

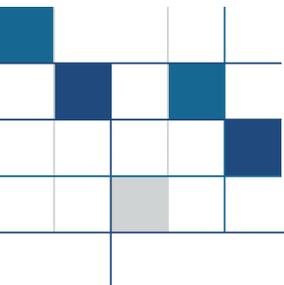
Guideline

Decision making

Activities regulated under Part V, Division 3, *Environmental Protection Act 1986*

June 2019

(Plain English version, December 2020)





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June 2019

(Plain English version, December 2020)

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1 Objective

This guideline describes how the Department of Water and Environmental Regulation applies regulatory controls for works approvals and licences granted under Part V, Division 3 of the *Environmental Protection Act 1986* (EP Act).

2 Scope

This guideline outlines how the department makes decisions when:

- you apply for, or wish to amend, transfer or renew works approvals and licences (referred to as instruments)
- you concurrently apply to clear native vegetation under Part V, Division 3 of the EP Act
- we issue a closure notice under section 68A of the EP Act
- we assess existing licensed prescribed premises.

3 Context

The department undertakes regulatory functions under Part V of the EP Act. The *Guideline: Regulatory principles* sets out how we will apply the principles of good regulatory practice.

We assess risk and apply regulatory controls in proportion to the risk. Our *Guideline: Risk assessments* helps us to set appropriate conditions for works approvals and licences.

This guideline provides specific guidance on our decision-making when we assess applications for works approvals and licences (including amendments). You should read this guideline together with the department's *Guideline: Risk assessments*.

4 Legislation

This guideline principally relates to the department's regulatory practice for making decisions on works approval and licence applications and their amendments under Part V, Division 3 of the EP Act.

4.1 Requirements for works approvals and licences

Schedule 1 to the Environmental Protection Regulations 1987 sets out categories of prescribed premises.

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

It is an offence under Section 56 of the EP Act for an occupier of a prescribed premises to cause or increase, or permit to cause or increase emissions, or to alter or permit to alter waste, noise, odour or electromagnetic radiation from the prescribed



premises, unless those activities are in the conditions attached to their licence, or unless in accordance with a works approval.

4.2 Applications

Section 54 of the EP Act has provisions for works approval applications, and their grant or refusal.

In most cases, when you obtain a works approval under Section 54 of the EP Act, you can then apply for a licence. Section 57 of the EP Act has provisions for licence applications, and their grant or refusal.

Under Clause 2(c)(ii) and (iii) of Schedule 6 of the EP Act, if you clear native vegetation in accordance with a works approval or licence, you do not need a clearing permit.

To reduce the regulatory burden, you may concurrently apply for a works approval or licence and to clear native vegetation using a single application form.

4.3 Closure notices

In certain circumstances, under section 68A of the EP Act, the department's Chief Executive Officer (CEO) may issue a closure notice for a premises. This means the premises may need ongoing investigation, monitoring or management.

4.4 Transfers

Section 64 of the EP Act makes provisions for transfers of works approvals or licences. The CEO may transfer a works approval or licence with conditions, or refuse a transfer.

4.5 Amendments

It is an offence under section 53 of the EP Act to take certain actions on prescribed premises unless you:

- are doing what is required by a works approval or licence
- are doing what a closure notice or environmental protection notice requires you to do
- are taking action to maintain pollution control equipment or procedures.

If there is a change in circumstances, you may apply to amend your works approval or licence, or the CEO may initiate this under Section 59 of the EP Act.

5 Guideline role

5.1 Timeframes

Our target is to process applications within 60 working days, excluding 'stop the clock' periods. We will stop the clock during our decision-making process in certain circumstances, as set out in Figure 1 below. We will notify you if we need to do this.



5.2 Overview of decision-making process

The overview flowchart in Figure 1 below shows how we make our decisions.

If you ask us to suspend our decision-making process for a period of less than six months, we will stop the clock.

If you ask us to suspend our decision-making process for a period of more than six months, we may refuse your application.

If you make repeated requests to suspend the decision-making process, we may refuse your application.

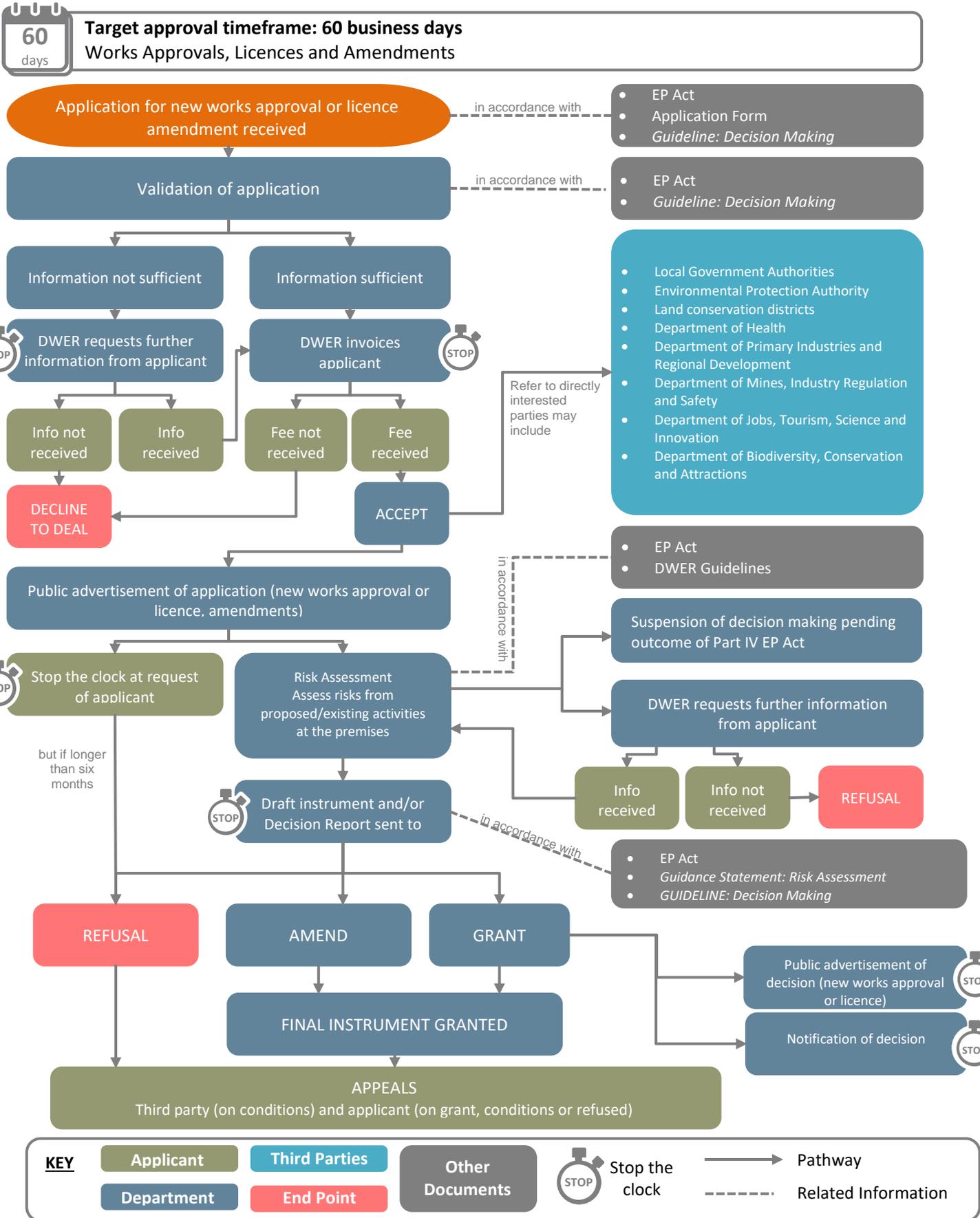


Figure 1 Decision-making overview



5.3 Concurrent clearing applications

If you make a concurrent application to clear native vegetation, we may elect to either jointly or separately determine the clearing component.

If we decide to determine the clearing component separately, we will view your application as being for a clearing permit under Section 51E of the EP Act.

We will assess an application for clearing of native vegetation using Schedule 5 of the EP Act – *Principles for clearing native vegetation* (see Appendix 1).

If clearing is exempt under the 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, we will not reassess the clearing or apply any additional controls.

5.4 Consideration of interests

In addition to publicly advertising your application, we may seek input from interested parties or people we consider the proposal may directly affect.

We may also ask other government agencies for advice, including:

- local government authorities
- the Environmental Protection Authority, when your application may need referral, or has been referred or assessed under Part IV of the EP Act
- land conservation districts, when your application involves clearing and the district is affected
- the Department of Primary Industries and Regional Development, when your application relates to agricultural activities
- the Department of Mines, Industry Regulation and Safety, when your application relates to a mining tenement
- the Department of Health, when your application relates to a matter of public health
- the Department of Jobs, Tourism, Science and Innovation, when your application relates to an industrial area or major State Project, including matters within a State Agreement
- the Department of Biodiversity, Conservation and Attractions, when your application may affect conservation areas, threatened ecological communities or rare flora, and with respect to clearing, when the application may affect wetlands and significant habitats for indigenous fauna.

We will consider responses from interested parties and advice from relevant government agencies when we assess risks to public health, public amenity or the environment.

5.5 Risk assessment

We will conduct a risk assessment using our *Guideline: Risk assessments*.



For a works approval, we will:

- identify and assess the risks to the environment, public health and amenity from the construction of the works for the premises
- identify and assess the risks to the environment, public health and amenity from the operation of the premises and determine likely controls for those risks.

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

5.6 Emissions

If there is a risk from proposed or actual emissions to air, land or water from the premises, we will:

- validate any screening analysis of the risk of the emission(s) you have carried out
- ask you to provide modelling or further information if required
- tell you what type and frequency of monitoring we require.

5.7 Decline to deal

We will decline to deal with your application if:

- the application form is incomplete and the information is not otherwise publicly available
- after we have written to you, within 21 business days you have not provided the information we asked for (before declining to deal, we may agree to extend this period if you make a request)
- you have not paid the prescribed fee.

We will also decline to deal with your application for a licence if:

- the application relates to a works approval previously granted, but you have not completed the works to the CEO's satisfaction
- you need a works approval but it has not been granted, and the works concerned have not been completed.

5.8 Request for further information

We may ask you for more information if your application is incomplete and we have not declined to deal with it.



5.9 Decision to grant

If we decide to grant an instrument (your works approval, licence or amendment), we will:

- assess the controls you have proposed to mitigate the risks
- determine controls using our *Guideline: Risk assessments*
- attach conditions to your instrument based on our *Guideline: Setting conditions*.

We will give you 21 business days to comment on our draft decision and draft instrument. You will have an opportunity to propose alternative controls to address the risk. We may agree to extend this period if you make a request.

We will notify interested parties about our decision and publish a copy of the final decision and instrument.

We will document the comments of interested parties and give our response to these in the decision report and instrument, which will be publicly available.

5.10 Decision to refuse

We will refuse an instrument when our risk assessment finds an unacceptable risk to public health or the environment, including a works approval where there would be unacceptable risks from the operations of the prescribed premises.

We will provide you with a draft decision to refuse. We will give you 21 business days to comment on the draft decision, including an opportunity to propose further controls to address the risk. We may agree to extend this period if you make a request.

We will refuse an application when we have considered your comments but determine that the risk remains unacceptable.

5.11 Closure notice

When we are considering the need for a closure notice under section 68A of the EP Act, we assess the risks using our *Guideline: Risk assessments* to determine what actions are needed.

We will give you 21 business days to comment on a draft closure notice. We may agree to extend this period if you make a request.

We will consider your comments before we determine the closure notice.



5.12 Transfer

If you are applying to transfer an instrument, we will assess whether the transferee is an appropriate person, and:

- if the transferee is 'equivalent' to you (the transferor), we will transfer the instrument
- if the transferee is not equivalent to you, we may:
 - refuse the transfer
 - transfer the instrument but make amendments to it.

To determine equivalence, we will consider the experience and historical environmental compliance and performance of the transferee and yourself.

If we decide the transferee is not equivalent to you, we will give them 21 business days to comment on the draft decision. We may agree to extend this period if the transferee makes a request.

We will consider the transferee's comments before we determine the transfer.

5.13 Existing premises

We may need to assess existing premises in a range of circumstances. These are set out in our *Guideline: Risk assessments*.

After we assess an existing premises, we may determine appropriate controls and amend conditions on instruments.

If we decide to amend an existing instrument for a premises, we will:

- notify you (the licence holder)
- give our reasons for the amendment
- attach the draft amendments.

We will give you 21 business days to comment on the draft amendments, including the opportunity to propose additional controls to address the risk. We may agree to extend this period if you make a request.

5.14 Applicant amendments

If you hold a licence or works approval and have applied to amend your instrument, we will aim to make a determination within 60 working days.

Some instrument holders may submit multiple amendments. When this occurs within a concurrent timeframe, we will aggregate the amendments and assess them as a single application if practicable.

If the activities of your premises make ongoing amendments likely (because of the nature of the works or operations) we will consult you to determine an amendment submission process.



5.15 Appeals

After we have determined an instrument or application, we will notify the applicant or licence holder that they have a right to appeal the decision and give them the contact details of the Appeals Convenor.

5.16 Renewals

When we assess renewal applications for existing licences or works approvals, we will use this guideline and determine the duration of the instrument using our *Guideline: Licence duration*.

6 Implementation

The department will use the decision-making process in this guideline for all new applications, transfers and closure notices from its start date (June 2019).



Related documents

Non-department documents	
Author	Title
WA State Parliament	<i>Environmental Protection Act 1986</i>
WA State Parliament	<i>Environmental Protection Regulations 1987</i>

Department documents	
Author	Title
Regulatory Capability Division	Guideline: Risk assessments
Regulatory Capability Division	Guideline: Regulatory principles
Regulatory Capability Division	Guideline: Environmental siting
Regulatory Capability Division	Guideline: Licence duration
Regulatory Capability Division	Industry regulation guide to licensing

Review

We will review this guideline as soon as practicable after the third year from the start date.

Acronyms

Acronym	Full name
CEO	Chief Executive Officer
DWER	Department of Water and Environmental Regulation
WA	Western Australia
EPA	Environmental Protection Authority
EP Act	<i>Environmental Protection Act 1986</i>