to:

- define the actual footprint of the derived proposal and demonstrate that it fits within the environmental outcomes assessed and approved at the strategic proposal stage of the assessment
- confirm the baseline ecological status within the area of the footprint and the area outside the footprint that may be at risk or impacted during construction or operation of the proposal
- outline the management measures to be taken to meet the principles and strategies referred to in the strategic proposal, and to ensure there is no material or serious environment harm outside the footprint
- define and implement a long-term program for environmental monitoring, management, reporting and incident response
- offset significant residual environmental impacts and risks if they occur.

#### 4.2.5 Consultation on conditions

The EPA *may* seek comment on the draft recommended conditions from the proponent, relevant decision-making authorities and other relevant government agencies (or any other person) before finalising its report.

Where the EPA seeks comment on the draft conditions:

- the EPA will *usually* seek comment on conditions after the EPA completes its assessment but may also seek comment before completing its assessment during preparation of the draft assessment report (see section 3.1.4)
- the consultation period *will* be seven business days, but the EPA may consider a longer consultation period if the proponent makes a written request
- consultation (and the contents of the draft conditions) *will* be confidential, subject to any legislative or procedural fairness requirements
- the EPA *will* consider comments received on the draft conditions
- where the EPA receives any comments and/or information that may be adverse to the proponent, the EPA *will* give the proponent the opportunity to respond to the substance of that information
- the EPA *may* amend the draft conditions.

**Stage 4 – EPA report on the assessment of a proposal** ends when the Minister causes the EPA's assessment report to be published.

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## Stage 5 – Decision on proposal and implementation of proposals(s. 44A–s. 48A)

**Stage 5 – Decision on proposal and implementation of proposals** starts when the Minister causes the EPA's Assessment report to be published.

This Stage relates to sections in Part IV of the EP Act for which the Minister is the decision-maker. Information is provided for completeness of EIA procedures under Part IV of the EP Act. The Chair and Deputy Chair of the EPA have delegated powers to exercise the powers and duties relating to amending approved proposals or implementation conditions under s. 45C of the EP Act.

If a proposal is approved for implementation, under s. 48 the CEO exercises the powers and duties relating to the control of the implementation of proposals.

See a summary of the procedures for Stage 5 relating to s. 45C and s. 46 of the EP Act in figures 14 to 17.

### 5.1 Procedure for deciding if assessed proposal may be implemented (s. 45)

#### 5.1.1 Appeals on EPA Assessment report

The Chair (or the Deputy Chair if the Chair is absent) has delegation from the EPA to respond to a request from the Appeals Convenor to report to the Minister on an appeal under s. 106(1)(a).

In addition to the procedures set out in the [Administrative Procedures](#), where the Minister remits the proposal to the EPA following an appeal, the EPA may publish the remittal on the EPA website.

The EPA will generally follow the procedures applicable to the relevant assessment stage to respond to the Minister's remittal, subject to any direction by the Minister in the remittal.

#### 5.1.2 Agreement or decision on whether proposal may be implemented

See the [Administrative Procedures](#).

### 5.2 Implementation conditions (s. 45A)

See the [Administrative Procedures](#) and section 4.2.

### 5.3 Implementation of derived proposals (s. 45B)

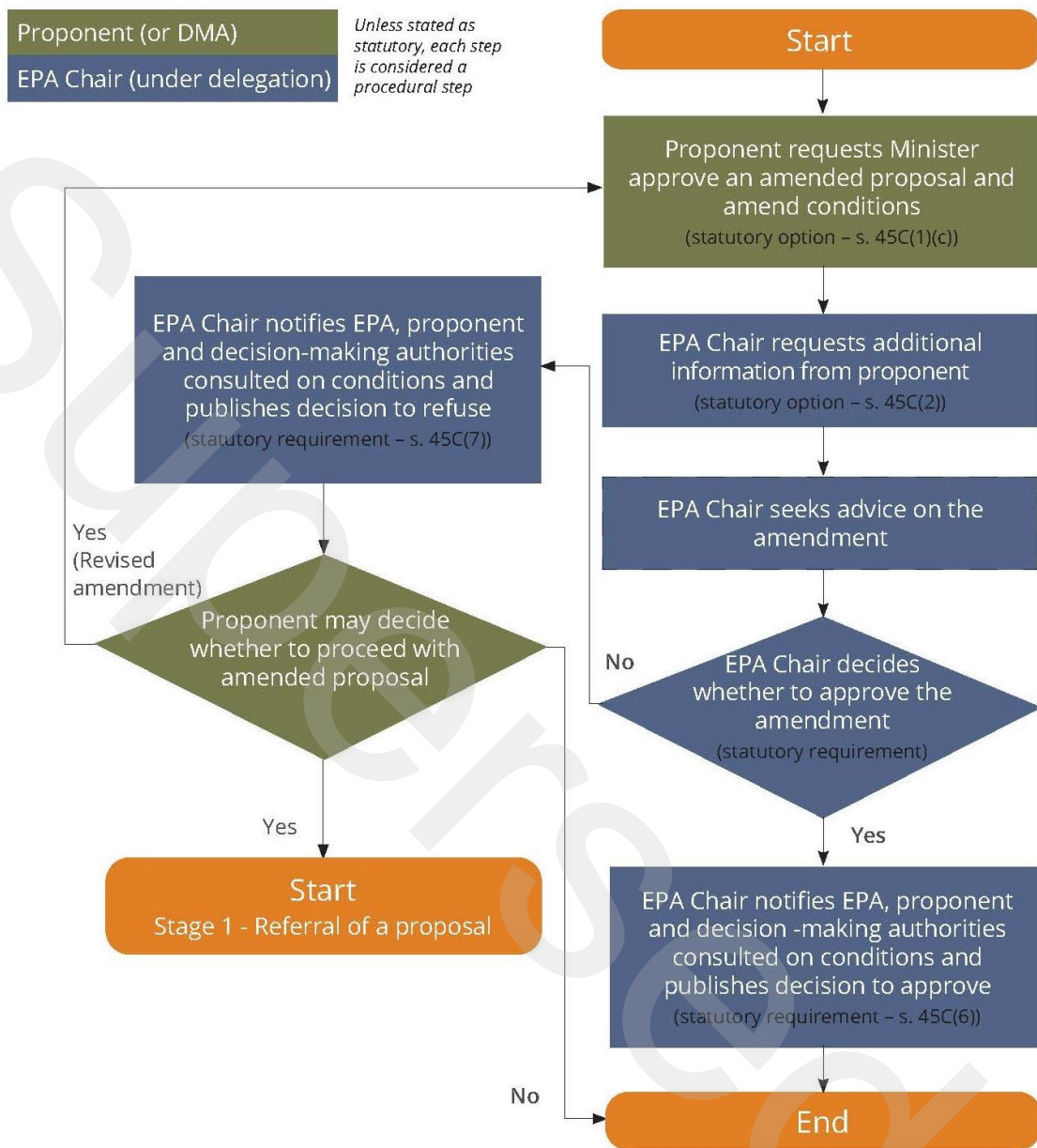
See the [Administrative Procedures](#).

### 5.4 Duties of proponents after service of Ministerial statement (s. 47)

See the [Administrative Procedures](#).

### 5.5 Amending approved proposals and/or implementation conditions without inquiry or assessment (s. 45C)

Proponents may ask to amend an approved proposal, or implementation conditions, or both, without an inquiry. Applications *will usually* be made public. See Figure 14 for a summary of the procedures for amending an approved proposal and conditions. See figures 15 and 16 for a summary of the procedures for amending an approved proposal only or conditions only.



**Figure 14: Request to amend approved proposal and conditions (s. 45C(1)(c))**

See Figure 15 for options if a proposal amendment is refused. See Figure 16 for options if a condition amendment is refused.

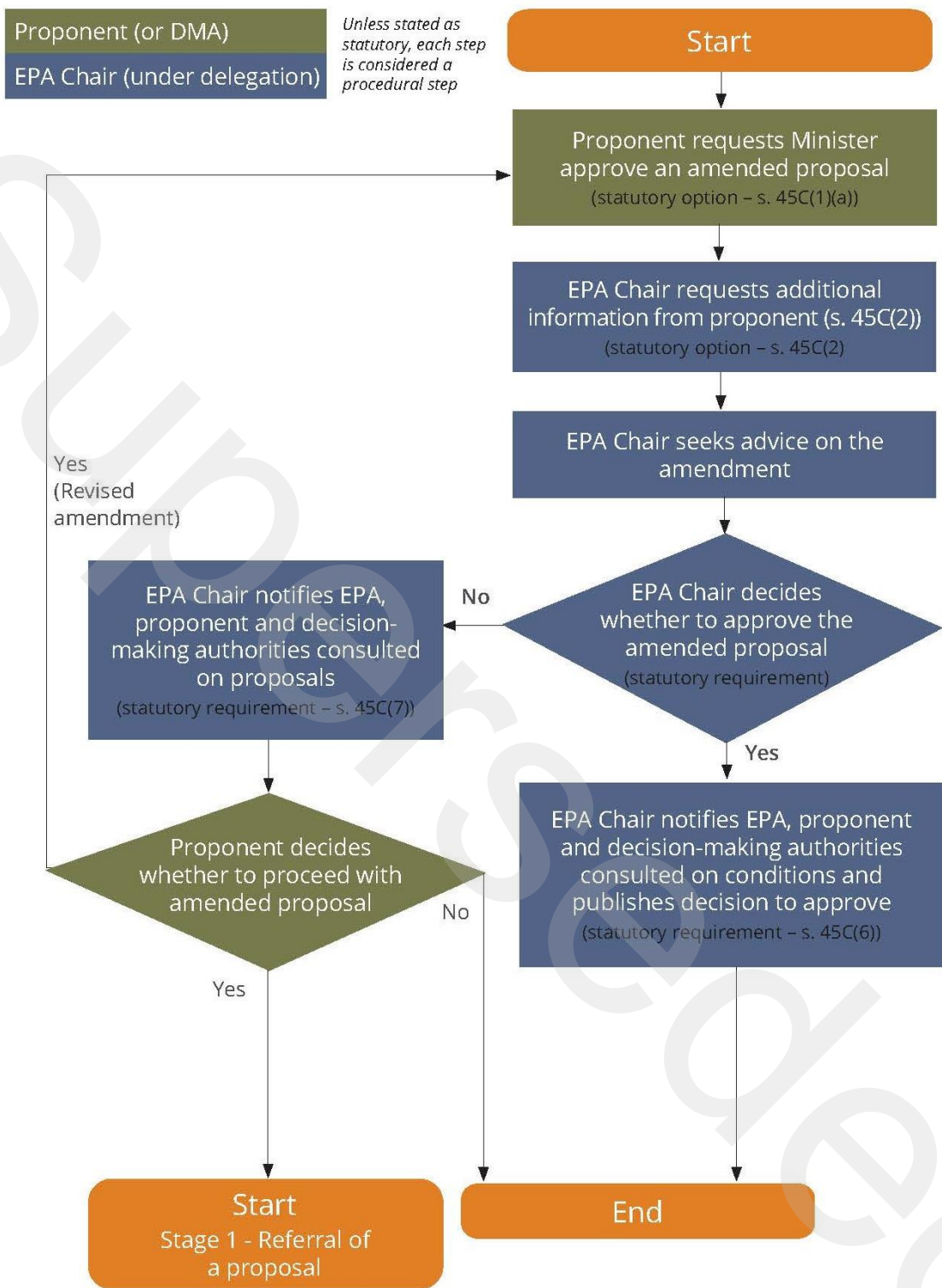
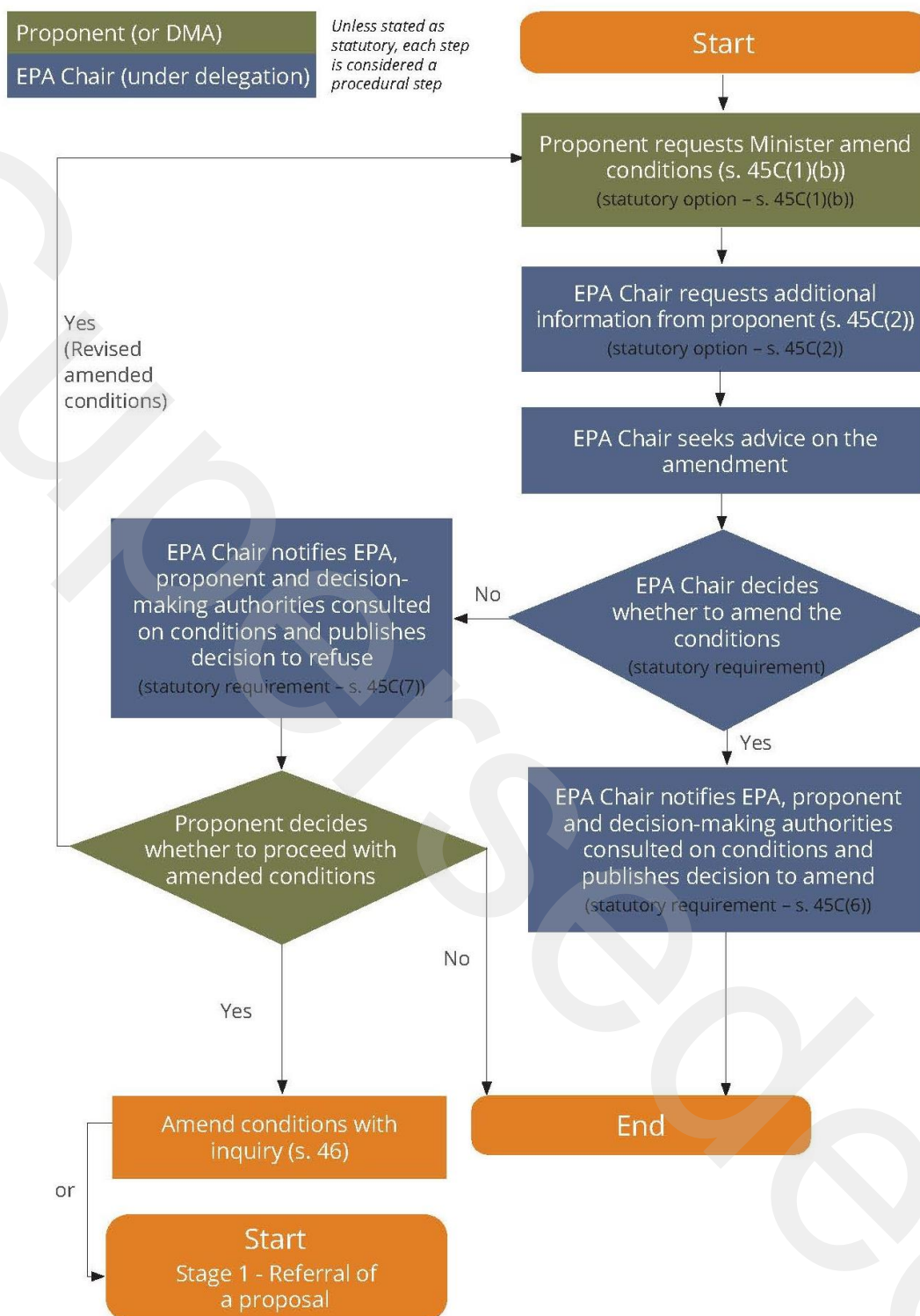


Figure 15: Request to amend approved proposal only (s. 45C(1)(a))



**Figure 16: Request to amend conditions only (s. 45C(1)(b))**

Under s. 45C, the Minister *may* approve a request for an amendment to an approved proposal, an amendment to the implementation conditions of an approved proposal, or both, unless an amendment is a significant amendment.

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the Minister to exercise the powers and duties in s. 45C. Proponents should address communications to the Chair of the EPA, unless directed otherwise.

The timing and nature of requests under s. 45C should not undermine the EPA’s advice and

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recommendations on approved proposals through the request of amendments which fragment or separate consideration of the environmental effects of proposals. The timing and nature of requests under s. 45C should also not undermine either consideration of and decision-making for whole-of-proposal impacts, or the efficient consideration of proposals and future amendment requests.

Section 5.5.1 sets out the information the decision-maker requires, when deciding whether to approve the proposed amendment. The level of detail the decision-maker requires depends on the nature of the amendment and its potential impacts on the environment.

The quality of information provided to the decision-maker about the nature of the proposal amendment, as well as its likely environmental effects, may affect the expected (non-statutory) timeframes. It may also affect the decision-maker's decision whether to approve the proposed amendment. There may be delays to expected (non-statutory) timeframes if adequate information is not provided and the decision-maker may also require additional information under s. 45C(2).

### 5.5.1 Content of the request to amend an approved proposal or implementation conditions

The decision-maker requires the proponent provide it with information in the [Instructions and form: Request to amend proposal and/or implementation conditions under s. 45C](#), including the following:

#### 1. Reason for and content of proposed amendment

- The reasons for the requested amendment to the approved proposal, implementation conditions, or both.
- The content of the requested amendment to the approved proposal (including consolidated updated proposal content document), consistent with the [Instructions and template: How to identify the content of a proposal](#).
- Any request to change the implementation conditions, including the purpose of the change, and any indicative wording which is proposed for consideration as part of the request.
- Whether any other condition amendments which arise during consideration of the request, and which are necessary or convenient for the processing of the request, are requested to be made.
- Alternatives to the requested amendment.

#### 2. Regulatory information and environmental performance

- Provide the history and current status of compliance of the approved proposal against its implementation conditions.
- Provide a report on the current environmental performance of the approved proposal against the EPA's environmental factors and any approved proposal implementation condition environmental outcomes and/or objectives.

#### 3. Consultation

- Whether any consultation has been undertaken, including decision-making authorities and any targeted consultation.
- Summarise the consultation process and outcomes.
- Justify if consultation has not been undertaken.

Note: The decision-maker would expect consultation with decision-making authorities relevant to any environmental factors which have the potential to be significantly affected by the amendment. The decision-maker would also usually expect some targeted public consultation if the original proposal (or any subsequent significant amendment) required a public review, and the proposed amendment had the potential to result in a significant impact on the environment.

#### 4. Control of implementation of amendment

- Identify if there are any likely changes to decision-making authorities because of the requested amendment.
- Discuss whether any of the environmental effects of the requested amendment are likely to be able to be mitigated by other statutory decision-making processes.
- Discuss whether the environmental effects of the proposal's requested amendment are likely to be within

the environmental outcomes, and/or are likely to be able to be managed to meet environmental objectives, set by the existing approved proposal implementation conditions.

- Discuss whether any existing approved proposal implementation conditions are requested to be amended, and/or whether new proposal conditions are requested, including:
  - whether the amendments are requested in response to a proposed amendment to the proposal, or
  - are requested as condition amendments in their own right.
- Discuss whether the management plans required by any existing conditions of the approved proposal are proposed to be amended to manage the proposed amendment. If amendments to management plans are proposed, discuss whether an outcome-based condition can replace the management plan. If not, information about management plan amendments is required.

## 5. Assessment and significance

### Assessment

Using information which is adequate and current for the purpose of reasonable consideration of the request:

- Identify which environmental factor/s or values are relevant to assessment of the requested amendment(s).
- Assess the likely effect of the requested amendment on, or in relation to, the environmental factors after application of the avoidance and minimisation elements of the mitigation hierarchy, including:
  - the effects of requested amendment on its own
  - the effects of the requested amendment in the context of the current environmental performance of the approved proposal as implemented to date.
- Cumulative environmental impacts.
- Holistic impacts.
- Assess the likely effect on the environment of the proposed amendment, on its own and in the context of the approved proposal:
  - if implemented following existing implementation conditions
  - if implemented following proposed amended implementation conditions.
- Likely environmental outcomes of the proposed amendment, on its own and in the context of the approved proposal, and the consistency of these outcomes with the EP Act principles and the EPA's objectives for environmental factors.

### Significance – amendments to proposals

Assess whether the proposed amendment is likely, if implemented, to have a significant effect on the environment, both on its own and in the context of the approved proposal and taking into account the existing and/or proposed implementation conditions. For guidance on 'significance', see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

### Significance – amendments to implementation conditions

Assess whether, if approved, the proposal's implementation 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 approved proposal has on its implementation under the existing implementation conditions.

## 5.5.2 Process for amending approved proposal or implementation conditions

The process for an amendment to an approved proposal and/or implementation conditions is:

- The proponent *will* consult with relevant stakeholders during the preparation of the request.
- The proponent must request an amendment to an approved proposal and/or implementation conditions in writing to the decision-maker, using the [Instruction and form: Request to amend proposal and/or implementation conditions under s. 45C](#).
- The decision-maker may, by written notice, request the proponent provide the decision-maker with

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additional information about the proposed amendment (s. 45C(2)).

- The decision-maker may release information on the proposed amendment for public review, where there is a potential for a significant impact.
- The decision-maker may seek advice from relevant decision-making authorities and other government agencies and will consider advice received.
- If the decision-maker considers a requested amendment to a proposal is a significant amendment, it will refuse the amendment. An amendment to a proposal is a significant amendment if it is likely, if implemented in accordance with the existing, or proposed, implementation conditions, to have a significant effect on the environment.
- If the decision-maker considers a requested amendment to existing approval implementation conditions is a significant amendment, it will refuse the amendment. An amendment to implementation conditions is a significant amendment if it is likely that the amended implementation conditions will have a significant detrimental effect on the environment in addition to, or different from, the effect of the proposal's implementation under the existing implementation conditions.
- In considering a requested amendment, the decision-maker will usually, among other things, consider:
  - whether the character of the proposed amended proposal will be substantially the same as the character of the approved proposal
  - the environmental effects of the proposed amendment, on its own and in the context of the approved proposal, and if there will be consistency with the EPA's environmental factor objectives
  - whether an EPA inquiry or report would be more appropriate than approval under s. 45C having regard to, for example:
    - whether the requested amendment requires consideration of matters that were not considered in the original assessment (e.g., whether it requires consideration of impacts on a threatened species not considered in the original assessment)
    - the adequacy and currency of information (including information about the proposal's environmental performance as implemented)
    - whether compensatory offsets are proposed as the primary method to reduce the significance of environmental effects. In determining whether a requested amendment involving offset conditions is a significant amendment, the effect of existing or requested offset conditions will not usually be considered if they only compensate for the likely significant effects on the environment rather than reducing those effects.
- If the proponent's request asks the decision-maker to consider other amendments which arise during the request's consideration which are necessary or convenient for the processing of the request's purpose, the decision-maker will advise the proponent of the other amendments the decision-maker considers should be made. The proponent may then revise the request to include the other amendments.
- The decision-maker will notify the proponent in writing of the decision whether or not to approve the amendment and will also notify the EPA, and decision-making authorities consulted on the conditions for the approved proposal (s. 45C(6) and (7)).
- The decision-maker will publish its decision, the updated consolidated proposal document, and any updated conditions to the Ministerial statement on the EPA website.
- The decision-maker will usually publish a summary of reasons for decision on the EPA website.

Under s. 45C(4) and (5), the decision-maker *may* also amend the approved proposal or implementation conditions to make minor amendments, whether or not a proponent request has been made.

Under s. 45C(7), if the decision-maker refuses to approve the amendment, the proponent may refer the requested amendment as a significant amendment under s. 38(1) (see Stage 1).

Under s. 45C(8), if the refusal is in relation to implementation conditions, the Minister may request an inquiry under s. 46(1) (s. 45C(8)) (see section 5.7) or may agree with any decision-making authority that was consulted about the existing implementation conditions that the proposed amendment is a significant amendment that must be referred by the decision-making authority under s. 38(4) (see Stage 1).

- If the decision-maker approves an amendment to the proposal, the implementation conditions then apply to the amended proposal.
- If the decision-maker approves an amendment to implementation conditions, the amended conditions then apply to the proposal (or amended proposal).

## 5.6 Division or consolidation of proposals and issue of separate or combined Ministerial statements (s. 45D)

Under s. 45C(1), the Minister *may* approve a request under s. 45D for:

- the division of an approved proposal (and Ministerial statement) into separate proposals (and Ministerial statements) (s. 45D(1)(a)); or
- the consolidation of approved proposals (and Ministerial statements) into a consolidated proposal (and Ministerial statement) (s. 45D(1)(b)).

Proponents of an approved proposal/s can request approval from the Minister or the Minister's delegate (the decision-maker).

If a request for division or consolidation is made under s. 45D as part of a s. 45C request, additional information will usually be required and considered.

In deciding whether to approve the proposed division or consolidation of a Ministerial statement for an approved proposal as part of a s. 45C request, the decision-maker will have regard to the matters relevant to s. 45C (section 5.5), and may have regard to additional matters including, whether the:

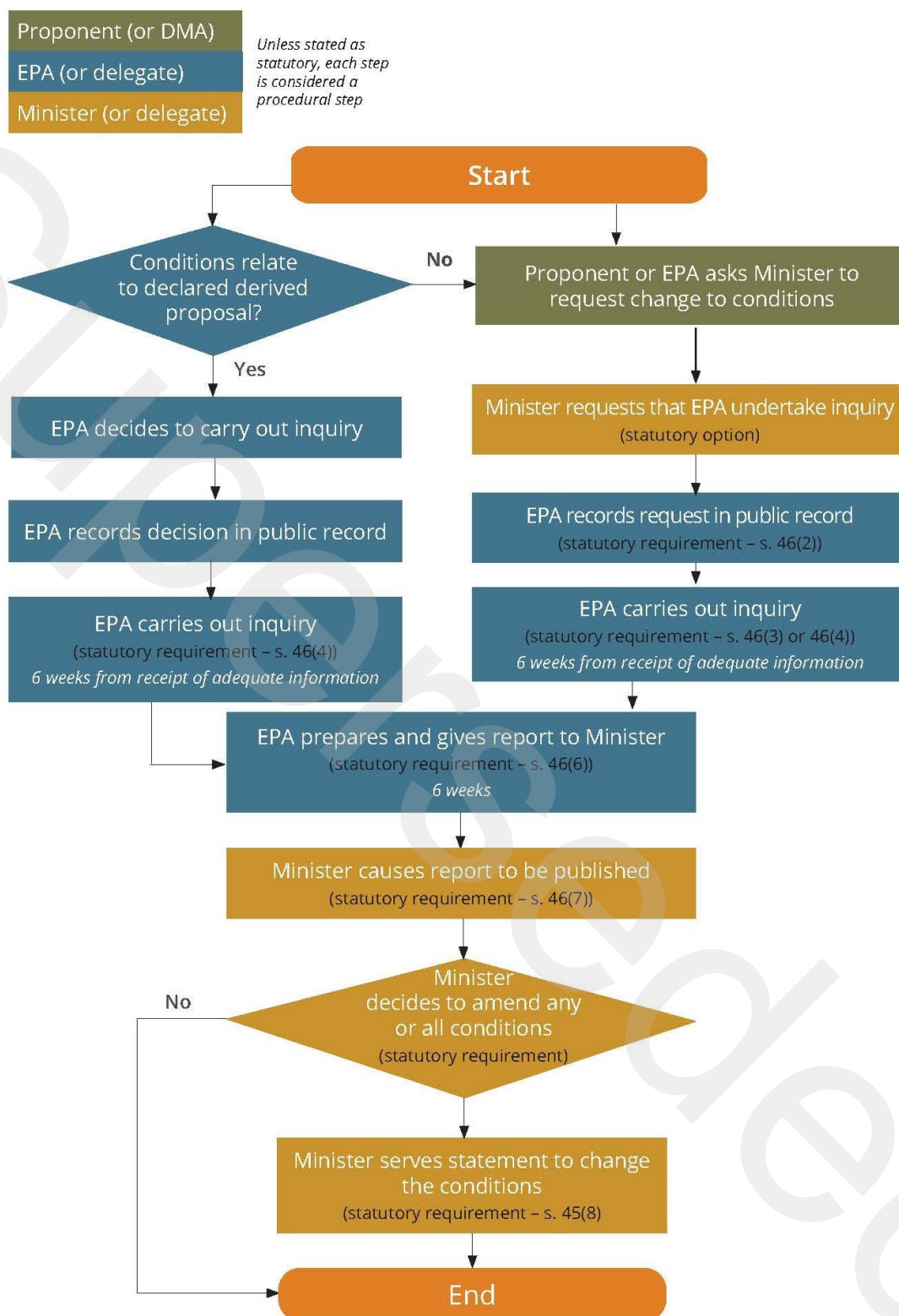
- proposed separated or consolidated proposals are substantially the same character as relevant elements of the existing proposal(s)
- proposed separation or consolidation of the proposals is likely to affect the achievement of the EPA's objectives for environmental factors
- proposed separation or consolidation of the proposals is likely to be a significant amendment
- proposed division of the Ministerial statements is likely to undermine achievement of compliance with, or assessment of compliance with, the conditions of the Ministerial statement.

Applications for the consolidation or division of Ministerial statements will usually be made public.

A summary of reasons for the decision may also be published and made available on the EPA website.

## 5.7 Amending implementation conditions after inquiry (s. 46)

See Figure 17 for a summary of the procedures for amending implementation conditions after an inquiry. The EPA must record any request from the Minister for the EPA to inquire into and report on the conditions in the public record. Applications from proponents to the Minister seeking that the Minister request the EPA inquire into amending conditions (s. 46) will also usually be made public.



**Figure 17: Amending implementation conditions after inquiry (s. 46)**

The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties under s. 46(2) to (6) in relation to inquiring into changes to conditions and providing a report to the Minister.

In addition to the procedures set out in the [Administrative Procedures](#), in conducting the inquiry the EPA:

- may seek advice on the proposed amendment from any person, including relevant decision-making

authorities and other government agencies

- *may* seek comment from the proponent, relevant decision-making authorities and other government agencies on the draft changes to the recommended conditions (see Stage 4, section 4.2)
- *may* make information available for public review (subject to the Environmental Protection (Publication and Confidentiality) Regulations 2021).

The s. 46 application from the proponent to the Minister asking the Minister to request that the EPA conduct an inquiry into amending conditions should include a summary of:

- the existing implementation conditions relating to the approved proposal
- the proponent's view on whether the existing implementation conditions:
  - should be inquired into
  - are adequate to ensure the proposal's ongoing elements are consistent with the EPA's current environmental factor objectives.

If the proponent does not provide this summary, they must justify why not.

For further guidance on how a proponent may request the Minister to amend conditions under s. 46, see the [Instructions: Amend implementation conditions after inquiry under s. 46](#).

If a request to amend conditions is initially made under s. 45C (1) and this is refused, then under s. 45C(8), the Minister may request an inquiry under s. 46(1). The Minister may also agree with any decision-making authority that was consulted about the existing implementation conditions that the proposed amendment is a significant amendment that must be referred under s. 38(4) (see Stage 1).

## 5.8 Interim conditions and procedures (s. 46A)

In addition to the procedures set out in the [Administrative Procedures](#), the EP Act does not preclude a proponent from requesting interim conditions. Interim conditions may be issued under circumstances where a due date for an implementation condition may expire before the EPA completes its s. 46 inquiry into the changes to conditions.

## 5.9 Duration and withdrawal of Ministerial statement (s. 47A)

Information on this section is provided for completion of EIA procedures under Part IV of the EP Act.

Proponents of an approved proposal/s can request approval from the Minister or the Minister's delegate (the decision-maker) to withdraw a Ministerial statement relating to a proposal under s.47A of the EP Act.

Requests should demonstrate that:

- a proposal has been implemented and its implementation conditions have been complied with, or are no longer required, or
- the impacts of the proposal can be satisfactorily mitigated.

The decision-maker can consider whether:

- a proposal has been implemented and its implementation conditions have been complied with, or are no longer required; or
- the impacts of the proposal's implementation can be satisfactorily mitigated by way of licensing or some other form of regulatory control under the EP Act or another written law.

If the latter is applied, the decision-maker may consider the potential impacts of the specific proposal and whether the EPA's objectives for relevant environmental factors are likely to be met through the other regulatory control.

### 5.9.1 Control of implementation of proposals (s. 48)

See the [Administrative Procedures](#).

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## Delegations

The following types of formal delegations are in place for a delegate to exercise the powers and duties in a subsection or section/s of the EP Act, instead of the decision-maker:

- EPA to Chair of the EPA (and Deputy Chair if Chair is absent)
- EPA to senior officers of the DWER (Executive Director of the EPA Services Directorate)
- Minister to Chair of the EPA (and Deputy Chair if Chair is absent).

Where a delegation exists, the delegate *usually* administers that section of the EP Act, unless indicated otherwise.

DWER supports the EPA to perform its functions under the EP Act.

The EPA requests that communications to the EPA are sent to the EPA or DWER, unless directed otherwise.

## Communications to the EPA

**The EPA and DWER prefer to receive (and send) communications electronically:**

- to the EPA Registrar: registrar@dwer.wa.gov.au for direct communication, including the submission of proposal documentation
- the EPA's Consultation Hub for public comment.

Where a person submits a communication electronically, the EPA does not require a hard copy of that communication.

Alternatively, communications may be made via the following methods:

1. **Posted to:** Environmental Protection Authority  
or, Department of Water and Environmental Regulation  
Locked Bag 10  
Joondalup DC WA 6919
2. **Delivered to:** Environmental Protection Authority  
or, Department of Water and Environmental Regulation  
Prime House 8 Davidson Terrace  
Joondalup WA 6027

## Timeframes

The process diagrams summarising the key procedures within stages and steps of the EIA process (figures 2 to 17) include timeframes for the EPA's procedures, where applicable. The timeframes are administrative targets, except for the statutory requirements which are:

- s. 38G(1): within 28 days after the referral of the proposal the EPA is to give written notice of whether or not it is going to assess the proposal.
- s. 44(2b): the Assessment report may be given to the Minister at any time but, so far as is practicable, it must be given no later than six weeks after the EPA completes its assessment or reassessment of the proposal.

Figure 18 provides an overall summary of the stages and steps of the EIA process and the EPA's minimum target timeframes.

Note: The quality of information provided to the EPA stage about nature of Proposal elements and likely environmental effects may affect expected timeframes

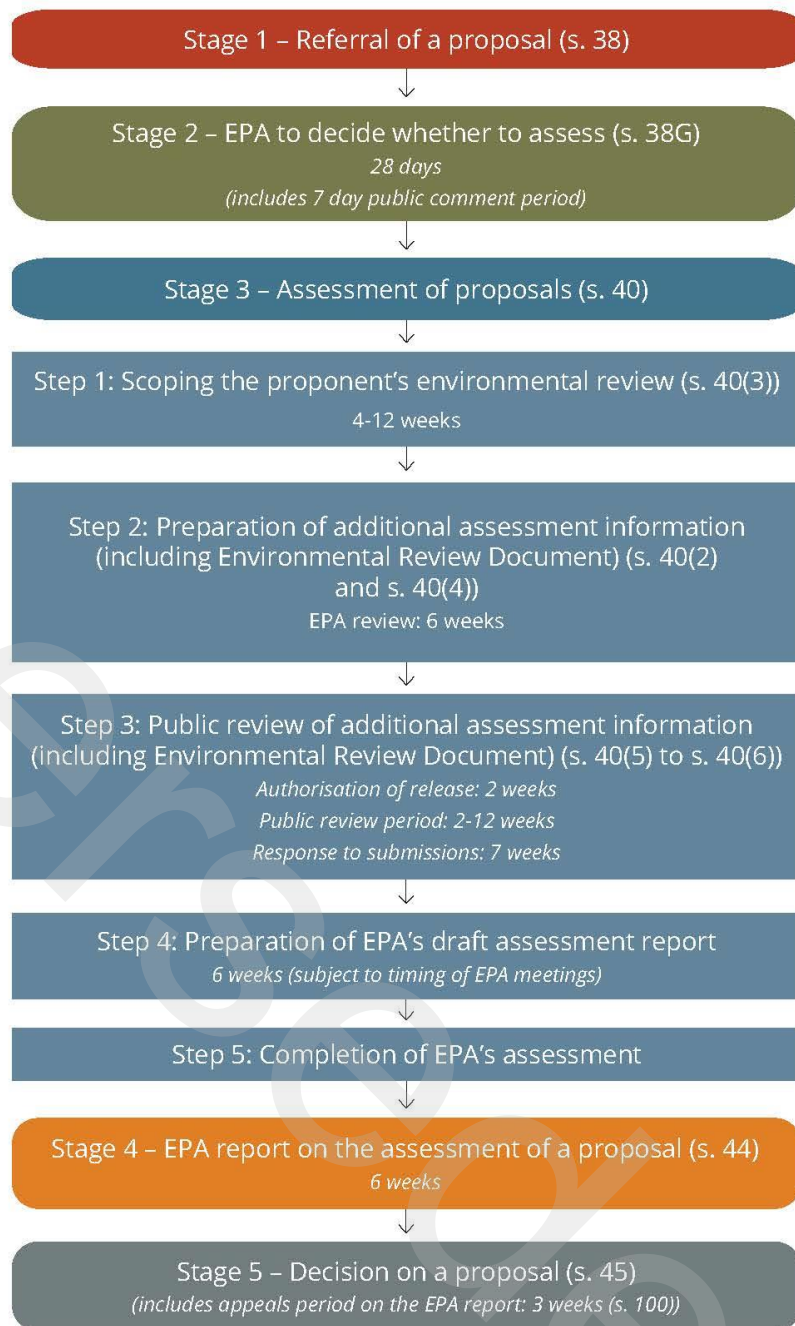


Figure 18: EIA process stages and steps and EPA's minimum target timeframes

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## Definitions

Words and expressions used in the Procedures Manual shall have the same respective meanings as provided for in the EP Act or as provided for below.

Term	Definition
<b>Accredited assessment</b>	Process where the Commonwealth accredits the State assessment process on a case-by-case basis and the State assesses the controlled action on behalf of the Commonwealth.
<b>Additional assessment information</b>	The assessment information the EPA requires under s. 40 to assess a proposal.
<b>Alternatives</b>	Options for part of, or the whole of, a proposal
<b>Amended proposal</b>	Proposal as amended by a proponent and approved under sections 38C, 43A or 45C of the EP Act, or as amended after consideration under s. 40AA.
<b>Assessment information</b>	Referral information (s. 38 and where applicable, s. 38A and/or s. 39A(2)(b) and/or additional information (s. 40)) that the EPA uses to assess a proposal (see also referral information and additional assessment information).
<b>Assessment report</b>	The report given by the EPA to the Minister under s. 44.
<b>Bilateral Agreement</b>	A bilateral agreement is an agreement made between the Commonwealth and the State under s. 45 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth). A bilateral agreement may accredit either the State's assessment processes (commonly referred to as an 'assessments bilateral') or the State's assessment and approvals processes (commonly referred to as an 'approvals bilateral').
<b>CEO</b>	The Chief Executive Officer of the Department of the Public Service of the State responsible for the administration of the <i>Environmental Protection Act 1986</i> . Currently the Director-General of the Department of Water and Environmental Regulation.
<b>Commonwealth</b>	The Commonwealth agency responsible for administering the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .
<b>Controlled action</b>	As defined in the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .
<b>Cumulative environmental impacts</b>	<p>Cumulative environmental impacts are the successive, incremental and interactive impacts on the environment of a proposal with one or more past, present and reasonably foreseeable future activities.</p> <p>The EPA expects (and may provide guidance on) scoping on the activities, boundaries and environmental values relevant to assessment of cumulative environmental impacts for relevant environmental factors during:</p> <ul style="list-style-type: none"><li>• the pre-referral stage; and/or</li><li>• the environmental scoping stage, for proposals that require an Environmental Review Document.</li></ul> <p>Note: Past activities should be acknowledged in EIA but do not need to be individually assessed if their impact is incorporated by consideration of the receiving environment.</p> <p>Note: Reasonably foreseeable future activities are defined below.</p>

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<b>Decision-maker</b>	The Minister, EPA or the CEO, who has specific powers and duties under the EP Act (see also Delegate).
<b>Delegate</b>	Person or public authority who, by instrument of delegation made under sections 18, 19 or 20 of the EP Act, is authorised to perform all or any of the powers or duties under the EP Act of the decision-maker (being either the Minister, the EPA or the CEO).
<b>DWER</b>	Department of Water and Environmental Regulation
<b>Effect</b>	The EPA considers environmental effects through the process of environmental impact assessment.
<b>Environmental factors</b>	Features or characteristics of the environment that may be impacted or affected by, or are otherwise relevant to the assessment of, a proposal that the EPA uses as an organising principle for environmental impact assessment. For guidance on these see the EPA's <i>Statement of environmental principles, factors, objectives and aims of EIA</i> .
<b>Environmental Review Document</b>	Proponent's report on an environmental review under s.40(2)(b).
<b>Environmental Scoping Document</b>	The document that defines the form, content, indicative timing and procedure of the environmental review under s. 40(3).
<b>EP Act</b>	<i>Environmental Protection Act 1986</i>
<b>EPA</b>	Environmental Protection Authority, defined as the Authority in Part I, s. 3 of the EP Act, or their delegate.
<b>Future proposal</b>	A proposal identified in a strategic proposal.
<b>Investigation work</b>	Activity carried out to inform the EPA's decision to assess a proposal or its assessment of a proposal, that does not involve implementing of the proposal.
<b>Holistic impacts</b>	Connections and interactions between impacts, and the overall impact of the proposal on the environment as a whole.
<b>Impact</b>	The EPA considers environmental effects through the process of environmental impact assessment.
<b>In writing</b>	Any form of communication in writing, including but not limited to, letter, email etc. (see also written notice).
<b>Key environmental factors</b>	The environmental factors that the EPA reports on under s. 44.
<b>Level of assessment</b>	Proposal-specific requirements that the EPA determines are necessary to assess the proposal.
<b>Minister</b>	The Western Australian Minister for the Environment, or their delegate
<b>Mitigation hierarchy</b>	Strategies to reduce the impacts of a proposal on the environment. For guidance on the mitigation hierarchy, see the <i>Statement of environmental principles, factors, objectives and aims of EIA</i> .

<b>Preliminary key environmental factors</b>	The environmental factor/s that the EPA identified on a preliminary basis as key environmental factors (when it decides to assess a proposal, publishes an Environmental Scoping Document, or otherwise identifies any time during its assessment).
<b>Prescribed class</b>	Types of proposals as specified in the Environmental Protection Regulations 1987, for example a proposal with a significant discharge of waste or emission of noise, odour or electromagnetic radiation into the environment.
<b>Referral information</b>	The information provided at referral (s. 38) and, where applicable, from requests for further information (s. 38A) and/or from information derived from the EPA's investigations and inquiries (s. 38G(3)(c)).
<b>Reasonably foreseeable future activities</b>	Third party (or proponent) activities which are already approved, are in a government approvals process, or are otherwise reasonably likely to proceed: <ul style="list-style-type: none"> <li>• for proposals assessed at the level of environmental review – at the time an Environmental Review Document for a proposal is accepted; or</li> <li>• for proposals assessed at the level of assessment on referral information – at the time the final referral or required additional information is accepted; and</li> <li>• existing activities that are reasonably expected to be ongoing</li> </ul>
<b>Significance / significant</b>	For guidance on 'significance' and 'significant' see the EPA's <i>Statement of environmental principles, factors, objectives and aims of EIA</i> .
<b>Statement of environmental principles, factors, objectives and aims of EIA</b>	<i>Statement of environmental principles, factors, objectives and aims of EIA</i> (EPA 2021) or any subsequent updates or replacements
<b>Strategic assessment</b>	Assessment of a strategic proposal
<b>Validly referred proposal</b>	A proposal recorded by the EPA as a valid referral
<b>WA Environmental Offsets Guidelines</b>	<i>WA Environmental Offsets Guidelines</i> (Government of Western Australia, 2014) or any subsequent updates or replacements
<b>WA Environmental Offsets Policy</b>	<i>WA Environmental Offsets Policy</i> (Government of Western Australia, 2011) or any subsequent updates or replacements
<b>Written notice</b>	Any form of notice in writing, including but not limited to, letter, email etc.

Suppressed