



Department of **Water and Environmental Regulation**

Department of **Biodiversity, Conservation and Attractions**

Memorandum of Understanding

for collaborative arrangements between the

Department of Water and
Environmental Regulation

and the

Department of Biodiversity,
Conservation and Attractions

1 Introduction

This Memorandum of Understanding (MOU) provides a framework for effective communication and cooperation between the Department of Water and Environmental Regulation (DWER) and the Department of Biodiversity, Conservation and Attractions (DBCA) (collectively, the 'Parties') when undertaking their respective regulatory responsibilities.

DWER is responsible for supporting Western Australia's community, economy and environment by managing and regulating the state's environment and water resources under the *Environmental Protection Act 1986* (EP Act) and other environmental legislation. DWER supports the Western Australian Environmental Protection Authority (EPA) to conduct environmental impact assessments of both significant proposals and schemes under Part IV of the EP Act. The outcomes of an environmental impact assessment inform the EPA's recommendation to the Minister for Environment on whether or not a significant proposal or scheme should be implemented, and if so, what conditions should apply.

DBCA is responsible for managing and conserving the biodiversity, social and Aboriginal cultural heritage values of lands and waters reserved under the *Conservation and Land Management Act 1984* (CALM Act); supporting and promoting recreation and tourism on these lands; the conservation, and management of biodiversity and biodiversity components; and the protection of threatened species and ecological communities pursuant to the *Biodiversity Conservation Act 2016* (BC Act).

The MOU seeks to facilitate the effective administration of the EP Act, CALM Act and BC Act (including associated subsidiary legislation). This MOU recognises that both DWER and DBCA have responsibilities in the administration of specific legislation and adopt procedural responsibilities for environmental protection and biodiversity conservation.

The primary intent of this MOU is to ensure that when the Parties interact with each other, their respective legislative and procedural responsibilities are carried out in the most efficient, fair, transparent and consistent manner. It also seeks to facilitate the timely delivery of consistent and efficient advice, and the removal of administrative overlap and duplication within a risk-based regulatory approach.

2 Purpose

Both Parties have legislative obligations and responsibilities for environmental management, protection and regulation.

The purpose of the MOU is to:

1. provide an agreed framework for collaborative working arrangements between the Parties to facilitate transparent, efficient and effective administration of each other's regulatory and procedural roles; and
2. outline a shared understanding of each Party's regulatory and procedural roles in providing advice to the Minister for Environment under relevant legislation.

The MOU is not intended to replace or conflict with responsibilities that each Party has under the legislation and policies which it administers, or other relevant legislation. The MOU has no bearing on the functions and role of the EPA.

3 Objectives

The overarching objective of the MOU is to facilitate the implementation of the Parties' legislative and procedural responsibilities in an efficient, fair, transparent and consistent manner. The MOU provides an administrative framework which:

- defines the respective roles and responsibilities of DWER and DBCA in their interactions with each other;
- identifies shared principles of cooperation regarding interactions between development activities, CALM Act lands and waters, and biodiversity values in Western Australia;
- recognises that there are both statutory and non-statutory processes requiring interactions between DWER and DBCA;
- provides for development and implementation of agreed administrative arrangements and protocols;
- facilitates effective and efficient communication and consultation processes between DWER and DBCA to support appropriate and timely assessment and approval processes;
- maintains departmental transparency to the public;
- maximises consistency and minimises uncertainty for proponents and the public in relation to approvals and the outcomes of development activities on CALM Act lands and waters, and potential impacts on biodiversity values.

Schedules attached to this MOU contain specific arrangements and protocols relating to regulatory processes under legislation. The schedules can be updated or revised with the signed approval of the relevant Deputy Directors General of both Parties, without requiring amendment to the overarching MOU.

4 Scope of the MOU

This MOU is applicable to proposals, schemes and activities assessed or otherwise regulated under Part IV of the EP Act in relation to:

- statutory requirements for threatened species and communities protected under the BC Act;
- existing and proposed CALM Act lands and waters and associated values managed by DBCA pursuant to the CALM Act; and
- the provision of discretionary advice for native flora, fauna and ecological communities in Western Australia protected under the BC Act or otherwise identified as conservation significant under DBCA policies as issued, amended or replaced from time to time.

Where appropriate, the processes, protocols or procedures developed and provided for under this MOU may, by mutual agreement, be more widely applied or adapted to other land areas, places or values.

5 Principles

In the pursuit and achievement of the objectives of this MOU, the Parties will be guided by the following principles:

Shared recognition of roles and responsibilities

Both Parties are government departments of the State of Western Australia within the responsibility of the Minister for Environment and share many common objectives. The Parties recognise that effective cooperation and sharing of information and knowledge optimises service delivery, including the efficiency and quality of advice provided to the Minister for Environment.

The Parties acknowledge each other's statutory and non-statutory roles, objectives and other accountabilities in implementing this MOU and associated schedules.

Planning and working cooperatively

The Parties will plan and implement work to support effective cooperation between each other and will endeavour to ensure successful implementation of this MOU and associated schedules. The Parties commit to supporting each other's respective statutory assessment and approvals processes, while ensuring related assessment and approvals processes are effectively coordinated. The Parties will regularly forecast requirements, where data is available, to support cooperation under this MOU and to allow each other to plan and allocate resources as required.

Effective consultation and communication

The Parties will:

- exchange current, accurate and relevant information and advice in good faith; and
- ensure detailed consultation occurs for proposed changes to relevant external and internal documents relating to this MOU.

6 Consultation criteria

DWER **will** seek advice from DBCA at appropriate stages of the assessment, in cases where:

- a proposal or scheme directly or indirectly impacts, or has the potential to impact on State-listed threatened flora, fauna and/or ecological communities listed under the BC Act;
- a proposal or scheme affects lands or waters managed by DBCA; for example, State forests, national parks, nature reserves, conservation parks and marine parks;
- a proposed or implemented environmental offset:
 - involves the protection or management of threatened flora, fauna and/or ecological communities;
 - is proposed or implemented on or directly adjacent to lands or waters managed by DBCA; and/or
 - where DBCA is proposed as a potential manager and/or research partner, or has any other role in the implementation of that offset; and
- draft or approved Ministerial conditions specifically refer to DBCA, or its predecessors, and/or matters directly relevant to its legislative responsibilities.

DWER **may** seek advice from DBCA at appropriate stages of assessment, in cases where:

- a proposal or scheme significantly impacts, or has the potential to significantly impact on:
 - priority flora;
 - priority fauna and other conservation listed species;
 - priority ecological communities; and/or
 - areas proposed for addition to the conservation reserve system.

7 Timelines

The Parties will use their best endeavours to optimise the overall timeline for assessment and approval processes based on agreed timelines for provision of requested advice at various stages that may be outlined in the schedules. Both Parties recognise that, in the context of effective regulation, this may not always be achievable. Where possible, the Parties will accommodate reasonable amendments to timeframes for the provision of information or advice.

8 Sharing information

Both Parties will:

- maintain the use, security and non-disclosure of confidential information;
- assume information is confidential unless otherwise advised; and
- retain the property of their own documents.

Where a Party considers that it has acquired information that is of significant interest, importance or relevance to the statutory responsibilities of the other Party, it will notify the other Party and provide that information wherever practicable, subject to ensuring statutory requirements and agency objectives are suitably addressed.

Both Parties will comply with any confidentiality and data sharing requirements, including those in force under relevant legislation (e.g. *Freedom of Information Act 1992 (WA)*), applicable to any information systems used from time to time.

9 Complaints, enquiries and incidents

For complaints, enquiries and incidents involving third parties that are relevant to statutory roles and responsibilities of either or both Parties, it is agreed that both Parties will undertake a collaborative approach to notifying and informing each other of the matter where relevant.

Where it is determined that a complaint, enquiry or incident should be referred to the other Party for action, the Parties will consult each other and, where appropriate, agree on whether and which single Party will take the lead role in the investigation. The Party conducting the investigation will ensure the other Party is kept up to date during the process of managing the relevant matter/s.

10 Policy development

The Parties will:

- consult with each other about the development or revision of legislation, policies and guidelines affecting each other's interests or responsibilities;
- where appropriate, aspire to apply complementary policy and decision-making and minimise regulatory overlap and duplication as far as practicable; and
- collaborate in policy development, where appropriate, with a view toward jointly publishing documents in circumstances where decision-making is shared between the Parties.

11 Contentious issues management

The Parties will communicate closely and coordinate actions on contentious issues before government. A lead Party may be agreed for specific contentious issues to provide advice to the Minister for Environment, the media and the public on a particular issue. Where appropriate, the lead Party will consult and generally act with the agreement of the other Party and provide final versions of advice and correspondence to that other Party.

12 Dispute resolution

The Parties will endeavour to resolve any disputes arising in relation to the implementation of this MOU or schedules by negotiation. Dispute resolution will occur between relevant officers, with elevation to more senior levels only if necessary.

13 Governance

The Parties will collaborate to achieve ongoing operation and oversight of the MOU.

The Parties will establish and participate in regular meetings or workshops on matters relevant to this MOU. Such meetings or workshops will include relevant officers and, where appropriate, senior-level staff from both Parties, with agreed outcomes recorded. The frequency of the meetings or workshops will be decided by agreement and will be varied as required.

14 Monitoring and audit of implementation

The Parties will monitor implementation during the period of this MOU and, where agreed as appropriate, use external providers to perform implementation audits focusing on achievement of the objectives of this MOU.

15 Duration

The MOU will commence from the date of execution and continue on its terms, as amended or replaced from time to time, until it is terminated by written notice by either Party.

16 Review

The MOU is subject to a review every five years. A review may be undertaken sooner if there is a substantial change in government policy affecting the subject or substance of the MOU or through agreement between both Parties.

Amendments to the MOU may be implemented with the signed approval of both Directors General. Schedules to this MOU may be created or amended with the signed approval of the relevant Deputy Directors General of both Parties or nominated delegates.

17 Legal status

This MOU is not intended to be legally binding. It does not create enforceable obligations between the Parties. The Parties are bound by legislation to perform their functions. This MOU does not abrogate the legislative responsibilities of the Parties.

18 Execution

The signatories below endorse the MOU on behalf of the Parties.



Alistair Jones
Director General
Department of Water and
Environmental Regulation

Date: 25 November 2024



Stuart Smith
Director General
Department of Biodiversity,
Conservation and Attractions

Date: 28 November 2024

Schedule 1

**LIST OF SCHEDULES FOR THE MEMORANDUM OF UNDERSTANDING
FOR COLLABORATIVE ARRANGEMENTS BETWEEN THE
DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION AND
THE DEPARTMENT OF BIODIVERSITY, CONSERVATION AND
ATTRACTIONS**

| | | |
|-------------------|--|------------------|
| Schedule 2 | Communication Protocol between DWER and DBCA For advice to assist EPA assessment of significant resource, industrial and infrastructure proposals under Part IV of the <i>Environmental Protection Act 1986</i> | |
| | Date approved | 28 November 2024 |
| | Status | Current |
| Schedule 3 | Communication Protocol between DWER and DBCA For advice to assist EPA assessment of land use planning proposals and schemes under Part IV of the <i>Environmental Protection Act 1986</i> | |
| | Date approved | 28 November 2024 |
| | Status | Current |

Schedule 2

COMMUNICATION PROTOCOL BETWEEN THE DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION AND DEPARTMENT OF BIODIVERSITY, CONSERVATION AND ATTRACTIONS

For advice to assist EPA assessment of significant resource, industrial and infrastructure proposals under Part IV of the *Environmental Protection Act 1986*

It is recognised by both Parties that clear arrangements and cooperative interaction (both informal and formal) are necessary to allow for:

- effective and efficient assessment of significant resource, industrial and infrastructure proposals under Part IV of the *Environmental Protection Act 1986* (EP Act); and
- consideration of the *Biodiversity Conservation Act 2016* (BC Act) and *Conservation and Land Management Act 1984* (CALM Act) statutory approval requirements.

Separate arrangements apply to DBCA advice on land use planning proposals, planning schemes and state planning policies (see Schedule 3).

In undertaking environmental impact assessment (EIA) of proposals under Part IV of the EP Act, DWER applies a significance-based approach as outlined in, amongst other materials, the [Statement of environmental principles, factors, objectives and aims of EIA](#), [Environmental Impact Assessment \(Part IV Divisions 1 and 2\) Administrative Procedures](#) and [Environmental Impact Assessment \(Part IV Divisions 1 and 2\) Procedures Manual](#) (collectively, 'Guidance materials'), as amended from time to time. Consistent with the EP Act, application of the Guidance materials ensures that the EIA process focuses on those aspects that are likely to result in significant environmental impacts, rather than all environmental impacts.

Consultation procedures

While informal cooperation between individual officers and individual branches is assumed and expected, formal consultation procedures are detailed below.

All requests for formal advice will occur in writing from DWER's managers within EPA Services to DBCA's Manager Environmental Management Branch (EMB) or delegate (emailed to EMBAdmin@dbca.wa.gov.au).

Where a proposal is:

- identified as a State significant or strategic project by the Government of Western Australia from time to time;
- is of a type or category recognised in the Ministerial Statement of Expectation issued under the EP Act from time to time; and/or
- is one of particularly high public interest,

DWER will identify these matters in relevant correspondence and communications between the Parties.

If an advice request is issued from and between the Directors General of both Parties, an additional five days is required to allow for the Director General sign-off process within DBCA.

Upon establishment of Cross-Sector Triage Teams (CSTTs) within each agency, advice requests, both formal and informal, may involve the CSTTs where appropriate.

It is recognised that DWER has adequate environmental assessment skills, knowledge and expertise to undertake appropriate EIAs in most situations. Therefore, it is important that requests for technical subject matter expertise from DWER to DBCA are limited to situations where the information required cannot be sourced internally. Prior to seeking advice from DBCA and where DWER considers technical subject matter advice should be sought, DWER will review the 'Consultation criteria' outlined under clause 6 of this MOU. Where a need for technical information remains, DWER will seek confirmation from DBCA prior to sending a formal advice request.

Table 1 of this Schedule outlines process, key interactions, timelines and expected information requirements for consultation throughout each of the stages of the EIA process through to post-assessment.

When seeking advice from DBCA, DWER **will** ensure requests:

- clearly articulate the scope and nature of review required;
- identify the particular matters on which advice and/or feedback is requested;
- are framed to aid risk-based decision-making; and
- use advice templates agreed between the Parties as amended or replaced from time to time.

DBCA will provide consolidated advice to DWER via the Manager EMB or delegate (or Director General where appropriate).

DBCA will determine and provide advice only on matters of significance and relevance to the department's legislative responsibilities, with a response to this effect from the Manager EMB being provided within the timeframes outlined in Table 1.

DBCA will identify in its advice those aspects that relate to its statutory responsibilities under the BC Act and CALM Act, and those that are non-statutory. DBCA's risk-based advice will align with its *Corporate Guideline 37 Assessing the risks to conservation of biodiversity associated with threatened species and threatened ecological communities* and will also support the EPA's assessment of significance as outlined in, amongst other materials, the Guidance materials.

Engagement with proponents

DWER will encourage proponents of proposals to discuss issues and matters related to DBCA's legislative responsibilities directly with DBCA throughout the EIA process. DBCA will endeavour to engage on a case-by-case basis, considering the risks associated with statutory requirements of the BC Act and CALM Act. DBCA's engagement in relation to non-statutory issues will be by agreement and subject to available capacity. Where DBCA requests that a DWER Assessment Officer attend any such engagement, DBCA officers will issue the request to the relevant DWER officers. DWER officers will only support any such requests with the prior agreement of the relevant DWER Branch Manager.

DWER may invite DBCA to participate in pre-referral workshops with proponents to provide early advice on relevant issues consistent with the 'Consultation criteria' outlined in clause 6 of this MOU. Where appropriate, DWER will ensure that any advice provided by DBCA, and information provided or commitments made by the proponent, during such meetings is formally documented and confirmed by DBCA.

Parallel processing and parallel decision-making

The Parties will work in a collaborative and coordinated manner to implement parallel decision-making and parallel processing for Part IV EP Act assessments and related approvals processes.

Both Parties will follow the whole-of-government [Parallel Decision-Making Policy](#) and any relevant guidance issued, amended or replaced from time to time.

To the extent that parallel processing or decision-making of assessments under the EP Act and BC Act is necessary or agreed for a proposal, DWER and DBCA will develop a coordinated assessment approach, including with respect to information required from proponents to support both assessment and approvals processes.

Early engagement with proponents and other decision-making authorities (DMAs) is important and leads to efficiencies during assessment and approval processes.

In undertaking parallel processing or decision-making, the Parties will endeavour to:

- share information relevant to the other's assessment and approvals processes for efficient and streamlined processing or decision-making; and
- share information required from proponents to support parallel decision-making, subject to any confidentiality requirements.

Where DBCA considers that parallel processing or decision-making requires additional information for BC Act and CALM Act matters beyond that required by DWER to support a Part IV EP Act assessment, DBCA will seek required information directly from proponents outside of the concurrent Part IV EIA process. This may include additional meetings with proponents, particularly during the pre-referral stage of assessment.

Document distribution

DWER will request advice from DBCA electronically and provide, or make available, electronic copies of relevant documentation and information that is searchable, including through online cloud services.

Timelines and extensions

DWER will endeavour to provide DBCA with reasonable time for document review and provision of advice in accordance with the timelines identified in Table 1 of this Schedule. Prior to requesting advice, DWER may consider reasonable adjustments to timelines outlined in Table 1 based on the:

- priority of the request;
- volume and quality of information provided for review;
- nature and complexity of the matters identified; and

- number of matters on which advice is sought.

DBCA will seek to meet these timelines. Where there may be difficulties in doing so, DBCA will contact DWER as soon as possible following receipt of correspondence to discuss a reasonable, revised timeline. Both Parties recognise that meeting timelines may not always be achievable. DWER will endeavour to accommodate reasonable requests for time extensions where these are justified and align with any relevant statutory timeframes prescribed under the EP Act for a particular stage of EIA, a direction of timelines from the Minister for Environment, or broader government policy.

All requests for extension of five business days or less will be requested by the Manager EMB and approved by the relevant DWER Branch Manager. Where an extension of more than five business days is required, DWER's Director Major Project Assessments must approve the request. When granting extensions, DWER will consider the same factors listed under this section to adjust timelines under Table 1 of this Schedule. DWER will also have regard for the number of requests for advice provided to DBCA at any point in time and identify priority requests where possible.

In cases where DBCA identifies an omission of key documentation or major deficiencies in the available information, DBCA will endeavour to advise DWER as soon as reasonably practicable after receiving the request. Where agreed and permitted under the EP Act, the timeline for provision of advice may be suspended while documentation is provided and restarted from when the full complement of information becomes available.

To enable DBCA to meet target timelines referred to in Table 1, open communication between DWER and DBCA staff during the assessment process on the progress of assessments and advance notice of upcoming advice requests will likely assist in the timeliness of assessment and approval processes. DWER and DBCA will develop agreed processes for regularly communicating respective workloads and priorities, which may include regular meetings between relevant teams.

DBCA contact

DBCA's Director General may nominate a particular DBCA officer, other than the Manager EMB, as the primary point of contact with respect to any specific proposal.

Problem solving/escalation of issues

It is desirable for officers of DWER and DBCA to meet to clarify and resolve issues of a technical or policy nature, or matters of interpretation, that arise from time to time.

If issues remain unresolved, managers of the relevant branches of DBCA and DWER will meet to discuss the matter(s). If necessary, these issues will be escalated to the relevant Executive Directors and/or Deputy Directors General, to be resolved.

Where necessary, matters will be referred to the Directors General of DWER and DBCA.

Review

These procedures are to be reviewed within six months of the date of this Schedule and annually thereafter.



Chris Shaw
Deputy Director General Approvals
Department of Water and
Environmental Regulation

Date: 22 November 2024



Peter Dans
Deputy Director General Parks and
Wildlife
Department of Biodiversity,
Conservation and Attractions

Date: 28 November 2024

Table 1: Communication Protocol between DWER and DBCA for significant resource, industrial and infrastructure proposals assessed under Part IV of the *Environmental Protection Act 1986 (WA)* (November 2024)

Stages 1 & 2: Pre-referral, referral and decision to assess

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|--|---|---|-------------------------|-----------------|--|--|
| Pre-referral consultation | DWER may seek early advice from DBCA on a proposal and its location, including at a pre-referral meeting. | Assessment Officer | Manager EMB | Informal | Case-by-case basis | Advice may relate to additional information required, including scoping considerations. Pre-referral meetings with both agencies and with proponents are encouraged, particularly to identify information likely to be required to support Part IV EP Act and BC Act assessments. Pre-referral meetings should also identify the extent to which parallel processing under the EP Act and BC Act can occur and the respective information requirements where proponents seek parallel processing options. |
| Consultation regarding level of assessment | DWER may seek advice from DBCA on a proposal and its location, to assist in understanding the significance of impacts to determine the level of assessment for a referred proposal. | Assessment Officer Relevant Branch Manager | Manager EMB | Informal/Formal | Informal – case-by-case basis Formal – 15 business days | Advice may relate to additional information required, including scoping considerations. DBCA may provide informal advice. |

Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Stages 3 & 4: Assessment of proposals and report on assessment

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|--|--|---|-------------------------|-----------------|--|---|
| Scoping issues | DWER may seek advice from DBCA regarding any preliminary scoping issues. | Assessment Officer Relevant Branch Manager | Manager EMB | Informal/Formal | Informal – case-by-case basis Formal – 15 business days | Requests for advice will be dependent on level of assessment determined in Stage 2. |
| Draft environmental scoping document (ESD) | DWER may seek DBCA's advice on a draft ESD. | Relevant Branch Manager | Manager EMB | Formal | Within the public review period or 10 business days | Advice may relate to the adequacy and appropriateness of investigations (e.g. surveys) identified in a draft ESD to allow for a fully informed assessment of a proposal. Where alternative methods of seeking advice are undertaken, such as via a workshop, DWER will ensure advice, recommendations and action items are captured and circulated to DBCA in writing. |

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|--|--|---|----------------------------------|-----------------|--|--|
| Draft environmental review document (ERD)/additional information | DWER may seek advice from DBCA on a draft ERD with proposal-specific advice requests. | Relevant Branch Manager | Manager EMB | Formal | 20 business days | <p>Advice may relate to the adequacy of information identified and described in the draft ERD/additional information to enable a determination to be made on the release of the documentation for stakeholder review (not released for public review) or public review. Advice may also relate to the level of risk and significance of impact of the proposal as described in the draft ERD/additional information.</p> <p>Where alternative methods of seeking advice are undertaken, such as via a workshop, DWER will ensure advice and action items are captured and circulated to DBCA in writing.</p> <p>In cases where DBCA advice is being sought for subject matter expertise, pre-consultation is to occur between the relevant DWER Branch Manager and Manager EMB prior to formal advice being requested to determine DBCA's capacity/capability.</p> <p>Duplication of advice requests should be avoided where possible between DBCA and DWER's Terrestrial Ecosystems Branch.</p> |
| ERD/additional information at time of public review | DWER may seek advice from DBCA on a draft ERD with proposal-specific advice requests. | Relevant Branch Manager | Director General via Manager EMB | Formal | Within public review period; at a minimum 20 business days | <p>Advice may relate to the level of risk and significance of impact of the proposal identified and described in the draft ERD/additional information.</p> <p>Where the public review period is less than four weeks, DWER will endeavour to provide DBCA with the ERD/additional information ahead of the public review period to provide 20 business days for review.</p> |
| Response to submissions | DWER may seek advice from DBCA on a proponent's responses to submissions (where DBCA provided advice during the public review period, or where significant new or changed impacts result from submissions) with proposal-specific advice requests. | Assessment Officer Relevant Branch Manager | Manager EMB | Informal/Formal | Informal – case-by-case basis Formal – 20 business days | <p>Advice may relate to the responses received regarding an ERD/additional information, identified and described in a proponent's response to submissions.</p> <p>Where alternative methods of seeking advice are undertaken, such as via a workshop, DWER will ensure advice, recommendations and action items are captured and circulated to the proponent and DBCA in writing.</p> |
| Draft conditions | DWER may seek advice from DBCA regarding specific draft Ministerial Statement conditions, including after an EPA meeting for Stage 4 (as listed in this Table). | Director Major Project Assessments | Manager EMB | Formal | 7 business days | <p>DWER may consult informally with the Manager EMB during the development of draft Ministerial Statement environmental conditions. Where possible, DWER will provide contextual information on the results of the assessment (e.g. significant new information received after the response to submissions or the outcomes of the assessment) to assist in understanding the draft conditions and enabling advice on the draft conditions.</p> <p>Wherever possible, DWER will endeavour to provide prior advice to DBCA of its intention to seek advice on a particular condition set.</p> |

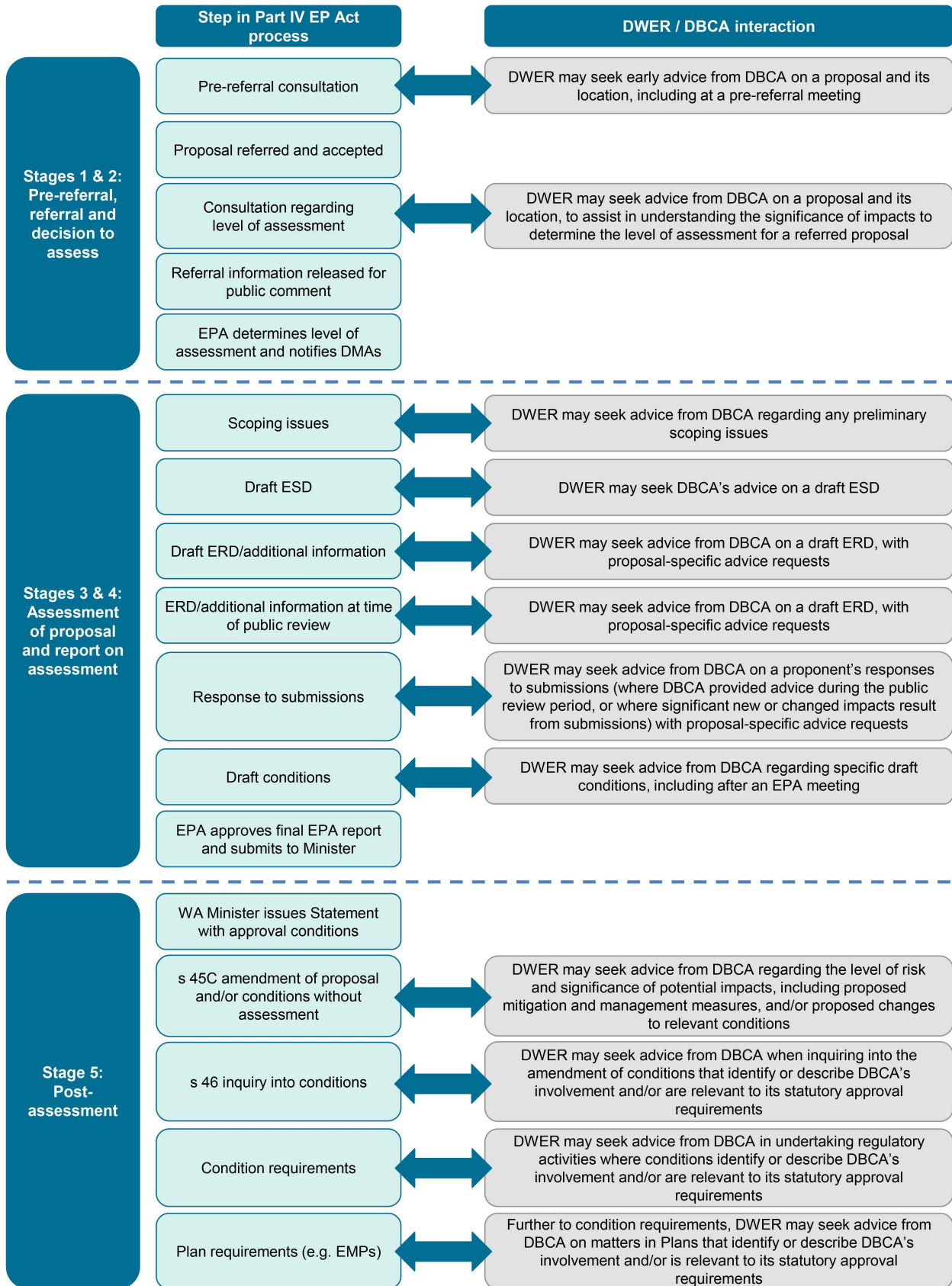
Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Stage 5: Post-assessment

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|---|--|---|-------------------------|-----------------|--|---|
| Section 45C EP Act amendment of proposal and/or conditions without assessment | DWER may seek advice from DBCA regarding the level of risk and significance of potential impacts, including proposed mitigation and management measures, and/or proposed changes to relevant conditions. | Relevant Branch Manager | Manager EMB | Formal | 15 business days | Relevant conditions are those that identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. Consultation to occur prior to completion of process. |
| Section 46 EP Act inquiry into conditions | DWER may seek advice from DBCA when inquiring into the amendment of conditions that identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. | Relevant Branch Manager | Manager EMB | Formal | 15 business days | Consultation to occur prior to completion of process. |
| Condition requirements | DWER may seek advice from DBCA in undertaking regulatory activities where conditions identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. | Relevant Branch Manager and/or Senior Manager (Assurance) | Manager EMB | Informal/Formal | Informal – case-by-case basis Formal – 20 business days | |
| Plan requirements (e.g. environmental management plans (EMPs)) | Further to condition requirements, DWER may seek advice from DBCA on matters in plans that identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. | Relevant Branch Manager | Manager EMB | Formal | 20 business days | Where conditions that require the preparation and implementation of EMPs in consultation with, on the advice of, or to the satisfaction of DBCA, DWER will encourage direct proponent communication and consultation with DBCA, to address any outstanding matters of concern prior to submission of EMPs. Consultation to occur prior to completion of process. |

Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Interactions between DWER and DBCA for proposals referred under s 38 of the EP Act



Schedule 3

COMMUNICATION PROTOCOL BETWEEN THE DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION AND THE DEPARTMENT OF BIODIVERSITY, CONSERVATION AND ATTRACTIONS

For advice to assist EPA assessment of land use planning proposals and schemes under Part IV of the *Environmental Protection Act 1986*

It is recognised by both Parties that clear arrangements and cooperative interaction (both informal and formal) are necessary to allow for:

- effective and efficient assessment of land use planning proposals and planning schemes under Part IV of the *Environmental Protection Act 1986* (EP Act); and
- consideration of the *Biodiversity Conservation Act 2016* (BC Act) and *Conservation and Land Management Act 1984* (CALM Act) statutory approval requirements.

Separate arrangements apply to DBCA advice on significant resource, industrial and infrastructure proposals (see Schedule 2).

In undertaking environmental impact assessment (EIA) of proposals and schemes under Part IV of the EP Act, the EPA applies a significance-based approach as outlined in, amongst other materials, the [Statement of environmental principles, factors, objectives and aims of EIA](#), [Environmental Impact Assessment \(Part IV Divisions 1 and 2\) Administrative Procedures](#) and [Environmental Impact Assessment \(Part IV Divisions 1 and 2\) Procedures Manual](#) (collectively, 'Guidance materials'; noting these Guidance materials are referred to in the absence of similar documentation for Part IV Divisions 3 & 4). Consistent with the EP Act, application of the Guidance materials ensures that the EIA process focuses on those aspects that are likely to result in significant environmental impacts, rather than all environmental impacts.

Consultation procedures

While informal cooperation between individual officers and individual branches is assumed and expected, formal consultation procedures are detailed below.

Requests for formal advice at the referral step will occur in writing from the EPA Chair or delegate to the relevant Regional Manager or delegate, with a copy sent to the Coordinator Land Planning Program (CLPP). All other requests for formal advice will occur in writing from DWER's Director Major Project Assessments or delegate to the relevant Regional Manager or delegate, with a copy sent to the CLPP.

Where a planning proposal or scheme is, relevantly:

- identified as a State significant or strategic project by the Government of Western Australia from time to time;
- is of a type or category recognised in the Ministerial Statement of Expectation issued under the EP Act from time to time; and/or

- is one of particularly high public interest,

DWER will identify these matters in relevant correspondence and communications between the Parties.

If an advice request is issued from and between the Directors General of both Parties, an additional five days is required to allow for the Director General sign-off process within DBCA.

Upon establishment of Cross-Sector Triage Teams (CSTTs) within each agency, advice requests, both formal and informal, may involve the CSTTs where appropriate.

It is recognised that DWER has adequate environmental assessment skills, knowledge and expertise to undertake appropriate EIAs in most situations. Therefore, it is important that requests for technical subject matter expertise from DWER to DBCA are limited to situations where the information required cannot be sourced internally. Prior to seeking advice from DBCA, where DWER considers technical subject matter advice should be sought, DWER will review the 'Consultation criteria' outlined under clause 6 of this MOU. Where a need for technical information remains, DWER will seek confirmation from DBCA prior to sending a formal advice request.

Table 1 and Table 2 (Tables) in this Schedule outline the processes, key interactions, timelines and expected information requirements for consultation throughout each of the stages of the EIA process through to post-assessment for proposals and schemes.

When seeking advice from DBCA, DWER **will** ensure requests:

- clearly articulate the scope and nature of review required;
- identify the particular matters on which advice and/or feedback is requested;
- are framed to aid risk-based decision-making; and
- use advice templates agreed between the Parties as amended or replaced from time to time.

DBCA will provide consolidated advice to DWER via the Regional Manager or delegate (or Director General where appropriate).

DBCA will determine and provide advice only on matters of significance and relevance to the department's legislative responsibilities, with a response to this effect from the Regional Manager being provided within the timeframes outlined in the Tables.

DBCA will identify in its advice those aspects that relate to its statutory responsibilities under the BC Act and CALM Act, and those that are non-statutory. DBCA's risk-based advice will align with its *Corporate Guideline 37 Assessing the risks to conservation of biodiversity associated with threatened species and threatened ecological communities* and will also support the EPA's assessment of significance as outlined in, amongst other materials, the Guidance materials.

Engagement with proponents

DWER will encourage proponents of proposals to discuss issues and matters related to DBCA's legislative responsibilities directly with DBCA throughout the EIA process. DBCA will endeavour to engage on case-by-case basis, considering the risks associated with statutory requirements of the BC Act and CALM Act. DBCA's engagement in relation to non-statutory issues will be by agreement and subject to available capacity. Where DBCA requests that a DWER Assessment Officer attend any such engagement, DBCA officers will issue the request to the relevant DWER officers. DWER

officers will only support any such requests with the prior agreement of the relevant DWER Branch Manager.

DWER may invite DBCA to participate in pre-referral workshops with proponents to provide early advice on relevant issues consistent with the 'Consultation criteria' outlined in clause 6 of this MOU. Where appropriate, DWER will ensure that any advice provided by DBCA, and information provided or commitments made by the proponent, during such meetings is formally documented and confirmed by DBCA.

Parallel processing and parallel decision-making

The Parties will work in a collaborative and coordinated manner to implement parallel decision-making and parallel processing for Part IV EP Act assessments and related approvals processes.

Both Parties will follow the whole-of-government [Parallel Decision-Making Policy](#) and any relevant guidance issued, amended or replaced from time to time.

To the extent that parallel processing or decision-making of assessments under the EP Act and BC Act is necessary or agreed for a proposal, DWER and DBCA will develop a coordinated assessment approach, including with respect to information required from proponents to support both assessment and approvals processes.

Early engagement with proponents and other decision-making authorities (DMAs) is important and leads to efficiencies during assessment and approval processes.

In undertaking parallel processing or decision-making, the Parties will endeavour to:

- share information relevant to the other's assessment and approvals processes for efficient and streamlined processing or decision-making; and
- share information required from proponents to support parallel decision-making, subject to any confidentiality requirements.

Where DBCA considers that parallel processing or decision-making requires additional information for BC Act and CALM Act matters beyond that required by DWER to support a Part IV EP Act assessment, DBCA will seek required information directly from proponents outside of the concurrent Part IV EIA process. This may include additional meetings with proponents, particularly during the pre-referral stage of assessment.

Document distribution

DWER will request advice from DBCA electronically and provide, or make available, electronic copies of relevant documentation and information that is searchable, including through online cloud services.

Timelines and extensions

DWER will endeavour to provide DBCA with reasonable time for document review and provision of advice in accordance with the timelines identified in the Tables of this Schedule. Prior to requesting advice, DWER may consider reasonable adjustments to timelines outlined in the Tables based on the:

- priority of the request;

- volume and quality of information provided for review;
- nature and complexity of the matters identified; and
- number of matters on which advice is sought.

DBCA will seek to meet these timelines. Where there may be difficulties in doing so, DBCA will contact DWER as soon as possible following receipt of correspondence to discuss a reasonable, revised timeline. Both Parties recognise that meeting timelines may not always be achievable. DWER will endeavour to accommodate reasonable requests for time extensions where these are justified and align with any relevant statutory timeframes prescribed under the EP Act for a particular stage of EIA, a direction of timelines from the Minister for Environment, or broader government policy.

All requests for extension of five business days or less will be requested by the Assistant Director and approved by the relevant DWER Branch Manager. Where an extension of more than five business days is required, DWER's Director Major Project Assessments must approve the request. When granting extensions, DWER will consider the same factors listed under this section to adjust timelines in the Tables. DWER will also have regard for the number of requests for advice provided to individual DBCA Regions at any point in time and identify priority requests where possible.

In cases where DBCA identifies an omission of key documentation or major deficiencies in the available information, DBCA will endeavour to advise DWER as soon as reasonably practicable after receiving the request. Where agreed and permitted under the EP Act, the timeline for provision of advice may be suspended while documentation is provided and restarted from when the full complement of information becomes available.

To enable DBCA to meet target timelines referred to in the Tables, open communication between DWER and DBCA staff during the assessment process on the progress of assessments and advance notice of upcoming advice requests will likely assist in the timeliness of assessment and approval processes. DWER and DBCA will develop agreed processes for regularly communicating respective workloads and priorities, which may include regular meetings between relevant teams.

DBCA contact

DBCA's Director General may nominate a particular DBCA officer, other than CLPP, as the primary point of contact with respect to any specific proposal.

Problem solving/escalation of issues

It is desirable for officers of DWER and DBCA to meet to clarify and resolve issues of a technical or policy nature, or matters of interpretation, that arise from time to time.

If issues remain unresolved, managers of the relevant branches of DBCA and DWER will meet to discuss the matter(s). If necessary, these issues will be escalated to the relevant Executive Directors and/or Deputy Directors General, to be resolved.

Where necessary, matters will be referred to the Directors General of DWER and DBCA.

Review

These procedures are to be reviewed within six months of the date of this Schedule and annually thereafter.



Chris Shaw
Deputy Director General Approvals
Department of Water and
Environmental Regulation

Date: 22 November 2024



Peter Dans
Deputy Director General Parks and
Wildlife
Department of Biodiversity,
Conservation and Attractions

Date: 28 November 2024

Table 1: Communication Protocol between DWER and DBCA for schemes assessed under Part IV of the *Environmental Protection Act 1986* (November 2024)

Section 48A - Regional and Local Planning Schemes and Amendments

Stages 1 & 2: Pre-referral, referral and decision to assess

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|---------------------------------|---|---|--|-----------------|---|--|
| Pre-referral consultation | DWER may seek advice from DBCA on pre-referral issues. | Assessment Officer | Regional Manager and copy sent to Coordinator Land Planning Program (CLPP) | Informal | Case-by-case basis | Regional officer to consult with specialist areas where/if required. |
| Consultation on referral issues | DWER may seek advice from DBCA on matters relevant to the referral of a scheme. | Assessment Officer Relevant Branch Manager | Regional Manager and copy sent to CLPP | Formal | 10 to 20 business days, depending on complexity | DBCA to determine whether the scheme/amendment identifies all the environmental factors relevant to the Consultation criteria. Please refer to the EPA's Statement of environmental principles, factors, objectives and aims of EIA for guidance. DWER to initially consult with CLPP to determine whether DBCA advice should be sought. CLPP to consult relevant region. |

Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Stages 3 & 4: Assessment of schemes & EPA report on assessment of schemes

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|--|---|------------------------------------|--|-----------------|--|---|
| Draft Instructions for environmental review (ER) | DWER may seek advice from DBCA when preparing the draft scheme ER Instructions. | Assessment Officer | Regional Manager and copy sent to CLPP | Informal | Case-by-case basis | Please refer to the 'Timelines and extensions' section in this Schedule for further guidance to support achievement of the stated timeline. |
| | | Director Major Project Assessments | Regional Manager and copy sent to CLPP | Formal | 5 business days | |
| Issue Instructions | N/A | Director Major Project Assessments | Regional Manager and copy sent to CLPP | Formal | Within 60 calendar days of referral to EPA | |
| Draft environmental review document (ERD) | DWER may seek advice from DBCA on whether the ERD satisfies the requirements of the Instructions. | Assessment Officer | Regional Manager and copy sent to CLPP | Informal | Case-by-case basis | |
| | | Director Major Project Assessments | Regional Manager and copy sent to CLPP | Formal | 15 business days | |

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|-------------------------------|--|---|--|-----------------|---|--|
| ERD at time of public comment | DWER may seek advice from DBCA on: <ul style="list-style-type: none"> the significance of the predicted impacts; the adequacy of the proposed mitigation and management; and any other issues the EPA should consider in making its decision. | Responsible Authority and/or Director Major Project Assessments | Regional Manager and copy sent to CLPP | Formal | Within public comment period as determined by Responsible Authority | In addition to the Responsible Authority seeking comments during the public comment period, DWER may also seek comment separately from DBCA. |
| Response to submissions | DWER may seek advice from DBCA relevant to matters previously raised in DBCA's advice. | Assessment Officer Relevant Branch Manager | Regional Manager and copy sent to CLPP | Informal/Formal | Informal – case-by-case basis Formal – 15 business days | Where alternative methods of seeking advice are undertaken, such as via a workshop, DWER will ensure comments are captured and circulated to DBCA in writing. |
| Draft conditions | DWER may seek advice from DBCA on draft conditions, including after an EPA meeting. | Director Major Project Assessments | Regional Manager and copy sent to CLPP | Formal | Formal – 7 business days | DWER should consult informally with the DBCA Regional Manager and CLPP during the development of draft environmental conditions which involve DBCA or relate to BC Act values. Wherever possible, DWER will endeavour to provide prior advice of its intention to seek advice on a particular condition set. Please refer to the 'Timelines and extensions' section in this Schedule for further guidance to support achievement of the stated timeline. |

Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Other requests for advice¹

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ² |
|------------------------|--|------------------------------------|--|-----------------|--|--------------------|
| General correspondence | DWER may seek initial informal advice on potential DBCA input/provision of preliminary advice on broad issues. Location and proposal information to be provided by email if required. | Assessment Officer | Regional Manager and copy sent to CLPP | Informal | 5 business days | |
| | DWER may formally request advice or information on other matters as required. | Director Major Project Assessments | Regional Manager and copy sent to CLPP | Formal | 10 to 20 business days depending on complexity | |

Note 1: Includes advice regarding Structure Plans, Outline Development Plans, Local Planning Strategies and other land use planning-related requests.

Note 2: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Table 2: Section 38 strategic, subdivision and development proposals

Stages 1 & 2: Pre-referral, referral and decision to assess

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|--|---|---|--|-----------------|--|---|
| Pre-referral consultation | DWER may seek early advice from DBCA on a proposal and its location, including at a pre-referral meeting. | Assessment Officer | Regional Manager and copy sent to the CLPP | Informal | Case-by-case basis | Advice may relate to additional information required, including scoping considerations. Pre-referral meetings with both agencies and with proponents are encouraged, particularly to identify information likely to be required to support Part IV EP Act and BC Act assessments. Pre-referral meetings should also identify the extent to which parallel processing under the EP Act and BC Act can occur and the respective information requirements where proponents seek parallel processing options. |
| Consultation regarding level of assessment | DWER may seek advice from DBCA on a proposal and its location, to assist in understanding the significance of impacts to determine the level of assessment for a referred proposal. | Assessment Officer Relevant Branch Manager | Regional Manager and copy sent to the CLPP | Informal/Formal | Informal – case-by-case basis Formal – 15 business days | Advice may relate to additional information required, including scoping considerations. DBCA may provide informal advice. |

Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Stages 3 & 4: Assessment of proposals and report on assessment

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|--|--|---|--|-----------------|--|---|
| Scoping issues | DWER may seek advice from DBCA regarding any preliminary scoping issues. | Assessment Officer Relevant Branch Manager | Regional Manager and copy sent to the CLPP | Informal/Formal | Informal – case-by-case basis Formal – 15 business days | Requests for advice will be dependent on level of assessment determined in Stage 2. |
| Draft environmental scoping document (ESD) | DWER may seek DBCA's advice on a draft ESD. | Relevant Branch Manager | Regional Manager and copy sent to the CLPP (Mailing list for documents as agreed) | Formal | Within the public review period or 10 business days | Advice may relate to the adequacy and appropriateness of investigations (e.g. surveys) identified in a draft ESD to allow for a fully informed assessment of a proposal. Where alternative methods of seeking advice are undertaken, such as via a workshop, DWER will ensure advice, recommendations and action items are captured and circulated to DBCA in writing. |

| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|--|--|---|--|-----------------|--|---|
| Draft environmental review document (ERD)/additional information | DWER may seek advice from DBCA on a draft ERD with proposal-specific advice requests. | Relevant Branch Manager | Regional Manager and copy sent to the CLPP | Formal | 20 business days | <p>Advice may relate to the adequacy of information identified and described in the draft ERD/additional information to enable a determination to be made on the release of the documentation for stakeholder review (not released for public review) or public review. Advice may also relate to the level of risk and significance of impact of the proposal as described in the draft ERD/additional information.</p> <p>Where alternative methods of seeking advice are undertaken, such as via a workshop, DWER will ensure advice and action items are captured and circulated to DBCA in writing.</p> <p>In cases where DBCA advice is being sought for subject matter expertise, pre-consultation is to occur between the relevant DWER Branch Manager and Regional Manager prior to formal advice being requested to determine DBCA's capacity/capability.</p> <p>Duplication of advice requests should be avoided where possible between DBCA and DWER's Terrestrial Ecosystems Branch.</p> |
| ERD/additional information at time of public review | DWER may seek advice from DBCA on a draft ERD with proposal-specific advice requests. | Relevant Branch Manager | Regional Manager and copy sent to the CLPP | Formal | Within public review period; at a minimum 20 business days | <p>Advice may relate to the level of risk and significance of impact of the proposal identified and described in the draft ERD/additional information.</p> <p>Where the public review period is less than four weeks, DWER will endeavour to provide DBCA with the ERD/additional information ahead of the public review period to provide 20 business days for review.</p> |
| Response to submissions | DWER may seek advice from DBCA on a proponent's responses to submissions (where DBCA provided advice during the public review period, or where significant new or changed impacts result from submissions) with proposal-specific advice requests. | Assessment Officer Relevant Branch Manager | Regional Manager and copy sent to the CLPP | Informal/Formal | Informal – case-by-case basis Formal – 20 business days | <p>Advice may relate to the responses received regarding an ERD/additional information, identified and described in a proponent's response to submissions.</p> <p>Where alternative methods of seeking advice are undertaken, such as via a workshop, DWER will ensure advice, recommendations and action items are captured and circulated to the proponent and DBCA in writing.</p> |
| Draft conditions | DWER may seek advice from DBCA regarding specific draft Ministerial Statement conditions, including after an EPA meeting for Stage 4 (as listed in this Table). | Director Major Project Assessments | Regional Manager and copy sent to the CLPP | Formal | 7 business days | <p>DWER may consult informally with the Regional Manager during the development of draft Ministerial Statement environmental conditions. Where possible, DWER will provide contextual information on the results of the assessment (e.g. significant new information received after the response to submissions or the outcomes of the assessment) to assist in understanding the draft conditions and enabling advice on the draft conditions.</p> <p>Wherever possible, DWER will endeavour to provide prior advice to DBCA of its intention to seek advice on a particular condition set.</p> |

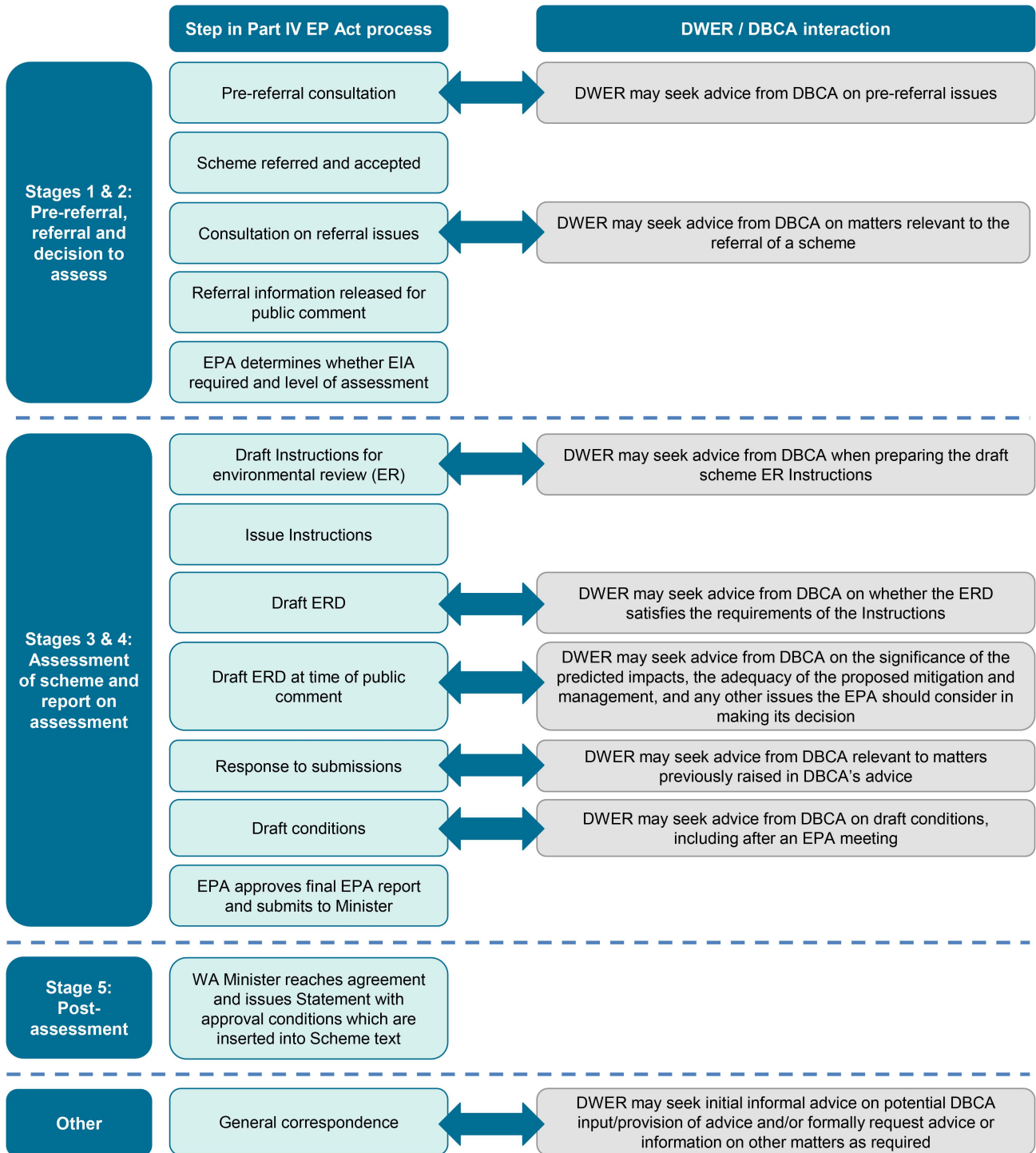
Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Stage 5: Post-assessment

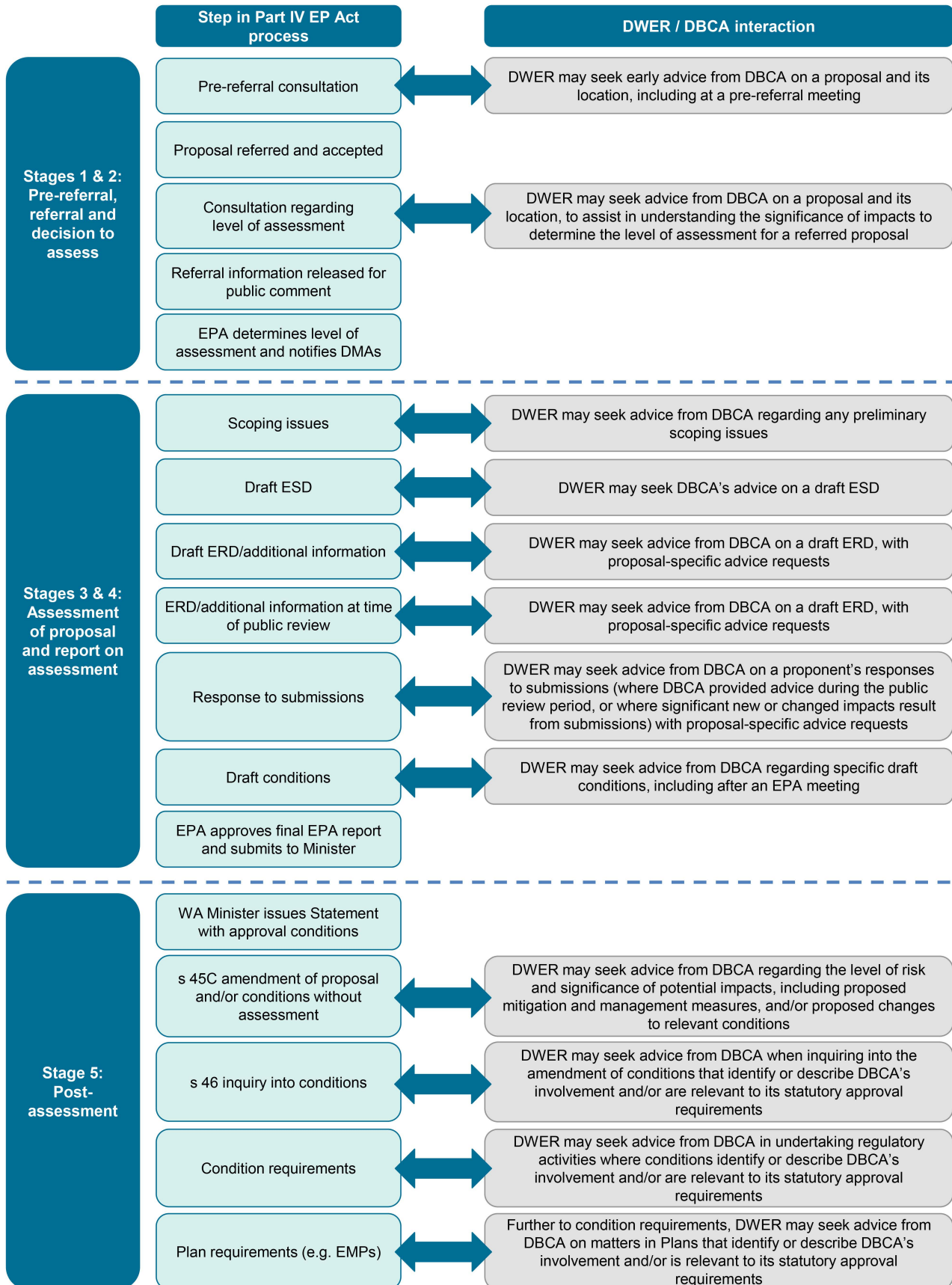
| Step | Interaction | DWER personnel involved | DBCA personnel involved | Formal/Informal | Timeline | Notes ¹ |
|---|--|---|--|-----------------|--|---|
| Section 45C EP Act amendment of proposal and/or conditions without assessment | DWER may seek advice from DBCA regarding the level of risk and significance of potential impacts, including proposed mitigation and management measures, and/or proposed changes to relevant conditions. | Relevant Branch Manager | Regional Manager and copy sent to the CLPP (Mailing list for documents as agreed) | Formal | 15 business days | Relevant conditions are those that identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. Consultation to occur prior to completion of process. |
| Section 46 EP Act inquiry into conditions | DWER may seek advice from DBCA when inquiring into the amendment of conditions that identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. | Relevant Branch Manager | Regional Manager and copy sent to the CLPP (Mailing list for documents as agreed) | Formal | 15 business days | Consultation to occur prior to completion of process. |
| Condition requirements | DWER may seek advice from DBCA in undertaking regulatory activities where conditions identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. | Relevant Branch Manager and/or Senior Manager (Assurance) | Regional Manager and copy sent to the CLPP | Informal/Formal | Informal – case-by-case basis Formal – 20 business days | |
| Plan requirements (e.g. environmental management plans (EMPs)) | Further to condition requirements, DWER may seek advice from DBCA on matters in plans that identify or describe DBCA's involvement and/or are relevant to its statutory approval requirements. | Relevant Branch Manager | Regional Manager and copy sent to the CLPP (Mailing list for documents as agreed) | Formal | 20 business days | Where conditions that require the preparation and implementation of EMPs in consultation with, on the advice of, or to the satisfaction of DBCA, DWER will encourage direct proponent communication and consultation with DBCA, to address any outstanding matters of concern prior to submission of EMPs. Consultation to occur prior to completion of process. |

Note 1: All requests for advice must relate to the 'Consultation criteria' outlined under clause 6 of this MOU and be consistent with guidance provided in this Schedule.

Interactions between DWER and DBCA for schemes assessed under Part IV of the EP Act



Interactions between DWER and DBCA for proposals referred under s 38 of the EP Act



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