

Request to amend a proposal during
referral under section 38C of the
Environmental Protection Act 1986
Instructions

Environmental Protection Authority

November 2021

Version	Change	Date
1.0	Initial version aligned with EP Act amendments 2020	5 November 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: Request to amend a proposal during referral under s. 38C of the EP Act, 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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Purpose of these instructions

Proponents must seek approval from the Environmental Protection Authority (EPA) if they wish to amend their proposal before the EPA has made a decision whether or not to assess the proposal. The Chair (or the Deputy Chair if the Chair is absent) has a delegation from the EPA to exercise the powers and duties in section 38C of the *Environmental Protection Act 1986* (EP Act).

The purpose of this document is to instruct proponents to provide with their request the necessary information to enable the EPA to decide whether to approve an amendment to a referred proposal under section 38C of the EP Act.

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

The EPA has discretion to approve or refuse a request to amend a referred proposal, at any time before the EPA decides whether or not to assess a referred proposal. If approved, the amended proposal is taken to be the referred proposal.

Note: It is the EPA's view that, if the proposal was already approved, and the proposed amendment would be considered a significant amendment (see section 3 of the EP Act), then the EPA will usually refuse the amendment. A "significant amendment" is one which is likely to have a significant effect on the environment. For guidance on "significance", refer to the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

How to complete a request to amend a proposal during referral under s. 38C

Proposal information provided to the decision maker

The EPA needs sufficient information about the proposed amendment and its likely impacts to decide whether to approve the proposed amendment and whether public comment is needed on the proposed amendment. The quality of information provided in the request, the nature of Proposal elements and likely environmental effects associated with the proposed amendment may affect timeframes. They may also affect the EPA's decision whether to approve the proposed amendment. There may be delays to expected timeframes if, adequate information is not provided, and the EPA may also require further information.

Advice

Proponents may contact EPA Services, Department of Water and Environmental Regulation (DWER), if assistance to prepare a request is needed.

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

An application under 38C restarts the 28 days that the EPA has to decide whether or not to assess a proposal.

A section 38C application will usually be made public and may be advertised for public comment. The EPA will usually publish a summary of reasons detailing the outcome of the section 38C application.

Content of a request to amend a proposal under s. 38C

A proponent who wishes to amend a referred proposal must request the EPA's approval by written notice and provide the following information in the form provided.

Information to be provided in support of a request to amend a referred proposal

The following information is provided to assist proponents to complete the [Form: Request to amend a proposal during referral under s. 38C](#) 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

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

Who is requesting to amend a proposal? Provide the name and contact details of the individual who will be corresponding with the EPA on the proposal.

Declaration: For the EPA Services to accept a request from a proponent, or consultant on behalf of the proponent, it 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

Quote any applicable correspondence reference number and/or the EPA Services contact. Identify outcomes of any discussions with EPA Services at any meetings held prior to submitting the s38C request.

3. Proposal information

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

Title of the proposal: Provide the title of the proposal.

Description of the proposed amendment/s: Provide a brief description of the amended proposal.

Proposal content document: Provide the Proposal content document of the original referred proposal. If there is no current Proposal content document for the approved proposal, the proponent is required to prepare one as part of the request and is required to comply with the [Instructions and Template: How to identify the content of a proposal](#). This ensures the inclusion of all Proposal elements which have the potential to have a significant effect on the environment.

Spatial data: The EPA requires maps and figures with the request. 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).

Part B Assessment of amendments

1. Reason for and content of proposed amendment

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

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

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

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

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

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

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

2. Regulatory information

Proposal referral date: Provide the proposal referral date.

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

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

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

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

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

(see Instructions and Form: Referral of a proposal under s. 38).

3. Identification of environmental factors and environmental effects

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

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

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

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

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

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

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

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

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

4. Consultation

Consultation undertaken: Discuss whether any consultation has been undertaken, including:

- consultation with identified decision-making authorities
- targeted consultation with other stakeholders where there are proposed increases to a relevant environmental factor/s.

Outcomes of consultation: Summarise the consultation and any outcomes of the consultation:

- 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. It is expected that targeted consultation with other stakeholders will be undertaken as appropriate.

Part C: Additional information (if needed)

Provision of this information is optional. Depending on the nature of the proposed amendment, and in particular, where a proponent aims to provide sufficient information with the referral to enable the EPA to set Referral information as the level of assessment, the EPA may need this information to consider the requested proposal amendment.

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

1. Additional surveys, investigations and other information

Discuss and provide additional information that has been obtained since the original referral, such as surveys, investigations and other information about the proposed amendment.

Submit additional information where it supports the request. If surveys are provided, submit IBSA/IMSA data packages – refer to [Instructions and Templates: Preparing data packages for the Index of Biodiversity Surveys for Assessments \(IBSA\)](#) and [Instructions, Templates and Form: Preparing data packages for the Index of Marine Surveys for Assessments \(IMSA\)](#).

2. Discussion of significance

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

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

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

Significant effect on the environment: Discuss whether there is likely to be a significant effect on the environment (including cumulative and holistic impacts):

- from the effects of the proposed amendment on its own
- from the whole proposal if the amendment were approved, in the context of the original proposal.

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

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

For guidance on “significance” see the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

The proponent may provide the information above in a revision of the supplementary report provided with the referral. If the proponent provides a revised supplementary report, the proponent must clearly highlight in the report where changes have been made.

The EPA has discretion to approve or refuse a request to amend a referred proposal. If approved, the amended proposal is taken to be the referred proposal.

If the EPA refuses the proposed amendment, the proponent may:

- decide not to proceed with the amendment, OR
- revise the amendment to reduce the environmental effect of the proposed amendment and resubmit the request, OR
- withdraw the referred proposal under s. 38D and refer the amended proposal under s. 38.

Submitting a request

Ensure that all required information in the 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
Email: info.epa@dwer.wa.gov.au Website: www.epa.wa.gov.au