

Policy statement

Works approvals, licences and conditions for prescribed premises

Title

Works approvals, licences and conditions for prescribed premises.

Aim

This policy presents the Department of Environment's position on the use of works approvals, licences and conditions for prescribed premises.

Purpose

The purpose of this policy is to outline the DoE's principles, objectives, expectations, and rationale for using works approvals, licences and conditions to achieve environmental outcomes.

Scope

This policy is relevant to all prescribed activities listed in Schedule 1 of the *Environmental Protection Act 1986*.

Stakeholders affected

This policy is of direct relevance to occupiers of prescribed premises, but is also of interest to the general community.

Consultation

Consultation on this policy has been conducted with:

- the Environmental Management Division's Stakeholder Reference Group
- the Chamber of Commerce and Industry and the Chamber of Minerals and Energy
- the Conservation Council of WA
- other Divisions within the DoE.

Implementation

This policy is to be implemented through the imposition of works approvals, licences and conditions of these instruments.

Regulatory principles

COAG principles

The Council of Australian Governments drafted principles and guidelines for national standard setting and regulatory action. The key principles relating to good regulation are summarised below:

- Regulation should be the minimum required to achieve the predetermined and desirable outcomes, and any assessment process for the development of regulations should be scientifically rigorous, including, where appropriate, a risk assessment process which takes into account public health and environmental protection.

- Regulation should have clearly identifiable outcomes, and performance-based requirements that specify outcomes rather than inputs or other prescriptive requirements should be used.
- Wherever possible, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices.
- Good regulation should attempt to standardise the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce uncertainty and lower compliance costs.

The document goes on to outline a series of features of good regulation. The relevant items are:

- Minimising regulatory burden on the public – legislation should entail minimum necessary regulation to achieve the objectives. Non-regulatory alternatives to regulation should be explicitly considered.
- Minimising administrative burden – Regulators should develop standards or regulatory measures in a way that minimises the financial impact of administration and enforcement of regulation on governments and the sectors of the community which will be affected by them.
- Regulatory impact assessment – Proposed regulation should be subjected to a regulatory impact assessment process, which quantifies the costs and benefits of the proposal to the greatest extent possible.
- Compliance strategies and enforcement – Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties. Regulators also need to consider the feasibility of enforcing regulatory requirements through the detection of non-compliance.
- Performance-based regulations – Regulatory instruments should be performance-based, that is, they should focus on outcomes rather than inputs.
- Plain language drafting – Where possible, regulatory instruments should be drafted in plain language to improve clarity and simplicity, reduce uncertainty and enable the public to understand better the implications of regulatory measures.

Further to the above, the DoE considers that the following principles of regulation should apply to effective regulation models and licensing in particular.

Regulatory equity

In regulating industrial activities, consistent levels of control should be imposed on activities that pose equivalent environmental risk. This suggests that if an activity needs some form of environmental regulation then all such activities should be regulated, not just a subset that is currently included in a prescribed premises list.

Complimentary regulation / Appropriate regulatory authority concept

Activities that require some form of regulatory control should preferentially be dealt with by the regulatory authority that has the most appropriate or directly applicable legislative framework and powers. Where this legislative authority is deficient or under-enforced, efforts should be made to correct this first before creating new regulatory requirements.

Risk-based management

Part V licensing should be reserved for commercial or industrial activities that:

- Pose a significant environmental risk, based on a set of clear environmental risk criteria;
- Need ongoing adaptive regulatory attention, management and surveillance and reporting (i.e. that cannot be regulated by simple fixed rules and regulations); and
- Warrant significant ongoing opportunities for community involvement and input.

Environmentally significant aspects of other activities should be managed through regulations or other legislation. In this context, Part V licensing is but one of a range of proactive and/or coercive regulatory and non-regulatory instruments available to ensure protection of the environment.

Limitations to licences and licence conditions

Licences, as they are currently framed under the *Environmental Protection Act 1986*, do not regulate all aspects of the operation of a prescribed premises. Rather, they are focused on regulating emissions and discharges. Conditions contained within licences should relate to the prevention, reduction or control of particular emissions and discharges, or to the monitoring and reporting of them.

Licences should be considered in the perspective of being one tool amongst many for the regulation of environmental protection. Other tools include:

- Environmental Protection Policies;
- Ministerial conditions set during the Part IV environmental impact assessment process. These are relevant to major proposals within the State that have been subject to formal assessment by the EPA;
- Pollution abatement notices, to be referred to as environmental protection notices under proposed amendments to the Act, which are relevant for any premises, prescribed or not, that has caused or is likely to cause pollution;
- Regulations gazetted for the management of all premises that fall within a particular industry type (e.g. concrete batching plants);
- Regulations gazetted for the management of particular environmental issues, regardless of the industry type (e.g. noise);
- General provisions of the Environmental Protection Act 1986, however it should be noted that Section 74 of the Act provides companies that hold a licence certain defences against proceedings under many general provisions of the Act;
- Local Government approvals, including planning, extractive industry and offensive trades approvals;
- Local Government by-laws; and
- Department of Industry and Resources approvals, relevant for mine-sites, petroleum industries and dangerous goods storage facilities.

Legal authority

Licences should only be used to regulate activities or issues that fall within the current scope of the *Environmental Protection Act 1986*. The licensing system should not be used to address planning issues directly, although it does need to address issues that arise subsequent to planning decisions.

Stakeholder involvement

Relevant stakeholders for the licensing system include directly affected community members, local government, environmental groups, regulated industry, the DoE and other regulatory agencies. All have both rights and responsibilities.

Explaining positions

The DoE has a responsibility to explain and justify its licensing decisions to all stakeholders. This requires an agreed and documented policy framework linked to other environmental and regulatory approval processes, provision of working tools and procedures, and training of staff to understand and correctly apply departmental policies and procedures.

Works approval policy

The primary purpose of a works approval is to ensure that the potential adverse environmental impacts of a proposal are properly assessed and that these impacts will be prevented or minimised during the construction and operation of the premises in accordance with DoE policy.

The works approval assessment process is also an opportunity to refuse a proposal which is deemed to be unacceptable from an environmental perspective. This decision may be based on considerations of the appropriateness of the proposed location.

In setting the agenda for the operation of a premises, a works approval should create a situation which minimises the ongoing need for intensive management through a licence.

Furthermore, a works approval is:

- A legal instrument constrained by s52, s53 and s62 of the EP Act.
- Only applicable to prescribed premises.
- One of a range of regulatory tools available to protect the environment.
- Intended to apply mainly to controlling significant discharges (including abatement, monitoring and reporting).
- A means of applying EPA/Departmental policy and achieving best practice.
- A defence against pollution or environmental harm.
- Focussed primarily on ensuring that discharges from a facility, once constructed, will be eliminated or minimised.
- A means of minimising the adverse environmental impacts of construction activities.

A works approval is not:

- An approval to pollute.
- Intended to be applied to trivial issues.
- An approval to conduct “works” except where those works create the need to hold a works approval.
- An opportunity to inflict unreasonable (legally binding) requirements.
- A public relations document.

As set out in s52 of the EP Act, a works approval is required:

- When work on or in relation to a premises makes a premises prescribed.

As set out in s53 of the EP Act, a works approval may also be required:

- When there are (significant) changes in discharges (good or bad).
- The nature of the operation changes (significantly) in scale and/or type.
- When there is a change in waste management or pollution control equipment.
- When there is a change in fuel or fuel burning equipment.

A works approval would not be required:

- When the premises is not prescribed.
- Where there is little or no variation in discharges.
- For maintenance activities.
- Where the issues are addressed in a licence or notice (particularly when the change is required by the DoE).

A works approval would generally not be required:

- Where no works are undertaken (e.g. installation of pre-built equipment such as screening plants) and where there is no need to improve the design or manage the installation to ensure protection of the environment – unless the activity makes the premises prescribed.
- For construction of buildings or plant unrelated to the prescribed activity (e.g. warehouses, machinery shops).

While the wording of s53 (1) suggests any change in the nature of volume of an emission requires some form of approval, for the purposes of practical regulation the DoE’s policy position is that works approvals will only be required for significant changes and where the use of another regulatory instrument is inappropriate.

Licence policy

The primary purpose of an industry licence is to manage those discharges which require ongoing adaptive management, monitoring and reporting to ensure that they are prevented, minimised or their impact on the environment remains within an acceptable range (i.e. prevent pollution and/or environmental harm).

Furthermore, an industry licence is:

- A legal instrument constrained by s56 and s62 of the EP Act.
- Only applicable to prescribed premises (Schedule 1, Part 1).
- One of a range of regulatory tools available to protect the environment.
- Focussed mainly on controlling significant discharges (including abatement, monitoring and reporting) from prescribed premises.
- A means of applying EPA/Departmental policy.
- A defence against pollution or environmental harm.

An industry licence is not:

- An approval to pollute.
- Intended to be applied to trivial issues.
- A catch-all environmental approval.
- A public relations document or social contract.
- An opportunity to inflict unreasonable (legally binding) requirements.

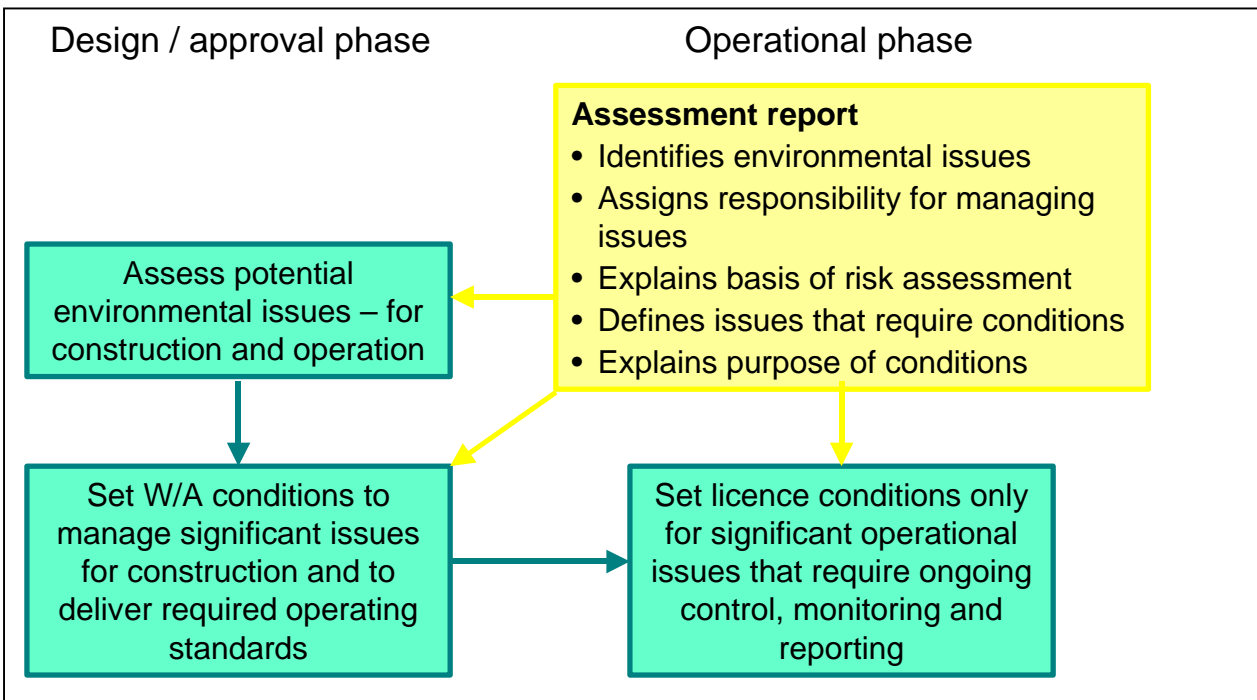
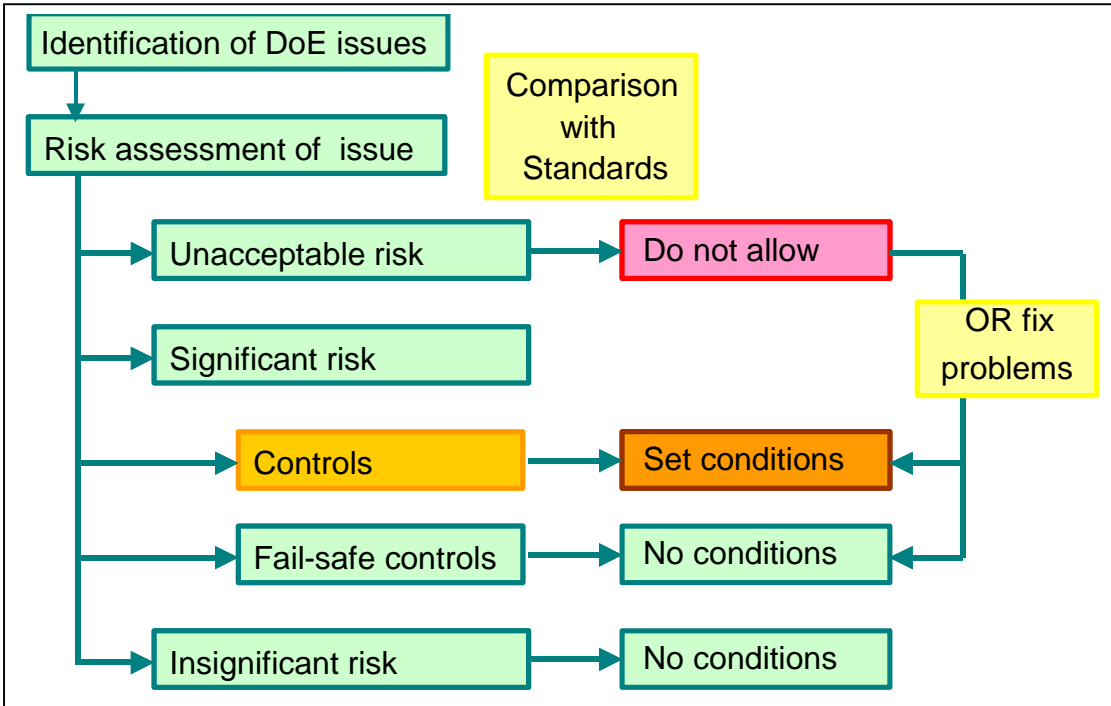
Condition-setting policy

Works approval and licence conditions may be imposed in accordance with s62 of the EP Act to prevent, control, abate or mitigate pollution or environmental harm and must be consistent with an approved policy or a prescribed standard. The types of conditions that may be imposed are described in s62A of the EP Act.

The DoE's position on setting conditions is that:

- Conditions are intended to ensure protection of the environment in situations where there is a realistic prospect of significant harm that requires ongoing management, monitoring and reporting.
- Conditions should only be applied to address issues of environmental significance based on an objective risk assessment.
- It is not necessary to address all possible environmental concerns in works approval or licence conditions – a licence is not a generic environmental approval and/or management tool.
- Conditions should avoid addressing matters that are dealt with by other agencies or under other approvals.
- Conditions should achieve the desired environmental objective by the most efficient and effect means. As a preference, a condition should specify the desired environmental outcome (e.g. control of an emission to a specified level) but could specify the means of achieving an outcome where this provides greater clarity and where compliance can more easily be demonstrated (e.g. prohibiting the use of certain fuels).
- Conditions must be written such that it is possible for the works approval or licence holder to demonstrate compliance via monitoring and/or reporting.

The decision framework for condition setting is summarised in the diagrams following.



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Monitoring conditions should be set in accordance with the Policy Statement *Regulatory Monitoring Requirements for Prescribed Premises*.

Issues relating specifically to setting limits and targets are addressed in the Policy Statement *Targets and Limits for Prescribed Premises*.

Conditions should:

- Address environmental issues.
- Be legally sustainable.
- Be enforceable.
- Be measurable and auditable.
- Be reasonable.
- Be understandable.

Related policies

This policy should be read in conjunction with the following policies:

- Targets and limits for prescribed premises.
- Regulatory monitoring requirements for prescribed premises.
- Works Approval policy.

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MANAGER LICENSING POLICY UNIT

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