



Consultation Summary

Guidance Statement: Publication of Annual Audit Compliance Reports (Part V Environmental Protection Act 1986)

Version: Final

May 2016



Produced and published by

Department of Environment Regulation
168 St Georges Terrace, Perth, Western Australia

May 2016

Copyright © State of Western Australia 2016

All material is the copyright of the State of Western Australia. Permission is not given for any commercial use or sale of this material. No part of the contents of the publication may be reproduced by any process, electronic or otherwise, distributed, adapted, broadcast, performed in public or communicated to the public without the written consent of Department of Environment Regulation, except as permitted under the *Copyright Act 1968*.

Disclaimer

The information contained in this document is provided by Department of Environment Regulation in good faith. However, there is no guarantee of the accuracy of the information contained in this document and it is the responsibility of users to make their own enquiries as to its accuracy, currency, relevance and correctness.

The State of Western Australia and Department of Environment Regulation and their servants and agents expressly disclaim liability, in negligence or otherwise, for any act or omission occurring in reliance on the information contained in this document, or for any incident or consequential loss or damage of such act or omission.

The State of Western Australia is committed to providing quality information and has made every attempt to ensure the accuracy, currency, reliability and correctness of the information contained in this document. However, changes in circumstances and legislation after the time of publication may impact on the correctness or quality of this information.

In addition the accuracy, currency, reliability and correctness of links or references to information sources referred to or provided by third parties is outside the control of State of Western Australia and it is therefore the responsibility of the user to make their own decisions on information found on those external sites. Confirmation of any of the information provided in this document may be sought from the relevant originating bodies or the department providing the information; however, users of this material should verify all relevant representations, statements and information with their own professional advisers.

The State of Western Australia and Department of Environment Regulation reserve the right to amend the content of this document at any time without notice.

The information contained in this document is general. It does not constitute, and should be not relied on as legal advice. The State of Western Australia recommends seeking advice from a qualified lawyer on the legal issues affecting you before relying on this information or acting on any legal matter.

Questions regarding this report should be directed to:

[Department of Environment Regulation](#)
[Locked Bag 33 Cloisters Square](#)
[PERTH WA 6850](#)

Phone: +61 8 6467 5000

Fax: +61 8 6467 5562

Email: info@der.wa.gov.au

Web: www.der.wa.gov.au

Accessibility

This document is available in alternative formats and languages on request.

1. Background

On 23 October 2015, the Department of Environment Regulation (DER) released the draft *Guidance Statement: Publication of Annual Audit Compliance Reports* (draft AACR Guidance Statement), the draft *Annual Audit Compliance Report Guideline* (draft AACR Guideline) and draft *Annual Audit Compliance Report Form* (draft AACR Form) for public comment.

The suite of documents provide guidance to licensees on DER's intention to publish Annual Audit Compliance Reports (AACRs) on its website. The documents also provide assistance to licensees on how to complete an AACR Form required under condition of licences granted under Part V of the *Environmental Protection Act 1986* (EP Act).

Consultation closed on 24 December 2015 with 10 submissions received. This document summarises the submissions, the key issues raised, and responses to these issues within the scope of the draft AACR Guidance Statement, draft AACR Guideline and draft AACR Form.

DER thanks all respondents for taking the time to respond to the consultation.

1.1 Summary of Consultation Submissions

Ten submissions were received in relation to the draft AACR Guidance Statement. Four submissions provided general support in principle to the public availability of AACRs on DER's website. The majority of submissions raised issues relating to the confidentiality and nature of information provided by a licensee in an AACR and publication of such information.

1.2 Summary of Responses to Submissions

DER acknowledges the comments received relating to information provided in an AACR. DER's intention to publish AACRs is in line with its *Guidance Statement: Regulatory Principles* (published July 2015).

Publication of AACRs is aimed at increasing transparency of licensees' environmental performance and providing greater public access to information. It is also consistent with reporting arrangements in other jurisdictions.

2. Consultation Submissions

Ten submissions were received as listed in Table 1.

Table 1: Consultation submissions received

Organisation
Asphaltech Pty Ltd
Chamber of Commerce and Industry WA
Chamber of Minerals and Energy WA
ECA Environmental Consultants Association
MBS Environmental
Mindarie Regional Council
Suez Medical Solutions [MediCollect]
Synergy
Western Australian Local Government Association (WALGA)
Water Corporation

Table 2: Extract of submissions received

Comment	DER Response
Draft AACR Guidance Statement and Guideline	
<p>It was noted that “<i>the AACR Guidance Statement refers to the AACR as part of the Annual Environment Report (AER) and that DER is amending the requirements for AERs as detailed in its draft Licence Documentation – Consultation Paper (published September 2015)</i>”. For consistency, the submission suggested that “<i>references to AERs should be removed from this Guidance Statement</i>”.</p>	<p>DER acknowledges that in its broader regulatory reforms the records, information and reporting conditions in a licence granted under Part V of the EP Act have been reviewed. As part of these reforms the draft licence template (released for consultation on 4 September 2015) no longer references AERs. Accordingly, DER has re-drafted the AACR Guidance Statement to remove the reference to AERs.</p>
<p>One submission stated that “<i>in the existing Guideline for AACRs that DER undertook to negotiate the timing of the submission of AACRs to align with other reporting requirements</i>”. It was further noted that “<i>the submission of AACRs with other reporting requirements is convenient for licensees as there may be synergies in the preparation of documents</i>”. It was suggested that an equivalent provision should be included in the new draft AACR Guideline.</p>	<p>In reference to submission time frames for an AACR, a condition of licence sets out the AACR reporting date. The date is determined in the draft licence template which the applicant has an opportunity to comment on before finalisation. A principle in the <i>Guidance Statement: Setting Conditions</i> (first published 24 September 2015) reflects this process. Therefore, DER does not consider any amendment to the AACR Guideline is necessary.</p>
<p>Support was given to DER’s statement that licensees are no longer required to obtain the approval of the Chief Executive Officer (CEO) of DER in respect of persons authorised to sign AACRs. It was noted that this would “<i>reduce the administrative burden for licensees</i>”.</p>	<p>DER notes the submission made.</p>

Comment	DER Response
Publication of AACRs on DER’s website	
<p>It was suggested that “<i>DER maintain its current procedures whereby AACRs are sent in confidence to DER and (possibly redacted) reports only be released to third parties on production of a suitably authorised FOI request</i>”.</p>	<p>DER’s intention to publish AACRs is in line with its <i>Guidance Statement: Regulatory Principles</i> (published July 2015). Publication of AACRs is aimed at increasing transparency of licensees’ environmental performance, providing greater public access to information, and is consistent with reporting in other jurisdictions.</p>
<p>It was noted “<i>that in making AACRs publicly available that persons viewing AACRs would need a level of competence to understand the technical details that may be provided to add clarity to the reported non-compliances</i>”.</p> <p>Similarly, it was suggested that “<i>publication of AACRs may lead to extra work for both DER and the licensee due to uninformed enquiries from persons who lack understanding of the technical and environmental issues involved</i>”.</p>	<p>DER acknowledges there may be a level of competence required to interpret information stated in an AACR, however this does not detract from DER’s aims to increase transparency in environmental performance.</p>
<p>It was suggested that “<i>in knowing that an AACR would become publicly available, some AACR submissions may be less forthcoming with information stated in a report</i>”.</p>	<p>When submitted, an AACR is reviewed by DER for completeness and accuracy of information stated. DER may require a licensee to provide further information to substantiate statements made in an AACR to ensure the information submitted is accurate and can be verified.</p>

Comment	DER Response
Publication of AACRs on DER’s website (continued)	
<p>It was suggested that “<i>publication of AACRs will not enhance the powers under the EP Act and that the proposal may be outside the purpose of the Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm</i>”.</p> <p>Similarly, it was questioned “<i>what the value would be in making these AACRs publicly available</i>”.</p>	<p>Publication of AACRs is aimed at increasing transparency of licensee’s environmental performance, providing greater public access to information, and is consistent with reporting in other jurisdictions.</p>
<p>It was noted that “<i>making organisations publicly accountable for their business practices encourages best practice solutions that will improve the protection of the environment</i>”.</p>	<p>DER notes the submission made.</p>
<p>It was noted that “<i>the AACR becomes more valuable as other reforms, such as removing the requirement for AERs, are proposed</i>”.</p>	<p>DER notes the submission made.</p>
Confidentiality of information contained in an AACR	
<p>It was noted that “<i>DER should give consideration to the Freedom of Information Act 1992 when making information publicly available</i>”.</p>	<p>In the draft AACR Guideline, DER states that information proposed to be redacted from the AACR is to be marked as confidential for consideration of the CEO of DER. The licensee should provide a justification as to the reasons for its</p>

Comment	DER Response
<p>It was suggested that <i>“in the event that the CEO of DER makes the decision to publish information marked as confidential by the licensee, the licensee should be consulted prior to publication of the AACR. Licensees should be provided with the opportunity to submit a request to DER for the decision to be reviewed and information redacted where appropriate”</i>.</p>	<p>confidentiality.</p> <p>In determining confidentiality, DER will review this information together with the provisions of the <i>Freedom of Information Act 1992</i>.</p> <p>Prior to publication, DER will advise the licensee of its decision to publish an AACR and the outcome of its decision regarding confidentiality.</p>
<p>It was suggested that <i>“the AACR Guideline be amended to note that when a licensee considers information as confidential, confidentiality cannot include details on non-conformance”</i>.</p>	<p>The licensee should provide a justification as to the reasons for marking any information as confidential and DER will assess the claim on its individual merits. DER does not consider any amendment to the draft AACR Guideline is necessary.</p>
<p>It was suggested that <i>“personal information, such as name and position, should be removed from the AACR prior to it being published”</i>.</p>	<p>At the request of the licensee, DER will give consideration to information in an AACR, such as personal details being redacted.</p>
<p>Draft AACR Form</p>	
<p>It was noted that publication of AACRs would increase the amount of information available to the public and that that information needs to be interpreted correctly, therefore <i>“DER needs to ensure that AACRs are in a format that facilitates the correct reporting and interpretation of this information”</i>.</p>	<p>DER has revised the draft AACR Guideline and Form to provide the licensee with clear and sufficient information to facilitate reporting.</p>

Comment	DER Response
<p>It was suggested that “<i>answering ‘no’ to the question ‘Did you comply with your licence conditions during the reporting period?’ in Section B – Statement of compliance with licence conditions, may imply that the licensee has not complied with any of its licence conditions even though non-compliance may only relate to a subset of licence conditions. It was suggested that the query be amended so that an answer of ‘no’ would not imply non-compliance with all licence conditions</i>”.</p>	<p>To address this comment, DER has made a minor amendment to wording in this part of the draft AACR Form.</p>
<p>It was suggested that “<i>the declaration statement in Section C of the draft AACR Form be amended to include wording that takes into account confidentiality of the information being provided</i>”.</p>	<p>DER does not consider any amendments are necessary to this declaration. Guidance on how a licensee can mark information as confidential is provided in the draft AACR Guideline.</p>
<p>Support was given to “<i>including a question in the draft AACR Form on the actual or suspected environmental impact of a non-compliance event</i>”. It was noted that “<i>the inclusion provides licensees with the opportunity to explain the significance and substance of a breach</i>”.</p>	<p>DER notes the submission made.</p>