

Submission on the DER Draft Guidance Statements: Regulatory Assessment Framework, Environmental Risk Assessment Framework, Regulatory Controls

February 2016



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 Australian Local Governments. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

This Submission was considered and endorsed by the Municipal Waste Advisory Council on Wednesday, 17 February.

Executive Summary

The Draft Guidance Statements on the Regulatory Assessment Framework, Environmental Risk Assessment Framework and Regulatory Controls are inter linking documents which map the DERs regulatory process. The documents provide guidance on how the new risk assessment process should be applied, the type of emissions which are likely from the range of prescribed premises and the types of regulatory controls that DER will use in different situations. Local Government welcomes the clarification that these documents provide.

These documents are currently drafted in a way that will assist DER officers undertaking assessments rather than act as a guide for proponents. Through reading the documents a general understand of the process can be gained, but further information is necessary for it to be clear to proponents how to use the risk assessment process. The Association considers the most appropriate place for this advice, is in the *DER Guideline for Applications*.

Recommendation: DER update the Guideline for Applications to include the relevant information in a form which will be useful for proponents.

While there are clear linkages between various documents to the decision making process outlined in the Guidance Statements, there is a need to detail how consideration of these linked documents will occur. An example can be found in the linkage between the Guidance Statements on Environmental Siting and the Environmental Risk Assessment Framework (as discussed in the MWAC Submission on Environmental Siting).

Consistent terminology across all Guidance Statements is needed, specifically relating to how impacts on human health and amenity and impacts on the environment are described. Guidance Statements may use different terminology to that of Environmental Standards. For example, the draft Environmental Standard: Composting refers to 'sensitive environmental receptors,' whereas the Guidance Statement on Separation Distances has a wider remit that includes 'beneficial use of land' and 'sensitive land uses.' The Guidance Statement on Environmental Siting refers to 'specified ecosystems,' whereas the Guidance Statement on the Regulatory Assessment Framework uses different terminology (point 1(e)(viii)), as does the Guidance Statement on Regulatory Controls (point 7(a) and (b)).

Recommendation: In finalising the Guidance Statements and Environmental Standards DER use consistent terminology.

Regulatory Assessment Framework

Local Government provided positive feedback on how the Regulatory Assessment process is outlined in the Guidance Statement. *Figure 1: DER Assessment Framework* was considered to be a useful pictorial representation of DER's assessment process.

There were some suggestions on how to further improve the Guidance Statement:

- Identify the timeframes for each of the key steps in the process. Including timeframes for referrals to other interested parties. One suggestion made on how to encourage other agencies to provide timely feedback on proposal documentation, was for DER to adopt the position that if no response is received, within a predetermined timeframe, then DER could take it that the other agency had no objection to the proposal.
- Include linkages to the planning system and bilateral process with the Environmental Protection Authority.
- Clarify that not all applications need to go through native vegetation clearing, or the planning system (this could be achieved by adding the words 'if applicable' in the relevant box)
- Clarify how DER initiated assessments, or applicant amendments of prescribed premises fit within the process.
- Clarify if public advertisement will occur on all renewals.

Editorial clarification is requested on point 7 (b) of this Guidance Statement:

Impose additional controls where DER's risk assessment determines that the risk rating is above moderate having taken into consideration applicants proposed controls.

Should this be phrased as 'moderate and above' instead of 'above moderate'? The current wording suggests that additional controls will be applied only for prescribed premises with a high risk rating.

A stakeholder suggestion relating to process, was that DER invest in systems that allow proponents to see how far through the assessment process their proposal has progressed. An online tracking system which includes key steps such as 'application received,' 'undertaking an assessment of hazards,' 'referring documentation to other interested parties' and so on, would assist proponents in their planning, and increase the transparency of DER processes.

Environmental Risk Assessment Framework

This Framework provides more detail on how the DER will undertake risk assessments of activities. Local Government found how this was articulated in the document to be relatively clear. However, Local Government has requested that worked examples are provided, so proponents can see how the risk assessment has been applied by DER and the level of information that is required for considerations such as site and operator history.

Local Government has also requested that key terms such as 'small population,' 'large population,' 'significantly exceeded,' 'moderate impact,' and 'minor impact' are linked to a set of parameters. This will provide a higher degree of confidence and certainty for proponents entering into the risk assessment process.

Appendix 1 Risk Assessment Process is a depiction of the process DER will use to assess applications. It is not currently clear from the Guidance Statement how the context will be established, or an evaluation of impact will occur. It is suggested that this flow chart includes stronger linkages to the relevant guidance documents and/or appendices that will inform the risk assessment process. For example, Guidance Statements such as those on Separation Distances, Environmental Siting, and Regulatory Controls could be referenced in a similar way as they are referred to with Figure 1 of the Guidance Statement on the Regulatory Assessment Framework.

Appendix 2 and 3 within the Guidance Statement are closely related. The linkage between the risk rating (Extreme, High, Moderate, and Low) in Appendix 2 and how DER will treat risk (identified in Appendix 3) needs to be highlighted. Figure 1 (Appendix 3) introduces a new term 'tolerable' to the document that is not linked to the risk ratings or acceptability criteria identified in the Risk Treatment Matrix. It is suggested that this Figure be removed as it does not provide any additional value to the Guidance Statement.

To provide additional clarity to the Risk Assessment Template in Appendix 4, linkages to the specific documentation, such as Environmental Standards and Guidance Statements or appendices would be beneficial. There is also some confusion as to the need to consider both normal and upset emission events, when it appears there is only a single tiered assessment process.

A large number of criteria/emissions limits are included in Appendix 5 however it is not explained how these different standards have been selected. Further investigation is required as to the regulatory status of referenced documents, for example the Australian Drinking Water Guidelines (NHMRC & ARMCANZ 2011) have been used as one of the primary reference points for this document. Section 1.5 Development of the Guidelines states that:

"The Productivity Commission has determined that the NHMRC is not required to undertake an RIS as the Guidelines do not have a regulatory status (Productivity Commission 2000). Implementation of the Guidelines by the states and territories is at the discretion of each state and territory health department, usually in consultation with water suppliers, and should include an appropriate economic analysis prior to implementation."

Regulatory Controls

In reviewing the list of prescribed premises, Local Government has responded with the view that the schedule adequately reflects relevant activities at these facilities, as well as overall hazards, likely emissions and possible controls. A suggestion was made that odour be included as a possible emission type for the relevant landfill categories.

Point 6 of this Guidance Statement does not link well to how DER has said it will treat risks in Appendix 3 of the Environmental Risk Assessment Framework. There is also a need for a clearer explanation of how environmental siting and separation distances influences DER's assessment of prescribed premises.

Implementation

The implications and impact of the new process on existing facilities was raised, specifically the need to ensure these facilities understand the new approach and are able to apply it. Local Government was asked what support they would need in order to implement the new approach. Suggestions include worked examples of proposals where risk assessments have been completed and regulatory controls applied.

For all facilities it was highlighted there needs to be a clear link between the risks identified through the assessment process and the requirements identified in the Licence document for a facility. Statements made by DER at the consultation sessions indicates that through the risk assessment process a proponent would be able to more clearly track the risks identified and the consequential regulatory requirements.