



Consultation Summary

Application Form

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Document Control

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Objective

As part of introducing a risk-based Regulatory Framework, the Department of Environment Regulation (DER) has developed new documentation, including a new Application Form for works approvals, licences, registrations and renewal or amendment of these instruments. This document summarises the consultation feedback received by DER, and DER's responses, in relation to the Application Form.

Background

DER's [Guidance Statement: Regulatory Principles](#) sets out principles of good regulatory practice that guide the exercise of DER's regulatory functions. DER's licensing and compliance functions relating to prescribed premises under the *Environmental Protection Act 1986* (EP Act) require appropriate instruments and documentation.

On 4 September 2015, DER released a draft suite of documents for public comment including a draft Application Form: works approval / licence and draft Guideline for applications to assist in completion of the Application Form. Consultation closed on 13 November 2015 and 20 submissions from external parties were received in respect of the Application Form.

DER amended the Application Form in response to the external submissions received and released a revised interim Application Form in July 2016. The interim version contained amendments to:

- rectify significant usability problems with the original Application Form;
- embed the Guideline into the Application Form itself;
- clarify which sections are required for different types of applications;
- structural changes to ensure choice in the format of attachments;
- add the ability to apply for clearing as part of a works approval application and to apply for registrations; and
- clarify section 5 regarding fitness and competency of the applicant.

Following the trialling of the interim version of the Application Form, DER has made further amendments in response to internal feedback to improve the usability and clarity of the form.

DER thanks all respondents and appreciates the time taken to provide comments on the Application Form. DER has considered the issues raised in the submissions, issues arising during the trial of the Application Form, and has considered the documentation in the context of the release of, and consultation on, other core aspects of DER's Regulatory Framework including *Guidance Statement: Decision Making* and *Guidance Statement: Risk Assessments*.

This document summarises the submissions received in relation to the September 2015 version of the Application Form, the key issues raised and the way in which these have been addressed through the final Application Form.

Submissions

External submissions were received from the following persons:

	Submitting Party
1	AWE Limited
2	Boral Shared Services
3	Brickworks Building Products
4	Chamber of Minerals and Energy of Western Australia
5	Cockburn Cement
6	David Bills
7	Department of Agriculture and Food
8	Department of Water
9	Kwinana Industries Council
10	MBS Environmental (David O' Brien)
11	MBS Environmental (Freea Itzstein-Davey)
12	Metals X Limited
13	Roy Hill
14	Spinifex
15	Strategen Environmental
16	Synergy
17	WA Local Government Association
18	Water Corporation
19	Wesfarmers CEF
20	Southern Ports Authority (received outside of consultation period)

Application Form and Guidelines

The comments received by DER in relation to the Application Form can be grouped into the following themes.

- Consultation
- Environmental registrations
- Detail required for different instruments
- Clarification on clearing
- Risk-based decision-making

Department of Environment Regulation

- Electronic applications
- Fee calculation
- Fit and competent operator
- Authorised representative
- Rural areas / first time users and small operators
- Primary / Secondary / Contributory activities
- Occupier status

DER's response to each of these themes is provided in the following sections.

Consultation

One comment was received relating to consultation on the documents. This is summarised below:

Summary of Comments Received and Response

Comment	DER response
Consultation paper says: "DER will be applying the application form immediately". This is not really consultation. In general it appears that this reform program is being rushed to meet arbitrary internal deadlines, rather than make long-term improvements.	<p>Noted. DER has trialled a revised application form which includes some of the key changes which were raised during consultation and required immediate attention.</p> <p>Consultation by way of feedback and submissions have been received and have been considered in the finalisation of the Application Form.</p>

DER Position

DER is committed to continual improvement and this is demonstrated by the consideration of comments and changes made to guidance and the Application Form.

Environmental Registrations

DER received a number of submissions on registrations under Schedule 1, Part 2 of the EP Act.

Summary of Comments Received and Response

Comment	DER response
Will environmental registrations go through the reform process or will they remain unchanged?	Noted. Risk-based regulation will also apply to the assessment of applications for registrations and works approvals associated with registration categories.
Will there be a separate form/process for seeking a registration for Schedule 1 Part 2 facilities?	No. The revised application form includes registrations.

DER Position

DER has amended the application form to include the ability to apply for registration under Schedule 1, Part 2 of the EP Act.

Detail Required for Different Instruments

DER received a large number of submissions recommending that the information requested in the application form is limited to the change in activity being requested. These are summarised below:

Summary of Comments Received and Response

Comment	DER response
Recommend DER update the Application Form and the Guideline to ensure the information provided for amendments is limited to the change in activity being requested. Parts 4 and 6 should also be updated to ensure consistency through the documents.	Noted. The revised application form incorporates these changes.
The information requested...aimed at new proposals. If the application is for an amendment, renewal or works approval for an already licensed premises, could there be an option to only complete sections relevant to the proposed sections?	Agreed. The Completion Matrix in the revised application form explains what sections are required to be completed for different types of applications.
"Proposed activities" - should the reference on the form be marked as only relevant for works approvals or new licences? Where information is required for existing premises there could be a part covering "current activities". For works approvals it would be more appropriate to clearly define the requirement to describe both activities and potential impacts (part 6) associated with construction and with proposed operations as these can be different.	Noted. The Completion Matrix in the revised application form provides that "proposed activities" is only required to be filled in to the extent changed/required in relation to an amendment.

DER Position

DER has amended the application form to include a Completion Matrix which explains what sections are required to be completed for different types of approvals.

Clarification on Clearing

A number of comments were received seeking clarification on whether the Application Form is intended to apply to clearing.

Summary of Comments Received and Response

Comment	DER response
Consider instruction around clearing.	Agreed. Information on clearing is only required where a works approval includes clearing of native vegetation.
This document is probably a bit misleading in relation to the information required for a clearing permit and would recommend that clearing permits use a different application form.	Agreed. The revised application form includes a box to be marked where a separate application form has already been submitted. Otherwise, information on clearing is only required where a works approval includes clearing of native vegetation.
Section 3.3 requires the period of clearing undertaken to align with clearing permit applications (same issue as in Part 2 - approvals are already governed by the EP Act and EP Regulations).	Agreed. This information is required in order to appropriately condition works approvals which permit clearing to occur. Further guidance on clearing will be included in the application form.

DER Position

DER has included guidance on the use of the Application Form relating to clearing. For premises where clearing of native vegetation is required, an Applicant may either apply for a:

- clearing permit utilising the relevant clearing application form, C1 (Area Permit) or C2 (Purpose Permit), available on the Clearing Permits section of the DER website; or
- works approval and indicate that clearing is required. DER will then validate the application and inform the applicant that:
 - clearing may be dealt with by way of conditions on the works approval;
 - an exemption is available; or
 - a clearing permit application form is required. This may be required if the proposed clearing is likely to have a significant effect on the environment, or is likely to be at variance to one or more of the clearing principles set out in Schedule 5 of the EP Act.

Risk-based Decision-making

A number of submissions were made in relation to risk-based decision-making and Parts 6 and 8 of the Application Form. These are summarised below.

Summary of Comments Received and Response

Comment	DER response
Recommend delaying publishing the final Application Form and Guideline until the Environmental Risk Assessment Framework has been finalised.	Agreed. The application form and embedded guidance have been finalised after the <i>Guidance Statement: Decision Making</i> and <i>Guidance Statement: Risk Assessments</i> were published.
Update Part 6 and Attachment 6 of the Application Form to include a column for applicants to nominate the level of risk. DER to also clarify whether low risk sources are required to be listed.	Noted. Risk assessments will be undertaken by DER, not the applicant. This has been clarified in the revised Application Form.
Asking the applicant to determine if emissions are a risk to public health/environment seems risky and open to interpretation. Recommend asking for the emissions that are produced from the activity, and then DER can decide if that is a risk. Otherwise providing (Plain English) definitions for environment and public health would help applicants answer this question.	Noted. Risk assessments will be undertaken by DER, not the applicant. This has been clarified in the revised Application Form.

Comment	DER response
Further information requested on what DER considers 'sensitive receptors' to be. Siting considerations are only one factor in assessing the risks associated with a facility.	Noted. The <i>Guidance Statement: Risk Assessments</i> and <i>Guidance Statement: Environmental Siting</i> clarify this.

DER Position

Clarification around the implementation of DER's risk based Regulatory Framework is provided through the *Guidance Statement: Decision Making* and *Guidance Statement: Risk Assessments* which were finalised in November 2016. DER has updated the Application Form to include appropriate reference to those Guidance Statements. DER has also revised the wording of the Application Form to make it clear that applicants are not expected to undertake a risk assessment of their proposed activities.

Electronic Applications

DER received a number of comments relating to the functionality of the Application Form. These are summarised below.

Summary of Comments Received and Response

Comment	DER response
DER is working on "improvements to enable online application submissions"; until then, applications are to be both emailed and posted, which seems a regressive step. Perhaps the document upload part of Industry Licensing System, at least, could be retained until a new system can replace it, or DER could allow documents to be submitted via Dropbox or one of many other popular file hosting services.	Noted. DER is aware of the issues with the Industry Licensing System (ILS) and will be reviewing the system over time. Parties can contact info@der.wa.gov.au if they experience any issues with submission of an application.
Working online is problematic as the whole document needs to be completed before it can be saved. Redoing lost work is costly in terms of time.	Noted. This issue has been resolved in the revised application form. The Application Form has been amended so that the word version is completely downloaded and can be saved by the applicant.

DER Position

DER has resolved the issues experienced with the Application Form which was subject to public consultation. Over time, DER will work to resolve the issues with the current Industry Licensing System. Until then, applicants should send applications by email and in hard copy.

Fee Calculation

A number of comments were received in relation to Part 9 of the Application Form – Fee Calculation. These comments are summarised below.

Summary of Comments Received and Response

Comment	DER response
The fee calculator should be linked because it is very hard to find on the website	Agreed. The application form has been revised to include links to the appropriate fee calculators.
Can the licence fee calculation component of ILS be retained so that the applicant can submit calculated fees online? The guidance notes provide less information than previous DER guidance regarding what costs should be included in the proposed works costing. As a minimum it would be helpful for applicants if DER points applicants to Section 5C of the Regulations to assist in determining costs.	Noted. There are currently issues with the use of ILS. Until this is resolved, the fee component will need to be submitted in hard copy. Further guidance has been included in the revised application form.
Capital Cost for the purpose of calculating the works approval fee should be limited to cost associated with building/modifying equipment directly related to emissions, e.g. cost of levelling land, engineering design, equipment purchase and engineering consultancy costs should not be included. These aspects are already subject to local government fees.	Noted. The revised Application Form clarifies that detail of costs of works must include site works (for example levelling and drainage), construction works, plant and equipment hire and labour.

DER Position

The revised Application Form now contains links to the fee calculators available online. Further guidance has been given relating to the calculation of licence and works approval amendments.

Fit and Competent Operator

DER received a large number of comments on the requirements of Part 1 - requesting director details, and Part 5 - Fit and competent operator of the Application Form. These comments are summarised below.

Summary of Comments Received and Response

Comment	DER response
Delete the requirement "For an applicant that is a company, each director must complete this section as an individual and include their previous history as director of other companies"	Agreed. Director names must only be included in the application form if they are not evident from the ASIC Company Extract (which is required to be attached).
Consider whether Director details and registered address are required to be filled out. Recommendation that a current company file be submitted as an attachment instead.	Agreed. The revised application form includes a provision for an ASIC Company Extract to be attached.
1.2 - Directors change over time, sometimes quite often. Keeping this up to date is problematic.	Noted. Only changes which occur while the application is being assessed are required to be notified to DER.
The guidance document requests that where a company has previously had a licence or works approval non-compliance - 'each Director must complete Section 5 as an individual and include their previous history as directors of other companies'. This seems to be a very onerous process for a company which may have had only a minor technical non-compliance.	Noted. This section of the application form has been deleted. Directors are not required to complete section 5 individually however the applicant must have details for the questions raised in revised sections 5.1-5.11. These sections are not intended to be directed towards minor technical non-compliance.
Compliance history of directors and companies is available through an ASIC check and through DER's record keeping system. It would be more appropriate for DER to coordinate the compliance check.	Noted. Aside from revised questions 5.1-5.11 DER will undertake an internal due diligence of the applicant's fitness and competency based on its compliance records. Additional information may be provided by the applicant for DER to consider in making this assessment. This has been clarified in the revised application form.

Comment	DER response
<p>5.3 - difficult to impossible to answer for several reasons including:</p> <ul style="list-style-type: none"> -the timeframe has not been set. Many companies are very old and may not have a record of licence breaches; -most potential licence breaches are unconfirmed -It has not always been a requirement to keep record of licence breaches and even in modern licences, the licensees are only required to keep records for 6 years if there was no effect on the environment; -large companies, or businesses that have operated for a long time will unfairly appear incompetent to the general public; -Nowhere in the Act does it refer to a licence holders competency or compliance history. 	<p>Noted. The question relating to licence breaches has been deleted and replaced with a question relating to whether there have been any convictions or penalties paid, or licences or other authorisations revoked or suspended for a breach or offence.</p>

Comment	DER response
<p>While we agree that company directors should be aware of and take ownership of environmental compliance, the scope of disclosure appears very broad... this matter was raised at a briefing session and DER stated it “will take into account the materiality of non-compliances [and] acknowledges that Section 5 of the application form is currently too broad and will be revised”. DER will help applicants if it provides clear guidance on what it considers material in this context. DER further stated that the requirement is: “not intended to apply to a board of directors of major companies”. Why not, if directors of smaller companies have to disclose? And what counts as “major”? “but intended as a way to look behind the corporate veil in specific circumstances”. What kind of circumstances would those be? Seem at odds with DER’s principles of competitive neutrality and transparency.</p>	<p>Agreed. This section of the revised application form has been revised and further guidance provided on materiality. The section also applies to all companies.</p>
<p>Part 5.5 - We suggest a specific question is added that states: Does the licensee have a certified environmental management system? If yes provide certification number. If no outline the environmental management systems implemented (or proposed to be implemented).</p>	<p>Noted. The question relating to the experience of the instrument holder has now been deleted.</p>

DER Position

DER has had regard to the numerous comments made in submissions relating to Part 5 of the Application Form. It has made a number of amendments to the Application Form directed towards obtaining information relating to material offences which include convictions, penalties paid or instruments revoked or suspended as a result of a breach or offence. This information is sought for companies, directors and persons involved in the management of the company, as referred to by section 118 of the EP Act. The section is required to be filled in by individuals and/or all companies. The information may be used by the CEO in exercising the discretion whether to grant an instrument.

Authorised Representative

DER received a number of comments relating to the definition of 'authorised representative' in 1.6. These comments are summarised below.

Summary of Comments Received and Response

Comment	DER response
1.6 - Is 'authorised representative' defined somewhere? What evidence is required to demonstrate that someone is an authorised representative?	Noted. The term is not defined. DER is seeking contact details of a person who is authorised to be contacted on behalf of the company. This is in addition to the contact person who is authorised to be contacted by DER in respect of queries relating to the application form. That contact person may be a consultant.

DER Position

DER has amended the application form to request contact details of a person who can be contacted to discuss queries relating to the application form (who can be a consultant), as well as a contact person who is authorised to be contacted on behalf of the company. For example, the authorised person may be the person who is responsible for the management of environmental matters at a company.

Rural Areas/First Time Users and Small Operators

DER received a number of comments relating to the application of the documentation to first time users, rural areas and small operators. These are summarised below.

Summary of Comments Received and Response

Comment	DER response
Documentation doesn't take into account how risk and hence level of modelling will be determined for proponents in rural areas, especially if the risk assessor is not conversant with that particular rural area and its demography.	Noted. <i>Guidance Statement: Risk Assessments</i> sets out how risk assessments will be conducted. Risk assessments are site specific and take into account the full context of a particular site setting.
Concerned that the documents are geared towards repeat users/consultants. A first time user, small operator with little knowledge of the EP Act or DER's licensing process would potentially struggle to complete the document/s	Noted. Guidance has been embedded in the revised application form to assist in its completion.

DER Position

The Application Form is intended to be user friendly for all operators. DER has

amended the Application Form to include further guidance to assist completion.

Primary / Secondary / Contributory Activities

A number of comments were received seeking clarification of the requirement under Part 3 – Proposed activities. These comments are summarised below.

Summary of Comments Received and Response

Comment	DER response
Clarify DER's requirements - are proponents required to list all primary, secondary and contributing activities as described in the <i>Guidance Statement: Licensing and Works Approval Process</i> ? Once a premise is licensed, if a proponent proposes to undertake any secondary activities...do they submit the form to disclose activities to the DER?	Noted. The revised application form references to the <i>Guidance Statement: Risk Assessments</i> which provides that DER will identify likely emissions arising from the primary activities which fall within the description of the category of prescribed premises in schedule 1 of the EP Regulations and directly related activities that give rise to emissions and discharges.
Primary, Secondary and Contributory Activities - There is no provision within the Application form for these activities, it is not clear how these activities will be assessed.	Noted. This is addressed in the <i>Guidance Statement: Risk Assessments</i> .

DER Position

The terms Primary, Secondary and Contributory Activities have been removed from DER's Regulatory Framework guidance material. DER has amended the Application Form to provide further guidance on the information it requires relating to proposed activities. This includes information on emissions and discharges arising from all prescribed activities occurring at the Premises.

Occupier Status

DER received a number of comments seeking clarification on what was required to show 'occupier' status. These comments are summarised below.

Summary of Comments Received and Response

Comment	DER response
Guideline for Applications needs to include an example(s) of acceptable landholder agreements or at least clearly state the minimum requirements of such agreements.	Noted. Further information will be provided in the application form relating to what is acceptable evidence of occupier status.

Comment	DER response
<p>Recommend DER update 1.7 of the Application Form and Guideline to allow for the following 'Occupier status':</p> <ul style="list-style-type: none"> -Tenure held jointly by a Joint venture; and - Contractor who is the 'occupier' but does not hold tenure over the prescribed premises. 	<p>Agreed. The revised application form has been updated.</p>
<p>Quite common for the certificate of title for a farm to remain the parents' name once operational responsibility has been passed to their children. Include an explanation of what is required in this instance e.g. if your name is not listed on the Certificate of Title, it is necessary that you provide additional evidence that you have legal rights to the land.</p>	<p>Noted. The definition of “occupier” under the EP Act means a person who is in occupation or control of those premises, whether or not that person is the owner of those premises. Sufficient evidence is required to be provided, showing occupation or control, such as a lease or management agreement.</p>

DER Position

DER has amended the Application Form to provide further guidance on the definition of an 'occupier', and clarity around what documentation is sufficient evidence of occupancy.