



Information for proponents on environmental impact assessment under the new Assessment Bilateral Agreement

The Western Australian Government (WA) has signed a new assessment bilateral agreement with the Commonwealth Government under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The agreement was signed on 3 October 2014 and came into effect on 1 January 2015.

The agreement allows WA to assess proposals likely to have a significant impact on the environment on behalf of the Commonwealth. The Commonwealth will still make the approval decision under the EPBC Act relying on the WA assessment report. A separate Infosheet which provides a summary of key information about the new agreement is available on the Environmental Protection Authority's (EPA) website.

The aim of this Infosheet is to provide more detailed information for proponents on the process and requirements for referral and the assessment of proposals under the new assessment bilateral agreement. Part I provides general information about the referral and assessment process and Part II provides information on the additional process requirements for the Assessment on Proponent Information - category A level of assessment.

PART I – general information on the new agreement

What does the agreement mean for proponents?

The bilateral agreement accredits two of the EPA's assessment processes; the EPA's Public Environmental Review (PER), and Assessment on Proponent Information - category A (API Category A) levels of assessment. Under the bilateral agreement, the Commonwealth can rely on environmental assessments undertaken by the EPA for the purpose of its approval decisions under the EPBC Act on projects that are likely to have a significant impact on a **matter of national environmental significance** (MNES). If the EPA assesses a proposal under the agreement through one of the two accredited processes, a separate assessment by the Commonwealth is not required. Duplication of assessments for proponents is avoided as a result.

The agreement also accredits the clearing permit assessment process administered by the Department of Environment Regulation under Part V Division 2 of the *Environmental Protection Act 1986* (EP Act).

The bilateral agreement does not accredit WA to undertake strategic assessments under the EPBC Act.

Referral of proposals

All proposals that are likely to have a significant impact on MNES must still be referred to the Commonwealth under the EPBC Act and the Commonwealth must first decide whether the proposal is a controlled action.¹ After the assessment process is complete, the final approval decision will still be made by the Commonwealth.

Proponents should be aware that the opportunity for a proposal to be assessed by the EPA under the bilateral agreement relies on the coordinated timing of the referral of the proposal to the Commonwealth and the EPA. If a proposal is referred to the EPA before the referral to the Commonwealth, the EPA's assessment process may be too far progressed to enable an assessment to occur under the bilateral agreement. For the EPA, the completion of the scoping stage of the environmental impact assessment is usually the limit of opportunity for an assessment under the bilateral agreement.

¹An action that a person proposes to take is a controlled action if it is one that has, will have or is likely to have a significant impact on a matter of national environmental significance, as determined by the Commonwealth Government.

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Commencement and transition

Proposals being assessed under the previous assessment bilateral automatically transitioned to the new agreement as of 1 January 2015. The assessment process will not be affected.

Proposals being assessed at the level of API Category A can start to be assessed under the new agreement on the commencement date subject to the Commonwealth's controlled action decision being made on or after that date.

Request for an assessment under the bilateral agreement

As of 1 January 2015, proponents are required to apply to the EPA for a proposal to be assessed under the new bilateral agreement.

It is recommended that this application is made at the time of the referral of the proposal to the EPA. A simple tick box is provided in the EPA's new [Referral Form](#) for this purpose.

If the application is made after referral and the EPA's assessment process is not too far progressed, a [separate application form](#) is available on the EPA website for this purpose.

Assessment of impacts on matters of national environmental significance

All MNES within Western Australian land and waters are covered by the bilateral agreement. The agreement does not cover proposals located within the Commonwealth marine area or on Commonwealth land, either wholly or in part. Projects not located in those areas, that may impact the environment in those areas, can be assessed through the bilateral agreement.

An assessment of a proposal under the bilateral agreement requires that the likely significant impacts on each MNES specified in the Commonwealth's controlled action decision are explicitly assessed. The EPA will expect proponents' final Environmental Review documentation to address the likely significant impacts on MNES within the framework of the EPA's factors and objectives. The EPA's environmental factors and objectives are set out in the EPA's [Environmental Assessment Guideline 8](#).

When undertaking an assessment under the bilateral agreement, the EPA, where relevant, is required to have regard to Commonwealth guidelines, policies and plans. Examples include the Commonwealth EPBC Act Environmental Offsets Policy, recovery plans for threatened species and ecological communities and/or approved conservation advice and threat abatement plans. To support assessments under the bilateral agreement, proponents will need to address relevant Commonwealth policy documents when undertaking their environmental review and preparing their Environmental Review document.

The EPA will consult with Commonwealth staff during the assessment to ensure that significant impacts on MNES are adequately addressed. Administrative Arrangements prepared with the Commonwealth will include measures for when and how this consultation will occur.

Relationship with clearing permit accredited assessment process

A proposal to clear native vegetation may be assessed under the bilateral agreement through the clearing permit process, under Part V Division 2 of the EP Act, provided:

- it is not referred to the EPA and there are no other significant environmental impacts besides the clearing; or
- in the case of a proposal being referred to the EPA, where the environmental impacts are unlikely to extend beyond clearing of native vegetation, the EPA decides not to assess it on the basis that the predicted impacts will be adequately considered through the clearing provisions.

Prospective clearing permit applicants should visit the [Department of Environment Regulation's website](#) or contact the Department for further information about assessments through that accredited process.

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Planning schemes and subdivisions

New planning schemes and scheme amendments are not 'actions' requiring referral and assessment under the EPBC Act. Therefore the EPA's assessment of schemes under the EP Act is not a process that can be accredited, nor one that needs to be accredited because there is no duplication of environmental assessment of schemes.

Unlike planning schemes, subdivisions are 'actions' and must be referred to the Commonwealth if likely to have a significant impact on MNES. A proponent or a relevant decision making authority (DMA) should refer a subdivision to the EPA to be assessed under section 38 of the EP Act, if the proposal has environmental issues not considered in the assessment of the planning scheme, or the proposal does not comply with the assessed scheme. While this does not occur often, if the EPA then decides to assess the subdivision it may be assessed under the bilateral agreement if referred to the Commonwealth at the same time as the EPA. The process for assessing subdivisions under the new bilateral agreement is the same for any other proposal also referred to the EPA under section 38 of the EP Act.

Public Environmental Review (PER)

The process for conducting a PER under this bilateral agreement has not changed. The Environmental Scoping Document (ESD) will continue to provide guidance for proponents on how to identify, align and integrate MNES with EPA factors and address them in the PER documentation. The PER public consultation period required by the EPA already fulfils the public comment requirements of the previous and new bilateral agreement.

PART II – further information on the new process for API Category A under the assessment bilateral agreement

Public comment on proposals

This agreement requires that proponents of proposals that are assessed under the agreement at the level of API Category A release their draft "assessment documentation" providing information on the likely significant impacts of their proposal on MNES for public comment for at least 14 calendar days. In the context of an EPA assessment, draft "assessment documentation" is the relevant extract that deals with MNES in the draft API Environmental Review document.

The bilateral agreement sets out particular requirements for the invitation for public comment and the content of the draft assessment documentation released for public comment. Further detail on the process for addressing these requirements is provided below and in the EPA's [Environmental Assessment Guideline for API Category A](#).

Documentation released for public comment

In accordance with the Environment Protection and Biodiversity Conservation Regulations 2000 and the bilateral agreement, the draft assessment documentation that is released for public comment must describe:

- the proposed action;
- the likely significant impacts on matters protected by Part 3 of the EPBC Act;
- to the extent practicable, any feasible alternatives to the proposed action; and
- possible mitigation measures.

The draft documentation that was advertised for public comment must be included in an appendix (on CD) to the final Environmental Review document together with sufficient information to demonstrate that the 14-day public review has been carried out and considered in the prescribed manner.

The draft documentation released for public comment is an extract of the Environmental Review document. However, the final API Category A documentation for assessments under the bilateral agreement should contain an assessment table which provides an overview of the preliminary key environmental factors, including MNES, in the context of the relevant EPA factor. For example, for impacts

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on a fauna species listed as threatened under the EPBC Act, the relevant EPA environmental factor may be terrestrial fauna, subterranean fauna or marine fauna. A specific section in the document is also necessary to address impacts on MNES. Public comments received and the proponent's response to submissions must also be included in the appendix.

Timing of the public comment period for API Category A proposals

Proponents may conduct their public comment before referral of their proposal to the EPA, or after referral when the EPA has set level of assessment at API A. Figure 1 shows how these two options for the bilateral comment period relate to the API Category A process.

Option 1 – pre-referral public comment

All proponents are encouraged to meet with the Office of the EPA (OEPA) prior to any referral. The OEPA will provide advice on whether a proposal meets the criteria for an API Category A level of assessment. The first pre-referral meeting with the OEPA will also include consideration of whether the bilateral agreement may apply and, if so, matters relating to this.

Where it has been agreed that the proposal is likely to meet the requirements of an API Category A it is the EPA's preference that the proponent prepares the draft Environmental Review document with a view to submitting it at referral with the referral information.

To address requirements of the bilateral agreement, the proponent will need to:

- determine the likely significant impacts of their proposal on MNES;
- ensure that adequate information on these impacts is provided in the draft assessment documentation that is released for public comment; and
- that public submissions are addressed in the API Environmental Review submitted on referral.

It is important to note that it is the EPA that ultimately decides the level of assessment and it is possible that a PER level of assessment may be applied, in which case the usual public review period for that level of assessment will still be required. For this reason it is important that the proponent fully consults with the OEPA prior to referral.

Option 2 – post-referral public comment

The second option is to release draft assessment documentation for public comment, addressing impacts on MNES, after the EPA's decision to assess the proposal at the level of API Category A. The proponent will need to summarise submissions received through the public comment process, and their response, in the final API Category A Environmental Review document.

Arranging an invitation for public comment

The EPA is facilitating the public participation process for API A proposals by:

- hosting proponent invitations for public comment on its consultation hub;
- linking to proponent's websites where the draft assessment documentation is located; and
- receiving and transmitting submissions to proponents.

To initiate a request for hosting an invitation for public comment, proponents will need to **complete the request form** and email it to info@epa.wa.gov.au. All draft assessment documentation released for public comment is to be housed on the proponent's website and not provided to the EPA as part of this process. Proponents must keep each file to a maximum of 8MB for ease of access and to meet EPA file size requirements when final documentation is submitted.

The scope of comment for submissions is limited to the impacts of the proposal on MNES. All submissions received will be provided to the proponent in their original form.

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API - Category A procedure

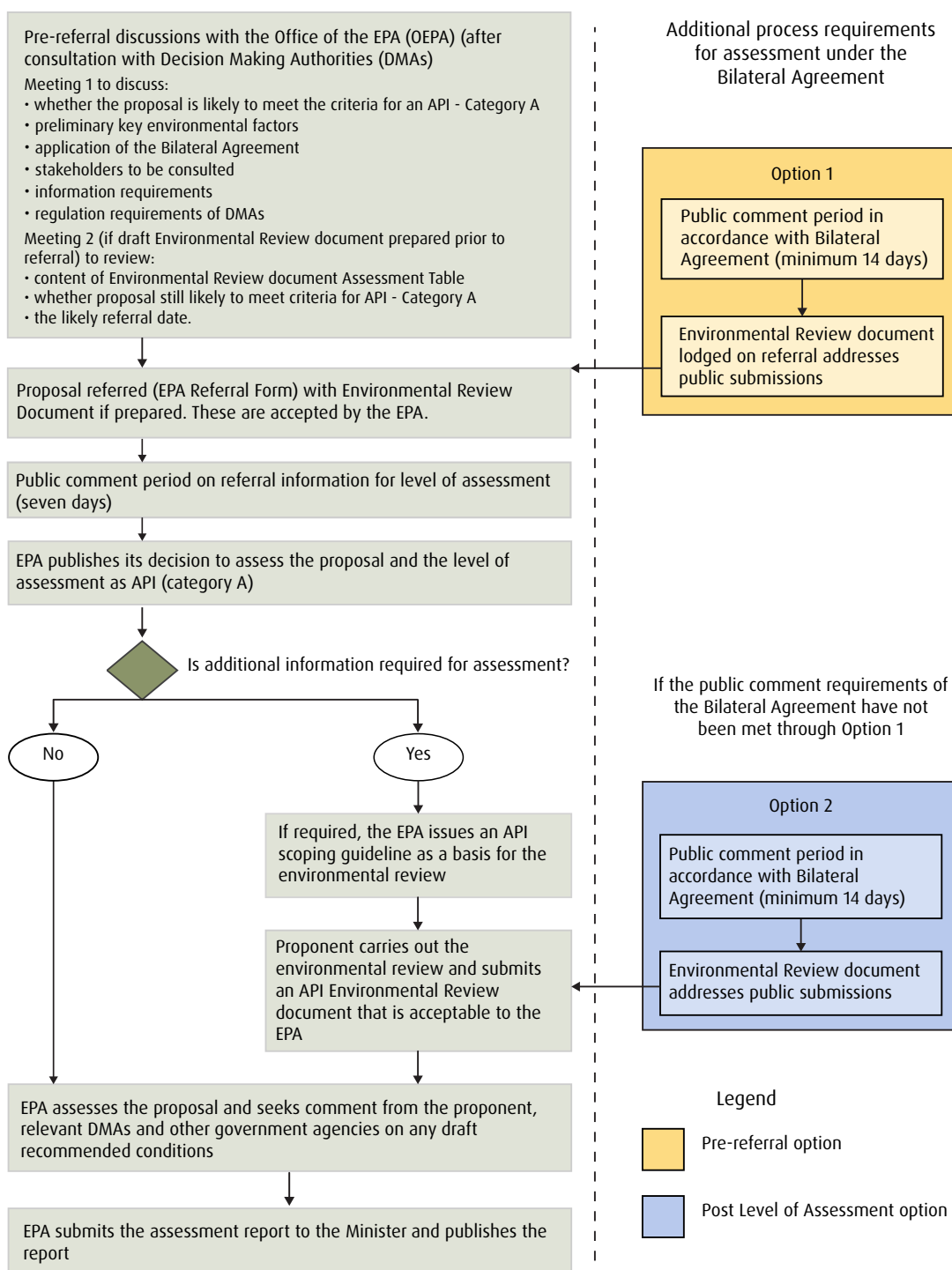


Figure 1: Procedure for API A assessment under the assessment bilateral agreement

Front page image: The Grand Spider Orchid, *Caladenia huegelii*, is a Declared Rare plant under the Western Australian Wildlife Conservation Act 1950, and is listed as Endangered under the Commonwealth EPBC Act.

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