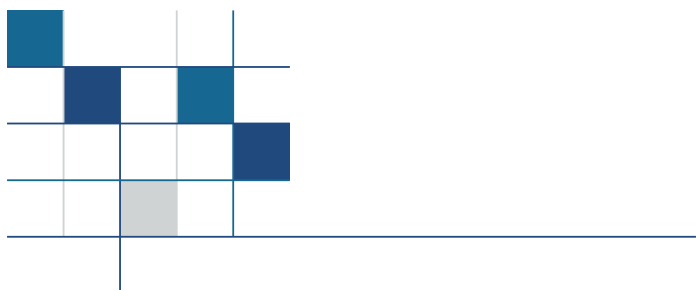


Consultation summary

Guideline: Industry Regulation Guide to Licensing

June 2019





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1. Background

The Department of Water and Environmental Regulation (DWER) is developing a suite of documents to guide the administration of its regulatory functions under Part V Division 3 of the Environmental Protection Act 1986 (EP Act). The Industry Regulation Guide to Licensing (the Guide) provides information to applicants, licensees, consultants, members of the public and Department staff on the requirements of Part V.

The draft Guide was released on 2 May 2018 for public consultation and the 12-week consultation period closed on 20 July 2018.

On 8 April 2019, a revised draft Guide was distributed to the Department's Regulatory Services Stakeholder Reference Group. This group was asked to return any further comments on the Guide to the Department by 19 April 2019.

This document consolidates and summarises the submissions received from both consultation periods, the key issues raised, and the Department's responses to these issues.

The Department thanks all respondents for taking the time to contribute to the consultation.



2. Summary of consultation submissions 2018

Fifteen external submissions were received in relation to the draft Guideline. The respondents are listed in Appendix A.

The submissions included commentary on the new approaches to licensing that had been outlined in the Guide and requested clarification on how the approaches would work in practice.

Key matters raised in these submissions were regarding:

- changes to concurrent assessment of works approvals and licence applications;
- a lack of clarity in the use of licence amendments versus works approvals;
- the need for clarification on how to determine a prescribed premises boundary;
- suggestions regarding the inclusion of information for specific prescribed categories in the Guide;
- a desire for more detail regarding native vegetation clearing requirements;
- suggestions for concurrent assessment of Part V applications while being assessed under Part IV;
- clarification of application requirements for licence renewals;
- clarification of concurrent assessment of land use planning and development approvals, and works approval and licence applications;
- a request for information regarding the surrender and revocation of licences;
- an explanation of target timeframes and the application of 'stop the clock' in the assessment process;
- clarification of the activities and duration of commissioning to enable smooth transition to licensed operation; and
- administrative and editorial suggestions.



3. Response to submissions 2018

This section consolidates submissions into a set of key issues and provides a response to each issue. All submissions were considered in the preparation of the summary.

3.1 Key issue - Concurrent assessment

3.1.1 Summary of submissions

The Department is unable to accept an application for a licence until relevant works under a works approval have been verified as complete to the CEO's satisfaction. This approach was reflected in the draft Guide. Several proponents submitted concerns about the potential for time delays as a result of the sequential assessment of works approvals and licences. They have requested an approach be found to ensure timeliness of assessment and a smooth transition between the works approval and licence (including a partial concurrent processing of the two instruments).

3.1.2 Response to submissions

The Department recognises that a form of concurrent assessment of works approvals and licence applications is desired by submitters, however, due to the requirements of the EP Act, the Department is unable to consider concurrent assessments. To satisfy the desire for a smooth transition between a works approval and a licence, the Department will, for most premises, allow operation under a works approval for a limited period, allowing enough time for the licence application to be assessed.

The Department has also re-examined at what point the works are verified as being satisfactorily completed and how emissions are governed in the transition from a works approval to a licence.

Change to Guide

A new section 3.1 *Transition from works approval to licence* has been added, with the inclusion of Figure 1, to describe the pathways of approvals and better explain the transition from a works approval to licensed operation.

3.2 Key issue - Licence amendment vs works approval

3.2.1 Summary of submissions

Previously, the Department's position was that only new proposals, or proposals involving the addition of a new category of prescribed premises to an existing licensed premises, were to be assessed under a works approval, and all other changes to existing prescribed premises were to be assessed as licence amendments. The draft Guide changed that position, instead requiring applicants



who wish to construct or install equipment or infrastructure provided for under Section 53 of the EP Act to apply for a works approval, and only works of a minor or simple nature may be applied for via a licence amendment.

A number of submissions indicate concern with the changed position, with the key issues being:

- the new position unnecessarily fetters the Department's discretion afforded by "*as the case requires*";
- a lack of clarity regarding the criteria to be used by the Department in exercising its discretion to determine whether and when a licence amendment is required; and
- a lack of clarity regarding what constitutes "*works of a minor or simple nature*".

3.2.2 Response to submissions

The Department recognises the need for clarification and has amended the Guide to provide criteria around in what circumstances an applicant should apply for a works approval or a licence amendment.

Change to Guide

A new section, section 8: *Changes to prescribed premises*, has been inserted to clarify the requirements of when either a works approval or licence amendment should be used. Figure 2: *Considerations for applications to alter premises* specifies questions that can be asked to help determine whether a works approval or licence amendment should be applied for.

3.3 Key issue - Commissioning

3.3.1 Summary of submissions

Comments submitted said there was unclear or otherwise seemingly unworkable guidance on how certification and commissioning of completed works would be undertaken, and more generally what the Department meant by these stages and how they might be applied to ensure the smooth transition to an operating licence.

3.3.2 Response to submissions

The Department recognises the descriptions of "pre-commissioning" and "full commissioning" in section 3.1: *Works approval* were insufficient in addressing this issue. The Department has reviewed the issue of certifying works as complete and commissioning under a works approval and provides further guidance in the Guide.



Change to Guide

Reference to “*pre-commissioning*” and “*commissioning*” have been removed from section 3.1.

A new section 3.1: *Transition from works approval to licence* has been added, with the inclusion of Figure 1, to describe the pathways of approvals and better explain the transition from a works approval to licenced operation.

3.4 Key issue - Prescribed premises boundary

3.4.1 Summary of submissions

The draft Guide indicated some of the criteria used to determine the boundary of a prescribed premises. The Guide pointed out that the complexities of tenure and size of land holdings may mean some or all of the criteria do not apply, and these situations will be dealt with by the Department on a case-by-case basis.

Some submissions pointed out that:

- the Guide’s requirement to have premises be readily identifiable from ground level may be difficult and impractical; and
- there is confusion regarding whether a buffer zone must be within the boundaries of a prescribed premises or if one can exist outside the premises’ boundaries and still be held to satisfy the Department’s requirements.

3.4.2 Delineation of boundaries

The Department accepts it is not always practical to require a premises boundary to be wholly identifiable from the ground level.

Change to Guide

The Department has amended the Guide to remove the criteria ‘be clearly identifiable from ground level at premises’ from section 2.3: Prescribed Premises Boundary.

3.4.3 Buffers and encroachment satisfying the Department’s requirements

Buffers are essentially separation distances used in the planning process through development approvals to minimise conflicting land use encroachment.

Irrespective of planning decisions, the Department has an obligation to ensure emissions are not unreasonable or causing pollution.



Change to Guide

Buffers and encroachment are not a relevant consideration regarding the licensing processes discussed in the Guide, therefore buffers have not been referred to in the Guide. No change to the Guide has been made.

3.5 Key issue - Prescribed categories

3.5.1 Summary of submissions

A number of submissions suggested:

- the Guide should provide more information about specific prescribed categories; and
- being aware of the Department's rollout of category fact sheets, support their production and have provided suggested categories for their development. Some suggestions for additional fact sheets to produce next include categories:
 - 5 – Ore processing;
 - 6 – Mine dewatering;
 - 12 – Crushing and screening;
 - 31 – Chemical manufacturing;
 - 52 – Electric power generation;
 - 54/85 – Sewage facilities;
 - 54A – Water desalination plant;
 - 57 – Used tyre storage;
 - 59 – Bulk material loading or unloading;
 - 61 and 61A – Liquid and solid waste facilities;
 - 63 to 66 – Landfills; and
 - 73 – Bulk storage of chemicals.

3.5.2 Response to submissions

The Department is in the process of developing fact sheets for the various categories of prescribed premises. These fact sheets will answer specific questions on matters including production or design capacity and risk factors the Department will consider when assessing applications from particular types of industry.

Suggestions for the development of future fact sheets are appreciated and will be considered. The Department will continue to produce category specific information which may become a consolidated Guide on categories in the future.



Change to Guide

No change has been made to the Guide for inclusion of this information in section 2.1, because this information is contained in separate guidance, and it is not considered practical to include in the Guide due to the large number of prescribed categories.

3.6 Key issue - Native vegetation clearing

3.6.1 Summary of submissions

More guidance is sought about the interplay of clearing regulation and industry regulation. In particular, more information is requested regarding clearing that does not require a clearing permit (as per Schedule 6 of the EP Act).

3.6.2 Response to submissions

The Guide relates specifically to the regulation of industry under Part V Division 3 of the EP Act. The clearing of native vegetation is contained within Part V Division 2 of the Act, and is therefore not the primary focus of this Guide.

The reference to Schedule 6 in the Guide is to indicate where exemptions for the requirement for clearing permits exist that may be relevant to the intersection of clearing and industry regulation.

Change to Guide

No change has been made in section 5 of the Guide regarding processes relating to the clearing of native vegetation.

3.7 Key issue - Concurrent assessment of Part IV and Part V

3.7.1 Summary of submissions

Two submissions requested clarity on:

- concurrent assessment of a proposal under Part IV and Part V of the EP Act; and
- whether the Department can conduct its assessment under Part V up to the point where a formal decision would be required, which would be withheld until the Part IV assessment has been concluded.

3.7.2 Response to submissions

The Department agrees with this approach in principle. Section 1.2 of the Draft Guide states where a works approval or licence application relates to a proposal also being assessed under Part IV of the EP Act, the Department will, where it is practical to do



so, 'parallel process' any applications it receives, but must defer a determination that would cause or allow the proposal to be implemented prior to:

- the Department receiving notice that the Environmental Protection Authority (EPA) has decided not to assess the proposal and the appeal period relating to that decision has expired; or
- the Minister issuing a Statement that the proposal may be implemented.

Change to Guide

Section 1.2 of the Guide regarding concurrent Part IV and Part V assessments has been removed and Section 1 renumbered. The Department's obligations as a decision making authority in relation to Part IV assessments are located in Section 1.1 and remain unchanged.

3.8 Key issue - Licence renewal

3.8.1 Summary of submissions

Several submissions expressed the desire for:

- the amount of information and level of detail required for a licence renewal application to be less than that required for a new application, when the operations at the premises seeking the renewal have not changed; and
- the Department to use licence amendments to extend the duration of a licence (and therefore defer the requirement for a licence renewal).

3.8.2 Response to submissions

Level of detail in application

Licences are issued for a finite period of time, up to a maximum of 20 years. During this time significant changes to the operating technologies available, environmental risk, societal expectations and regulatory landscape can occur. It is necessary to undertake a full assessment of the licence renewal application from a risk and evidence basis before replacing the expired licence.

The Department notes it does not require this level of detail in annual reporting practices and it is reasonable to request the information be reviewed from time to time. Such an assessment will require the same burden of information in the application as that required for a new licence.

The Department acknowledges that, in implementing the 20 year licence duration, some licensees were required to provide information that was unexpected.



The Department will consider requiring a lesser amount of information where a licence has had a duration under five years and where there are no changes to operations or the regulatory landscape.

Use of licence amendment to extend duration of licence

Licence amendments to extend the duration of licences are typically sought by applicants for licences with shorter durations. The factors which would lead the Department to have granted a shorter duration licence generally relates to the risk the prescribed premises poses to the environment and human health. The Department will fully review that premises' licence at the time of renewal.

In most cases, it is not appropriate to extend the duration of a licence through a licence amendment.

Change to Guide

Section 13 has been amended to remove reference to a licence amendment application to extend the licence duration in order to explicitly identify that when a licence reaches its expiry date it ceases to have effect, and that a licence renewal is required prior to this time.

3.9 Key issue - Land use planning

3.9.1 Summary of submissions

Greater explanation of the interplay of licensing and land use planning is desired, including clarification on whether the Department will conduct Part V assessments in parallel with assessments for land use planning by the Department of Planning, Lands and Heritage and local authorities.

3.9.2 Response to submissions

Land use planning is not the focus of this Guide. However, the Department appreciates the difficulties emerging from multiple approvals processes from various authorities.

Where a premises is the subject of consideration for a planning approval, the Department may concurrently assess the premises under a works approval or licence application.

The Department will have consideration of the status of other approvals on a case-by-case basis. Where the Department's consultation with planning authorities indicates a level of risk associated with the planning decision, the Department will take this into consideration in its decision making processes.

This may result in the Department conveying its intention to grant or refuse the application in advance of the final planning decision.



Change to Guide

Section 14 has been amended to clarify that the recipient of a works approval or licence who begins works or operates a prescribed premises without the necessary approvals from other authorities, does so at their own risk.

3.10 Key issue - Scoping

3.10.1 Summary of submissions

There is strong support for the Department to enable scoping and pre-application meetings.

3.10.2 Response to submissions

The Department notes and appreciates the support for pre-application meetings.

Change to Guide

Section 11.5 of the Guide has been reviewed but there has been no change to the intent of that section regarding scoping and pre-application meetings.

3.11 Key issue - Surrenders and revocations

3.11.1 Summary of submissions

One respondent requested further information on surrenders and revocations.

3.11.2 Response to submissions

Sections 15.1 and 15.2 provide details of the grounds for surrender and revocation.

Change to Guide

Sections 15.1 and 15.2 of the Guide have been reviewed but there has been no change to the intent of that section regarding surrenders or revocations.

3.12 Key issue - Timeframes

3.12.1 Summary of submissions

Several respondents submitted comments in relation to target timeframes and related matters, concerning:

- the perceived misuse of 'stop-the-clock' functions to manage the flow of work rather than for its stated purposes;
- why the target timeframe for all instruments has been set at 60 days; and



- challenging the efficiency of the approach to assess all applications, whether simple or complex, in the order of receipt.

3.12.2 Response to submissions

The Department recognises the need for industry to have clear timeframes on works approval, licence and licence amendment approvals.

The Department does not put a hold on assessment of applications as a workload management tool. Holds on assessments occur when the Department is awaiting action or further information from the applicant, when a Part IV assessment is pending or where a planning decision is imminent. Departmental procedures require the applicant to be formally notified before an application is placed in stop clock.

The timeframe of 60 days is considered a reasonable target. It is the Department's intention to achieve the 60 day target timeframe for the assessment of all applications (simple or complex) as outlined in the Guide, and wherever possible based on risk and complexity, to attempt to process applications in a shorter timeframe.

The Department however accepts that further work can be done which could provide a tiered response for applications. These options will be explored further in 2019/20 and are expected to be incorporated into the Department's new business systems.

Change to Guide

Section 12.1 has been amended to better reflect some of the factors that may initiate a hold on an assessment process and highlighting that comprehensive and well supported applications and responsiveness to the Department's requests for information by applicants can reduce the frequency and length of such delays.

3.13 Key issue - Other

3.13.1 Summary of submissions

"Other" refers to submissions that dealt with a range of other issues including editorial and administrative process matters. Submissions fell into the following broad categories:

- clarification of terms in the Guide like "unreasonable emission";
- matters relating to administrative processes of assessment;
- removal of reference to superseded guidance material;
- comments and suggestions regarding readability and clarity; and
- a range of suggestions for editorial changes.



3.13.2 Response to submissions

Definitions of terms used in the Guide are as defined in the EP Act (e.g. “unreasonable emissions” is defined in section 49), and the EP Regulations. Where no definition is given, the definition in common usage applies.

The Guide is an explanation of Part V Division 3 of the EP Act. It is not intended to deal with detail specific to individual prescribed categories or assessment processes. Such detail can be found in category or process specific guidance material published by the Department (such as the Industry Regulation Fact Sheet – Fees, Category Fact sheets and Guidance Statements). Where the Guide has introduced new or revised positions than those contained in existing published guidance material, that material will be amended to be consistent with the Guide.

Comments and suggestions regarding content, readability and clarity were gratefully acknowledged.

Change to Guide

The Department has reviewed the submissions and, where possible and appropriate, has applied the suggestion in the Guide. Active links to relevant guidance material have been inserted in the Guide to assist.



4. Summary of consultation submissions 2019

In April 2019, the revised draft *Industry Regulation Guide to Licensing* (Guide) was sent to selected stakeholders for final comments before publication. This was in addition to the external consultation conducted between May and July 2018.

Three submissions were received from the Regulatory Services Stakeholder Reference Group in relation to the draft Guideline. The respondents are listed in Appendix B.

The submissions included commentary on the new approaches to licensing that had been outlined in the Guide and requested clarification on how the approaches would work in practice.

Key matters raised in these submissions were regarding:

- preparatory works on premises;
- the process for confirmation of works;
- the necessary content of Environmental Compliance Reports, Critical Containment Infrastructure Reports, and Environmental Commissioning Reports;
- the application of new processes on existing premises;
- the Department's land use planning approach;
- possible exemptions to requiring a licence; and
- editorial suggestions.

In addition to this Report, a Frequently Asked Questions document (FAQ) has been drafted to be published alongside the Guide. This FAQ responds to specific questions raised by the stakeholder reference group to ease the transition of the document.



5. Responses to submissions 2019

5.1 Key issue - Reports to confirm works

5.1.1 Summary of submission

Comments were received asking for clarification of what information would be required in the confirmation of works reports (Environmental Compliance Report, Critical Containment Infrastructure Report (CCIR), and Environmental Commissioning Report).

5.1.2 Response to submission

The Department recognises the desire for more information around the requirements in a CCIR. The Department believes that it is unable to provide meaningful generic information about what will be required in a CCIR. Instead, the Department will condition the requirements of the CCIR in the related works approval.

Change to Guide

Information detailing where the requirements of the reports will be found has been added to *Section 3.1* of the Guide. No further information about the requirements of the reports themselves have been included in the Guide.

5.2 Key issue - Existing premises

5.2.1 Summary of submission

Comments highlighted the need for information of how existing licensed premises, and those who will lodge applications immediately after the Guide is published would be transitioned to the new processes outlined in the Guide.

5.2.2 Response to submission

The Department is aware of the need to provide a staged transition to the new processes for existing premises and applications. To accommodate this need, the Department will publish a transition document alongside the Guide, outlining when each process will begin to apply to premises in different circumstances. The transition will take place over a number of months following the publication of the Guide.

Change to Guide

No change has been made to the Guide.



5.3 Key issue - Exemptions

5.3.1 Summary of submission

A comment was received requesting the Guide provide more information on exemptions to requiring a licence, and the process for acquiring one.

5.3.2 Response to submission

The Department considers that the only premises which are exempt from requiring a licence are those which have a registration. Registrations are addressed in section 6 Registrations of the Guide.

There are no other exemptions from requiring a licence where a premises meets one of the prescribed premises categories in Schedule 1 of the Environmental Protection Regulations 1987.

Change to Guide

No change has been made to the Guide.

5.4 Key issue - Editorial

5.4.1 Summary of submission

A variety of comments were made with editorial, stylistic or clarity suggestions.

This included the reordering of text, the rewriting of content into simpler English, and a desire for more diagrams.

5.4.2 Response to submission

The Department appreciates the effort by submitters to improve the readability of the Guide. The Department has looked to incorporate changes where possible, however it has been decided that a complete review of the language, format and style would undesirably delay the publication of the Guide.

Change to Guide

Where possible and appropriate, the Guide has been edited to improve its style and clarity.

5.5 Key issue - Other

Several comments re-addressed issues raised during the 2018 external consultation on the Guide. These included comment on timeframes and land use planning. These matters are addressed in Section 3 of this document.



Appendix A - Consultation respondents 2018

List of consultation respondents

Association of Mining and Exploration Companies (AMEC)
Rio Tinto
Chamber of Minerals and Energy (CME)
Water Corporation
Eastern Metropolitan Regional Council (EMRC)
C-Wise
Environmental Institute of Australia and New Zealand (EIANZ)
MBS Environmental
The Australian Organics Recycling Association (AORA)
Department of Primary Industries and Regional Development (DPIRD)
Western Australian Local Government Association (WALGA)
Fortescue Metals Group Limited (FMGL)
Emerge Associates
Instant Waste Management
Kellie Wilson
Association of Mining and Exploration Companies (AMEC)
Rio Tinto
Chamber of Minerals and Energy (CME)
Water Corporation
Eastern Metropolitan Regional Council (EMRC)
C-Wise



Appendix B - Consultation respondents 2019

List of consultation respondents

Association of Mining and Exploration Companies (AMEC)
Chamber of Minerals and Energy (CME)
Western Australian Local Government Association (WALGA)