



Referral of a proposal under section 38 of
the *Environmental Protection Act 1986*
Instructions

Environmental Protection Authority

October 2021

Version	Change	Date
1.0	Initial version	12 July 2018
2.0	Version aligned with EP Act amendments 2020	29 October 2021

As EPA documents are updated from time to time, users should consult the EPA website to ensure they have the most recent version.

Environmental Protection Authority 2021,
Instructions- Referral of a proposal to the Environmental Protection Authority under section 38 of the Environmental Protection Act 1986, EPA, Western Australia.

This document is available in alternative formats upon request.

National Relay Service

TTY: 133 677

(To assist persons with hearing and voice impairment)

More information

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1. Purpose of these instructions

The purpose of this document is to assist referrers to provide the necessary information with their Referral form required by the EPA to enable them to determine whether the proposal is a valid referral and whether or not to assess it.

Proponents who are seeking an amendment to a referred proposal, before EPA decision on whether or not to assess, should refer to the [Instruction and form: Request to amend a referred proposal under s38C](#).

2. How to refer a proposal to the EPA

Proposal information provided to the decision maker

The EPA requires sufficient information on the Proposal and the effects of the Proposal on the environment to make a decision on whether to assess a proposal (and to determine the level of assessment, if it decides to assess). The quality of information provided with the referral, the nature of Proposal elements and likely environmental effects associated with the proposal may affect expected timeframes. It may also affect the EPA's decision whether to assess the proposal. There may be delays to expected timeframes if adequate information is not provided, and the EPA may also require further information under s. 38F. The EPA endeavours to keep further information requests to a minimum, however, this is dependent on the quality of information received.

The proponent is responsible for identifying the proposal, including the elements which have the potential to have a significant effect on the environment. The EPA takes this information into account when considering issues related to the significance of the proposal.

Note: A s38C application for amending a referred proposal before decision to assess restarts the 28day clock timeframe to decide whether or not to assess a proposal.

Note: Further information requests in response to third party referrals require the proponent to respond to the EPA.

Advice

Referrers may contact EPA Services, Department of Water and Environmental Regulation (DWER), if they need assistance to fill out a Referral form.

Refer to the EPA's [Administrative Procedures](#) and [Procedures Manual](#) for more information about the processes relating to referring a proposal

Content of a Referral of proposal

A person who wishes to refer a proposal should provide the following information in the form provided.

Proponents may request a pre-referral meeting with the EPA Services, Department of Water and Environmental Regulation (DWER) prior to submitting the form.

3. Supporting information

The following information is provided to assist proponents to complete the Form: Referral of a proposal under s. 38 of the EP Act. The following sections are aligned with the key headings in the form for ease of completion.

PART A: PROPONENT INFORMATION AND PROPOSAL DESCRIPTION

1. Referrer information

Who is referring this proposal? Check the relevant box as the EPA needs to know whether you are a proponent, decision-making authority or community member/third party.

Contact information: Provide the name and contact details of the individual who will be corresponding with the EPA on the proposal.

Does the referrer request that the EPA treat any part of the referral information as confidential?: If you are a proponent, you may request that the EPA keep any or all of the proposal information confidential by checking the 'Yes' box. A request for confidentiality does not make a submission automatically exempt from disclosure. Where the EPA agrees that the information is confidential, the EPA will not publish the confidential information as part of the referral information. Refer to section 2.6.3 of the EPA's [Procedures Manual](#) for further information.

Referral declaration: For the EPA to accept a referral from an organisation, proponent or a decision-making authority, it must be signed by an authorised person – either a CEO or a person with evidence to act on behalf of the organisation.

2. Proponent information

Proponent name: provide correct proponent name

Complete the details and provide an Australian Company Number (or Australian Business Number for government agencies).

3. Pre-referral discussions

Quote any applicable correspondence reference number and/or the EPA Services contact. Identify outcomes of any pre-referral discussions with EPA Services.

4. Proposal information

Provide clear proposal information, including relevant maps, figures and spatial data.

Title of the proposal: State the name assigned to the proposal

What is the proposal: Include general description in the EPA's [Instruction and template: How to identify the content of a proposal](#)

Spatial data: The EPA requires maps and figures in the referral.

Provide spatial data in GIS format that is geo-referenced and conforms to the following parameters:

- data type: closed polygons that represent the proposal boundary (development envelope) and the activity areas for all physical elements of the proposal (footprint)
- attribution: name the development envelope and each activity area in the attribute table of the spatial data
- format: ESRI geodatabase or shapefile
- coordinate system: GDA20 (datum) (or as updated) and projected into the appropriate Map Grid of Australia (MGA) zone.

Provide maps and figures that are clear and readable, of appropriate scale, in either jpeg or pdf format and of good resolution (greater than 300 ppi).

Proposal type: Check the relevant box for the type of proposal.

This form is used for significant proposals, strategic proposals, proposals of a prescribed class and proposal under an assessed planning scheme. Refer to the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#) for guidance on 'significance'.

Significant amendments, proposals under an assessed scheme and derived proposals: provide the associated existing Ministerial statement number(s).

Proposal content: Complete the appropriate template (Proposal content document) for the corresponding type of proposal in the [Instruction and template: How to identify the content of a proposal](#) to outline the general proposal description and the proposal elements. This form must be completed and submitted with the Referral Form and any associated Supplementary Report for the EPA to determine that the referral is valid (see [Administrative Procedures](#)).

A consolidated updated Proposal content document (which describes and tabulates the existing Proposal content combined with the proposed amendment content) must be provided with any significant amendment referral.

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

PART B: ASSESSMENT OF ENVIRONMENTAL IMPACTS

Note: For strategic proposals, also provide supporting information to assist in EPA's strategic assessment, see section 3.4 of the Procedures Manual.

1. Environmental factors

Check the boxes for the environmental factors that are relevant to the impacts or effects of the proposal.

For each factor:

- complete the 'Potential environmental impacts table', or
- provide the information in a supplementary report according to the [Instruction and template: How to prepare and Environmental Review Document](#).

Refer to the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#) for the list of factors and the EPA's [Framework for environmental considerations in EIA](#) for guidance for each factor.

2. Potential environmental impacts

Provide information about the likely environmental impacts of the proposal and the assessment of those impacts.

2.1 EPA policy and guidance

Outline which EPA policy and guidance you considered and how you've applied them in relation to the relevant factor.

Refer to the EPA's guidance for each factor in the EPA's [Framework for environmental considerations in environmental impact assessment \(EIA\)](#).

2.2. Receiving environment

Describe the current condition of the receiving environment in relation to this factor, using appropriate baseline studies such as flora and vegetation surveys or water quality data.

This may include: regional context; known environmental values; current quality; sensitivity to impact; and potential to increase cumulative effects.

2.3 Potential Impacts

List the proposal elements that have impacts or effects relevant to each environmental factor, considering direct, indirect impacts and cumulative effects. For example, impacts to flora and vegetation can be from clearing, ground water drawdown and dust.

Identify the potential impacts (direct, indirect, and cumulative) before applying the mitigation hierarchy.

Quantify the potential impacts (direct, indirect and cumulative) on the environmental values (including MNES if relevant) for each factor (before the application of the mitigation hierarchy) in a local and regional context, from actual data and predictions:

- Quantify the predicted impacts—extent and duration, for example—against the baseline condition acknowledging any uncertainty in predictions
- Consider the impacts in a local and regional context, including cumulative environmental impacts

- Compare against established environmental policies, guidelines, and standards.

2.4 Mitigation

Describe how the mitigation hierarchy has been applied to reduce the potential environmental impacts of the proposal. Refer to the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#) for further information on the mitigation hierarchy.

Discuss whether and how another statutory decision-making process can mitigate the potential impacts of the proposal. Include reasons, taking the specific likely impacts of the proposal into account, and considering whether the EPA's objectives for environmental factors can be met

2.5 Assessment and significance of residual impacts

Identify whether there are any residual impacts after applying the mitigation hierarchy and whether these are significant. For guidance on what the EPA may have regard to in its consideration of 'significance' see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

Where there are any significant residual impacts, identify if any offsets are proposed. If the proponent aims to provide sufficient information at the Referral stage to enable the EPA to set Referral Information as the level of assessment, assess whether the offsets are likely to counter-balance significant residual environmental impacts. For guidance on offsets see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

If there is potential for a significant cumulative environmental impact, provide relevant information from other developments (including past, present, and reasonably foreseeable future proposals) in the area.

2.6 Environmental outcomes

Identify likely environmental outcomes and whether these are likely to be consistent with the EP Act principles and EPA objectives for environmental factors.

The EPA expects the Proposal content and likely environmental outcomes to be well understood for those seeking an assessment based on referral information. Those expecting a Public Environmental Review (PER) level of assessment, may not have fully defined the project or have an understanding of likely environmental outcomes at the referral stage, and may seek to make amendments to amend the proposal during assessment.

3. Holistic impact assessment

Holistic impact assessment considers the connections and interactions between impacts, and the overall impact of the proposal on the environment as a whole.

The assessment process for holistic impact assessment should be conducted similar to the single factors environmental impact assessment process, except proponents should identify the interconnected factors (such as inland waters and flora and vegetation) as the basis for the impact assessment.

4. Cumulative environmental impact assessment

Cumulative environmental impacts are the successive, incremental and interactive impacts on the environment of a proposal with one or more past, present and reasonably foreseeable future activities. Refer to the EPA's [Procedures Manual](#) for further information on reasonably foreseeable future activities.

Where cumulative impact assessment is needed to assess cumulative effects in respect of one or more environmental factors, the referral should identify this.

The assessment process for cumulative environmental impact assessment should be conducted similar to the single factor environmental impact assessment process once scoping of activities, boundaries and environmental values relevant to the cumulative impact assessment of (one or more) environmental factor(s) has been conducted. The EPA expects (and may provide guidance on) the scoping relevant for each factor during the pre-referral stage, and/or the environmental scoping stage for proposals that require an Environmental Review document..

Past activities should be acknowledged but do not need to be individually assessed if their impact is incorporated by consideration of the receiving environment.

A summary of cumulative impact assessment can be provided in this section if it has been completed as part of the Potential environmental impacts assessment (see section 2 of these instructions).

5. Consultation

Discuss whether any consultation has been undertaken, including:

- consultation with decision-making authorities
- targeted consultation with other stakeholders (including any public consultation) where there are proposed increases to a relevant factor or factors

Summarise the consultation process and outcomes:

- identify who was consulted, summary of discussions, key issues / matters raised, outcomes and whether matters raised were resolved or outstanding

Justify, if consultation has not been undertaken.

It is expected that the proponent would consult with any decision-making authorities who administer decision-making processes which may be affected by increases to impacts in relation to a relevant factor/s (and/or new factor/s) which have the potential to be significant.

The decision maker also expects targeted consultation with other stakeholders will be undertaken as appropriate.

6. Supporting documents

The information provided with the referral form should be appropriate for the: elements of a proposal that have the potential to have a significant effect on the environment (proposal elements); the relevant environmental factors; and the proposal's stage of development.

Index of Biodiversity Surveys for Assessments (IBSA) and Index of Marine Surveys for Assessments (IMSA) are mechanisms by which all terrestrial biodiversity survey and marine survey information collected for environmental impact assessment under the EP Act will be captured and integrated into a consolidated, indexed and publicly available repository. IBSA and IMSA are administered by DWER on behalf of itself, the EPA and the Department of Mines, Industry Regulation and Safety.

Each time a terrestrial biodiversity survey report or marine survey report is submitted (at any point in the assessment and compliance process under Part IV of the EP Act), an IBSA or IMSA data package should be provided.

The IBSA data package should be submitted via the online IBSA Submissions portal in accordance with the [Instruction and templates: Preparing data packages for the Index of Biodiversity Surveys for Assessments \(IBSA\)](#) and the IMSA data package should be provided in accordance with the [Instruction, templates and form: Preparing data packages for the Index of Marine Surveys for Assessments \(IMSA\)](#).

7. Conclusion

Briefly summarise whether you consider that the proposal may have a significant effect on the environment.

PART B: ASSESSMENT OF ENVIRONMENTAL IMPACTS FOR SIGNIFICANT AMENDMENTS ONLY

If the referred proposal is a significant amendment to an approved proposal, referrers should **also** complete the additional requirements in the EPA Referral Form.

1. Type of significant amendment

Identify whether the significant amendment relates to an amendment to the approved proposal, amendment to implementation conditions of an approved proposal, or both.

2. Information of the approved proposal

Provide information on the approved proposal, so that the EPA can consider the environmental effects of the significant amendment in the context of the approved proposal.

3. Combined effects

Outline the combined effects which the implementation of the approved proposal and the significant amendment might have on the environment.

4. Existing implementation conditions

Provide an analysis of the existing implementation conditions relating to the approved proposal and whether the proponent considers they should be inquired into. This should include consideration of whether the existing implementation conditions are adequate to ensure consistency of the ongoing elements of the proposal with the EPA's environmental factor objectives.

5. Previous changes to the proposal and / or implementation conditions

Provide details of the proposal as originally approved any approved amendments (and/or changes) under s. 45C and/or s. 46 in a table(s), including a summary of the proposal as originally approved, any approved amendments, and approval dates. Include any significant amendments which have been approved.

Describe the stage of implementation of the proposal (eg. planning, construction, operations, closure).

6. Compliance

Provide the history (five years) and current status of compliance with the Ministerial statement (this may be provided as a table). This can include reference to the most recent Compliance Assessment Report if it is less than one year old, provided any potential non-compliance since that time is also discussed.

7. Environmental performance

Provide a report on the current environmental performance of the approved proposal against the EPA's objectives for environmental factors relevant to the requested amendment, and any Ministerial statement implementation condition environmental outcomes and/or objectives. This can include reference to a recent Annual Environmental Report if it is less than one year old, provided it discusses environmental performance against the EPA's objectives for environmental factors and any implementation condition environmental outcomes and/or objectives.

Where relevant, include details of any monitoring results, data and any supporting documentation.

Note: It is expected that the EPA's current objectives, procedures, instructions and guidance will be considered in reporting on current environmental performance, rather than the objectives, procedures, instructions and guidance at time the original proposal was approved.

8. Control of implementation of significant amendment

Discuss whether the environmental effects of the amendment to the proposal are likely to be within the

environmental outcomes, and/or are likely to be able to be managed to meet environmental objectives, set by the approved proposal implementation conditions. Discuss whether any new or amended environmental outcomes are proposed.

Discuss whether any objectives-based environmental management plans required by any existing approved proposal implementation conditions will need to be amended to manage the proposed amendment. If amendments to objectives-based environmental management plans are required:

- discuss whether an outcome-based condition setting arrangement can replace the objectives-based management plan
- summarise the content of any proposed management plan amendments
- summarise how the amendments to the management plan will manage the impacts of the proposed amendment
- summarise any consultation and endorsement requirements relating to management plans
- provide revised management plans highlighting proposed changes.

PART B: ASSESSMENT OF ENVIRONMENTAL IMPACTS FOR A PROPOSAL UNDER AN ASSESSED PLANNING SCHEME ONLY (For the responsible authority)

If the referred proposal is a proposal under an assessed planning scheme, the responsible authority should also complete the additional requirements in the EPA Referral Form.

1. Environmental issues

Provide detail on what new environmental issues are raised by the proposal that were not assessed during the assessment of the planning scheme.

2. Environmental effects

Describe how the proposal under the assessed planning scheme may have significant effects on the environment, and detail why these effects were not considered at the time of the scheme assessment.

Outline how the proposal does not comply with the assessed scheme and/or environmental conditions in the assessed planning scheme.

PART B: ASSESSMENT OF ENVIRONMENTAL IMPACTS FOR A DERIVED PROPOSAL- ONLY (For proponents only)

If the referred proposal is a derived proposal proponents should also complete the additional requirements in the EPA Referral Form.

1. Environmental outcomes

The proponent's supporting information needs to demonstrate how the proposal will meet the environmental outcomes defined through the assessment of the strategic proposal

2. Implementation conditions

Provide an analysis of the existing implementation conditions of the related strategic proposal in relation to the derived proposal. This should include consideration of whether the existing implementation conditions are adequate to ensure consistency of the elements of the derived proposal with the EPA's environmental factor objectives.

PART C: OTHER APPROVALS AND REGULATION

1. Decision-making authorities and their approvals

The EPA needs accurate regulatory information to correctly identify relevant decision-making authorities for the proposal. This information is important because decision-making authorities need to be informed of decisions under the EP Act and the EPA needs to consult with the correct decision-making authorities.

List the decision-making authority—Minister, government CEO or government department, for example—and the law or agreement that requires a decision related to the proposal and the approval required. See below table as an example.

The EPA also needs accurate regulatory information to identify whether other statutory decision-making processes can mitigate the potential impacts of the proposal on the environment to be consistent with the EPA's objectives. This is important because under the EP Act the EPA can take these other decision-making processes into account when deciding whether to assess a proposal.

Proponents must provide information about whether and how another decision-making process can mitigate the potential impacts of their specific proposal on the environment. The proponent must provide reasons and take the specific likely impacts of their proposal into account. This information is required under "Mitigation" in Part B, above, and a summary should be provided in a table.

2. Tenure and Local Government approvals

Outline land tenure including existing zoning, tenements and/or lease types. Specify if the proponent has legal access to the land.

3. Commonwealth Government approvals

Complete this section if the proposal will potentially impact Matters of National Environmental Significance, protected under the Environment Protection and Biodiversity Conservation Act 1999.

If the EPA decides to assess a proposal and the Commonwealth Department of Agriculture, Water and the Environment has decided that the proposal is a controlled action, the proposal may be assessed by the EPA under a Bilateral Agreement between the State of WA and the Commonwealth Government, or as an accredited assessment.

If there are other approvals from the Commonwealth Government that may be required, such as a sea dumping permit, provide details in the box provided.

4. Decision-making authority referrals ONLY

Complete this section only if proposal has been referred by a decision-making authority.

Submitting a request

Ensure that all required information in the Referral Form is provided with your request to the EPA Services of the Department of Water and Environmental Regulation (DWER). It is preferred that requests are emailed. Postal submissions will be accepted.

Submissions

Email: registrar@dwer.wa.gov.au OR EPA Services
Department of Water and Environmental Regulation
Locked Bag 10, Joondalup DC, WA 6919

General Enquiries

Telephone: 6364 7000 Fax: 6364 0896
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