

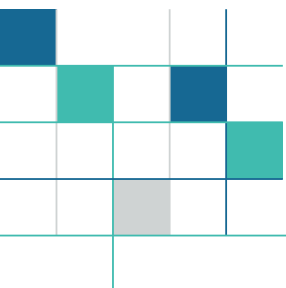
Procedure

Prescribed premises works approvals and licences

Application, assessment, and management requirements under Part V
Division 3 of the *Environmental Protection Act 1986*

October 2019

Updated in November 2024 to align with the *Environmental Protection Amendment Act 2024*. Additional revisions may be required to update content and to align with current processes and other legislative amendments.



Department of Water and Environmental Regulation
8 Davidson Terrace

Joondalup Western Australia 6027

Telephone +61 8 6364 7000

Facsimile +61 8 6364 7001

National Relay Service 13 36 77

www.dwer.wa.gov.au

© Government of Western Australia

October 2019 (updated November 2024)

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to the Department of Water and Environmental Regulation.

FIRST 115781

For more information about this document, contact Director, Regulatory Capability

Disclaimer

This document has been published by the Department of Water and Environmental Regulation. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and Environmental Regulation and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

This publication is available at www.dwer.wa.gov.au or for those with special needs it can be made available in alternative formats such as audio, large print, or Braille.



Contents

Purpose	1
Scope	1
Stages of assessment	2
1. Stage 1: Pre-application	3
1.1 Applicant considers if an instrument is required	4
Clearing native vegetation under a works approval or licence	4
1.2 Applicant requests a scoping meeting (optional)	5
Coordinating multiple applications across the department	5
1.3 Applicant determines if referral to the EPA is required (if applicable)	6
1.4 Applicant completes and submits application form	6
2. Stage 2: Validation	7
2.1 Department receives application.....	8
2.2 Department determines if referral to the EPA is required	8
Concurrent processing of Part IV and Part V applications.....	8
2.3 Department reviews application.....	8
Incomplete applications	9
2.4 Applicant pays prescribed fee.....	9
2.5 Department determines if application is valid	9
Resubmission	10
2.6 Department advertises application.....	10
Confidential or commercially sensitive information.....	10
3. Stage 3: Assessment	12
3.1 Department determines the assessment pathway	13
3.2 Department determines if further information is required.....	13
3.3 Department assesses application	14
Updating an application mid-assessment.....	14
3.4 Department drafts proposed decision and sends to applicant for comment	15
Department sends proposed decision to applicant.....	15
Types of conditions.....	15
3.5 Applicant responds to proposed decision	16
3.6 Department considers applicant submissions, finalises decision, and notifies applicant.....	16
Relationship to other decision-making authorities	16



3.7	Department advertises the decision.....	17
4.	Stage 4: Decision review.....	18
4.1	Applicant or third party lodges an appeal.....	19
4.2	Minister determines appeal.....	19
5.	Stage 5: Instrument management.....	20
5.1	Compliance with conditions	21
	Reporting to the department.....	21
5.2	Department undertakes compliance inspections	21
5.3	Department undertakes enforcement actions as required	22
5.4	Transitioning from a works approval to a licence	22
5.5	Licence holder pays annual licence fees	23
5.6	Licence holder applies to renew a licence	23
5.7	Instrument holder applies to amend an instrument.....	24
	Appeals against amendments	25
5.8	Department initiates amendment of an instrument	26
5.9	New occupier applies to transfer instrument.....	26
	Application for a new instrument.....	27
5.10	Instrument holder applies to surrender instrument.....	27
	Timeframes.....	29
	Stop the clock.....	29
	Delegations.....	31
	Document implementation	31
	Related documents.....	31
	Custodian and review	32
	Glossary	33

Figures

<i>Figure 1. Stages of assessment</i>	<i>2</i>
<i>Figure 2. Stage 1: Pre-application process flowchart</i>	<i>3</i>
<i>Figure 3. Stage 2: Validation process flowchart.....</i>	<i>7</i>
<i>Figure 4. Stage 3: Assessment process flowchart.....</i>	<i>12</i>
<i>Figure 5. Stage 4: Decision review process flowchart</i>	<i>18</i>
<i>Figure 6. Stage 5: Instrument management activities.....</i>	<i>20</i>
<i>Figure 7. Target assessment timeframes</i>	<i>30</i>



Purpose

The Department of Water and Environmental Regulation (the department) manages Western Australia's environment and the environmental impacts of activities undertaken on prescribed premises through the provisions of the *Environmental Protection Act 1986* (EP Act) and the *Environmental Protection Regulations 1987* (EP Regulations).

The *Procedure: Prescribed premises works approvals and licences* (Procedure) outlines the processes undertaken by the department to assess applications for works approvals or licences (an instrument) under Part V Division 3 of the EP Act, and manage any consequently granted instrument(s).

This Procedure aligns with the department's *Customer Service Charter*. For further information on how the department manages its relationship with external stakeholders, refer to the *Customer Service Charter* on the [department's website](#).

Scope

This Procedure applies to applications:

- for a new works approval (section 54 of the EP Act)
- for a new licence (section 57 of the EP Act)
- for an amendment to an existing instrument (section 59B of the EP Act)
- to surrender an existing instrument (section 59B of the EP Act)
- to transfer an existing instrument (section 64 of the EP Act).



Stages of assessment

The assessment process follows five key stages:

- Stage 1: Pre-application
- Stage 2: Validation
- Stage 3: Assessment
- Stage 4: Decision review
- Stage 5: Instrument management.

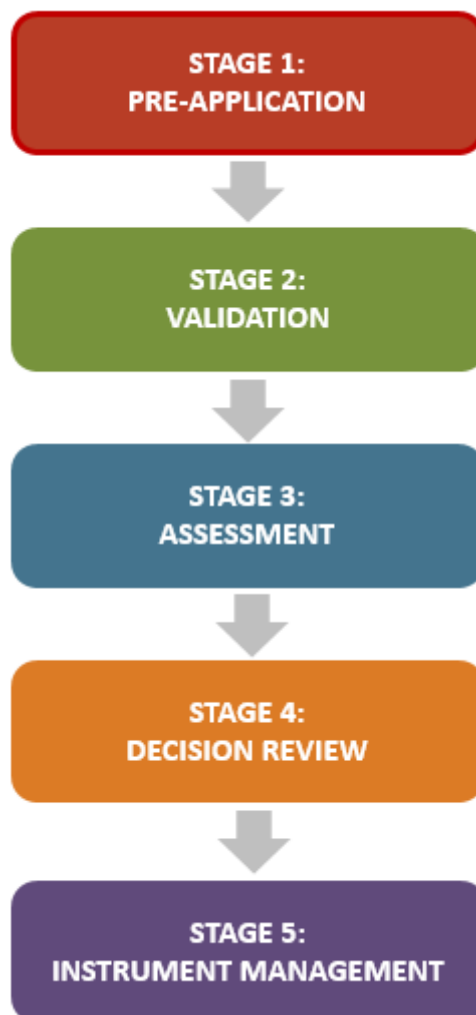


Figure 1. Stages of assessment



Stage 1: Pre-application

The procedure for *Stage 1: Pre-application* is summarised in the process flowchart below.

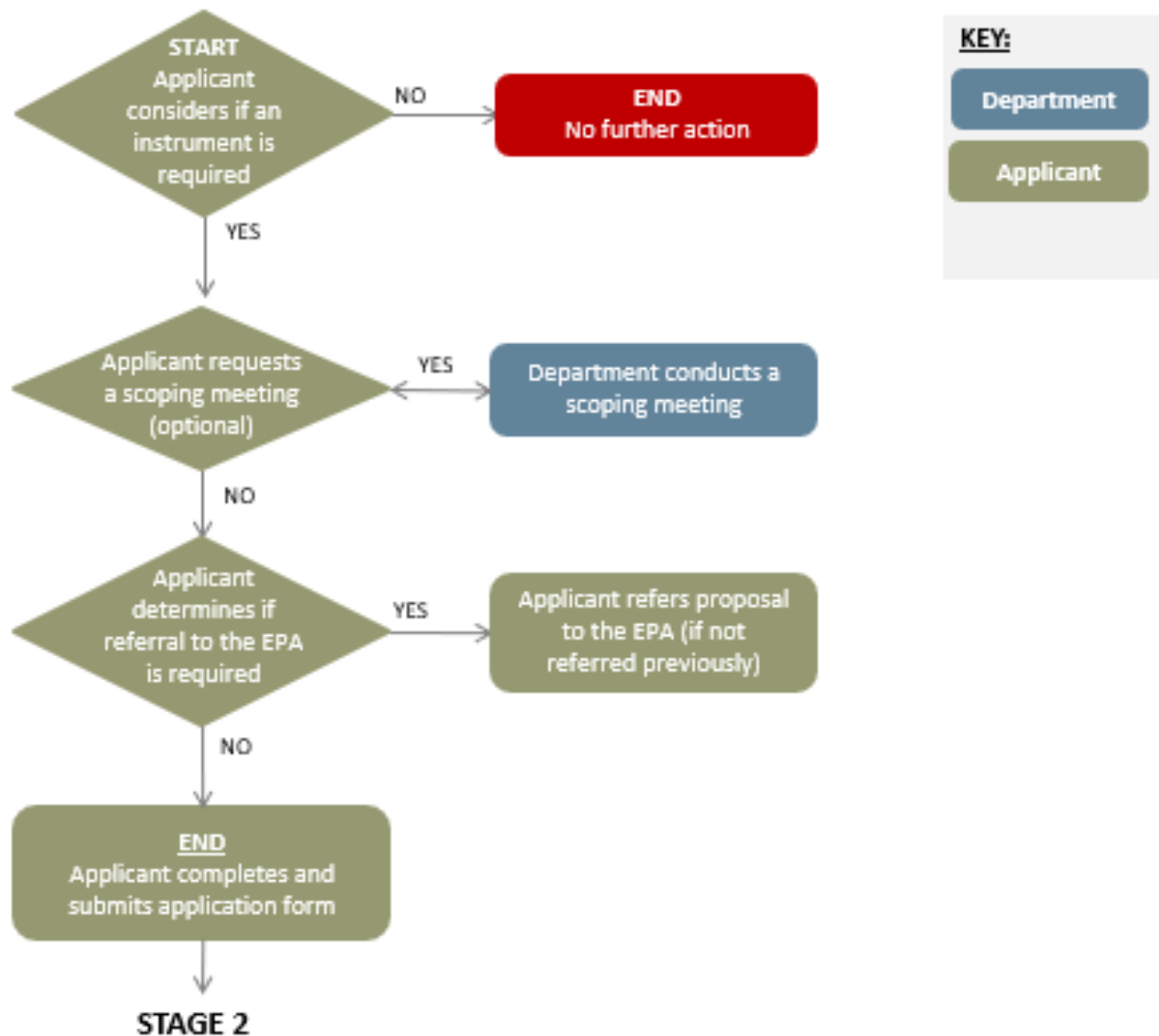


Figure 2. Stage 1: Pre-application process flowchart



1.1 Applicant considers if an instrument is required (s.52, 53, 56 EP Act; r.5, 5A, Sch 1 EP Regulations)

Stage 1: Pre-application begins when the prospective applicant considers whether they require an instrument.

The EP Act stipulates that it is an offence to construct or operate (and thereby cause emissions or discharges to the environment) a prescribed premises without holding a relevant instrument. Categories of prescribed premises are listed in Schedule 1 of the EP Regulations (regulation 5).

A licence is required when causing emissions through the operation of a prescribed premises (section 56 of the EP Act).

A works approval is required (sections 52, 53 of the EP Act) in circumstances that include, among others, when:

- causing a premises to become, or become capable of being, a prescribed premises
- adding a new category to an existing prescribed premises, or
- performing works that would result in an increase in the volume or change in the nature of emissions and/or discharges from the prescribed premises because of or following the construction or equipment installation activities.

For some prescribed premises, applying for a registration may be a desirable alternative to applying for a licence (regulation 5A of the EP Regulations). The application processes relating to registrations are not covered in this procedure.

For further guidance on when a works approval, licence, or registration is required, refer to the *Guideline: Industry Regulation Guide to Licensing* and other related documents on the [department's website](#), or contact the department.

Clearing native vegetation under a works approval or licence

(Pt V Div 2, Sch 6 EP Act; Pt 3 Div 1 EPBC Act)

Under Schedule 6 of the EP Act (items 2(c)(ii) and 2(c)(iii)), clearing authorised under an EP Act works approval or licence is exempt from requiring a clearing permit. Prospective applicants have the option to apply for clearing under a works approval or licence, or to apply for a clearing permit separately.

In some cases where an applicant has applied for clearing under a works approval or licence, the department will recommend the clearing component be applied for via a separate clearing permit application. These scenarios may include, among others, where the proposed clearing:

- is for a purpose related to mineral and petroleum activities
- is related to another clearing permit (or application) unrelated to the current works approval application
- may be contentious in nature



- may impact a matter of national environmental significance, as defined under Part 3 Division 1 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), or
- may require environmental offsets to be conditioned on the relevant instrument in accordance with the *WA Environmental Offsets Policy 2011* and the *WA Environmental Offsets Guidelines*.

Note that the Part V Division 3 assessment processes are not accredited under the EPBC Act bilateral agreement between the Commonwealth and the State of Western Australia. If assessment under the bilateral agreement is preferred or required, it may only be done via a clearing permit application. Refer to the [department's website](#) for further guidance.

For further information on the Part V Division 2 clearing permit application and assessment process, refer to the on *Procedure: Native vegetation clearing permits*.

1.2 Applicant requests a scoping meeting (optional)

Prospective applicants may request a scoping meeting with the department before submitting their application if:

- they would like to discuss what information is required in their application
- they would like to discuss how they intend to avoid or mitigate the impacts of their proposed activity
- the proposed activity, and its projected impacts, are likely to be complex, or
- the proposed activity has the potential to cause a 'significant' impact to the environment or public health (see Sections 1.3 and 2.2 for further relevant information).

Scoping meetings assist prospective applicants with understanding the department's application requirements and help the department better understand the specifics of a prospective application. They can ensure the applicant provides the department with the required information in their submissions, saving them time and money by potentially enabling faster assessment of their application.

Coordinating multiple applications across the department

In addition to matters covered by Part V of the EP Act (primarily prescribed premises and native vegetation clearing), the department regulates the state's water resources under the *Rights in Water and Irrigation Act 1914* (RIWI Act) and supports the Environmental Protection Authority (EPA) in its administration of Part IV of the EP Act.

The department provides a 'one stop shop' for prospective applicants that may require instruments across multiple environmental and water regulatory functions. This streamlines the application process and provides advice to prospective applicants with multiple assessment requirements.



Where it appears that multiple instruments may be required by the prospective applicant, the department may hold joint scoping meetings with the applicant and with representatives from all relevant departmental regulatory areas.

1.3 Applicant determines if referral to the EPA is required (if applicable)

(s.37B, 38, 39A EP Act)

Before submitting a works approval application, prospective applicants are recommended to determine whether the proposed project is considered a 'significant proposal' and, if necessary, consult with the EPA regarding the need to refer it for formal assessment under Part IV of the EP Act (section 38). A significant proposal is one that is likely, if implemented, to have a significant effect on the environment (section 37B). For further information on the interaction between Part IV and Part V assessments, refer to Section 2.2 below.

For more information on the EPA's processes, and the factors considered when determining a proposal's 'significance', refer to the [EPA's website](#).

1.4 Applicant completes and submits application form

(s.54(1), 57(1) EP Act)

Where an instrument is required, the prospective applicant must complete the appropriate application form (sections 54(1), 57(1) of the EP Act) and submit it:

- via email to info@dwer.wa.gov.au, or
- in hard-copy, sent via post.

Application forms are available via the [department's website](#). The department prefers, but does not require, applications to be submitted electronically by email.

Refer to the application form for the department's current contact details.



Stage 2: Validation

The procedure for *Stage 2: Validation* is summarised in the process flowchart below.

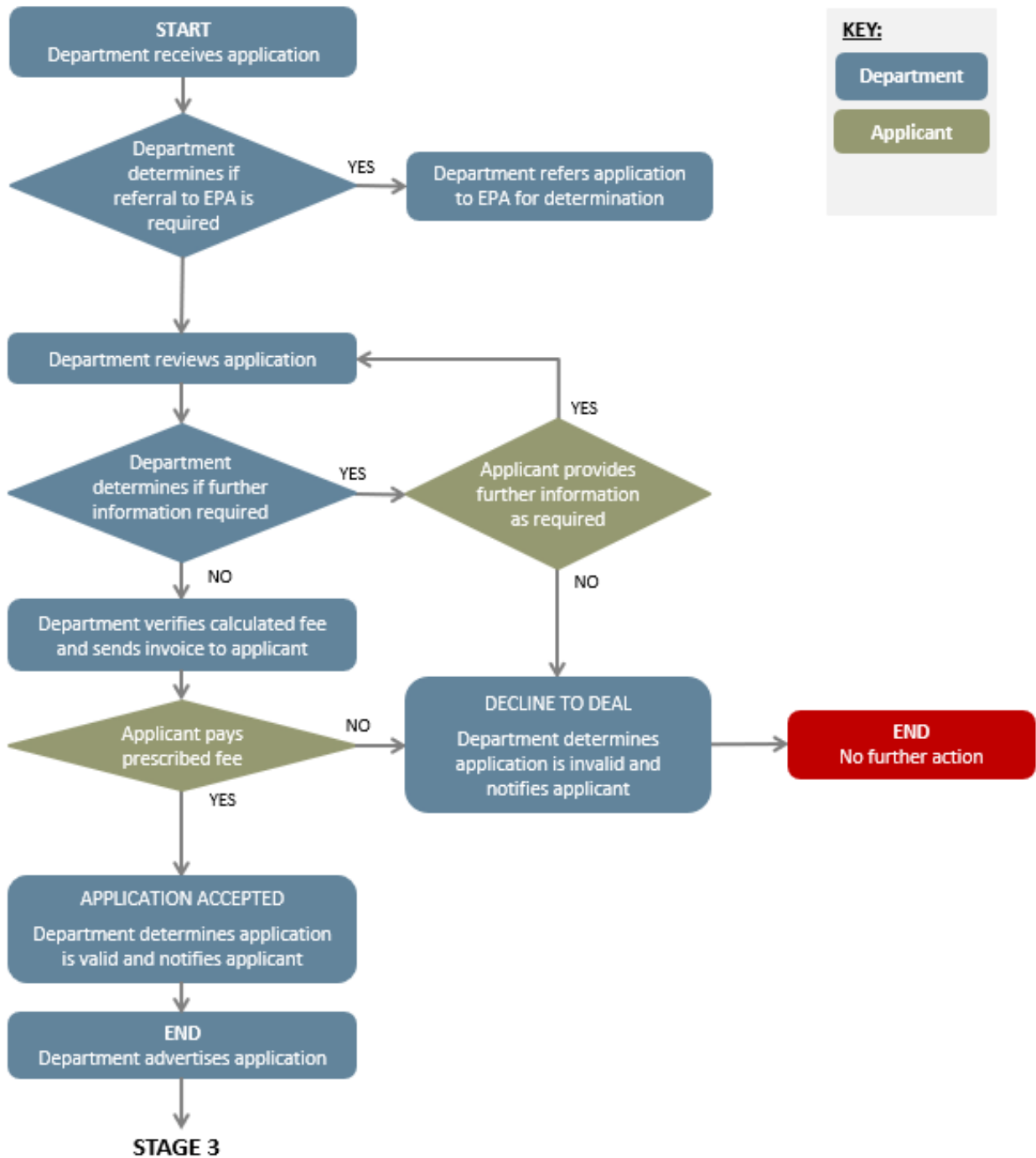


Figure 3. Stage 2: Validation process flowchart



2.1 Department receives application

Stage 2: Validation begins when the department receives an application.

2.2 Department determines if referral to the EPA is required

(s.37B, 38(4), 39A EP Act)

The department is required to refer significant proposals to the EPA (section 38(4) of the EP Act) that have not been previously referred to the EPA (see Section 1.3).

On receipt of an application, the department will make a preliminary determination on whether the subject of the application appears to be a 'significant proposal' (section 37B of the EP Act) and would require referral to the EPA under Part IV of the EP Act (section 38(4)).

If referred, the EPA will review the subject matter of the proposal and determine whether a Part IV assessment is required (section 39A of the EP Act).

Concurrent processing of Part IV and Part V applications

(s.54(4), 57(4), 59B(7) EP Act)

When the EPA is assessing a referred proposal under Part IV of the EP Act, the department will continue to assess the Part V related application in parallel with the EPA's assessment.

The department may parallel approve the Part V application while the EPA completes its assessment. This option is suitable for works approvals and operating licences for prescribed industrial premises that will likely not need changes to be consistent with a later Part IV approval.

If the Part V application is not suitable for parallel approval, the department will parallel process the Part V application to the furthest extent possible and issue a decision as soon as practicable after the Part IV assessment is completed and a Ministerial Statement is published.

This also applies to processing amendment applications (section 59B(7) of the EP Act). Refer to Section 5.7 for further information on instrument amendments.

For more information on the EPA's processes, refer to the [EPA's website](#).

2.3 Department reviews application

(s.54(1), 57(1) EP Act)

The department will review the application to determine whether the applicant has:

- completed the application in the approved form and manner (i.e. using the correct, and unaltered, form) (sections 54(1)(a), 57(1)(a) of the EP Act)
- applied for the correct type of instrument
- provided evidence of compliance with relevant existing works approvals (licence applications only) (section 57(2)(a)(ii)(A) of the EP Act)



- provided all of the relevant information (including supporting documents, etc.) (sections 54(1)(c), 57(1)(c) of the EP Act).

If the applicant has met the above criteria, the application is considered to be 'complete' and the department will progress it to the step outlined in Section 2.4.

Incomplete applications

If the application does not meet all of the above requirements, it is considered 'incomplete' and the department will contact the applicant.

Minor issues can be dealt with via phone or informal email (e.g. for minor cases of missing information, or documents referenced in the application but not submitted with the application package).

Major issues will be addressed via a formal 'intent to decline' letter, and may include, among others, failure to:

- submit the correct application form
- sign the legal declaration on the application form
- provide adequate supporting information, and/or
- (for licence applications only) provide an environmental compliance report, critical containment infrastructure report, and/or environmental commissioning report (as applicable) (section 57(2)(a)(ii)(A) of the EP Act) (refer to Section 5.4 below for further information on this).

Following receipt of an 'intent to decline' letter, the applicant has 21 calendar days to rectify the issues. The applicant may request an extension if required, which may be granted at the department's discretion.

2.4 Applicant pays prescribed fee

(s.54(1)(b), 57(1)(b) EP Act; r.5BA, 5D, 5O, Sch 3 & 4 EP Regulations)

When an application is deemed 'complete', the department will verify the prescribed fee calculated by the applicant and send them an invoice. The applicant is then provided with 21 calendar days to pay the prescribed fee.

A 'complete' application cannot be accepted unless the prescribed fee is paid within the timeframe specified (sections 54(1)(a), 54(1)(b), 57(1)(a), 57(1)(b) of the EP Act).

Refer to *Fact Sheet: Industry Regulation fees* for guidance on the methodology used to calculate the prescribed fee payment due for a works approval or licence application.

2.5 Department determines if application is valid

(s.54(2), 57(2) EP Act)

Once the applicant submits the required information and pays the prescribed fee, the CEO (or their delegate) will determine that the application is valid (sections 54(2)(b), 57(2)(b) of the EP Act) and notify the applicant that it has been accepted for assessment.



The CEO (or their delegate) will decline to deal with an application (sections 54(2)(a), 57(2)(a) of the EP Act) where:

- the major issues identified in the 'intent to decline' letter (see Section 2.3, above) were not resolved within the specified timeframe, or
- the application fee was not paid within the specified timeframe.

If the application is declined, the CEO (or their delegate) will inform the applicant accordingly (sections 54(2)(a), 57(2)(a) of the EP Act). In this scenario, *Stage 2: Validation* ends at this point and will not progress to *Stage 3: Assessment*.

Resubmission

If an applicant updates and re-submits their previously declined application, the department will process it as a new application.

2.6 Department advertises application

(s.54(2)(b), 54(2a), 57(2)(b), 57(2a) EP Act; r.5CAA, 5J EP Regulations)

Once an application is accepted, the CEO (or their delegate) will advertise the application in *The West Australian* (regulation 5CAA, 5J of the EP Regulations), and publish the application on the department's website, on the ['assessments for public comment' page](#), inviting comment from the general public (sections 54(2a), 57(2a) of the EP Act). The application may also be advertised in the relevant local newspaper.

The CEO (or their delegate) may also undertake targeted consultation by directly seeking comment from persons, organisations, or public authorities identified during the validation review as likely to have a direct interest in the outcome of the application process ('direct interest stakeholders') (sections 54(2)(b), 57(2)(b) of the EP Act).

These may include, among others:

- persons whose properties border the proposed prescribed premises
- native title holders or claimants
- local government authorities, and/or
- other relevant State or Australian government departments or agencies.

The application (including the supporting documents) will be advertised for public comment and made available on the department's website for a minimum of 21 calendar days. Highly complex or potentially contentious applications may be advertised for longer periods at the discretion of the department.

Confidential or commercially sensitive information

(r.5CAA, 5J EP Regulations)

Information submitted in an application will be made publicly available. Applicants may request in their application that selected information be excluded from being published.

The department will take reasonable steps to protect genuinely confidential or commercially sensitive information.



In accordance with regulations 5CAA and 5J of the EP Regulations, the department is required to include in the advertisement, at minimum the:

- prescribed premises category describing the main function of the premises
- name of the applicant
- location of the premises, and
- reference number of the application.

The applicant's personal contact details will be redacted before advertising the application.



Stage 3: Assessment

The procedure for *Stage 3: Assessment* is summarised in the process flowchart below.

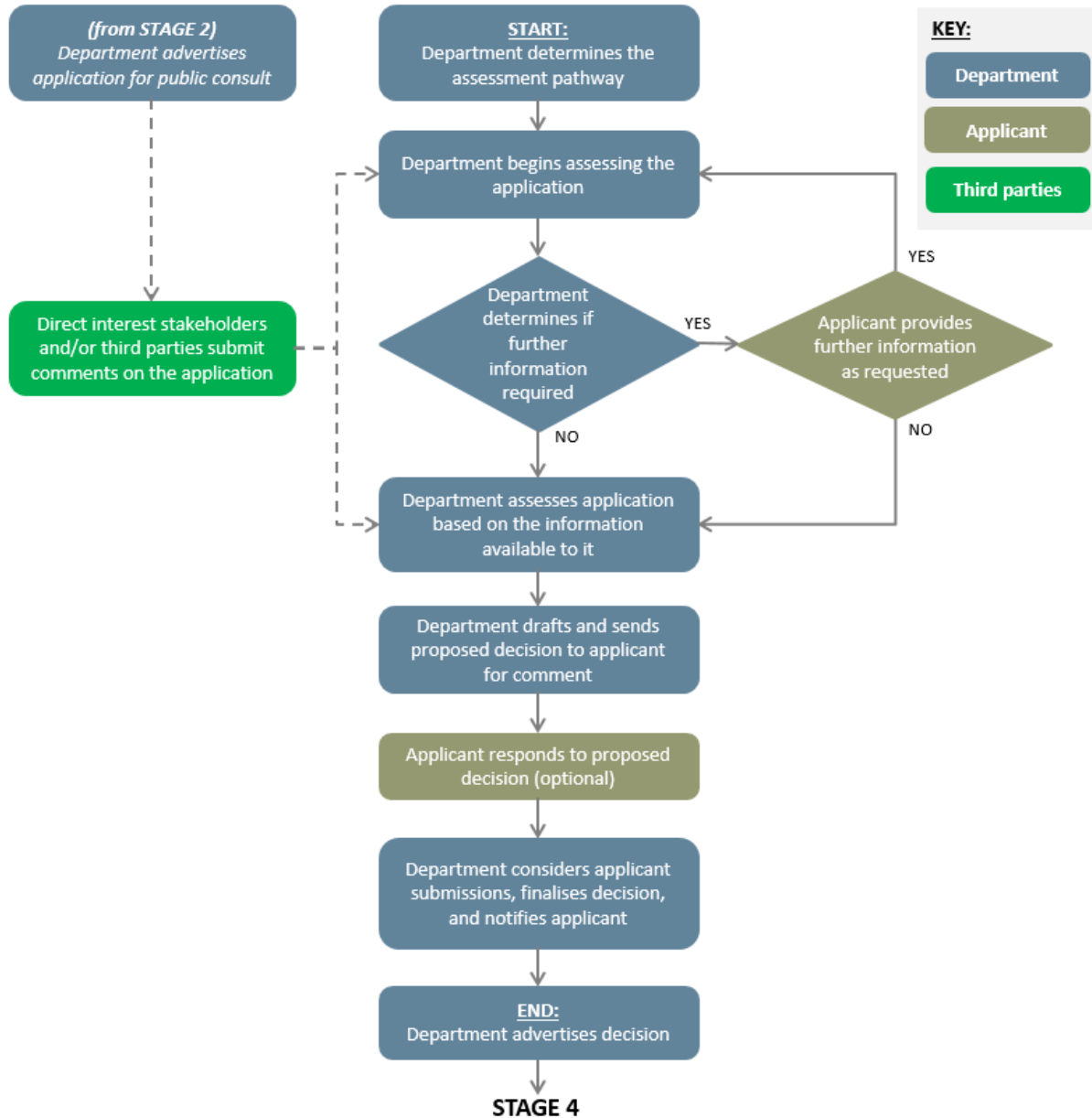


Figure 4. Stage 3: Assessment process flowchart



3.1 Department determines the assessment pathway

Stage 3: Assessment begins when the department notifies the applicant that the application was accepted for assessment and advertised for public comment on the department's website.

The department employs a risk-based approach when assessing applications for works approvals and licences. The department conducts a preliminary desktop assessment of the application to determine how potential risks to the environment are likely to influence the assessment and prioritises assessments accordingly.

Factors the department may take into consideration in this preliminary desktop assessment include, among others, the:

- proposed size of the prescribed premises (e.g. throughput volumes, etc.)
- anticipated quantity and type of annual emissions and discharges
- complexity of the proposed operation
- proximity and sensitivity of nearby human or environmental receptors (including matters of Indigenous spiritual and/or cultural heritage significance, such as native title, sacred sites, etc.)
- degree to which the proposed technologies, processes, management actions, etc. have been previously tested and relied on
- extent to which the applicant has made, or intends to make, efforts to avoid and/or mitigate potential impacts on environmental or human health outcomes.

3.2 Department determines if further information is required

The department will notify the applicant if further information is required to continue the assessment of the application (e.g. a survey of the baseline ambient environmental conditions at the premises) using a formal 'request for further information' letter.

The applicant must provide the requested information within the specified timeframe – usually a minimum of 21 calendar days, though this may vary depending on the information requested. The applicant may request a time extension, which will be granted at the department's discretion.

If the applicant does not provide the requested information within the timeframe specified, the assessment will continue, and the department will make a decision based on the information available to it at that time.

Note that this may result in a refusal of the application, or stricter conditions being imposed on the instrument, if granted.

For relatively minor further information requests, the department may instead notify the applicant via email correspondence, or flag the matter in the draft decision report (see Section 3.4).



3.3 Department assesses application

(s.54(3), 57(3) EP Act)

The department undertakes a risk-based and evidence-based assessment of the environmental impacts of the activities proposed in the application to determine whether to grant or refuse to grant an instrument (sections 54(3), 57(3) of the EP Act). The assessment will be conducted in accordance with the *Guidance Statement: Risk Assessments*.

As part of the assessment, the department will review:

- the accepted application
- any submissions received from direct interest stakeholders or the general public.

Factors that the department will consider include, among others, the:

- legislative context of the application (i.e. existing Part IV or Part V approvals, existing planning approvals, etc.)
- geographical, meteorological, and climatological contexts of the premises
- presence of nearby human and environmental sensitive receptors
- potential emissions and discharges from the premises
- potential likelihood of emissions impacting on nearby sensitive receptors.

The department will also take into consideration any control measures the applicant has proposed to avoid and/or mitigate impact to the environment or public health.

The department may request to visit the premises where necessary to assist in the assessment of the application.

Updating an application mid-assessment

An applicant may update their application after the department has accepted it for assessment. If the changes involve additional information that alter the character of the application to make it a different application in substance (for example, significantly changing matters relating to the considerations referred to in Section 3.1), the department will treat the updated application as an entirely new application (including for the purposes of assessment timeframe management – see Section: *Timeframes*).

In such circumstances, the CEO (or their delegate) will seek further comments from direct interest stakeholders and re-advertise the application for public submissions (see Section 2.6), including notations of what has changed from the original application.

Note that depending on the nature of the update to the application, this may alter the prescribed fee and/or supporting information requirements associated with the application. The CEO (or their delegate) will decline to deal with the application if the applicant does not pay the required revised fee (see Section 2.5).



3.4 Department drafts proposed decision and sends to applicant for comment

(s.62, 62A EP Act)

Once the assessment of the application is complete, the department will prepare a proposed decision to grant or refuse to grant the instrument, noting the reasons for the decision in a draft decision report.

Where the proposed decision is to grant the instrument, the department will prepare a draft instrument with conditions that the CEO (or their delegate) considers necessary or convenient to prevent, control, abate, or mitigate pollution or environmental harm (sections 62, 62A of the EP Act). Conditions on the instrument will be determined in accordance with the *Guidance Statement: Setting Conditions* and taking relevant technical guidelines into consideration.

Department sends proposed decision to applicant

The department will send the proposed decision draft document(s) to the applicant and invite them to provide relevant comments.

This consultation process is undertaken to ensure procedural fairness for the applicant but is not a statutory requirement under the EP Act.

Where there is further information required to finalise a decision on the application, the department may also request this information by flagging specific matters in the draft documents for the applicant's attention.

Types of conditions

(s.62, 62A, 63 EP Act)

The CEO (or their delegate) may attach conditions to an instrument, under sections 62 and 62A of the EP Act, that (for example):

- specify the location of infrastructure to avoid or minimise potential impacts on receptors
- specify infrastructure design or construction requirements
- limit the quantity of emissions / discharges from the premises
- limit the design and/or production capacity of the premises in relation to throughput, production, or acceptance or removal of materials
- limit or specify the production inputs that may be used in the licensed activities
- specify other operational, maintenance, and/or management requirements, and/or
- any other conditions that the CEO (or their delegate) considers necessary or convenient to prevent, control, abate, or mitigate pollution or environmental harm.

For works approvals, the CEO (or their delegate) may attach conditions allowing the instrument holder to operate in a limited fashion under the works approval to facilitate



commissioning activities and other activities relevant to the transition of a works approval to a licence. Refer to Section 5.4 for further information on this matter.

The department will determine the appropriate instrument duration and specify it on the draft instrument (section 63 of the EP Act).

Refer to the *Guidance Statement: Licence Duration* and *Guideline: Industry Regulation Guide to Licensing* for further guidance on the criteria applied when determining instrument durations.

3.5 Applicant responds to proposed decision

The applicant will have a minimum of 21 calendar days from the date of receipt of the proposed decision to provide comments to the department before a decision is finalised. Applicants are requested to submit comments using track changes where possible.

Alternatively, the applicant may:

- request a time extension to provide comments (which may be granted at the discretion of the department), or
- if satisfied with the proposed decision, request the remaining comment period be waived and the instrument issued immediately.

Note that if the applicant does not respond within the allotted time, the department will assume there are no objections and will issue the decision.

3.6 Department considers applicant submissions, finalises decision, and notifies applicant

(s.54(3), 54(3a), 57(3), 57(3a), 63A(1)(a) EP Act)

The department will consider the applicant's submissions on the proposed decision (if any) and record the responses of the department in an appendix attached to the final decision report.

In accordance with the EP Act, the CEO (or their delegate) will then finalise their decision to either:

- grant the instrument (sections 54(3)(a), 57(3)(a)(i), 57(3)(b)(i)), or
- refuse to grant the instrument (sections 54(3)(b), 57(3)(a)(ii), 57(3)(b)(ii)).

The CEO (or their delegate) will then notify the applicant of their decision (sections 54(3a), 57(3a) of the EP Act).

The decision will be recorded in the department's electronic record keeping system (section 63A(1)(a) of the EP Act).

Relationship to other decision-making authorities

(s.54(4), 54(5), 57(4), 57(4a) EP Act)

If another decision-making authority has made any determination (e.g. planning approval decisions, decisions of the Minister under section 45(13) of the EP Act that an assessed proposal may not be implemented, etc.) that would prevent a granted



application from being implemented, the CEO (or their delegate) may elect to not finalise their decision on that application for as long as the other decision-making authority's determination remains in effect (sections 54(5), 57(4a) of the EP Act). The department will notify the applicant if this occurs.

3.7 Department advertises the decision

(s.63A(2) EP Act)

After finalising the decision, the CEO (or their delegate) will:

- notify any direct interest stakeholders (refer to Section 2.6), and third parties who made submissions during the public consultation process
- if the instrument was granted, advertise the decision on the department's website, on the ['available for public appeal' page](#), for the duration of the appeal period (refer to Section 4.1) (section 63A(2) of the EP Act). The department may also advertise the decision to grant in *The West Australian* and/or a relevant local newspaper.

Stage 3: Assessment ends when the CEO (or their delegate) notifies the applicant of their decision.



Stage 4: Decision review

The procedure for *Stage 4: Decision review* is summarised in the process flowchart below.

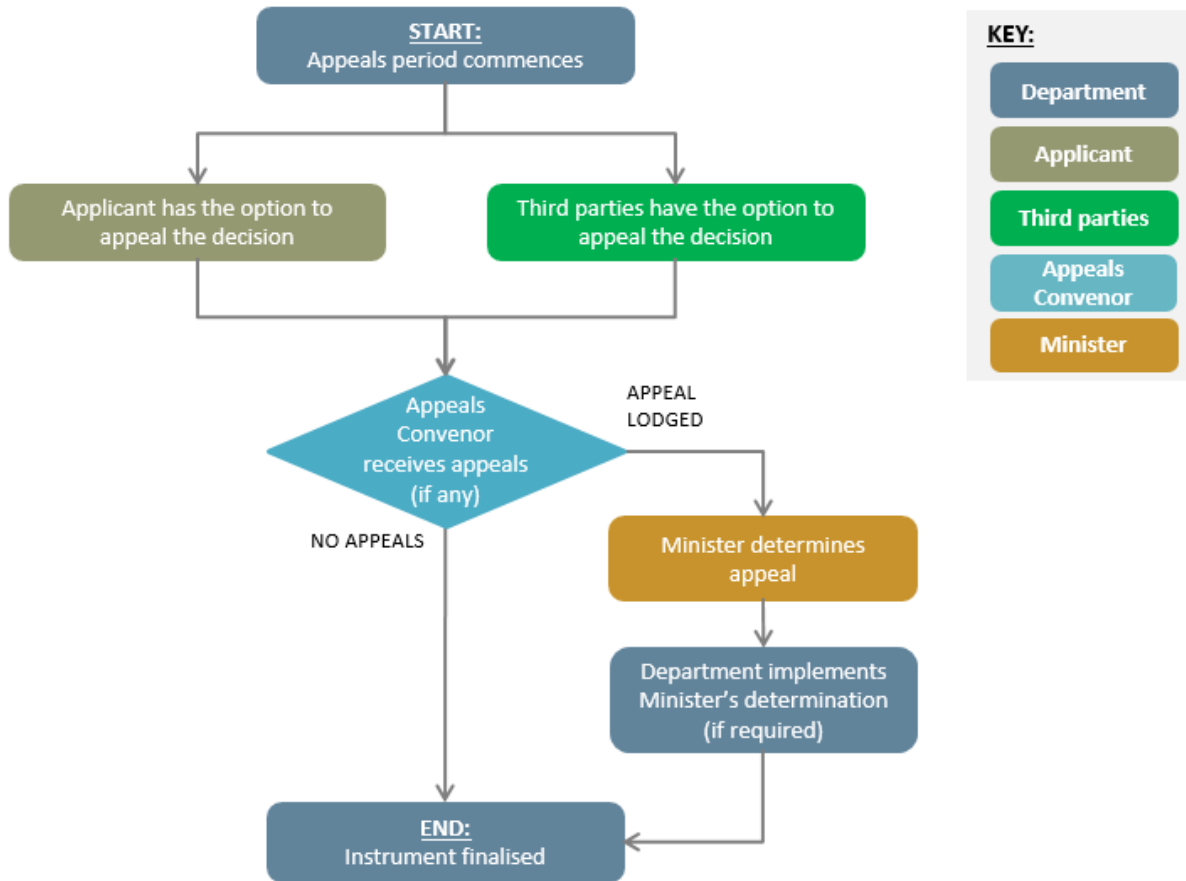


Figure 5. Stage 4: Decision review process flowchart



4.1 Applicant or third party lodges an appeal

(s.102(1), 102(3), 102(4) EP Act)

Stage 4: Decision review begins when the CEO (or their delegate) notifies the applicant of their decision and advertises the decision.

At this point, applicants or third parties who are aggrieved by a decision may lodge an appeal with the Minister for Environment (the Minister), via the Office of the Appeals Convenor. Appeals must be lodged within 21 calendar days of the applicant being notified of the decision (sections 102(1), 102(3) of the EP Act).

Under the EP Act, an applicant may appeal:

- against a refusal to grant an instrument (section 102(1)(a)), or
- (as the new instrument holder) against the conditions of a granted instrument (section 102(1)(c)).

Third parties:

- **may not** appeal against a decision to grant or refuse to grant an instrument
- **may** appeal against the conditions of a granted instrument (section 102(3)(a) of the EP Act).

Note that decisions to grant or refuse to grant a new instrument remain in effect pending the outcome of any lodged appeals (section 102(4) of the EP Act).

For further information on the Part V appeals process, refer to the [Office of the Appeals Convenor's website](#).

If no appeals are lodged during the appeal period, *Stage 4: Decision review* ends.

4.2 Minister determines appeal

(s.59(1)(j), 59(2), 105(b), 107, 109, 110 EP Act)

The Minister will consider the appeal and make a determination (sections 107(1), 107(2), 109(3) of the EP Act) to either:

- allow/uphold the appeal in full
- allow/uphold the appeal in part, or
- dismiss the appeal.

Following the determination, the CEO (or their delegate) will give effect to the Minister's decision, which may include amending the instrument (section 110(1) of the EP Act).

Amendments based on an appeal determination by the Minister (section 59(1)(j)) are initiated by the CEO (or their delegate) under section 59(2) of the EP Act and may not be appealed (section 105(b)).

Where an appeal to the Minister was lodged, *Stage 4: Decision review* ends once that appeal has been determined and the outcome implemented as appropriate.



Stage 5: Instrument management

The instrument management options for the instrument holder and the department are summarised in Figure 6 below.

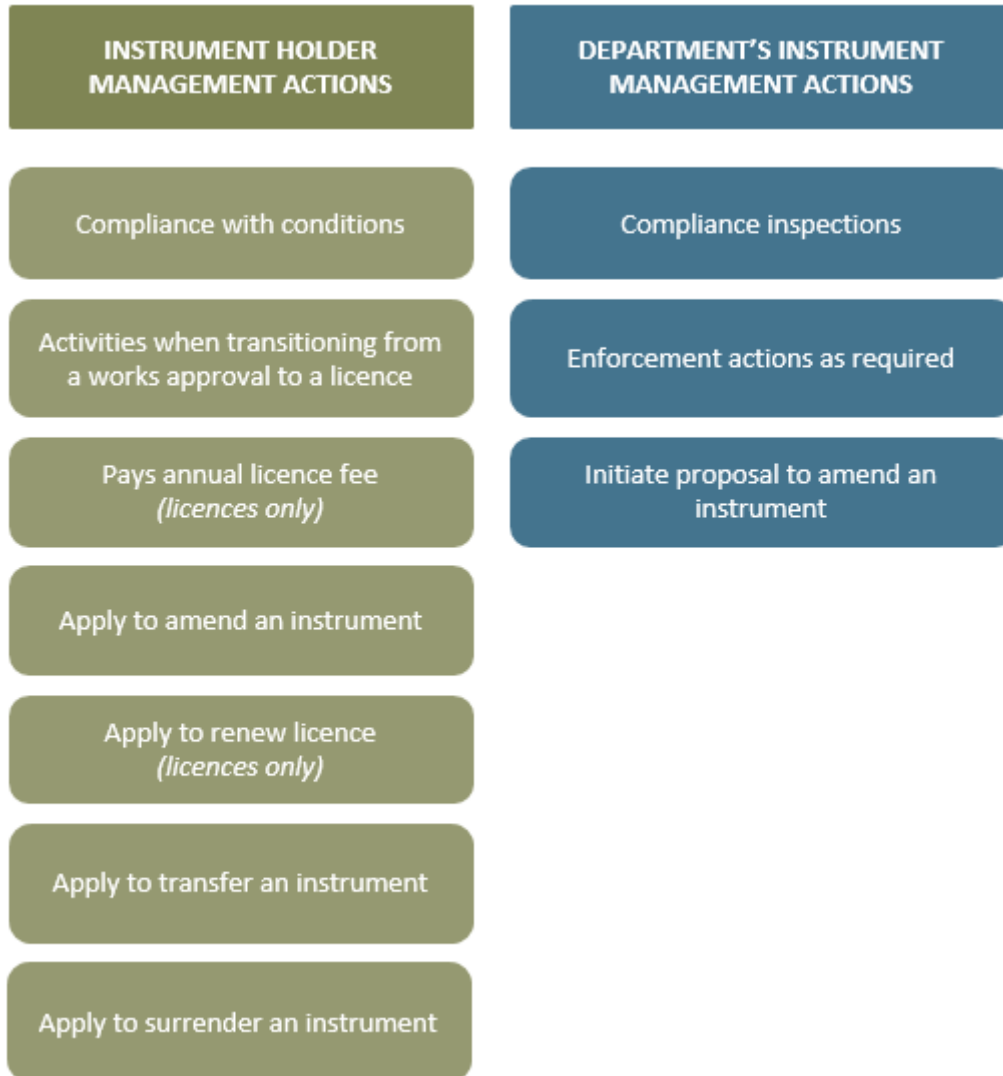


Figure 6. Stage 5: Instrument management activities



Stage 5: Instrument management begins when an instrument is granted. It continues for the entire duration of the instrument (including while any relevant appeals are pending – see *Stage 4: Decision review*).

5.1 Compliance with conditions

(s.55, 58 EP Act)

Each instrument has a number of associated conditions, and it is the responsibility of the instrument holder to ensure they comply with those conditions.

Contravention of the conditions to which an instrument is subject is considered an offence (sections 55, 58 of the EP Act).

Reporting to the department

(s.62A(1)(p) EP Act)

Licences include a condition requiring the licence holder to submit an Annual Audit Compliance Report (AACR) to the CEO (or their delegate) (section 62A(1)(p) of the EP Act), declaring:

- whether or not they have complied with each of the conditions on their instrument, and/or
- the details of any non-compliances that have occurred.

AACR form templates are available on the [department's website](#).

Instrument conditions may also include requirements to provide other types of reports, such as:

- construction compliance reports and/or commissioning reports (see Section 5.4 below)
- an annual environmental report, which may include information about:
 - environmental incidents or community complaints submitted to the occupier directly
 - monitoring data required by relevant instrument conditions.

5.2 Department undertakes compliance inspections

The department undertakes a risk-based inspection program focused on the emissions and discharges from premises to verify they are managed appropriately by the current instrument and relevant legislation to ensure there is no unacceptable risk to public health, the environment, or water resources.

The department uses a risk-based approach to determine the frequency of inspections.

To inform and provide context for risk, the department will use the best available intelligence including the following:

- the nature, scale, complexity of the operation (including any control measures conditioned on the instrument)



- compliance history of the business or person associated with the activities or premises
- controls and measures a person or business has in place to mitigate impacts on public health, the environment or water resources
- the location of water resources and the environment, including people, and their susceptibility to impacts to their value, beneficial use, quality, vulnerability or rarity
- any suspected impact to public health, the environment and water resources, with consideration of cumulative impacts.

Note that premises considered by the department to have an overall higher risk associated with them are likely to receive more frequent compliance inspections.

5.3 Department undertakes enforcement actions as required

(s.65, 66, 67, 68A EP Act)

Enforcement is a response to identified breaches of the law and involves a range of different actions to deter and punish offenders and rehabilitate damage to the environment.

In this context enforcement has two key elements:

- Remedy – fixing the problem or ‘making good’ (e.g. issuing an environmental protection notice or closure notice under sections 65 to 67 and 68A respectively of the EP Act)
- Sanction – enforcement action undertaken to punish, deter, and change behaviour (e.g. prosecution).

Refer to the department’s *Compliance and Enforcement Policy* for further detail on the department’s approach to responding to breaches of the law.

5.4 Transitioning from a works approval to a licence

(s.57(2)(a)(ii)(A) EP Act)

Where a licence application relates to a matter in which a works approval has been granted, the CEO (or their delegate) must be satisfied that the conditions of the works approval have been complied with before they can consider the licence application (section 57(2)(a)(ii)(A) of the EP Act).

The works approval conditions will require the submission of report(s) relating to compliance and commissioning including:

- Environmental Compliance Report
- Critical Containment Infrastructure Report (CCIR), and/or
- Environmental Commissioning Report.

The works approval holder may apply for a licence only once the report(s) required under the works approval conditions are submitted.



Where the department establishes that there has been non-compliance with works approval conditions, consideration will be given to whether it is appropriate for commissioning or operation of the premises to commence. The department may consider actions such as suspension of the works approval to prevent the operation of the premises and use of non-compliant infrastructure.

For further information refer to the department's *Guideline: Industry Regulation Guide to Licensing*.

5.5 Licence holder pays annual licence fees

(r.5D, 5E, 5F, 5G, 5O, Sch 4 EP Regulations)

Where a licence is issued for more than 12 months, the licence holder must pay an annual licence fee, before the anniversary date of when the licence was granted (regulation 5DA(3) of the EP Regulations).

The annual licence fee is calculated by the licence holder and verified by the department based on the three fee components specified in Parts 1, 2, and 3 of Schedule 4 of the EP Regulations.

Licence holders may apply for a refund if they have overpaid the annual license fees by completing the appropriate form (regulation 5O of the EP Regulations), available via the [department's website](#).

The prescribed fee submitted during *Stage 2: Validation* (refer to Section 2.4 above) covers the first year of that prescribed premises' operation.

Works approvals do not attract an annual fee.

For further information on annual licence fees, refer to the *Fact Sheet: Industry Regulation fees*.

5.6 Licence holder applies to renew a licence

(s.57 EP Act; r.5CB EP Regulations)

An application to replace an existing licence (a renewal) is treated in the same way as an application for a new licence. An application for a licence renewal follows the same process as outlined in Stages 1 to 4.

The licence holder must submit an application to renew their licence more than 70 business days before the expiry of their current licence (regulation 5CB(1) of the EP Regulations).

Where a renewal application is lodged less than 60 business days before the expiry date of the existing licence, the department is unable to guarantee that the application will be processed before the expiry date.

Renewal applications submitted 70 business days or less before the expiry date will incur late fees proportional to the lateness of their submission (regulation 5CB(2), 5CB(3) of the EP Regulations).

An EP Act instrument is an important legal document and keeping it up to date is the instrument holder's responsibility. If the licence is not renewed in time, it will expire



and will cease to have effect. Continuing to operate a prescribed premises without a valid licence is an offence (section 56 of the EP Act).

The department will notify licence holders of the impending expiration of their licence 12 months before the expiry date, with a second notification sent to licence holders about 120 business days before the expiry date.

5.7 Instrument holder applies to amend an instrument

(s.59, 59B EP Act; r.5BB EP Regulations)

An application for an instrument amendment follows broadly the same processes as outlined in Stages 1 to 5.

An instrument holder may apply to amend their instrument at any time during the instrument's duration (section 59(2) of the EP Act). An amendment may include making any of the following changes (section 59(1) of the EP Act):

- adding, removing, or changing a condition
- redescribing the boundaries of the premises
- redescribing the purpose for which the premises are used
- correcting a:
 - clerical mistake
 - figure which has been miscalculated
 - misdescription of any person, thing, or property
- changing the format of the instrument
- adding or removing a discharge point or emission point
- aligning instrument to conform with an approved policy
- give effect to a decision of the Minister
- ensure that it is not contrary to and otherwise accords with a Ministerial Statement, or
- extending the duration of the instrument.

An application to amend an existing instrument must (section 59B(1) of the EP Act):

- be made in the approved form and manner
- be accompanied by the correct prescribed fee, and
- provide all relevant required information.

The prescribed fee for an amendment is calculated by the instrument holder (and verified by the department) based on:

- the prescribed fee unit value (regulation 5BB of the EP Regulations), and
- the premises component of the fees in Schedule 4, Part 1 of the EP Regulations.



Refer to the *Fact Sheet: Industry Regulation fees* on the [department's website](#) for further guidance on this.

Note that the department will consider amendment applications that fail to meet these requirements to be 'incomplete' and will send an 'intent to return' letter to the instrument holder. Following receipt of an 'intent to return' letter, the instrument holder has 21 calendar days to rectify the issues. The instrument holder may request an extension if required, which may be granted at the department's discretion (refer to Section 2.3 "*Incomplete applications*" for further details).

There is no statutory requirement for the department to advertise amendment applications or seek comment from direct interest stakeholders. However, the department may determine to do so on a case-by-case basis and may consider any comments received in completing its assessment of the application.

Once the CEO (or their delegate) has completed assessing the proposed amendment, they will notify the instrument holder (including providing a draft decision report and draft amended instrument), and provide a minimum of 21 calendar days' within which the instrument holder can make written representations as to why the action should not be taken (sections 59B(2), 59B(3), and 59B(4) of the EP Act). Refer to Section 3.5 above for further details.

At the end of the notice period (or earlier, if waived by the instrument holder in writing), the CEO (or their delegate) will take into account any comments received, and finalise their decision to amend or not amend the instrument (sections 59B(5) and 59B(6) of the EP Act).

The CEO (or their delegate) will give written notice to the instrument holder of their final decision on the amendment application (section 59B(9) of the EP Act). The department will advertise a decision to grant an amendment on its website, on the ['available for public appeal' page](#).

Appeals against amendments

(s.59(1), 102, 105, 109, 110 EP Act)

An instrument holder or other person who is aggrieved by the amendment of an instrument, can lodge an appeal in writing to the Minister within 21 calendar days of the instrument holder being notified of the amendment (sections 102(2) and 102(3) of the EP Act).

Where an appeal is lodged against a granted amendment (sections 102(2) and 102(3) of the EP Act) the amendment either:

- *does not come into effect* – if the instrument holder is the party who has lodged the appeal (section 102(5) of the EP Act), or
- *continues to have effect* – where a third party is the party who lodged the appeal (section 102(6) of the EP Act).

No appeal rights exist in the following circumstances:

- a refusal to grant an amendment
- an amendment issued to give effect to a decision of the Minister under section 109 of the EP Act (sections 59(1)(j), 105(a), 110 of the EP Act), or



- the grant of an amendment relating to matters identified under section 105(b) of the EP Act, namely:
 - correcting clerical mistakes, miscalculations, misdescriptions, or similar (section 59(1)(e))
 - administrative changes to the format of an instrument (section 59(1)(f))
 - deleting discharge or emission points no longer in use (section 59(1)(h))
 - amending the instrument to conform with an approved policy or prescribed standard under the EP Act (section 59(1)(i)), or
 - amending the instrument to ensure that it is not contrary to, and that it otherwise accords with, a Ministerial statement (section 59(1)(ia)).

Refer to Sections 4.1 and 4.2, or the [Office of the Appeals Convenor's website](#), for further guidance.

5.8 Department initiates amendment of an instrument (s.59 EP Act)

The CEO (or their delegate) can initiate an amendment at any time during the instrument duration (section 59(2) of the EP Act). The amendment may include making any of the changes outlined in Section 5.7 above (section 59(1) of the EP Act):

CEO-initiated amendments follow the same processes as amendment applications (excluding *Stage 1: Pre-application* and *Stage 2: Validation*). The department may also, on a case by case basis, elect to seek comments from direct interest stakeholders through a consultation process.

The same appeal rights exist for CEO-initiated appeals, as per Section 5.7 above.

5.9 New occupier applies to transfer instrument (s.61, 64 EP Act; r.4(5), 5C EP Regulations)

An application to transfer an existing instrument follows broadly the same processes as those outlined in Stages 1 to 5.

Where a prescribed premises is transferred to a new occupier, it is the responsibility of the new occupier to apply to transfer the relevant existing instrument within 30 calendar days of the change of occupancy (section 61(3) of the EP Act).

An application to transfer an existing instrument must (section 64(1) of the EP Act):

- be submitted by the new occupier in the approved form and manner
- be accompanied by the correct prescribed fee (section 64(1)(b) of the EP Act), and
- provide all relevant required information.

The fee for a transfer application is prescribed under regulation 5C of the EP Regulations.



Note that incomplete and/or invalid transfer applications will be returned to the applicant (the new occupier) without further assessment.

There is no statutory requirement for the department to advertise transfer applications or seek comment from direct interest stakeholders. However, the department may determine to do so, and may consider any comments received in completing its assessment of the application. This will be determined on a case by case basis.

Once the CEO (or their delegate) has completed assessing the transfer application, they will notify the new occupier of their decision to either grant or refuse to grant the transfer application (section 64(2) of the EP Act).

Except for as stated below, failure to apply for the transfer of an instrument within 30 calendar days is an offence under section 61(4) of the EP Act.

Under section 61(5) of the EP Act, the new occupier is deemed to be the 'acting instrument holder' while the transfer application is being processed, allowing the prescribed premises to continue operating undisrupted under the conditions of the existing instrument.

Application for a new instrument

(s.61(3)(b), 61(5)(b), 61(7) EP Act)

As an alternative to transferring the existing instrument, new occupiers may instead apply for a new instrument (section 61(3)(b) of the EP Act), provided they do so within 30 business days of becoming the new occupier.

The new occupier may continue to operate under the conditions of the existing instrument as the 'acting instrument holder' until a determination is made on the new instrument application (section 61(5) of the EP Act).

5.10 Instrument holder applies to surrender instrument

(s.59A, 59B, 68A EP Act)

An application to surrender an existing instrument follows broadly the same processes as outlined in Stages 1 to 5.

An application to surrender an existing instrument must (section 59B(1) of the EP Act):

- be made in the approved form and manner, and
- provide all relevant required information.

There are no application fees for surrendering an instrument.

Note that incomplete and/or invalid surrender applications will be returned to the instrument holder without further assessment.

The relevant application form is available on the [department's website](#).

Where the CEO (or their delegate) determines to grant an application to surrender, the decision will be implemented via a revocation of the instrument (sections 59A(1), 59A(2)(e) of the EP Act). The CEO (or their delegate) will provide written notice of their intent to revoke the instrument (section 59B(2) of the EP Act) which will provide



the instrument holder a minimum of 21 calendar days to make written representations as to why the revocation should not be implemented (section 59B(3) and 59B(4) of the EP Act).

The CEO (or their delegate) will give written notice to the instrument holder of their final decision on the surrender application (section 59B(9) of the EP Act).

If there are ongoing management requirements associated with the surrendered instrument (e.g. monitoring of groundwater contaminants, or similar), an EP Act closure notice may be issued with the revocation, to ensure the management requirements continue (section 68A of the EP Act).



Timeframes

The department's target assessment timeframes are calculated from the first business day after the application is submitted. Timeframes are not statutory, and are rather in place to provide efficiency targets for the department and some degree of certainty for applicants.

The department's target timeframe (summarised below in Figure 7) is to make a determination on 80 per cent of applications for a new instrument, amendment, transfer, surrender, or renewal within 60 business days. The exception to this is that for major resource projects, the department aims to make a determination on 100 per cent of applications within 60 business days.

Stop the clock

In certain circumstances, an application may be placed on hold. The period while the application is on hold (referred to as 'stop the clock') does not count towards the department's target timeframes.

The department will 'stop the clock' for an application:

- when waiting for the applicant to submit further information or pay outstanding application fees in response to a written request from the department (refer to Section 2.3 and 3.2)
- when waiting for the applicant to respond to draft documents, or a notice of the department's proposed decision (refer to Section 3.5)
- for applications not suitable for parallel decision-making, once the application has been parallel processed to the furthest extent practicable, while waiting for the outcome of an EPA assessment and associated Ministerial decision under Part IV (refer to Section 2.2)
- when the CEO (or their delegate) has determined to not make a decision while another decision is in force that would prevent the application being implemented (sections 54(5), 57(4a), 59B(8) of the EP Act) (refer to Section 3.6 above).

The department will not 'stop the clock' when waiting for requested advice or information from another government department or agency.

The department considers the assessment timeframe to have ended once the CEO (or their delegate) finalises their decision. The implementation of decisions based on appeal outcomes are not subject to assessment timeframes.

Note that comprehensive and well-supported applications and responsiveness to the department's correspondence by applicants can reduce the frequency and length of any delays in the timeframe for processing an application.

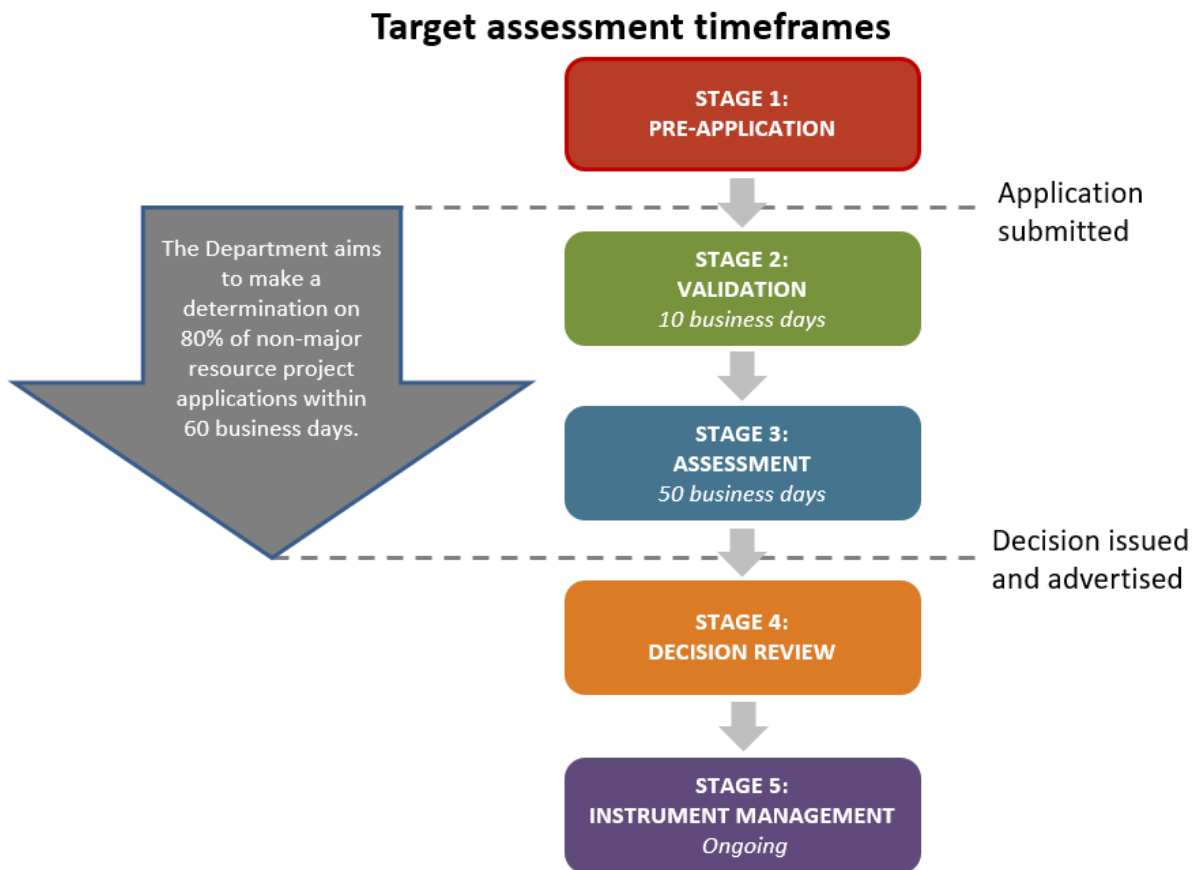


Figure 7. Target assessment timeframes



Delegations

The department manages the State's environment in accordance with the objects of the EP Act (section 4A of the EP Act).

References to the CEO refer to either the Director General of the department or their delegate exercising the powers or undertaking the duties delegated to them under section 20 of the EP Act.

Specific delegations under section 20 are published in the *Western Australian Government Gazette* (section 20(3) of the EP Act), available via the [Western Australian Legislation website](#).

Document implementation

This Procedure comes into effect on the day it is published. Applications received after publication will be assessed in accordance with the information contained herein.

Related documents

WA State legislation
<i>Environmental Protection Act 1986 (WA)</i>
<i>Environmental Protection Regulations 1987 (WA)</i>
<i>Interpretations Act 1984 (WA)</i>
<i>Rights in Water and Irrigation Act 1914 (WA)</i>
Commonwealth legislation
<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>

Department documents
<i>Customer Service Charter</i>
<i>Enforcement and prosecution policy</i>
<i>Fact Sheet: Industry Regulation fees</i>
<i>Guidance Statement: Licence Duration</i>
<i>Guidance Statement: Risk Assessments</i>
<i>Guidance Statement: Setting Conditions</i>
<i>Guideline: Industry Regulation Guide to Licensing</i>
<i>Procedure: Native vegetation clearing permits</i>



Non-Department documents	
Author	Title
WA State Government	<i>WA Environmental Offsets Policy</i>
WA State Government	<i>WA Environmental Offsets Guidelines</i>

Custodian and review

The application of this procedure will be continuously evaluated, and reviewed no later than two years from the date of issue, or sooner as required, and in line with the implementation of the Environment Online project.

Document details	
Author(s)	Regulatory Capability Division
Current version	Version 2.0 – Updated to align with the <i>Environmental Protection Amendment Act 2024</i> . Additional revisions may be required to update content and to align with current processes and other legislative amendments.
Previous versions	Version 1.0
Corporate file number	DWERVT2142



Glossary

Words and expressions used in this document have the respective meanings listed below, or as provided for under the EP Act or EP Regulations.

Term	Definition
applicant	As defined under section 3 of the EP Act to mean the person applying for the works approval, licence, amendment, etc.
business day	Any day that does not meet the definition of an 'excluded day', as described under section 62(2) of the <i>Interpretations Act 1984</i> (WA).
calendar day	Any day of the week from Monday to Sunday inclusive.
category	A category of prescribed premises, as specified in Schedule 1 of the EP Regulations.
CEO	Chief Executive Officer
department	Department of Water and Environmental Regulation
direct interest stakeholders	Persons, organisations, or public authorities identified during the validation and/or assessment process as likely to have a direct interest in the outcome of a given application.
emissions	As defined under section 3 of the EP Act to mean any of the following: <ul style="list-style-type: none"> (a) a discharge of waste (b) an emission of noise, odour or electromagnetic radiation (c) the transmission of electromagnetic radiation.
environmental offsets	Offsite actions to address significant residual environmental impacts of a development or activity.
EP Act	<i>Environmental Protection Act 1986</i> (WA)
EP Regulations	<i>Environmental Protection Regulations 1987</i> (WA)
instrument	A works approval or a licence issued under Part V Division 3 of the EP Act.
prescribed premises	As defined under section 3 of the EP Act to mean premises prescribed for the purposes of Part V.
receptors	The environment or humans who may suffer negative impacts due to the activities carried out on (or the resultant emissions and/or discharges from) the prescribed premises.
stop the clock	A business rule where the timeframe for processing an application can be paused under specified circumstances.
third party	A person other than the applicant (or instrument holder).