

Request to amend implementation
conditions under section 46 of the *Environmental
Protection Act 1986*

Instructions

Minister for Environment and the
Environmental Protection Authority

August 2022

Version	Change	Date
1.0	Initial version aligned with EP Act amendments 2020	August 2022

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 2022,
Instructions: Request to amend implementation conditions under section 46 of the Environmental Protection Act 1986, EPA, Western Australia.

This document is available in alternative formats upon request.

National Relay Service

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(To assist persons with hearing and voice impairment)

More information

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Purpose of these instructions

These Instructions outline the information required in relation to functions of the Minister for Environment and the Environmental Protection Authority (EPA) under section 46 (s.46) of the *Environmental Protection Act 1986* (WA) (EP Act).

If the Minister considers that any of the implementation conditions of an existing Ministerial statement should be amended, the Minister may request the EPA to inquire into and report on the matter. The Minister is the primary decision-maker for this part of the EP Act. The Minister may make the request to the EPA at the Minister's own initiative, and the proponent may also request that the Minister consider making a request.

The purpose of this document is to assist proponents to prepare a request for an amendment to implementation conditions of an approved Ministerial statement.

When to make a request to amend implementation conditions under s.46

A proponent may request an amendment to implementation conditions under s.46 if they have an existing Ministerial statement and wish to change, add to, or delete one or more of the existing conditions of the Ministerial statement.

How to complete a request to amend implementation conditions under s.46

Information provided to the Minister

The Minister needs sufficient information from the proponent to decide whether to request that the EPA conduct an inquiry and report on whether the implementation conditions for an existing Ministerial statement, or any of them, should be amended. The EPA will also usually consider the information provided to the Minister in the course of conducting any inquiry the Minister requests.

The quality of information provided in the proponent's request, the nature of proposed amendments and likely environmental effects associated with the proposed amendments may affect expected (non-statutory) timeframes. They may also affect the Minister's decision regarding the proposed amendment. The Minister (in deciding whether to ask the EPA to inquire into conditions) may seek additional information if insufficient information is provided in the request.

In the course of conducting an inquiry into implementation conditions, the EPA may: seek information in addition to the information provided by the proponent; and exercise all the powers the EPA usually has to conduct environmental impact assessment (including for example the power to require an environmental review and that information be made publicly available).

As part of a request under s.46, proponents should describe which existing implementation conditions the proponent considers should be inquired into and which should not, including the provision of

reasons. 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 current objectives for each environmental factor.

Proponents should provide the information described below in the [Form: Request to amend implementation conditions under s. 46 of the EP Act](#).

Advice

It is highly recommended that all proponents wishing to request the Minister to amend existing implementation conditions have a meeting with EPA Services, Department of Water and Environmental Regulation (DWER) prior to submitting a s.46 request.

Content of a request for an amendment to implementation conditions under s. 46

A proponent who wishes to request an amendment to implementation conditions is required to make a written request to the Minister. Requests should be submitted to the EPA Services, DWER, on behalf of the Minister.

The EPA will make a public record of the Minister's request to inquire into the implementation conditions and publish a report of its inquiry.

After publication of the EPA's report, the Minister will consult with other decision-making authorities before making the decision on the request to amend implementation conditions. If approved, the decision will be published as a Ministerial statement. Refer to the EPA's [Administrative Procedures](#) and [Procedures Manual](#) for more information about the processes relating to amending implementation conditions.

Content of a request to amend implementation conditions

The following information is provided to assist proponents to complete the [Form: Request to amend implementation conditions under s. 46 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. Proponent information

Provide correct proponent name and an Australian Company Number (or Australian Business Number for government agencies).

These instructions apply to the nominated proponent of the proposal for which amendment to implementation conditions are being sought. If the nominated proponent wishes to use an authorised agent, then an authorisation should be provided with the request to amend conditions.

A request to amend implementation conditions from a proponent, or consultant on behalf of the

proponent, must be signed by an authorised person – either a CEO or a person with evidence to act on behalf of the organisation.

2. Pre-request discussions

For any meetings or correspondence with EPA Services prior to submitting the request, state the name of the EPA services staff and quote any applicable correspondence reference number. Identify outcomes of the discussions.

3. Proposal information

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

Title of the proposal: As stated on the Ministerial statement.

Ministerial statement number/s and date of approval: As stated on the Ministerial statement.

Describe the proposal – provide the Proposal content document: If there is no current Proposal content document for the approved proposal, the proponent should prepare one as part of the request for an amendment to implementation conditions. Proponents should use the [*Instructions and Template: How to identify the content of a proposal*](#) to prepare the Proposal content document. This ensures the inclusion of all Proposal elements which have the potential to have a significant effect on the environment.

Previous amendments to the proposal or implementation conditions: For any previous amendments or changes to the proposal or implementation conditions, provide details (preferably in a table) which describe the original proposal and conditions, the amendments that have been made, and the approval dates.

Derived proposals: Identify if the change to implementation conditions relates to a derived proposal.

Stage of implementation: Describe the stage of implementation of the proposal (e.g. planning, construction, operations, closure) including whether and how stages are partially implemented.

4. Types of amendment to conditions request

Identify whether the request to amend the conditions:

- is a request to amend implementation conditions only (section 46)
- includes a request for interim conditions and procedures (section 46A)
- is associated with a request for an amendment to an approved proposal (section 45C).
- includes a request for extension of time limit of authorisation for proposal implementation

Part B: Assessment of amendment

The information referred to in this section should be provided for all conditions that the proponent is

seeking to amend. Related conditions can be considered together, but adequate information must be provided in relation to each condition.

If the request is for an extension to the 'Time Limit of Authorisation' (for substantial commencement) of the proposal, then the proponent will need to provide current information on all key environmental factors which were assessed by the EPA for the original proposal, as well as any new environmental factors that may have arisen since the original assessment.

The scope and detail of assessment information required will depend on the nature of the amendments being sought and be proportionate to their likely environmental effects.

1. Summary of proposed amendment to conditions

Provide a succinct summary of:

- the conditions that are requested to be amended
- the reasons for and purpose of the requested amendment.

2. Contextual information to support the request

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.

Proponents should usually describe which existing implementation conditions the proponent considers should be inquired into and which should not, including the provision of reasons. 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 current objectives for each environmental factor. If this summary is not provided, justify why.

3. Identification of specific existing conditions requested to be amended

Condition number and title: Identify the conditions that are requested to be amended

Intent of the existing conditions and proposed amendment: Explain the proponent's view of the intent (objective) of the existing conditions, and the intent of the proposed amended conditions.

EPA's environmental factor/s and objective/s:

Identify:

- the relevant key environmental factors and objectives identified by the EPA in its original Report and Recommendations of the Environmental Protection Authority for the proposal
- those environmental factors relevant to the proposed amendment to conditions.

Provide the above in accordance with the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#). For guidance on each environmental factor refer to the associated EPA's Environmental factor guidelines.

New environmental effects: Identify if there are any new environmental effects associated with the proposed amendment not assessed in the original EPA assessment of the proposal, the environmental factors and objectives relevant to these effects, and if new conditions are required to protect, abate, restore or mitigate these effects.

4. Proposed amendment to conditions

Purpose of amendments: Provide the purpose of the proposed amendment to existing conditions, and any proposed new conditions.

Proposed indicative wording of amendment: Provide the suggested indicative wording of the proposed new conditions.

Note: the EPA has a preference for outcomes-based conditions. Refer to the [Interim Guidance: Environmental Outcomes and Outcome-based Conditions](#).

Refer to Section 4.2 - Implementation conditions and procedures of the [Procedures Manual](#), for the types of conditions the EPA may recommend.

Discuss the requested amendment to conditions as they relate to the relevant key environmental factors and objectives for the proposal (see [Statement of environmental principles, factors, objectives and aims of the EIA](#)), as well as any newly identified environmental considerations not previously assessed that may cause an environmental impact.

Maintaining or improving the intent of existing conditions: The proponent should demonstrate how the intent of the existing condition will be maintained or improved and how the proposed new condition amendment will meet the EPA's objectives for the relevant environmental factors.

Environmental effects: If the proposed amendment is expected to result in an increase in environmental effects:

- Describe how the mitigation hierarchy has been applied. In doing this the proponent should outline what (if any) alternatives have been considered to minimise environmental impacts
- Assess cumulative environmental impacts in the context of the approved proposal and past, present and reasonably foreseeable future activities
- Assess holistic impacts, including in the context of the approved proposal.

Describe the level of confidence in the predicted environmental effect of the implementation conditions.

Provide an assessment of the resilience of the environment to cope with the impacts or change

(including considering pressures such as climate change).

Note: Resilience is one of the considerations when considering significance, see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#). It is important that the resilience and sensitivities of the environments are understood through contemporary science, and in the context of cumulative impacts.

Significant effect on the environment: Provide an assessment of whether there is likely to be a significant detrimental effect on the environment from the proposed amendment in addition to, or different from, the effect the proposal has through its implementation under the existing conditions. For guidance on 'significance', see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

EPA's policy and guidelines applied: Describe how current EPA objectives, procedures, instructions and guidance have been applied and considered in the proposed amendment to conditions.

Environmental Studies/Supporting Information

Include current relevant information to support the requested amendments, such as an analysis of recent monitoring data, technical reports, maps and other relevant reference information. These can be included as Attachments or Appendices. While information should be current, it may also be appropriate to reference documents used during the assessment of the original proposal to justify that the proposed amendment can be made against a known baseline (this may be required when the condition to be amended refers to background levels, thresholds, or trigger levels).

Index of Biodiversity Surveys for Assessment (IBSA) and Index of Marine Surveys for Assessment (IMSA)

IBSA and 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 Instructions and form: IBSA Data Packages and the IMSA data package should be provided in accordance with the Instructions and form: IMSA Data Packages.

Pilbara Environmental Offsets Fund - Impact Reconciliation Procedures and Impact Reconciliation Reports

For proposals within the Pilbara region proponents may need to provide an updated Impact Reconciliation Procedure, including the relevant spatial data, prepared in accordance with Instructions on how to prepare an Impact Reconciliation Procedure and Impact Reconciliation Report. Where a revised proposal results in superseded Ministerial statement/s, or several previous Ministerial

statements are amalgamated, proponents are required to detail all relevant amendments that relate to the reporting of impacts.

5. Consultation

Consultation undertaken: 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

Outcomes of consultation: Summarise the consultation process and outcomes:

- identify who was consulted
- provide a summary of discussions
- identify key issues and matters raised
- outline the outcomes and whether matters raised were resolved or remain outstanding

Justify, if consultation has not been undertaken.

Describe the anticipated level of public interest in the proposed amendment.

Proponent's are encouraged to consult with any decision-making authorities who administer decision-making processes related to new or additional significant environment effects of the proposed amendment.

In appropriate cases, targeted consultation with other stakeholders should be undertaken and may be required by the Minister in the course of an EPA inquiry. For example, some targeted public consultation is likely to be appropriate if the level of assessment for the original proposal (or subsequent significant amendment) was public environmental review, and the proposed amendment has the potential to result in a significant effect on the environment.

6. Other statutory decision-making processes

Existing or proposed licences or permits: Provide information on any existing or proposed licences or permits issued for the proposal that are relevant to the proposed amendment to conditions. Discuss any amendment that would be required for existing licences or permits.

Updates to DMAs: Provide an updated decision-making authority (DMA) table (provided as the Example Table at the end of the Form) to identify any DMA details that may have changed, including department names.

Other decision-making processes: Where conditions are proposed to be removed or amended on the basis that another statutory decision-making process will apply, include information on whether the other decision-making process can mitigate the potential impacts of the proposal on the environment and whether the EPA's objectives for environmental factors are likely to be met through other decision-making process.

7. Amendments to environmental management plans (EMP's)

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

Converting objective based EMPs to outcome-based conditions: 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. If not:

- 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 amendments.

8. Spatial information requirements

If the proposed amendment to conditions will change any physical aspects of the proposal, then proponents are required to submit 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: GDA2020 (datum) and projected into the appropriate Map Grid of Australia (MGA) zone.
- Maps and figures should be clear and readable, of appropriate scale, in either jpeg or pdf format and of good resolution (> 300 dpi).

Note: GIS spatial data that is not provided in the above format will not be accepted.

Submitting the request

Ensure that all required information in the Form is provided to the EPA Service, DWER, with your amendment request. It is preferred that requests are emailed. Postal submissions will be accepted.

Submissions

Email: registrar@dwer.wa.gov.au OR EPA Services

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Locked Bag 10, Joondalup DC, WA 6919

General Enquiries

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