

September 7, 2021

Department of Water and Environmental Regulation
Better Regulatory Branch
Locked Bag 10
JOONDALUP DC WA 6919
(Sent via email: publicationconfidentialityregulations@dwer.wa.gov.au)

Dear Sir/Madam,

RE: DRAFT ENVIRONMENTAL PROTECTION REGULATIONS AMENDMENT (PUBLICATION AND CONFIDENTIALITY) REGULATIONS 2021

The Australian Petroleum Production & Exploration Association (APPEA) would like to thank you for the opportunity to provide comment on the proposed draft Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021 (Draft Regulations) developed by the Department of Water and Environmental Regulation (DWER) released in August 2021.

Oil and gas industry in Western Australia

APPEA is the peak national body representing upstream oil and gas explorers and producers with interests in Australia. APPEA's member companies account for more than 95 per cent of Australia's petroleum production, the majority of which is produced from facilities located in Western Australia (WA). The oil and gas industry in WA is a major contributor to the state and national economies creating jobs and business opportunities whilst providing oil and gas to domestic and international consumers. Further information about APPEA and the Australian oil and gas industry can be found at www.appea.com.au.

Comments on the Draft Regulations

APPEA and its member companies are supportive of transparency and the Draft Regulations are consistent with the industry's ongoing efforts to build trust of the communities which host its activities. APPEA would like to see that information that is made public has tight measures in place to protect information that may be commercially sensitive and/or confidential. The State legislation that deals with information and public access to information is the *Freedom of Information Act 1992* (FOI Act). The FOI Act sets out basic underlying principles of freedom of information and provides for an avenue for members of the public to gain access to official documents held by Government agencies. APPEA is supportive of DWER's aim to align the Draft Regulations more closely with the objectives of maintaining confidentiality as per the FOI Act.

APPEA is supportive of the intention to improve and streamline the materials that the State may publish to provide increased transparency on matters that the public should expect to be published. APPEA is also supportive of continued efforts to streamline regulatory processes in relation to disclosure of information, particularly when there may be opportunity to remove duplication within the state jurisdiction where different portfolios are impacted.

APPEA has identified key issues in the Draft Regulations for publication and confidentiality and provides the following comments.

Publication of information for proposals submitted under Part IV of the EP Act

The provision for record keeping of referred proposals is described at section 39 of the *Environmental Protection Act 1986* (EP Act) and states that the Environmental Protection Authority (EPA) must keep a public record of each referred proposal, and shall in that public record set out whether or not that proposal is to be assessed under Part IV and if yes, publish the level of assessment.¹ Prior to the amendments to the EP Act, the proponent could request that certain information be kept confidential however, in its current form, the *Environmental Protection Amendment Act 2020* (EP Amendment Act) limits the ability for the EPA to refrain from publishing documents and information.

APPEA understands the purpose of the Draft Regulations is to provide the EPA and the Chief Executive Officer (CEO) of DWER with the discretion to make decisions in relation to publishing, or not publishing, certain documentation. APPEA is supportive of this approach, and for the EPA and CEO of DWER to maintain discretion and to continue to protect confidential information that it receives from proponents and clearing permit holders and applicants.

Publication of information for clearing permits made under Part V, Division 2 of the EP Act

In relation to the amendments to the Clearing Regulations, APPEA agrees that there needs to be a process for applicants and holders to request the CEO of DWER keep confidential the whole or part of documentation that has been provided. APPEA is supportive of the EPA and CEO of DWER to continue to protect confidential information that it receives from clearing permit holders and applicants.

APPEA notes that under Part 2 and Part 3 of the explanatory memorandum, the following text is included:

The CEO may also (without a request being made) keep certain information confidential including:

- *personal information*
- *bank account details*
- *precise location of threatened, endangered, vulnerable or priority species, or their breeding areas*
- *precise location of native species and their breeding habitat if the CEO considers that publication would threaten the survival of the population.*

To align with the FOI Act, APPEA believes that ‘the CEO may’ should be replaced with ‘the CEO will’ to ensure that confidential information is not published.

Conclusion

APPEA is supportive of transparency in the oil and gas industry and appreciates that DWER and the EPA is mindful of commercially sensitive and personal information not being made public, by

¹ Section 39(a) and (b) of the [EP Act 1986](#)



providing the proponent, permit holder or applicant with the opportunity to request this information is not made public.

APPEA recommends that the provision that the CEO of DWER may keep certain information confidential is amended, as it currently proposes that the CEO of DWER has authority to publish personal information which is not aligned with the FOI Act.

If you have any queries on any of the information provided in this submission, please do not hesitate to contact Tessa Liddelow on 0484 827 504.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Claire", with a long, sweeping horizontal flourish extending to the right.

Claire Wilkinson
Director – Western Australia