



Government of **Western Australia**
Department of Water and Environmental Regulation

Publication and Confidentiality Regulations

Consultation summary report

Department of Water and Environmental Regulation
October 2021

Department of Water and Environmental Regulation
Prime House, 8 Davidson Terrace
Joondalup Western Australia 6027
Locked Bag 10 Joondalup DC WA 6919

Phone: 08 6364 7000
Fax: 08 6364 7001
National Relay Service 13 36 77

dwer.wa.gov.au

© Government of Western Australia

October 2021

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to the Department of Water and Environmental Regulation.

Disclaimer

This document has been published by the Department of Water and Environmental Regulation. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and Environmental Regulation and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

This publication is available at our website www.dwer.wa.gov.au or for those with special needs it can be made available in alternative formats such as audio, large print, or Braille.

Contents

Executive summary	v
1 Part V clearing of native vegetation.....	1
1.1 Public records of particulars to be kept by CEO	1
Particulars for applications for clearing permits under section 51E(1) of the Act	1
Particulars for applications for amendments of clearing permits under section 51K(2)(a) of the Act	1
Particulars for undertakings given by the CEO under section 51E(9) of the Act.....	1
Particulars for the surrender of clearing permits accepted by the CEO under section 51MA(7)(a) of the Act and for clearing permits revoked or suspended by the CEO under section 51L(1) of the Act	1
CEO may keep documentation confidential on request.....	2
CEO may keep certain matters confidential.....	2
2 Part IV proposals.....	3
Public inspection of minutes of the Authority	3
Authority may keep documentation relating to proposals confidential on request	3
Authority may keep certain matters relating to proposals confidential	3
Appendix A – Submissions received	5

Executive summary

The *Environmental Protection Amendment Act 2020* is the most significant reform of Western Australia's environmental legislation in more than 30 years. It introduces a raft of amendments to Western Australia's primary environmental legislation – the *Environmental Protection Act 1986* (EP Act).

The amendments will be introduced in three main stages. For more information go to: www.wa.gov.au/service/environment/business-and-community-assistance/amendments-the-environmental-protection-act-1986.

Proclamation of amendments under Stage 2 occurred on 22 October 2021. These amendments require the Environmental Protection Authority (the Authority) or the Chief Executive Officer (CEO) to publish information and material in relation to:

- proposals referred to the Authority
- clearing permit referrals or applications, and any accompanying information
- any amendment, revocation or suspension of a clearing permit
- applications and notices in connection with surrender of clearing permits.

The Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021 were also gazetted on 22 October 2021. These provide the particulars that the CEO and Authority must keep public records of, and set out the process by which applicants may request that confidential information be withheld from publication. The regulations also give the CEO and Authority a discretionary power to redact certain types of information without having received a request that the information be kept confidential.

The regulations ensure that, consistent with current practice, applicants can request confidential information is not published.

To inform the development of the regulations, the Department of Water and Environmental Regulation (the department) released the [draft Environmental Protection Regulations Amendment \(Publication and Confidentiality\) Regulations 2021](#) for public comment. An [explanatory note](#) was published alongside the draft regulations to guide readers through the meaning of the regulations and how they would apply.

We received 10 submissions during the two-week comment period from 24 August 2021 to 7 September 2021.

The respondents supported the regulations. Many acknowledged their administrative nature and that they would not alter the current approach of the department and the Authority in relation to the publication of confidential information.

Several suggestions to strengthen the regulations were received through the consultation process. This report provides the department's response to the feedback received, which has helped to inform the final Publication and Confidentiality Regulations. The department thanks all respondents to this consultation process.

1 Part V clearing of native vegetation

1.1 Public records of particulars to be kept by CEO

Particulars for applications for clearing permits under section 51E(1) of the Act

One respondent recommended that the period for which clearing is proposed to be undertaken should be included in the particulars for applications for clearing permits under section 51E(1) of the Act.

Response:

The department supports this recommendation and notes it is consistent with current practice.

Particulars for applications for amendments of clearing permits under section 51K(2)(a) of the Act

One respondent recommended that the nature of the amendment be published to facilitate full public participation in the process, and to ensure appropriate standards of transparency and accountability.

Response:

The department supports this recommendation and notes it is consistent with current practice.

Particulars for undertakings given by the CEO under section 51E(9) of the Act

One respondent recommended that draft regulation 8(5) be amended to include whether the undertaking is in relation to an area or purpose permit, given the significant differences between area and purpose permits, including their duration under EP Act section 51G.

Response:

The publication of particulars of undertakings given by the CEO under section 51E(9) can only relate to area permits (see s.51E(1)(b)(i)), therefore no change is required.

Particulars for the surrender of clearing permits accepted by the CEO under section 51MA(7)(a) of the Act and for clearing permits revoked or suspended by the CEO under section 51L(1) of the Act

So as to remove any potential confusion, one respondent recommended that a description of the land to which the permit was granted also be included in the record. The respondent noted that this is particularly relevant where persons have multiple clearing permits under their name.

Response:

The department supports this recommendation and notes it is consistent with current practice.

CEO may keep documentation confidential on request

Two respondents expressed concern about the potential abuse of draft regulation 11 whereby applicants rely on confidentiality exceptions to limit public access to information. One respondent recommended that a public register of confidentiality requests and decisions be maintained.

Response:

The department considers that the parameters in the draft regulations are sufficiently discrete to ensure that only confidential information is withheld from publication.

The application of draft regulation 11 has been extended to include documentation submitted to the CEO in relation to *a referral of proposed clearing*. This amendment provides a referrer the same opportunity to request the CEO does not publish their confidential documentation as that afforded to an applicant for a clearing permit.

CEO may keep certain matters confidential

Some respondents recommended tighter measures to ensure that personal information and bank details are not published.

One respondent questioned whether the CEO should also be able to refrain from publishing the precise location of a threatened ecological community (TEC).

Two respondents recommended the CEO should also be able to keep the precise location of sites of significance to Aboriginal people confidential without a request being made for the information to be kept confidential.

Response:

The department supports the recommendation that the CEO refrain from publishing bank details. Given the broad nature of the term, the department considers that some flexibility should be maintained in relation to the publication of 'personal information'.

The precise locations of TECs are already publicly available through the TEC data layer (DBCA-038) and so it is not necessary that this information be kept confidential.

The department supports the recommendation that the CEO may refrain from publishing confidential information disclosing the precise location of Aboriginal sites. This relates to those locations identified in the information provided in relation to an application for a clearing permit or referral of proposed clearing.

2 Part IV proposals

Public inspection of minutes of the Authority

One respondent recommended that the regulations clarify when records and minutes are to be published, and an appropriate time period.

The respondent also recommended that the regulations clarify that parts of minutes or records that are not subject to a confidentiality determination should be published.

The respondent also recommended the regulations confirm the ongoing application of the *Freedom of Information Act 1992*.

Response:

The department supports the recommendations to clarify when records and minutes are to be published, an appropriate time period and that the parts of minutes or records that are not confidential should be published.

The amendments to this regulation do not affect a person's ability to request information under the *Freedom of Information Act 1992*.

Authority may keep documentation relating to proposals confidential on request

Two respondents expressed concern over the potential abuse of draft regulation 3B whereby proponents rely on confidentiality exceptions to limit public access to information. One respondent recommended that a public register of confidentiality requests and decisions be maintained.

Response:

The department considers that the parameters in the draft regulations are sufficiently discrete to ensure that only confidential information is withheld from publication.

Authority may keep certain matters relating to proposals confidential

Some respondents recommended tighter measures to ensure that personal information and bank details are not published.

One respondent questioned whether the Authority should also be able to refrain from publishing the precise location of a TEC.

Two respondents recommended the Authority should also be able to keep the precise location of sites of significance to Aboriginal people confidential without a request being made for the information to be kept confidential.

Response:

The department supports the recommendation that the Authority refrain from publishing bank details. Given the broad nature of the term, the department considers that some flexibility should be maintained in relation to the publication of 'personal information'.

The precise locations of TECs are already publicly available through the TEC data layer (DBCA-038) and so it is not necessary that this information be kept confidential.

The department supports the recommendation that the Authority may refrain from publishing confidential information disclosing the precise location of Aboriginal sites. This relates to those locations identified in the information provided in relation to an application for a clearing permit or referral of proposed clearing.

Appendix A - Submissions received

Ten submissions were received during the consultation period.

No.	Organisation
1	Association of Mining and Exploration Companies
2	Australian Petroleum Production & Exploration Association
3	The Chamber of Minerals and Energy of Western Australia
4	Department of Biodiversity, Conservation and Attractions
5	Department of Transport and the Public Transport Authority
6	Environmental Defender's Office
7	Hazel Law
8	Main Roads Western Australia
9	The Water Corporation
10	Western Australian Local Government Association