

Request to amend a proposal or
implementation conditions under section 45C of the
Environmental Protection Act 1986
Instructions

Chair of the Environmental Protection Authority
(under delegation)

October 2021

Version	Change	Date
1.0	Initial 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: Request to amend a proposal or implementation conditions under section 45C 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

EPA Services

Department of Water and Environmental Regulation

Prime House, 8 Davidson Terrace

Joondalup WA 6027

Locked Bag 10

Joondalup DC WA 6919

p: 08 6364 7000

e: info.epa@dwer.wa.gov.au

w: www.epa.wa.gov.au

Purpose of these instructions

Proponents must request approval from the Minister or the Minister's delegate (the decision maker) under section 45C (s. 45C) of the *Environmental Protection Act 1986* (EP Act) if they wish to amend their approved proposal and/or the conditions of their approved proposal. The EPA Chair usually exercises a delegation to consider these applications on behalf of the Minister.

The purpose of this document is to assist proponents to provide the necessary information with their requests to enable the decision maker to determine whether to approve an amendment to a proposal and/or implementation conditions under s. 45C.

Note: The decision maker must not approve a request under s. 45C(1) if they consider the requested amendment is a significant amendment of an approved proposal or to implementation conditions. A 'significant amendment' is defined in the EP Act as:

- a) a proposal that -
 - i. is or includes the amendment of an approved proposal; and
 - ii. is likely, if implemented, to have a significant effect on the environment;or
- b) a proposed amendment to implementation conditions relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions.

Guidance on significance can be found in the EPA's Statement of environmental principles, factors, objectives and aims of EIA.

Provided an amendment is not a significant amendment, the decision maker has a discretion to approve or refuse a request to amend an approved proposal and/or the implementation conditions for the approved approval.

The timing and nature of requests under s. 45C should not tend to undermine the EPA's advice and recommendation on approved proposals by requesting amendments which fragment or separate consideration of the environmental effects of proposals. Neither should the timing and nature of requests under s. 45C tend to undermine either consideration of and decision-making for whole of proposal impacts, or the efficient consideration of proposals and future amendment requests.

How to complete a request to amend a proposal and/or implementation conditions under s. 45C

Proposal information provided to the decision maker

The decision maker needs sufficient information on the proposed amendment and/or amended implementation conditions, to decide whether to approve an application. The quality of information provided in the request, the nature of proposal elements and likely environmental effects associated with the proposed amendment, may affect expected (non-statutory) timeframes. They may also affect the decision regarding whether to approve the proposed amendment. There may be delays to expected timeframes if adequate information is not provided, and the decision maker requires additional information under s. 45C(2).

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 and/or implementation conditions.

The EPA may publish a summary of reasons for its decision on the EPA website.

Content of a request to amend a proposal and/or implementation conditions under s. 45C

A proponent who wishes to amend an approved proposal and/or the implementation conditions relating to an approved proposal is required to make a written request to the decision maker and provide the following information in the form provided.

Proponents may request a meeting prior to submitting a s. 45C request with the EPA Services, Department of Water and Environmental Regulation (DWER) prior to submitting the s. 45C Form.

Applications for a s.45C will usually be made public, and a summary of reasons for decision will usually be made public,

Content of an amendment to proposal and/or conditions

The following information is provided to assist proponents to complete the [Form: Request to amend a proposal or implementation conditions under s. 45C 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. Complete the details and provide an Australian Company Number (or Australian Business Number for government agencies).

Who is requesting to amend a proposal and/or implementation Conditions? These instructions apply to a nominated proponent of a proposal who wishes to amend the proposal and/or conditions of their own Ministerial Statement. If the nominated proponent wishes to use an authorised agent, then an authorisation should be provided with the request to amend the proposal and/or conditions.

Request declaration: For the EPA Services (on behalf of the decision-maker) 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.

Note: If the referrer is responsible for the proposal but is not the nominated proponent, then a [Form: Change nominated proponent under s. 38I](#) must be submitted with this Form.

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 s45C request.

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.

Proposal content document: If there is no current Proposal content document for the approved proposal, the proponent is required to prepare one as part of the request for an amendment to an approved proposal and/or implementation conditions. This can be based on any current Schedule 1 to the Ministerial Statement where relevant, but is also 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.

Previous amendments to the proposal 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.

Stage of implementation: Describe the stage of implementation of the proposal (e.g., planning, construction, operations, closure).

4. Types of amendment request

Identify the type of amendment request as defined by s. 45C of the EP Act:

- requested amendment to an approved proposal

- requested amendment to implementation conditions relating to an approved proposal
- requested amendment to an approved proposal and implementation conditions relating to the approved proposal.

Note: This form should not be used for significant amendments. The decision maker must not approve a request under s. 45C, if they consider the requested amendment is a significant amendment.

Division or separation of an approved proposal: Applications for the division or consolidation of proposals and issue of separate or combined Ministerial Statements will require additional information and should be made separately and on the advice of the EPA Services of DWER. The [Instruction and Form for the division or consolidation of Ministerial Statements under s45D](#) is in development and will be made available after consult and review.

Part B: Assessment of amendments

1. Reason for and content of proposed amendment

Reasons for the proposed amendment: Provide reason(s) for the proposed amendment(s) to the approved proposal and/or implementation conditions.

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

- consolidated updated table of General Proposal Description
- consolidated updated table of Proposal elements
- spatial data
- maps and figures.

See [Instructions and Template: How to identify the content of a proposal](#) for examples of how to reflect amendments to the Proposal content document and conditions.

Content of the proposed amendment to the proposal: Describe the content of the proposed amendment(s) to the approved proposal and/or implementation conditions, including:

- any changes to the current approved Proposal content document General Proposal Description, including comparison of the proposed amended proposal. Examples of this might be a change in location, or the removal or addition of developments or activities.
- any changes to the current Proposal content document's Proposal elements, including comparison of the proposed amended proposal with the approved proposal. Examples of this might be a decrease or increase in the extent of Proposal elements, or the removal or addition of Proposal elements.

If the proponent does not request an amendment to conditions when requesting an amendment to a proposal, proponents should be aware this may affect when and whether their proposal amendment request is approved. This is because if the decision maker considers (non-minor) amendments to the implementation conditions are needed to protect the environment as a result of a proposal amendment, the decision maker can only make the condition amendments if there has been a request which relates to this purpose. If there has not been a request, the condition amendments can then only be made if there is a separate request for condition amendments under s. 45C or the Minister separately requests that the EPA inquire whether the implementation conditions should be amended under s. 46. The amendment to the proposal would then usually not be able to be approved until the s.46 inquiry process was complete.

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

- any changes to implementation conditions, including the removal or change of current conditions or addition of new ones, including:
 - Condition number(s) to be amended/removed/added where relevant
 - Purpose of proposed change
 - Indicative wording proposed for consideration, highlighting changes between approved and proposed wording
 - Whether any other amendments which arise during consideration of the original request, are requested to be made (See note below relating to requests of this type)
- proposed changes and proposed indicative wording
- whether change to conditions should be considered if a change of proposal only has been requested

If the proponent requests, and the decision maker considers, condition amendments which arise during consideration of a request which are necessary or convenient for the processing of the purpose of the request, the decision maker will liaise with the proponent about revising its request to include such amendments to conditions under s. 45C.

The decision maker can approve some minor amendments to proposals and conditions under s. 45C (4) and (5) without a request from the proponent.

Consolidation or Division of Ministerial Statements: Provide detail about any proposed consolidation or division of Ministerial statements.

Any division of an approved proposal into separate proposals and implementation statements or any consolidation of 2 or more proposals into a single proposal and implementation statement.

Additional information will be required for s. 45D applications for requests for the division or consolidation of proposals and implementation conditions. An amendment decision which considers division or consolidation under s45D is published under s45C(6) of the EP Act.

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

Discuss whether the character of the proposed amended proposal will be substantially the same as the character of the approved proposal.

2. Regulatory information and environmental performance

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.

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.

3. 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, 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. For example, the decision maker would usually expect some targeted public consultation 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 impact on the environment.

4. Control of implementation of amendment

Changes to decision making authorities or processes: Identify any likely changes to decision-making authorities (addition or removal) as a result of the proposed amendment.

Discuss whether any of the environmental effects of the proposed amendment are likely to be able to be mitigated by other statutory decision-making processes (see example in the [Referral of a proposal to the EPA under s38 of the EP Act Instruction and Form](#)). Discuss whether conditions may be added or removed if another statutory decision-making process can, or no longer can, mitigate the potential impacts of the proposal on the environment.

Environmental outcomes: 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.

Environmental management plans: 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, and 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 changes.

Existing licences / permits: Provide information on any existing licences or permits issued for the approved proposal that are relevant to the proposed amendment and discuss any amendments that would be required, or any new licences or permits that would be needed

Conditions: Discuss the context of any requested or related change to implementation conditions, including:

- whether the requested amendments relate to a proposed amendment to the proposal
- whether the requested amendments are independent of any proposed amendment to the proposal
- Identify any changes to conditions that have been requested under section 46.

5. Assessment and significance

Note: 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.

a. Assessment

Environmental factors: Identify which EPA environmental factors are relevant to the assessment of the amendment(s), including decrease or increase in environmental effects. List and explain the addition or removal of any environmental factors.

Environmental effects: Assess the likely environmental effect of the proposed amendment on, or in relation to, all of the environmental factors, both on its own and in the context of the approved proposal.

Identify any residual impacts of the proposed amendment after the application of the avoidance and minimisation elements of the mitigation hierarchy, including:

- the effects of requested amendment on its own
- the effects of the requested amendment in the context of the current environmental performance of the approved proposal as implemented to date

Cumulative environmental impacts: Assess the likely cumulative environmental effects of the proposed amendment, both on its own and in the context of the approved proposal.

Holistic impacts: Assess the likely holistic impacts of the proposed amendment, both on its own and in the context of the approved proposal.

Assessment of impacts in relation to conditions: Assess the likely effect on the environment of the proposed amendment, both on its own and in the context of the approved proposal:

- if implemented in accordance with existing implementation conditions
- if implemented in accordance with proposed amended implementation conditions

Environmental outcomes: Discuss likely environmental outcomes for the amendment proposal, both on its own and in the context of the approved proposal, and the consistency of these outcomes with the EP Act principles and the EPA's objectives for environmental factors.

Note: In considering a requested amendment, the decision-maker will usually consider whether compensatory offsets are proposed as the primary method to reduce the significance of environmental effects. In determining whether a requested amendment involving offset conditions is a significant amendment, the effect of existing or requested offset conditions will not usually be considered if they only compensate for the likely significant effects on the environment rather than reducing those effects.

b. Significance – amendments to proposals

Discuss significance of the residual impacts (including holistic and cumulative) for the proposed amendment, the proposed amendment and the current environmental status of the approved proposal, and the proposed amendment plus the approved proposal (if fully implemented).

c. Significance - amendments to implementation conditions

For proposals seeking an amendment to conditions, provide an assessment of whether the amended conditions (if approved) are likely to have a significant detrimental effect on the environment additional to the approved proposal.

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

Note:

- If the decision maker considers that proposed amendment is a significant amendment, it will refuse approval of the amendment as required by s. 45C.
- If relevant to the proposed amendments, the decision maker may consider environmental factors that the EPA did not consider as key environmental factors during the assessment of the approved proposal.
- If the decision maker approves an amendment to the proposal, the implementation conditions then apply to the amended proposal.
- If the decision maker approves an amendment to implementation conditions, the amended conditions then apply to the proposal (or amended proposal).
- The decision maker may decide to approve only some of the requested amendments.

If the decision maker refuses to approve some or all of a proposed amendment under s. 45C, 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
- request that the Minister ask the EPA to inquire into the implementation conditions under s. 46 (amendments to conditions only), OR
- refer the amendment as a significant amendment under s. 38.

6. Supporting documents

Refer to and submit (where relevant) documents used to support the proposed amendment(s),

including:

- Approved proposal documents (including proposal as originally approved): Ministerial Statements, Compliance Assessment Reports, Annual Environmental Reports, EPA Reports, appeal documentation, proponent Environmental Review Documents and Environmental Management Plans.
- Proposed amendment documents: surveys, investigations, studies and environmental performance reports.

If surveys are provided, submit IBSA/IMSA data packages – for IBSA data packages – see [Instructions and Templates: IBSA Data Packages](#), for IMSA data packages – see [Instructions, Templates and Form: IMSA Data Packages](#).

Submitting a s. 45C request

Ensure that all required information in the Form for a Request to amend a proposal or implementation conditions under s. 45C of the EP Act is provided with your request to the EPA Services of the 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