


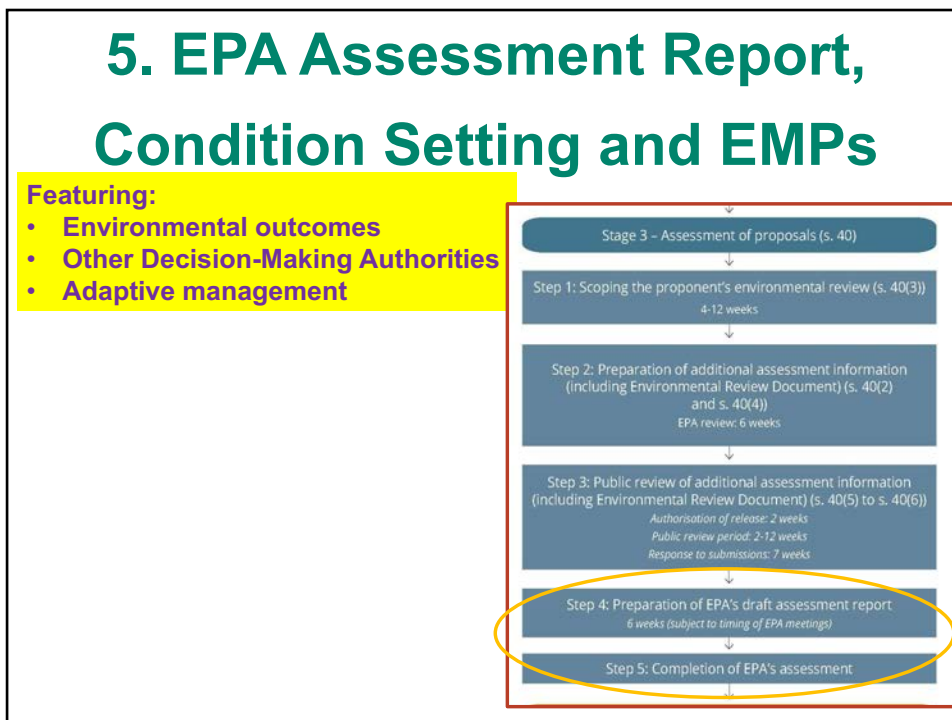
**EIA Practitioners Course March 13 & 14 February 2024**

**Table List – Day 2 – 14 February**

Table 1	Table 2	Table 3	Table 4
Kane Jackson Pamela Simpson Erin Cameron Sophia Gia Brandao Pinto Cally Koopman Sujan Henk	Camila Bedulli do Carmo Sheldon Chambers Catherine Rea Dominic Flynn Lauren Munks Toni Munro	Helen Shaughnessy Jack Robinson Christine Athanassiou Yoanna Seesaha Andrew Wiltshire Cindy Beckley	Nathan Sumner Minh Vo Ryan Cook Hannah Raphael Shona Wharton Linda Dalgliesh
Table 5	Table 6	Table 7	Table 8
Ashlee Barrowcliff Debbie Gleeson Haydn Davies Stefen Humphries Brooke Campbell Lindsay Shelton	Amanda Thomas Robyn Chesney Tracy de Vetter Kat Partridge Brandon Ovens Pierre Bouvais	Kate Morrison Clare Whyte Ben Miles Matthew Germs Shona James Jason Paterson	Hannah Sumner Viki Cramer Stacey Meredith Samantha Mickan Kieran Birch Nicole Dakin
	Table 9	Table 10	
	Rowan Inglis Lauren Kupsch Samuel Luckas Rochelle Lupton Rachel Bell Felicity Keet	Sarah Jupp Megan Jones Kirk Rumball Shirley Dawe Jacob Boxall Jade Pitman	



1



2

## EPA Report – EPAct 1986, s44 (1), (2), (2a)

**44. Report by Authority**

(1) ...the Authority ... **must prepare a report** on the outcome of its assessment ... and give that report (the "assessment report") to the Minister

(2) The assessment report **must set out** –


- (a) what the Authority considers to be the **key environmental factors** identified in the course of the assessment; and
- (b) the Authority's recommendations as to **whether or not the proposal may be implemented** and, if it recommends that implementation be allowed, as to the **conditions and procedures**, if any, to which implementation should be subject.

[2AA]...

(2a) The Authority **may**, if it thinks fit, **include other information, advice and recommendations** in the assessment report.


[Section 44 amended by No. 40 of 2020, s 27.]

[similar provision for Schemes – in s48D(1)]



(EPAct s44)

advice can be to Minister or to any other person (Admin Proc 2021, s4.1)



3

## Environmental outcomes (i)

**2 Introduction** + holistic impact assessment

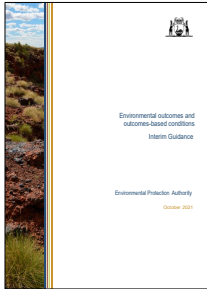
In assessing proposals, a central consideration for the EPA is whether a proposal can be implemented in conformity with the achievement of its environmental objectives. Environmental outcomes are a key tool for the EPA to use in considering this.

The EPA's ability to consider whether its environmental objectives are met is improved when it is provided with information from the proponent about proposed environmental outcomes or information about residual environmental impacts, rather than just being provided with measures to minimise or manage impacts.

Environmental outcomes are fundamental to the EPA's decision on whether or not to recommend approval

EPA 2021, *Environmental outcomes... Interim Guidance*, p2

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



4

## Environmental outcomes (ii)

### 3 What is an environmental outcome?

An environmental outcome, in the context of EIA, is the state of the environment at a point in time during implementation or after a proposal has been implemented.

Environmental outcomes:

- reflect specific and measurable environmental states
- have a clear boundary, size, extent, or limit
- are associated with the achievement of one or more of the EPA's objectives for environmental factors (refer to the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#)).

The EPA believes the focus on environmental outcomes throughout the EIA process is a key mechanism to ensuring proposals can be implemented to be consistent with the *Environmental Protection Act 1986* (EP Act) principles and with the EPA's objectives for environmental factors.

Proponent responsibility

EPA 2021, *Environmental outcomes... Interim Guidance*, p2

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



5

## Identifying environmental outcomes - proponents

### 6 Requirements of proponents – identifying proposed environmental outcomes

The EPA requires proponents to identify the environmental outcomes likely to result from their proposal as early as possible in the development of their proposal, and to continue to assess and refine the proposed environmental outcomes throughout the assessment process.

This process should begin in the pre-referral discussions. This enables proponents to consider from the outset whether likely outcomes appear to be inconsistent with the EP Act principles and EPA objectives for environmental factors. Proposed environmental outcomes should also be included in the referral document, so they can be considered during public comment on the referral, and in the EPA's decision whether or not to assess a proposal.

Proponents should apply the mitigation hierarchy to reduce the environmental impacts of their proposal at pre-referral and referral, and then continue to apply the mitigation hierarchy throughout any further assessment phase as more information about the proposal and its impacts is known. Proponents should then assess likely residual environmental impacts as a result of their proposals.

Once the likely residual impacts (proposal-centric) from a proposal are assessed, proponents should then propose the environmental outcomes (environment-centric) they believe are achievable during and after the implementation of their proposal up until the proposal is fully implemented. This process should take into account whether the proposed environmental outcomes are consistent with the EP Act principles and EPA objectives for environmental factors.

EPA 2021, *Environmental outcomes... Interim Guidance*, p5

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



6

## Environmental outcomes throughout EIA process (i) *Referral*

### 5 Environmental outcomes throughout the EIA process

Environmental outcomes are relevant at every stage of assessment, as outlined in the EPA's Procedures Manual and associated Instructions, and as summarised below.

Note: Environmental outcomes are referred to as "likely" until they are substantiated and proposed by a proponent in a formal EIA application (i.e., referral, assessment or post assessment application), where they are referred to as "proposed" environmental outcomes.

#### Stage 1 - Referral of a proposal to the EPA

Proponents are encouraged to discuss likely environmental outcomes of their proposal and application of the mitigation hierarchy in pre-referral discussions with the EPA.

If it appears the likely environmental outcomes of a proposal may be inconsistent with the EP Act principles and EPA objectives for environmental factors, the EPA encourages proponents to consider proposal alternatives and further apply the mitigation hierarchy.

Proponents should discuss proposed environmental outcomes in referral documentation, as outlined in the EPA's [Instruction and form: Referral of a proposal under section 38 of the EP Act](#).

EPA 2021, *Environmental outcomes... Interim Guidance*, p3

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



7

## Environmental outcomes throughout EIA process (ii) *ERD*

### 5 Environmental outcomes throughout the EIA process

#### Stage 3 - Assessment of proposals

Proponents should assess likely residual impacts from the implementation of the proposal in any assessment information they prepare, including any Environmental Review Document (see the EPA's [Instruction and template: How to prepare an Environmental Review Document](#) for more detailed information about the content required in an Environmental Review Document).

Once likely residual impacts from a proposal are assessed, the proponent should specify the related environmental outcomes they propose to achieve or ensure during and at the cessation of the implementation of their proposal. Examples of how to translate a likely residual impact (which is proposal-centric) into a proposed environmental outcome (which is environment-centric) are discussed in Section 6.

Proponents should then consider whether the proposed environmental outcomes are consistent with the EP Act principles and EPA objectives for the key environmental factors.

Proponents should also include details on whether and how the proposed environmental outcome can be assured by conditions or other statutory decision-making processes.

As in Step 1, if it appears the environmental outcomes of a proposal may be inconsistent with the EP Act principles and EPA objectives for environmental factors, the EPA encourages proponents to consider proposal alternatives and further apply the mitigation hierarchy.

EPA 2021, *Environmental outcomes... Interim Guidance*, p4

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



8



## Environmental outcomes throughout EIA process (iii) *EPA report*

### 5 Environmental outcomes throughout the EIA process

#### Stage 4 - EPA report on the assessment of a proposal

In its Assessment Report to the Minister, the EPA will consider likely residual impacts and proposed environmental outcomes, including whether these are consistent with the EP Act principles and EPA objectives for the final key environmental factors.

The EPA will also consider whether to recommend conditions to ensure environmental outcomes are met. The EPA prefers outcome-based conditions where practical, leaving the proponent flexibility in how the outcome-based condition is achieved.

The EPA will also consider whether to recommend that outcome-based environmental management plan conditions should be imposed to provide assurance that environmental outcomes can be met (see the EPA's [Instruction and template: How to prepare EP Act Part IV Environmental Management Plans](#) for further detail about the content of outcome-based environmental management plan conditions).

Note: If there is inconsistency between proposed environmental outcomes and the EP Act principles and/or EPA objectives for the final key environmental factors, the EPA may take this into account when recommending whether or not the proposal may be implemented.

EPA 2021, *Environmental outcomes... Interim Guidance*, p4

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



9

## Environmental outcomes versus residual impact (i)

In identifying environmental outcomes, it is important to distinguish the difference between an environmental outcome and a residual impact.

**Residual impacts** are the **impact/s** of a proposal that are **expected to remain after the application of the mitigation** hierarchy.

**Environmental outcomes** are the **state of the environment** at a point in time during implementation or after a proposal has been implemented.

**Residual impacts are "proposal-centric"** whereas **environmental outcomes are "environment-centric"**.

EPA 2021, *Environmental outcomes... Interim Guidance*, p2

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



10

## Environmental outcomes versus residual impact (ii)

An example of this process is: if the residual impact of a proposal was a low risk of the introduction of new weed species, the proponent may consider it achievable to ensure no weeds were introduced and propose an environmental outcome for the proposal of “no introduction of weeds to the development envelope”. Achievement of this outcome would be consistent with the EPA’s objective for its flora and vegetation environmental factor.

Another example is: if the residual impact of a proposal was that discharge of brine to the marine environment of x ML/d with a salinity of y mg/L was not likely to cause a significant impact on marine environmental values, the proponent may propose an environmental outcome of “meet the (specified criteria – consistent with high level of environmental protection) for [specified environmental value] within z m of the outfall”. Achievement of this outcome would be consistent with the EPA’s objective for its marine environmental quality environmental factor.

Or consider amount of clearing (proposal) versus extent remaining (environment)

EPA 2021, *Environmental outcomes... Interim Guidance*, p5

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcomes\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcomes_based_conditions.pdf)



11

## Environmental outcomes at the Commonwealth level (i)

*The EPBC Act has no comprehensive mechanism to describe the environmental outcomes it is seeking to achieve, or to ensure decisions are made in a way that contributes to them* (Samuel, 2020, p2)



Samuel G, (2020) *Independent Review of the EPBC Act – Final Report October 2020*, <https://epbcactreview.environment.gov.au/resources/final-report>

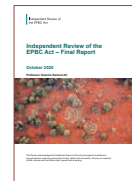
12

## Environmental outcomes at the Commonwealth level (ii)

**National Environmental Standards should set clear requirements for those that interact with the EPBC Act and clear bounds for decision-makers.**

**Standards should prescribe how activities at all scales, including actions, decisions, plans and policies contribute to outcomes for the environment.**

(Samuel, 2020, p2)



Samuel G, (2020) *Independent Review of the EPBC Act – Final Report October 2020*, <https://epbcactreview.environment.gov.au/resources/final-report>

13

## EPA assessment provisions in *Admin Proc* (i)

### 3.1.4 Step 4. Preparation of EPA's draft assessment report

The EPA starts to prepare a draft assessment report when it has adequate information that meets its requirements. This is either when—

1. **the EPA decides to assess a proposal**, if the only information required for the assessment is the referral information (specified in the level of assessment record required by s. 39(b)), or
2. **the EPA accepts additional assessment information** (including an Environmental Review Document, or information requested by written notice) provided during an assessment, if public review of that information is not required, or
3. **the public review period closes** (on an Environmental Review Document or other additional assessment information), if public review of that information is required and the EPA does not require the proponent to respond to submissions, or
4. **the EPA decides that it can proceed to prepare its draft assessment report after receipt of the proponent's response to submissions** (on an Environmental Review Document or other additional assessment information), if public review of that information is required and the EPA requires the proponent to respond to submissions.



[*Admin Proc* 2021, s3.1.4]

The EPA commences reporting preparation as soon as possible after referral (e.g. template for report – some fields can be filled in immediately) but obviously EPA needs proponent's ERD (or other) material, public review inputs and (ideally) proponent's response to submissions

- EPA may assess and report without adequate proponent response to submissions (EIA Procedures Manual 2021, s3.1.3,)

14

## EPA assessment provisions in *Admin Proc* (ii)

The EPA *will*—

- assess the proposal, based on information that includes but is not limited to—
  - referral information (and request/s for further information, if required)
  - additional assessment information, including an Environmental Review Document
  - information requested by written notice
  - submissions (if information is made available for public review) and the proponent's response to any submissions, if required
  - additional assessment information obtained during the assessment, including the EPA's own investigations and inquiries (s. 40(2a))
- consider whether conditions are necessary and if they are, *will* develop draft conditions.
- consider whether Environmental Management Plans required during the assessment are adequate.
- prepare a draft assessment report.

If any substantial relevant new issues arise during the preparation of the draft EPA's assessment report that require substantial changes, the EPA will revise the draft assessment report.

[i.e. transparency/public record of EIA activities is important]



[*Admin Proc* 2021, s3.1.4]

15

## EPA assessment report contents (i)

### 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**...
- whether the preliminary key env. factors are the final key env. factors
- **how the proponent has applied the mitigation hierarchy** ...
- the **residual environmental impacts** of the proposal including:
  - impacts on key environmental factors and environmental values
  - **cumulative environmental impacts**
  - ...[for] a significant amendment, ... combined impacts with ... existing
- **assessment of residual environmental impacts** and ... **significance**
- **whether** the likely environmental **outcomes**, after the application of conditions, **are consistent with the EPA's objectives** ...
- **whether any offsets** (if proposed) **are likely to counterbalance** any significant residual environmental impacts
- **assessment of holistic impacts**
- consideration of MNES [bilateral/accredited assessment]

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

16

## EPA assessment report contents (ii)

### 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: ...

- whether the proposal may be implemented ...and, if so, whether ... :
  - 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.

*[i.e. legal basis of EMPs is important (more later)]*

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

17

## Consideration of other DMAs throughout EIA process

PART C: OTHER APPROVALS AND REGULATION	
Decision-making authorities and their approvals	
Provide a table list of the decision-making authorities, associated legislation or agreement regulating the activity and the specific approval required. (Example table at the end of form)	
Provide a summary of the statutory decision-making processes you consider can mitigate the potential impacts of the proposal on the environment. (Note: this should be a summary of the information provided in Part B section 2.4).	
Tenure and Local Government approvals	
Location of proposal: a) street address, lot number, suburb, and nearest road intersection; or b) if remote, the nearest town and distance and direction from that town to the proposal site.	
Name of the Local Government Authority in which the proposal is located.	
Is rezoning of any land required before the proposal can be implemented?	<input type="checkbox"/> Yes

4 | October 2021

(EPA Referral Form, p4)

First identified (by proponent) at referral stage

(EPA Referral Instructions and Form  
<https://www.epa.wa.gov.au/forms-templates/s38-referral-instructions-and-form>)

Example Table: Other approvals

Decision-making authority	Legislation or Agreement regulating the activity	Approval required (and specify which proposal element the approval is related to)	Whether and how statutory decision-making process can mitigate impacts on the environment? (Yes/No and summary of reasons. Include a separate line item for each relevant impact, and discuss how

18

***EPA*Act 1986 – s3: Definition of **DMA****

**3. Terms used in this Act**

(1) In this Act, unless the contrary intention appears —

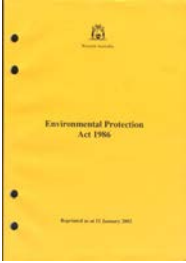
**decision-making authority** means a public authority empowered by or under —

(a) a written law; or

(b) any agreement —

(i) to which the State is a party; and

(ii) which is ratified or approved by an Act, to make a decision in respect of any proposal and, in Division 2 of Part IV, includes, in relation to a particular proposal, any Minister prescribed for the purposes of this definition as being the Minister responsible for that proposal;



(EPAAct s3)

19

***Other DMAs*** – Decision on whether to assess & EPA Report

**38G. Authority must decide whether to assess a referred proposal**

...

(4) In making its decision ...the Authority **may take into account other statutory decision-making processes that can mitigate the potential impacts** of the proposal on the environment.


*[Section 38G inserted by No. 40 of 2020, s 15.]*

**44. Report by Authority**

...

(2AA) In considering key environmental factors and any recommendations that may be included in the assessment report the Authority **may take into account other statutory decision-making processes that can mitigate the potential impacts** of the proposal on the environment.

*[Section 44 amended by No. 40 of 2020, s 27.]*



(EPAAct s38G & 44)

**[Test is whether or not the DMA's process can deliver environmental outcomes consistent with the EPA's factor objectives]**

20

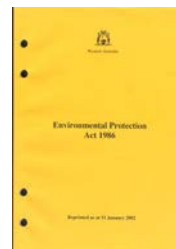
## Other DMAs – Decision to withdraw Ministerial Statement s47A(3)(b)

### 47A.

...

- (3) This subsection applies if the proponent of an approved proposal requests the Minister, in writing, to withdraw the Ministerial statement relating to the proposal and the Minister is satisfied —
- (a).....

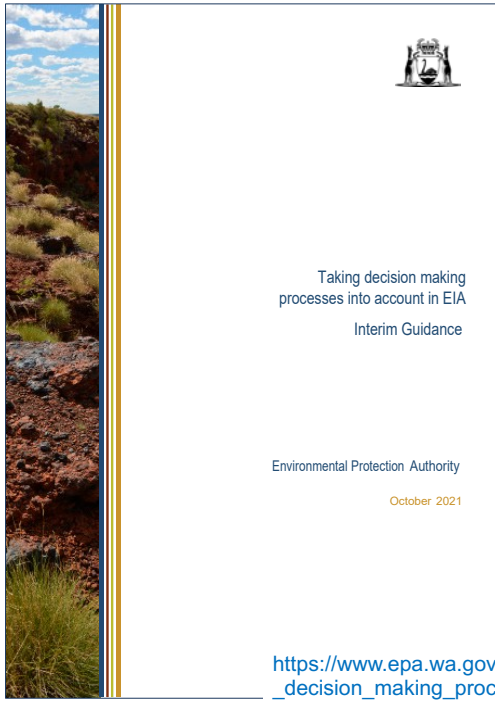
(b) *that the impacts of the implementation of the proposal can be satisfactorily mitigated by way of licensing or some other form of regulatory control under this Act or another written law.*



(EPA Act s44)

[Section 47A inserted by No. 40 of 2020, s 31.]

21



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

(EPA 2021, *Interim Guidance: Taking decision making processes into account in EIA*, p2)

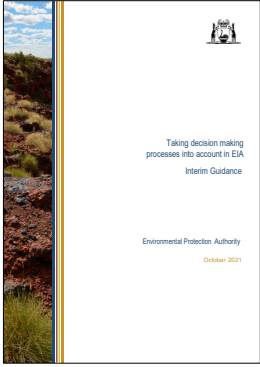
[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Taking\\_decision\\_making\\_processes\\_into\\_account\\_in\\_EIA.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Taking_decision_making_processes_into_account_in_EIA.pdf)

22

## Taking other DMAs into account - considerations

1. **The ability** of the DMA to consider impact of proposal.
2. **The process** that the DMA uses to assess the potential impacts of the activity on the environment
3. **The relevant considerations** which the DMA can take into account in decision making
4. **The conditions** that may be applied as a result of the decision-making process
5. **Likely outcomes**
6. **Overall conclusion**

[**'approvals' versus assessment**  
(not just availability of another DMA's approval process that matters, but assessment of how that DMA would protect env. for the impact/factor)]





[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Taking\\_decision\\_making\\_processes\\_into\\_account\\_in\\_EIA.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Taking_decision_making_processes_into_account_in_EIA.pdf)


23


## DMA deep dive: Aboriginal cultural heritage in EIA

- Historical overlap/ambiguity between *EPA Act 1986* and *Aboriginal Heritage Act (AHA) 1972* for assessing impacts on Aboriginal heritage
- Not much clearer under short-lived *Aboriginal Cultural Heritage Act (ACHA) 2021*
- *ACHA 2021* repealed in Nov 23, and *AHA 1972* reinstated with minor amendments, including:
  - S18 consent holders' duty to report new information
  - Traditional Owners right of appeal to State Appeals Tribunal (SAT)
  - Prohibition of gag laws
- EPA revised Social Surroundings EFG in:
  - June 2023 (to reflect ACHA)
  - October 23 (to reflect amendment AHA)
- Also released new Technical Guidance (to replace GS41)







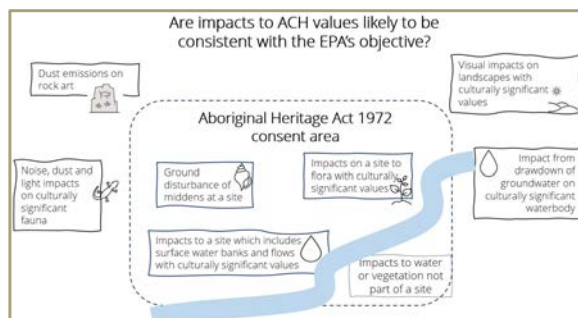


24



## Technical Guidance: EIA of Social Surroundings – Aboriginal cultural heritage

- Onus on proponent to distinguish between impacts that may or may not be managed under the AHA, and evaluate extent to which AHA process is likely to mitigate the impact and ensure the EPA’s factor objective for social surroundings can be met
- EPA can still condition Aboriginal cultural heritage but moving away from CHMPs



[https://www.epa.wa.gov.au/sites/default/files/Policies\\_and\\_Guidance/Technical\\_Guidance\\_EIA\\_of\\_Social\\_Surroundings - Aboriginal Cultural Heritage \(Nov2023\)\\_2.pdf](https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/Technical_Guidance_EIA_of_Social_Surroundings_-_Aboriginal_Cultural_Heritage_(Nov2023)_2.pdf)

25

## Alkimos – EPA assessment of social surroundings (pp 47-52)

### 2.4 Social Surroundings

#### 2.4.5 Potential impacts from the proposal

The proposal has the potential to impact on social surroundings from:

- Potential impacts to Aboriginal heritage, the Alkimos Waugal place ID 23053 and/or cultural values.
- Temporary impacts to amenity from dust, noise, and vibration from construction of the plant and tunnel boring for the marine intake and outlet pipelines.
- Potential impacts to amenity values to residential and recreational areas in proximity to the desalination plant from operational noise.

The EPA considers that the residual risk to Aboriginal cultural heritage from potential indirect impacts is unlikely but, in the event, cultural heritage materials, human remains, or unknown sites are uncovered or disturbed, can be subject to other statutory decision-making processes in accordance with the *Aboriginal Heritage Act 1972*. The EPA therefore considers the environmental outcome is likely to be consistent with the EPA’s objective for social surroundings.



**Table 6: Summary of assessment for social surroundings**

Residual impact or risk to environmental value	Assessment finding	Recommended conditions and DMA regulation
1. Potential residual impact to future residents from construction noise and vibration.	The EPA advises that this residual impact is unlikely due to the construction being undertaken before residential development in areas that may be impacted by noise and vibration. If required, this can be regulated through <i>Environmental Protection (Noise) Regulations 1997</i> .	Complementary regulation and approval (if required) of noise management plan for construction outside of prescribed hours.

26

## EPA assessment provisions in *Admin Proc* (iii)

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

The EPA **completes its assessment** when the EPA considers the draft Assessment report and any conditions and—

- agrees on the key environmental factors identified in the course of the assessment
- agrees to recommend whether or not the proposal may be implemented
- agrees to adopt the draft assessment report as the basis for the EPA's (final) Assessment report
- resolves that the EPA prepare the (final) Assessment report and give that report to the Minister, pursuant to s. 44.

If the EPA does not agree to the above, the EPA will revise the draft assessment report based on any additional information it needs to complete its assessment and will reconsider the draft assessment report.

[i.e. in practice DWER assessment officers prepare draft EPA assessment report – to be finalised/endorsed by the EPA Board]



[Admin Proc 2021, s3.1.5]

27

## EPA's draft assessment report

The EPA usually considers the draft assessment report at an EPA meeting. The EPA may invite the proponent to attend the EPA meeting. [Procedures Manual 2021, s3.1.5]

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

### 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, before finalising its report to—

- correct any errors of fact
- confirm the conditions are clear and relevant to the proposal
- confirm that the conditions are technically feasible and can be complied with
- identify any practical opportunities for strengthening the environmental outcomes of the conditions.

[Admin Proc 2021, s4.2]

[i.e. no surprises – natural justice  
+ opportunity for proponent to present their case]




28

**Structure of EPA report (for each key environmental factor):**

1. Environmental objectives
2. Investigations and surveys
3. Assessment context: Existing environment
4. Consultation
5. Potential impacts from the proposal
6. Avoidance measures
7. Minimisation measures (including other DMAs)
8. Assessment of impacts to environmental values
9. Summary of key factor assessment and recommended conditions

**Summary: Residual impact/ Assessment finding**

**Alkimos – EPA report TOC**



## 5. EPA Assessment Report, Condition Setting and EMPs

## Implementation conditions (i) – *Admin Proc* 4.2 Recommended conditions and procedures

The EPA *will* recommend conditions to which implementation should be subject (s. 44(2)(b)), and ***these conditions*** will relate to, and ***should protect, abate, restore or mitigate, the detrimental impact on the environment*** which the implementation of the proposal may or would cause.

[*Admin Proc 2021*, s4.2]



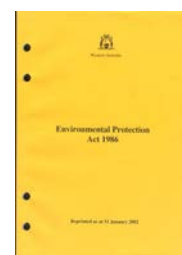
31

## EPA Report (i) – *EPA Act 1986*, s44 (1), (2)

### 44. Report by Authority

- (1) ...the Authority ... ***must prepare a report*** on the outcome of its assessment ... and give that report (the "assessment report") to the Minister
- (2) The assessment report ***must set out*** –
  - (a) what the Authority considers to be the key environmental factors identified in the course of the assessment; and
  - (b) ***the Authority's recommendations*** as to whether or not the proposal may be implemented and, if it recommends that implementation be allowed, as to ***the conditions and procedures, if any, to which implementation should be subject.***

[repeat content]



(*EPA Act* s44)

[Section 44 amended by No. 40 of 2020, s 27.]

32

#### 45A. Implementation Conditions *EPA Act 1986, s45A*

(1) The following list sets out things the proponent of the assessed proposal can be required to do under implementation conditions —



- (a) ...commence implementation of ...proposal within ..specified period...
- (b) ...take **environmental protection, abatement or restoration measures on the subject land, or on other land, ...to directly or indirectly offset the impacts** ...
- (c) **contribute moneys** to be used for... [same list as (b)];
- (d) ...**environmental undertaking in relation to other land**;
- (e) arrange for an **environmental protection covenant** ... by ...person other than ... proponent ... [for] other land;
- (f) ...**prepare, implement and adhere to EMS, EMPs and environmental improvement plans**;
- (g) ...**audits** [to show]...conditions ...complied with ...

[Section 45A inserted by No. 40 of 2020, s 28.]

33

#### Types of conditions – *Procedures Manual* (i)

##### 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.

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

(Procedures Manual 2021, s4.2.1)

34

## Types of conditions: **limit on proposal extent**

### 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.
- 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.

[Closely related to, but not exactly the same thing as the Proposal Content Document]

(Procedures Manual 2021, s4.2.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

35

## Limit and extent of proposal condition – Alkimos

STATEMENT THAT A PROPOSAL MAY BE IMPLEMENTED  
(Environmental Protection Act 1986)

ALKIMOS SEAWATER DESALINATION PLANT

### PART A: PROPOSAL EXTENT

#### A1 Limitations and Extent of Proposal

A1-1 The proponent must ensure that the proposal is implemented in such a manner that the following limitations or maximum extents/capacities/ranges are not exceeded:

Proposal element	Location	Maximum extent
Physical elements		
Terrestrial development envelope	Within the development envelope shown in Figure 1	Clearing of no more than 51.2 ha of native vegetation within a development envelope of 130.15 ha
Marine development envelope	Within the development envelope shown in Figure 2	Disturbance to no more than 8.39 ha within a 11.45 ha development envelope
Operational elements		
Marine brine discharge		Maximum salinity of 75,200 mg/L
Intake velocity		Maximum velocity 0.15 metres/second
Timing elements		
Project life – operation of desalination plant		100 years from commissioning of desalination plant

[https://www.epa.wa.gov.au/sites/default/files/Ministerial\\_Statement/1739Statement\\_1207\\_for\\_publishing\\_-\\_Alkimos\\_Seawater\\_Desal\\_Plant.pdf](https://www.epa.wa.gov.au/sites/default/files/Ministerial_Statement/1739Statement_1207_for_publishing_-_Alkimos_Seawater_Desal_Plant.pdf)

36

## Types of conditions: **standard matter conditions**

### **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.

(Procedures Manual 2021, s4.2.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

37

## Types of conditions: **proposal-specific conditions**

### **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.

We will come back to EMPs shortly

(Procedures Manual 2021, s4.2.3)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

38

## Types of conditions: **prescriptive conditions**

### 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.

(Procedures Manual 2021, s4.2.3.1)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

39

## Types of conditions: **outcomes-based conditions (i)**

### 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.

[Outcome-based conditions will usually require a monitoring environmental management plan].

(Procedures Manual 2021, s4.2.3.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

40



Types of conditions: **outcomes-based conditions** (ii)

#### 4.2.3.2 Outcomes-based conditions

...

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.

(Procedures Manual 2021, s4.2.3.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

41

Types of conditions: **outcomes-based conditions** (iii)

#### 4.2.3.2 Outcomes-based conditions

...

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*.

(Procedures Manual 2021, s4.2.3.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

42

## Outcomes-based conditions – examples (i) [Sea]

### 8 Examples of environmental outcomes

Table 1: Example of how to propose environmental outcomes

Theme	Factor	Example of environmental outcomes
Sea	Benthic Communities and Habitats	<ul style="list-style-type: none"> <li>Direct disturbance of benthic communities and habitats to be confined to proposal footprint</li> <li>No serious damage to benthic communities and habitats outside the Zone of High Impact</li> <li>No impacts to benthic communities and habitats within the Zone of Moderate Impact unless they are recoverable</li> <li>No impacts outside the Zone of Moderate Impact, including no impact in the Zone of Influence</li> </ul>
	Coastal Processes	<ul style="list-style-type: none"> <li>Direct disturbance to be confined to proposal footprint</li> <li>Flow rates over x tidal flat to be no more than y m/s</li> <li>No wrack accumulation on x beach which has an adverse impact on social amenity including odour or public beach access</li> <li>No sediment deposition or accumulation which adversely affects the natural breeding behaviour of x fauna</li> <li>No detectable impact to seagrass communities</li> </ul>
	Marine Environmental Quality	Return discharge water to the marine environment will not exceed the following water quality parameters: <ul style="list-style-type: none"> <li>Turbidity: median &gt; 80th percentile reference site</li> <li>Temperature: 20th or &gt; 80th percentile of baseline or reference site</li> <li>Dissolved Oxygen: &lt; 60% saturation</li> </ul>
	Marine Fauna	No introduction of marine pests as a result of the proposal

EPA 2021, *Interim guidance on outcomes and outcome-based conditions*

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcome\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcome_based_conditions.pdf)



43

## Outcomes-based conditions – examples (ii) [Land]

### 8 Examples of environmental outcomes

Table 1: Example of how to propose environmental outcomes

Theme	Factor	Example of environmental outcomes
Land	Flora and Vegetation	<ul style="list-style-type: none"> <li>Direct disturbance to be confined to proposal footprint</li> <li>No direct disturbance in exclusion areas</li> <li>No impact on black cockatoo breeding trees</li> <li>No impacts on TECs outside development envelope</li> <li>No introduction of weeds into development envelope</li> </ul>
	Landforms	<ul style="list-style-type: none"> <li>Landforms not to exceed x m</li> <li>Landforms to meet x safety factor</li> <li>No disturbance of landforms within x of y sensitive receptor</li> <li>Final landform to be consistent with undisturbed landforms in region (within 100 km)</li> </ul>
	Subterranean Fauna	<ul style="list-style-type: none"> <li>No disturbance of subterranean fauna within exclusion zones</li> <li>No disturbance of subterranean fauna habitat outside development envelope</li> <li>For any new species – no disturbance unless found in a sustainable population outside the development envelope</li> </ul>
	Terrestrial Environmental Quality	<ul style="list-style-type: none"> <li>No process waste to be disposed of on Swan Coastal Plain</li> <li>No contamination of soil outside proposal footprint</li> </ul>
	Terrestrial Fauna	<ul style="list-style-type: none"> <li>No disturbance of fauna habitat within exclusion zones</li> <li>No disturbance of native fauna habitat outside development envelope</li> <li>For any new species – no disturbance unless found in a sustainable population outside the development envelope</li> </ul>

EPA 2021, *Environmental outcomes... Interim Guidance, p7*

[https://www.epa.wa.gov.au/sites/default/files/Interim\\_Guidance\\_Environmental\\_outcomes\\_and\\_outcome\\_based\\_conditions.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim_Guidance_Environmental_outcomes_and_outcome_based_conditions.pdf)



44

## Outcomes-based conditions – examples (iii) [Water/Air/People]

### 8 Examples of environmental outcomes

Table 1: Example of how to propose environmental outcomes

Theme	Factor	Example of environmental outcomes
Water	Inland Waters	Water quality parameters (pH, salinity, water temperature and dissolved oxygen concentration) of an individual surface water site will be maintained to pre-disturbance levels or a suitable reference site.
	Air Quality	The SO <sub>x</sub> and NO <sub>x</sub> concentrations measured at site x shall not exceed x concentration.
Air	Greenhouse Gas Emissions	<ul style="list-style-type: none"> <li>• Net zero emission by 2050 along (at a minimum) a straight line trajectory based on emissions measured at 5 year intervals</li> <li>• X % reduction by 2030</li> </ul>
	Social Surroundings	<ul style="list-style-type: none"> <li>• No direct or indirect disturbance of the exclusion zones</li> <li>• No interruption of access for traditional use or custom</li> <li>• No exceedance of EP Noise Regulations at x</li> <li>• No direct disturbance in the buffer separation zone</li> </ul>
People	Human Health	<ul style="list-style-type: none"> <li>• No air-borne asbestos above background levels</li> <li>• No radiation above background levels</li> </ul>

EPA 2021, *Environmental outcomes... Interim Guidance*, p7

[https://www.epa.gov/sites/default/files/interim\\_guidance\\_environmental\\_outcomes\\_and\\_outcome\\_based\\_conditions.pdf](https://www.epa.gov/sites/default/files/interim_guidance_environmental_outcomes_and_outcome_based_conditions.pdf)



45

## Types of conditions: objectives-based management plan conditions

### 4.2.3.3 Objectives-based management plan conditions

.....

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 objective/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....

(Procedures Manual 2021, s4.2.3.3)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

46

## Types of conditions: **management plans (outcomes-based and objectives-based)**

### 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.

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...

(Procedures Manual 2021, s4.2.3.4)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

47

## Types of conditions: **case-specific conditions**

### 4.2.4 Case-specific conditions

The conditions may also include case-specific matters.

[with 4 types being]:

#### 4.2.4.1 Baseline conditions

[i.e. requirement for (further) baseline surveys]

#### 4.2.4.2 Offset conditions

[i.e. to counterbalance a significant residual impact]

**(more details on offset conditions follow)**

#### 4.2.4.3 Mine closure conditions

[i.e. where not already covered by *Mining Act 1978*]

#### 4.2.4.4 Strategic proposal conditions

[i.e. specific to future derived proposals]

(Procedures Manual 2021, s4.2.4)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

48

## Types of conditions: **offset plan conditions**

### 4.2.4.2 Offset conditions

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.**

(Procedures Manual 2021, s4.2.4.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

49

## Structure of conditions has been simplified

Ministerial Statements now have **four categories of conditions**:

**Part A – Proposal extent** (replaces old Schedule 1)

**Part B – Environmental outcomes, prescriptions & objectives**

- includes standardised conditions for:
  - Offsets and Pilbara Environmental Offsets Fund
  - Rehabilitation
  - Closure

**Part C – Environmental management plans & monitoring**

- mostly standardised, can be tailored

**Part D – Compliance, time limits, audits & other conditions**

- standardised compliance and administrative conditions (which are not intended to change)

The 1st Ministerial Statement issued with this new structure was Parker Range Iron Ore Haul Road Proposal (April 2023)

[https://www.epa.wa.gov.au/sites/default/files/1MINSTAT/1735/Statement 1202 for publishing - Parker Range.pdf](https://www.epa.wa.gov.au/sites/default/files/1MINSTAT/1735/Statement%201202%20for%20publishing%20-%20Parker%20Range.pdf)

Published on: 19 April 2023 Statement No. 1202  
STATEMENT THAT A PROPOSAL MAY BE IMPLEMENTED  
(Environmental Protection Act 1986)  
PARKER RANGE (MOUNT CAUDAN) IRON ORE HAUL ROAD PROPOSAL  
Proposal: The proposal involves the development of a Haul Road to transport iron ore from the Parker Range (Mount Caudan) Iron Ore Project to the Koolyanobbing Operations.  
Proponent: Pilbara Metals Pty Ltd  
Australian Company Number 085 223 570  
Proponent address: 20 Walters Drive  
OSBORNE PARK WA 6017  
Assessment number: 2297  
Report of the Environmental Protection Authority: 1735

50

## 5. EPA Assessment Report, Condition Setting and **EMPs**

51

### EPA website on EMPs...

**EMPs may be provided at referral, during an assessment** by the EPA, **or required as an implementation condition** under a Ministerial statement.

**[Submitting an EMP during assessment is the preferred approach of the EPA...]**

(EPA 2021, *Instructions: How to prepare an EMP*, p3)

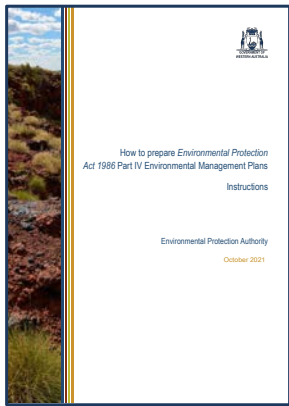
Concerns about 'secondary approvals' tested in Yeelirrie court case  
[CONSERVATION COUNCIL OF WESTERN AUSTRALIA (INC) -v- THE  
HON STEPHEN DAWSON MLC [2018] WASC 34; 8 February 2018  
<https://jade.io/article/570285?at.hl=+conservation+council+of+western%252Caustralia+%255B2018%255D>

Note: EMP is generic term, documents may be referred to in various ways, e.g. 'Fauna Management Plan' or 'Groundwater Monitoring and Management Plan'



<https://www.epa.wa.gov.au/forms-templates/instructions-part-iv-environmental-management-plans>

52



**How to prepare Environmental Protection Act 1986 Part IV Environmental Management Plans Instructions**  
Environmental Protection Authority  
October 2021

## Templates

### Environmental Management Plans

1. Executive Summary (Template in Attachment 1)
2. Context, scope and rationale
  - 2.1. Proposal
  - 2.2. Key environmental factor/s
  - 2.3. Condition requirements
  - 2.4. Rationale and approach
    - Environmental outcome or management objective/s
    - Survey and study findings
    - Key assumptions and uncertainties
    - Objective-based EMP – risk-based approach
    - Rationale for choice of indicators and/or management actions
3. EMP Components (template in Attachment 2)
  - 3.1. Outcome-based EMPs
    - Outcome
    - Indicators (trigger criteria and threshold criteria)
    - Response actions (trigger level actions and threshold contingency actions)
    - Monitoring
    - Reporting
  - 3.2. Objective-based EMPs
    - Objective
    - Management actions
    - Management targets
    - Monitoring
    - Reporting
4. Adaptive management and review of the EMP
5. Stakeholder consultation
6. Changes to an EMP table (template in Attachment 3) *[if required]*

**Figures**  
**Glossary** *[if required]*  
**Schedules** *[optional]*  
**Appendices** *[if required]*

1 | October 2021

Note: types of EMPs and key content requirements (details follow)

<https://www.epa.wa.gov.au/forms-templates/instructions-part-iv-environmental-management-plans>

53

## How to prepare an EMP


- *stand-alone document*

### How to prepare an EMP

Proponents should understand what is needed in an EMP to adequately demonstrate and communicate how the potential impacts on the environment will be avoided, mitigated, monitored and managed, and how environmental outcomes can be achieved.

An EMP should be a stand-alone document. Information provided in the document should be specific and directly relevant to the purpose of the EMP and able to be read and understood on its own, using clear and concise language. The EMP should not contain an assessment of impacts, but a description of the monitoring and management actions against the potential impacts on the environment.

Cross-referencing to other documents should be avoided, as this may hinder the review of the document and impact on timelines. Where appropriate, documents suitable for cross-referencing may include publicly available documents, those approved by other decision-making authorities and other approved and relevant management plans accompanying the submission.



Instructions: How to prepare an EMP, p1

54

## Outcomes-based EMPs (i)

### 4.2.3.2 Outcomes-based conditions

...

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. *[i.e. to be prepared in accordance with Instructions & Template for EMPs]*

May also be referred to as a **Monitoring EMP**  
– defines trigger criteria and threshold criteria

(Procedures Manual 2021, s4.2.3.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

55

## Outcomes-based EMPs - indicators

Indicators are selected to determine if the outcome is being achieved. The assessment of indicators can be used to evaluate the health or condition for part of the environment. The EPA has identified two levels of indicators: criteria relating to trigger levels; and criteria relating to threshold levels.

These criteria must include proposal-specific information such as location, time period, scale and a relative benchmark such as comparison to control or reference sites or to pre-established guidelines such as the National Water Quality Guidelines.

Trigger criteria are the indicators selected for monitoring to provide a warning that if exceeded, the outcome may not be achieved.

Trigger criteria are intended to forewarn of the approach of the threshold criteria and prompt trigger response actions. Trigger criteria must be set at a conservative level to ensure trigger level actions are implemented well in advance of the threshold criteria to avoid non-compliance and to avoid compromising the environmental outcome. Trigger criteria may be set through scientific research, impact assessment or by statutory, regulatory and/or policy requirements.

Threshold criteria are indicators selected to represent the limit of acceptable impact beyond which the environmental outcome is not being met and there is likely to be a significant impact on the environment. Threshold criteria may be set through scientific research, impact assessment or by statutory, regulatory and/or policy requirements.

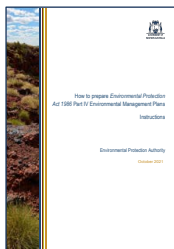
The trigger level actions and threshold contingency actions are important considerations after determining the trigger and threshold criteria. These actions are the specific activities and timing that proponents will implement to ensure impacts remain below the trigger or threshold criteria. Actions should be defined in a manner that is easily assessed and audited.

Instructions: How to prepare an EMP, p4

56



# Adaptive management and EMPs



Instructions: How to prepare an EMP, pp 7-8

## Adaptive management and early response

### i. Adaptive management

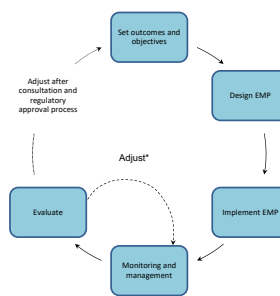
**Adaptive management** is a systematic approach to improving environmental results and management practices during project implementation through the application of learning from monitoring of outcomes and management actions (Figure 1).

Adaptive management involves more than just reviewing the trigger/threshold criteria and/or management targets following any learning.

Adaptive management in relation to an EMP includes:

- defining the issue and objectives or required outcomes and developing the EMP to address these
- implementing the management and mitigation measures
- monitoring and evaluating the applied management and mitigation against the outcomes and objectives
- adjusting the management and mitigation measures and monitoring (if required) to meet the outcome or objective, based on what is learnt from:
  - evaluation of monitoring data or methodology
  - review of assumptions and uncertainties
  - re-evaluation of risk assessment
  - increased understanding of the ecological system
  - external changes during the life of the proposal (e.g. technical advances or innovation).

Subject to conditions in Ministerial statements, changes to an EMP may require approval from DWER and may involve consultation with relevant stakeholders.



\*Changes may require regulatory approval and may involve stakeholder consultation

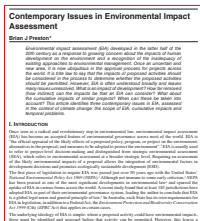
Figure 1: Adaptive management cycle for Environmental Management Plans

57

## Need for adaptive management (Preston, 2020)

[International perspective]

*Science evolves, community expectations and needs evolve, and environmental problems evolve. Nature does not stand still. Yet project approvals remain static, involving “a once-and-for-all determination of the application with no opportunity to reconsider or impose new conditions of consent in response to evolving information or changes in circumstances”.* (Preston, 2020, p442)



Preston B (2020) Contemporary Issues in Environmental Impact Assessment, *Environmental Planning and Law Journal*, 37: 423–442

58


[International perspective]

## Defn of adaptive management

(Fitzpatrick and Williams 2020)

### 3.1 ADAPTIVE MANAGEMENT<sup>2</sup>

An important, but often poorly implemented design element of strong follow-up and monitoring programs is adaptive management. “[A]daptive management is a systematic process for improving strategies and practices by learning and acting on the outcomes of management experience” [43]. Adaptive management can be employed to monitor expected interactions, address unexpected outcomes [13], learn from unanticipated effects and make changes, as appropriate. [34, 35, 44].



Fitzpatrick P and B Williams (2020) *Building the system: Follow-up, monitoring & adaptive management*, The University of Winnipeg: Winnipeg, MB.  
[http://winnspace.uwinnipeg.ca/bitstream/handle/10680/1787/08\\_04\\_2020\\_KMG\\_IA\\_Follow\\_Up\\_Fitzpatrick\\_Williams.pdf?sequence=1&isAllowed=y](http://winnspace.uwinnipeg.ca/bitstream/handle/10680/1787/08_04_2020_KMG_IA_Follow_Up_Fitzpatrick_Williams.pdf?sequence=1&isAllowed=y)

*Adaptive management refers to planned reactive, iterative, on-going examination, based on systematic monitoring with feedback (to stakeholders) and learning, rather than managing adaptively (ad hoc learning from mistakes).*

[defn from research project underway currently...]


59

## Adaptive management in EIA follow-up best practice principles

### Impact assessment follow-up principles

IA follow-up should be guided by these 15 best practice principles.

1. **State the objective of each impact assessment follow-up activity and the overall program.**  
IA follow-up should be objectives-led and goal oriented.
2. **Be tailored to context.**  
IA follow-up should be 'fit-for-purpose' recognising that individual applications of IA follow-up will vary according to the specific contextual factors at play (e.g., project or plan type or locality, significance of impacts or issues arising, or institutional setting).
3. **Commence early in the impact assessment process.**  
Timing is vital in IA follow-up and developing a follow-up program should start early in the IA process (e.g., during screening and scoping) and thereafter be acted upon as appropriate.
4. **Be carried out throughout the project or plan life-cycle.**  
IA follow-up should be carried out on an iterative and ongoing basis. IA follow-up provisions should be established by the time that projects or plans are approved. Implementation of follow-up actions should commence and continue through the construction, operation, and, where relevant, the decommissioning phases of development.
5. **Be transparent.**  
All IA follow-up arrangements (e.g., design, processes and governance) and implementation actions and their outcomes (monitoring, evaluation, management and engagement with stakeholders) should be publicly disclosed. All stakeholders have a right to feedback on the IA process.
6. **Be accessible to all impact assessment stakeholders.**  
IA follow-up information should be easy to access and to understand. Archiving, retrieval and disclosure of follow-up information requires careful attention. As a minimum, stakeholders should be informed about IA follow-up activities and outcomes, and to be provided with opportunities to give input or feedback; but active engagement in follow-up program design and implementation is desirable.
7. **Provide clear accountability for impact assessment follow-up responsibilities.**  
Ensure that there is clear accountability established in the governance arrangements for IA follow-up. Enabling a two-way flow of communication between stakeholders who are affected and those responsible for IA follow-up and/or the development is important.
8. **Provide clear, pre-defined and well-justified performance criteria.**  
Follow-up actions should produce useful information and outcomes which can be easily measured, and unambiguously ap-  
praised against clear and pre-defined performance criteria. The performance criteria should be rigorous and reflect best practice (e.g. through adopting well-defined methodologies or approaches to monitoring, evaluation, management, communication and engagement).
9. **Specify enforcement provisions.**  
In addition to promoting 'good behaviour', it is also important to identify the consequences for non-compliance within IA follow-up provisions.
10. **Promote continuous learning from experience to improve future practice.**  
IA follow-up should enable learning from experience through active feedback. It should not be static. Such learning may inform the management of other similar projects or plans regardless of whether they are operated by the same or other proponents, to improve IA practice.
11. **Facilitate adaptive management.**  
Mitigation provisions for a project or plan should be adjustable as needed. Learning derived from IA follow-up should inform ongoing adaptive management of the project or plan as necessary in order to achieve its objectives. IA follow-up would ideally also enable unexpected consequences to be revealed and addressed as appropriate, as part of an effective adaptive management approach.
12. **Be flexible according to emerging needs.**  
Governance arrangements for IA follow-up, and the IA follow-up program itself, should be adjusted as necessary to emerging needs (e.g., arising from environmental changes, evolving needs of stakeholders, or changes in the regulatory framework).
13. **Inform and be informed by follow-up for other relevant activities at different levels of decision-making.**  
IA follow-up should facilitate the transfer of information between different levels of IA application – tiering the various strategic and operational planning stages of policies, plans, programs and projects.
14. **Address cumulative effects.**  
IA follow-up activity should account for the environmental impacts from all stressors in a regional environment, not solely those of the project or plan under evaluation.
15. **Consider the overall effects of the project or plan.**  
IA follow-up should provide a holistic perspective of the project or plan outcomes, taking into account how each of the individual effects of a project or plan interact with each other to contribute to sustainable development.



[International perspective]

Arts, J. and Morrison-Saunders, A. (2022) *Impact Assessment Follow-up: International Best Practice Principles*. Special Publication Series No. 6. Fargo, USA: International Association for Impact Assessment.  
[https://iaia.org/uploads/pdf/SP6\\_22\\_Follow\\_up\\_converted.pdf](https://iaia.org/uploads/pdf/SP6_22_Follow_up_converted.pdf)

60

30

[repeat slide]


## Aims of EIA in WA (i)

### 4 Aims of EIA

**EPA**

In conducting EIA, the EPA aims to:

1. fulfil the object of, and apply the principles of, the Act
2. provide independent, timely and sound advice about the environmental impacts of a proposal to enable the Government to make an informed decision in relation to the implementation of the proposal
3. provide opportunities for public participation, and input from decision-making authorities and other relevant government agencies in the assessment of the environmental impacts of a proposal before decisions are made
4. ensure that proponents take primary responsibility for the protection of the environment relating to their proposals, detailed in the aims of EIA for the proponent outlined below
5. promote adaptive environmental management, positive environmental outcomes and continuous improvement through learning and knowledge gained through the EIA process and project implementation
6. promote education and awareness of environmental issues.



[EPA 2021, Statement of env principles, p4]

61

## Objectives-based EMPs (i)

### 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.

Environmental Impact Assessment  
 (Part IV Divisions 1 and 2)  
 Procedures Manual

(Procedures Manual 2021, s4.2.3.3)

62

## Objectives-based EMPs (ii)

### 4.2.3.3 Objectives-based management plan conditions

...

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.

(Procedures Manual 2021, s4.2.3.3)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

63

## Objectives-based EMPs - examples

### Objective-based EMPs

Objective-based EMPs (previously known as management-based EMPs) relate to management actions and management targets. An **objective** is the proposal-specific desired state for an environmental factor/s, to be achieved from the implementation of management actions. An objective must relate to the EPA’s environmental objective for a particular factor/s.

Objective based examples:

- Objective-based Example 1: Implement the proposal to ensure that interruption to beach access is avoided where practicable, and otherwise minimised during operational activities. This is considered an objective as the management actions are required to achieve this objective (pedestrian pathways, signage, fencing, notification in local newspapers, coordination with local government, safety actions).
- Objective-based Example 2: During operations the proponent shall take all reasonably practicable measures to prevent, eradicate and minimise the number of feral animals attracted to the development area. This is considered an objective as the management actions are required to achieve this objective (baiting, shooting and trapping regimes, fencing, access to water and food sources).

Instructions: How to prepare an EMP, p5

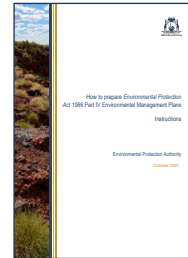


64

## Objectives-based EMPs – management actions

**Management actions** are the identified actions implemented to meet the environmental objective/s. Management actions generally relate to the 'minimise' and 'rehabilitate' steps of the mitigation hierarchy.

Management actions should include auditable timelines, clear identification of record-keeping and reporting against actions and be prioritised using a risk-based approach. The greatest management effort should align with proposal activities that have the highest likelihood of causing environmental impacts, where the consequences of the impacts are severe and likely irreversible.



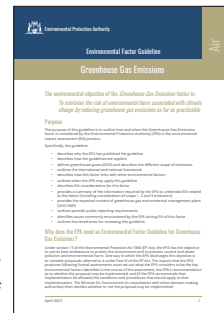
Instructions: How to prepare an EMP, p5

65

## EMP deep dive: Greenhouse Gas (GHG)

- EPA released initial GHG EFG in March 2019, and withdrew it one week later
- Revised GHG EFG released April 2020
- Following review, current version released April 2023:
  - Revised factor objective
  - Scope 2 emissions included
  - Expectation of straight line to Net Zero in 2050 is explicit
  - Specifies that Cth Safeguard Mechanism may be relied upon if it meets EPA's factor objective
  - Discusses assessments of amended proposals and need to consider combined impacts (more on this later)

[https://www.epa.wa.gov.au/sites/default/files/Policies\\_and\\_Guidance/Guideline-GHG-Emissions – April 2023.pdf](https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/Guideline-GHG-Emissions – April 2023.pdf)



66

## **Why climate change is a big challenge for EIA...**

[international perspective]

Climate change is unlike other adverse environmental impacts traditionally assessed, and a challenge to incorporate into traditional IA methodologies and processes. This is due in part to three key characteristics:

- i. the **effects of releasing GHG emissions are felt globally**, with regional variations in the nature and scale of the effects,
- ii. the effects are delayed, and
- iii. the emissions and effects on sinks are cumulative, with the result that **a given effect cannot be traced back to a specific project**. [Doelle, 2020, p2]

Doelle, M (2020) Integrating Climate Change into Environmental Impact Assessments: Key Design Elements, <https://ssrn.com/abstract=3273499>

[Also, carbon offsets can take many forms and occur anywhere worldwide (e.g. relative to biodiversity offsets) >>> multi-national company?]

67

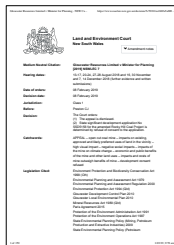
## Gloucester Resources Limited v Minister for Planning (NSW)

**Both direct and indirect GHG emissions should be considered**

- 486 The Rocky Hill Coal Project will result in GHG emissions. The Air Quality and Health Risk Assessment for the amended EIS estimated the Scope 1 and Scope 2 emissions to be about 1.8Mt CO<sub>2</sub>-e over the life of the mine and Scope 3 emissions to be at least 38Mt CO<sub>2</sub>-e. The estimated scope 3 emissions are limited to the emissions from the combustion of product coal from the Project by end users, such as steel mills and electricity power stations, as the emissions from shipping of product coal were not included. GHG emissions from the combustion of product coal by end users are downstream emissions.
- 487 Although GRL submitted that Scope 3 emissions should not be considered in determining GRL's application for consent for the Rocky Hill Coal Project, I find they are relevant to be considered. [judge finds Scope 3 emissions to be relevant](#)

[NSW perspective]

Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7, <https://www.caselaw.nsw.gov.au/decision/5c59012ce4b02a5a800be47f>



**All GHG emissions contribute to climate change**

- 514 All of the direct and indirect GHG emissions of the Rocky Hill Coal Project will impact on the environment. All anthropogenic GHG emissions contribute to climate change. As the IPCC found, most of the observed increase in global average temperatures is due to the observed increase in anthropogenic GHG concentrations in the atmosphere. The increased GHG concentrations in the atmosphere have already affected, and will continue to affect, the climate system. The current and future impacts of climate change were summarised by Professor Steffen and have been set out earlier in the judgment.
- 515 The direct and indirect GHG emissions of the Rocky Hill Coal Project will contribute cumulatively to the global total GHG emissions. In aggregate, the Scope 1, 2 and 3 emissions over the life of the Project will be at least 37.8Mt CO<sub>2</sub>-e, a sizeable individual source of GHG emissions. It matters not that this aggregate of the Project's GHG emissions may represent a small fraction of the global total of GHG emissions. The global problem of climate change needs to be addressed by multiple local actions to mitigate emissions by sources and remove GHGs by sinks. As Professor Steffen pointed out, "global greenhouse gas emissions are made up of millions, and probably hundreds of millions, of individual emissions around the globe. All emissions are important because cumulatively they constitute the global total of greenhouse gas emissions, which are destabilising the global climate system at a rapid rate. Just as many emitters are contributing to the problem, so many emission reduction activities are required to solve the problem" (Steffen report, [57]). **all mitigation efforts matter**

argument that this project is only small % of global emissions is not relevant

68

## GHG management plans

- Special GHGMP template plus summary template

### Templates

#### Greenhouse Gas Environmental Management Plan – Summary Plan

*Summary Plans should usually be published when Greenhouse Gas Environmental Management Plans (GHG EMPs) (and revisions) are approved, to support transparency and consistency of GHG EMPs. Specific content of Summary Plans may be required by conditions, and Summary Plans should also usually include the content of this template. It is intended that this template is a "living document" that will be periodically updated in response to further feedback and changing expectations.*

SECTION 1	
Proposer name	
Proposed description and scope	
Purpose of the GHG EMP summary plan	Including Ministerial Statement condition requirements if relevant
Compliance period	
Emissions estimates and trajectory of emissions reductions	<ul style="list-style-type: none"> <li>Annual and expected life of proposal emission estimates for scope 1, 2 and 3</li> <li>Trajectory of emissions reductions over the life of proposal for scope 1 and 2 (separately and together), and scope 3</li> <li>Trajectory of the emissions avoided, reduced or offset for scope 1, 2 and 3 emissions.</li> </ul>
Key components in the GHG EMP summary plan	<ul style="list-style-type: none"> <li>Proposed GHG emissions intensity</li> <li>Proposed emissions intensity (baseline and trajectory) benchmarked with comparable projects and technologies with a local and regional context, international and Australian best practice, and other relevant industry and sector standards</li> <li>A summary of emission reduction measures proposed to be undertaken to avoid or reduce GHG emissions, including:                             <ul style="list-style-type: none"> <li>Best practice design and operational measures adopted to avoid, reduce and offset scope 1 emissions</li> <li>Reasonably practicable measures adopted to avoid, reduce and offset scope 2 emissions</li> <li>Reasonably practicable measures adopted to reduce scope 3 emissions</li> </ul> </li> <li>(Where relevant) Trajectory of emissions over the life of proposal for scope 1 and 2 (separately and together) under other statutory decision-making processes or non-statutory GHG reduction instruments</li> <li>Summary of circumstances and timeframes in which offsets are proposed to be used, and summary of likely availability and integrity.</li> </ul>
GHG EMP reviews and reporting	

5 | April 2023

### Templates

#### Greenhouse Gas Environmental Management Plan

*This template has been developed to support transparency and consistency of Greenhouse Gas Environmental Management Plans (GHG EMP), it is intended that this template is a "living document" that will be periodically updated in response to further feedback and changing expectations.*

- Executive Summary** [Template in Attachment 3]
- Context, scope and purpose** [Template for items 2-7 below in Attachment 2]
  - Proposer, proposal description and scope
  - Purpose of GHG EMP
- GHG EMP Components**
  - Emissions estimates
  - Trajectory of emissions reductions
  - Mitigation measures adopted to avoid, reduce or offset scope 1 emissions
  - Mitigation measures adopted to avoid, reduce or offset scope 2 emissions
  - Mitigation measures adopted to reduce scope 3 emissions
  - Other statutory decision-making processes which require reduction in GHG emissions
  - Consistency with other GHG reduction tools
  - Offsets
  - Projects operating beyond 2050
- Adaptive management, continuous improvement, and review of the GHG EMP**
- Reporting**
- Stakeholder consultation**
- Changes to GHG EMP** [Template in Attachment 3 – if required]

**Figures**

**Glossary** [if required]

**Schedules** [optional]

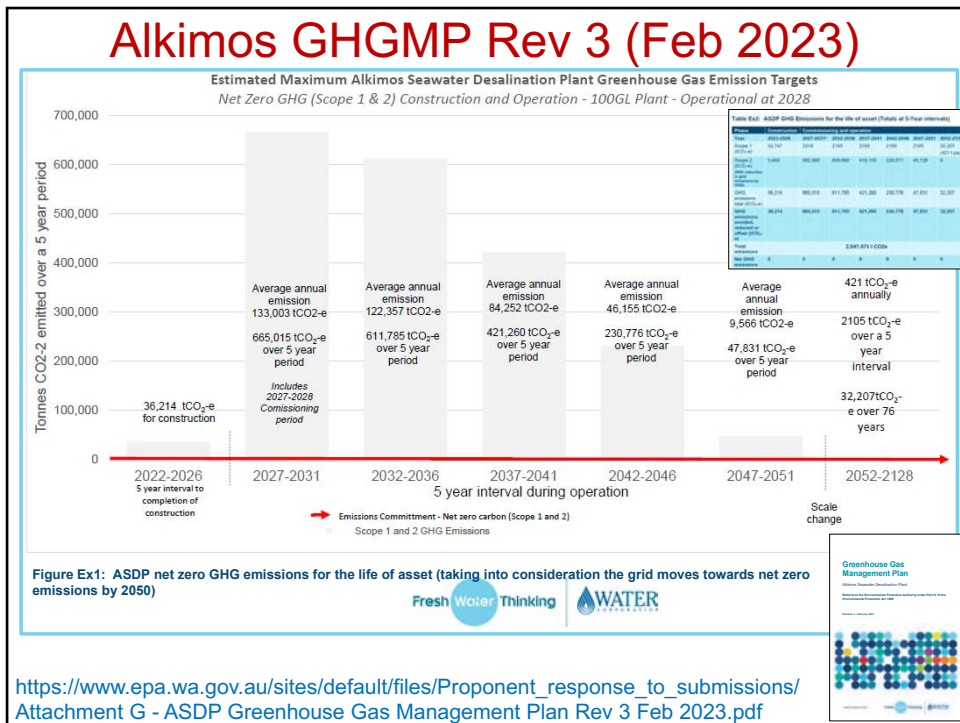
**Appendices** [if required]

5 | April 2023

[https://www.epa.wa.gov.au/sites/default/files/Forms\\_and\\_Templates/Template Greenhouse Gas Environmental Management Plan -Summary Plan April 2023.pdf](https://www.epa.wa.gov.au/sites/default/files/Forms_and_Templates/Template_Greenhouse_Gas_Environmental_Management_Plan_-_Summary_Plan_April_2023.pdf)

[https://www.epa.wa.gov.au/sites/default/files/Forms\\_and\\_Templates/GHG EMP TEMPLATE APRIL 2023.pdf](https://www.epa.wa.gov.au/sites/default/files/Forms_and_Templates/GHG_EMP_TEMPLATE_APRIL_2023.pdf)

69



70

# Alkimos GHG in Ministerial Conditions

## B7 Greenhouse Gas Emissions

B7-1 The proponent shall take measures to ensure there are zero net scope 1 and 2 GHG emissions from the commencement of operations throughout the life of the proposal.

B7-2 At least six (6) months prior to commissioning, the proponent shall revise the Greenhouse Gas Management Plan (Revision 3, 2023) and submit to the CEO to:

- (1) be consistent with the achievement of net zero scope 1 and 2 GHG emissions for the operation of the proposal;
- (2) update the estimated proposal GHG emissions and emissions intensity for the life of the proposal;
- (3) include a comparison of the estimated proposal GHG emissions and emissions intensity for the life of the proposal against other comparable facilities;
- (4) update and revise any measures that the proponent will implement to avoid, reduce and/or offset proposal GHG emissions and/or reduce the emissions intensity of the proposal; and
- (5) provide a program for the future review of the plan to:

[https://www.epa.wa.gov.au/sites/default/files/Ministerial\\_Statement/1739\\_Statement\\_1207\\_for\\_publishing\\_-\\_Alkimos\\_Seawater\\_Desal\\_Plant.pdf](https://www.epa.wa.gov.au/sites/default/files/Ministerial_Statement/1739_Statement_1207_for_publishing_-_Alkimos_Seawater_Desal_Plant.pdf)

Published on: 10 August 2023 Statement No. 1207

**STATEMENT THAT A PROPOSAL MAY BE IMPLEMENTED**  
(Environmental Protection Act 1986)

**ALKIMOS SEAWATER DESALINATION PLANT**

**Proposal:**  
The construction and operation of a 100 GL per annum seawater desalination plant and a 6 GL per annum groundwater treatment plant at the Alkimos water precinct. The source water for the desalination process will be delivered through the construction of a pipeline directly west of the proposed seawater desalination plant.  
By-products of the desalination process will be returned further offshore to the marine environment through a separate pipeline.  
In order to distribute the drinking water into Perth's Integrated Water Supply Scheme, the project includes a 32.93 kilometre pipeline from the Alkimos site to the Wanneroo Reservoir, and other significant distribution points along the pipe route.

**Proponent:**  
Water Corporation  
Australian Business Number 28 003 434 917

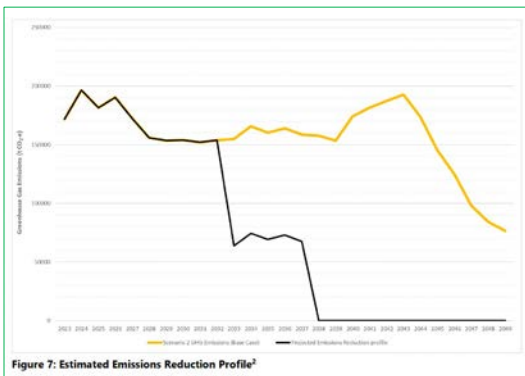
**Proponent address:**  
620 Newcastle Street  
Leederville WA 6007

**Assessment number:**  
2210

Report of the Environmental Protection Authority: 1739

71

# GHG case study: West Musgrave (i)



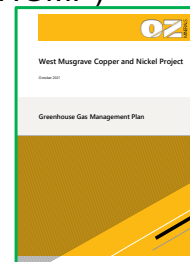
How?

- Additional Renewable Electricity infrastructure
- Electrification of the Mining Fleet
- Use of Ammonia as Fuel, Including Hydrogen Storage Infrastructure

(Outlined in GHGMP)

Emissions reduction profile from p34 of revised GHGMP (Oct 21) – exceeding EPA expectations

[https://www.epa.wa.gov.au/sites/default/files/Proponent\\_response\\_to\\_submissions/3\\_Greenhouse\\_Gas\\_Management\\_Plan.pdf](https://www.epa.wa.gov.au/sites/default/files/Proponent_response_to_submissions/3_Greenhouse_Gas_Management_Plan.pdf)



72



## GHG case study: West Musgrave (ii)

**STATEMENT THAT A PROPOSAL MAY BE IMPLEMENTED**  
(Environmental Protection Act 1986)

**WEST MUSGRAVE COPPER AND NICKEL PROJECT**

### 5 Greenhouse Gas Management

5-1 The proponent shall take measures to ensure that **net greenhouse gas (GHG) emissions** do not exceed:

- (1) 915,000 t CO<sub>2</sub>-e for the period between project commencement and 30 June 2028;
- (2) 780,000 t CO<sub>2</sub>-e for the period between 1 July 2028 and 30 June 2033;
- (3) 378,000 t CO<sub>2</sub>-e for the period between 1 July 2033 and 30 June 2038;
- (4) zero (0) t CO<sub>2</sub>-e per annum for every five (5) year period from 1 July 2038 onwards.

5-2 The proponent shall submit a report to the CEO each year by 31 March, commencing on the first 31 March after the date of this Statement specifying for the previous financial year:

- (1) the quantity of **proposal GHG emissions** and copper and nickel concentrates produced; and
- (2) the **emissions intensity** for the proposal.

5-3 The proponent shall submit to the CEO by 31 March 2029, and every fifth 31 March thereafter:

Page 6 of 19

5-6 The proponent:

- (1) may revise a **greenhouse gas management plan** at any time;
- (2) must revise the **greenhouse gas management plan** if there is a change to the proposal which means there is a material risk that condition 5-1 will not be achieved;
- (3) must revise the **greenhouse gas management plan** at least every five (5) years to align with the five (5) yearly reporting requirements specified in condition 5-3; and
- (4) must revise a **greenhouse gas management plan** if directed to by the CEO, within the time specified by the CEO.

5-7 The proponent shall ensure any revised **greenhouse gas management plan**:

- (1) is consistent with the achievement of the emission limits in condition 5-1 (or achievement of emission reductions beyond those required by the emission limits);
- (2) specifies the estimated **proposal GHG emissions, net GHG emissions** and total **GHG emissions intensity** for the remainder of the life of the proposal;
- (3) includes comparison of each of the estimated emissions and **emissions intensity** figures referred to in condition 5-7(2) for the remainder of the life of the proposal against other comparable projects;
- (4) identifies and describes any measures that the proponent will implement to avoid, reduce and/or offset **proposal GHG emissions**, or reduce the total **GHG emissions intensity** of the proposal;
- (5) specifies interim and long-term targets for avoiding, reducing and/or offsetting **proposal GHG emissions**; and
- (6) provides for a program for the future review of the plan to:
  - (a) assess the effectiveness of measures referred to in condition 5-7(4); and

73

## Some GHG challenges... (there are many!)

- Assessing impact - cannot directly connect and emission with an impact (climate change impacts are cumulative)
- Technical knowledge required to review GHGMPs
- Determining an appropriate baseline (from which emissions are to be reduced)
- Existing operations (s46 inquiries)
- Integrity of carbon offsets

74

## 6. Panel discussion

**Lee McIntosh** – (EPA, Deputy Chair)



**Danielle Griffiths** – (DWER, EPAS)



**Jamie Shaw** – (AECOM)



**Matthew Jones** – (Westport)



1

## 7. Appeals, Approval Decision and Changing Proposals/Conditions

**Featuring:**

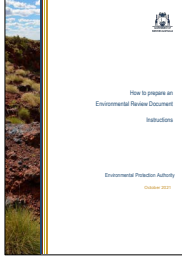
- Stakeholder engagement
- Changing proposals and conditions (at all stages)

2

## ERD contents: *stakeholder engagement*

**Stakeholder engagement**

1. **Key stakeholders**  
List the key stakeholders for the proposal.
2. **Stakeholder engagement process**  
Discuss the process for stakeholder engagement for the proposal, including ongoing consultation.  
Include:
3. **Stakeholder consultation outcomes**  
Include outcomes of consultation with stakeholders and a detailed response to issues raised by them (or reference the section in the ERD where they are addressed) (Template Table 5). Identify who was consulted, summary of discussions, key issues / matters raised, outcomes and whether matters raised were resolved or outstanding  
  
Do not include generic outcomes of discussions with decision making authorities – do include specific outcomes.  
  
Justify if consultation has not been undertaken



*Instructions: how to prepare an ERD, p4*

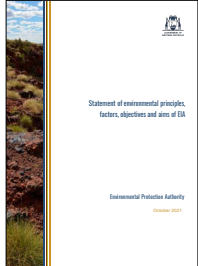
3

## Aims of EIA in WA - public

**Public involvement**

Members of the wider public are encouraged to:

1. participate in consultation by offering advice, identifying omitted relevant data and information, providing local knowledge and proposing alternatives
2. participate in strategic policy and planning as appropriate, since engagement at these earlier stages may influence the development and evaluation of future proposals
3. be informed of the administration and outcomes of EIA
4. take a responsible approach to opportunities for engagement in the EIA process, including being informed of objective information about the environmental issues.



[EPA 2021, Statement of env principles, p5]

4

### **Peer review** provisions in *Admin Proc*

The EPA *may* commission, or *may* require the proponent to commission, a peer review of assessment information including, but not limited to, the findings and conclusions of a particular environmental survey, investigation, scientific report or technical advice.

The EPA *may* require a peer review if there is a critical environmental issue and/or there is conflicting scientific information and/or advice.

The EPA *must* consider that the reviewer is an authoritative expert on the particular subject.



*Admin Proc* 2021, s3.1.2

5

### **Public review provisions** EPAAct 1986 – s40(4) & (5)

#### **40. Assessment of proposals referred**

repeat content

(4) ... the Authority may cause the following to be published —

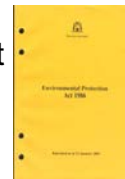
...

(b) any report made in compliance with a requirement made under subsection (2)(b).

(5) When publishing information or a report under subsection (4) the Authority may —

(a) declare the information or **report to be available for public review**; and

(b) specify the **period** within which, the extent to which and the **manner in which public authorities or persons may make submissions** to the Authority in respect of the information or report.



(EPAAct s40)

[Section 40 amended by No. 40 of 2020, s 18.]

"Specific requirements relating to public review are outlined in the *Procedures Manual*". (*Admin Proc* 2016, s3.1.3)



6

[Public concern/interest >>> public review]

*EPA Act 1986 (s38)*

### 38. Referral of proposals

...

(3) If it appears to the Minister that there ***is public concern*** about the likely effect of a proposal, if implemented, on the environment, the Minister may refer the proposal to the Authority.

*[Section 38 amended by No. 40 of 2020, s 15.]*



(EPA Act s38)

7

## Public review determination

### 2.3.1.2 Whether any of the additional assessment information is made available for public review

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

...

The review period for an ERD is ***usually two to 12 weeks***.

*EIA Procedures Manual 2021, s2.3.1.2*

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

8

## Expectations for proponents to consult

### ERD contents: *stakeholder engagement*

**Stakeholder engagement**

1. Key stakeholders

List the key stakeholders for the proposal.

2. Stakeholder engagement process

Discuss the process for stakeholder engagement for the proposal, including ongoing consultation. Include:

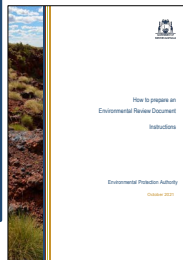
3. Stakeholder consultation outcomes

Include outcomes of consultation with stakeholders and a detailed response to issues raised by them (or reference the section in the ERD where they are addressed) (Template Table 5). Identify who was consulted, summary of discussions, key issues / matters raised, outcomes and whether matters raised were resolved or outstanding

Do not include generic outcomes of discussions with decision making authorities – do include specific outcomes.

Justify if consultation has not been undertaken

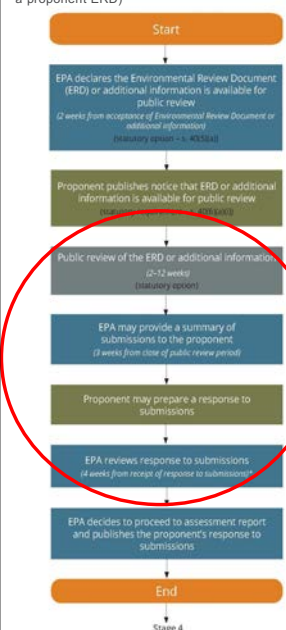
[repeat slide]



*Instructions: how to prepare an ERD, p4*

9

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



Making EIA documents available for public review and requiring responses to submissions (also publicly available) is important for:

- **credibility**
- **accountability**
- **transparency**

The EPA/DWER view is that **publishing the proponent's response to submissions** prior to the EPA report being prepared is **useful in reducing appeals** (i.e. because people can see that they have been heard and issues addressed appropriately).

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

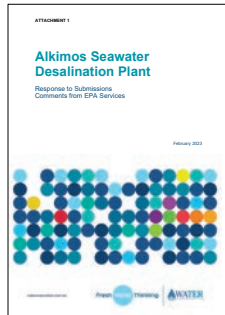
*EIA Proc Manual 2021, p37*

10

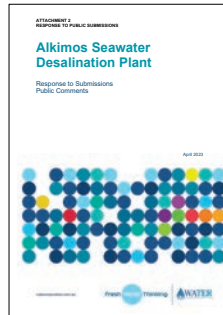
## Alkimos: proponent's response to public submissions [letter + 3 documents]

### Proponent response to submissions:

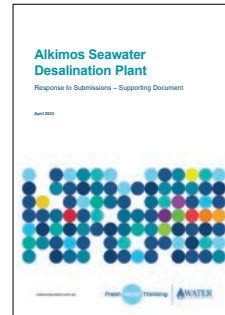
- AA\_RTS\_Submission\_CoverLet - February 2023 Assessment 2210\_Water Corporation (Feb).pdf (PDF, 330.7 KB)
- Attachment 1 - ASDP RTS to EPAS comments (Feb).pdf (PDF, 1.05 MB)
- Attachment 2 - ASDP RTS to Public and Agency\_Other Responses (April).pdf (PDF, 756.41 KB)
- Attachment 3 - ASDP - RTS Supporting Document (April).pdf (PDF, 4.69 MB)



[52 pp]



[41 pp]



[90 pp]

11

## 7. Appeals, Approval Decision and Changing Proposals/Conditions

12

## Timing and publishing of EPA report

s44 of the *EPA* Act also provides

- timelines for EPA to meet in preparing its report (s2(b)-(d)) – [*not later than 6 weeks after the Authority completes its assessment... of the proposal*]
- process for Minister to publish EPA report (s3)
  - copies to be given to submitters, other Ministers (likely to be concerned about outcomes) and relevant DMAs



[similar provisions for publishing reports on schemes – s48D(3)]



[also summarised in *Admin Proc 2021*, s4.1]

13

## Appeal on **decision not to assess**

### 100. Lodging of appeals ...

(1) **Any** decision-making authority, responsible authority, proponent or other **person that disagrees with:**

(a) a recorded **decision of the Authority that a proposal is not to be assessed**, other than a decision that includes a recommendation that the proposal be dealt with under Part V Division 2; or

...

may lodge with the Minister an appeal in writing setting out the grounds of the appeal.

[within 21\*days of publication of the Chair's determination decision]  
(\*14 days previously)

[Section 100 amended by No. 40 of 2020 s. 84.]



(*EPA* Act s100)

14



## Appeal on EPA Report

**100. Lodging of appeals ...**

(1) **Any** decision-making authority, responsible authority, proponent or other **person that disagrees with:**

...

(d) the **content of, or any recommendation** in, the report prepared under section 44 in respect of a **proposal**;

(e) the content of, or any recommendation in, the report prepared under section 48D in respect of a scheme,


...

may lodge with the Minister an appeal in writing setting out the grounds of the appeal.

[within 21 days\* of publication of EPA report] (EPAct s100)  
 (\*14 days previously)

[s. 100 amended by No. 40 of 2020 s. 84.]


[this aspect of EIA in WA stands out internationally (natural justice)]



15

## Office of the Appeals Convenor ...


[s107D(1)(a) of the EPAct enables the Appeals Convenor to “draw up administrative procedures as to ... the conduct of appeals”]





<https://www.appealsconvenor.wa.gov.au/>

16



Government of Western Australia  
Office of the Appeals Convenor  
Environmental Protection Act 1986

## When lodging an appeal

**Where do I send my appeal?**

Appeals can be lodged via this website using our [online form](#). The form is the easiest way to lodge an appeal and will guide you through the lodgement process including the payment gateway if required. Attachments can be added via the online form and when you have submitted your appeal you will receive automatic notification to your nominated email address that your appeal has been received.

Alternatively, appeals can lodged by email to [admin@appealsconvenor.wa.gov.au](mailto:admin@appealsconvenor.wa.gov.au). You can also post or deliver your appeal to the Appeals Convenor, Level 22 Forrest Centre, 221 St Georges Terrace, Perth WA 6000. For any queries about lodgement, please contact 08 6364 7990. We will acknowledge receipt of your appeal at our earliest opportunity if received via email or the post.

**What does my appeal need to include?**

Information about what can and can't be appealed can be found at [Types of appeal](#). Once you are sure about the type of appeal you are making you should focus on

- clearly laying out your grounds of appeal, preferably numbering the grounds.
- focus on the problem and identify the key issue(s) that you are concerned about. Be clear and concise.
- clearly state the outcome you are seeking having regard to the type of appeal you have submitted.

As an example, an appeal against the conditions of a works approval or licence, must relate to the conditions of the works approval or licence. You cannot appeal the decision to issue the works approval or licence.

<https://www.appealsconvenor.wa.gov.au/What-to-expect/When-lodging-an-appeal>

17

## **Consultative & merits-based appeals process**

### **109. Procedure of appeals committees**

(1) In considering an appeal, **an appeals committee** —

(a) **shall consult** —


(i) **the CEO** in the case of an appeal against a decision of the CEO;

(ii) **the Authority** in the case of an appeal against a decision of the Minister or the Authority; and


(iii) **the appellant;**

(aa) **may consult such other persons as it considers necessary;** and

(b) **shall act according to equity, good conscience and the substantial merits of the case**, without regard to technicalities or legal forms, shall not be bound by any rules of evidence and may conduct its inquiries in whatever manner it considers appropriate.



18



Government of Western Australia  
Office of the Appeals Convenor  
Environmental Protection Act 1986

**How is an investigation conducted?**

Once an appeal has been received, the Appeals Convenor, decides the most appropriate method of investigation in accordance with the requirements of the Act having regard to the nature and complexity of the issue under appeal.

This will ordinarily include meeting with the parties to the appeal including the appellant(s), proponent and the Department. These discussions are informal in nature, and are intended to provide an opportunity to clarify the issues in contention. Due to the informal nature of the process, appellants do not require legal representation. Occasionally the Appeals Convenor may convene a combined meeting between the parties where the Appeals Convenor is of the opinion that this will assist in resolving the issues in dispute.

The Appeals Convenor, acting on behalf of the Minister, is required to seek the advice from the original decision maker, for example the Department of Water and Environmental Regulation or the Environmental Protection Authority.

The Appeals Convenor is required to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms. The Appeals Convenor is specifically not bound by any rules of evidence and may conduct inquiries in whatever manner is considered appropriate.

Appeals under the Act are 'merits' appeals. This means that the Minister can consider all relevant facts before making a decision. While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters raised in respect to the proposal or scheme.

**What are some of the considerations in the appeals?**


EPA Report and Recommendations

The Appeals Convenor will have regard to the 'consideration of significance' as described in the EPA's Statement of Environmental Principles, Factors and Objectives (December 2016), which includes:

- values, sensitivity and quality of the environment which is likely to be impacted;
- extent of the likely impact;
- consequence of the likely impact;
- cumulative impact with other projects;
- level of confidence in the prediction of impacts and the success of proposed mitigation; and
- level of public interest.

<https://www.appealsconvenor.wa.gov.au/What-to-expect/When-an-appeal-is-being-investigated>

19



Government of Western Australia  
Office of the Appeals Convenor  
Environmental Protection Act 1986

**What happens when an investigation is complete**

On completing the investigation of an appeal, the Appeals Convenor will provide a report to the Minister. This report and recommendations must be consistent with any relevant Environmental Protection Policy or other standard prescribed under the Act.

The Minister is required to take the Appeals Convenor's report into account before deciding the appeal. The Minister can generally allow an appeal (in full or in part), or dismiss an appeal. In the case of appeals against a decision or recommendation of the Environmental Protection Authority, the outcomes available may include remitting the proposal to the Authority for fresh assessment or varying the conditions recommended by the Authority.

The Minister's decision is final and is not subject to appeal. Copies of decisions are available at [search appeals](#).

**How long does the appeal process take?**

While there are no statutory timelines in respect to appeal investigations, the Appeals Convenor aims to have 80% of appeal reports submitted to the Minister for Environment within 60 days of receiving a final response to the appeal from the relevant decision-making authority and proponent.

<https://www.appealsconvenor.wa.gov.au/What-to-expect/When-an-appeal-is-being-investigated>


**[Note: there were no appeals for Alkimos]**

20

## Role of Appeals Convenor

In essence the Appeals Convenor applies the 'normal EIA process'

- except not trying to determine significance,
- but rather is **testing that the merits of the EPA's reasoning is robust**




Government of Western Australia  
Office of the Appeals Convenor  
Environmental Protection Act 1986

[s100(1): "any person who disagrees with...(EPA report)"]

Example: Appeals Convenor report on Yanchep Rail appeals on EPA report

Having regard for the information provided during the appeals investigation, including the referral documentation, and information provided by the appellants, the proponent and the EPA, the Appeals Convenor considered that the EPA's report and recommendations were appropriate and supported by the available evidence. However, the Appeals Convenor recommended that the conditions relating to the EMP and the Green Bridges Design and Management Plan (GBDMP) be amended to require the PTA to provide evidence of any third party input received, including how that input was addressed.



<https://www.appealsconvenor.wa.gov.au/oac/files/061-19%20Appeals%20Convenor%20Report.pdf>


21

## Minister's options for determining appeals

**101. Minister's powers on appeals under s. 100**

(1) When an appeal is lodged under section 100(1) or (4), the Minister may —

- (a) in the case of any appeal so lodged but subject to section 109(3)(a), **dismiss the appeal**; or
- (b) in the case of an appeal referred to in section 100(1)(a), **remit the proposal to the Authority for the making of a fresh decision as to whether or not the proposal is to be assessed**; or
- (c) in the case of an appeal referred to in section 100(1)(a), remit the proposal to the Authority for assessment and for that purpose make a direction under section 43; or
- (d) in the case of an appeal referred to in section 100(1)(d) —
  - (i) **remit the proposal to the Authority for assessment, further assessment or reassessment**, as the case requires, and for that purpose make a direction under section 43; or
  - (ii) **vary the Authority's recommendations by changing the implementation conditions**;



22

## Role of Minister when determining appeals

In essence, the Minister is standing in the shoes of EPA and remaking their advice in the assessment report (i.e. now as a decision)

### Example: Minister's appeal determination report on Yanchep Rail

Appeal Number:  
061 of 2019

Having considered the information available, including the EPA's response to the appeals and the Appeals Convenor's report, the Minister considered that the EPA's assessment was appropriate and its conclusions and recommendations were supported by the available evidence.

The Minister decided, however, to allow the appeals to the extent that conditions relating to the content of the Environmental Management Plan (EMP) and Green Bridges Design and Management Plan (GBDMP) be amended to require the PTA to show evidence of any third party input received, including how that input was addressed.

<https://www.appealsconvenor.wa.gov.au/oac/files/061-19%20Ministers%20Appeal%20Determination.pdf>



23

Note: an emphasis of appeals is on approval conditions, which can only concern matters directly under control of proponent.

#### Ningaloo Lighthouse Resort (Oct 2023)

- conditions cannot set up secondary approvals; thus, cannot condition for co-design of EMP, but can require proponent to consult
- indirect impacts of tourists fall outside of conditions (proponent only has control of development envelope) – and DBCA is responsible for visitors in national park



#### some other recent interesting appeals findings...

##### Optimised Mardie Project (Sept 2023)

- appeal that cumulative impacts not understood (and thus EPA assessment not sufficient). This was overturned; i.e. EPA process stands, (but Minister did alter some conditions in light of appeals)



##### Ningaloo Lighthouse Resort (Oct 2023)

- implication in appeal that EPA assessment (and Factors approach) is not able to properly assess Aboriginal cultural values, but Convenor found this to be ok (thus Social Surroundings guideline was examined and tested).

24

**Note: Appeals on EPA Report are separate from the yes/no approval decision of Minister**

...although there will very likely be a connection between the EPA's conclusions with respect to the adverse environmental consequences of any proposal and its recommendation to the Minister with respect to the implementation of the proposal, as there was in this case, **it does not follow that the Minister's dismissal of an appeal from the EPA's report with respect to the adverse environmental consequences of the implementation of a proposal is equivalent to a determination that the proposal should not be implemented.**

Yeelirrie court case 2018 – Chief Justice Martin  
*Conservation Council of Western Australia (Inc) -V- The Hon Stephen Dawson MLC [2018] WASC 34 s87 (p30)*

[REDACTED]	
JURISDICTION	: SUPREME COURT OF WESTERN AUSTRALIA DISTRICT
CITATION	: CONSERVATION COUNCIL OF WESTERN AUSTRALIA (INC) - THE HON STEPHEN DAWSON MLC [2018] WASC 34
CORAM	: MARTIN CJ
HEARD	: 14 NOVEMBER 2017
DELIVERED	: 1 FEBRUARY 2018
FILE NOS	: CV 2004 of 2017
BETWEEN	: CONSERVATION COUNCIL OF WESTERN AUSTRALIA (INC) First Applicant GLENIS WENTWORTHING ELIZABETH WENTWORTHING TERRY WENTWORTHING Second Applicants  AND THE HON STEPHEN DAWSON MLC First Respondent CAMERO AUSTRALIA PTY LTD Second Respondent
Case words:	Environment and planning - Environmental impact assessment - Proposal to mine uranium

**example - role of Minister (s45 of EPAAct)**

- EPA recommended 'no'
- proponent appealed
- appeal upheld
- then Minister had to make s45 decision...
- and said 'yes'

**6** The Australian West November 25-26, 2017

# Mine on ancient range blocked

■ Daniel Mercer

Plans by one of WA's richest men to mine iron ore in an ancient outback range have been ruled environmentally unacceptable by the State Environment Minister.

Stephen Dawson said last night he had sided with the State's environment watchdog to reject a proposed iron ore mine in the Helena-Aurora Range in the Yilgarn, 500km north-east of Perth.

The proposal is being pursued by Chris Ellison's Perth company Mineral Resources.

After the Environmental Protection Authority in June concluded the mine should not be allowed to go ahead because of the "irreversible impacts" it would have on the range, **Minister appealed.**

But Mr Dawson backed the positions of the EPA and the Appeals Convenor, saying they were supported by "the available evidence on environmental impacts".

"After carefully considering the concerns raised, I have found that the EPA's assessment was rigorous and comprehensive," Mr Dawson said yesterday.

"I agree with the conclusions of the Appeals Convenor and the reasoning behind those conclusions and have dismissed the appeals accordingly.

**This is not a final decision from Government.** "I will now consult with my ministerial colleagues to ensure the social, economic and environmental aspects of this proposal are considered," **Minister said.**

It had received the Minister's report and was considering its position. The company claims the project will save 425 jobs and create another 1000 indirectly, while saying the mine would only affect 5 per cent of the range.

Mr Dawson's decision comes after the EPA controversially tried to reject the Helena-Aurora mine proposal at the first opportunity, only to be instructed by then environment minister Albert Jacob to carry out a full assessment.

But in a widely expected decision, the EPA earlier this year recommended the mine not go ahead on the grounds that the three-billion-year-old range is one of the oldest and most ecologically sensitive landforms in the world.

The Wilderness Society WA applauded the decision.

**Pause point**

*Any questions/comments  
regarding appeals...?*

27

**7. Appeals, Approval Decision  
and Changing  
Proposals/Conditions**

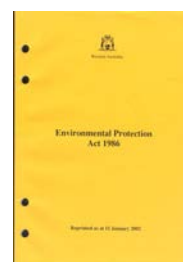
28



## EIA approval decision – *proposals* (i)

### 45. Procedure for deciding if assessed proposal may be implemented

- (1) This section applies after the Minister has caused a report to be published under section 44(3)(a).
- (2) For the purposes of this section the Minister must **determine** which or whom of the decision-making authorities in relation to the assessed proposal the Minister considers to be a **key decision-making authority**.



[Section 45 amended by No. 40 of 2020 s. 28.]

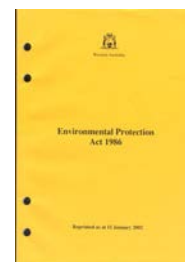
[EPAct s45(1), (2)]

29

## EIA approval decision – *proposals* (ii)

### 45. Procedure for deciding if assessed proposal may be implemented

- (3) ...the Minister **must consult and, if possible, agree with that Minister** or those Ministers on the implementation issues.
- (4) ...the Minister **must consult and, if possible, agree with that key decision-making authority** ... on the implementation issues.



[EPAct s45(3), (4)]

[Section 45 amended by No. 40 of 2020 s. 28.]

[similar provisions for publishing decision on schemes in s48F; i.e. consult and agree with responsible Minister]

30



## EIA approval decision – *proposals* (iii)

### 45. Procedure for deciding if assessed proposal may be implemented

(8) **If** the implementation agreement or **decision is that the assessed proposal** may be implemented, or **may be implemented subject to implementation conditions**, the Minister must within 30 days ...

(a) cause copies of a **statement** setting out the implementation agreement or decision to be served on

... [the Authority, each key DMA, proponent, person who referred the assessed proposal] ...

and

(b) **cause the statement to be published** as soon as is practicable...



[Section 45 amended by No. 40 of 2020 s. 28.]

[[EPAct s45(8)]

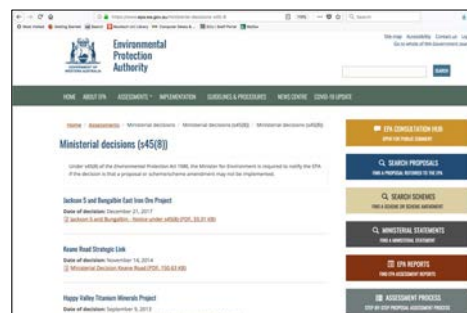
[similar provisions for publishing decision on schemes – s48F(2)]

31

## Approval conditions

For proposals, the Ministerial Statement is a stand-alone document – outlining conditions for implementation

<https://www.epa.wa.gov.au/ministerial-decisions-s45-8>



32

## Withdrawing a Statement – *EPA* Act 1986, s47A

### 47A. Duration and withdrawal of Ministerial statement

- (1) The *Ministerial statement* relating to an approved proposal *continues to have effect unless it is withdrawn or taken to have been withdrawn* under this section.

...

- (3) ...if the proponent of an approved proposal requests the Minister, in writing, to withdraw the Ministerial statement relating to the proposal and the Minister is satisfied —
- (a) that the proposal has been implemented and that the *implementation conditions*, if any, *have been complied with* or no longer need to be complied with; or
- (b) that the *impacts of the implementation* of the proposal *can be satisfactorily mitigated by way of licensing or some other form of regulatory control* under this Act or another written law.



(*EPA* Act s47A)

still awaiting Instructions on this...!

[Section 47A inserted: No. 40 of 2020, s 31.]

33

## Joining or splitting Statements – *EPA* Act 1986, s45D

### 45D. Division or consolidation of proposals and issue of separate or combined Ministerial statements

- (1) Without limiting section 45C, an amendment approved or made under section 45C(1) may comprise or include —
- (a) the division of an approved proposal into 2 or more proposals (the *separate proposals*) and the division of the implementation agreement or decision for the approved proposal into implementation agreements or decisions for each of the separate proposals; or
- (b) the consolidation of 2 or more approved proposals into 1 (*EPA* Act s45D) proposal (the *consolidated proposal*) and the consolidation of the implementation agreements or decisions for the approved proposals to form an implementation agreement or decision for the consolidated proposal.

still awaiting Instructions on this...!



[Wording can be contemporised but meaning cannot be changed]

[Section 45D inserted: No. 40 of 2020, s 28.]

34

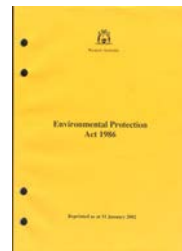
# 7. Appeals, Approval Decision and Changing Proposals/Conditions

35

## Amending proposals and conditions

### Mechanisms for changing proposals/conditions:

- s38C – change to referred proposal before decision to assess (New in 2020 amendments)
- s43A – change to proposals during assessment
- s45C – amendments to assessed proposals and conditions
- s46 – change to approval conditions
- PLUS: s40AA - significant amendments



We address each assessment process **briefly** in turn **But first...**

**EIA is EIA!**

Types of proposals assessed in WA

The EPAct 1986 contains various particular EA processes:

- s38(1) significant proposals
- s43C amendments to assessed proposals and conditions
- s45C amendments to assessed proposals and conditions
- s46 strategic proposals
- s46C strategic proposals
- s46D strategic proposals
- s46E strategic proposals
- s46F strategic proposals
- s46G strategic proposals
- s46H strategic proposals
- s46I strategic proposals
- s46J strategic proposals
- s46K strategic proposals
- s46L strategic proposals
- s46M strategic proposals
- s46N strategic proposals
- s46O strategic proposals
- s46P strategic proposals
- s46Q strategic proposals
- s46R strategic proposals
- s46S strategic proposals
- s46T strategic proposals
- s46U strategic proposals
- s46V strategic proposals
- s46W strategic proposals
- s46X strategic proposals
- s46Y strategic proposals
- s46Z strategic proposals

*The same process/thinking applies for all processes!* [i.e. covered in this course]

(\*there are minor differences in administrative arrangements...)

36

## **Key points (i)**

### 1. Consistent significance test

- The ‘test’ of whether amendments can be approved is now the same for s38C, s43A and s45C – i.e. **not a ‘significant amendment’**
- Previously different tests were used, e.g.:
  - former s43A: “**unlikely to significantly increase the impact**”
  - former s45C: “**might have a significant detrimental effect...in addition to or different from...**”



37

## **Key points (ii)**

### 2. New concept of ‘significant amendment’ to approved proposal

- If amendment is significant, amendment cannot be made under s45C, referral under s38 is required and s40AA applies
- s40AA prescribes requirements for assessing significant amendments (more later)



38

## **Key points (iii)**

### 3. Scope of possible amendments

- Amendments to approved proposals can be:
  - Changes to proposal
  - Changes to conditions
- This applies to both:
  - s45C (changes that are not significant)
  - s38/s40AA (changes that are significant)
  - [former s45C did not allow for changes to conditions]
- [s46 amendment to conditions still available]



39

### ‘Significant amendment’ definition [EPA Act – s3]

#### 3. Terms used in this Act

"**significant** amendment, of an approved proposal, means —

- (a) a proposal that —
- (i) is or includes the **amendment of an approved proposal**;
  - and**
  - (ii) is **likely**, if implemented, **to have a significant effect on the environment**;

[repeat slide]

or

- (b) a proposed **amendment to implementation conditions** relating to an approved proposal if implementation of the proposal under the amended implementation conditions is **likely to have a significant detrimental effect** on the environment in **addition to, or different from**, the effect the proposal has in its implementation under the **existing implementation conditions**

[Section 3 amended by No. 40 of 2020 s. 4.]



40

[repeat slide]

## EPAct 1986 – s38C & 38D

### 38C. Proponent may amend a referred proposal

(1) At any time before the Authority decides whether or not to assess a referred proposal, the proponent may, by written notice, request the Authority to approve of the proposal being amended in the manner set out in the request.

[(3) amended proposal is taken as if referred under s38].

### 38D. Proponent may give notice that a referred proposal will not proceed

(EPAct s38C & D)

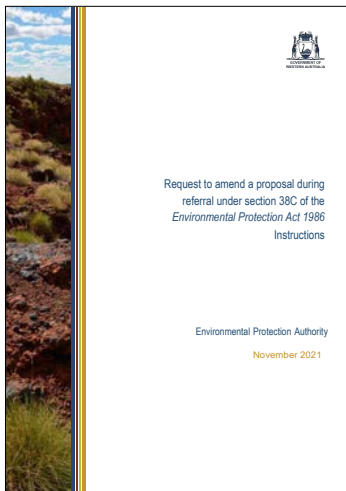
(1) If at any time before the Authority has decided whether or not to assess a referred proposal the Authority receives written notice from the proponent that the proponent does not wish to proceed with the proposal, the referral of the proposal is taken to have been withdrawn.

(2) This section applies whether or not the proposal was referred to the Authority by the proponent.

*[Section 38C & D inserted by No. 40 of 2020, s 15.]*

41

## s38C Instructions and Template



**Form**

Request to amend a referred proposal under s.38C of the EP Act

Part A. Proponent information and proposal description	
<b>1. Proponent information</b>	
Name of the proponent(s) <small>(including Trading Name if relevant)</small>	
Australian Company Number(s) <input type="checkbox"/>	OR
Australian Business Number(s) <input type="checkbox"/>	<input type="checkbox"/> Proponent
<input type="checkbox"/> Authorized representative (an authorisation from the proponent should be provided)	
<b>Name (s)</b>	<b>Signature</b>
<b>Position</b>	<b>Organisation</b>
<b>Email</b>	<b>Phone</b>
<b>Address</b>	
<b>Date</b>	
Does the referer request that the EPA treat any part of the proposal information in the referral as confidential? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Provide confidential information in a separate attachment. <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Referer declaration for proponent and Authorized representative:</b>	
I, _____ (Full name) of _____, declare that I am authorised to refer this request on behalf of the proponent, and further declare that the information contained in this form is true and not misleading.	
Provide contact details for purposes of the assessment, if different from the above. <small>(include: name, physical address, phone, email)</small>	
<b>2. Pre-request discussion</b>	
Have you had pre-referral discussions with the EPA (including the EPA Services of DARE)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If no, provide name, date, and overview of discussion.	

<https://www.epa.wa.gov.au/forms-templates/instructions-amending-proposal-during-referral-under-s-38c-environmental-protection>

42

## Summary of s38C application requirements

**Part A: Proponent information and proposal description**

1. Proponent information
2. Pre-request discussions
3. Proposal information

**Part B: Assessment of amendments**

1. Reason for and content of proposed amendment
2. Regulatory information
3. Identification of environmental factors and environmental effects
4. Consultation

**Part C: Additional information if needed**

1. Additional surveys, investigations and other information
2. Discussion of significance

*[We will look at some of these in more detail]*

43

### s38C application Part B

**Part B Assessment of amendments**

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

Reason for the proposed amendment: Provide the reason(s) for the proposed amendment(s) to the proposal.

Content of the proposed amendment: Describe the content of the proposed amendment(s) to the proposal, including:


- any changes to the General Proposal Description in the Proposal content document (as originally referred), including how they compare to the referred proposal. For example, a change in location, or removal and/or addition of development(s) and/or activity(ies).
- any changes to the Proposal elements in the Proposal content document (as originally referred), and the proposed extent of these, including comparison of the proposed amended proposal with the referred proposal. For example, a decrease and/or increase of extent of Proposal elements or removal and/or addition of Proposal elements.

Consolidated updated Proposal content document: Provide a consolidated updated Proposal content document, including where relevant:

- General Proposal Description
- Proposal elements
- spatial data, maps and figures.

Note: Refer to [Instructions and Template: How to identify the content of a proposal](#), for examples.

Proposal alternatives: To the extent reasonably practicable, describe any feasible alternatives to the proposed amendment, including a comparative description of the environmental impacts of each alternative, and sufficient detail to make it clear why any alternative is preferred to another.



Describe...any changes to the current PCD

Provide a consolidated updated PCD

Alternatives

*s38C Instructions (2021)*

44

### s38C application Part B

#### 2. Regulatory information

Proposal referral date: Provide the proposal referral date.


Status of the referral: Provide the status of the referral, including:

- whether the EPA has requested further information under s. 38F, and if so whether the proponent has provided the requested information to the EPA.
- whether the EPA has released the proposal for the seven-day comment period, and if so, whether the comment period has closed.

The status of the referral is an important consideration for the EPA's decision and any information it may require in order to consider the request to amend the proposal. For example, if the EPA has already released the referred proposal for the seven-day comment period and received comments, it may release the proposal as amended, or as proposed to be amended, for an additional seven-day comment period.

Changes to decision-making authorities or processes: Identify if there are any likely changes to decision-making authorities or processes (addition or removal) as a result of the proposed amendment. Provide an updated decision-making authority (DMA) table (provided as the Example Table at the end of the Form) to identify changes to DMAs as a result of the proposed amendments.

For any new decision-making authorities or processes, include whether they can mitigate the potential impact of the proposal on the environment. For any removal of decision-making authorities or processes (where there is still a potential significant effect on the environment), include whether there is an alternate statutory decision-making process that can mitigate the potential impact of the proposal



(May be) an additional seven-day comment period

↓

s38C Instructions (2021)

45

### s38C application Part B

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

Environmental factors: Identify which environmental factor/s are relevant to the proposed amendment, considering:

- change in the environmental effects relevant to environmental factors (including decrease or increase in environmental effects).
- identification of new environmental factors.

Environmental effects: Identify any negative likely environmental impacts (including cumulative environmental and holistic impacts) to the environmental factors and environmental values from the proposed amendment, such as additional developments / activities and / or increases in the extent of Proposal elements.

Mitigation hierarchy: Describe how the mitigation hierarchy has been applied to the proposed amendment. Refer to [Statement of environmental principles, factors, objectives and aims of EIA](#) for further guidance on the mitigation hierarchy.


Residual impacts: Identify if there are any residual environmental impacts, including whether there are significant residual environmental impacts.

Additional information: Specify if any additional information is needed to enable the EPA to continue assessing the proposal.

Where a proponent aims to provide sufficient information with the referral to enable the EPA to set Referral information as the level of assessment, discuss whether information already provided with the referral (and the information in PART B: Assessment of amendments) is adequate for the EPA to continue processing the referral or whether additional information should be submitted. This may depend on the currency of information, such as surveys, and the nature of the proposed amendment, such as, whether it includes additionality, increases or decreases to proposal extents.

The EPA may also need additional information in other cases to continue to process the referral. For example, where the proposed amendment may be significant, or increase the requirements set in the EPA's level of assessment decision.

If additional information needs to be submitted to the EPA to support the request for amendment, **complete PART C: Additional Information**. If the EPA's view is that additional information is required but is not provided with the request, the EPA may request that the information be provided.



Part C likely to be needed if ARI sought or if changes are significant


→

s38C Instructions (2021)

46



### s38C application Part C



1. Additional surveys, investigations and other information
2. Discussion of significance

Discussion should be based on the environmental factors relevant to negative environmental effects likely from the proposed amendment that the proponent has identified in Part B - Step 3.

**Change to the significance of the residual impact:** Discuss the likely effect of the requested amendment on, or in relation to, the environmental factors, after application of the mitigation hierarchy including:

- the effects of the proposed amendment on its own
- the effects of the proposed amendment in the context of the existing referred proposal
- cumulative environmental impacts
- holistic impacts.

**Significant effect on the environment:** Discuss whether there is likely to be a significant effect on the environment (including cumulative 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.

**Environmental outcomes:** When discussing the above, include any change in likely environmental outcomes and the consistency of these outcomes with the EP Act principles and EPA objectives for environmental factors, in the context of the original proposal.

**Character of the proposed amendment:** Discuss whether the character of the proposed amended proposal will be substantially the same character as the referred proposal.

*Amendments  
in context (cf  
s40AA)*

*Cumulative  
and holistic*

*Environmental  
outcomes*

**s38C  
Instructions  
(2021)**

47

### 43A. Amendment to proposals during assessment

(1) While a proposal is being assessed, the proponent may... —


- (a) advise the Authority that the proponent *wishes to amend the proposal* ...; and
- (b) request that the Authority approve of the *assessment of the proposal being completed in respect of the proposal as so amended.*

...

(3) If the Authority gives approval under subsection (1)(b) —

- (a) the proposal as so amended is *taken to have been referred to the Authority under section 38*; and
- (b) without limiting section 40, the Authority, if it thinks fit, may perform, ...any function that it could have performed, or has already performed, in respect of the proposal.

[Section 43A replaced by No. 40 of 2020 s.26.]



(EPAAct s43A)

48

## s43A overview of changes

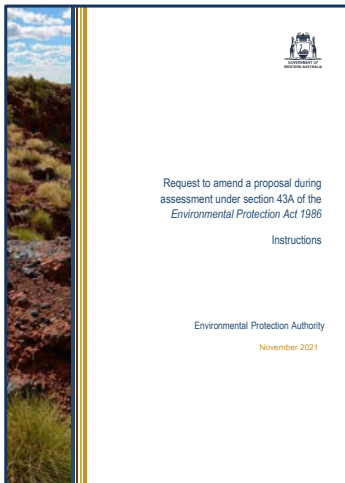
**New Instruction (amended section 43A of the Act):**

- Clarifies that a proponent must seek approval under s. 43A of the EP Act if they wish to amend a proposal during assessment (amendments cannot be made in ESDs or ERDs or RTs).
- Reflects that amended s. 43A gives the EPA greater scope to approve changes to proposals during assessment.
- Clarifies that EPA has discretion to approve a proposal amendment. For consistency with s 45C of the EP Act, amendments will not usually be approved if they would be “a significant amendment” if the proposal were already approved.
- Sets out that information needed by the EPA to consider an amendment to a proposal during assessment is proportional to the nature of the amendment and the risk of potentially significant impacts.
- Clarifies that when making a decision under 43A, the EPA will review whether any assessment steps need to be taken again and/or whether additional information is required (under s40).

**Note: s43A request may be necessary towards end of assessment to ‘tidy everything up’**  
[e.g. earlier sharing of s43A for Alkimos on Proposal Content Document topic]

49

## s43A Instructions and Form



Form	
Request to amend a proposal during assessment under s 43A of the EP Act	
<b>Part A. Proponent information and proposal description</b>	
<b>1. Proponent information</b>	
Name of the proponent (including Trading Name if relevant)	
<input type="checkbox"/> Australian Company Number(s) <input type="checkbox"/> OR <input type="checkbox"/> Australian Business Number(s)	
<input type="checkbox"/> Proponent <input type="checkbox"/> Authorized representative (an authorisation from the proponent should be provided)	
Name (print)	Signature
Position	Organization
Email	Phone
Address	
Date	
Describe whether you request that the EPA treat any part of the proposal information in the referral as confidential? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Provide confidential information in a separate attachment.	
Declaration for proponent and Authorized representative: I, _____ (full name) of _____ declare that I am authorized to refer this request on behalf of the proponent, and further declare that the information contained in this form is true and not misleading.	
Provide contact details for purposes of the assessment, if different from the above (include name, physical address, phone, email)	
<b>2. The proposed alterations</b>	
Have you had an informal discussion with the EPA (including the EPA Services of WADEC)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If no, provide name, date, and overview of discussions.	
11 November 2021	

<https://www.epa.wa.gov.au/forms-templates/instructions-amending-proposal-during-assessment-under-s43a-environmental-protection>

50

## Summary of s43A application requirements (as for s38C)

### Part A: Proponent information and proposal description

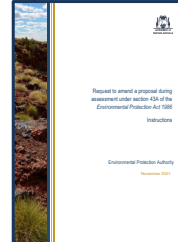
1. Proponent information
2. Pre-request discussions
3. Proposal information

### Part B: Assessment of amendments

1. Reason for and content of proposed amendment
2. Regulatory information
3. Identification of environmental factors and environmental effects
4. Consultation

### Part C: Additional information if needed

1. Additional surveys, investigations and other information
2. Discussion of significance



*s43AC Instructions (2021)*

51

### 2. Regulatory information

### s43A application Part B

**Level of Assessment:** Provide the level of assessment for the proposal.

**Assessment details:** Identify the assessment details and any proposed change to: assessment form; content; or indicative timing.

**Status of the assessment:** Provide the status of the assessment, including:

- Last assessment step completed (and date)
- Current assessment step. If the proposal is currently in Step 3: Public review, identify whether the Environmental Review Document has been released for public review.

The current level of assessment and status of assessment are important considerations for the EPA's decision, particularly where the proposed amendment includes increases to the proposal activities and/or proposal extents. The EPA's considerations include but are not limited to the following:

- The level of detail required in the information provided. The further an assessment has progressed the more information may be required.
- Whether to approve or refuse. The EPA usually expects a request to amend a proposal to reduce environmental effects as the assessment progresses and the mitigation hierarchy is applied. For other amendments, the EPA may be less likely to approve an amendment the further the EPA's assessment has progressed. For example, the EPA may refuse a request to amend a proposal if the proposal is in Step 4: Preparation of Assessment report.

If the EPA approves the amendment, the EPA may be more likely to perform any of the functions under section 40 of the EP Act if the nature of the amendment means that the assessment requirements for the amendment are not already included in the current Level of Assessment. This will depend on how far the assessment has progressed

*EPA may be less likely to approve an amendment the further the EPA's assessment has progressed*



*s43A Instructions (2021)*

*s40 implications (e.g. additional info, public review)*

52

## Amending approved proposals (i)

### 45C. Amending approved proposals or implementation conditions without inquiry or assessment

- (1) The Minister, after receiving a written request from the proponent to do so, may —
- (a) approve an **amendment to an approved proposal**; or
  - (b) **amend implementation conditions** relating to an approved proposal; or
  - (c) [do both at same time]
- (2) The Minister may, ... request the proponent to **provide the Minister with additional information** about an amendment to which a request under subsection (1) applies to enable the Minister to decide whether or not to approve or make the requested amendment.

[Section 45C replaced by No. 40 of 2020 s. 28.]

(EPAAct s45C)

53

## Amending approved proposals (ii)

### 45C. Amending approved proposals or implementation conditions without inquiry or assessment

- (3) The **Minister must not approve** or make an amendment requested under subsection (1) **if** the Minister considers that the requested amendment is **a significant amendment**. [s38 and s40AA apply]
- (4) Whether or not there has been a request under subsection (1), the Minister **may amend an approved proposal if the Minister considers that the amendment is of a minor nature** and is necessary and desirable in order to correct in the description of the proposal —
- (i) a clerical mistake or unintentional error or omission; or
  - (ii) a figure that has been miscalculated; or
  - (iii) a misdescription of any person, thing or property.

[Section 45C replaced by No. 40 of 2020 s. 28.]

(EPAAct s45C)

54

## Amending approved proposals (iii)

### 45C. Amending approved proposals or implementation conditions without inquiry or assessment

- (5) Whether or not there has been a request under subsection (1), the Minister **may amend implementation conditions relating to an approved proposal if the Minister considers that the amendment is of a minor nature** and is necessary and desirable in order to —
- (a) standardise the implementation conditions applying to different proposals; or
  - (b) correct in the implementation conditions —
    - (i) a clerical mistake or unintentional error or omission; or
    - (ii) a figure that has been miscalculated; or
    - (iii) a misdescription of any person, thing or property.

[Section 45C replaced by No. 40 of 2020 s. 28.]

(EPAAct s45C)



55

## Amending approved proposals (iv)

### 45C. Amending approved proposals or implementation conditions without inquiry or assessment

- (8) Without limiting this Division, ...in relation to a requested amendment of implementation conditions —
- (a) the **Minister may make a request under section 46(1)** whether or not the Minister considers that the implementation conditions, or any of them, should be amended; or
  - (b) the Minister may agree with any decision-making authority that was consulted under this Act in relation to the existing implementation conditions that the proposed amendment to conditions is a **significant amendment that must be referred** by the decision-making authority **under section 38(4) as a significant proposal.**

[Section 45C replaced by No. 40 of 2020 s. 28.]

(EPAAct s45C)



56

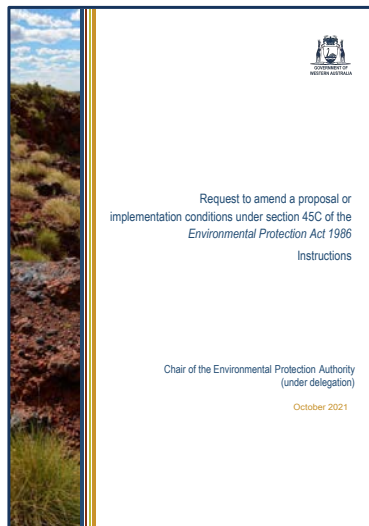
## s45C overview of changes

**Changes since March 2020 version:**

- Reflects 2020 EP Act amendments which allow approval of some changes to Ministerial statement implementation conditions under s 45C
- Reflects 2020 EP Act amendments which provide greater scope for changes to be approved under s 45C in the post assessment stage. Changes can now be approved unless they are “significant amendments”.
- Reflect the definitions of “significant amendment” when applied to a) proposals and b) Ministerial statement implementation conditions.
- Reflects EP Act amendments which permit requests for additional information under s 45C(2).
- Sets out that the level of information needed to consider an amendment to a proposal, implementation conditions or both, is proportional to the nature of the amendments and the risk of potentially significant impacts.
- Removal of formal “six aspects” test for considering amendments to proposals under s 45C (but retention of relevant legal principles which the six aspects test was based on).
- Clarifies that if a proponent requests an amendment to a proposal only (and does not request a change in conditions), a separate inquiry into conditions under s 46 may be needed.
- Facilitates the removal of schedule 1 of Ministerial statements “summary of key proposal characteristics” for existing proposals. Schedule 1 will be replaced with a standalone Proposal content document provided when s 45C applications are requested.

57

## s45C Instructions



[https://www.epa.wa.gov.au/sites/default/files/Forms\\_and\\_Templates/Instructions\\_Request\\_to\\_amend\\_proposal\\_an\\_or\\_conditions\\_under\\_s.45C.pdf](https://www.epa.wa.gov.au/sites/default/files/Forms_and_Templates/Instructions_Request_to_amend_proposal_an_or_conditions_under_s.45C.pdf)

58

**Form**  
Request to amend a proposal and/or implementation conditions under s45C of the EP Act

**s45C Form**

**Part A: Proponent information and proposal description**

**1. Proponent information**

Name of the proponent (including Trading Name if relevant)

Environmental Company Number(s)

OR

Business Number(s)

OR

Proprietor

Authorised representative (an authorisation from the proponent should be provided)

Name (print)

Signature

Position

Organisation

Address

Phone

Email

Date

Do you refer to request that the EPA treat any part of the proposal information in the referral as confidential?  Yes  No

Do you refer to request that the EPA treat any part of the proposal information in the referral as confidential?  Yes  No

I hereby declare that the proposed and authorised representative:

1.  is the (full name) of the proponent, and I am authorised to refer this request on behalf of the proponent, and further declare that the information contained in this form is true and not misleading.

2. Provide contact details for purposes of the assessment, if different from the above. (include name, physical address, phone, email)

3. Pre-request discussions

Have you had pre-request discussions with EPA (including the EPA Services of WA)?  Yes  No

If yes, provide name, date, and overview of discussions.

**3. Proposal information**

Proposal name as stated on the Ministerial Statement

Ministerial Statement number /s and date of approval

What is the proposal? (Exclude Proposal content document as attachment)

Have you provided electronic spatial data, maps and figures in the appropriate format of the referred proposal before any change request?  Yes  No

Do you have any previous amendments to the proposal for implementation conditions, if any?

Stage of implementation:

**4. Types of amendment request**

Type of amendment

Amendment to proposal

Amendment to implementation conditions

Amendment to proposal and implementation conditions

As part of the proposal amendment, are you proposing to divide or combine Ministerial statements?  Yes  No

divide an approved proposal into separate proposals

combine 2 or more proposals into a new consolidated proposal

**Part B: Assessment of amendments**

**1. Reasons for the proposed amendment**

Reasons for the proposed amendment/s

Proposal content document - General proposal description (summarised, showing requested changes in mark up)

Proposal content document - proposal content elements - (summarised, showing requested changes in mark up)

Proposed amendments to conditions (including new or deleted conditions, or changes to existing conditions in mark up)

Consolidation or Division of Ministerial Statements

Note: Additional information will be required following submission of the application for consolidation or division of Ministerial Statements

**Alternatives to the proposed amendment/s**

**2. Regulatory information and environmental performance**

Compliance

Environmental Performance

**3. Consultation**

Consultation undertaken

Outcomes of consultation

**4. Content of implementation of amendment**

Changes to decision making authorities or processes

If required, provide an updated CHM table (see Chapter Table or see end of this form)

Environmental Outcomes (including new or amended environmental outcomes)

Environmental Management Plans (EMP) information (including whether an outcomes based condition can replace an EMP, and summary of content of any changes)

Leasing/tenure matters

Content of condition changes:

Related to proposal amendments

Independent of condition amendments

Condition changes being sought under section 45C

**5. Assessment and Significance**

**a. Assessment**

Environmental factors

Environmental effects of the proposed amendment

- On its own
- In the context of the approved proposal

Health impacts

Assessment of impacts of proposed amendment

- On its own
- In the context of the approved proposal

<https://www.epa.wa.gov.au/forms-templates/instructions-change-proposal-under-section-45c>

**Environmental Outcomes**

**b. Significance - amendments to proposals**

**c. Significance - amendments to implementation conditions**

**6. Supporting documents**

**Example Table: Other approvals**

Decision-making authority, if different from the original referral proposal, please provide detail.	Legislation or Agreement regulating the activity	Approval required (and specify which proposal element the approval is related to)	Whether and how statutory decision-making process can mitigate impacts on the environment? (Yes/No and summary of reasons. Include a separate line item for each relevant impact, and discuss how the EPA's factor objective will be met)

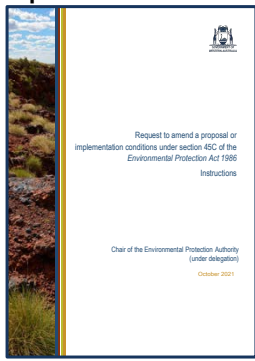
59

## Summary of s45C application requirements

### (s38C and s43A requirements +)

**Part A: Proponent information and proposal description**

1. Proponent information
2. Pre-request discussions
3. Proposal information
4. Types of amendment request
  - Proposal
  - Condition
  - Both



*s45C Instructions (2021)*

60

## Summary of s45C application requirements

### Part B: Assessment of amendments

1. Reason for and content of proposed amendment
2. Regulatory information and environmental performance
3. Consultation
4. Control of implementation of amendment
5. Assessment and significance
6. Supporting documents *s45C Instructions (2021)*



61

## s45C and s46

### Part B: Assessment of amendments

1. Reason for and content of proposed amendment

If the proponent does not request an amendment to conditions when requesting an amendment to a proposal, proponents should be aware this may affect when and whether their proposal amendment request is approved. This is because if the decision maker considers (non-minor) amendments to the implementation conditions are needed to protect the environment as a result of a proposal amendment, the decision maker can only make the condition amendments if there has been a request which relates to this purpose. If there has not been a request, the condition amendments can then only be made if there is a separate request for condition amendments under s. 45C or the Minister separately requests that the EPA inquire whether the implementation conditions should be amended under s. 46. The amendment to the proposal would then usually not be able to be approved until the s.46 inquiry process was complete.

*What this means: Think carefully before submitting a s45C request for change to proposal with no change to condition*

*s45C Instructions (2021)*



62



Part B: Assessment of amendments

### s45C application Part B

1. Reason for and content of proposed amendment

Proposal alternatives: to the extent reasonably practicable, any feasible alternatives to the proposed amendment, including a comparative description of the impacts of each alternative, and sufficient detail to make it clear why any alternative is preferred to another. *→ Alternatives to proposed amendments*

5. Assessment and significance

Note: The scope and detail of assessment information that is required to be provided is likely to depend upon the nature of the amendments being sought and be proportionate to their likely environmental effects.

a. Assessment

Environmental factors: Identify which EPA environmental factors are relevant to the assessment of the amendment(s), including decrease or increase in environmental effects. List and explain the addition or removal of any environmental factors.

Environmental effects: Assess the likely environmental effect of the proposed amendment on, or in relation to, all of the environmental factors, both on its own and in the context of the approved proposal.

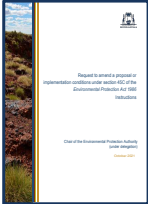
Identify any residual impacts of the proposed amendment after the application of the avoidance and minimisation elements of the mitigation hierarchy, including:

- the effects of requested amendment on its own *→ The effects...in the context of the current...(cf s40AA)*
- 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: Assess the likely cumulative environmental effects of the proposed amendment, both on its own and in the context of the approved proposal. *Cumulative impacts*

Holistic impacts: Assess the likely holistic impacts of the proposed amendment, both on its own and in the context of the approved proposal. *Holistic impacts*

*s45C Instructions (2021)*



63

## s45C: Some important points


Note:

- If the decision maker considers that proposed amendment is a significant amendment, it will refuse approval of the amendment as required by s. 45C.
- If relevant to the proposed amendments, the decision maker may consider environmental factors that the EPA did not consider as key environmental factors during the assessment of the approved proposal. *New factors may be considered*
- If the decision maker approves an amendment to the proposal, the implementation conditions then apply to the amended proposal. *Implementation conditions apply to amended proposal*
- If the decision maker approves an amendment to implementation conditions, the amended conditions then apply to the proposal (or amended proposal).
- The decision maker may decide to approve only some of the requested amendments. *Only some amendments may be approved*

If the decision maker refuses to approve some or all of a proposed amendment under s. 45C, 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
- request that the Minister ask the EPA to inquire into the implementation conditions under s. 45C (amendments to conditions only), OR
- refer the amendment as a significant amendment under s. 38.

*s45C Instructions (2021)*



64

## Changes to conditions (s46) - (i)

### 46. Amendment of implementation conditions by inquiry

(1) If the Minister considers that the implementation conditions relating to a proposal, ...should be amended (whether because of an amendment to the proposal approved under section 45C or for any other reason), ... the Minister may request the Authority to inquire into and report on the matter ...

...

(6) On completing an inquiry ... the Authority is to prepare and give to the Minister a report that includes –

- (a) a recommendation on whether or not the implementation conditions ...should be amended; and
- (b) any other recommendations that it thinks appropriate.



(EPA Act s46)

[Section 46 amended by No. 40 of 2020 s.29.]

## Changes to conditions (s46) - (ii)

Proponent may also request Minister to request EPA to undertake a s46 inquiry

- detail specific Conditions
- rationale (including technical information) to support submission



Report number	Change to conditions - section 46 inquiry	Proponent	Date signed by EPA Chair
1728	Jarvis Field Gas Pipeline, Gorgon Gas Development Revised and Expanded Proposal, Additional Construction, Operation and Operations Support Area, and Gorgon Gas Development Fourth Train Expansion Proposal - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial statement 1102	Cherton Australia Pty Ltd	23 September 2023
1791	Thomas Cockburn Line - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial statement 1114 as amended by Ministerial Statement 1160	Public Transport Authority of Western Australia	24 November 2022
1792	Whitestone Development - Gas Processing, Support Facilities and Infrastructure - inquiry under section 46 of the Environmental Protection Act 1986 to amend the implementation conditions of Ministerial Statement 873 relating to the emission of greenhouse gases	Cherton Australia Pty Ltd	31 January 2023
1794	Pluto Liquefied Natural Gas Development (Site B Option) Burnup Petroleum, Stage of Rehabilitation - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial Statement 1017	Woodside Energy Ltd	3 March 2023
1741	West Pilbara Iron Ore Project, Stage 1 Mine Area - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial Statement 1027	APM Management Pty Ltd	8 June 2023
1743	Tubridgi Gas Field Development, near Onslow - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial Statement 112	AGU Development Group Nominees Pty Ltd	22 June 2023
1744	Cyclone Mineral Sands Project - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial Statement 1053	Lost Sands Pty Ltd	27 June 2023
1717	Abemarle Sampson Flare - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial statement 1085	Abemarle Offshore Pty Ltd	20 October 2021
1718	Kanana Waste to Energy Project - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial statement 1028	Kanana WTE Project Co Pty Ltd	21 October 2021
1724	Albany Port Expansion - inquiry under section 46 of the Environmental Protection Act 1986 to amend Ministerial statements 846 and 1004	Southern Ports Authority	14 June 2022

7 s46 assessments in 2022-23

9 s46 assessments in 2021-2022

## Timing and public review for s46 assessment

- There are no statutory timeframes for s46 but target is 6 weeks from receipt of adequate information
- EPA will judge whether public review is necessary based on level of public interest, environmental significance and complexity of changes to conditions

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

### **Note on timeframes for assessment of changes to conditions:**

There are no statutory timeframes for completion of a section 46 inquiry into changes to conditions. Figure 13 of this manual provide indicative timeframes for undertaking an inquiry into changing conditions. These timeframes will commence from when the EPA has received sufficient information to undertake its inquiry.

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 about the likely effect of the proposal on the environment;
- whether the public interest is at a local, regional or broader scale;
- environmental significance of the proposed changes; and
- complexity of the changes to conditions.

*former EIA Proc Manual (2020), s5.4, p45*

still awaiting  
Instructions on  
this...!

67

## Assessment of significant amendments (i) [EPA Act – s40AA]

### **40AA. Assessment of significant amendments**

- (1) This section applies if the Authority assesses a significant amendment of an approved proposal.
- (2) The Authority **must assess** the significant amendment **in the context of the approved proposal and have regard to the combined effect** that the implementation of the approved proposal and the significant amendment might have **on the environment**.
- (3) For the purposes of subsection (2) the **Authority may inquire into and report on the implementation conditions** relating to the approved proposal.

[Section 40AA inserted by No. 40 of 2020 s. 19.]

68

## Assessment of significant amendments (ii) [EPA Act – s40AA]

### 40AA. Assessment of significant amendments

...

(4) [specifies that existing Ministerial conditions continue to apply until amendments are approved]

...

(6) If a statement is served and published under subsection 45(8), it may be in the form of —

- (a) a statement that **only applies to the significant amendment; or**
- (b) a statement that **includes the implementation conditions for the approved proposal** as amended by the significant amendment, **and supersedes the previous Ministerial statement** relating to the approved proposal.

[Section 40AA inserted by No. 40 of 2020 s. 19.]



69

## Significant amendments: Summary of key points

- Significant amendments go through same process as any significant proposal i.e. s38 (same form)
- Assessed in context of approved proposal, having regard to the combined effect of the proposed amendment and the approved proposal
- Existing implementation conditions will be considered (including offsets conditions)
- If significant amendment is not approved, existing proposal may continue to be implemented under existing conditions

70

## Assessment of significant amendments (iv)

### 4.2.4.2 Offset conditions

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.

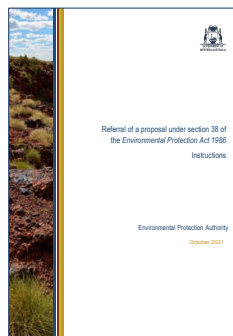
(Procedures Manual 2021, s4.2.4.2)

Environmental Impact Assessment  
(Part IV Divisions 1 and 2)  
Procedures Manual

71

## Requirements for referral of significant amendments

- Type of significant amendment
- Information on the approved proposal
- Combined effects
- Existing implementation conditions
- Previous changes to the proposal and/or implementation conditions
- Compliance
- Environmental performance
- Control of implementation of significant amendment



Instructions: Referral  
(2021) p8-9

72

## Form – Referral of a proposal under s38

Form	
Referral of a proposal under s.38 of the EP Act	
PART A: PROPONENT AND REFERER INFORMATION AND PROPOSAL DESCRIPTION	
Referer information	
Who is referring this proposal? <input type="checkbox"/> Proponent <input type="checkbox"/> Decision-making authority <input type="checkbox"/> Community member/3rd party	
Name (print)	Signature
Name of the person or organisation referring	Organisation
Position	Phone
Email	Street Name
Address	State
Postcode	Postcode
Date	
Does the referer request that the EPA treat any part of the proposal information in the referral as confidential? <input type="checkbox"/> Yes <input type="checkbox"/> No Provide confidential information in a separate attachment.	
Does the referer confirm that they consent to receive correspondence electronically? <input type="checkbox"/> Yes <input type="checkbox"/> No	
I, _____ declare that I am authorised to refer this proposal on behalf of _____ and further declare that the information contained in this form is true and not misleading.	
Date: _____	
Proponent information	
Name of the proponent/s Include Trading Name (if relevant)	
Australian Company Number(s) OR Australian Business Number(s)	<input type="checkbox"/>
Pre-referral discussions	
Have you had pre-referral discussions with the EPA (including the EPA Services of DWER)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<small>11 June 2023</small>	

PART B: ASSESSMENT OF ENVIRONMENTAL IMPACTS FOR SIGNIFICANT AMENDMENTS ONLY	
Type of significant amendment	<input type="checkbox"/> significant amendment to the approved proposal <input type="checkbox"/> significant amendment to the implementation conditions <input type="checkbox"/> significant amendment to both the proposal and the implementation conditions
Information of the approved proposal	
Combined effects of the approved proposal and significant amendment	
Analysis of existing implementation conditions	
Previous changes to the Proposal and or implementation conditions	
Compliance	
Environmental Performance	
Control of Implementation of significant amendment	

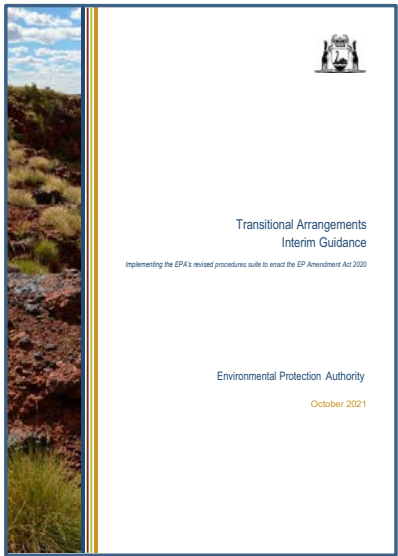
  

PART C: OTHER APPROVALS AND REGULATION	
Decision-making authorities and their approvals	
Provide a table list of the decision-making authorities, associated legislation or agreement regulating the activity and the specific approval required. (Example table at the end of form)	
Provide a summary of the statutory decision-making processes you consider can mitigate the potential impacts of the proposal on the environment. (Note: this should be a summary of the information provided in Part B section 2.4).	
Tenure and Local Government approvals	
Location of proposal:	

[https://www.epa.wa.gov.au/sites/default/files/Forms\\_and\\_Templates/Form - Referral of a proposal under s38\\_0.docx](https://www.epa.wa.gov.au/sites/default/files/Forms_and_Templates/Form_-_Referral_of_a_proposal_under_s38_0.docx)

73

## Transitional arrangements – interim guidance



Transitional Arrangements  
Interim Guidance

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

Environmental Protection Authority

October 2021

[https://www.epa.wa.gov.au/sites/default/files/Interim-Guidance-Transitional\\_Arrangements.pdf](https://www.epa.wa.gov.au/sites/default/files/Interim-Guidance-Transitional_Arrangements.pdf)

74

## Transitional arrangements – summary

### iii. Transitional arrangements

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

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

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

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

Transitional  
arrangements –  
interim guidance  
(2021) p3-4

Otherwise: New procedures apply now. Proponents can apply to EPA Chair for an exemption on a case-by-case basis.



## 8. Compliance, future directions for EIA in WA and reflections on practice

1

EIA approval decision is legally binding

### 47. Duties of proponents after service of Ministerial statement

- (1) *If* a Ministerial statement has been published and the **proponent does not ensure that any implementation of the proposal** to which the statement relates **is carried out in accordance with the implementation conditions**, the **proponent commits an offence.**

[Section 47 amended by No. 40 of 2020 s. 31.]



(EPAAct s47)

2



## Compliance provisions (i)

### 47. Duties of proponents after service of Ministerial statement

- (3) In order to enable the CEO to assess compliance with the implementation conditions ..., the CEO may by written notice given to the proponent —
  - (a) **require the proponent to give the CEO reports** and information **about the implementation of the proposal** to which the statement relates; and
  - (b) **require the proponent to undertake tests, surveys, investigations, monitoring or other work** and give the CEO reports and information about ...[these].
- (4) **If**, without reasonable excuse, the **proponent refuses or fails to comply** with a requirement made under subsection (3), the **proponent commits an offence**.



[Section 47 amended by No. 40 of 2020 s. 31.]

(EPAAct s47)

3

## Ministerial Statement for Alkimos – standard conditions for performance and compliance reporting

Published on: 10 August 2023 Statement No. 1207  
**STATEMENT THAT A PROPOSAL MAY BE IMPLEMENTED**  
*(Environmental Protection Act 1986)*  
 ALKIMOS SEAWATER DESALINATION PLANT

### PART D – COMPLIANCE, TIME LIMITS, AUDITS AND OTHER CONDITIONS

#### D1 Non-compliance Reporting

D1-1 If the proponent becomes aware of a potential non-compliance, the proponent must:

- (1) report this to the CEO within seven (7) days;
- (2) implement **contingency measures**;
- (3) investigate the cause;
- (4) investigate environmental impacts;
- (5) advise rectification measures to be implemented;
- (6) advise any other measures to be implemented to ensure no further impact; and
- (7) provide a report to the CEO within twenty-one (21) days of being aware of the potential non-compliance, detailing the measures required in conditions D1-1(1) to D1-1(6) above.

D1-2 Failure to comply with the requirements of a condition, or with the content of an environmental management required under a condition, constitutes a non-compliance with these conditions, regardless of whether the **contingency measures, rectification or other measures** in condition D1-1 above have been or are being implemented.

#### D2 Compliance Reporting

D2-1 The proponent must provide an annual Compliance Assessment Report to the CEO for the purpose of determining whether the implementation conditions are being complied with.

D2-2 Unless a different date or frequency is approved by the CEO, the first annual Compliance Assessment Report must be submitted within fifteen (15) months of the date of this Statement, and subsequent plans must be submitted annually from that date.

D2-3 Each annual Compliance Assessment Report must be endorsed by the proponent's Chief Executive Officer, or a person approved by proponent's Chief Executive Officer to be delegated to sign on the Chief Executive Officer's behalf.

D2-4 Each annual Compliance Assessment Report must:

- (1) state whether each condition of this Statement has been complied with, including:

- (a) exceedance of any proposal limits and extent;
- (b) achievement of environmental outcomes;
- (c) achievement of environmental objectives;
- (d) requirements to implement the content of environmental management plans;
- (e) monitoring requirements;
- (f) implement **contingency measures**;
- (g) requirements to implement adaptive management; and
- (h) reporting requirements;

(2) include the results of any monitoring (inclusive of any raw data) that has been required under Part C in order to demonstrate that the limits in Part A, and any outcomes or any objectives are being met;

(3) provide evidence to substantiate statements of compliance, or details of where there has been a non-compliance;

(4) include the corrective, remedial and preventative actions taken in response to any potential non-compliance;

(5) be provided in a form suitable for publication on the proponent's website and online by the Department of Water and Environmental Regulation;

(6) be prepared and published consistent with the latest version of the Compliance Assessment Plan required by condition D2-5 which the CEO has confirmed by notice in writing satisfies the relevant requirements of Part C and Part D.

D2-5 The proponent must prepare a Compliance Assessment Plan which is submitted to the CEO at least six (6) months prior to the first Compliance Assessment Report required by condition D2-2, or prior to implementation of the proposal, whichever is sooner.

D2-6 The Compliance Assessment Plan must include:

- (1) what, when and how information will be collected and recorded to assess compliance;
- (2) the methods which will be used to assess compliance;
- (3) the methods which will be used to validate the adequacy of the compliance assessment to determine whether the implementation conditions are being complied with;

#### D6 Independent Audit

D6-1 The proponent must arrange for an independent audit of compliance with the conditions of the Statement, including achievement of the environmental outcomes and/or the environmental objectives and/or environmental performance with the conditions of this Statement, as and when directed by the CEO.

D6-2 The independent audit must be carried out by a person with appropriate qualifications who is nominated or approved by the CEO to undertake the audit under condition D6-1.

D6-3 The proponent must submit the independent audit report with the Compliance Assessment Report required by condition D2, or at any time as and when directed in writing by the CEO. The audit report is to be supported by credible evidence to substantiate its findings.

D6-4 The independent audit report required by condition D6-1 is to be made publicly available in the same simultaneous manner and form as a Compliance Assessment Report, or as otherwise directed by the CEO.

[Signed on 10 August 2023]

Hon Rebecca Whitty M.L.A.  
 MINISTER FOR ENVIRONMENT, CLIMATE ACTION

4

## Compliance provisions (ii)

### 48. Control of implementation of **proposals**

- (1) The **CEO may monitor the implementation of a proposal**, or cause it to be monitored, for the **purpose of determining whether the implementation conditions** relating to the proposal **are being complied with**.
- (2) If the CEO finds that any of the implementation conditions is not being complied with, the CEO –
- (a) may exercise any power in respect of the non-compliance that is exercisable by the CEO under a written law; and
  - (b) in any event, is to report the non-compliance to the Minister



(EPAAct s48)

5

## Compliance provisions (iii) – DMAs

similar provisions for DMAs to monitor proposals and enforce compliance, where an implementation condition covered by a DMA legal requirement

[EPAAct Sections 48 (3)–(5)]  
(2020 amendments)



(EPAAct s48)

6

## Compliance provisions (iv) – Minister powers

### 48. Control of implementation of **proposals**

(7) The powers of the Minister under subsection (6) are as follows —

- (a) after making *reasonable endeavours to consult the proponent* of the approved proposal —power to cause to be served on that proponent a written notice issued by the Minister requiring that proponent —
  - (i) forthwith to *stop the implementation* of the proposal;
  - ...
  - (c) power to cause the *taking of steps necessary for* the purpose of —
    - (i) *complying with the relevant implementation condition*; or
    - (ii) *preventing, controlling or abating any pollution or environmental harm caused by any non-compliance* with the relevant implementation condition;



[Section 47 amended by No. 40 of 2020 s. 31.]

(EPAAct s48)

7

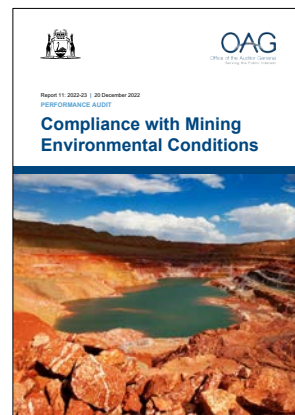
## Problems with compliance – WA (1)

### Conclusion

DMIRS and DWER are not fully effective in ensuring mining projects comply with conditions to limit environmental harm and financial risks to the State. Their monitoring and enforcement currently provide a narrow view of operator compliance and do little to deter operators from breaching conditions.

[OAG, 2022, p8]

[https://audit.wa.gov.au/wp-content/uploads/2022/12/Report-11\\_Compliance-with-Mining-Environmental-Conditions.pdf](https://audit.wa.gov.au/wp-content/uploads/2022/12/Report-11_Compliance-with-Mining-Environmental-Conditions.pdf)



8

## Problems with compliance – WA (2)

### Key findings

#### Understanding of operator compliance with environmental conditions has narrowed

##### Monitoring of operator compliance is not fully effective

- Both entities plan a yearly compliance program to check operators follow their environmental conditions.
- Although the mining sector has grown, both entities plan fewer compliance activities, including significantly less site inspections. Neither entity has consistently completed these smaller programs.
- Entities require their compliance programs to be risk-based and there is evidence of more focus on higher-risk operations, but neither has documented how their compliance activities address the environmental and related financial risks of the sector.

##### Compliance information is inadequately verified and is incomplete

- Neither entity has a sufficiently independent view of operator compliance. Information used to assess compliance is self-reported by operators, but entities do not adequately verify it. The substantial reduction in the number of proactive inspections means entities have less opportunity to confirm and verify operators' self-reported information.
- Compliance records are spread across multiple systems, and some are incomplete.
- Information can be better shared between entities.

##### Probity processes for staff are mostly in place

- Conflict of interest and gift declaration processes are adequate, although DWER does not regularly communicate probity risks to staff. Entities do not have processes for rotating staff across mining projects to reduce the risk that staff become overly familiar and, as a consequence, less objective in their regulatory assessments.

#### Current enforcement actions are unlikely to deter operators from breaching conditions

##### Entities do not have a comprehensive approach to enforcement

- Internal guidance does not contain clear thresholds to support consistent and appropriate enforcement actions. Some areas have no enforcement guidance at all.
- Entities do not have a clear approach to address ineffective conditions or how to feed learnings into approval processes.

##### Entities are slow to take enforcement action

- Entities do not issue and follow-up on enforcement actions in a timely manner. Neither met their internal targets in 2021-22 and some serious breaches have remained unaddressed for several years.

##### Lack of published compliance information reduces social pressure

- Neither entity publishes detailed compliance information or formal warnings issued to operators. Additionally, DMIRS does not make it easy for the public to find the operators it has penalised.

[OAG, 2022, pp9-10]



[https://audit.wa.gov.au/wp-content/uploads/2022/12/Report-11\\_Compliance-with-Mining-Environmental-Conditions.pdf](https://audit.wa.gov.au/wp-content/uploads/2022/12/Report-11_Compliance-with-Mining-Environmental-Conditions.pdf)

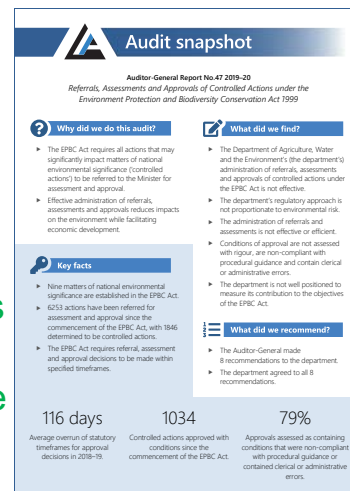
9

## Problems with performance evaluation – EPBC

**Appropriate monitoring, evaluation and reporting arrangements have not been established.**

Performance measurement and evaluation activities do not assess the contribution of referrals, assessments and approvals to the objectives of the EPBC Act.

[Auditor General 2020, p69]




Auditor General, (2020) *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999: Department of Agriculture, Water and the Environment*, Auditor-General Report No.47 2019–20 Performance Audit, Canberra:

Australian National Audit Office, Commonwealth of Australia,

[https://www.anao.gov.au/sites/default/files/Auditor-General\\_Report\\_2019-2020\\_47.pdf](https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2019-2020_47.pdf)

10

## Impact reconciliation procedures (offset funds)



**Instructions on how to prepare Environmental Protection Act 1986 Part IV Impact Reconciliation Procedures and Impact Reconciliation Reports**

**Purpose of these instructions**

To assist proponents in preparing an Impact Reconciliation Procedure (IRP) and Impact Reconciliation Report (IRR) as required by an implementation condition in a Ministerial Statement published under Part IV of the Environmental Protection Act 1986 (EP Act). IRPs and IRRs will usually be required when an offset condition specifies that funds are to be paid based on the clearing of vegetation at a specified rate per hectare in order to counterbalance a significant residual impact.

**Impact Reconciliation Procedure**

**Purpose**

The primary purpose of the IRP is to advise the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation (DWER) on the methodology that will be used to calculate the area of vegetation cleared (or the area of clearance of any other environmental values listed in the implementation conditions).

An IRP is to be submitted prior to the commencement of ground disturbing activities and usually only once for a proposal, unless the proponent requests or the CEO requires this document to be updated. Once approved by the CEO, the IRP will be published on the Western Australian Environmental Offsets Register ([www.offsetsregister.wa.gov.au](http://www.offsetsregister.wa.gov.au)).

**Impact Reconciliation Report**

**Purpose**

Impact Reconciliation Reports are usually required to be submitted biennially once an IRP is approved. The purpose of the IRR is to advise the CEO on the amount of clearing that has been undertaken within each year of the biennial reporting period.


**Indexation**

Most Ministerial Statements require that the real value of the contributions is subject to indexation. This indexation will be achieved by applying the Percentage Changes in the All Groups Consumer Price Index for Perth (CPI), as published by the Australian Bureau of Statistics unless otherwise specified in the Ministerial Statement. The DWER will also publish the rates.

Each year of the reporting period will be indexed using the CPI rate applicable for the year in which the clearing is undertaken. For example, a proponent submits an IRR to the DWER in the 2016-17 financial year for clearing undertaken in the biennial reporting period of 2014-15 and 2015-16. In this example, the CPI rate that will be applied to clearing undertaken in 2014-15 is 1.8 per cent and the CPI rate that will be applied to clearing undertaken in 2015-16 is 0.9 per cent. Proponents will not be required to calculate the CPI or amount owed as this will be undertaken by the DWER.

**Payments**

Following submission and acceptance of the IRR, the DWER will invoice the proponent with the amount owing, inclusive of CPI. The proponent will be issued a receipt once the money has been received.



**Template for Environmental Protection Act 1986 Part IV Impact Reconciliation Procedure**

**Drafting instructions:**  
 Green text indicates content that may not be relevant to your proposal, delete if not relevant  
 Blue text in italics indicates an example, delete

**1. The Proposal and condition requirements**

**1.1 The Proposal**

**1.2 Condition requirements**

**2. Procedure**

**2.1 Identification of the biodiversity values requiring offsets**

Table 1: Biodiversity values from Ministerial Statement XXXX that require offsets

Condition	Clearing matter	IBA subregion	Offset rate documented in Statement (\$/ha)
14-2(1)	e.g. Good to Excellent native vegetation in the Infrastructure Corridor	Hamerley	2706
14-2(2)	e.g. Riparian vegetation in the Mine Development Envelope	Fortescue	53,193

**2.2 Methodology to determine clearing**

**2.1 Direct impacts**

**2.2 Other impacts**

**3. Reporting**

**3.1 Frequency and timing**

Table 2: Reporting period and frequency of the Impact Reconciliation Report


Biennial Period	Action	Timing
	Ministerial Statement issued	September 2017
	Clearing commenced	November 2017
Period 1*	First biennial reporting period	November 2017 to June 2019
	Aerial survey/ground truthing	July 2019
	Impact Reconciliation Report submitted to DWER	30 October 2019
Period 2	Second biennial reporting period	July 2019 to June 2021

January 2018

<https://www.epa.wa.gov.au/forms-templates/instructions-preparing-impact-reconciliation-procedures-and-impact-reconciliation>

11

## Regional/cumulative follow-up by Dept...



**Evaluating the environmental condition of Weeli Wolli Creek**

**Summary**

This evaluation project focused on the theme of the on-ground environmental outcomes that are achieved after implementation of proposals.

The question that the Environmental Protection Authority (EPA) wanted this project to answer is:

*'Is Weeli Wolli Creek responding as was predicted through the EPA's Environmental Impact Assessment (EIA), from mining that has occurred in the catchment?'*


From this evaluation, the EPA has concluded that the EIA process has been effective in predicting impacts to this stage of mining development and management measures appear to have been effective. Overall, the Weeli Wolli Creek system has largely responded as predicted.

**Why did the EPA choose Weeli Wolli Creek to evaluate?**

**Environmental value**

The Weeli Wolli Creek system in the central Hamersley Range area of the East Pilbara (Figure 1) has high environmental value. A key feature is Weeli Wolli Spring (Figure 2), created by a geological barrier where high permeability rock units meet low permeability rock units, forcing groundwater to rise to the ground surface.

Under natural conditions, Weeli Wolli Spring supported permanent pools and perennial (government) flow downstream of the spring.



**Evaluating the environmental condition of Weeli Wolli Creek**

**Supporting technical report**


**[this kind of study is enabled by s16(e, i, j) of EPAct]**

Evaluation program report series  
March 2018

<https://www.epa.wa.gov.au/evaluating-environmental-condition-weeli-wolli-creek>

12

**Compliance programs –  
DWER**



**Compliance programs**

The Department of Water and Environmental Regulation has a fundamental role in monitoring compliance with the legislation we administer.

Last updated: 7 March 2023

Compliance monitoring is an important component in improving our regulatory capability. Information from compliance activities is a vital input into the regulatory cycle, providing valuable information to encourage continual improvement and enhance public health and environmental and water resource outcomes.

Compliance monitoring information may be used to improve statutory instruments, drive decisions on new or amended applications and guide development and modification of policies, guidelines and regulations.

Compliance monitoring is important to ensure stakeholders meet their regulatory requirements and supports better management of the environment.

These reports detail our compliance monitoring sub-programs and priorities.

**Provided by**  
Department of Water and Environmental Regulation

**Share**  
f X in

<https://www.wa.gov.au/government/document-collections/compliance-programs>

Compliance program 2022-23

Department of Water and Environmental Regulation  
March 2023

13

## Compliance and audit arrangements (i)

The Department of Water and Environmental Regulation (DWER) audits compliance with the conditions of Ministerial Statements, and undertakes enforcement action as appropriate.

DWER conducts **audits, reviews compliance assessment reports, carries out onsite inspections**, and **engages with stakeholders**.

This **helps identify areas to improve compliance and the environmental impact assessment process**.

When non-compliance is identified, the proponent is issued with a notice, detailing actions required to rectify the issue and regain compliance.

The Minister for Environment is informed of each non-compliance.

<https://www.epa.wa.gov.au/implementation>

14

## ***Outcome-based conditions and compliance***

- Compliance with an outcome-based condition results in performance verification
  - *i.e. compliance = environmental protection*
- [if conditions specify mitigation measures to be undertaken
  - (e.g. technology X must be installed to manage emission Y)
- then compliance only means that such measures have been implemented – and there still needs to be follow-up on the effectiveness of mitigation measures]

15

Government of Western Australia  
Department of Water and Environmental Regulation

**Policy**

Compliance and Enforcement Policy

May 2021

Government of Western Australia  
Department of Water and Environmental Regulation

**Guideline**

Prosecutions

November 2020

<https://www.wa.gov.au/service/environment/business-and-community-assistance/compliance-and-enforcement-policy>

16

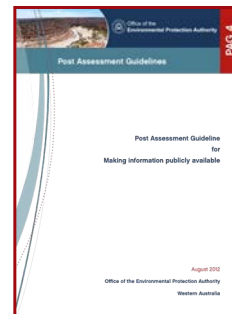
## Compliance and audit arrangements (ii)

- DWER staff oversees audit program for each proposal (*Compliance* staff)
- Audit program assesses env. performance of proposal against conditions in Ministerial Statement
- audits initially based on information provided by proponent (i.e. desk-top audit)
  - site visits also undertaken
- some monitoring of projects may occur
  - (e.g. during site visits, might verify footprint with GPS)

17

## Responsibility of proponent to develop audit program

- requirements laid out in Ministerial Statement conditions
- should be prepared shortly after Ministerial Statement is issued
- *Compliance* staff available to provide advice
- all information to be made publicly available (within 7 days of proponent receiving request or material from a 3<sup>rd</sup> party)
  - *PAG4 Making Information Publicly Available*



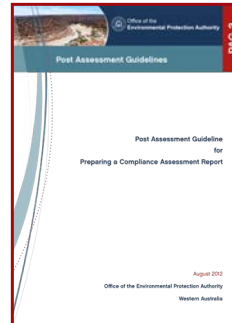
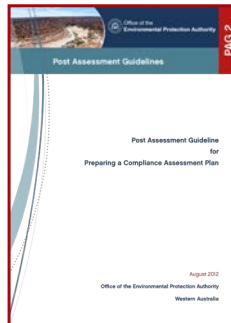
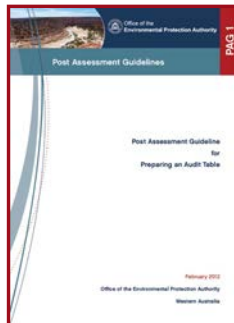
<https://www.epa.wa.gov.au/making-information-publicly-available>

18



## Key components of audit program

- Compliance Assessment Plan (CAP)
- Compliance Assessment Report (CAR)
- **Audit Table** –framework for tracking implementation of requirements of Ministerial Statement
  - set up in CAP; progressively completed in CARs



<https://www.epa.wa.gov.au/compliance-assessment-plan>  
<https://www.epa.wa.gov.au/preparing-compliance-assessment-report>

19

Audit Code		Subject	Requirement	How	Evidence	Phase	Timeframe	Status	Further Information
XXXXM1.1	Implementation	The proponent shall implement the proposal as assessed by the Environmental Protection Authority and described in schedule 1 of this statement subject to the conditions and procedures of this statement.	Implemented project in accordance with criteria outlined in Schedule 1 and assessment.	Compliance Assessment Report.	Overall				
XXXXM2.2	Proponent Nomination	The proponent shall notify the Chief Executive Officer (CEO) of OEPA of any change of the name and address of the proponent for the serving of notices or other correspondence within 30 days of such change.	Notify the CEO of any change in proponent details in writing.	Copy of written notification of the CEO of any change in proponent details.	Overall	Within 30 days of such change.			
XXXXM3.1	Time Limit	The authorisation to implement the proposal provided for in this statement shall lapse and be void within five years after the date of this statement if the proposal to which this statement relates is not substantially commenced.			Overall	dd month year			
XXXXM3.2	Time Limit	The proponent shall provide the CEO of OEPA with written evidence which demonstrates that the proposal has substantially commenced on or before the expiration of five years from the date of this statement.	Provide evidence to the CEO in writing to demonstrate the proposal has substantially commenced. Include photographs.	Copy of written notification to CEO of substantial commencement.	Overall	dd month year			
etc	etc	etc	etc	etc	etc	etc	etc	etc	etc

<https://www.epa.wa.gov.au/preparing-audit-table>

20

## Assessing an audit program (i)

Responsibility of *Compliance* staff to review the audit program and audit project implementation

Audits conducted on basis of:

- audit and compliance reports by proponent
- other information provided by proponent
- onsite monitoring carried out by *Compliance* staff
- information provided by other parties (regulatory authorities and community)

21

## Statement of compliance form (p1)

POST ASSESSMENT FORM 2

**Statement of Compliance**

**1. Proposal and Proponent Details**

<b>Proposal Title</b>	<small>Enter the proposal title as it appears on the Ministerial Statement.</small>
<b>Statement Number</b>	<small>Enter the Ministerial Statement Number</small>
<b>Proponent Name</b>	<small>Enter the proponent name as it appears on the Ministerial Statement.</small>
<b>Proponent's Australian Company Number (where relevant)</b>	

**2. Statement of Compliance Details**

**Reporting Period** Click to enter start date to Click to enter end date

<small>Implementation phase(s) during reporting period (please tick <input checked="" type="checkbox"/> relevant phase(s))</small>			
<input type="checkbox"/> Pre-construction	<input type="checkbox"/> Construction	<input type="checkbox"/> Operation	<input type="checkbox"/> Decommissioning

**Audit Table for Statement addressed in this Statement of Compliance is provided at Attachment:** 2

Audit Table for the Statement addressed in the Statement of Compliance must be provided as Attachment 2 to this Statement of Compliance. The audit table must be prepared and maintained in accordance with the Department of Water and Environmental Regulation (DWER) Post Assessment Guideline for Preparing an Audit Table, as amended from time to time. The 'Status Column' of the audit table must accurately describe the compliance status of each implementation condition and/or procedure for the reporting period of this Statement of Compliance. The terms that may be used by the proponent in the 'Status Column' of the audit table are limited to the Compliance Status Terms listed and defined in Table 1 of Attachment 1.

Were all implementation conditions and/or procedures of the Statement complied with within the reporting period? (please tick  the appropriate box)

<input type="checkbox"/> No (please proceed to Section 3)	<input checked="" type="checkbox"/> Yes (please proceed to Section 4)
---	---

Each page (including Attachment 2) must be initialed by the person who signs Section 4 of this Statement of Compliance.  
INITIALS: \_\_\_\_\_

[https://www.epa.wa.gov.au/sites/default/files/Forms\\_and\\_Templates/PAF2 - Statement of Compliance 2018\\_0.docx](https://www.epa.wa.gov.au/sites/default/files/Forms_and_Templates/PAF2 - Statement of Compliance 2018_0.docx)

22

## Assessing an audit program (ii)

Substantive evidence to verify compliance as outlined in the Ministerial Statement is needed, e.g.

- Compliance Assessment Reports
- letters from agencies showing they have been consulted and are satisfied with action(s) taken
- photographs showing that action(s) completed
- quality assurance forms signed by an authorised person
- monitoring data & analysis
- contractor invoices for completion of action(s)

23

Proponents are expected to advise of potential non-compliance... (standard condition in Ministerial Statement)

Published on: 10 August 2023      Statement No. 1207  
**STATEMENT THAT A PROPOSAL MAY BE IMPLEMENTED**  
*(Environmental Protection Act 1986)*  
 ALKIMOS SEAWATER DESALINATION PLANT

### PART D – COMPLIANCE, TIME LIMITS, AUDITS AND OTHER CONDITIONS

#### D1 Non-compliance Reporting

**D1-1** If the proponent becomes aware of a potential non-compliance, the proponent must:

- (1) report this to the **CEO** within seven (7) days;
- (2) implement **contingency measures**;
- (3) investigate the cause;
- (4) investigate environmental impacts;
- (5) advise rectification measures to be implemented;
- (6) advise any other measures to be implemented to ensure no further impact; and
- (7) provide a report to the **CEO** within twenty-one (21) days of being aware of the potential non-compliance, detailing the measures required in conditions D1-1(1) to D1-1(6) above.

**D1-2** Failure to comply with the requirements of a condition, or with the content of an environmental management required under a condition, constitutes a non-compliance with these conditions, regardless of whether the **contingency measures**, rectification or other measures in condition D1-1 above have been or are being implemented.

24

## Recording non-compliance (Statement of compliance form p2)

POST ASSESSMENT FORM 2

### 3. Details of Non-compliance(s) and/or Potential Non-compliance(s)

The information required Section 3 must be provided for each non-compliance or potential non-compliance identified during the reporting period covered by this Statement of Compliance.

**Non-compliance/potential non-compliance 3-1**

Which implementation condition or procedure was non-compliant or potentially non-compliant?

Was the implementation condition or procedure non-compliant or potentially non-compliant?

On what date(s) did the non-compliance or potential non-compliance occur (if applicable)?

Was this non-compliance or potential non-compliance reported to the Chief Executive Officer, DWER?

Yes  Reported to DWER verbally Date \_\_\_\_\_  No  Reported to DWER in writing Date \_\_\_\_\_

What are the details of the non-compliance or potential non-compliance and where relevant, the extent of and impacts associated with the non-compliance or potential non-compliance?

What is the precise location where the non-compliance or potential non-compliance occurred (if applicable)? (please provide this information as a map or GIS co-ordinates)

What was the cause(s) of the non-compliance or potential non-compliance?

What remedial and/or corrective action(s), if any, were taken or are proposed to be taken in response to the non-compliance or potential non-compliance?

What measures, if any, were in place to prevent the non-compliance or potential non-compliance before it occurred? What, if any, amendments have been made to those measures to prevent re-occurrence?

Please provide information/documentation collected and recorded in relation to this implementation condition or procedure:

- in the reporting period addressed in this Statement of Compliance, and
- as outlined in the approved Compliance Assessment Plan for the Statement addressed in this Statement of Compliance.

(the above information may be provided as an attachment to this Statement of Compliance)

For additional non-compliance or potential non-compliance, please duplicate this page as required. Each page (including Attachment 2) must be initiated by the person who signs Section 4 of this Statement of Compliance. INITIALS: \_\_\_\_\_

Post Assessment Form 2

### 4. Proponent Declaration

I, \_\_\_\_\_ (Full name and position title) declare that I am authorized on behalf of \_\_\_\_\_ (Full name and position title) (being the person responsible for the proposal) to submit this form and that the information contained in this form is true and not misleading.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please note that:

- I am a responsible officer (RO) of the Environmental Protection Act 1986 for a person to sign on behalf of a government department or its member or to sign on behalf of a local government; and
- I am not a responsible officer (RO) of the Environmental Protection Act 1986 for a person to sign on behalf of a person who is not a government department or its member or a local government.

### 5. Submission of Statement of Compliance

This form (page 2) must be submitted (with supporting PDF or GIS or other details of the Statement of Compliance) as an attachment to be submitted to the Chief Executive Officer, DWER, in accordance with the approved Compliance Assessment Plan.

Please note, the DWER has adopted a procedure of providing written acknowledgment of receipt of all Statements of Compliance submitted to the department. However, the DWER does not approve Statements of Compliance.

### 6. Contact Information

Details regarding Statements of Compliance, or other details of compliance related to a Statement may be directed to Compliance Assessment Services, DWER.

**Manager, Compliance Assessment Services**  
Department of Water and Environmental Regulation

Please Address: Locked Mail Bag 971  
Manning Road  
Perth WA 6005  
Phone: 9447 6000  
Email: [compliance@water.wa.gov.au](mailto:compliance@water.wa.gov.au)

### 7. Post Assessment Guidelines and Forms

Post assessment documents can be found at: [https://www.epa.wa.gov.au/sites/default/files/Forms\\_and\\_Templates/PAF2\\_-\\_Statement\\_of\\_Compliance\\_2018\\_0.docx](https://www.epa.wa.gov.au/sites/default/files/Forms_and_Templates/PAF2_-_Statement_of_Compliance_2018_0.docx)

Each page (including Attachment 2) must be initiated by the person who signs Section 4 of this Statement of Compliance. INITIALS: \_\_\_\_\_

25

## Compliance status terms (Statement of compliance form p4)

[https://www.epa.wa.gov.au/sites/default/files/Forms\\_and\\_Templates/PAF2 - Statement of Compliance 2018\\_0.docx](https://www.epa.wa.gov.au/sites/default/files/Forms_and_Templates/PAF2_-_Statement_of_Compliance_2018_0.docx)

POST ASSESSMENT FORM 2  
**ATTACHMENT 1**

**Table 1 Compliance Status Terms**

Compliance Status Terms	Abbrev	Definition	Notes
Compliant	C	Implementation of the proposal has been carried out in accordance with the requirements of the audit element.	This term applies to audit elements with: <ul style="list-style-type: none"> <li>ongoing requirements that have been met during the reporting period; and</li> <li>requirements with a finite period of application that have been met during the reporting period, but whose status has not yet been classified as 'completed'.</li> </ul>
Completed	CLD	A requirement with a finite period of application has been satisfactorily completed.	This term may only be used where: <ul style="list-style-type: none"> <li>audit elements have a finite period of application (e.g. construction activities, development of a document);</li> <li>the action has been satisfactorily completed; and</li> <li>the DWER has provided written acceptance of 'completed' status for the audit element.</li> </ul>
Not required at this stage	NR	The requirements of the audit element were not triggered during the reporting period.	This should be consistent with the 'Phase' column of the audit table.
Potentially Non-compliant	PNC	Possible or likely failure to meet the requirements of the audit element.	This term may apply where during the reporting period the proponent has identified a potential non-compliance and has not yet finalized its investigations to determine whether non-compliance has occurred.
Non-compliant	NC	Implementation of the proposal has not been carried out in accordance with the requirements of the audit element.	This term applies where the requirements of the audit element are not 'complete' have not been met during the reporting period.
In Process	IP	Where an audit element requires a management or monitoring plan be submitted to the DWER or another government agency for approval, that submission has been made and no further information or changes have been requested by the DWER or the other government agency and assessment by the DWER or other government agency for approval is still pending.	<p><b>The term 'In Process' may not be used for any purpose other than that stated in the Definition Column.</b></p> <p>The term 'In Process' may not be used to describe the compliance status of an implementation condition and/or procedure that requires implementation throughout the life of the project (e.g. implementation of a management plan).</p>

Each page (including Attachment 2) must be initiated by the person who signs Section 4 of this Statement of Compliance. INITIALS: \_\_\_\_\_

26

## 8. Compliance, future directions for EIA in WA and reflections on practice

27

### ***Future directions for EIA in WA***

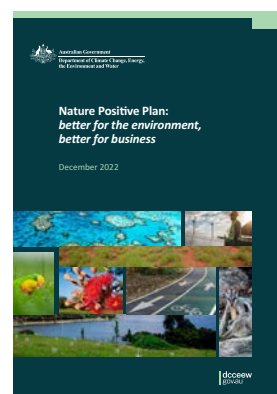
1. Commonwealth reforms and implications for WA
  - Consultation on new *Nature Positive Act* (to replace *EPBC Act*)
  - Nature Repair market
  - Safeguard Mechanism Reform
2. WA Initiatives:
  - accreditation of practitioners
  - EPA Strategic Plan 2023-2026
  - "Vogel recommendations" – *Independent Review of WA Environmental Approvals Processes*

28

## Commonwealth reforms (i)

- Legislative reform directions outlined in:
  - Minister Plibersek's national Press Club presentation 19 July 2022
  - Government response to the Samuel Review: *Nature Positive Plan* Dec 2022

[Previous Government focus on streamlining EIA through bilateral agreements at expense of other Samuel recommendations].

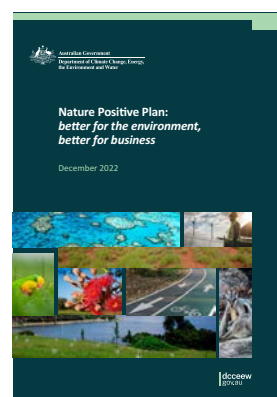


<https://www.dceew.gov.au/environment/epbc/publications/nature-positive-plan>

29

## Commonwealth reforms (ii)

- *Nature Positive Plan* priorities:
  - Regional planning
  - National Environmental Standards
  - Commonwealth EPA (Environmental Protection Australia)
  - Improving conservation planning arrangements
  - Improving environmental data and information (Environmental Information Australia)
  - Working with First Nations partners
  - Environmental offsets reform
- Proposed new *Nature Positive Act*



<https://www.dceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>

<https://www.dceew.gov.au/environment/epbc/publications/nature-positive-plan>

30

## Commonwealth reforms (iii) – Consultation on new Nature Positive laws

**Consultation documents released in 'tranches' – initially in locked room then on web**

- Oct 23
- Dec 23
- Feb 24 (forthcoming)

<https://consult.dcceew.gov.au/australias-new-nature-positive-laws>

31

## Commonwealth reforms (iv) – National Environmental Standards

Priorities in *Nature Positive Plan*:

- Matters of National Environmental Significance (MNES)
- First Nations engagement and participation in decision-making
- regional planning
- community engagement
- environmental offsets

- Currently in draft:
  - Matters of National Environmental Significance (MNES)
  - Restoration acts and contributions
  - Regional planning
  - Data and information
  - Community engagement and consultation

Note: draft NES were proposed by Samuel (2020) and revised by the previous Govt (2021). Draft NES were then issued for consultation in 2023 – (this is at least Attempt 4.)

32

## Commonwealth reforms (v) – Regional planning

### Regional planning



Regional planning will help governments, communities and businesses to better protect, restore, and manage Australia's environment.

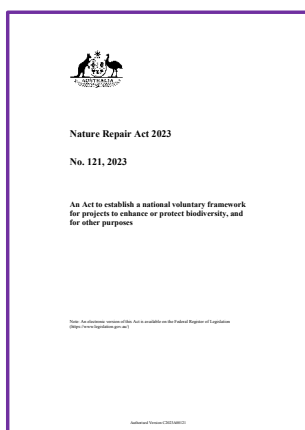
By taking a national approach to regional planning, we will:

- consider cumulative impacts and manage threats to biodiversity at a regional scale
  - provide clear guidance on what areas need protection, which areas are appropriate for development, and which areas need caution provide certainty about regional biodiversity and heritage priorities
  - contribute to protecting 30% of our land and 30% of our oceans by 2030
  - inform targeted government and private investment in environmental restoration and management.
- Similar approach to Part 12 of *EPBC Act* (bioregional plans)
  - Pilots in Queensland and NSW?
  - Focus on protecting MNES

<https://www.dcceew.gov.au/environment/epbc/epbc-act-reform/regional-planning>

33

## Commonwealth reforms (vi) – *Nature Repair Act 2023*



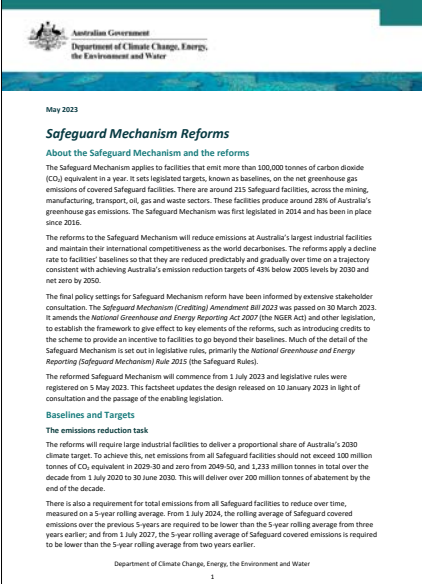
- *Nature Repair Act* came into effect 15 Dec 2023
- “establishes a framework for a world-first legislated, national, voluntary biodiversity market”
- Market will be administered by Clean Energy Regulator
- Demand expected from businesses reporting under TFND and those seeking co-benefits from carbon offsets

- <https://www.dcceew.gov.au/environment/environmental-markets/nature-repair-market#daff-page-main>
- <https://www.legislation.gov.au/C2023A00121/asmade/2023-12-14/text/original/pdf>

34



## Commonwealth reforms (vii) – Safeguard Mechanism (SGM) reform



May 2023

**Safeguard Mechanism Reforms**

**About the Safeguard Mechanism and the reforms**

The Safeguard Mechanism applies to facilities that emit more than 100,000 tonnes of carbon dioxide (CO<sub>2</sub>) equivalent in a year. It sets legislated targets, known as baselines, on the net greenhouse gas emissions of covered Safeguard facilities. There are around 215 Safeguard facilities, across the mining, manufacturing, transport, oil, gas and waste sectors. These facilities produce around 28% of Australia's greenhouse gas emissions. The Safeguard Mechanism was first legislated in 2014 and has been in place since 2015.

The reforms to the Safeguard Mechanism will reduce emissions at Australia's largest industrial facilities and maintain their international competitiveness as the world decarbonises. The reforms apply a decline rate to facilities' baselines so that they are reduced predictably and gradually over time on a trajectory consistent with achieving Australia's emission reduction targets of 43% below 2005 levels by 2030 and net zero by 2050.

The final policy settings for Safeguard Mechanism reform have been informed by extensive stakeholder consultation. The Safeguard Mechanism (Crediting) Amendment Bill 2023 was passed on 30 March 2023. It amends the National Greenhouse and Energy Reporting Act 2007 (the NGER Act) and other legislation, to establish the framework to give effect to key elements of the reforms, such as introducing credits to the scheme to provide an incentive to facilities to go beyond their baselines. Much of the detail of the Safeguard Mechanism is set out in legislative rules, primarily the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 (the Safeguard Rules).

The reformed Safeguard Mechanism will commence from 1 July 2023 and legislative rules were registered on 5 May 2023. This factsheet updates the design released on 10 January 2023 in light of consultation and the passage of the enabling legislation.

**Baselines and Targets**

**The emissions reduction task**

The reforms will require large industrial facilities to deliver a proportional share of Australia's 2030 climate target. To achieve this, net emissions from all Safeguard facilities should not exceed 100 million tonnes of CO<sub>2</sub> equivalent in 2020-30 and zero from 2040-50, and 1,233 million tonnes in total over the decade from 1 July 2020 to 30 June 2030. This will deliver over 200 million tonnes of abatement by the end of the decade.

There is also a requirement for total emissions from all Safeguard facilities to reduce over time, measured on a 5-year rolling average. From 1 July 2024, the rolling average of Safeguard covered emissions over the previous 5-years are required to be lower than the 5-year rolling average from three years earlier; and from 1 July 2027, the 5-year rolling average of Safeguard covered emissions is required to be lower than the 5-year rolling average from two years earlier.

Department of Climate Change, Energy, the Environment and Water  
1

SGM reformed in 2023 to ensure baseline emissions for facilities reduce over time in line with Australia's climate commitments (previously just had to maintain baseline)

<https://www.dcceew.gov.au/sites/default/files/documents/safeguard-mechanism-reforms-factsheet-2023.pdf>

35

## Implications of Commonwealth reforms for EIA in WA

- Regional planning
  - Native Vegetation Policy and new EPA strategic plan and also emphasise regional approaches
- National Environmental Standards
  - Potentially facilitate bilateral agreements or future accreditation processes
- Safeguard Mechanism reform
  - Cth requirements better aligned with EPA's Greenhouse Gas EFG

36

## WA initiatives (i) - Accreditation of EIA practitioners

### Schedule 2 — Matters in respect of which regulations may be made

36B. **Establishing** or recognising a **scheme or system for the accreditation of persons as environmental practitioners** for purposes related to this Act.

[Section 36B of Schedule 2 inserted by No. 40 of 2020 s. 108.]

**ON HOLD**



37


## WA Initiatives (ii) – new EPA strategic plan



[https://www.epa.wa.gov.au/sites/default/files/EPA%20Strategic%20Plan%202023-2026\\_0.pdf](https://www.epa.wa.gov.au/sites/default/files/EPA%20Strategic%20Plan%202023-2026_0.pdf)

38

## The EPA (2023) strategic plan



### Our goals & strategies

#### 1 Lead the ongoing enhancement of environmental impact assessment practices to deliver regional protection outcomes

- We will develop guidance that improves cumulative and holistic environmental impact assessment to deliver regional environmental protection outcomes
- We will evaluate the success of environmental impact assessment processes in predicting, and approval conditions in achieving, expected environmental protection outcomes
- We will facilitate meaningful public consultation processes in EIA and ensure that consultation outcomes inform EIA decision-making to achieve environmental protection outcomes

#### 2 Provide independent strategic advice that improves environmental protection and policy

- We will publish strategic advice and guidance on emerging industries (such as hydrogen, critical minerals and renewable energy projects) to enable the environmental benefits of these industries to be realised in a way that is consistent with the EPA's objectives
- We will provide advice and advocacy across government and to the public and industry on key emerging environmental issues to ensure environmental protection
- We will publish an EPA position on the application of offsets at regional scales to ensure inter-generational environmental protection and enhancement

#### 3 Promote and enhance knowledge that strengthens environmental protection

- We will proactively engage with key research partners and experts in institutions and government to jointly enhance and promote environmental protection knowledge and understanding
- We will establish targeted subject matter expert panels to provide contemporary scientific and other advice to support our decision-making processes
- We will promote the understanding and use of Indigenous values and traditional knowledge in our environmental practices and policies
- We will implement creative and impactful modes of communication to engage and educate on environmental protection

The EPA will promote the development of regional environmental protection frameworks for significant environmental assets such as the Swan Coastal Plain.

Key delivery strategies will include: environmental state and pressures analysis; cumulative and holistic impact assessment; stakeholder and community engagement.

Key outcomes will include: guidance and key indicators for ensuring environmental protection; advice for future environmental impact assessment; management and co-ordination recommendations for government and stakeholders.

39

## WA initiatives (iii) - "Vogel recommendations" (1)



*We're working for Western Australia.*

### Independent Review of WA Environmental Approvals Processes and Procedures

LIST OF RECOMMENDATIONS

No.	Recommendation	Timeframe	Government response
1	Develop an innovative and creative recruitment strategy in consultation with the PSC to attract skilled talent to the 'Office of the EPA'.	Less than 6 months	Accepted.
2	Government to develop an attraction and retention package for key qualified personnel to assist environmental assessment processing using the PSC Attraction and Retention Incentives framework.	Less than 6 months	Accepted.
3	DWER and Office of EPA to: a) Expand on existing training programs for existing and new staff on an ongoing and mandatory basis, that builds understanding and skills in EIA as well as risk-based decision making in the face of uncertainty, working across Government and adoption of a service culture. b) Establish a mentoring program to support new and inexperienced assessment personnel with experienced officers.	6-12 months	Accepted.
4	DWER to participate actively in the Government's Graduate Program so as to 'build for the future'.	Less than 6 months	Accepted.

<https://www.wa.gov.au/system/files/2023-12/recommendations-independent-review-of-wa-environmental-approvals-processes-and-procedures.pdf>

40

### WA initiatives (iv) - "Vogel recommendations" (2)

12	<p>a) The Government consider amending the EP Act to introduce a requirement for the EPA to have a 'Statement of Intent' with the Minister for Environment to ensure the <u>EPA recognises the government's priorities and policy objectives.</u></p>	up to 18 months	(a) Accepted.
14	<p>a) <u>The government should develop and maintain a list of priorities/State Significant projects</u> that are communicated to all DGs. The DWER DG and DDG Approvals should engage with the EPA Chair to ensure they are efficiently and effectively case managed.</p> <p>b) Government and the State Solicitors Office to evaluate if s 44(2c) of the EP Act has any utility in being able to direct <u>the EPA to prepare an assessment report to the Minister for Environment within a specified period of time for State Significant proposals or projects.</u></p>	6-12 months	(a) Accepted. (b) Accepted.
36	<p>a) As part of the review of EPA's Administrative Procedures, introduce timelines for DWER advice to EPA for its 'level of assessment' decision following analysis of public comments on referrals.</p> <p>b) Introduce KPIs/timelines for provision of EPA advice into <u>the Appeals process.</u></p> <p>c) <u>Government consider removing all appeal rights under Part IV of the EP Act and moving appeal rights under Part V to the State Administrative Tribunal.</u></p>	6-12 months  6-18 months	(a) Accepted. (b) Accepted. (c) Accepted.

<https://www.wa.gov.au/system/files/2023-12/recommendations-independent-review-of-wa-environmental-approvals-processes-and-procedures.pdf>

41

## Government response (ABC news item)

**ABC NEWS**

### How the WA government plans to fix its 'broken' environmental approvals process

By WA state political reporter James Carmody  
Posted Thu 14 Dec 2023 at 5:27am, updated Thu 14 Dec 2023 at 2:29pm



Roger Cook's government is aiming to overhaul the state's environmental approval laws. (ABC News: James Carmody)

According to Premier Roger Cook, the environmental approvals process in WA is 'broken', so his government will legislate an overhaul of how the Environmental Protection Authority functions.

The reforms were announced at a business breakfast this week and were widely welcomed by the mining industry and business sector but have raised concerns among environmental groups.

<https://www.abc.net.au/news/2023-12-14/new-wa-environmental-laws-explainer-epa/103224098>

42

## Minister Whitby comments... (in ABC news item)

Built into planned changes to the Environmental Protection Act 1986 will be a requirement for the Environment Minister to issue the EPA with a "statement of intent", recognising the government's priorities and policies.

... Mr Whitby dismissed suggestions there could be conflicts of interest arising from the statement of intent.

***"The EPA is about providing independent evidence, but it's not independent of government, it has to appreciate the priorities and the issues that the government wants to confront and needs to confront,"*** he said.

### 8. Independence of Authority and Chair

Subject to this Act, neither of the following is subject to the direction of the Minister —

- (a) the Authority;
- (b) the Chairman.



[Section 8 amended by No. 40 of 2020 s. 7.]

<https://www.abc.net.au/news/2023-12-14/new-wa-environmental-laws-explainer-epa/103224098>

43

## ***Reflections on practice...***

44

### Audit snapshot

**Auditor-General Report No.47 2019-20**  
*Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*

**Why did we do this audit?**

- The EPBC Act requires all actions that may significantly impact matters of national environmental significance ('controlled actions') to be referred to the Minister for assessment and approval.
- Effective administration of referrals, assessments and approvals reduces impacts on the environment while facilitating economic development.

**What did we find?**

- The Department of Agriculture, Water and the Environment's (the department's) administration of referrals, assessments and approvals of controlled actions under the EPBC Act is not effective.
- The department's regulatory approach is not proportionate to environmental risk.
- The administration of referrals and assessments is not effective or efficient.
- Conditions of approval are not assessed with rigour, are non-compliant with procedural guidance and contain clerical or administrative errors.
- The department is not well positioned to measure its contribution to the objectives of the EPBC Act.

**Key facts**

- Nine matters of national environmental significance are established in the EPBC Act.
- 6253 actions have been referred for assessment and approval since the commencement of the EPBC Act, with 1846 determined to be controlled actions.
- The EPBC Act requires referral, assessment and approval decisions to be made within specified timeframes.

116 days

Average overrun of statutory timeframes for approval decisions in 2018-19.

1034

Controlled actions approved with conditions since the commencement of the EPBC Act.

79%

Approvals assessed as containing conditions that were non-compliant with procedural guidance or contained clerical or administrative errors.

**What did we recommend?**

- The Auditor-General made 8 recommendations to the department.
- The department agreed to all 8 recommendations.

## Overall effectiveness of EIA under EPBC Act

(Auditor General 2020, p6)

Auditor General, (2020) *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999: Department of Agriculture, Water and the Environment*, Auditor-General Report No.47 2019-20 Performance Audit, Canberra: Australian National Audit Office, Commonwealth of Australia,  
[https://www.anao.gov.au/sites/default/files/Auditor-General\\_Report\\_2019-2020\\_47.pdf](https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2019-2020_47.pdf)

45

## Some reflections on EIA in WA...

- important tool (internationally and locally) for environmental protection (sustainable development?)
- strong legal basis – well developed guidance for practice
- key best practice principles internationally are upheld

Environmental Protection Act 1986

Documents to support EIA

Procedures for EIA

- Administrative Procedures s.122
- Procedures Manual

Environmental considerations in EIA

- Statement of Environmental Principles, Factors and Objectives
- Environmental Factor Guidelines (by factor)
- Technical Guidance (by factor) s.16(n)

**Holistic impact assessment**

The diagram shows five interconnected factors (A, B, C, D, E) in a circular arrangement, each with a flowchart of sub-factors and arrows indicating relationships between them.

46

## About the EPA and EIA arrangements...

### The EPA:

- is an *independent* body
- *provides advice* to govt (Env Minister)
- *consults* stakeholders
- keeps a *public record* of activities (eg s39)  
(+ *appeals* – anyone can disagree with them)

i.e. the EPA does not make EIA approval decision  
(has a procedural and expert role only)

47

## Other features of the EIA arrangements...

- Appeals Convenor is an independent body
- once EIA is initiated, other decision-makers cannot proceed with authorising development
- Minister (i.e. elected representative) makes approval decision
- EIA outcomes are legally binding
- audit and follow-up is required  
(because part of approval conditions)


48



**[International perspective]**

**Comments on the Western Australian EIA process**

Widely perceived as a comprehensive and effective EIA system, Western Australia's EIA process is of particularly comparative interest for three reasons. First, there exists an independent Environmental Protection Authority (EPA) which administers and reports on EIA.



Second, the environmental decision is central to the authorization of new proposals; it over-rides all other permits. Third, the Western Australian EIA system places very heavy emphasis on environmental monitoring and management once proposals have been implemented.


Wood, C 1999 Lessons from Comparative Practice, *Built Environment*, 20:4, 332 - 344

The outstanding characteristics of Western Australia's EIA system are twofold: first among which is the primacy of the environmental decision, taken by the Minister for the environment on the basis of the EIA process, over all other decisions and the implementation of the conditions attached to permissions as a result of the EIA process under the enabling legislation. Second is the statutory guarantee of independence from political direction that is enjoyed by the Environmental Protection Authority (EPA) established, in part, to administer the EIA process.... In principle, as a late second-generation EIA system further modified in recent years, Western Australia should provide a model for other jurisdictions seeking to remedy deficiencies in their own EIA systems.


Wood, C and J Bailey 1994 Predominance and Independence in Environmental Impact Assessment: The Western Australia Model, *EIA Review*, 14, 37-59

49

**[CCWA are concerned about Vogel recommendations...]**



**Save Our EPA - Protect WA Nature!**



Caring into pressure from industry groups, and with no community consultation, the Cook Labor government has announced plans that will undermine WA's Environmental Protection Authority (EPA).

**Add a climate and biodiversity crisis, the proposed changes would destroy public confidence in environmental decision making and pave the way for accelerated destruction of WA's already stressed, unique and world-renowned nature.**

To protect the living systems on which we all depend, we need our EPA to be rigorous, science based, independent and consultative.

**JOIN US TO SAVE OUR EPA!**

We are joining forces with organisations and groups across our state to rally on the steps of Parliament on the first sitting day for the WA Government.

Together, we are advocating for stronger environmental assessment processes and the fundamental rights to be informed, to participate in, and to challenge decisions made about our environment.


**Join us - and share these details with your networks!**

**WHAT:** Rally: Save Our EPA - Protect WA Nature


**WHERE:** Tuesday 13 February, 11:30am

**WHERE:** Parliament House, BorochoPerth

[https://www.ccwa.org.au/save\\_our\\_epa](https://www.ccwa.org.au/save_our_epa)



**Environment Matters: Safeguarding WA's EPA and Environment**



Join CCWA for our first Environment Matters event for 2024! We will be delving into the pressing concerns surrounding the Cook Government's proposed overhaul of Western Australia's environmental assessment system. Conservation organisations across the state are sounding the alarm on these changes, emphasising the potential threats to WA's unique nature and the independence of the Environmental Protection Authority (EPA).

WA is home to an array of unique plants and animals found nowhere else in the world. However, the count of endangered species increases annually, while wildlife habitats dwindle. In numerous areas, the escalating exploitation of natural resources and climate shifts present unprecedented challenges to our ecosystems. Given this climate and biodiversity crisis, it's crucial that we bolster our Environmental Protection Authority (EPA) instead of weakening it. Our unique environment in WA needs protection, and the EPA plays a key role in that effort.

This event aims to shed light on the potential threats posed by the proposed changes, providing a platform for informed discussions on how we can collectively address these challenges. Together, we can advocate for policies that strengthen the independence of the Environmental Protection Authority (EPA) and protect the natural treasures that make life truly unique.

We need bold, urgent and decisive action, with new ways of thinking and working together to tackle these environmental challenges and protect our precious wildlife and biodiversity in a rapidly changing environment.

This is a free event and light refreshments will be provided.

Speakers to be confirmed shortly.

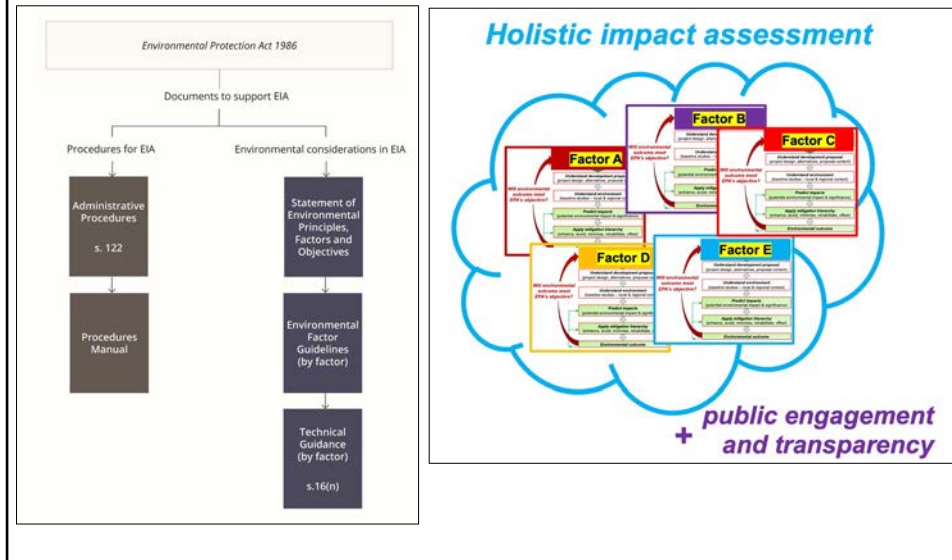
**SAVE** of significant challenges, this will be a hopeful dialogue centered on solutions and a vision for the future.

[https://www.ccwa.org.au/environment\\_matters\\_1\\_2024](https://www.ccwa.org.au/environment_matters_1_2024)

50



*[final slide] EIA in WA...  
(what we have covered in this training course)*



51

*Thank you for your participation.*

*Big special thanks to Danielle,  
Hannah and Gerry!!!*

*And good luck in furthering your  
own environmental impact  
assessment practice!*



52