



# Frequently asked questions

<b>Title:</b>	Frequently asked questions on the <i>Guideline: Industry Regulation Guide to Licensing</i>
<b>Subtitle:</b>	Activities regulated under the <i>Environmental Protection Act 1986</i>
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## Introduction

The following are a selection of frequently asked questions, and their corresponding answers, to clarify aspects of the *Guideline: Industry Regulation Guide to Licensing* (Guide) published by the Department of Water and the Environmental Regulation (Department) in June 2019.

The answers are not intended to replace the Guide, which is the best source of information on the Department's licencing processes under Part V Division 3 of the *Environmental Protection Act 1986* (EP Act).

## General

### 1. When does a works approval cease to have effect?

A works approval will continue in force until the expiry date noted on the works approval<sup>1</sup>, or if/when it is surrendered by the works approval holder and/or revoked by the Department<sup>2</sup>.

In determining the duration of a works approval, the Department will consider similar factors to those listed in the *Guidance Statement: Licence Duration*.

A works approval does not cease to have effect when compliance documents are submitted to the Department. However, once the works are completed, the Department recommends that further construction, other than minor changes to the works, be addressed through a new application.

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<sup>1</sup> Section 63 of the EP Act.

<sup>2</sup> Sections 59A and 59B of the EP Act.



## 2. What changes trigger the need for a works approval amendment?

Under section 52 of the EP Act, a works approval is required when proposed works on a premises would cause it to become (or become capable of being) a prescribed premises under the EP Act.

Where a works approval is in effect, and proposed changes to the works deviate from the application initially assessed and approved by the Department, an amendment to the works approval may be required. Where the proposed changes are inconsistent with the conditions of the works approval or meet the thresholds described in section 53 of the EP Act, the works approval holder should also consider applying for an amendment to the works approval.

The CEO<sup>3</sup> can initiate an amendment to a works approval, or the works approval holder can apply for one (section 59(2) of the EP Act).

Section 59(1) of the EP Act specifies the ways in which the CEO can amend a works approval. Of those ways, the following scenarios are likely to relate to this instance:

- removing or varying any condition to which the works approval or licence is subject (section 59(1)(a));
- subjecting the works approval or licence to a new condition (section 59(1)(b));
- redescribing the boundaries or area of the premises to which the works approval or licence applies (section 59(1)(c));
- redescribing the purpose for which the premises to which the works approval or licence applies are used (section 59(1)(d));
- adding a discharge point or emission point (section 59(1)(g)); or
- extending the duration of the works approval or licence (section 59(1)(k)).

Works approval holders should also consider sections 59(1)(e), (f), (h), (i), and (j) as other less likely reasons to amend a works approval.

## 3. Will the Department continue to process licence amendment requests as an amendment notice? If so, in what scenarios will a licence amendment request trigger a full review of the licence and consolidation of previously issued amendment notices?

Yes. The Department will continue to process licence amendment requests through amendment notices, although it will work towards minimising this practice as far as practicable.

The Department has commenced a project to review and consolidate amendment notices into a single licence document.

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<sup>3</sup> CEO means the Chief Executive Officer of the Department administering the *Environmental Protection Act 1986*, or a person acting as the CEO's delegate under section 20 of the EP Act.



#### **4. What is the appropriate way for an applicant to arrange a scoping or pre-application meeting with the Department?**

The intent of the Guide is to reduce the need for scoping meetings by providing guidance to applicants on the Department's licensing framework.

Scoping meetings will be accepted at the Department's discretion, and will prioritise scoping applications that are complex and high risk.

To arrange a scoping meeting, prospective applicants should email the Department at [info@dwer.wa.gov.au](mailto:info@dwer.wa.gov.au) specifying the location of the premises, the nature of the project, and their desired outcome from the scoping meeting.

#### **5. How will existing works approval and licence holders be impacted by the new Guide?**

A companion implementation document will be published with the Guide. It will explain how existing premises and applications will transition to the updated processes set out in the Guide.

In general, existing licence holders will not be impacted by the Guide until they seek to renew or amend the licence, or require a works approval to make changes to the premises.

Existing works approval holders may be impacted if they wish to make use of the transition to licence provisions outlined in the Guide.

Works approval and licence holders should contact the Department to discuss any concerns they have about implementation of the Guide.

#### **6. What information will be required in the Environmental Compliance Report, Critical Containment Infrastructure Report (CCIR) and Environmental Commissioning Report?**

The information required from these reports will vary depending on the risk profile of the premises and the nature of the activities conducted at the premises. The specific requirements of these reports will be included in the conditions of the works approval.

In general, the purpose of the reports is as follows:

- *Environmental Compliance Report*: to confirm that the works have been constructed in accordance with the conditions of the approval.
- *Critical Containment Infrastructure Report (CCIR)*: to confirm that the environmental controls on containment infrastructure are properly constructed before materials are deposited in the containment cell.
- *Environmental Commissioning Report*: to confirm the performance of equipment, generally at the 'end of pipe', against the emissions predicted by the applicant in the application and considered by the Department in the risk assessment.



## Preparatory works

### **7. What are typical examples of site preparatory works that cannot be undertaken prior to the granting of a works approval, and why can they not be undertaken?**

Under section 52 of the EP Act, it is an offence for an occupier to undertake any work on, or in relation to, a premises which causes the premises to become, or to become capable of being, a prescribed premises<sup>4</sup>.

Licences and works approvals regulate emissions and discharges in order to protect the environment and public health, in accordance with the objectives of the EP Act.<sup>5</sup> They provide their holders with a defence against certain offences under the EP Act, provided that those holders are acting in accordance with the conditions on the works approval or licence.<sup>6</sup> Works that are general in nature, and would not be considered to contribute to transformation of the premises into a prescribed premises, will not typically require a works approval.

Works that are specific in nature, and relate directly to the storage, handling, transport, or treatment of waste would likely cause the premises to become 'prescribed', and so a works approval would be required. The Department is required to assess the suitability of infrastructure to control emissions and discharges before it is constructed. This may include, for example, infrastructure for managing stormwater drainage potentially contaminated by the activities on the premises, or impermeable hardstands for stockpiles or processing plants.

### **8. If the occupier of a premises conducts preparatory works in such a manner that results in pollution, unreasonable emissions, or environmental harm otherwise than in accordance with a works approval or a licence, they would be committing an offence under the EP Act.<sup>7</sup> Should applicants consult with the Department about preparatory works for additions to existing premises, or only for new premises?**

The decision on whether to consult with the Department at any stage remains with the applicant. An applicant should consult with the Department whenever they require further information or clarification as to their specific requirements.

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<sup>4</sup> Regulation 5 of the *Environmental Protection Regulations 1987* - The premises specified in Schedule 1 of the EP Regulations are prescribed premises for the purposes of Part V of the EP Act. Schedule 1 sets out the categories of prescribed premises.

<sup>5</sup> Section 4A of the EP Act.

<sup>6</sup> Section 74A of the EP Act.

<sup>7</sup> Sections 49, 50A, and 50B of the EP Act.



## Critical containment infrastructure

### **9. What are typical examples of the types of facility / infrastructure that are considered to be critical containment infrastructure?**

Typical examples of critical containment infrastructure include:

- tailings storage facilities;
- leachate, wastewater and liquid waste storage ponds;
- vat or heap leach containment structures; and
- engineered, lined landfill cells.

### **10. Will the determination of critical containment infrastructure be related back to risk (i.e. what may be considered critical containment infrastructure at one premises, may not be classified as such at another premises)?**

Yes. The determination of whether a works approval will require submission of a CCIR is related to risk. Where the potential impact of infrastructure failure is considered to be low risk, the infrastructure will not be considered critical containment infrastructure, and will not require submission of a CCIR.

The time period required by the Department to assess the CCIR is also based on risk. Table 1 in the Guide provides examples of typical timeframes required to assess a CCIR based on the risk posed by the infrastructure.

### **11. Will the classification of critical containment infrastructure apply to changes to existing premises?**

The Department focusses on the original construction of the containment infrastructure to ensure appropriate environmental controls are in place before operational use. This relates primarily to the base cell lining and the management of drainage and seepage.

The ongoing management of infrastructure is generally not intended to be subject to the requirements of a CCIR. The requirement will however be considered on a case by case basis, with the risk of the proposed changes being a key determinant.

For example, the base construction of containment cells may require a CCIR, whereas ongoing embankment lifts would generally not require consideration via a CCIR.

Where the level of risk of the lift does warrant a CCIR, the assessment process can be managed so that implementation of the lift is approved well in advance of capacity being required.

The Department encourages applicants to take a strategic approach in applying for life of project approvals where possible, and plan for lifts in advance.



The Department's *Guidance Statement: Licence duration* notes that the Department prefers to issue licences with longer durations (up to 20 years). As such, the Department can consider longer term plans, which may allow sites to gain approval for future lifts in the initial works approval where the risk assessment indicates that the risk is acceptable.

## Critical Containment Infrastructure Report (CCIR)

### **12. Do I have to submit my Environmental Compliance Report alongside, or as part of the CCIR?**

The two reports can be submitted together, separately, or as a single report, as desired by the applicant. Applicants should consider their construction schedules when determining when it would be appropriate to lodge the reports, noting that submission of a report may allow the applicant to progress to a new phase (i.e. construction to commissioning or to time limited operations).

Where a delay is conditioned on the works approval to allow for assessment of CCIR compliance, applicants may want to consider completing critical containment infrastructure and submitting the CCIR first. This will allow the works approval holder to complete other infrastructure while the Department is assessing compliance with the CCIR.

### **13. What additional information, beyond the Environmental Compliance Report, needs to be submitted as part of the CCIR?**

Where information is required via a CCIR, it is not required in the Environmental Compliance Report.

The information required as part of a CCIR will vary depending on the nature of the works, and will be specified in the conditions of the works approval.

In general, the Department would like to confirm that the cell lining and any drainage or seepage management systems are appropriate before they are used.

The works approval may require the CCIR to include a declaration from a professional with suitable qualifications or experience, to confirm that each item or component of infrastructure has been constructed with no material defects, and that the works approval holder has complied with all works approval conditions relating to construction and installation of the infrastructure.

### **14. When will applicants be notified of the duration allocated for assessment of the CCIR?**

The Department will identify what it considers to be critical containment infrastructure at a premises in the works approval conditions and decision report.

Based on the outcome of the application risk assessment, the conditions of the works approval will specify the duration allocated for the Department to assess the CCIR. During the CCIR assessment period, environmental commissioning and time limited operations will be delayed.

**15. Does the CCIR assessment period end when the report is approved?**

Yes. If the Department completes assessment of the report before the end of the CCIR assessment period; and is satisfied the CCIR is compliant, the Department will notify the works approval holder that they may progress to environmental commissioning or time limited operations (as appropriate).

**16. Is the CCIR assessment period subject to 'stop-the-clock' protocols?**

No. The CCIR assessment period is specified as a condition of the works approval, 'stop-the-clock' protocols are not applicable. The Department's assessment timeframes, and associated 'stop-the-clock' protocols are 'self-imposed', these are not statutory timeframes.

The duration of the assessment period will refer to business days.

The Department will assess the report in a timely manner to discover any non-compliance before automatic progression of the application to time limited operations occurs.

Where the Department is not satisfied with the level of protection achieved, it will take appropriate regulatory action to ensure time limited operations do not commence before the Department is satisfied that appropriate protection is in place.

To avoid regulatory action it is incumbent on the works approval holder to ensure the CCIR adequately demonstrates that they have met the conditions of their works approval.

**17. Is the scope of the CCIR restricted to the certification of emission / waste control infrastructure?**

Yes. The CCIR will only address information related to whether the containment infrastructure can adequately manage the emissions and discharges identified in the application. This may extend to construction details of the cell where those details are critical to the control of emissions and discharges.

The scope of the CCIR will always be specified in the conditions of the works approval.

Where a CCIR and Environmental Compliance Report are submitted as a single document, it must be clear which parts of the document specifically apply to the critical containment infrastructure.



### **18. Is there an overlap between the Department of Water and Environmental Regulation's (DWER) and the Department of Mines, Industry Regulation and Safety's (DMIRS) requirements for information to be submitted for assessment on tailings storage facilities?**

DMIRS's primary regulatory responsibility for tailings storage facilities (TSFs) is to fulfil the requirements of the *Mining Act 1978* and the *Mines Safety and Inspection Act 1994*. DMIRS is required to ensure the safety of the TSF during operation, and the long-term stability of the TSF at mine closure.

DWER's responsibility for TSFs is to regulate emissions and discharges to the environment according to the EP Act.

Both DMIRS and DWER may require similar information for aspects of the TSF design and construction that affect safety, stability, and control of emissions and discharges.

Information provided to both Departments in design, construction and operational reports may be similar, but the reports will be used by each Department for different purposes.

## Environmental commissioning

### **19. Is environmental commissioning the same as commissioning from an engineering perspective?**

In general, no.

From an engineering perspective, commissioning is the process of assuring all systems and components of the plant and equipment have been built and installed correctly, and are operational according to the specifications of the plant or equipment.

The purpose of environmental commissioning is to optimise any process or emission source in order to demonstrate that it meets the emissions predicted in the works approval application. The Department is primarily interested in validating the measurement of these emissions.

### **20. Can environmental commissioning of non-critical containment infrastructure occur during the CCIR assessment period?**

Yes. As long as no environmental commissioning or operation of the critical containment infrastructure takes place, other works constructed on the premises may be commissioned under the conditions of the works approval. This commissioning may only begin once the Environmental Compliance Report has been submitted to the Department.

The conditions of the works approval will specify what infrastructure may be commissioned and the circumstances under which the environmental commissioning may begin.





## **21. If the applicant has shown prior non-compliance with the works approval conditions, will the Department allow the commissioning of works?**

The Department requires works approval holders to declare, in the Environmental Compliance Report where they have been non-compliant with the works approval conditions.

It is an offence under the EP Act to:

- contravene a works approval condition<sup>8</sup>; and/or
- provide false or misleading information to the Department<sup>9</sup>.

Breaches will be dealt with in accordance with the Department's *Compliance and Enforcement Policy* (refer to Section: *Related documents*, below), and may include a range of options, ranging from suspension of the works approval to prosecution of offences.

The Department also refers applicants to section 57(2)(a)(ii)(A) of the EP Act which requires that works be completed to the satisfaction of the CEO in accordance with the conditions of a works approval, before the Department can accept a licence application.

Where the Department determines that works have not been satisfactorily completed at the commissioning stage, it is unlikely to be considered satisfactory at the licence application stage.

As per question 2, an applicant may wish to apply for an amendment to the works approval to address potential non-compliance with works approval conditions.

## **22. Can commissioning of critical containment infrastructure begin once the CCIR assessment period has elapsed?**

Yes, subject to the works approval holder being compliant with the conditions of the works approval.

The progression of a works approval through the stages of construction, commissioning and time limited operations will be specified via conditions in the works approval.

## **23. Are there timeframes around the environmental commissioning period?**

Environmental commissioning timeframes will be site specific and based on a risk assessment of the impacts of the emissions and discharges.

The duration of any environmental commissioning period will be conditioned in the works approval. Typically, this will be over a period of 6-12 months depending on the nature of the activities.

Where extended environmental commissioning is required, applicants must provide sufficient information on the predicted impacts of their commissioning activities in their works approval application.

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<sup>8</sup> Section 55 of the EP Act.

<sup>9</sup> Section 112 of the EP Act.



Where an application is made to amend the conditions of a works approval to extend the duration of the commissioning period, the Department will consider the impacts of the amendment, and whether the extension is due to an inability to comply with time limited operational conditions.

**24. Will applicants be allowed to commission new works as part of a licence amendment, similar to that allowed under a works approval?**

Where a change to a premises involves additional works, or emissions not previously assessed, a works approval application is generally required, not a licence amendment (Refer to Section 9: *Changes to prescribed premises* in the Guide).

New works, constructed under a licence amendment, should generally not require environmental commissioning. The Department will consider this requirement on a case by case basis.

If new works are expected to require environmental commissioning, an application should be made for a new works approval, and the commissioning process under the works approval may be used.

## Time limited operations

**25. Where a licensed premises is granted a new works approval for additional works that will result in an increase in emissions or discharges, how will the Department ensure that emissions during time limited operations under a works approval do not conflict with an existing licence?**

The Department will aim to reconcile the emissions allowed under the works approval, with any emissions already approved under an existing licence.

Where a valid works approval contains emission limits that are higher than a licence for the same premises, the works approval/licence holder can rely on the limit within the works approval for their time limited operations.

A licence amendment will be processed by the Department to remove any conflict between the emission limits.

**26. Where time limited operations under a works approval are conducted within an existing licensed prescribed premises, are time limited operations required to be included within the scope of the Annual Environmental Report?**

The Department may require monitoring and reporting of time limited operations under the works approval conditions.

Where relevant, such as for sites that have a pre-existing licence, reporting may be consolidated in one report.



**27. The Guide indicates that works approval holders are not allowed to operate new critical containment infrastructure unless the new works are certified as compliant. Can new works be initially certified by an external party?**

The Department has identified several pathways for works approval holders to proceed to time limited operations, based on certification of works by either the works approval holder or a third party, without intervention from the Department. The relevant pathway will be identified and conditioned through the granted works approval.

The Department has an obligation to ensure that works have been constructed in accordance with the works approval before allowing operations to occur. In instances where the activities present higher risk, and any environmental impacts would be difficult to retrospectively repair, it is appropriate for the Department to confirm compliance. This will often be based on third party reports from appropriately qualified or experienced persons. The conditions of the works approval will specify where certification by a suitably qualified third party must be provided to the Department to confirm compliance.

**28. Does the Department expect that the transition from time limited operations under a works approval to operations under a licence will be administrative, and will typically only involve a transfer of the operating conditions on the works approval to the licence?**

In assessing an application for a works approval, the Department makes an assessment of the ongoing operational impact of the activities before granting the works approval.

In allowing environmental commissioning and time limited operations, subject to conditions, risk, and compliance, the Department has assessed that the risk factors are minimal and ongoing operations will be conditioned in the licence.

If a facility is constructed in accordance with the application, and the emissions and discharges are equal to, or below, those that were assessed, the Department considers it acceptable for the site to be operating.

In assessing a licence application for a site, the Department will consider the original assessment conducted for the granting of the works approval, and confirm that the basis of that decision has not materially altered. The Department will note any changes that have occurred since the assessment (e.g. change to emissions, pathways, receptors or impacts), or changes to departmental policy, and will reassess as required, by exception.

The licence application assessment is not a process that is only administrative in nature. It will focus on matters that are materially important, while avoiding unnecessarily duplication of previous assessments.



## Related documents

Department title / link
<a href="#">Guideline: Industry Regulation Guide to Licensing</a>
<a href="#">Compliance and Enforcement Policy</a>
<a href="#">Environmental Protection Act 1986</a>
<a href="#">Mining Act 1978</a>
<a href="#">Mines Safety and Inspection Act 1994</a>



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