



# Submission on the Department of Water and Environmental Regulation Industry Regulation Guide to Licensing

June 2018

## Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate.

This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

This Submission was endorsed by the Municipal Waste Advisory on Wednesday 27 June 2018.

## 1. General Comments

The Department of Water and Environmental Regulation has released a Draft Industry Regulation Guide to Licensing Part V *Environmental Protection Act 1986*. The Draft is intended to provide guidance on the Department's licensing framework for applicants proposing to construct or undertake activities which are regulated by DWER under Part V, Division 3 of the *Environmental Protection Act 1986* (EP Act). This includes information for applicants on the process of preparing, submitting, assessing, and determining applications for works approvals, licences (including amendments and transfers), and registrations of prescribed premises. The Draft document is available from the [DWER's website](#) and submissions are due Friday 20 July.

The Departments intent to provide guidance is supported. To ensure the document can meet this intent, and be accessed by those seeking information about the licencing system, it is suggested that a less legalistic style of writing be used. An example of the legalistic style:

*If an emission is caused or increased, or an occupier alters or permits to be altered the nature of the waste, noise, odour, or electromagnetic radiation from the prescribed premises, the occupier commits an offence unless they are the holder of a licence or works approval and the emission is in accordance with any conditions to which the licence or works approval is subject.*

It is further suggested that diagrams showing the various stages of the licencing process be included in the document. The former [Department of Environment Regulation](#) had developed a clear diagram of this process, which could be modified and included in the final Guideline.

It is also suggested that the final Guideline includes:

- Information on how existing sites can navigate the licencing process. These sites may have increased in size to meet the threshold for licencing, however do not need to undertake a works approval as they are already operational.
- Information on how, and under what circumstances, licence exemptions apply and what process should be followed to seek a licence exemption.

## 2. Comments on Process Change

DWER held a consultation session on the Draft Guideline, on Wednesday 6 June. At this session it was identified that within the Draft Guideline were key areas of change to current practice, which were being consulted on through this process:

- Concurrent processing of Works Approvals and Licence Conditions - Works Approvals need to precede Licence applications.
- Scope of works permitted to be undertaken as a licence amendment vs a Works Approval – a Works Approval is required if the amendment significantly changes the risk profile of the site.
- Extension of the Department's Timeframe for Assessment – from 40 days to 60 for all amendments.

- Requirement for Planning Approval from Local Government – The draft Guideline is somewhat different to the current [DER Guidance Statement on Land Use Planning](#).

Local Governments have expressed concern regarding the change to the concurrent Works Approval and Licence Conditions process. For this to work effectively, timely decision making by the Department will be essential, as without it progress on projects will be limited.

The area of significant concern for Local Government relates to the changes proposed within the Planning Approvals section. The *Planning and Development Act 2005* requires that a planning approval is obtained before any 'development' is commenced, which includes the commencement of site works. Therefore a Planning approvals must to be obtained first, then provided to DWER, before a Works Approval is issued. For existing facilities seeking a DWER approval/licence, they would need to provide planning (and other associated approvals) prior to a licence being issued. The removal of this clause is not justified and could lead to a variety of unintended consequences, including breaching the *Planning and Development Act 2005* which could result in enforcement action being undertaken. This is not the preferred approach of the Local Government sector, and the 'order' of approvals should always start with the Planning Approval being obtained first. The current and proposed positions are compared in Table 1.

Table 1: Comparison of current and proposed position.

<b>Current DER Guidance Statement</b>	<b>DWER Draft Guide to Licencing</b>	<b>Comment / Recommendation</b>
DER will:	In assessing an application, applicants should note that DWER may:	Change to wording from will to may.
(a) consider current zoning when considering impacts on potential sensitive receptors when determining Division 3, Part V applications		Not included – justification requested as to why current zoning is not listed.
(b) assess applications under Division 3, Part V of the EP Act concurrently with applications for planning approval	assess applications for works approvals and licences concurrently with applications for planning approval;	No significant change.
(c) make DER's formal determination after the relevant planning decisions have been made		Not included – request this be reinstated to ensure that the requirements of the <i>Planning and Development Act 2005</i> are met.
(d) decline to make a regulatory determination on a matter where a planning decision prevents implementation of the application	decline to make a regulatory determination on a matter where a planning decision prevents implementation of the application while that decision has effect	No significant change.
(e) take the duration of planning approvals into account when determining the duration of works approvals, licences or permits granted under the EP Act, consistent with DER's <i>Guidance Statement: Licence Duration</i> .	consider the duration of any planning approval when determining the duration of the instrument to be granted in accordance with the <i>Guidance Statement: Licence Duration</i>	Change to wording: 'take into account' is now 'consider'. Request the original wording is retained to ensure planning decisions are included.
	seek comments from relevant Local Government Authorities on applications for works approvals and licences, to facilitate input on planning and other matters within a council or shire's responsibility;	New comment – supported. However, please note that the Local Government is the entity, the Council is the decision making body. The terminology should be 'within the Local Governments responsibility', rather than "a council or shire's responsibility".

### 3. Requirement for Guidelines / Environmental Standards

While the general guideline for licencing, and the fact sheets, will be useful, there is an urgently need for Guidelines or Environmental Standards on all types of prescribed premises. The Department of Environment Regulation (DER) commenced the development of a Composting Environmental Standard in 2015 and after significant industry input this document was nearing completion. Working with WALGA, the DER also developed a Draft Environmental Standard for Small Rural Landfills. This work took over 2 years to complete, and was successfully used to obtain a Works Approval to construct a new landfill for the Shire of Koorda. Again, this document has not been officially released. The Association requests that the DWER, as a matter of urgency, releases the Draft Environmental Standard (or Guideline) for Rural Landfills for comment and finalises the Composting Environmental Standard. These documents will assist not only industry and Local Government to understand requirements, but also the Department, as it moves to streamline its approvals processes and reduce the workload associated with assessing applications.

The resourcing limitations of the Department are well understood. The Association would like to propose that a consultative approach is taken in the development of future standards, to ensure industry buy in and that existing knowledge is used to fast track the process of developing these documents. In the 2018/19 Budget, there was an announcement that the DWER licence fee would increase, to fund additional staff. For this approach to be effective the DWER must develop guidance for prescribed premises. Without such guidance, the DWER will continue to assess every possible risk that could ever be associated with a premises – rather than the risks that are significant and specifically relevant to individual sites.