

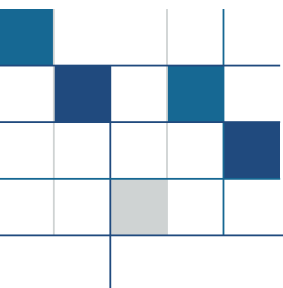


Guideline

Decision making

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

June 2019





Enquiries

WA Department of Water and Environmental Regulation

Regulatory Services Directorate

Prime House, 8 Davidson Terrace

Joondalup Western Australia 6027

Postal address: Locked Bag 10, Joondalup DC WA 6919

Email: info@dwer.wa.gov.au

Telephone: +61 8 6364 7000

Facsimile: +61 8 6364 7001

National Relay Service 13 36 77

Website: www.dwer.wa.gov.au

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1 Objective

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

2 Scope

This Guideline outlines the Department's decision making process relating to:

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

3 Context

The Department's *Guidance Statement: Regulatory Principles* sets out principles of good regulatory practice that guide the exercise of the Department's environment regulation functions.

Guidance Statement: Risk Assessments provides guidance on the Department's risk-based assessment process and the determination of proportionate regulatory controls for works approvals and licences.

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

4 Legislation

This Guideline principally relates to the Department's regulatory practice relating to decision making and determination of 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

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

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



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

4.2 Applications

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

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

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

To reduce regulatory burden, occupiers may concurrently apply through the single application form for a works approval or licence and the clearing of native vegetation.

4.3 Closure Notices

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

4.4 Transfers

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

4.5 Amendments

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

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



5 Guidance statements

5.1 Timeframes

The Department will target to determine applications for instruments in 60 working days, excluding stop-the-clock periods.

The Department will stop-the-clock for its decision making process in certain circumstances, as set out in Figure 1 below, and the Department will notify the applicant when the decision making process has been placed on stop-the-clock.

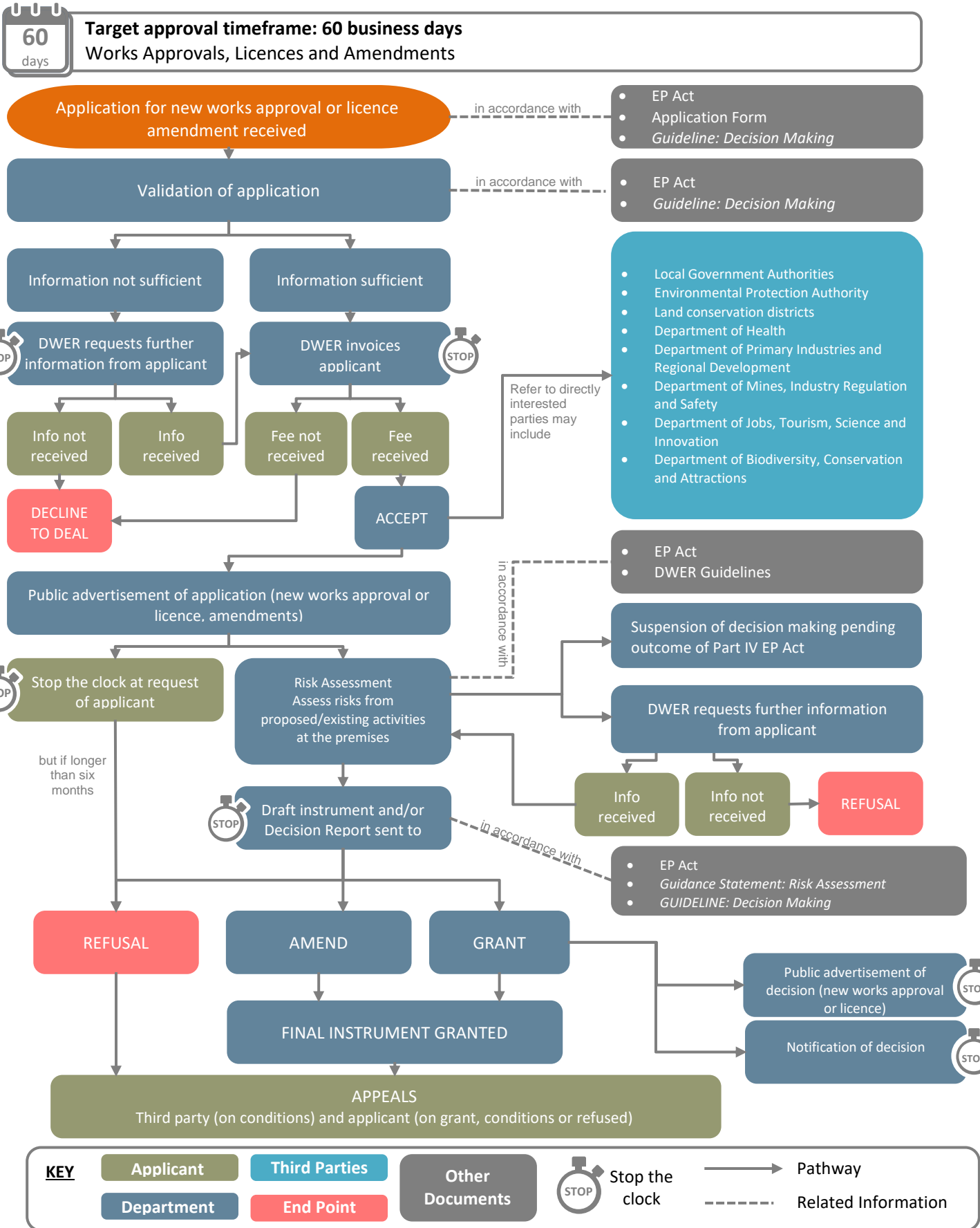
5.2 Overview of decision-making process

The Department will carry out its decision making in accordance with the overview flowchart outlined in Figure 1 below.

Where an applicant has requested the Department to suspend its decision-making process for a period of less than six months, the Department will stop-the-clock on the decision making process.

Where an applicant has requested the Department to suspend its decision-making process for a period of more than six months, the Department may refuse the application.

Where an applicant makes repeated requests to the Department to suspend the decision making process, the Department may refuse the application.



• Figure 1 Decision Making Overview



5.3 Concurrent clearing applications

Where a concurrent application for clearing of native vegetation is made, the Department may elect to either jointly or separately determine the clearing component of the application.

Where the Department separately determines the clearing component, the application will be deemed to be an application for a clearing permit under Section 51E of the EP Act.

The Department will assess the clearing of native vegetation in accordance with Schedule 5 of the EP Act – *Principles for clearing native vegetation* (see Appendix 1).

Where clearing of native vegetation is exempt under *Environment Protection (Clearing of Native Vegetation) Regulations 2004* or is being assessed by a relevant authority which would lead to an exemption under Schedule 6 of the EP Act, the clearing will not be reassessed by the Department or be subject to any additional controls by the Department.

5.4 Consideration of interests

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

The Department may also seek advice on applications for instruments, including amendments, from relevant government authorities including:

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

The Department will consider responses from interested parties and advice from relevant government authorities in the Department's assessment of risks to public health, public amenity or the environment.



5.5 Risk assessment

The Department will undertake a risk assessment in accordance with the *Guidance Statement: Risk Assessments*.

For a works approval, the Department will:

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

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

5.6 Emissions

Where there is a risk from the premises arising out of proposed or actual emissions to air, land or water, the Department will:

- validate any screening analysis of the risk of the emission undertaken by the applicant;
- if required, specify the modelling or further information to be provided; and
- specify the type and frequency of monitoring required.

5.7 Decline to Deal

The Department will decline to deal with applications where:

- the Application Form is incomplete and the information is not otherwise publicly available;
- following the Department's written request, the applicant has not provided within 21 business days the information required to undertake the assessment. Prior to declining to deal, the Department may agree to extend this period on the request of the applicant; or
- the prescribed fee has not been paid.

The Department will also decline to deal with an application for a licence where:

- the application relates to matters for which works approval has been granted, and the works have not been completed to the CEO of the Department's satisfaction; or
- a works approval is required but has not been granted, and the works concerned have not been completed.

5.8 Request for further information

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



5.9 Decision to grant

In deciding to grant an instrument, the Department will:

- assess the controls proposed by the applicant to mitigate risks;
- determine controls in accordance with the *Guidance Statement: Risk Assessments*; and
- prepare conditions in the instrument in accordance with the *Guidance Statement: Setting Conditions*.

The Department will afford the applicant 21 business days to comment on the draft decision and draft instrument, including the opportunity to propose alternative controls to address the risk. The Department may agree to extend this period on the request of the applicant.

The Department will notify interested parties of the Department's decision and publish a copy of the final decision and instrument.

The Department's consideration of interested parties' comments will be documented in the decision report and instrument, which will be publicly available.

5.10 Decision to refuse

The Department will refuse an instrument where the risk assessment determines that there is an unacceptable risk to public health or the environment, including a works approval where the unacceptable risks are in relation to the operations of the prescribed premises.

The Department will provide the applicant with a draft decision to refuse. The Department will afford the applicant 21 business days to comment on the draft decision, including the opportunity to provide further controls to address the risk. The Department may agree to extend this period on the request of the applicant.

The Department will refuse an application where the Department has considered the comments made by the applicant and has determined that the risk remains unacceptable.

5.11 Closure Notice

Where the Department is considering whether a Closure Notice may be required under Section 68A of the EP Act, the Department will undertake a risk assessment in accordance with the *Guidance Statement: Risk Assessments* to determine the specified actions required under the Closure Notice.

The Department will afford the instrument holder 21 business days to comment on the draft Closure Notice. The Department may agree to extend this period on the request of the licence holder.

The Department will consider the comments made by the instrument holder prior to determining the Closure Notice.



5.12 Transfer

Where an application for the transfer of an instrument has been made, the Department will undertake an assessment of the appropriateness of the transferee and:

- where the transferee is equivalent to the transferor, the Department will transfer the instrument; and
- where the transferee is not equivalent to the transferor, the Department may –
 - refuse the transfer; or
 - transfer the instrument subject to amendments to the instrument.

In determining equivalence, the Department will have regard to a number of factors including experience and historical environmental compliance and performance of the transferee and the transferor.

Where the Department considers that the transferee is not equivalent to the transferor, the Department will afford the transferee 21 business days to comment on the draft decision. The Department may agree to extend this period on the request of the transferee.

The Department will consider the comments made by the transferee prior to determining the transfer.

5.13 Existing premises

Assessments of existing premises may be considered necessary by the Department in a range of circumstances. Those circumstances are set out in the *Guidance Statement: Risk Assessments*.

Following an assessment of existing premises, the Department may determine appropriate controls and amend conditions on instruments.

Where the Department determines to amend an existing instrument for a premises, the Department will notify the licence holder of:

- the Department's intention to amend;
- the reasons for the amendment; and
- the draft amendments.

The Department will afford the licence holder 21 business days to comment on the draft amendments, including the opportunity to provide alternative controls to address the risk. The Department may agree to extend this period on the request of the licence holder.

5.14 Applicant amendments

Where licence holders and works approval holders have applied for amendments to instruments, the Department will aim to make a determination on the amendment application within 60 working days.

In some circumstances, certain instrument holders may submit multiple amendments.



Where there are multiple amendments within a concurrent timeframe, the Department will aggregate the amendments and assess them as a single application as the Department considers practicable.

Where the activities of premises require expected ongoing amendments due to the nature of the works or operations, the Department will determine an amendment submission process with the instrument holder.

5.15 Appeals

Upon determining an instrument or application, the Department will notify the applicant or licence holder of their right to appeal the decision and will provide the applicant with the contact details of the Appeals Convenor.

5.16 Renewals

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

Document implementation

- The Department's decision making process will be implemented in accordance with this Guideline for all:
 - new applications received; and
 - new transfers and Closure Notice matters, from the date of commencement.
- The CEO may also apply this Guideline to existing matters as the CEO considers appropriate, having regard to ensuring an orderly transition.



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	Guidance Statement: Risk Assessments
Regulatory Capability Division	Guidance Statement: Regulatory Principles
Regulatory Capability Division	Guidance Statement: Environmental Siting
Regulatory Capability Division	Guidance Statement: Licence Duration
Regulatory Capability Division	Industry Regulation Guide to Licensing

Review

The application of this Guideline will be continuously evaluated and reviewed no later than three years from the date of issue or sooner as required.

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>