



## Frequently asked questions

# Discussion Paper: Environmental Regulation Reform: A strategic review of regulatory delivery and fees for industry regulation

### What is the Discussion Paper about?

The Department of Water and Environmental Regulation's (the department) vision for a regulatory framework for emissions and discharges is one where the level of regulatory intervention is proportionate to risk, and the way we regulate activities is fit for purpose, streamlined and effective. It is serviced by a spectrum of interventions from general emissions regulations for those activities where risks are known and well understood, to case-by-case assessment of impacts for larger or complex projects.

The passing of the *Environmental Protection Amendment Act 2020* (EP Amendment Act) in November 2020 resulted in the most significant reform of Western Australia's environmental legislation in 30 years. Implementation of these reforms require amendment of Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations). This has necessitated consideration of the scope of activities that require regulation because of emissions and discharges and also how best to regulate these, including outside of licensing.

We are seeking to work collectively with our stakeholders to not only reflect on our previous approach but to look forwards to ensure we achieve our vision for our future regulatory model.

Your feedback will help inform the drafting of amendments to the EP Regulations. The Discussion Paper presents regulatory reform concepts that are concerned with Schedule 1 of the EP Regulations, which currently sets out the prescribed premises categories that are subject to regulation under Part V Division 3 of the EP Act. The department is also seeking feedback on the concepts for, and design of, a new fees model. More broadly, the Discussion Paper seeks stakeholder views on further improvements that could be implemented through a program of regulatory reform that would extend beyond 2023.



## Will there be further consultation on the concepts within the Discussion Paper and the new fee framework?

Yes. As appropriate, the department will look to run some targeted workshops around the development of some aspects of the discussion paper.

The Government of Western Australian intends to release an exposure draft of the EP Regulation amendments with an accompanying discussion paper in mid-2023 for further public consultation.

## What changes will take place as a direct result of the EP Act amendments?

Key changes that relate to the third stage of the EP Act amendments include:

- regulation of 'prescribed activities' rather than 'prescribed premises'
- licences will now be granted in relation to the areas that the activities are undertaken, rather than in relation to the entire area that an occupier leases or owns
- licences will be granted to a person or business in control of the activity being undertaken rather than to the occupier of a premises.
- it will be an offence to not hold a licence for prescribed activities that cause emissions and discharges
- consolidation of works approvals and licences into a single licence instrument that authorises and regulates 'controlled works' and 'prescribed activities'
- activities that don't take place at a fixed location (e.g., mobile plant or equipment) can now also be licensed
- direct consideration of planning authorisations that are, or required to be, in place.

## How do the proposed amendments ensure Western Australia's environment is protected for future generations?

The proposed amendments to Schedule 1 will allow the department to proactively manage risks to human and environmental health by introducing a streamlined approach to assessments and approvals. Government and industry decisions and practices will be required to contain and mitigate cumulative environmental impacts.

The future regulatory delivery model proposals provide further opportunities to achieve better environmental outcomes through the consideration of a regulatory



hierarchy that applies higher levels of regulation to activities that have the potential to generate emissions and discharges that represent a higher risk to environmental health and public health. The future model also proposes to strengthen the application of better practice environmental standards and performance objectives across all industries.

The department has recently engaged with the organic recycling industry on the proposed Better Practice Guidelines – Organics Recycling which sets out our vision for better practice regulation.

## What is the likely timing of the amendments to the EP Regulations to implement the new ‘prescribed activity’ regime?

It is intended that the proposed amendments to the EP Regulations will come into effect in December 2023.

## What are the advantages of the regulation of prescribed activities rather than prescribed premises?

This approach focuses the effort on regulating emissions and discharges from polluting activities, rather than emissions and discharges from specific locations and emissions and discharges that relate to non-prescribed activities.

This means that in assessing and determining licences, the department can focus on the activities that are likely to be a higher risk to public health and the environment, thereby improving environmental outcomes.

The proposed change to regulate prescribed activities rather than prescribed premises combined with the review of some thresholds which trigger the requirement for a licence will result in changes to the number of premises that require regulation and the types of activities that will be regulated. The changes are being proposed to both modernise and streamline the regulation of industry in Western Australia.

It is important to note that the upcoming EP Act amendment will change all prescribed premises categories to prescribed activities, but only some thresholds will change. Some current prescribed premises categories will be combined to form a new prescribed activity.



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## Will the move to activity-based licensing allow the department to licence a mobile plant?

Yes. The new regulatory approach will allow the licensing of mobile plants being used on a mobile basis, which will ensure better operational flexibility for industry while still ensuring emissions and discharges associated with the use of the mobile plant or equipment remain regulated. Mobile plants will only require one licence.

## How will the proposed amendments assist in reducing regulatory burden on business?

By streamlining and simplifying applications and removing unnecessary regulation of low-risk activities.

The State Government supports a one-sector mindset through the operation of Streamline WA. Overall, the amendments seek to standardise applications and supporting information across relevant regulatory agencies. The department is seeking to maximise opportunities to streamline application processes with common application and supporting information across Part IV and Part V (Division 3 (licensing) processes).

## The Department of Health (DoH) and you are both undertaking reforms of their environmental regulations. Are these reforms complementary?

DoH and the department have a collaborative relationship to their regulatory reforms and are aware of the respective work being undertaken in their reform programs. Both agencies are adopting a risk-based approach to environmental and public health reforms, seeking to reduce unnecessary regulatory burden while offering effective control of risk to the environment and public health.

## Will licences cover both the construction and operation phases of prescribed activities or will I need to apply for a licence for the construction followed by a submission of an application to amend the licence to allow for the operation?

Licences can authorise the construction phase (controlled works) and the operations phase. The department will be able to apply transition conditions in the same way that they do now, for time-limited operations under a current works approval.



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Alternatively, proponents can apply for a licence just for controlled works and then, at a later date, apply to amend their licence to also allow for operations. This provides the industry with a more flexible approach to design an approvals pathway that works for them and their projects.

## What will be the status of my current works approval when the requirement for a separate works approval is removed?

Under transitional provisions, existing works approvals will remain in force for the term of the current approvals and will be subject to the provisions under the existing EP Act. However, works approvals may be amended to conform with the new provisions of the EP Act.

## Will changing the licence holder from the occupier to a person create difficulties for government or industry in complying with a licence?

The person applying for a licence will be able to nominate the person or business with day-to-day control of the prescribed activities as the licence holder and this person does not need to be the occupier of the land. Supporting information will need to be provided to confirm that the nominated person is aware that they are nominated and is able to hold a licence issued under the provisions of the EP Act.

## How will the activity thresholds be determined?

Thresholds that trigger the requirement for a licence will be determined based on the risk to the environment, human health and amenity and the feedback and comments received on the concepts outlined in the Discussion Paper. The focus will be on higher-risk activities, while reducing regulatory burden for lower-risk activities.

## Will focusing on higher-risk activities mean that lower-risk emissions will not be managed?

No. Regardless of whether or not an emission or discharge is regulated under a licence, regulations or the general responsibilities, offences and penalties under the EP Act still apply in relation to causing or allowing an emission or discharge to the environment which results in either pollution or harm to the environment or a risk to human health.



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## Why does the department seek to cost recover?

1. The department's fee model needs to support an effective pollution-prevention and licensing service that meets the needs of our stakeholders and protects the environment and public health. The current fees model does not reflect the effort involved in assessing a new renewal or amendment of a licence or the effort involved in assessing the annual compliance with a licence.
2. It will provide an incentive for industry to integrate considerations around the environmental impact of their proposal and how to achieve best environmental outcomes early in their project planning schedule.
3. The State Government's *Costing and Pricing Government Services: Guidelines for Use by Agencies in the Western Australian Public Sector* in June 2015 specifies that in general, fees and charges should be set at a level that reflects the full costs of providing the services.

## Why are the fees changing? Will I be charged more under new fee provisions?

The department recognises that inefficient regulation may increase costs for business and fail to achieve environmental protection outcomes. The fee model is being reviewed to better align with the amendments to the EP Act, and to reflect a risk-based and 'polluter pays' approach to environmental regulation. Fees recovery is one part of an overall approach to achieve environmental outcomes.

The framework for new fee provisions will be considered in a discussion paper accompanying an exposure draft of the EP Regulation amendments anticipated for release in early-mid 2023.

## How will the new fee framework be determined?

Industry licensing fees will be reviewed to accommodate the change from prescribed premises to prescribed activities and to implement cost recovery. Licence fees will be aligned with the risks to the environment, public health and amenity, with appropriate consideration of assessment workload.

These considerations will be outlined in a discussion paper accompanying an exposure draft of the EP Regulation amendments anticipated for release in early-mid 2023.

## What is 'better practice' and will it be mandatory?

The department has considered the use of 'better practice' following engagement with the approach in the [Waste Avoidance and Resource Recovery Strategy 2030](#).



Under that approach, facilities will be required to demonstrate how they meet an Environmental Performance Objective, that can be achieved by meeting 'better practice' guidance.

Where better practice is achieved, grant-funding opportunities arise and allow for the support of new facilities. The department is interested in exploring positive, proactive approaches to better practice as opposed to mandating it.

## Does the proposed approach align with the Part IV assessment framework?

The department has deliberately included a number of matters that align with regulation under Part IV of the EP Act. Given the express powers provided to the Environmental Protection Authority to consider other decision-making authorities and the Minister's ability to revoke Ministerial Statements, the department considers it prudent to explore, and where possible minimise any duplication or overlap in Part IV and V processes.

Aspects of the discussion paper, such as better practice, outcome-based assessment and greenhouse gas regulation, may help to minimise regulatory overlap.

## Does Part V have the regulatory power to regulate greenhouse gas?

The department will need to consider the context in which greenhouse gas is to be regulated; however, there is a possibility that it would be feasible to include licence conditions for greenhouse gas regulation.

We note that there are already significant considerations in the regulation of greenhouse gas, including the role that Part IV provides, the state policy on greenhouse gas regulation and the national safeguard mechanism.

Any consideration of greenhouse gas regulation would need to effectively integrate with these approaches.

## How would General Emissions Regulations work?

There are a number of mechanisms whereby a set of general emissions regulations could work.

One approach is to develop regulations addressing a single emission type such as odour or fugitive dust emissions. A good example of this approach is the Environmental Protection (Noise) Regulations 1997.





Alternatively, consideration could be given to regulating a number of low-impact industries, with a general regulation requiring the development of a site environmental management plan, designed to meet specific outcomes.

There are numerous options available here and we would like to hear what you think will work well!