



Environmental Protection Act 1986

Amendments to EPA's EIA Procedures Suite

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Submission to the Environmental Protection Authority

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia (WA). CME is funded by member companies responsible for more than 88 per cent of the State's mineral and energy workforce employment.¹

In 2019-20, the WA's mineral and petroleum industry reported a record value of \$172 billion.² Iron ore is currently the State's most valuable commodity at \$103 billion. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at \$37 billion, with gold third at \$16 billion.

The value of royalties received from the sector totalled \$9.3 billion in 2019-20,³ accounting for 28.8 per cent of general government revenue.⁴ Now accounting for 47 per cent of the State's total industry Gross Value Added,⁵ the sector is a significant contributor to local, State and Australian economies.

Summary of recommendations

CME makes the following recommendations to address key concerns and priorities for amendments to the Environmental Protection Authority (EPA) environmental impact assessment (EIA) procedures suite:

- Clarify within the Procedures Manual the application of the significance test to proposed amendments of an approved proposal under s45C(a).
- Revise the Procedures Manual to clarify that stricter approval conditions will not be imposed upon assessment of an amendment to an approved proposal where the proponent has demonstrated good environmental management.
- Revise the Procedures Manual to indicate what matters the EPA may take into consideration when determining how a decision-making authority is determined to be 'relevant' to a referred proposal under s38G(1)(b)(iii).
- Revise the Procedures Manual to clarify that a Ministerial Statement will reference the proposal content document to which the approval relates, but not condition compliance with a proposal content document.
- Revise section 6 of the Statement of Principles, Factors and Objectives to clarify the scope boundaries for what "stages and components" and "offsite and indirect impacts" of a proposal are considered when determining significance.
- Revise section 6 of the Statement of Principles, Factors and Objectives to clarify the definition of "reasonably foreseeable" with regards to future activities to be considered in the assessment of cumulative environmental impacts of a proposal.
- The Procedures Manual be updated to reflect that the EPA may take into consideration the positive environmental impacts of a proposal.
- Develop guidance which clearly demonstrates the linkage between potential environmental risk and minimum standards for environmental information to ensure alignment of expectations regarding proportionality of information across the EPA Services, the EPA, and proponents.
- Clarify the escalation process for proponents for disputes regarding information requirements.
- Revise the 'Instructions – Environmental Outcomes and Outcome-Based Conditions' to make explicit that where an outcome-based condition requires an impact to be avoided that it is clarified within the condition whether (i) initial impact and subsequent remediation is permitted, or (ii) no impact throughout proposal implementation is required.

¹ Full-time employees and contractors onsite in 2019-20, excludes non-operating sites. Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

² Government of Western Australia, *Latest statistics release: Mineral and petroleum review 2019-20*, Department of Mines, Industry Regulation and Safety, 25 September 2020.

³ Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

⁴ Government of Western Australia, *2019-20 Annual report on State finances*, Department of Treasury, 25 September 2020.

⁵ Cassells, R. *et al*, *BCEC Quarterly economic commentary*, Bankwest Curtin Economics Centre, 26 November 2020, p. 2.

- Develop a process for transitioning existing Ministerial Statements to the new framework, outlining how proponents can engage the EPA Services to update Ministerial Statements to remove Schedule 1 and transition to outcome-based conditions when the need arises.

Context

CME welcomes the opportunity to provide a submission on proposed amendments to the EPA EIA procedures suite (the revised EPA Procedures Suite) released 23 April 2021:

- Environment Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2021 (Administrative Procedures)
- Environment Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual v3.0 (Procedures Manual)
- Statement of Environmental Principles, Factors, Objectives and Aims of EIA (Statement of Principles, Factors and Objectives)
- Process Summary of Environmental Impact Assessment
- Instructions – Environmental outcomes and outcome-based conditions
- Instructions – How to identify the content of a Proposal
- Instructions – How to prepare an Environmental Scoping Document
- Instructions – How to prepare an Environmental Review Document
- Instructions – Referral of a proposal to the Environmental Protection Authority under section 38 of the *Environmental Protection Act 1986*
- Instructions – Request to amend a referred proposal under section 38C of the *Environmental Protection Act 1986*
- Instructions – Request for EPA consent to undertake minor or preliminary work under section 41A(3) of the *Environmental Protection Act 1986*
- Instructions – Request to amend a proposal during assessment under section 43A of the *Environmental Protection Act 1986*
- Instructions – Request to amend a proposal or implementation conditions under section 45C of the *Environmental Protection Act 1986*

Amendments to the above procedures are proposed to align with and support implementation of amendments to the *Environmental Protection Act 1986* (EP Act), passed in November 2020 under the *Environmental Protection Amendment Act 2020* (EP Amendment Act).

Responses to revised EPA Procedures Suite

CME supports the EPA's ten key principles which underpin the proposed amendments to the EPA Procedures Suite, in particular:

- Efficient processes and maintain strong environmental protection
- Facilitate implementation of bilateral agreements
- Clear and consistent focus on key principles for EIA
- Proportionality of information
- Outcome-based conditioning
- Adaptive management
- Transparency

CME has consulted extensively with its members to inform its submission in response to the revised EPA Procedures Suite. This submission firstly provides high-level comments on key issues followed by specific, detailed responses on each revised procedure in Appendix I.

Efficient processes and strong environmental protections

Significance test

Under section 3 of the amended EP Act, 'significant amendment' is defined as:

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; 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.

Feedback received from members on the interpretation of clause (a) above highlights that further clarification is required in the Procedures Manual.

Related to clause (a) above, **Figure 1** illustrates how CME understands the significance test outcomes for proposed amendments to approved proposals under various scenarios would operate, explained further by examples in **Table 1**. This represents a risk-based, outcome-focused approach, consistent with the EPA's regulatory streamlining objectives.

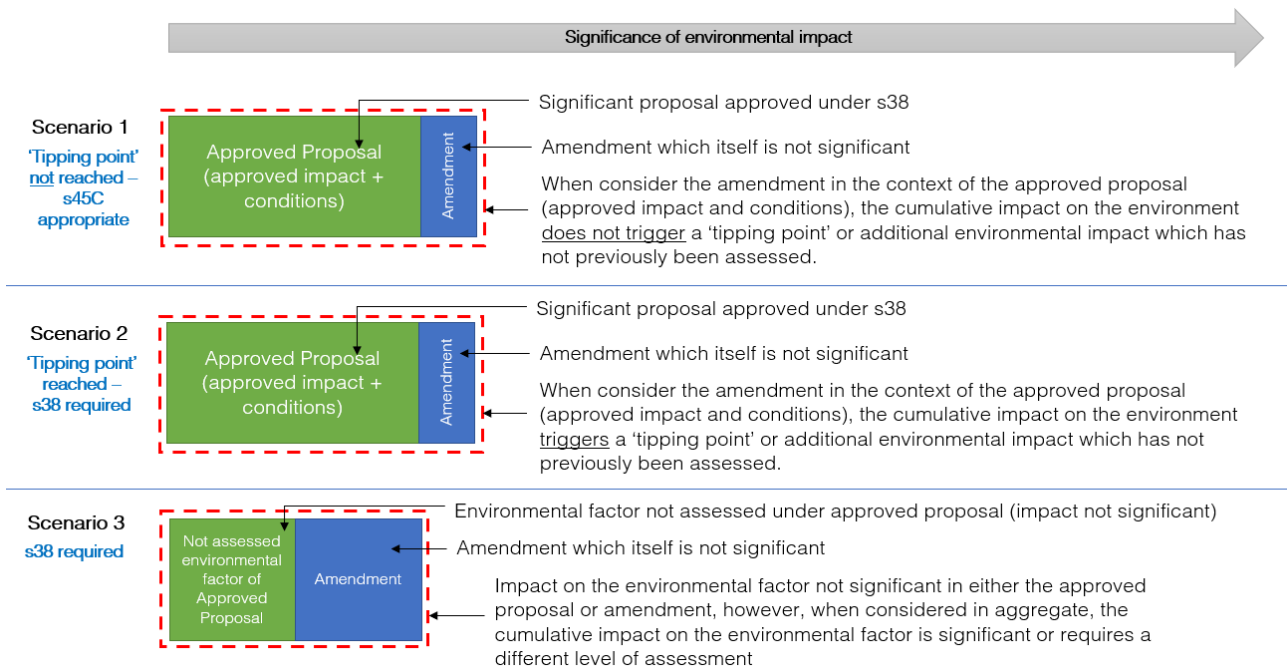


Figure 1: Application of the test of significance for proposed amendments to approved proposals.

Table 1: Examples of significance test outcomes for proposed amendments to approved proposals.

| Approved proposal | Proposed amendment | Significance test outcome |
|---|--|--|
| Scenario 1 | | |
| Significant impact on fauna environmental factor (clearing 10ha of threatened species habitat) | Additional impact on fauna environmental factor = clearing 1ha of threatened species habitat | <p>Additional impact of amendment does not exceed threshold for fauna environmental factor.</p> <p>When considering the amendment in the context of the approved proposal (approved impact and conditions), the cumulative impact on the environment does not trigger a 'tipping point' or additional environmental impact which has not previously been assessed.</p> <p>Therefore, the amendment is not significant, and it is appropriate to submit a proposal amendment via s45C.</p> <p>(Note: If existing conditions were incapable of managing impacts, they may also be amended in the s45C process)</p> |
| Scenario 2 | | |
| Significant impact on landforms environmental factor (waste rock dump (WRD) height 100m – equal to or just below surrounding terrain) | Additional impact on landforms environmental factor = 5m increase in WRD height | <p>Additional impact of amendment does not exceed threshold for landforms environmental factor.</p> <p>Despite the proposed amendment being insignificant compared to the existing approved 100m heights, the final landform would be higher than the surrounding terrain therefore the cumulative impact of the proposed amendment and the approved proposal is significant and EPA assessment of the impacts on visual amenity is necessary. This amendment would be a "tipping point" for this factor.</p> <p>Therefore, the amendment is significant, and it would require proposal amendment via s38.</p> |
| Scenario 3 | | |
| GHG emissions not determined to be a key environmental factor (50,000t CO ₂ ^e). | Additional impact on GHG emissions environmental factor = 52,000t CO ₂ ^e | <p>Additional impact of amendment does not exceed threshold for significance for GHG emissions environmental factor.</p> <p>However, when considering the amendment combined with the current environmental performance of the approved proposal, the cumulative impact on GHG emissions environmental factor exceeds the significance threshold.</p> <p>Therefore, GHG emissions are a key factor for the amended proposal (i.e. significant) and it would require proposal amendment via s38.</p> |

There will likely be some situations where even a small amendment (in itself or relative to an existing proposal) would trigger a "tipping point" or additional impact that has not previously been assessed. In these circumstances, as under Scenario 2, referral under s38 may be required despite the impact of the amendment by itself appearing insignificant.

Under Scenario 3, it is proposed that the amendment would be considered significant as, when considered

in combination with the approved proposal, the cumulative impact on the environment exceeds the significance threshold resulting in a new environmental factor being significant for the amended proposal that was not previously assessed. Therefore, a referral under s38 would be required for that factor.

CME expects the overall effect of the changes to s45C of the EP Act will mean that the number of s38 referrals will increase where proposed amendments are required to be processed under s38 instead of s45C. Such amendments to approved proposals are often time critical for operating assets. It is therefore essential that referrals under s38 for amendments to approved proposals that can be assessed on referred information are processed as efficiently as possible.

CME strongly recommends the Procedures Manual more clearly clarifies the application of the significance test to proposed amendments of an approved proposal under s45C(a).

Significant amendments – Consideration of current environmental performance

For significant amendments, the Procedures Manual states that the combined effects which the implementation of the approved proposal and the significant amendment in the context of the approved proposal need to be addressed in the referral and the EPA's assessment of the referral (refer section 1.4.2, and section 3.2).

It is unclear whether it is the EPA's intent to re-examine existing authorised impacts (and conditions) as part of an assessment of a significant amendment to an approved proposal.

The EPA's consideration of current environmental performance, rather than the scope of an approved proposal, presents a risk to proponents that upon application for amendment to an approved proposal, proponents may be subject to stricter approval conditions in instances where they have demonstrated good environmental management or not yet reached nameplate capacity (and associated approved level of impact).

For example, a proponent's approval authorises a specific level of emissions and during the implementation of the approved proposal the proponent's emissions generation is significantly lower than the approved level due to additional measures the proponent has implemented as part of continuous improvement. During the EPA's assessment of an application to amend the approved proposal, the EPA considers the current emissions generation (not the scope of the approved proposal) and may impose stricter emissions conditions, below that in the approved proposal.

This could have the effect of penalising proponents for good environmental performance and in turn restricting the flexibility of approvals necessary to enable operational agility and responsiveness to unforeseen changes.

CME does not support the imposition of stricter approval conditions upon assessment of an amendment to an approved proposal, where the proponent has demonstrated good environmental management.

CME recommends the Procedures Manual be revised to clarify that stricter approval conditions will not be imposed upon assessment of an amendment to an approved proposal where the proponent has demonstrated good environmental management.

Relevant decision-making authorities

Under s38G(1)(b)(iii) of the amended EP Act, the EPA has the discretion to determine which decision-making authorities it will notify of its decision to assess a proposal, allowing the EPA to identify only major decision-makers in relation to an approval.

The revised Administrative Procedures and Procedures Manual lack clarity regarding how the EPA will determine which decision-making authorities are considered relevant decision-making authorities.

CME supports the EPA to utilise discretion to identify and notify only relevant decision-making authorities (and therefore constraining them from making subsequent decisions).

CME recommends the Procedures Manual be revised to indicate what matters the EPA may take into consideration when determining how a decision-making authority is determined to be 'relevant' to a referred proposal under s38G(1)(b)(iii).

Proposal content document

CME supports greater flexibility for proponents to define and implement proposals to enable effective and sustainable environmental management.

It is CME's understanding that a Ministerial Statement will not condition compliance with a proposal content document, however it will reference the proposal content document to which the approval relates. This should be clarified in the Procedures Manual.

The primary objective of the Ministerial Statement will be to condition the environmental outcomes of the proposal and, where necessary, condition specific elements of the proposal to ensure environmental outcomes are achieved.

CME also understands that Schedule 1 will be removed from Ministerial Statements with the intent that proponents draft their own proposal description to be included within their proposal content document. This approach is supported. Giving proponents the responsibility for appropriately describing their proposal, supported by a key focus on achieving environmental outcomes through implementation conditions, provides proponents the necessary flexibility to implement their proposals to ensure effective and sustainable management of environmental impacts.

CME suggests a substantial and sustained cultural shift is needed to realise the intent of this framework and the anticipated regulatory efficiencies, requiring open communication and collaborative effort on behalf of industry, EPA Services, and the EPA.

CME recommends the Procedures Manual be revised to clarify that a Ministerial Statement will reference the proposal content document to which approval relates, but not condition compliance with a proposal content document.

Key principles, objectives and aims of EIA

Consideration of significance

Under the revised Statement of Principles, Factors and Objectives, a number of aspects have been included under section 6 'Consideration of significance' (p9), including:

- Item (iii) – “All stages and components of the proposal (including infrastructure required for the proposal to be practicably implemented).”
- Item (vii) – “Consequence of the likely impacts (or change), including off-site and indirect impacts.”
- Item (ix) – “Cumulative environmental impacts – the cumulative effect of the impacts of the proposal on the environment, meaning the successive, incremental and combined impacts of the proposal with one or more other activities on the environment, arising from past, present and reasonably foreseeable future activities.”

CME understands that items (iii) and (vii) have been included to align Part IV approval processes under the EP Act with the requirements under the *Environment Protection and Biodiversity Conservation Act 1999* and support the implementation of future bilateral agreements. While CME support this policy harmonisation, the revised Statement of Principles, Factors and Objectives lacks clarity regarding the scope boundary for these considerations, presenting concerns that these additional elements are broadening considerations beyond the referred proposal.

Well-defined scope boundaries for what “stages and components” and “offsite and indirect impacts” of a proposal are to be considered when determining significance is necessary to provide regulators and proponents with a clear and consistent understanding of the relevant parameters defining significance and therefore the information required to support a referred proposal or application for amendment.

CME recommends section 6 of the Statement of Principles, Factors and Objectives be revised to clarify the scope boundaries for what “stages and components” and “offsite and indirect impacts” of a proposal are considered when determining significance.

CME supports the concept of cumulative impacts assessment and understands that future guidance on the assessment and management of cumulative impacts will be developed by the EPA. However, in the interim, the definition of “reasonably foreseeable” must be clarified to address current issues relating to its subjective and inconsistent interpretation.

CME recommends section 6 of the Statement of Principles, Factors and Objectives be revised to clarify the definition of “reasonably foreseeable” with regards to future activities to be considered in the assessment of cumulative environmental impacts of a proposal.

Taking into account positive impacts of a proposal

The potential positive impacts of a proposal, including benefits via the social surroundings factor on other matters beyond the proposed activity, should also be able to be taken into account in the EPA's assessment of a referred proposal.

For example, a below water table mine may have excess dewatering water and is partnering with the underlying third party-owned pastoral station to provide that excess water to support the station to:

- (i) Drought proof itself and reduce grazing pressure on native vegetation
- (ii) Improve stock welfare outcomes and reducing impacts on natural springs and water sources
- (iii) Take part in carbon farming initiatives
- (iv) Destock certain environmentally sensitive areas of the station to achieve better conservation outcomes.

All of these initiatives deliver positive environmental outcomes or positive economic outcomes that directly derive from an aspect of environmental management. As such, the EPA should be able to consider these positive impacts under social surroundings in their assessment of the referred proposal.

CME recommends the Procedures Manual be updated to reflect that the EPA may take into consideration the positive environmental impacts of a proposal.

Proportionality of information

CME supports the principle of proportionality of information such that information needs are dependent on the nature and risk of potentially significant impacts. In recent years, information requirements for referred proposals and applications for amendments to approved proposals have become increasingly onerous and disproportionate to the likely environmental impact.

There is fundamentally a lack of guidance regarding how the EPA will determine what information is required at different stages of the EIA process - particularly at the referral, validation, and decision to assess stages. This lack of clarity has resulted in misalignment of expectations across EPA Services, the EPA, and proponents with regards to what information is needed relative to the nature and risk of potentially significant impacts. Consequently, assessment and approval timeframes have been significantly impacted due to subsequent requests for information and the increased burden on proponents to generate the information and for the EPA Services to review that information.

Critically, there is a need for proportionality and a risk-based approach by Assessing Officers with regards to requests for information from proponents.

CME recommends guidance be developed which clearly demonstrates the linkage between potential environmental risk and minimum standards for environmental information to ensure alignment of expectations regarding proportionality of information across EPA Services, the EPA, and proponents.

Where a proponent is experiencing what they believe is a disproportionate level of information requests, an escalation process should be available. **CME recommends clarifying the escalation process for proponents for disputes regarding information requirements.**

Outcome-based conditions

CME strongly supports the EPA's preference for outcome-based conditions. However, in CME member companies' experience, outcome-based conditioning has historically not been well implemented.

Fundamental to the success of the EPA's implementation of an outcome-based condition framework is:

- (i) A common understanding between EPA Services, the EPA, and proponents of what constitutes an outcome-based condition; and
- (ii) A robust framework clearly defining the circumstances under which outcome-based conditions are appropriate or where other types of conditions are better suited to support risk-based, outcome-focused regulation.

The 'Instructions – Environmental Outcomes and Outcome-Based Conditions' lacks clarity regarding outcome-based conditions where an impact must be avoided. The current wording in the Instructions is not sufficiently clear as to whether initial impact and subsequent remediation is permitted, or if no impact is permitted throughout the implementation of the proposal or the associated timeframe.

CME recommends revising the 'Instructions – Environmental Outcomes and Outcome-Based Conditions' to make explicit that where an outcome-based condition requires an impact to be avoided that it is clarified within the condition whether (i) initial impact and subsequent remediation is permitted, or (ii) no impact throughout proposal implementation is required.

CME support proponents having the primary role in defining and adaptively managing proposals to meet EPA objectives and environmental outcomes. Adaptive management is fundamental to effective environmental management practices. Adaptive management provides the necessary flexibility for proponents to implement approved proposals and meet EPA objectives and environmental outcomes while optimising operational efficiencies to sustainably manage and mitigate environmental impacts.

CME supports the use of a standardised condition bank under Environment Online, clarifying for proponents the potential conditions which may be imposed.

Transitional arrangements

The process for proponents to transition older Ministerial Statements (with Schedule 1 and conditioned management plans) to align with the revised procedures is unclear.

It is imperative transition arrangements are based on practical considerations and need, for example when an amendment to an approved proposal is required or a proponent needs to contemporise their approvals to focus on outcome-based conditions. In turn, transition arrangements should avoid introducing unintended risks to existing approved proposals and unnecessary administrative burden on the EPA Services, the EPA, and proponents.

CME recommends developing a process for transitioning existing Ministerial Statements to the new framework, outlining how proponents can engage the EPA Services to update Ministerial Statements to remove Schedule 1 and transition to outcome-based conditions when the need arises.

CME strongly supports common understanding workshops with industry, EPA Services, the EPA, and other decision-making authorities to ensure a collective cultural shift and transition to risk-based, outcome-focused assessment and approval processes.

Conclusion

CME thanks the EPA for the opportunity to comment on these draft documents and looks forward to continuing to work with the EPA and the Department of Water and Environmental Regulation to support the implementation of the EP Amendment Act.

If you have any further queries regarding the above matters, please contact Kira Sorensen, Senior Adviser – Environment & Sustainability.

| Authorised by | Position | Date | Signed |
|--------------------|---|------------|--------|
| Robert Carruthers | Director – Policy & Advocacy | 31/05/2021 | |
| Document reference | 210531-EPA Procedures Submission_final.docx | | |

Appendix I: Detailed Responses to revised EPA Procedures Suite

Table 2: Detailed responses to revised EPA Procedures Suite.

| Section | Description of proposed amendment/s | Response |
|--|--|---|
| Environment Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures | | |
| Purpose and scope | Reference to “Department of Water and Environmental Regulation” | <p>Changes of Government likely result in Department name changes in the future which would necessitate administrative amendments to this document.</p> <p>CME recommends changing “Department of Water and Environmental Regulation” to “Department of the Public Service of the State responsible for the administration of Part IV of the EP Act”.</p> |
| 2.1 Request for further information – Requisition | Under s38F(2), the EPA may require additional information to be provided within a specified timeframe ('compliance period'). | <p>There is no process for consultation with the proponent in setting a practicable compliance period. Depending on the volume and complexity of the information requested, the time required to obtain, analyse, and interpret the data may be considerable. The proponent must be given reasonable opportunity to comply with the information request. In some instances, third party consultants, technical experts or additional field work may be required.</p> <p>CME recommends the EPA consults with the proponent to agree a reasonable compliance period for requests for information, taking into consideration the volume and complexity of the information requested and the time expected to collect, analyse, and interpret the required information.</p> |
| 2.2.1 Public comment on referred proposals | Reference to <i>Environmental Protection Regulations 2021</i> . | <p>Regulations under the <i>Environmental Protection Regulations 2021</i> stipulating confidentiality requirements are yet to be drafted. It is unclear how the EPA will be able to gazette the revised Administrative Procedures before the gazettal of the referred regulations.</p> <p>CME recommends removal of reference to <i>Environmental Protection Regulations 2021</i> and replace with reference to “the Environmental Protection Regulations as gazetted from time to time”.</p> |

| Section | Description of proposed amendment/s | Response |
|--|--|---|
| Environment Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual | | |
| Figure 1 | "Procedures for EIA" | Language is inconsistent with Figure 1 of the Administrative Procedure. CME recommends changing "Procedures for EIA" to "EIA (Part IV Divisions 1 and 2) Procedures Manual". |
| Hyperlinks to external documents (throughout) | External documents not hyperlinked | CME recommends including hyperlinks to all external documents referenced. |
| Process diagrams (throughout) | Process diagram legend / formatting | The process diagram legend is unclear and incomplete: <ul style="list-style-type: none"> It is difficult to discern the dashed boundary indicating a process 'option'. As each box has a descriptor indicating a statutory requirement, statutory option, procedural requirement, or a procedural option, it is unnecessary to also format the box to indicate it as an 'option'. The legend does not include the yellow box indicating public participation in the process. CME recommends the process diagram legend be amended throughout to ensure legible and consistent formatting, and to indicate only the responsible party for each process step (i.e. referrer, proponent, EPA or delegate, public, etc). |
| Figure 3 | Final step Stage 2 | Following the final process step "End - Amend referred proposal (s. 38C) (subprocess)", the next step (Stage 2) should be indicated. This is consistent with other process diagrams. |
| Figure 4 | Process step after EPA decides not to assess proposal: "EPA publishes record of decision to assess (s. 39(a)) and issues required notices (s. 38G(1)(b))" | Typographical error. This step should read "[...] decision not to assess [...]". |
| | Arrow from "End" step to "End" step | CME recommends removing the arrow between the "End" steps of Figure 4. |

| Section | Description of proposed amendment/s | Response |
|---|---|---|
| | Final step Stage 2 | Typographical error. This step should read "Stage 3". |
| Figure 5 | Incorrect colouring of EPA process step | Formatting error. The process step "EPA publishes reasons for declaration" is formatted yellow (indicating the action is to be undertaken by the public), the box should be coloured blue as it is an action to be undertaken by the EPA. |
| | Final step Stage 3 | Following the process step "End – Stage 2 – EPA decide whether to assess", the final step (Stage 3) should be indicated. This is consistent with other process diagrams. |
| Stage 3 | Stage 3 sub-stages | The five sub-stages within Stage 3 are identified as Steps 1, 2, 3, 4, and 5. This inconsistent naming convention can lead to confusion where the term 'step' and 'stage' are often used interchangeably. This is further demonstrated within the document where the terms are used interchangeably throughout Stage 3 creating confusion. CME recommends the five sub-stages of Stage 3 are renamed Stage 3.1, 3.2, 3.3, 3.4, and 3.5 for consistency with the naming convention used for different assessment stages. |
| Figure 7 | Missing footnote | A footnote is indicated in the process step "EPA reviews draft Environmental Scoping Document", however the footnote has not been included. |
| 3.1.1.1 Content of the Environmental Scoping Document | "The template includes instructions for preparing an Environmental Scoping Document." | This statement is redundant as immediately prior the document states "The EPA requires proponents to follow the Instructions and Template: Proponent-prepared Environmental Scoping Document [...]". CME recommends removing "The template includes instructions for preparing an Environmental Scoping Document." |
| Figure 14 | "Start – Amend approved proposal or conditions (s. 45C) (subprocess)" | Typographical error. This process diagram outlines the process for amending an approved proposal <u>and</u> conditions. |
| | "Minister decides whether to approve amendment" | Formatting error. The "No" arrow from the process step "Minister decides whether to approve amendment" is pointing the wrong way. |
| | "Proponent decided whether to proceed with amended proposal" | Typographical error. The process step should state "Proponent decides whether to proceed with amended proposal <u>and conditions</u> ". |

| Section | Description of proposed amendment/s | Response |
|---|---|--|
| Figure 15 | "Start – Amend approved proposal or conditions (s. 45C) (subprocess)" | Typographical error. This process diagram outlines the process for amending an approved proposal only. |
| | "Minister notifies EPA, proponent and decision-making authorities consulted on conditions (s. 45(C)(7))" | Typographical error. This process step should state "Minister notifies EPA, proponent and decision-making authorities consulted on conditions <u>and publishes decision to refuse</u> (s. 45(C)(7))". |
| | "End – Amend approved proposal or conditions (s. 45C) (subprocess)" | Typographical error. This process diagram outlines the process for amending an approved proposal only. |
| Figure 16 | "Start – Amend approved proposal or conditions (s. 45C) (subprocess)" | Typographical error. This process diagram outlines the process for amending conditions only. |
| | "Proponent decides whether to proceed with amended conditions" | Formatting error. This process step should be connected to the step "Amend conditions after inquiry (s. 46) (subprocess)" by a downward facing arrow, annotated with "Yes". |
| | "Amend conditions after inquiry (s. 46) (subprocess)" | Formatting error. This process step should not be linked to "Start – Stage 1 – Referral of a proposal" except with an "or" arrow. |
| | "End – Amend approved proposal or conditions (s. 45C) (subprocess)" | Typographical error. This process diagram outlines the process for amending conditions only. |
| 5.5 Amending approved proposals or implementation conditions without inquiry or assessment (s. 45C) | "The EPA Chair will not usually consider changes to proposals or implementation conditions more than every two years in the life of proposals, unless the proponent can show why additional changes are reasonable in its particular case." | CME do not support the introduction of a limitation on the frequency of applications to amend approved proposals or implementation conditions. Mining developments evolve over time and changes will be required. There are times when more than one s45C application will reasonably be required in a two-year period and although this is portrayed as "will not usually", inclusion of such typical "defaults" create an anchoring bias for Assessing Officers which will unnecessarily frustrate efficient operation of the EP Act. |
| Figure 17 | "Conditions relate to declared derived proposal?" | Formatting error. This process step should be connected to the step "Proponent (or any other person) or EPA asks Minister to request change to conditions" by a downward facing arrow. |
| | "Minister decides to amend any or all conditions" | Formatting error. This process step should be connected to the step "End – Amending conditions after inquiry (s. 46) (subprocess)" by a downward facing arrow. |

| Section | Description of proposed amendment/s | Response |
|---|---|---|
| | "End – Amending conditions after inquiry (s. 45C) (subprocess)" | Typographical error. This process diagram relates to s46 amendments to conditions. |
| Figure 18 | Timeframe for EPA to decide if a referral is valid | <p>There is no procedural timeframe for the EPA to decide a referral is valid. This presents a significant concern to proponents as this process step sits outside of the stop the clock process. Delays in the EPA's decision on the validity of a referral occurs prior to the commencement of assessment of a referred proposal. Consequently, the timeframe for the EPA's decision is not monitored, recorded, or transparently publicly disclosed. Proponents, and the community, are therefore unable to hold the EPA to account for the timeliness of its decision.</p> <p>CME recommends including a target timeframe of 7 days for the EPA to decide a referral is valid.</p> |
| | Stage 5 – Decision on a proposal (s. 45) timeframe | <p>The timeframe for Stage 5 only refers to the period over which appeals on the EPA report are open (3 weeks), and does not include timeframes for the Appeals Convenor's report to the Minister, the Minister's determination of appeals, and the Minister's decision on a proposal. From a proponent's perspective, this timeframe is somewhat misleading and should be amended to represent the complete process timeline.</p> <p>CME recommends revising the timeframe for Stage 5 in Figure 18 to include the Appeals Convenor's report to the Minister, the Minister's determination of appeals, and the Minister's decision on a proposal.</p> |
| Statement of Environmental Principles, Factors, Objectives and Aims of EIA | | |
| 4 Aims of EIA – EPA | "6. Promote education and awareness of environmental issues" | <p>It is important that the EPA are clear on which "hat" they are wearing, and that when the EPA is operating in Part IV that they are focused on assessing the impact of the referred proposal, proposed amendment, etc.</p> <p>CME recommends removing item 6 "Promote education and awareness of environmental issues",</p> |

| Section | Description of proposed amendment/s | Response |
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| 4 Aims of EIA – The proponent | “3. Use best practicable measures, and genuine evaluation of options or alternatives, in locating, planning, and designing their proposal, to mitigate potential adverse environmental impacts and to facilitate positive environmental outcomes [...]” | The responsibility for the proponent to “facilitate positive environmental outcomes” lacks clarity. CME does not support the proposition that it is the responsibility of individual proponents to facilitate a net gain in environmental outcomes as part of implementation of an approved proposal. CME recommends revising to “[...] and, as applicable, facilitate positive environmental outcomes”. |
| 5 Environmental Factors and Objectives | “It will make judgements against these objectives on whether the environmental impact of a proposal or scheme may be significant. The environmental objectives are aimed towards ensuring the objects and principles of the Act are achieved.” | It is unclear how the environmental objectives are routinely applied such that the objects and principles of the EP Act are achieved. Clarification would assist in improved understanding of the concept of significance. CME recommends clarifying how the environmental objectives are routinely applied such that the objects and principles of the EP Act are achieved. |
| Process Summary of Environmental Impact Assessment | | |
| Version control | Version control page missing | CME recommends including a version control page on first page. |
| Header | “Instructions: Environmental outcomes and outcome-based conditions” | Typographical error. The document headers need to be corrected to “Process Summary of EIA”. |
| Stage 1 – Referral (p3) | “Prescribed proposals include hydraulic fracking proposals, and proposals which involve significant emissions or discharges.” | Typographical error. The correct terminology is “hydraulic fracturing stimulation”. This is consistent with other government documentation including the recent Inquiry terminology. |
| Stage 1 – Referral (p4) | “Third party referrals of mining proposals cannot usually be referred until after a mining lease (for land tenure) has been granted and a mining proposal is developed detailing the mining works proposed on the land.” | Clarification required – there is confusion regarding the term “Mining Proposal” as defined under the <i>Mining Act 1978</i> and a mining “proposal” as a type of proposal where “proposal” is defined under the EP Act. The limitation on third party referrals is that mining lease applications (so a tenure process) cannot be referred to the EPA by anyone other than the proponent if the mining lease application is made using a Mining Proposal for conversion (at that stage). The Mining Proposal can be referred by a third party once tenure has been granted. CME recommends clarifying the limitation of third-party referrals of mining proposals. |

| Section | Description of proposed amendment/s | Response |
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| Stage 2 – EPA decision to assess referred proposal (p5) | <p>“Once a proposal is referred, the EPA considers whether the referral is valid. This involves the EPA considering whether the proposal can legally be referred (for example, because it has not already been referred), and whether it is likely to have a significant effect on the environment.</p> <p>If a referral is valid, the EPA must then decide whether or not to formally assess the proposal and what level of assessment to apply.”</p> | <p>Whether a referred proposal is likely to have a significant effect on the environment should not form part of the EPA’s considerations when deciding whether a referral is valid.</p> <p>The validity of a referral is based on whether the proposal can be legally referred. Once the EPA has decided the referral is valid, then it must consider whether the referred proposal is likely to have a significant effect on the environment. This consideration consequently forms the basis of the EPA’s decision on whether or not to assess the proposal.</p> <p>CME recommends rewording to clarify that if the referral is valid, then the EPA assesses whether it is likely to have a significant effect on the environment.</p> |
| Stage 2 – EPA decision to assess referred proposal (p5) | <p>“[...] EPA’s environmental principles and objectives, and what things it may consider in gauging significance. These include: [...]”</p> | <p>The listed items are inconsistent with those in the ‘Statement of Environmental Principles, Factors, Objectives and Aims of EIA’ document.</p> <p>CME recommends directly copying the aspects in considering significance from the ‘Statement of Environmental Principles, Factors, Objectives and Aims of EIA’.</p> |
| Stage 3 – Assessment of a proposal (p7) | <p>“The EPA can also decide at any stage during the assessment process that it needs information than what is included in the ESD.”</p> | <p>Typographical error.</p> <p>CME recommends rewording to “The EPA can also decide at any stage during the assessment process that it needs information <u>other</u> than what is included in the ESD.”</p> |
| Stage 3 – Assessment of a proposal (p7) | <p>“The EPA may decide that the ERD needs to be open to public submissions, usually for between two to 12 weeks. If this is the case, the proponent must respond to the public submissions.”</p> | <p>Terminology is inconsistent with the Procedures Manual.</p> <p>CME recommends rewording to “The EPA may decide that the ERD needs to be open to public submissions, usually for between two to 12 weeks. If this is the case, the proponent <u>may be required to respond to the public submissions.</u>”</p> |
| Stage 4 – EPA report on assessment of proposal (p8) | <p>“Once the EPA is satisfied the proponent has completed the assessment as required, it prepares its report on the assessment of the proposal.”</p> | <p>The terminology is confusing and should be clarified. With the general public as the target audience for this document, it is unlikely that the public will understand the nuance in the “assessment” (environmental review) conducted by the proponent and the “assessment” (of the proposal) conducted by the EPA.</p> <p>CME recommends rewording to “Once the EPA is satisfied the proponent has completed the <u>necessary steps</u>, it prepares its report on the assessment of the proposal.”</p> |

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| Stage 4 – EPA report on assessment of proposal (p8) | “An appeal against the EPA’s report does not affect the report until the Minister makes a decision.” | Clarification required that the Minister’s decision is on the appeal, not the proposal. CME recommends rewording to “An appeal against the EPA’s report does not affect the report until the Minister makes a decision <u>on the appeal</u>.” |
| Stage 5 – Ministerial decision on the proposal (p9) | “If any of the other Ministers do not agree with the Minister for the Environment, the decision may need to go to Cabinet.” | This is not consistent with s45 of the amended EP Act. Under s45(5), if the Minister and other Minister/s identified as key decision-making authorities cannot agree on an implementation issue, then the matter is referred to the Governor for decision. Under s45(6), if the Minister and decision-making authority cannot agree on an implementation issue, then the Minister is to appoint an appeals committee to consider and report to the Minister on the matter. CME recommends revising to align with the requirements under s45(5) and (6) of the EP Act. |
| Instructions – Environmental outcomes and outcome-based conditions | | |
| Hyperlinks to external documents (throughout) | External documents not hyperlinked | CME recommends including hyperlinks to all external documents referenced. |
| Requirements of the proponent (p4) | “Once the (proposal-centric) likely residual impacts from a proposal are assessed, proponents should then set out the (environment-centric) environmental outcomes they propose to achieve or ensure during and after the implementation of their proposal.” | It is unclear how proponents achieve or ensure anything <u>after</u> implementation of their proposal. A proponent is required to implement a proposal as approved, which may include the achievement of closure outcomes. However, the implementation of the proposal is the limit of a proponent’s responsibility and outcomes achieved post-implementation (i.e. post closure and relinquishment) are beyond the responsibility of the proponent. Proponents are responsible for identifying post-mining land uses and delivering outcomes that enable those land uses. The post-mining landowner and/or land manager is responsible for the appropriate tenure and actual use of the land post relinquishment. CME recommends revising to “[...] environmental outcomes they propose to achieve or ensure during the implementation of their proposal.” |

| Section | Description of proposed amendment/s | Response |
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| Instructions – How to identify the content of a Proposal | | |
| Proposal content document template – Proposal elements | “Proposal elements include all specific activities associated with, and components of, a proposal which have the potential to have a significant effect on the environment.” | <p>Wording is ambiguous. Is the intention that the proposal elements are –</p> <ul style="list-style-type: none"> (i) Only the specific activities that may have a significant effect on the environment, or (ii) All specific activities associated with a proposal when the proposal may have a significant effect on the environment? <p>CME recommends revising the wording to clarify that only specific activities that may have a significant effect must be included in proposal elements.</p> |
| | Level of detail required at referral | <p>The Instructions indicate that the referral document should include the proposal content document and the likely environmental outcomes.</p> <p>For certain projects (likely to require an extended public environmental review) this information will likely not be known at the referral stage. In these instances, as the proposal is studied further and refined, these items will change. This scenario should be better accommodated in the template.</p> <p>It is also unclear how some of the items shown in the example are relevant to environmental outcomes (e.g. how does the exact size of an evaporation pond change the environmental outcomes?) due to their negligible level of impact relative to other key project aspects for certain proposals (e.g. large mining operations that operate for multiple decades). Only significant features should require such level of detail – particularly at the referral stage.</p> <p>Under the revised Instructions, significant additional studies would be required prior to referral, and additional s43A applications would be required to amend the referred proposal during assessment.</p> <p>CME recommends the examples be revised to reduce the level of detail currently captured to better reflect the practical application of the Instructions.</p> |

| Section | Description of proposed amendment/s | Response |
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| <p>Examples – Table 2: Proposal elements which have the potential to have a significant effect on the environment</p> | <p>Physical elements</p> | <p>Table 2 includes a detailed breakdown of disturbance by activity. This level of detail is not described within the requirements outlined in the body of the Instructions.</p> <p>The requirement to provide a detailed breakdown of disturbance by activity does not reflect a risk-based, outcome-focused approach. Requiring this level of detail removes the flexibility required by proponents to implement their proposals efficiently and effectively, and adaptively manage environmental values to ensure environmental outcomes are achieved.</p> <p>CME recommends the examples be revised to clarify that a breakdown of disturbance by activity is not required for proposal elements within a proposal content document.</p> |
| | <p>Greenhouse gas emissions</p> | <p>Table 2 includes greenhouse gas emissions described in “ppm CO² equivalent” which are non-standard units and incorrect chemical notation.</p> <p>CME recommends correcting the greenhouse gas emission units to “t CO₂e”.</p> |
| | <p>Rehabilitation</p> | <p>Rehabilitation methods are included in examples, however the requirement for this detail is not included in the body of the Instructions. The requirement to provide this level of detail restricts does not facilitate flexibility in proposal implementation or adaptive management and innovation to deliver closure outcomes.</p> <p>CME recommends the examples be revised to clarify that closure outcomes, rather than specific rehabilitation methods, are required to be outlined in the proposal content document.</p> |
| | <p>Other elements which affect extent of effects on environment – “Proposal time”</p> | <p>Specific timeframes for phases of implementation of the proposal have been included in examples. The requirement to provide this level of detail is not included in the body of the Instructions, rather stating that the proposal elements of a proposal “could include duration”. Often for mining projects estimated durations are exceeded due to unforeseen circumstances, and any such timeframes should be considered indicative only.</p> |
| <p>Instructions – How to prepare an Environmental Scoping Document</p> | | |
| <p>Content of an Environmental Scoping Document (p3)</p> | <p>General form and consent – “The ESD must also:”</p> | <p>Typographical error. The sentence is incomplete.</p> |

| Section | Description of proposed amendment/s | Response |
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| Instructions – How to prepare an Environmental Review Document | | |
| Content of an Environmental Review Document | <p>Document control –</p> <p>“If someone other than the Chief Executive Officer (CEO) (including a consultant) submits the ERD, provide evidence of authority to act on behalf of the CEO.”</p> | <p>Evidence of authority to act on behalf of the Chief Executive Officer (CEO) is also required for a s38 Referral. Where an Environmental Review Document (ERD) document is submitted in conjunction with a s38 Referral, it is unclear why it is necessary to include evidence of authority to act on behalf of the CEO on the ERD <u>and</u> the s38 Referral.</p> <p>Further, it is unclear what is considered sufficient evidence of authority, whether this can simply be the CEO signature in the document control box or something more explicit.</p> <p>CME recommends clarifying what evidence of authority to act on behalf of the CEO is required for an ERD.</p> <p>Where an ERD is submitted in conjunction with a s38 Referral, CME recommends clarifying whether evidence of authority to act on behalf of the CEO is required on both documents.</p> |
| | <p>Invitation to make a submission –</p> <p>“Print the invitation on different coloured paper.”</p> | <p>Question whether this is still necessary and relevant in the context of electronic submissions.</p> <p>CME recommends removing the requirement to print the invitation on different coloured paper.</p> |
| | <p>Executive summary</p> | <p>The Instructions recommend that the executive summary should be two to five pages in length however this is not achievable if the key environmental factor summary table is included.</p> <p>CME recommends providing an example demonstrating the sufficient level of detail to be captured under Table 3 and enable proponents to meet the recommended page length.</p> |

| Section | Description of proposed amendment/s | Response |
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| | 5.1.4 Potential environmental impacts | <p>The Instructions should explicitly state that cumulative impacts only need to be considered for the region defined as the receiving environment for each factor.</p> <p>The total impact of other proposals on the environmental value should also be explicitly constrained to the defined region.</p> <p>The known extent of the environmental value in the local and regional context is required to be defined, however the total impacts are to be assessed relative to the “environmental value”. It is unclear whether the “environmental value” is to be the total global environmental value, or the local and regional extent.</p> <p>It is unclear whether the proportion of the local and regional value likely to be impacted is required to be described, or whether only the total quantity of the impact (not proportion) is required.</p> <p>CME recommends revising the Instructions to clarify that:</p> <ul style="list-style-type: none"> • Cumulative impacts need only be considered for the region defined as the receiving environment for each key environmental factor. • The total impact of other proposals on the environmental value be constrained to the aforementioned defined region. • The total quantity (not proportion) of the impact on a local or regional environmental value is required to be described. |

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| | <p>5.1.4 Potential environmental impacts – “[...] if an indicative footprint has been proposed in order to seek flexibility in locating the proposal footprint during implementation, include consideration of impacts in all areas which may be subject to a final footprint, not just impacts within the indicative footprint.”</p> | <p>The requirement to consider impacts in all areas which may be subject to a final footprint may be reasonable for projects with fixed infrastructure, however is impracticable for mine sites with long lifespans and dynamic infrastructure (such as haul roads) which often change and the location of all alternative footprints are not known at the assessment stage.</p> <p>This requirement considerably limits the ability for the adaptive management of proposal as additional information becomes available, consequently resulting in additional s43A and/or s45C applications required to amend the approved footprint.</p> <p>For example, the locations of waste dumps, stockpiles, and infrastructure may need to be altered in response to:</p> <ul style="list-style-type: none"> ● Further flood modelling – shape of waste dump altered to move it out of the flood zone ● Recording more erodible material – waste dump design altered in size / shape to ensure integrity ● Recording of additional heritage site and/or Traditional Owner requests – location of infrastructure and waste dumps changed ● Mine schedule changes – locations of waste dumps changed to accommodate altered mining sequence <p>The ERD should focus on identifying and avoiding the key environmental values in the Development Envelope. The EPA should consequently focus on ensuring environmental values have been adequately identified and appropriate avoidance / mitigation measures are in place. This would afford proponents the necessary flexibility in adaptively managing the implementation of their proposal within the Development Envelope to ensure good environmental outcomes.</p> <p>To support a proponent's adaptive management of their proposal to meet the EPA's objectives and specific environmental outcomes, CME recommends the ERD be revised to focuses on identifying and avoiding key environmental values within the Development Envelope.</p> |

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| | 5.1.5 Mitigation | <p>With the current layout, quantification of potential environmental impacts is required to occur before assessment of mitigation actions. The intent of this process flow is to quantify the full potential impact of the proposal prior to mitigation measures; however, some mitigation measures have already been built into the proposal content by consideration of alternatives.</p> <p>The following would represent a more logical impact assessment process flow:</p> <ol style="list-style-type: none"> (1) Assess planned avoidance measures or mitigation incorporated into the proposal content. (2) Quantify potential impacts based on planned avoidance measures. (3) Assess secondary mitigation measures to further reduce potential impacts. <p>The secondary mitigation measures are not incorporated into the proposal content and therefore could be applied via outcome-based conditions.</p> <p>CME recommends the document structure be revised to incorporate a two-step assessment of mitigation measures whereby planned avoidance measures incorporated into the proposal content are initially assessed, upon which potential environmental impacts are quantified, and secondary mitigation measures are assessed to further reduce potential impacts.</p> |
| | 5.1.6 Assessment and significance of residual impacts | <p>CME supports the addition of an explicit section requiring assessment of residual impacts, assessing impacts after secondary mitigation measures.</p> |
| | 5.1.7 Environmental outcomes | <p>CME supports the additional clarity provided regarding environmental outcomes, proposed conditions, and additional instructions.</p> |
| | 8. Matters of National Environmental Significance | <p>CME supports the additional clarity provided regarding Matters of National Environmental Significance.</p> |
| | Spatial data and figures | <p>Additional clarity regarding what data is required to be provided would be useful (i.e. every component of the content of the proposal, including development envelope, footprints, etc).</p> <p>CME recommends clarifying what data is required to be provided.</p> |

| Section | Description of proposed amendment/s | Response |
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| Form – Table of Contents for an Environmental Review Document | Figures and Appendices | <p>It is unclear whether the list of Figures and Appendices is intended to be indicative or prescriptive. CME does not support this as a prescriptive list as it is not reflective of real application. For example, IBSA and IMSA data packages are submitted electronically via a prescribed system and are not captured in appendices.</p> <p>CME recommends clarifying that the list of Figures and Appendices are indicative only.</p> |
| Form – Tables | Table 7: Policy and guidance | <p>The table format is not effective – the environmental factor is to be captured under column 1, however the table would be inserted into a section for each environmental factor.</p> <p>Further, under section 5.1.2 of the Instructions the proponent is expected to describe how they have considered the relevant policy and guidance. The proposed table format does not reflect this requirement, rather requiring the proponent to list relevant policy / guidance as they relate to each key environmental factor.</p> <p>CME recommends the table format be revised to capture the relevant policy / guidance under column 1 and how it has been considered in relation to the proposal under column 2.</p> |
| Instructions – Referral of a proposal to the Environmental Protection Authority under section 38 of the <i>Environmental Protection Act 1986</i> | | |
| Overview – Spatial data, maps, and figures | “The EPA requires maps and figures in the referral.” | <p>It is unclear that the maps and figures need not be included in the referral form but may be included in supporting documentation.</p> <p>CME recommends clarifying that maps and figures may be provided in documentation supporting the referral.</p> |