



GOVERNMENT OF
WESTERN AUSTRALIA

**Request to withdraw a Ministerial Statement
under s. 47A(3) of the *Environmental
Protection Act 1986***

Instructions

Minister for Environment

June 2023

Version	Change	Date
1.0	Initial version aligned with EP Act amendments 2020	June 2023

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

Minister for Environment, 2023, *Instructions – Request to withdraw a Ministerial Statement under s. 47A of the Environmental Protection Act 1986*, 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

These instructions relate to the functions of the Minister for Environment regarding the withdrawal of Ministerial Statements under s. 47A(3) and (4) of the *Environmental Protection Act 1986 (WA)* (EP Act).

This document describes the information proponents should provide with their request. This enables the Minister to determine whether to approve a request to withdraw the relevant Ministerial Statement under s. 47A of the EP Act. Section 47A is a new provision introduced through the *Environmental Protection Amendment Act 2020*.

Upon receiving a written request from the proponent of an approved proposal, the Minister may withdraw the relevant Ministerial Statement if the Minister considers that it is appropriate to do so and is satisfied that:

- a) the proposal has been implemented and the implementation conditions, if any, have been complied with or no longer need to be complied with; or
- b) the impacts of the implementation of the proposal, can be satisfactorily mitigated by way of licensing or some other form of regulatory control under the EP Act or another written law.

These instructions do not apply to circumstances contemplated in s. 47A(2), where a commencement condition has not been complied with. In this case, the Minister may withdraw the Ministerial Statement if the Minister considers that it is appropriate to do so and if the Minister has received written notice from the CEO of the Department of Water and Environmental Regulation (DWER) that, in the CEO's opinion, the commencement condition has not been complied with.

2. How to complete a request to withdraw a Ministerial statement

Proposal information provided to the Minister

Proponents must make a written request for approval from the Minister to withdraw a Ministerial Statement relating to a proposal under s. 47A(3) of the EP Act using the *Form: Request to withdraw a Ministerial Statement under s. 47A of the EP Act*. The form can be accessed through Environment Online.

In considering the request to withdraw the Ministerial Statement, the Minister may seek advice from relevant decision-making authorities on how the proponent has met the implementation conditions. The Minister requires sufficient information to ensure the proposal has been implemented in accordance with the implementation conditions or that the environmental impacts of implementing the proposal will be satisfactorily mitigated by way of licensing or other form of regulatory control under the EP Act or another written law.

Content of a request to withdraw a Ministerial Statement

The *Form: Request to withdraw a Ministerial Statement under s. 47A of the EP Act* has two options:

Option 1: Fast-track request

Under the EP Act, the CEO of DWER or their delegate monitors the implementation of approved proposals and compliance with implementation conditions.

Prior to the introduction of s. 47A, Ministerial Statements were not able to be withdrawn under the EP Act. Historically, for some Ministerial Statements that were implemented and

implementation conditions complied with, or no longer needing to be complied with, the CEO or delegate may have written to the proponent confirming:

- the 'completion' of implementation condition/s or proponent commitments
- approval to cease implementing an implementation condition
- the approval to cease implementing a proponent commitment or environmental management plan (EMP).

A fast-track option is available for proponents who have received written confirmation from the CEO or delegate confirming the proposal has been implemented and implementation conditions have been complied with, or no longer need to be complied with. This option is available for proponents who have received written confirmation prior to the proclamation of s. 47A on 23 October 2021.

Option 2: Standard request

To be completed by proponents making a request to withdraw a Ministerial Statement that are not using the fast-track option.

Advice

Proponents may contact DWER using the 'Enquiries form on Environment Online specifying 'Subject: Section 47A enquiry' if assistance to prepare a request is needed.

For more information on the withdrawal of a Ministerial statement, refer to the EPA's [Environmental Impact Assessment \(Part IV Divisions 1 and 2\) Administrative Procedures 2021](#) and [Environmental Impact Assessment \(Part IV Divisions 1 and 2\) Procedures Manual](#).

3. Information to be provided with a request to withdraw a Ministerial Statement

The following information is provided to assist proponents to complete the [Form: Request to withdraw a Ministerial Statement under s. 47A of the EP Act](#). The following sections are aligned with the key headings in the form for ease of completion.

Proponents should provide all information requested in the form completely and accurately to ensure the timely assessment of the request by DWER. If sufficient information is not provided, DWER may request further information.

Option 1: Fast-track request

Eligible proponents for the fast-track option only need to complete option 1 on the [Form: Request to withdraw a Ministerial Statement under s. 47A of the EP Act](#). The information required is described below.

1. Proponent information

Proponent name

Nominated proponent responsible for the implementation of the proposal.

Provide an Australian Company Number (or Australian Business Number for government agencies).

Who is requesting to withdraw a Ministerial statement?

These instructions apply to a nominated proponent of a proposal who wishes to withdraw their own Ministerial Statement. If the nominated proponent wishes to use an authorised agent, then an authorisation should be provided with the request to withdraw a Ministerial Statement.

Request declaration

For DWER (on behalf of the Minister) to accept a request from a proponent (or consultant on behalf of the proponent), it must be signed by a person with sufficient authority to make the request – either a CEO or a person with evidence to act on behalf of the organisation.

2. Proposal information

Title of the proposal

As stated on the Ministerial Statement.

Ministerial Statement number and date of approval

As stated on the Ministerial Statement.

Description of the proposal

Provide the general proposal description and identify all relevant elements of the 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

Provide details of the approved proposal including a summary of the proposal as originally approved, any approved amendments (including any approved amendments (and/or changes) under s. 45C, s. 38 and/or s. 46 in a table), and approval dates.

3. Reason and details of the withdrawal request

Provide the reason for the request for withdrawal of Ministerial statement.

4. Summary of compliance

Proponents should provide a summary to demonstrate that the proposal has been fully implemented and all implementation conditions have been complied with or no longer need to be complied with. The summary must include the date that each of the implementation conditions or proponent commitments was 'completed' and/or no longer needed to be complied with. Written confirmation of compliance from DWER, or previous departments that regulated Part IV of the EP Act must be provided with the request.

5. Confirmation that implementation conditions have been met

List and attach written confirmation from the CEO of DWER (or delegate), or previous departments that regulated Part IV of the EP Act.

6. Supporting documents

Provide any other supporting document justifying the withdrawal of the Ministerial Statement.

Option 2: Standard request

This option is for proponents not using the fast-track option. Proponents must complete parts A; B and/or C; and D of the [Form: Request to withdraw a Ministerial statement under s. 47A of the EP Act](#).

Some proponents may need to complete both part B and C in circumstances where some environmental impacts can be mitigated by another regulator (Part B) **and** some

implementation conditions have been complied with or no longer need to be complied with (Part C).

Part A: Proponent information, proposal description and compliance status

1. Proponent information

Proponent name

Nominated proponent responsible for implementation of the proposal.

Provide an Australian Company Number (or Australian Business Number for government agencies).

Who is requesting to withdraw a Ministerial Statement?

These instructions apply to a nominated proponent of a proposal who wishes to withdraw their own Ministerial Statement. If the nominated proponent wishes to use an authorised agent, then an authorisation should be provided with the request.

Request declaration

For DWER (on behalf of the Minister) to accept a request from a proponent (or consultant on behalf of the proponent), it must be signed by a person with sufficient authority to make the request on behalf of the proponent – 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 DWER contact. Identify outcomes of any discussions with DWER at any meetings held prior to submitting the s. 47A request.

3. Proposal information

Title of the proposal

As stated on the Ministerial Statement.

Ministerial Statement number and date of approval

As stated on the Ministerial Statement.

Description of the proposal

Provide the general proposal description and identify all relevant elements of the 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

Provide details of the approved proposal including a summary of the proposal as originally approved, any approved amendments (including any approved amendments (and/or changes) under s. 45C, s. 38 and/or s. 46 in a table), and approval dates.

Stage of implementation

Describe the stage of implementation of the proposal (for example operations or closure). Give further details about the stage of implementation where they may vary across different parts of the proposal, or where they are only partially implemented.

Spatial data and maps

Confirm that DWER has the most up-to-date spatial data and maps of the proposal and the date that the data was provided.

4. Compliance and environmental performance

Compliance

Provide the history (5 years) and current status of compliance with the Ministerial Statement (this may be provided as a separate table). Also, provide a summary report on the current environmental performance and compliance of the approved proposal. These can include reference to the most recent Compliance Assessment Report (CAR) if it is less than one year old, provided any potential non-compliance since that time and environmental performance in compliance with the implementation condition environmental outcomes and/or objectives are also discussed. It is expected that CARs will be developed in accordance with [Post Assessment Guideline PAG3 - Preparing a Compliance Assessment Report](#).

If there is no CAR or the CAR is greater than one year old, complete and provide a CAR as an attachment (refer to [Post Assessment Guideline PAG3 – Preparing a Compliance Assessment Report](#)), ensuring the report includes:

- the status of implementation of the proposal
- an assessment of the proposal's environmental performance of how environmental impacts have been managed
- for each implementation condition and/or procedure of the Ministerial Statement, outline whether it has been, is being, has not or is not being complied with (that is, declare its compliance status) and provide documentation which supports/verifies requirements being fulfilled
- an audit table prepared in accordance with [Post Assessment Guideline PAG 1 - Preparing an Audit Table](#)
- documentation which supports the:
 - 'completion' of implementation condition/s or proponent commitments,
 - approval to cease implementing an implementation condition, and/or
 - approval to cease implementing a proponent commitment or environmental management plan (EMP)
- details of all non-compliances and potential non-compliances and the related corrective and preventative actions taken or being taken.

Environmental performance

Provide a report on the current environmental performance of the approved proposal against the Ministerial Statement implementation conditions. 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 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 current procedures, instructions and guidance will be considered, rather than the procedures, instructions and guidance at the time the original proposal was approved.

5. Reason and details of the withdrawal request

Provide the reason for the request for withdrawal of Ministerial Statement.

Part B: Conditions implemented, complied with, or no longer required

Complete this section for:

- proposals that have been implemented
- proposals where some or all conditions have been complied with
- proposals where some or all conditions are no longer required.

1. Status of compliance with implementation conditions

Proponents should provide a summary to demonstrate that the proposal has been fully implemented and all implementation conditions have been complied with or no longer need to be complied with. This should include evidence attached to the request.

2. Consultation

The proponent can include consultation information to facilitate consideration of the request, as it may be requested by the Minister upon review of the request.

The proponent should ensure that appropriate consultation occurs with relevant stakeholders including Traditional Owners where relevant, prior to making an application to withdraw a Ministerial Statement.

Consultation undertaken

Discuss whether any consultation has been undertaken, including:

- consultation with decision-making authorities
- targeted consultation with other stakeholders (including any public consultation).

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.

Provide justification if **consultation** has not been undertaken.

Describe the anticipated level of public interest in the withdrawal of the Ministerial Statement.

Proponents are encouraged to consult with any decision-making authorities identified by the EPA at the time the proposal was assessed. Evidence of consultation with the decision-making authorities and awareness of the proponent's request to withdraw the Ministerial Statement should be provided.

In appropriate cases, targeted consultation with other stakeholders and/or Traditional Owners, should be undertaken and may be required by the Minister upon review of the request. For example, some targeted public consultation is likely to be appropriate if the level of assessment for the original proposal (or subsequent significant amendment) included a public environmental review.

Part C: Mitigation by other regulatory processes

Complete this part of the instruction if the basis for the request to withdraw the Ministerial Statement is that the impacts of the implementation of the proposal can be satisfactorily mitigated by way of licensing, or some other form of regulatory control under the EP Act or another written law. Sufficient evidence should be provided with the request to withdraw a Ministerial Statement.

Refer to the EPA's [Interim guidance – Taking decision making processes into account in EIA](#), noting that this interim guidance is primarily for the purposes of referral and assessment decisions.

1. Mitigation of impacts by licensing or other regulatory control

The proponent must:

- Clearly identify all current and future impacts of the implementation of the entire proposal (including those impacts relating to decommissioning and rehabilitation)
- Identify all licensing or other form of regulatory control relevant to the implementation of the entire proposal and at what stage these processes were / are / will be relevant
- Include information on whether and how the licensing or other form of regulatory control can mitigate the impacts of the implementation of the proposal to achieve the EPA's objectives
- Provide evidence of any existing licences or permits issued relating to the implementation of the proposal that are relevant to the proposed withdrawal of the Ministerial statement and discuss any changes that would be required. If the proposed withdrawal of the Ministerial Statement will require an amendment to an existing licence or permit, the decision-making authority responsible for regulation should be consulted, and their advice provided with the supporting documentation. Any new or amended regulatory approval (for example a licence or permit) that would replace an implementation condition would need to be issued prior to the withdrawal of the Ministerial Statement.

Note: The Minister may seek validation of advice provided by decision-making authorities and other stakeholders.

2. Consultation

Provide details on the consultation undertaken and the outcomes of that consultation including a list of all stakeholders including Traditional Owners where relevant.

Provide evidence from relevant decision-making authorities of the extent they will mitigate (through licensing or other forms of regulatory control) the environmental impacts of the proposal as conditioned through the implementation conditions.

Part D: Supporting documents and conclusion

Provide a list of and submit (where relevant) documents used to support the proposed request to withdraw a Ministerial Statement, such as:

- approved proposal documents (including proposal as originally approved)
- Ministerial Statements
- Compliance Assessment Report
- Annual Environmental Report
- EPA Reports
- appeal documentation
- proponent Environmental Review Documents and Environmental Management Plans
- closure / rehabilitation plans
- information from other decision-making authorities.

Discuss why it is appropriate to withdraw the Ministerial Statement.

Submitting a request

Ensure all required information in the form is provided with your request. Requests should be submitted to DWER. It is preferred that requests are made using 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

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