



Decision Making

Part V, Division 3, Environmental Protection Act 1986

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Accessibility

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

Objective

To provide guidance on the Department of Environment Regulation's (DER) regulatory framework relating to applications for works approvals and licences granted under Part V, Division 3 of the *Environmental Protection Act 1986* (EP Act).

Background

DER's *Guidance Statement: Regulatory Principles* sets out principles of good regulatory practice that guide the exercise of DER's environment regulation functions. *Guidance Statement: Risk Assessments* provides guidance on DER's risk-based assessment process and the determination of proportionate regulatory controls for works approvals and licences.

In accordance with the regulatory principles, this Guidance Statement provides specific guidance on the decision making and the determinations of applications for works approvals and licences (including amendments). It should be read together with the *Guidance Statement: Risk Assessments*.

Legislation

This Guidance Statement principally relates to DER's regulatory functions relating to works approvals and licences under Part V, Division 3 of the EP Act.

Requirements for Works Approvals and Licences

Categories of prescribed premises are set out in Schedule 1 to the *Environmental Protection Regulations 1987*.

Section 52 of the EP Act makes it an offence to do work on or in relation to a premises, which would cause it to become, or become capable of being, a prescribed premises, unless in accordance with a works approval.

Under section 56 of the EP Act, an occupier of prescribed premises commits an offence if emissions are caused or increased or permitted to be caused or increased, or waste, noise, odour or electromagnetic radiation is altered or permitted to be altered from the prescribed premises, unless in accordance with any conditions to which the licence is subject, or unless in accordance with a works approval.

Applications

Section 54 of the EP Act contains provisions relating to applications for, and the granting or refusal of, works approvals.

In most cases, where an occupier has obtained a works approval under section 54 of the EP Act, they then apply for a licence. Section 57 of the EP Act contains provisions relating to applications for, and the granting or refusal of, licences.

Under clause 2(c)(ii) and (iii) of Schedule 6 to the EP Act, clearing that is done in accordance with a works approval or licence does not require a clearing permit.

To reduce regulatory burden, occupiers may concurrently apply through the single application form for:

- a works approval and licence; or
- a works approval or licence (including amendments) and the clearing of native vegetation.

Closure Notices

In certain circumstances, under section 68A of the EP Act, the Chief Executive Officer (CEO) may cause a closure notice to be given in respect of premises. A closure notice may require ongoing investigation, monitoring or management of the premises.

Transfers

Section 64 of the EP Act sets out provisions for the application for, and the transfer of, a works approval or licence. The CEO may transfer a works approval or licence subject to conditions, or refuse a transfer.

Amendments

Under section 53 of the EP Act, a person commits an offence if certain actions are taken to prescribed premises unless in accordance with a works approval, licence, a requirement contained in a closure notice or an environmental protection notice or where the actions are done in the course of maintenance of pollution control equipment or procedure.

Due to changes in circumstances, works approval or licence amendments may also be applied for by the occupier, or initiated by the CEO under section 59 of the EP Act.

Scope

This Guidance Statement relates to DER's decision making process for:

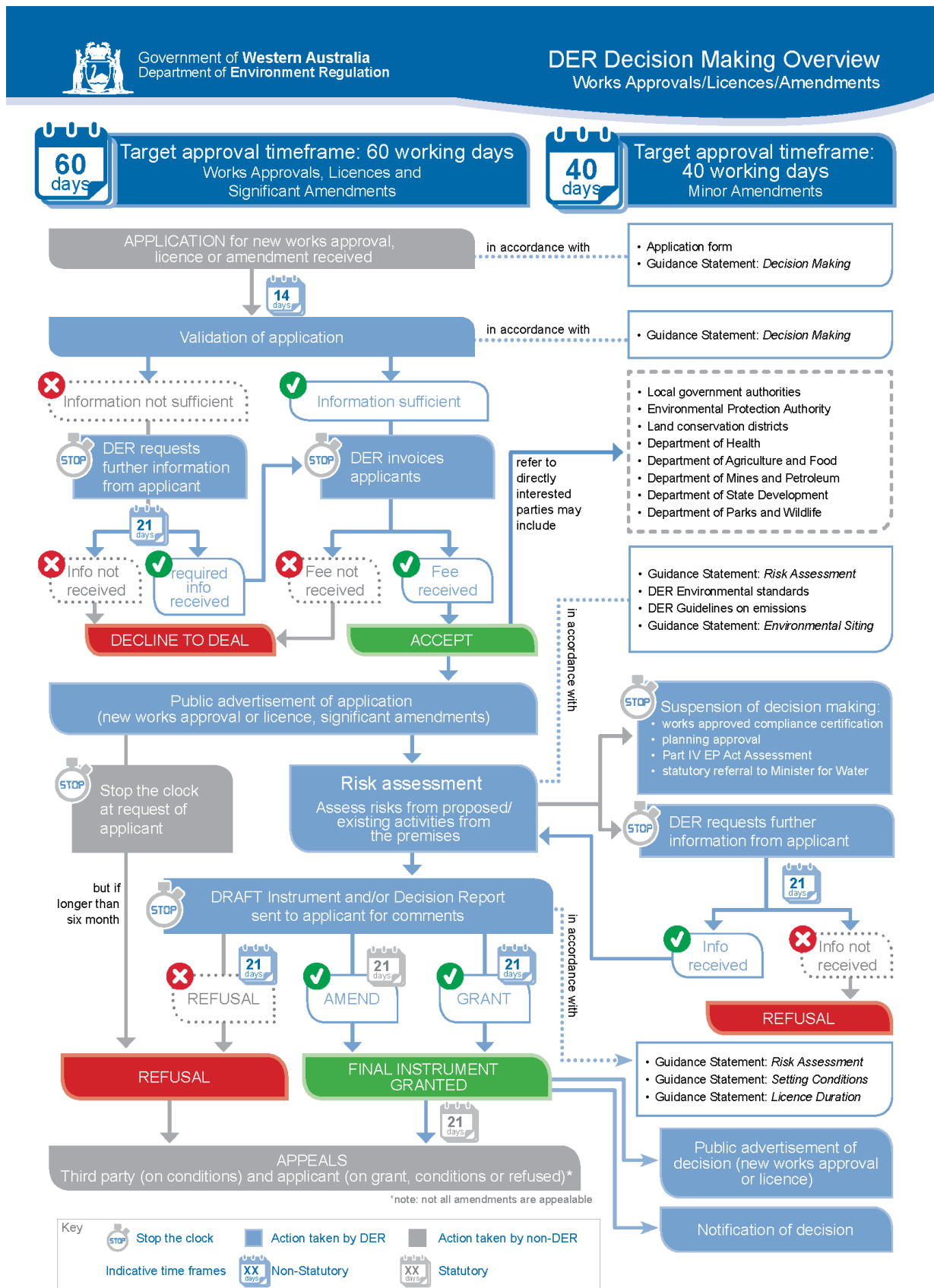
- **applications for, and amendments, transfers and renewals of, works approvals and licences (referred to as instruments);**
- **concurrent applications for clearing of native vegetation, under Part V, Division 3 of the EP Act;**
- **closure notices under section 68A of the EP Act; and**
- **assessments of existing licensed prescribed premises.**

Guidance Statement

Timeframes and Overview of Decision Making Process

1. **DER will carry out its decision making in accordance with the overview flow chart outlined in Figure 1 below.**
2. **DER will target to determine applications for instruments in 60 working days, excluding stop-the-clock periods.**
3. **DER will stop-the-clock for its decision making process in certain circumstances, as set out in Figure 1 below, and DER will notify the applicant when the decision making process has been placed on stop-the-clock.**
4. **Where an applicant has requested DER to suspend DER's decision making process for a period of less than 6 months, DER will stop-the-clock on the decision making process.**
5. **Where an applicant has requested DER to suspend DER's decision making process for a period of more than 6 months, DER may refuse the application.**
6. **Where an applicant makes repeated requests to DER to suspend the decision making process, DER may refuse the application.**

Figure 1: Decision Making Overview



Concurrent Works Approvals and Licence Applications

7. Where an application for both works approval and licence has been made, if DER has granted the works approval then DER will not grant a licence instrument until the applicant provides certification of completion of the works in accordance with the works approval.
8. Where the duration for the completion of the works is likely to exceed 12 months:
 - (a) DER may define stages of the works to be completed and accept certification of completion of works on a sequential or staged basis;
 - (b) DER will place the decision making process for the licence application on stop-the-clock once the application has been verified;
 - (c) DER will recommence the decision making process for the licence application 6 months in advance of the expected completion date of the works; and
 - (d) DER may require information from the applicant as to any changes which may have occurred during the construction period for the works.

Concurrent Clearing Applications

9. Where a concurrent application for clearing of native vegetation is made, DER may elect to either jointly or separately determine the clearing component of the application.
10. Where DER separately determines the clearing component, the application will be deemed to be an application for a clearing permit under section 51E of the EP Act and the CEO will waive the payment of the fee prescribed for an application for clearing permit.
11. DER will assess the clearing of native vegetation in accordance with Schedule 5 of the EP Act – *Principles for clearing native vegetation* (see Appendix 1).
12. Where clearing of native vegetation is of an exempt kind under *Environment Protection (Clearing of Native Vegetation) Regulations 2004* or is being assessed by a relevant authority which would lead to an exemption under Schedule 6 of the EP Act, the clearing will not be reassessed by DER or be subject to any additional controls by DER.

Consideration of Interests

13. In addition to DER's public advertisement of applications for instruments, DER will also refer applications to interested parties or persons who are considered to be directly affected by the proposal and may also refer

applications to other interested parties.

14. DER may seek advice on applications for instruments, including amendments, from relevant government authorities including:
 - (a) local government authorities;
 - (b) the Environmental Protection Authority, where applications may require referral, or which have been referred or assessed, under Part IV of the EP Act;
 - (c) land conservation districts, where the application involves clearing and the district is affected;
 - (d) the Department of Water, in accordance with DER's *Guidance Statement: Environmental Siting* and where the application involves emissions to water or emissions which have the potential to impact on water resources;
 - (e) the Department of Agriculture and Food, where the application relates to agricultural activities;
 - (f) the Department of Mines and Petroleum, where the application relates to a mining tenement;
 - (g) the Department of Health, where the application relates to a matter of public health;
 - (h) the Department of State Development, where the application relates to an industrial area, or major State Project including matters within a State Agreement; and
 - (i) the Department of Parks and Wildlife, where the application may affect conservation areas, threatened ecological communities or rare flora and with respect to clearing, where the application may affect wetlands and significant habitat for indigenous fauna.
15. DER will consider responses from interested parties and advice from relevant government authorities in DER's assessment of risks to public health, public amenity or the environment.

Risk Assessment

16. DER will undertake a risk assessment in accordance with the *Guidance Statement: Risk Assessments*.
17. For a works approval, DER will:
 - (a) identify and assess the risks to the environment, public health and amenity from the construction of the works for the premises; and
 - (b) identify and assess the risks to the environment, public health and amenity from the operation of the premises and determine likely

controls for these risks.

18. For a licence, DER will identify and assess the risks to the environment, public health and amenity from the operation of the premises and determine likely controls for these risks.

Emissions

19. Where there is a risk from the premises arising from proposed or actual emissions to air, land or water, DER will:
 - (a) validate any screening analysis of the risk of the emission undertaken by the applicant;
 - (b) if required, specify the modelling or further information to be provided; and
 - (c) specify the type and frequency of monitoring required.
20. Where relevant, the *Guidelines on Emissions* will apply.

Decline to Deal

21. DER will decline to deal with applications where:
 - (a) the Application Form is incomplete and the information is not otherwise publicly available; and
 - (b) following DER's written request, the applicant has not provided within 21 days the information required to undertake the assessment. Prior to declining to deal, DER may agree to extend this period on the request of the applicant.
22. DER will also decline to deal with an application where the prescribed fee has not been paid.

Request for Further Information

23. DER may request further information from applicants where information in an application is insufficient and DER has not declined to deal with the application.

Decision to Grant

24. In deciding to grant an instrument, DER will:
 - (a) assess the controls proposed by the applicant to mitigate risks;
 - (b) determine controls in accordance with the *Guidance Statement: Risk Assessments*; and
 - (c) prepare conditions in the instrument in accordance with the

Guidance Statement: Setting Conditions.

25. DER will afford the applicant 21 days to comment on the draft decision and draft instrument, including the opportunity to provide alternative controls to address the risk. DER may agree to extend this period on the request of the applicant.
26. DER will notify interested parties of DER's decision and publish a copy of the final decision and instrument.
27. DER's consideration of interested parties' comments will be documented in the decision report and instrument, which will be publicly available.

Decision to Refuse

28. DER will refuse an instrument where the risk assessment determines that there is an unacceptable risk to public health or the environment, including a works approval where the unacceptable risks are in relation to the operations of the prescribed premises.
29. DER will provide a draft decision to refuse to the applicant. DER will afford the applicant 21 days to comment on the draft decision, including the opportunity to provide further controls to address the risk. DER may agree to extend this period on the request of the applicant.
30. DER will refuse an application where DER has considered the comments made by the applicant and DER has determined that the risk remains unacceptable.

Closure Notice

31. Where DER is considering whether a Closure Notice may be required under section 68A of the EP Act, DER will undertake a risk assessment in accordance with the *Guidance Statement: Risk Assessments* to determine the specified actions required under the Closure Notice.
32. DER will afford the instrument holder 21 days to comment on the draft Closure Notice. DER may agree to extend this period on the request of the Licence Holder.
33. DER will consider the comments made by the instrument holder prior to determining the Closure Notice.

Transfer

34. Where an application for the transfer of an instrument has been made, DER will undertake an assessment of the appropriateness of the transferee and:
 - (a) where the transferee is equivalent to the transferor, DER will transfer the instrument; and
 - (b) where the transferee is not equivalent to the transferor, DER may:

- (i) refuse the transfer; or
- (ii) transfer the instrument subject to amendments to the instrument.

35. In determining equivalence, DER will have regard to a number of factors including experience and historical environmental compliance and performance of the transferee and the transferor.
36. Where DER considers that the transferee is not equivalent to the transferor, DER will afford the transferee 21 days to comment on the draft decision. DER may agree to extend this period on the request of the transferee.
37. DER will consider the comments made by the transferee prior to determining the transfer.

Existing Premises

38. Assessments of existing premises may be considered necessary by DER in a range of circumstances. Those circumstances are set out in the *Guidance Statement: Risk Assessments*.
39. Following an assessment of existing premises, DER may determine appropriate controls and amend conditions on instruments.
40. Where DER DER will notify the Licence Holder of:
- (a) DER's intention to amend;
 - (b) the reasons for the amendment; and
 - (c) the draft amendments.
41. DER will afford the Licence Holder 21 days to comment on the draft amendments, including the opportunity to provide alternative controls to address the risk. DER may agree to extend this period on the request of the Licence Holder.

Applicant Amendments

42. Where Licence Holders and Works Approval Holders have applied for amendments to instruments, DER will assess applicant amendments as follows:
- (a) **Minor Amendments:** which do not adversely affect the risks of the premises will be targeted to be determined within 40 assessment working days of receipt of application; and
 - (b) **Major Amendments:** which may adversely affect the risk of the premises will be targeted to be determined in 60 assessment working days.
- A major amendment includes:

- (i) **redescribing the boundaries of area of the premises where those changes are likely to have a significant effect on risk;**
- (ii) **adding a discharge or emission point;**
- (iii) **increasing the design capacity, throughput, emissions, or range or quantities of waste permitted; or**
- (iv) **adding a prescribed activity.**

43. **In some circumstances, certain instrument holders may submit multiple amendments. Where there are multiple amendments within a concurrent timeframe, DER will aggregate the amendments and assess them as a single application where DER considers practicable.**
44. **Where the activities of premises require expected ongoing amendments due to the nature of the works or operations, DER will determine an amendment submission process with the instrument holder.**

Licence Amendments for Works

45. **Where an occupier who is a Licence Holder of prescribed premises intends to carry out actions that fall within sections 53(1)(a) to (e) or sections 53(2)(a) to (b) of the EP Act, then the occupier should apply for a licence amendment in relation to the proposed works, rather than a works approval. This includes where works relate to a new category of prescribed premises.**
46. **This does not apply where the actions are being done:**
- (a) **in accordance with a requirement contained in a Closure Notice or an environmental protection notice; or**
 - (b) **in the course of and for the purpose of general maintenance to maintain the efficient operation of pollution control equipment or procedure.**

Appeals

47. **Upon determining an instrument or application, DER will notify the applicant or Licence Holder of their right to appeal the decision and will provide the applicant with the contact details of the Appeals Convenor.**

Renewals

48. **In determining the renewal of existing licences or works approvals, DER will undertake an assessment in accordance with this Guidance Statement and determine the duration of the instrument with reference to the *Guidance Statement: Licence Duration*.**

Implementation

DER's decision making process will be implemented in accordance with this Guidance

Statement for all:

- new applications received; and
 - new transfers and Closure Notice matters,
- from the date of commencement.

The CEO may also apply this Guidance Statement to existing matters as the CEO considers appropriate, having regard to ensuring an orderly transition.

Commencement

This Guidance Statement is to take effect from 10 November 2016.

Review

This Guidance Statement is to be reviewed no later than as soon as practicable following the fifth year of its commencement.

Appendix 1: Schedule 5 of the EP Act – Principles for clearing native vegetation

1. Principles

Native vegetation should not be cleared if:

- (a) it comprises a high level of biological diversity; or
- (b) it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia; or
- (c) it includes, or is necessary for the continued existence of, rare flora; or
- (d) it comprises the whole or a part of, or is necessary for the maintenance of, a threatened ecological community; or
- (e) it is significant as a remnant of native vegetation in an area that has been extensively cleared; or
- (f) it is growing in, or in association with, an environment associated with a watercourse or wetland[^]; or
- (g) the clearing of the vegetation is likely to cause appreciable land degradation; or
- (h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area; or
- (i) the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) the clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding.

[^] Separation distances for wetlands should be measured from the boundary of the mapped wetland.