

**Notice of proposed transfer of responsibility
for a proposal under s. 38I of the *Environmental
Protection Act 1986* after a Ministerial Statement
has been published**

Instructions

**Administered by DWER on behalf of
the Minister for Environment**

June 2023

Version	Change	Date
1.0	Initial version	12 July 2018
2.0	Version aligned with EP Act amendments 2020	June 2023

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 2023, *Instructions – Notice of proposed transfer of responsibility for a proposal under section 38I of the Environmental Protection Act 1986 after a Ministerial statement has been published*. Administered by DWER on behalf of the Minister for Environment, 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 Minister for Environment (or the Executive Director EPA Services as delegate) is the decision-maker for transferring responsibility of a proposal after a Ministerial Statement has been published.

The purpose of this document is to provide advice to the nominated proponent of a proposal, who proposes to transfer responsibility for a proposal to another person. Following these instructions and using the associated form will ensure the relevant information is provided to the Department of Water and Environmental Regulation (DWER). The requested information will be taken into consideration to inform the Minister's decision, whether to revoke the nomination and nominate another person in relation to the proposal.

2. How to complete a request to transfer responsibility for a proposal post assessment

The Minister (or DWER officer as delegate) needs sufficient information from the proponent to decide whether to approve the request to transfer the responsibility for a proposal.

Approval will be conditional on being notified by both the past and new proponent, that the transaction leading to the proponent change has been completed.

Proponents should provide information described below in the corresponding form. This form should be submitted at least 30 days before a proponent proposes to cease responsibility for a proposal.

Advice

Proponents may contact EPA Services, DWER via the Enquiry form in Environment Online if they need assistance to prepare a request.

For more information relating to referring a proposal, refer to the EPA's [Administrative Procedures](#) and [Procedures Manual](#).

Content of a request to transfer responsibility for a proposal – after Ministerial Statement has been published

Where a Ministerial Statement has been published, s. 38I(1) of the *Environmental Protection Act 1986* (EP Act) requires a person nominated as the proponent of a proposal, that proposes to transfer responsibility for the proposal to another person, to give the Minister written notice advising the name of the other person.

Regardless of whether the Minister receives such written notice, the Minister (or delegate) may revoke the nomination of the proponent and nominate another person as the proponent of the proposal.

The form is available to assist proponents to provide the Minister (or delegate) with relevant information to make a decision under s. 38I. The submission of the completed form by the proponent serves as written notice for the purposes of s. 38I(1) of the EP Act.

3. Supporting information to be provided with a request to transfer responsibility of a proposal

The following information is provided to assist proponents to complete the Form: *Notice of proposed transfer of responsibility for a proposal under s. 38I of the EP Act after a Ministerial statement has been published*. The following sections are aligned with the key headings in the form for ease of completion.

1. Proposal

List the proposal/s and corresponding Ministerial Statement number/s for which the transfer of proponent responsibility is proposed.

Provide a brief description of the proposal and a reference to the proponent prepared proposal content document (if one exists), or to the appropriate document defining the proposal content. Describe the stage of implementation of the proposal – planning, construction, operation, decommissioning, rehabilitation and/or site closure.

2. Reason for requesting transfer of responsibility

Briefly describe the nature of the transaction or change of circumstance that caused the proponent to give this notice, such as the sale of the business. Provide evidence to demonstrate the need to transfer responsibility.

3. Current and proposed proponent information

Complete the details for both current and proposed proponents, including the relevant Australian Company Numbers (or Australian Business Numbers for government agencies) if applicable.

4. Current compliance status of the proposal

The current proponent is required to provide details of the current compliance status of the proposal, as any non-compliance may need to be resolved prior to proponent transfer, or as soon as possible by the new proponent.

Provide the history (five years) and details of the 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-compliances since that time are also discussed.

5. Track record and ability of the proposed proponent

The proposed proponent is required to provide details of their ability and capacity, as well as their track record in environmental performance to provide DWER with confidence that it can meet statutory requirements and implement the proposal as approved. Provide supporting evidence as attachments.

The proposed proponent should also demonstrate that it is the entity that will be responsible for controlling the implementation of the proposal and ensuring compliance with the implementation conditions. Provide supporting evidence as attachments.

6. Joint venture

Indicate if the current or proposed proponent is implementing the proposal on behalf of other joint venture parties and provide details and any evidence.

7. Legal access

Indicate if the proposed proponent owns or has legal access to the land where the proposal is located and provide details of tenure or access agreements.

8. State Agreement

Indicate if a State Agreement Act applies to any part of the proposal and provide details of the Act.

9. Date of proposed transfer of responsibility

State the legal name of the proposed proponent and date that responsibility of the proposal is proposed to be transferred.

10. Current proponent declaration

A notice that a proponent proposes to transfer responsibility for the proposal to another person must be signed by the proponent, or a person that has legal authority to provide the notice on behalf of the proponent.

If the current proponent is a company, the notice may be executed in accordance with s. 127 of the *Corporations Act 2001*.

Sufficient evidence of the authority/capacity to execute the document must be provided.

11. Proposed proponent declaration

The notice that a proponent proposes to transfer responsibility for the proposal to another person must also be signed by the proposed proponent or a person that has legal authority to provide the notice on behalf of the proposed proponent.

If the proposed proponent is a company, the notice may be executed in accordance with s. 127 of the *Corporations Act 2001*.

Sufficient evidence of the authority/capacity to execute the notice must be provided.

Submitting a request

Ensure that all required information in the Form is provided with your request to DWER. It is preferred that requests are made via Environment Online; however, emailed and postal submissions will be accepted. For assistance in using Environment Online, please contact EOsupport@dwer.wa.gov.au.

Submissions

EO portal: environmentonline.dwer.wa.gov.au

Email: EOsupport@dwer.wa.gov.au

Post: EPA Services

Department of Water and Environmental Regulation

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General Enquiries

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