



# Consultation summary

## *Guidance statement: Regulatory principles*

**Version: Final**

July 2015

### Produced and published by

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

July 2015

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## Background

The Department of Environment Regulation (DER) is developing a robust suite of documents that will guide the administration of its regulatory functions under Part V of the *Environmental Protection Act 1986* (EP Act). The *Guidance statement: regulatory principles* is intended to clarify key outcomes for DER's regulatory functions and guiding principles for how it will undertake these functions.

The guidance statement will be supported by more detailed documents and process improvements within DER to provide improved efficiency, effectiveness, transparency, consistency and accountability in regulatory functions.

On 5 November 2014, DER released the *Guidance statement: regulatory principles* for public comment.

Consultation closed on 17 December 2014, with 19 submissions received. This document summarises these submissions, the key issues raised, and responses to these issues.

Finalisation of this guidance statement was deferred to allow consideration of related issues emerging from consultation on the *Guidance statement: setting conditions*, which closed on 20 March 2015.

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

## Summary of consultation submissions

Nineteen submissions were received in relation to the draft *Guidance statement: regulatory principles*. These were generally supportive, and primarily raised issues of clarification.

Key issues raised in the submissions were:

- requests for further information and guidance materials regarding application of the risk based approach to licensing and works approval decisions;
- requests for further information regarding setting licence conditions and ensuring consistent outcomes from regulatory processes;
- requests that Environmental Standards be developed through detailed consultation with affected stakeholders, with the final standards being clear and justifiable;
- suggestions that statutory principles from s 4A of the EP Act are included; and
- suggestions that further principles are included regarding managing approval time frames, maintaining consistency in decision-making and condition setting, and recognition of a trade-off between costs and benefits as part of regulatory decision-making.

## Summary of responses to submissions

DER recognises the need to publish further guidance about its risk-based approach to licensing and works approval decisions. DER is developing its assessment framework for public consultation.

DER published the *Guidance statement: setting conditions* for public comment on 22 December 2014. The public comment period closed on 20 March 2015, with nine submissions received. An updated guidance statement and consultation report is planned to be published in July 2015.

DER confirms that it intends to consult stakeholders when developing Environmental Standards. The guidance statement has been amended to clarify that intent.

The relationship between the administrative principles set out in the guidance statement and the statutory principles set out in the EP Act has been clarified in the guidance statement.

DER has considered whether further principles are required in the guidance statement, and has concluded that the intention behind the suggestions for additional principles can be accommodated as outlined below:

- Management of approvals time frames is addressed through public quarterly reporting and new key performance indicators in DER's annual report.
- Maintaining consistency in decision-making and condition-setting are addressed through two principles in the guidance statement (fair and equitable decision-making and competitive neutrality principles). These principles will be supported through implementation and publication of mechanisms including Environmental Standards, risk-based assessment and determination processes, and improved guidance.
- The trade-off between costs and benefits as part of regulatory decision-making is most effectively recognised in the development and determination of Environmental Standards. The Application of Environmental Standards principles have been amended to more directly address this matter.

## Consultation submissions

Nineteen submissions were received as listed in Table 1.

**Table 1: Consultation submissions received**

Organisation
Association of Mining and Exploration Companies
Cement Concrete and Aggregates Australia
Chamber of Commerce and Industry of WA Inc
Chamber of Minerals and Energy WA
Cristal Pigment Australia Ltd
CSBP
C-Wise
Department of Health
Environmental Consultants Association (WA) Inc
Environmental Health Australia (WA) Inc
John Holland Group
Kwinana Industries Council
Paul Byrnes
Shire of Broome
Urban Development Institute of Australia
Waste Management Association of Australia (WA)
Water Corporation
Western Australian Local Government Association
Westralia Infrastructure Pty Ltd

## Risk-based regulation

### Summary of submissions

Several submissions requested that DER develop guidance material outlining the risk-based approach to licensing and works approval decisions, including how DER will assess proposed deviations from Environmental Standards.

DER's role in protecting against harm to public health was both supported and questioned in submissions. Submissions also argued that the EP Act recognises a broad range of beneficial uses as part of the environment (including public benefit, public amenity, public safety, public health or aesthetic enjoyment) and suggested that a more balanced approach may be to recognise this range of beneficial uses.

One submission commented that the approach of assessing applications against defined standards implicitly requires DER to take responsibility for such assessment decisions. The submission queried whether government needs to take this responsibility and risk, suggesting that it should be up to companies and citizens to decide what an acceptable level of risk is. The submission also queried whether the tax system approach (placing decision responsibility with taxpayers, while tax officers undertake monitoring, compliance and enforcement) could be suitable for DER.

Two submissions suggested that the regulatory principles should have a greater focus on monitoring industry for compliance to prevent potential issues. The submissions also recommended that compliance and enforcement should focus on low and medium risk activities as well as high risk activities, supported by key performance indicators on the numbers of inspections and audits undertaken. Another submission queried whether a focus on high risk activities would also attract a greater penalty for non-compliance.

Two submissions recommended that DER work with the Environmental Protection Authority and the Department of Mines and Petroleum to determine a cross-government approach to risk assessments for proponents triggering approvals under Part IV and Part V of the EP Act and the *Mining Act 1978* to minimise duplication.

One submission suggested that the EP Act (specifically s 56) would not support refusal of an application that does not demonstrate that the risk of harm to public health or the environment can be managed to an acceptable level.

### Response to submissions

DER is preparing guidance material outlining its risk-based approach to licensing and works approval decisions and conditioning. DER is also developing an assessment framework and uniform environmental risk framework to apply throughout its regulatory cycle.

The EP Act and its definitions determine the scope and nature of DER's regulatory role. The expression "public health and the environment" is used in the guidance statement as it captures the key factors involved in many regulatory decisions. DER's role in protecting public health is limited to the matters regulated under the EP Act (including pollution, environmental harm, emissions and discharges, deposition of waste).



A series of definitions are reproduced from the EP Act to explain how public health (and other beneficial uses) are within the scope of the EP Act:

**pollution** means direct or indirect alteration of the environment —

- (a) to its detriment or degradation; or
- (b) to the detriment of an environmental value; or
- (c) of a prescribed kind, that involves an emission.

**environmental harm** means direct or indirect —...

- (c) alteration of the environment to the detriment or potential detriment of an environmental value; or....

**environmental value** means —

- (a) a beneficial use; or
- (b) an ecosystem health condition;

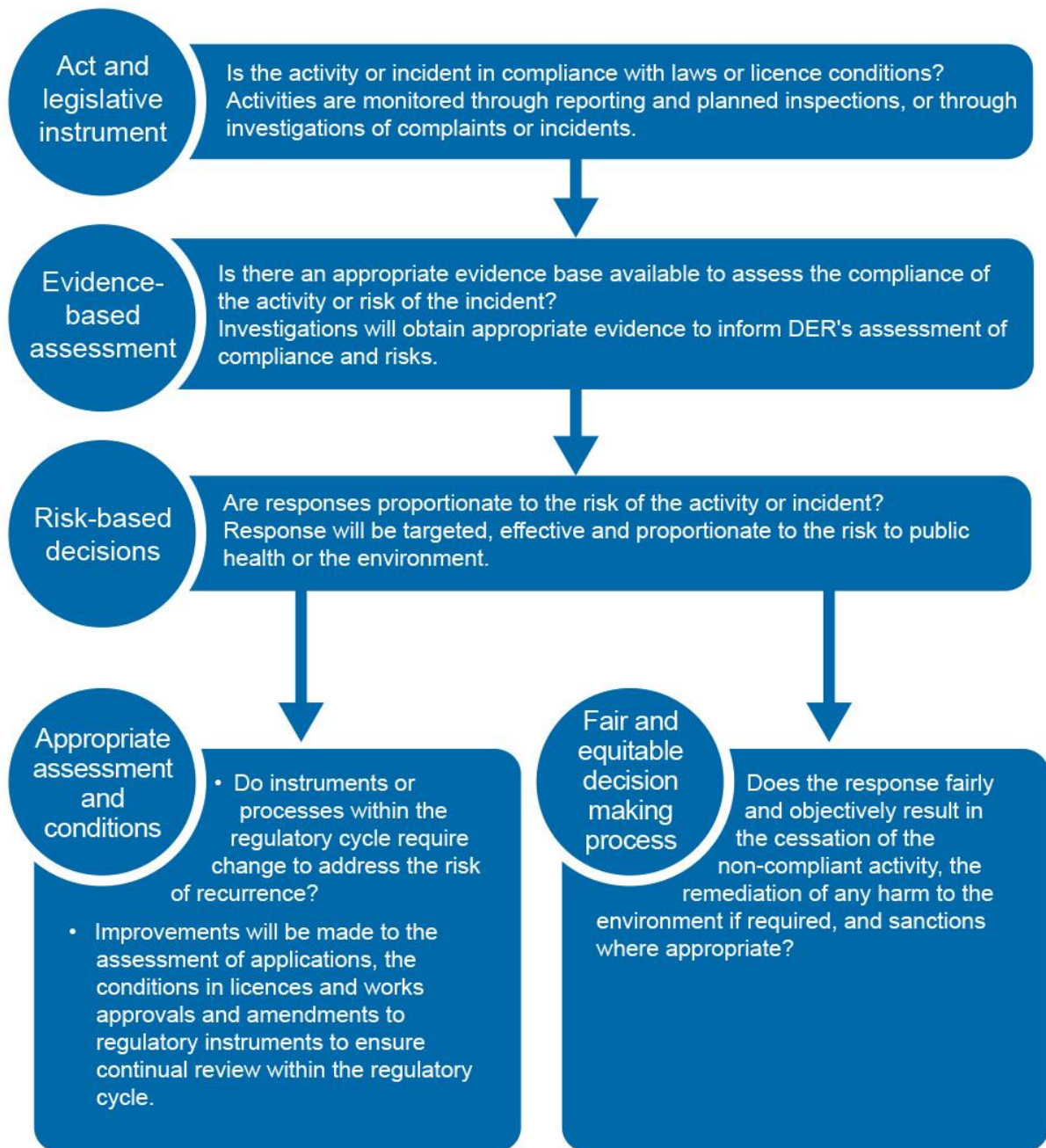
**beneficial use** means a use of the environment, or of any portion thereof, which is —

- (a) conducive to public benefit, public amenity, public safety, **public health** or aesthetic enjoyment and which requires protection from the effects of emissions or of activities referred to in paragraph (a) or (b) of the definition of environmental harm in section 3A(2)...

Regarding the role of government in assessing risk and setting conditions, DER's roles and responsibilities in the regulation of potentially polluting premises are established by the EP Act, and cannot be changed by the guidance statement. DER notes that mechanisms used in Western Australia's environmental protection legislation are conceptually similar to those used in other Australian jurisdictions.

However, DER is moving to an approach that allows industry to take greater responsibility for how it achieves the necessary outcomes. Environmental Standards will set out the mandatory requirements, based on achieving acceptable environmental outcomes. Licence conditions will place enforceable responsibility on licensees to meet those standards. Accountability for meeting the standards will rest with licensees and will be reviewed through monitoring and reporting requirements and DER's compliance and enforcement activities.

DER's compliance program is risk-based, meaning that more resources are directed to high-risk premises or sectors and less resources towards low to medium-risk premises or sectors (noting that such premises or sectors are still considered). Quarterly reports of DER's regulatory performance (including performance against its compliance inspection targets) are published at <http://www.der.wa.gov.au/about-us/regulatory-performance-and-reporting>. Figure 5 has been included in the guidance statement to provide an overview of the application of the regulatory principles to DER's compliance and enforcement functions, which are carried out in the detection and response stages of the regulatory cycle.



**Figure 5 (from guidance statement): Application of regulatory principles to monitor, enforce and review stages**

A risk-based approach to compliance and enforcement does not affect the penalties that can be imposed, as penalties are set by legislation and determined by courts, rather than DER policy.

Regarding a cross-government approach to risk assessments, DER is reviewing the requirements for licensing of emissions and discharges as part of the proposed amendments to the EP Act to ensure that these are well targeted, address material environmental risks and do not duplicate other regulators' functions.

DER has considered the views expressed that the EP Act may not support refusal of an application which cannot demonstrate that the risk of harm to public health and the environment can be managed to an acceptable level, and maintains its view that the EP Act does provide for this.

One of DER’s fundamental legislative roles is to regulate emissions and discharges from activities to ensure the risks of harm to public health and the environment are managed to acceptable levels. This is in DER’s view clearly embodied within provisions of the EP Act, such as s 60(3)(a):

if the CEO is satisfied that, as a result of environmental circumstances having changed, the environment or an environmental value of the area concerned requires a higher level of protection than would be provided by the standards required by or under any approved policy or by prescribed standards, the CEO may grant or amend a works approval or licence so as to make the works approval or licence subject to conditions which specify standards that are more stringent than those required by or under the approved policy or by prescribed standards;

Figure 1 below represents the environmental risk thresholds that DER will apply in regulatory decision-making:

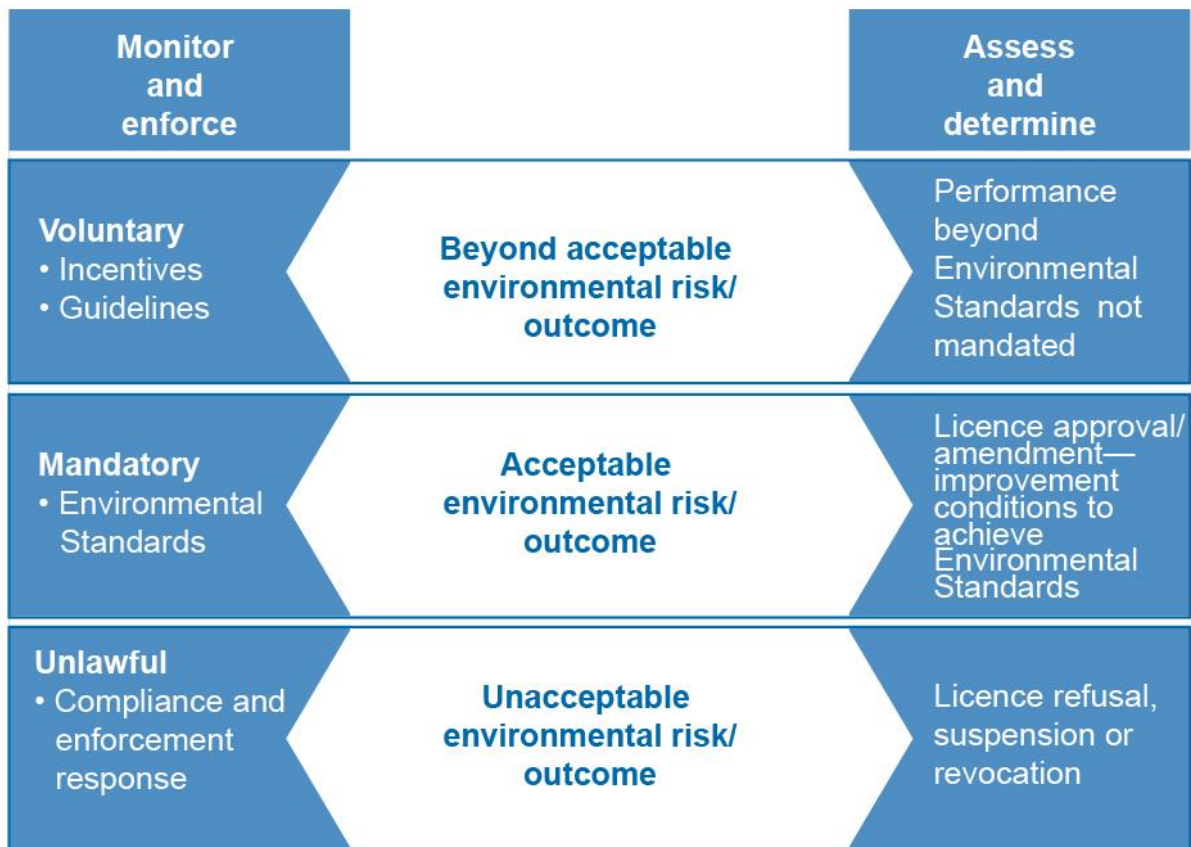


Figure 1: Risk thresholds

## Polluter Pays

### Summary of submissions

Several submissions raised concerns that the wording of the principle had been modified from that in the EP Act.

Other submissions sought to clarify the range of ways that DER is able to apply the polluter pays principle. Submissions suggested that “*Individuals that cause pollution should bear the cost of clean-up and remediation*”, and conversely that “*polluter pays should not be extended to become an alternative source of funding for DER*”.

### Response to submissions

The guidance statement has been amended to recognise the primacy of the EP Act’s statutory principles and no longer duplicates any statutory principles to avoid weighting or modifying the EP Act’s principles.

The guidance statement is not intended to provide guidance or direction about DER’s funding sources.

## Evidence-based decision-making

### Summary of submissions

Two submissions raised concerns that collecting information carries a cost to industry and DER and suggested DER undertake a risk assessment to determine whether the information is necessary to conduct DER’s regulatory function.

One submission sought clarification on how this principle would be applied in situations where the information requested has been identified as legally privileged.

One respondent suggested that information collected by DER should be made available to other regulators and (with the exception of commercial in confidence information) placed in the public domain to reduce data collection costs to proponents.

One submission asserted that the terms used in the principle appeared to be beyond the provisions of the EP Act.

### Response to submissions

DER recognises that seeking information from an applicant carries a cost. DER’s process to assess applications determines what information is already available to DER, and evaluates the importance of acquiring further information to enable the assessment and determination of the application.

DER recognises that it cannot require the provision of legally privileged information.

DER supports the concept of the information it collects being made available to other regulators and applicants to reduce the costs to business. A significant impediment is the lack of consent from the applicants providing the information. DER will investigate whether application forms can provide for consent to specified information being made available to third parties. The proposed amendments to the EP Act will also support this by requiring prescribed information to be published.

The CEO’s power to require information is provided by ss 51E, 54 and 57 of the EP Act (for clearing permits, works approvals and licences respectively), and provides



that the CEO may require the information necessary to undertake their functions under the EP Act.

## Application of Environmental Standards

### Summary of submissions

While there was strong support for the concept of Environmental Standards, several submissions sought clarification / offered views about the development of Environmental Standards, including:

- that Environmental Standards should be risk-based;
- that Environmental Standards should recognise the trade-off between costs and benefits, including the community's economic and social needs;
- that Environmental Standards should be outcome-based rather than technology-based;
- whether amenity issues (as well as actual health impacts) should be considered in Environmental Standards;
- that affected stakeholders should be consulted during the development of Environmental Standards; and
- that Environmental Standards should be established within a reasonable period of time.

Other submissions sought to clarify implementation concerns, including:

- whether it is appropriate for general Environmental Standards to be applied across various commodities and locations in Western Australia;
- whether environmental performance beyond Environmental Standards would be voluntary, and if so what non-regulatory means DER proposes to use to encourage that performance;
- the distinction between acceptable practice and best practice (particularly their application to existing facilities that comply with acceptable standards but do not reflect best practice because of advances in technology);
- the need for some flexibility to enable companies to comply within a reasonable period of time; and
- that the application of Environmental Standards requires an established and appropriate buffer policy, especially when evaluating emissions, discharges and noise.

Respondents suggested changes to Figure 1 to clarify the relationship of Environmental Standards to the various instruments in the regulatory hierarchy, including Prescribed Standards and Environmental Protection Policies.

Two respondents commented that levels of environmental performance higher than generally applicable standards should not be imposed on an industry due to political interference (due to complaints). The submissions asserted that where industry is meeting its licence conditions, there needs to be a scientific basis for the determination of potential impacts (e.g. monitoring or modeling) rather than an assessment of the number of complaints.

## Response to submissions

### Development of Environmental Standards

The views expressed about the development of Environmental Standards are similar to DER's, and it has amended the guidance statement to clarify key issues, including that DER will consult with stakeholders when developing Environmental Standards.

Environmental Standards will be developed with consideration of the trade-off between costs and benefits that would be expected at different levels of risk to public health and the environment. DER notes that it is preferable to consider costs and benefits when developing standards rather than through the assessment of individual applications as this supports more equitable and consistent decision-making.

DER's preference is for Environmental Standards to be outcome-based and specify limits where possible. However, DER notes that some risks will be more effectively regulated by infrastructure or process requirements.

Public amenity is primarily managed through the land use planning system, by maintaining appropriate buffers between incompatible land uses. Public amenity is a beneficial use recognised by the EP Act, and is therefore an element of the environment that is afforded protection from pollution and/or environmental harm under the EP Act.

While DER would prefer to develop a full set of Environmental Standards immediately, a prioritised approach will be necessary to ensure that industry is afforded sufficient opportunity to be consulted. A staged development process will also enable DER to ensure the effective and coordinated implementation of Environmental Standards.

### Implementation of Environmental Standards

DER will be releasing its draft guidance statement on Environmental Standards that apply to its regulatory functions under Division 3, Part V of the EP Act. The guidance statement will explain how Environmental Standards will apply to new and existing facilities.

DER notes that reasonable and appropriate transition periods will be necessary for existing licensees. The transition period will be specified in improvement conditions on the licence granted under Part V of the EP Act.

DER is considering a range of options to facilitate higher levels of performance by licensees. One option being considered is incentives through fee structures. In order to consider this option further, DER is conducting a review of fees.

### General comments related to Environmental Standards

The suggested additions to Figure 1 related to Environmental Standards were adopted.

While complaints can be a source of information, DER does not alter licence conditions (which determine the required level of environmental performance for a specific premises) solely on the basis of complaints received. Complaints that are substantiated, however, in DER's view provide a potentially valid basis for a regulatory, compliance or enforcement response.

DER prioritises complaints for further investigation on the basis of risk implied by the nature and pattern of the complaint(s). Amendments to licence conditions are normally supported by sound scientific evidence of impacts. However, in some

circumstances emissions are inconsistent, transient and highly complex, and decisions must be made without definitive scientific evidence in accordance with the statutory principles of the EP Act.

## Appropriate conditions

### Summary of submissions

Several submissions sought clarification about how DER intended to implement this principle and/or requested that DER develop guidance material for licence conditions and approvals. It was recommended that the guidance should be consistent with the Council of Australian Governments' Best Practice Regulation guide (2007).

Various issues were raised including that licence conditions should:

- not duplicate requirements of the EP Act or other legislation;
- not request reports or management conditions for approval and subsequent implementation;
- not request the use of authorised facilities for waste transferred from the premises (the authorisation of the offsite facility is beyond the control of the licensee / works approval holder);
- have a direct link to controlling emissions or discharges;
- not cause confusion with other legislation;
- be succinct and not contain null conditions; and
- be reasonable as well as justifiable.

Several submissions sought clarification about how DER will assess/determine when outcome-based conditions will be considered "practical and appropriate" and commented that technology and management-based conditions should be risk-based.

Three submissions sought clarification on how conditions (particularly improvement conditions) would be applied without setting up potential non-complying situations or compromising DER's own principles. One submission suggested that environmental improvement plans are a sensible mechanism for driving improvement to meet Environmental Standards, but raised concerns that plans may be used to drive "voluntary" improvements that would take licensees beyond compliance.

Two respondents commented that low-risk matters should not be controlled by conditions placed on licences and approvals.

Individual submissions:

- requested that DER publish the *standard, optional* and *sector specific* Re-Engineering for Industry Regulation and Environment (REFIRE) licence conditions as a priority;
- commented that some existing conditions are impossible or impractical to implement;
- sought clarification about whether Figure 2 was intended to imply that facilities meeting Environmental Standards will have improvements conditions added to the licence when it is amended;

- suggested that licence conditions that apply to all licences should be made into regulations or prescribed standards; and
- asserted that DER does not have the statutory power to impose improvement conditions other than to conform with an Environmental Protection Policy or a prescribed standard, nor to impose monitoring conditions as contemplated by the guidance statement.

### Response to submissions

DER recognises that further guidance is required regarding setting conditions on licences and approvals. DER released the draft *Guidance statement – setting conditions (Part V Environmental Protection Act 1986)* 22 December 2014 for public comment, to provide further guidance about DER's position on the key principles for setting conditions, including many of the specific issues raised in the current submissions.

DER's preference is for outcome-based conditions, and the guidance statement has been amended to reflect this. Process and management-based conditions are likely to be employed where it is not practical to specify emission limits and/or monitoring to detect compliance.

DER does not favour the complete exclusion of low-risk matters from licence conditions as the management of low-risk actions may be appropriate to support prevention of high-risk matters.

DER will manage prescribed premises against appropriate standards (primarily Environmental Standards) as they are established. Such standards will be used to determine acceptable performance for new and existing facilities. DER recognises that appropriate time frames will need to be provided for existing facilities to transition to compliance with Environmental Standards. Time frames will be specified through improvement conditions and environmental improvement plans may provide a useful mechanism to implement such transitions.

Figure 2 has been modified to clarify a number of minor issues. Improvement conditions would generally be appropriate for facilities operating near the upper end “unacceptable environmental risk/outcome” or the lower end of “acceptable environmental risk/outcome”. Improvement conditions would also be applied to transition existing facilities to acceptable environmental performance when Environmental Standards are introduced or updated, following consultation.

DER recognises the potential benefits of prescribing universally applicable licence conditions through regulations or prescribed standards and will investigate these options further. DER has also considered the assertion that improvement conditions are limited under the EP Act, and maintains its view that the Act provides for conditions to be imposed that require licensees to achieve specified outcomes and to monitor for compliance against licence conditions.

DER notes that some current licence conditions do not meet the regulatory principle relating to appropriate conditions. Further reforms to DER's industry regulation function, including the establishment of an environmental risk framework, will directly address this issue.



As part of its reform program, DER has reviewed its licence documentation. DER will not be continuing with the REFIRE template and, consequently, the conditions categories of *standard*, *optional* and *sector specific* will not be applied in DER licences.

DER licences will be simplified to clearly set out appropriate risk-based conditions, in accordance with this principle.

## Environmental conservation

### Summary of submissions

Two submissions sought more detail about how biological diversity and ecological integrity will be defined, and when these may apply.

### Response to submissions

The principle was a statutory principle from s 4A of the EP Act. The guidance statement has been amended to recognise the primacy of the EP Act's statutory principles and no longer duplicates any statutory principles to avoid weighting or modifying the EP Act's principles.

## Fair and equitable decision-making processes

### Summary of submissions

Two respondents queried the section's focus on compliance and enforcement, stating that all regulatory functions should be consistently applied and observe the rules of procedural fairness (not just compliance and enforcement).

Three respondents wrote that regulatory attention, particularly compliance and reporting requirements, should be consistent and risk-based to avoid adding unnecessary business costs.

Two submissions stated that consistency is a key issue, where DER has room to improve.

### Response to submissions

DER agrees that all regulatory functions should be fairly and consistently applied, and has modified the guidance statement accordingly.

Two of the principles in this guidance statement commit DER to improved consistency in its decision-making and condition-setting (fair and equitable decision-making, and competitive neutrality). These principles will be supported through implementation mechanisms including Environmental Standards and risk-based assessment and determination processes.

As part of the Department's reform program, DER is developing its assessment framework to directly improve consistency and transparency in its decision-making process.

## Consultation and transparency

### Summary of submissions

Five submissions requested that DER prepare a policy committing to actively engage with stakeholders, supported by concrete implementation measures and consultation standards. The submissions recommended that this be based on best-practice consultation, involve two rounds of consultation and submissions, and specify minimum consultation periods which provide adequate time for industry response.

Most of these submissions also requested that Environmental Standards be developed through detailed consultation with stakeholders, with the final standards being clear and justifiable. Some of these submissions requested that DER also consult on the methodology for creating Environmental Standards.

One submission sought a second round of consultation to ensure a clear understanding of key concepts that are not defined in legislation.

### Response to submissions

DER confirms that it intends to actively engage with stakeholders, and has amended the guidance statement to reflect this. In particular, DER is committed to consulting stakeholders when developing Environmental Standards.

In principle, DER supports the development of a consultation and engagement policy. However, development of such a policy needs to be considered in the context of the imperative to deliver significant reform and improvement to industry regulation.

Having considered the submissions received, DER will apply a standard consultation period of 8 weeks in respect of Environmental Standards. As part of the Department's reform program, DER will now be able to provide advance notice to industry of the pipeline of Environmental Standards and other guidance materials and documents under development. In order to improve industry consultation and transparency, DER will be updating its website to facilitate communication with industry and stakeholders. DER also commits to holding workshops with stakeholders as part of the public consultation process for Environmental Standards.

## Competitive neutrality

### Summary of submissions

Two submissions addressed this principle, suggesting that so long as the assessment and resultant regulatory management is systematic and consistent then fairness and transparency are met. The submissions argued that business competitiveness should not be a consideration for DER.

### Response to submissions

DER supports the submissions made. The principle is intended to commit DER to administering its regulatory functions consistently and fairly in order to minimise the risk of creating an "uneven playing field" between competitors through unnecessary differences in environmental regulation.

DER acknowledges that unnecessarily inconsistent regulation can result in disparate compliance costs that can inequitably penalise one or more operators in a market

relative to others. Moreover, parties operating with unacceptable environmental risks or contributing to unacceptable environmental outcomes potentially gain commercial advantage from unlawful activity.

## General comments

### Summary of submissions

A range of submissions suggested additional principles including:

- managing approval time frames (including when dealing with other decision-making bodies);
- consulting between government departments to ensure consistency of policy and regulation;
- the precautionary principle; and
- attaching s 4A of the EP Act to provide a full context on DER's role.

Various submissions sought definitions for terms including acceptable / unacceptable, proportionate and necessary / unnecessary.

Two submissions suggested the inclusion of a statement that provides the overarching objectives of the regulatory principles guidance statement. It was also suggested that the relationship between the guidance statement's principles, the principles in section 4A of the EP Act, and the Environmental Regulatory Practice Principles (COAG Standing Council on Environment and Water, 2013) be clarified.

Three submissions indicated that industry would be supportive of accepting third party certification, within an appropriate regulator endorsed framework, to reduce costs. It was suggested that using certification processes could be a means to reduce DER's costs.

Individual submissions:

- sought inclusion of all State and Federal legislation that DER has a role in regulating;
- sought specific examples of how the various principles will be operationalised (seeking information about how the principles will be applied while the necessary processes and standards are developed);
- recommended that cumulative impacts be included in the range of considerations related to evidence-based decision-making;
- requested that the regulatory principles consider environmental regulation training (the submission suggested that a better understanding of requirements could lead to greater compliance, and that revenue received for training programs could be used to fund compliance activities);
- suggested that a roles and responsibilities section outlining the crossover between agencies with regulatory and compliance responsibilities would strengthen the document; and
- commented that high-risk major hazard facilities do not seem to be incorporated into Figure 2.

## Response to submissions

### Additional principles and definitions

DER is addressing the issues underlying the suggestions for additional principles as follows:

- Approval time frames: DER has committed to application determination time frames as effectiveness indicators within the Government's Outcome Based Management structure. The Department reports against those indicators in its annual report. The Department also publishes a quarterly report of the Department's performance against those targets and a number of other performance indicators. The reports are available at <http://www.der.wa.gov.au/about-us/regulatory-performance-and-reporting>.
- Consultation between agencies: DER consults with other agencies as necessary through its regulatory functions, with memoranda of understanding in place or being developed to formalise arrangements where appropriate. DER also engages with other agencies through a variety of policy forums and working groups.
- Relationship to EP Act and COAG principles: The guidance statement was amended to clarify the relationship between its principles and those in the EP Act. The object and principles set out in s 4A of the EP Act guide DER's environment regulatory functions, and have primacy over DER's policy documents, including this guidance statement on regulatory principles.

The guidance statement no longer duplicates any of the EP Act's statutory principles to avoid inadvertently weighting or modifying the principles. The guidance statement sets out additional principles of good regulatory practice that DER will follow in administering its regulatory functions as established by the EP Act.

DER considers that the guidance statement is consistent with the COAG's Environmental Regulatory Practice Principles (COAG Standing Council on Environment and Water, 2013), and incorporates the COAG document's "Principles to apply when undertaking regulation" into DER's regulatory processes.

- Definitions: DER considers the dictionary definition to be adequate for the various terms identified. More detailed definitions are unlikely to provide improved clarity because the application of these terms relates to the facts of each situation. DER is developing further guidance material, including its assessment framework, to clarify how its regulatory decisions are made.

### General comments

DER notes industry support of third-party certification, within an appropriate regulator-endorsed framework, as an approach to reducing compliance costs. DER will give further consideration to such frameworks as it develops its regulatory reform program.

DER notes that current professional certification of environmental consultants is limited and considers this an essential pre-condition to an effective third-party certification regime. DER will also look to increase the transparency of self-certification of licensees.

The guidance statement applies to DER's regulatory functions under Part V of the EP Act, and is not intended to provide a comprehensive list of all legislation that DER has a role in regulating.

DER is developing material for publication (including key documents such as the Assessment Framework, the Environmental Risk Framework, and Compliance and Enforcement policies) that will apply these regulatory principles to DER's regulatory functions.

DER recognises that further policy development is required, specifically in the consideration of cumulative impacts.

DER recognises the benefits that would arise from supporting training programs to improve industry understanding of the requirements of Part V of the EP Act, and is considering partnership options for developing such programs. DER is a Registered Training Organisation, however, its initial focus is on the development of training programs to enhance the capability of its workforce.

The guidance statement is not intended to provide a summary of the roles of agencies with environmental responsibilities. A summary of agencies' roles in responding to pollution is available at <http://www.der.wa.gov.au/your-environment/reporting-pollution>.

DER notes that risks associated with major incidents at major hazard facilities are regulated by the Department of Mining and Petroleum under the *Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007*, and are not considered in the guidance statement.