



Environmental Impact Assessment in Western Australia

An introduction to Environmental Impact Assessment in Western Australia

Environmental impact assessment under the Environmental Protection Act 1986 (WA) ("EP Act") is the main method of considering the environmental impacts of major developments in Western Australia. The process involves a final decision about projects by the Minister for Environment ("the Minister") after recommendations, assessments and process decisions by the Environmental Protection Authority ("EPA") (an independent 5 person statutory body). The Office of the Environmental Protection Authority ("OEPA") is the government department which services the EPA for environmental impact assessments and also has some enforcement powers.

This fact sheet outlines the laws relating to environmental impact assessments in WA. See also [Fact Sheet 6: Commonwealth environmental impact assessment](#) for information on proposals that also require assessment and approval under Commonwealth legislation.

What does environmental impact assessment under the EP Act cover?

The EPA has authority to assess proposals which are likely, if implemented, to have a significant effect on the environment. "Proposals" are defined in the EP Act to include a development, project, plan, programme, policy, operation, undertaking, change in land use, or an amendment of any of these things. This definition is wide enough to mean that the EPA can look at not only development proposals, but also some government plans and policies if they will impact on the environment.

Town planning schemes, including redevelopment, metropolitan, regional and town planning schemes or amendments to those schemes, are assessed under a different process to "proposals" and are discussed in [Fact Sheet 3: Planning Laws](#). Be aware that if a development proposal complies with a town planning scheme, and that scheme has in the past been referred to the EPA, the individual development proposal itself is then usually not able to be assessed by the EPA. The main exception to this however is when an environmental issue raised by the development was not looked at in the initial referral of the scheme.

The EPA can also assess strategic proposals. Strategic proposals are future proposals that, if implemented, are likely to have a significant impact on the environment. The EPA can assess the strategic proposal, and then the Minister sets conditions which will be applied to the future individual development proposals when they actually happen. When this happens, the future proposal is called a "derived proposal" and cannot usually be assessed by the EPA. The main exceptions to this are if there are environmental issues which were not adequately assessed with the strategic proposal, if there is new information that justifies reassessment, or if there has been a significant change in the relevant environmental factors since the strategic proposal was assessed.

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Proposals which have already been referred to the EPA cannot be referred again unless they are significantly changed.

Who can refer a proposal to the EPA?

Any person can refer a proposal to the EPA for assessment if it thinks it may have a significant effect on the environment. However, only the proponent can refer a "strategic proposal".

"Decision-making authorities" (such as local governments who decide planning approvals, or the Minister for Mines who decides mining lease) must refer significant proposals to the EPA as soon as the proposal comes to their attention (unless it has already been referred). There are Memorandums of Understanding between the EPA and several decision making authorities which set out when the EPA expects a proposal should be referred to it. Once a decision-making authority has referred a proposal to the EPA, the decision-making authority is not allowed to make any decision which would cause or allow the proposal to go ahead (such as issue a mining lease, issue an approval, start to implement a plan, etc).

Mining lease applications which do not yet have a formal mining proposal developed for them (mining proposals set out detailed mine plans and assess environmental impact) can only be referred by the miner. However, mining cannot occur under mining leases until a mining proposal or a programme of works is later approved for the mine, and any person can refer the mining proposal or programme of works to the EPA.

The EPA also has a "call in" power. If a significant proposal or a proposal of a "prescribed class" (currently this prescribed class is a proposal which involves a significant discharge of waste or emission of noise, odour or electromagnetic radiation into the environment) has not been referred to the EPA, the EPA may require the proponent or decision making authority to refer the proposal to the EPA. However, in the case of a proposal under a town planning scheme which has already been referred, the EPA can only require this referral if it did not have sufficient scientific or technical information to enable it to assess the environmental issues when the scheme was originally referred.

If the Minister for Environment is aware that there is public concern about the likely effect of a proposal, the Minister can also refer the proposal to the EPA.

Referrals are usually made public, so should not contain any confidential information.

For a proposal under a town planning scheme which has already been referred to the EPA, only the proponent can refer the proposal to the EPA. Although the decision making authority must also refer such a proposal if it considers that environmental issues raised by the proposal were not considered, or that the proposal does not comply with the scheme or its conditions.

Who decides whether a proposal should be assessed?

The EPA, or a person to whom the EPA has delegated its decision-making power (usually the EPA Chair), decides whether a proposal should be assessed. It has a wide discretion to decide whether a project should be assessed or not, but the EPA's *Environmental Impact Assessment Administrative Procedures 2010* ("Administrative Procedures 2010") set out some of the things which the EPA will consider in deciding whether it believes a proposal is significant. These include the environmental values in the area, the resilience of the environment, the scope and potential impact of the proposal, and the public interest.

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The EPA will usually decide whether or not to assess the proposal within 28 days of the referral of the proposal. However if the EPA does not believe it has sufficient information to decide whether a project should be assessed or not, it can request that information from the proponent, a decision making authority, or any person. Until a satisfactory response to a request for additional information is provided, the EPA is not required to make a decision about whether or not to assess the proposal or the level of assessment.

The EPA is to provide written notice of its decision to the proponent, the person referring the proposal and any relevant decision-making authority. The EPA also publishes its decisions on its website.

Who can comment about whether a proposal should be assessed?

Any person can comment about whether a proposal should be assessed. The EPA publishes the referrals which it receives on its website, and gives any person 7 days to make submissions about whether or not the EPA should assess the proposal and the level of assessment which should apply to it.

Comments made to the EPA should focus on the significance of the proposal because of things such as the environmental values in the area, the resilience of the environment, the scope and potential effect of the proposal, and the public interest. If there is not room on the comments sheet for you to provide supporting information, you should note in your comments that you would like to provide this information.

EPA's decision not to assess a proposal

If the EPA decides that a proposal will not be assessed, it will record its decision in one of the following ways:

- "Not Assessed – no advice given". The EPA will not take any further action on the proposal.
- "Not Assessed – public advice given". The EPA will provide advice to the decision making authorities and proponent on the environmental aspects of the proposal. This advice is however not legally binding on the decision making authorities or proponent. The EPA's advice will be available to the public, and will be forwarded on request.
- Not Assessed – managed under Part V of the Act. The EPA considers that the proposal could be managed under Part V of the EP Act, which includes clearing laws and the requirements for works approvals and licences (see [Fact Sheet 7: Clearing Native Vegetation](#) and [Fact Sheet 27: Pollution and Environmental Harm](#))
- Not Assessed – public advice given and managed under Part V of the Act. The EPA provides (non binding) advice to decision making authorities and the proponent (which can be provided to the public), and considers that the proposal could be managed under Part V of the Act (see [Fact Sheet 7: Clearing Native Vegetation](#) and [Fact Sheet 27: Pollution and Environmental Harm](#))

Once the EPA decides not to assess a proposal (for whatever reason), it will usually not take any further action in relation to it. You cannot re-refer the proposal, as proposals which have already been referred to the EPA cannot be referred again unless they are significantly changed.

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Also, once the EPA decides not to assess a proposal, any decision-making authorities who were prevented from making decisions which would cause or allow the proposal to go ahead (such as issue a mining lease, issue an approval, start to implement a plan, etc) can then go ahead and make their decisions. If the EPA has given them advice about the proposal, they must take the advice into account and give it reasonable consideration, though they are not bound to follow it.

Who can appeal the EPA's decision not to assess a proposal?

Any person may appeal to the Minister for the Environment against a refusal by the EPA to assess a proposal. The Appeals Convenor publishes application forms on its website for lodging an appeal, but the appeal can also simply be in the form of a letter to the Minister for the Environment, setting out the grounds of the appeal. Whatever form your appeal is in, it should state the reasons and provide evidence about why you think the EPA's decision is wrong. You should also set out what you think the EPA should have instead decided, and what you think the Minister should now decide as a result of your appeal.

There may be several reasons you think the EPA's decision is wrong (these are called grounds of appeal). The grounds which are usually most successful are that you think the EPA did not consider a significant issue, and/or new information is now available which should change the EPA's decision. Other successful grounds can be that the EPA did not properly apply a relevant guidance or policy document. The EPA develops various documents to set out the minimum requirements for management which the EPA would expect to be met when the EPA considers a proposal as part of the assessment process. Guidance statements have been adopted in a number of specific areas, such as marine dredging proposals, protecting marine turtles from light emissions, minimising greenhouse gas emissions, terrestrial fauna surveys, etc. These are available on the EPA's website.

The appeal must be lodged within 14 days of the EPA's decision being placed on its public record. It usually costs \$10 to lodge an appeal, but you can ask to have this waived if you have a good reason.

The Appeals Convenor publishes procedures about how appeals will be conducted, which are available on its website. The Appeals Convenor also publishes the Minister's decisions on appeals, and a summary of the Minister's reasons.

The result of the appeal can be that the Minister either agrees with the EPA that the proposal does not need to be assessed, that the Minister sends the proposal back to the EPA for a fresh decision, or that the Minister believes the proposal should be assessed, in which case the EPA is then required to assess it.

An appeal against the EPA's decision not to assess a proposal does not affect the decision unless and until the Minister agrees with the appeal and directs the EPA to formally assess it.

What happens if the EPA decides to assess a proposal?

If the EPA decides to assess a proposal, it sends a notice to all relevant decision-making authorities advising them that from then on they cannot make any decision which could cause or allow the proposal to go ahead (such as issue a mining lease, grant an approval or implement a plan). It also then becomes an offence for any person (not just the proponent) to do anything to implement a proposal. This restraint stays in place until the EPA's assessment is final and the Minister decides that the proposal can be implemented. However, this does not apply to any minor or preliminary works which the EPA specifically approves can be done.

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Once it has decided to assess a proposal, the EPA then sets a level of assessment.

What types of assessment are available?

The EPA can determine the form, content, timing and procedure of any environmental impact assessment, and has a broad discretion to do so. However, the EPA most often follows the assessment process outlined in the Administrative Procedures 2010. (Note: For proposals which were already being assessed before 26 November 2010, the *Impact Assessment (Part IV Division 1) Administrative Procedures 2002* still apply.)

The Administrative Procedures 2010 set out that the following assessment types could apply:

- Assessment on Proponent Information ("API") - where the environmental acceptability or unacceptability of the proposal is apparent at the referral stage; and
- Public Environmental Review ("PER") – where the proposal is of State wide significance, where substantial assessment is required to determine whether/how the environmental impacts can be managed, where there are several significant (including some complex or strategic) environmental issues, or where the level of public interest warrants a public review.

If you are concerned about the EPA's proposed assessment approach (such as if the EPA sets a level of API and you think it should be PER), you can ask the Minister to direct the EPA to assess the proposal more fully or more publicly or both, and the EPA then has to comply with that direction. (Note – until 2010 people could lodge formal appeals to the Minister about the level of assessment set by the EPA, but this appeal right was removed from the EP Act in November 2010).

Assessment on Proponent Information

The EPA will apply an API level of assessment where it believes the proponent has provided adequate information in the referral about the proposal, its environmental impacts and proposed management. API does not involve any public review period because the EPA believes the proponent has appropriately and effectively consulted with the stakeholders, or further consultation through a public review process is unlikely to identify additional stakeholders or raise additional significant environmental issues.

When setting an API level of assessment, the EPA will deal with the proposal as either category A or category B:

Category A will be applied where the EPA thinks:

- the proposal raises a limited number of significant environmental factors that could be readily managed, and for which there is an established condition-setting framework;
- the proposal is consistent with established environmental policy frameworks, guidelines and standards; and
- there is limited or local interest only in the proposal.

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Category B (environmentally unacceptable) will be applied where the EPA thinks:

- the proposal is inconsistent with established environmental policy frameworks, guidelines or standards; or
- the proposal is likely to have a significant impact on a critical asset; or
- the proposal raises one or more significant environmental factors or issues that do not meet the EPA's environmental objectives; and
- the proposal could not be reasonably modified to meet the EPA's environmental objectives.

The general process for an API is set out in the diagram on page 7, which is provided by the OEPA and you can find in their Administrative Procedures 2010. You should review the Administrative Procedures 2010 themselves if you need specific information about the API process. If you are interested in the process for a specific proposal, you should also review the specific documents which the EPA publishes about that proposal (for example, the referral, the EPA's referral decision, any API scoping guideline etc).

Public Environmental Review (PER)

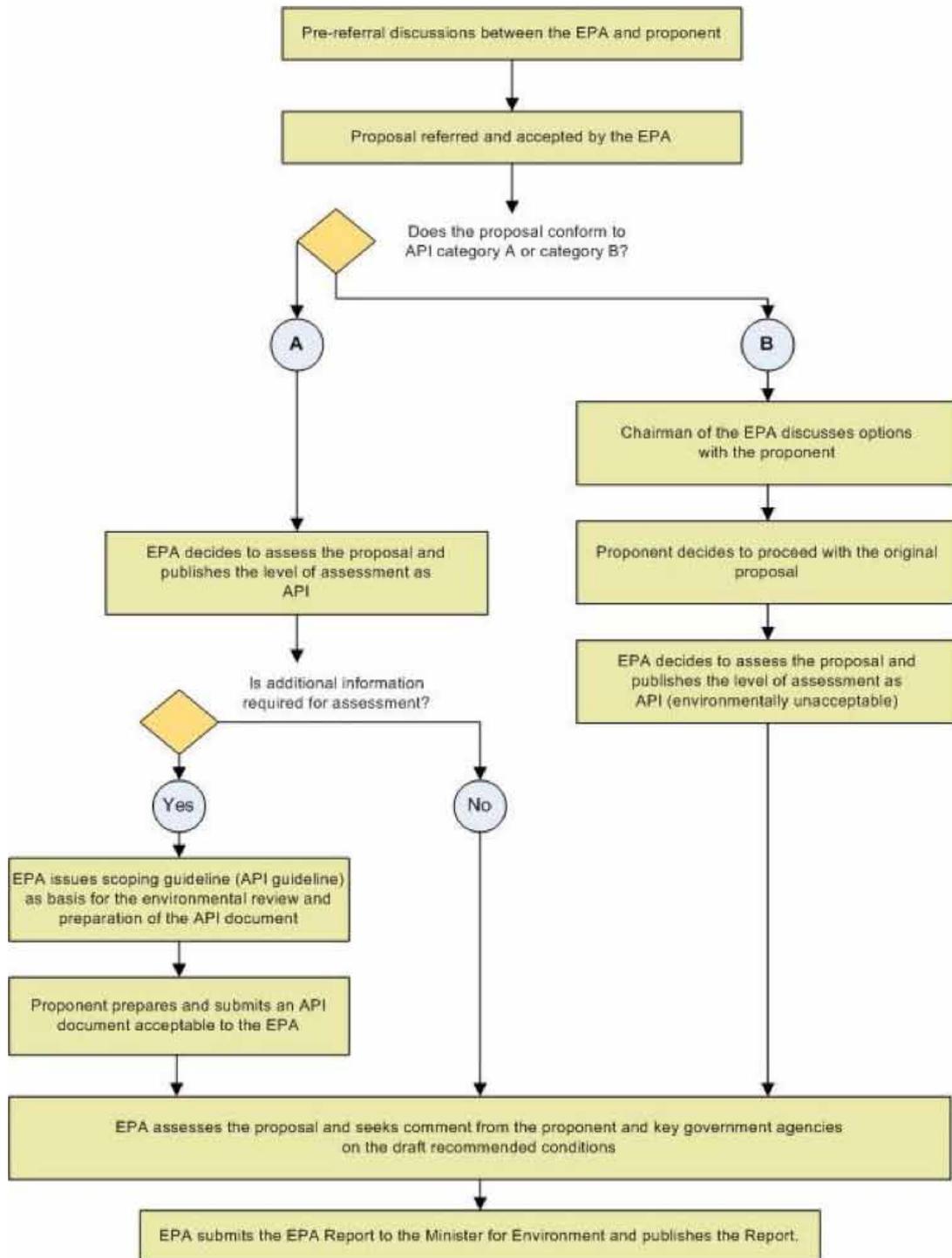
The general process for a PER is set out in the diagram on page 8, which is provided by the OEPA and you can find in their Administrative Procedures 2010. You should review the Administrative Procedures 2010 themselves if you need specific information about the PER process. If you are interested in the process for a specific proposal, you should also review the specific documents which the EPA publishes about that proposal (for example, the referral, the EPA's referral decision, any Environmental Scoping Document, etc).

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Assessment on Proponent Information

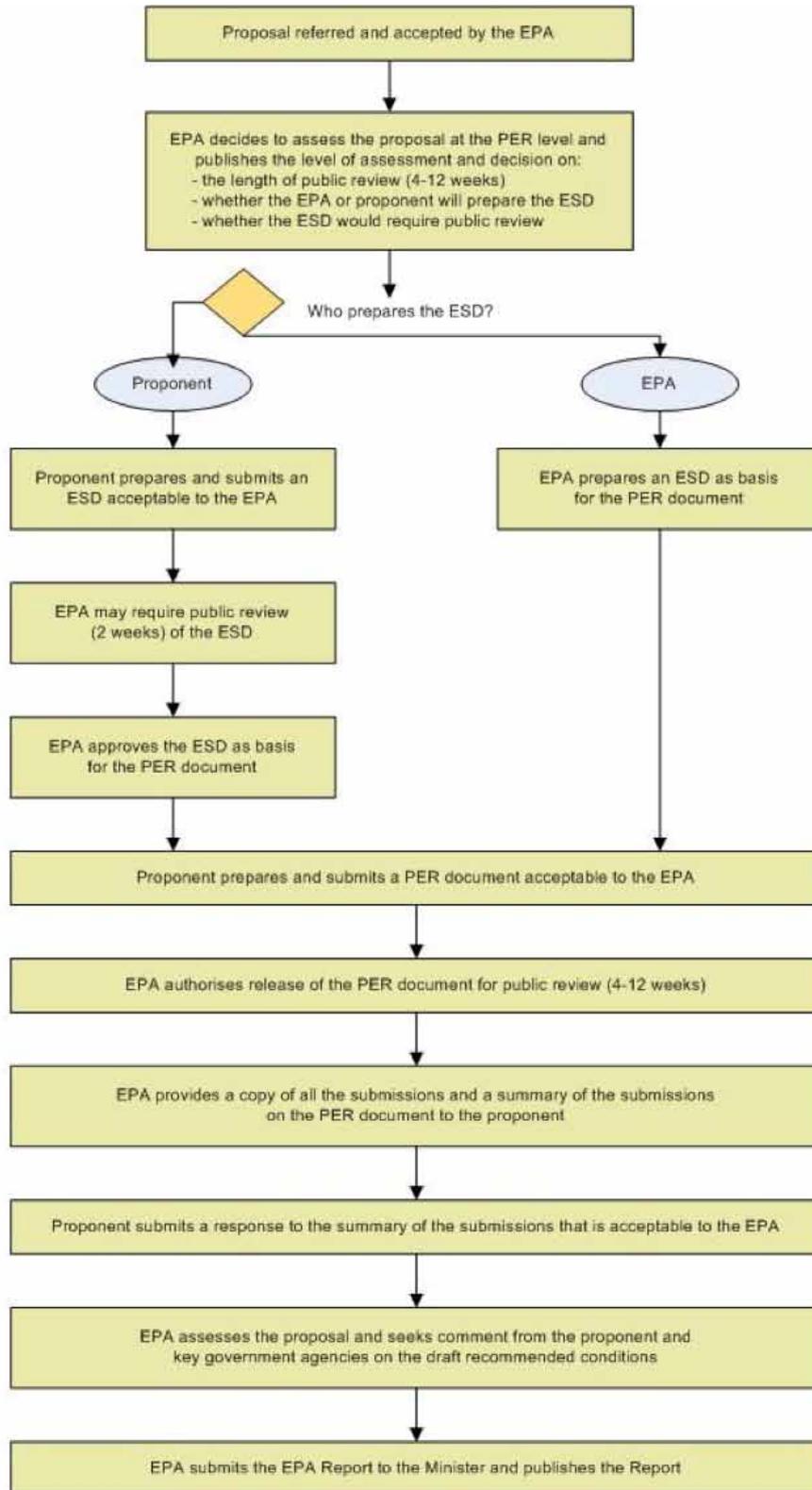


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Public Environmental Review



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EPA's other powers during assessment

While the EPA usually follows the process set out in the Administrative Procedures 2010, the EPA is not bound by them and can change the procedure in some cases. The EPA has a quite wide discretion to direct the form, content and procedure of any specific assessment. It also has the power to direct people to provide it with information and to make its own investigations. This means it can, for example, direct the proponent to publish additional information for public comment, or to engage independent experts to conduct an assessment, or to have information peer reviewed.

At any time during the assessment process, the proponent can ask the EPA to approve a change to its proposal. The EPA will usually accept these changes if they are unlikely to significantly increase any impact that the proposal may have on the environment. These changes are usually not notified to the public, but you can seek information directly from the EPA about whether any changes have been made. You can also ask the EPA to direct the proponent to publish additional information for public comment if you think a change has/may be made which was not included in the original public information. Note that changes cannot be made to proposals after the EPA's report is given to the Minister.

If you are concerned about the EPA's assessment process, you can ask the Minister to direct the EPA to assess the proposal more fully or more publicly or both, and the EPA then has to comply with that direction.

At the end of the assessment process, the EPA will prepare a report and recommendations on the proposal for the Minister (this is discussed further below).

Public Inquiry

With the approval of the Minister, the EPA may choose to assess a proposal through a public inquiry. A public inquiry may be conducted by the EPA, by both the EPA and non EPA members, or by a committee appointed by the EPA. The people conducting a public inquiry will have the powers of a Royal Commission during the inquiry. The process for a public inquiry will be defined by its terms of reference, which are set by the Minister. Public inquiries are very rare.

Can the EPA look at social and economic impacts?

The EPA's role is to report on factors affecting the "environment" as defined in the EP Act. The word environment is defined in the EP Act as living things, their physical, biological and "social surroundings" and interactions between all of these. Social surroundings are defined in the EP Act to include aesthetic, cultural, economic and social surroundings to the extent that they directly affect or are affected by physical and biological surroundings. Therefore, assessment of the "environment" can cover social impacts in the area which are directly affected by the physical or biological impact of the proposal, such as the impact of a mining project on groundwater used by neighbouring properties and their consequential loss of ability to use their land. It is, however, outside the EPA's role to report on the general economic benefits which may result from a proposal going ahead, or on how not going ahead with the project will affect the proponent or third parties.

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How can you influence the EPA's recommendations?

The main way to influence the EPA's recommendations is to make a submission on the proponent's PER.

The EPA suggests that to make your submission effective, you should note that:

- Informed comments are most useful, so find out as much as you can by attending open days, reading documents relating to the proposal or policy, talking to neighbours or interest groups, etc.
- Your submission does not need to be long or complex. Your opinions, your reasons for them and your suggestions are the most important parts. If you are not sure, ask the EPA for advice.
- State clearly your view and reasons for it.
- Say how your concerns might be addressed and your reasons for it. (Or give alternatives that might be considered.)
- Provide references to any factual data such as scientific reports.
- Use photographs, maps or sketches if possible.
- Group your points under the relevant section or chapter of the proponent's review or draft policy.

You should also consider whether the EPA has published a relevant guidance or policy document. These documents are developed by the EPA to set out the minimum requirements for management which the EPA would expect to be met when the EPA considers a proposal as part of the assessment process. Guidance statements have been adopted in a number of specific areas, such as marine dredging proposals, protecting marine turtles from light emissions, minimising greenhouse gas emissions, terrestrial fauna surveys, etc. These are available on the EPA's website, and should also be referred to (and applied) in the proponent's documents.

If at any time during the assessment you are concerned about the EPA's assessment, you can ask the Minister to direct the EPA to assess the proposal more fully or more publicly or both, and the EPA then has to comply with that direction.

EPA's report and recommendations on the proposal

The EPA can use a wide range of information from a wide range of sources when it makes its assessment and prepares its report. It can use information from the proponent, the public, internal or external experts, peer reviews, government departments, standards and guidelines, etc.

Once it completes its assessment, the EPA does not have the power to approve or reject proposals. Instead, it prepares a report for the Minister based on its assessment of the proposal, and provides a recommendation to the Minister about whether it believes the proposal should go ahead or not. If it recommends the proposal should go ahead, it also recommends conditions which it believes should be placed on the approval to manage the environmental impacts of the proposal.

The EPA's report will usually focus on the key impacts of a proposal, and the key environmental factors which a proposal may impact on, rather than reporting on every aspect. You may consider whether to appeal if you think the EPA did not properly consider a significant issue, or new information is now available which should change the EPA's report. Other successful grounds can be that the EPA gave too much weight to one issue to the detriment of others, or that it did not properly apply a relevant guidance or policy document.

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There are two types of conditions which the EPA usually recommends; management plan conditions, and outcomes based conditions. Outcomes based conditions are those which (should) set specific environmental limits on the proposal, such as “the proponent shall not clear more than x ha”, or which set an emission limit. The Administrative Procedures 2010 state that the EPA’s preference is for outcomes based conditions, but most conditions which have been set in the past are in fact management plan conditions. If you don’t think that the outcomes based conditions which the EPA recommends will ensure the proposal has acceptable environmental impacts, you may consider whether to appeal the EPA’s report.

Management plan conditions require the proponent to prepare a management plan to manage and/or monitor a particular part of the proposal or an environmental factor. The condition requiring the management plan should, however, still set the objectives that the plan has to achieve and set out some of its requirements, and cannot in effect simply defer the environmental conditions under which the proposal can operate to be resolved in the management plan. The conditions usually require that the project can’t commence until the plan is approved by the OEPA.

Conditions which require management plans usually require that the plan be made in consultation with government agencies, but not the public. Since management plans are usually drafted by the proponent, they are also not usually written in a legally binding way. For these reasons, you may consider whether to appeal when the EPA recommends these type of conditions.

All conditions should be SMART - Specific, Measurable, Attainable, Relevant, Time Bound. Again, you should consider whether to appeal when the EPA recommends conditions which do not meet these requirements.

Appeals about the EPA report and recommendations

Any person may appeal to the Minister for the Environment about the content of or a recommendation in the EPA’s report. The Appeals Convenor publishes application forms on its website for lodging an appeal, but the appeal can also simply be in the form of a letter to the Minister for the Environment, setting out the grounds of the appeal. Whatever form your appeal is in, it should state the reasons (grounds of appeal) and provide evidence about why you think the EPA’s decision is wrong. You should also set out what you think the EPA should have instead decided, and what you think the Minister should now decide as a result of your appeal.

The appeal must be lodged within 14 days of the EPA’s report. It usually costs \$10 to lodge an appeal, but you can ask to have this waived if you have a good reason.

The Appeals Convenor publishes procedures about how appeals will be conducted, which are available on its website.

The Appeals Convenor publishes the Minister’s decisions on appeals, with a summary of the Minister’s reasons. These can be a good source of information about what grounds of appeal may be successful. Some reasons you might decide to appeal are also explained above in **EPA’s report and recommendations on the proposal**.

The result of the appeal can be that the Minister either agrees with the EPA’s report and recommendations, or that the Minister believes the EPA should undertake further assessment or re-assessment and/or that the EPA should recommend different conditions. The EPA then has to comply with the Minister’s decision.

An appeal against the EPA’s report and recommendations does not affect the decision unless and until the Minister agrees with the appeal and directs the EPA to re assess a matter or change its recommendations.

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Appeals against the EPA's report and recommendation are quite an important way to influence whether the proposal is actually finally approved by the Minister or not, and if so what conditions should apply. This is because when the Minister makes this final approval decision, he or she is bound to follow his or her decision on the EPA's report.

Can the Minister say “no” to a proposal?

Where a proposal has been assessed, the Minister can say “no” to a proposal by issuing a statement that the proposal cannot be implemented. If the proponent then goes ahead, the proponent will commit an offence. Other decision-making authorities are also still prevented from issuing any other approvals.

The proposal cannot be re-referred unless it is substantially changed. This can include changes of scope, nature or environmental impact.

No one can appeal the Minister's decision to say no to a proposal (unless there is a legal error in the decision - see [Fact Sheet 1: Overview of environmental law in Western Australia](#)).

What happens if the Minister wants to say “yes” to a proposal?

The Minister is obliged to consult with all “decision-making authorities” before making a final decision on whether a proposal should be implemented, and if so on what conditions.

Where a decision-making authority is another Minister, the Minister for the Environment must either agree with that Minister over whether the proposal should go ahead and if so on what conditions, or refer the matter to the Governor (effectively Cabinet) for a final decision.

Where the decision-making authority is not another Minister, the Minister for the Environment can disagree with that authority, but then must appoint an Appeals Committee to consider and report on the matters in dispute (in practice, the Appeals Convenor).

After consulting and agreeing with the decision making authorities, the Minister can set the agreed conditions on the implementation of the proposal. This is done as part of a statement that the proposal may be implemented. It then becomes an offence for the proponent to breach any implementation conditions.

The types of conditions which the Minister can set are described above in **EPA's report and recommendations on the proposal**.

Once the Minister has decided that a proposal can be implemented and has set conditions on it, other decision making authorities are then free to grant their own approvals and make their own decisions about the proposal (for example, grant planning approval or a Mining lease). There is no direct requirement that approvals/decisions made by an authority (other than the Department of Environment and Conservation) must be consistent with the Minister of Environment's conditions. However, their approvals/decisions are usually consistent with the Minister's conditions (or at least not inconsistent with them).

One of the most significant effects of the Minister saying “yes” to a proposal is that the proponent no longer needs a clearing permit, as the Minister's approval provides an exemption to clearing laws as long as the conditions of the approval are complied with.

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Can the Minister's "yes" decision or the conditions be appealed?

No one can appeal the Minister's decision to say "yes" to a proposal (unless there is a legal error in the decision – see [Fact Sheet 1: Overview of environmental law in Western Australia](#)).

Only the proponent can appeal the conditions of the Minister's decision that a proposal can be implemented. Members of the public, or even people affected by the conditions, cannot appeal the conditions (unless there is a legal error in the decision - see [Fact Sheet 1: Overview of environmental law in Western Australia](#)).

If the proponent does appeal the conditions, it prevents the proposal being implemented until the appeal is finalised. The appeal is to the Minister, but as the Minister actually made the decision in the first place, the Minister is required to establish an appeals committee (which can be just one person) to investigate the appeal, and the Minister is then bound to follow the appeals committee's decision.

How can you ensure that conditions are followed?

The proponent must ensure that it, and any person who they contract or partner with to do work on the proposal, complies with the conditions. It is no defence for the proponent to a breach of conditions for the proponent to say "the contractor did it, not me". However, while the conditions are not in themselves binding on the contractor, unless the contractor complies with them, the contractor will not have the defences and exemptions which complying with the conditions usually provides, and so will be at risk of committing environmental law offences (see for example [Fact Sheet 27: Pollution and Environmental Harm](#)).

If you believe that a condition, or management plan required under a condition, or a commitment which is required to be followed because of a condition which says "the proponent shall implement the commitments", has been breached, you should forward a complaint to the OEPA. It is the OEPA's role to monitor the implementation of proposals and compliance with conditions.

If the OEPA advises the Minister that a condition has not been complied with, the Minister must take one of a number of actions specified in the EP Act, which range from a notice requiring the proponent to take specified steps, to a stop work order.

In addition, if a condition has been breached, the proponent commits an offence. Prosecutions or other enforcement action for breaches of conditions can only be brought by the OEPA. If you believe that the OEPA has not properly dealt with a complaint, you can take the matter up with the Minister or the State Ombudsman.

In extreme cases, where there is an impending breach of a condition and the OEPA refuses to take action, you may wish to consider seeking an injunction in the Supreme Court in order to prevent the event that will cause the breach from occurring. You would need to obtain legal advice to find out whether an injunction would be available in any particular case.

Can conditions be amended?

Ministerial Conditions can be amended. The amendment process is started by the Minister, who asks the EPA to report on whether the conditions should be changed. If the Minister and any relevant decision-making authorities consulted by the Minister agree that the change is a major change, the proposal should be formally assessed from the start of the usual environmental impact assessment process as a new proposal.

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Otherwise, the EPA will do an assessment of whether the conditions should change and report on this to the Minister. The Minister will then make a decision as to whether the conditions should be changed, in consultation with relevant decision-making authorities as if the conditions were being set for the first time (see above **What happens if the Minister wants to say “yes” to a proposal?**).

The EPA has to notify the public that it has been asked to inquire into the conditions, but the public are usually not given any chance to input into changes to conditions. Note though that the EPA can require the public to be consulted about changes to conditions. In fact, the EPA has all of its usual powers of environmental impact assessment when it is reviewing whether conditions should be changed. If you are concerned that the conditions of a proposal may change, you can ask the EPA to have some consultation with you (or the public generally) about it.

Once the Minister has requested that the EPA inquire into conditions, the Minister can also issue interim conditions without referring them to the EPA as long as the conditions are not expected to have a significant detrimental effect on the environment. These conditions have to be published but the Minister does not have to consult with other decision making authorities or the public about them.

Under section 46C of the EP Act, the Minister can also make a minor change to the implementation conditions without requesting an EPA report, if the Minister considers it is necessary to standardise conditions, correct an error or make an administrative change that does not alter the obligations of the proponent. These minor changes must be published and given in writing to the EPA, to each decision-making authority that was previously consulted and to the proponent.

Can the proposal change?

The Minister can approve the proponent making a change to the content of the proposal (with or without a change to the conditions) after it has been approved, as long as the Minister does not think the change might have a significant detrimental effect on the environment in addition to or different from the effect of the original proposal. The Minister usually delegates this power to approve changes to the EPA. Once the change is approved, it is usually attached to the back of the Ministerial Statement published on the EPA website.

If the proponent changes some aspect of its project which requires clearing, the proponent cannot choose whether to get approval for the change under the Ministerial approval or obtain a clearing permit. This is because a clearing permit can't be issued by DEC otherwise than in accordance with the Minister's decision that the proposal can go ahead.

Important disclaimer:

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How can you become involved?

The environmental impact assessment process has a number of opportunities for public involvement. These opportunities include:

- Referring any proposal likely to have a significant effect on the environment to the EPA for an environmental impact assessment.
- Making submissions to the EPA as part of the 7 day public comment period on a referral.
- Reviewing EPA decisions about whether to assess a proposal and appealing if you disagree.
- Making submissions to the developer as part of a PER assessment.
- Reviewing EPA reports and lodging appeals against content, recommendations or proposed conditions.
- Asking the Minister to direct the EPA to assess a proposal more fully or publicly or both.
- Monitoring proponents' compliance with conditions and referring possible breaches to the OEPA.

Contacts and further information

Environmental Protection Authority, Perth Tel: (08) 6467 5600 or visit www.epa.wa.gov.au

Department of Environment and Conservation, Perth Tel: (08) 6467 5000 or visit www.dec.wa.gov.au

Office of the Appeals Convenor under Environmental Protection Act 1986, Perth, Tel: (08) 6467 5190 or visit www.appealsconvenor.wa.gov.au

For copies of WA legislation considered in this fact sheet, contact the State Law Publisher
Tel: (08) 9321 7688 or visit www.slp.wa.gov.au

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The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: edowa@edowa.org.au

Thank you to our donors

The EDO is grateful for the funding provided by the following organisations to create and maintain these fact sheets.



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