



## Licence Documentation

Department of Environment Regulation

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## About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2014-15, the value of Western Australia's mineral and petroleum production was \$99.5 billion. Iron ore accounted for approximately \$54 billion of production value to be the state's most valuable commodity. Petroleum products (including LNG, crude oil and condensate) followed at \$24 billion, with gold third at \$9 billion.<sup>1</sup>

Notwithstanding the recent decline in the price of several export commodities, the estimated value of royalty receipts the state received from the resources sector still composed over 16 per cent of estimated total state revenue in 2015-16, or around \$4.4 billion.<sup>2</sup>

As at March 2015, there was approximately \$179 billion in resources sector projects committed or under construction in Western Australia and a further \$118 billion in proposed or possible projects.<sup>3</sup>

## Recommendations

### Application Form and Guideline

CME recommends:

- The Department of Environment Regulation (DER) update the Application Form and the Guideline to ensure the information provided for amendments is limited to the change in activity being requested. DER should also update Parts 4 and 6 to ensure consistency through the documents.
- DER deletes all references to 'Clearing Permit' throughout the Application Form and Guideline.
- DER delay publishing the final Application Form and Guideline until the Environmental Risk Assessment Framework has been finalised.
- Part 1.2 is deleted from the Application Form and Guideline.
- DER update Part 1.7 of the Application Form and Guideline to allow for the following 'Occupier status':
  - Tenure held jointly by a Joint Venture; and
  - Contractor who is the "occupier" but does not hold tenure over the prescribed premises.
- Part 2 is amended to allow applicants to nominate a subarea for the 'premises'.
- DER deletes the requirement to provide maximum design capacity, expected production capacity and estimated operating period from the Application Form and Guideline.

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<sup>1</sup> Department of Mines and Petroleum (DMP), *Mineral and Petroleum Industry 2014 Review*, 2015, <http://www.dmp.wa.gov.au/1525.aspx#1596>, p. 1

<sup>2</sup> Government of Western Australia, *2015-16 Budget, Budget Paper No. 2 Volume 2*, [www.ourstatebudget.wa.gov.au/Budget-Papers](http://www.ourstatebudget.wa.gov.au/Budget-Papers), pp. 541 & 593

<sup>3</sup> DMP, 2015, *loc. cit.*

- Part 4.5 is amended to include an option for applicants to select 'not applicable'.
- Part 4.6 is deleted from the Application Form and Guideline.
- Part 5.3 is deleted from the Application Form and Guideline.
- Part 5.5 is deleted from the Application Form and Guideline.
- The requirement "*For an applicant that is a company, each director must complete this section as an individual, and include their previous history as director of other companies*" is deleted.
- DER clarifies whether all sources are required to be identified under Part 6 and Attachment 6 of the Application Form.
- Part 6 and Attachment 6 of the Application Form is updated to include a column for applicants to nominate the level of risk. DER should also clarify whether low risk sources are required to be listed.
- Part 6.2 and 6.3 is amended to state "*discharge from containment leaks*".
- DER clarifies when applicants are required to fill in the waste type, quantity storage and location table in Attachment 6.
- Attachment 7 is updated to include a reference to the separation distances methodology included in DER's Guidance Statement on Separation Distances.
- Attachment 9 is updated to include a definition for "*Particulates*".

### **Licence Documentation – Consultation Paper and Template**

CME recommends:

- DER amends the Licence template to clarify what the licensee obligations are for non-prescribed activities which are conducted within the prescribed premises.
- Fees are waived for licence amendments and renewals.
- Conditions 1 and 5 are deleted from the Licence template to remove duplication with the EP Act.
- Condition 12 is updated to allow proponents, in consultation with DER, to nominate the due date for the Annual Audit Compliance Report.
- Condition 15 is updated to state "The Licensee must comply with a CEO Request, within 30 business days from the date of the CEO Request or such other period specified in the CEO Request."
- The full Conditions Library is made publicly available to industry (following finalisation).

## Context

CME welcomes the opportunity to review and provide comment on the Department of Environment Regulation (DER) suit of Licence Documentation for the licencing and conditioning of prescribed premises under Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations). This includes the Application form for works approvals/licences (Application Form), Guideline for applications (Guideline), Licence template and Sample Conditions library.

CME supports the suit of Licence documents and considers they will provide a useful tool for addressing issues the resources sector has encountered with licences issued under the DER's previous reform program, Re-Engineering for Industry Regulation and Environment (REFIRE). However, a number of recommended changes are proposed for consideration in Table 1 and 2 below.

## Application Form and Guideline

Table 1: CME feedback on Application Form and Guideline

General Comments
<p>Overall, CME considers the Application Form and Guideline is unclear in outlining exactly what information is required for an amendment versus a new application. For amendments, CME considers the requirement to provide all information is too onerous in circumstances where the information has already been provided in previous approvals. New information should be limited to the change in activity being requested.</p> <p>For example, Parts 4 and 6 of the Application Form would require applicants to provide information on the whole "<i>proposal</i>" or all "<i>sources</i>" regardless of whether this has been previously assessed and approved by DER. In these circumstances, the risk to the environment has not changed and the information has already been provided.</p> <p><b>CME recommends DER update the Application Form and the Guideline to ensure the information provided for amendments is limited to the change in activity being requested. DER should also update Parts 4 and 6 to ensure consistency through the documents.</b></p> <p>The Application Form includes 'Clearing Permit' and CME is concerned this will duplicate the <i>Application for a clearing permit (area permit) FORM C1</i>. Given the suit of Licence Documentation has been developed for works approvals, licensing and compliance functions related to prescribed premises only, the reference to 'Clearing Permit' should be removed from Application Form.</p> <p><b>CME recommends DER deletes all references to 'Clearing Permit' throughout the Application Form and Guideline.</b></p> <p>The Application Form requires the completion of a risk schedule. The risk schedule provides for the description of risks in accordance with the hazard-pathway-receptor model of environmental risks. This model will form the basis of DER's proposed Environmental Risk Assessment Framework which is yet to be released for public consultation.</p> <p>Many companies maintain a company-mandated risk assessment process that is consistent with internal processes or international standards. As the Environmental Risk Assessment Framework has not been released for public consultation, it is not possible to determine whether the risk schedule requirement will be consistent with company risk assessment processes.</p>

**CME recommends the DER delay publishing the final Application Form and Guideline until the Environmental Risk Assessment Framework has been finalised.**

### Part 1 Applicant Details

The Guideline states “*If a corporation, the ACN must be provided as well as Directors’ full names. Business names are not accepted*”. The rationale for this requirement is unclear and CME considers it unnecessary. For large companies, company directors’ can change and Directors may not be Australia-based which will create an administration burden for applicants.

**CME recommends Part 1.2 is deleted from the Application Form and Guideline.**

The Occupier Status requirements under Part 1.7 of the Application Form for the following scenarios is unclear:

1. When the tenure is held jointly by a Joint Venture, but the application is made solely by the entity operating on behalf of a Joint Venture.
2. Where the application is made by a contractor who is the “*occupier*” as defined by the *Environmental Protection Act 1986* (EP Act), but does not hold tenure over the prescribed premises.

**CME recommends DER update Part 1.7 of the Application Form and Guideline to allow for the following ‘Occupier status’:**

- a) **Tenure held jointly by a Joint Venture; and**
- b) **Contractor who is the “*occupier*” but does not hold tenure over the prescribed premises.**

### Part 2 Premises

Part 2.1 of the Application Form requires applicants to provide details of the “*Premises legal description*”. CME considers the requirements of this Part is unclear in circumstances where the activity triggers a ‘prescribed premise’ but only occupies a small portion of what is described in the Application Form as the “*Premise legal description*”.

CME considers the Guideline, in its current form, removes the ability to nominate a subarea within the “*legal description*”. For example, a project may have a single ‘legal tenure’ but may include subareas where separate activities are undertaken, some of which may trigger Schedule 1 and others may not.

**CME recommends Part 2 is amended to allow applicants to nominate a subarea for the ‘premises’.**

### Part 3 Proposed activities

Part 3 of the Application Form and Guideline includes the requirement for applicants to provide maximum design capacity, expected production capacity and the estimated operating period. The Licence Template also includes a field for ‘Production/design capacity’.

CME is concerned the requirement to provide this information and inclusion on the licence could result in production being limited. In accordance with DER’s Regulatory Principles, decision making will be risk-based and not based on production capacity.

**CME recommends DER deletes the requirement to provide maximum design capacity, expected production capacity and estimated operating period from the Application Form and Guideline.**

#### Part 4 Other approvals

The Guideline states “*Has the proposal obtained all relevant planning approvals*”. CME considers this question should be labelled as ‘if applicable’ given there are instances where projects do not require planning approvals. As currently stated, selecting ‘no’ suggests the relevant planning approvals have not yet been obtained, even if these are not required.

**CME recommends Part 4.5 is amended to include an option for applicants to select ‘not applicable’.**

CME supports the identification of other approvals as part of the application process given this will assist DER with minimising duplication. However, the Application Form states “*Has the proposal obtained all other necessary statutory approvals*”. CME considers this question is too broad and could include a number of secondary and tertiary approvals which may not be relevant or approved at time of application.

**CME recommends Part 4.6 is deleted from the Application Form and Guideline.**

#### Part 5 Fit and Competent Operator

Part 5.3 of the Application Form states “*Has the applicant ever breached any conditions of licence or works approval under the EP Act or its subsidiary legislation?*”

CME considers non-compliance with licence conditions does not necessarily indicate the applicant is not a fit and competent operator. Particularly for instances where the non-compliance was deemed immaterial (i.e. administrative non-compliances) and did not result in harm to the environment. The practicality of this question also presents a number of issues for applicants given there is no timeframe provided, which could result in applicants compiling many years’ worth of non-compliances.

The information required by Part 5.3 is also information which is typically not made publically available. However, once the information has been provided to the DER, there is a risk this information could be disclosed through the publication of the Application Form or the Freedom of Information process. The release of this information may impact the company’s reputation and social licence to operate.

**CME recommends Part 5.3 is deleted from the Application Form and Guideline.**

Part 5.5 of the Application Form states “*Does the applicant have previous experience, or are there key personnel with experience, in relation to activities in the proposal*”. Applicants are also required to provide details of any relevant qualification and capabilities, roles and responsibilities of experienced personnel including information on Quality or Environmental Management System (EMS) accreditations.

CME considers ‘accreditation’ of a Quality or EMS is an inappropriate measure in determining whether an operator is fit and competent. Further, the onus should be on the company to ensure that fit and competent personnel are employed to implement the works approval / licence. CME considers this information is unnecessary and should be removed.

**CME recommends Part 5.5 is deleted from the Application Form and Guideline.**

For an applicant that is a ‘company’, the requirement for each director to complete Part 5 as an individual (including their previous history as directors of other companies) would be logistically difficult for companies when directors change roles.

As stated above for ‘Part 1 Applicant Details’ sign-off would be too difficult for companies which have non-Australia based directors. CME considers this sign-off as unnecessary and would

significantly increase the administrative burden for companies.

**CME recommends the requirement “For an applicant that is a company, each director must complete this section as an individual, and include their previous history as director of other companies” is deleted.**

### Part 6 Public Health and Environmental Risks

Part 6 and Attachment 6 requires the applicant to provide details on the source, contaminants and quantity of the emissions to air, surface water, land and other incidents. CME considers this Part is unclear in describing whether *all sources* or only *significant sources* are to be identified.

Further, if the applicant has completed a Health Risk Assessment (HRA) and a source has been deemed as low risk, it is unclear whether the source is required to be listed. If all sources are required, applicants should be afforded the opportunity to determine the level of risk to assist DER with the risk assessment.

**CME recommends DER clarifies whether all sources are required to be identified under Part 6 and Attachment 6 of the Application Form.**

If all sources are required, **CME recommend Part 6 and Attachment 6 of the Application Form is updated to include a column for applicants to nominate the level of risk. DER should also clarify whether low risk sources are required to be listed.**

Part 6.2 and 6.3 of the Application Form refers to “*contamination from containment leaks*”.

CME considers this Part should be amended to state “*discharge from containment leakage*” rather than “*contamination*”. “*Discharge*” is well defined under the EP Act, whereas contamination is interpreted under the *Contaminated Sites Act 2003* and is not directly linked to approvals under Part V of the EP Act.

**CME recommends Part 6.2 and 6.3 is amended to state “discharge from containment leaks”.**

Attachment 6 includes a table for applicants to list waste types, quantity, storage and location. The Guideline is unclear in outlining the requirements for completing this table (i.e. is this table required for the whole site, or just the wastes as a result of the activity which triggers Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations). CME considers this table should be directly linked to the activities which trigger Schedule 1 of the EP Regulations, rather than a general overview of all wastes onsite.

**CME recommends DER clarifies when applicants are required to fill in the waste type, quantity storage and location table in Attachment 6.**

### Attachment 7: Siting and Location

Attachment 7 of the Application Form includes the requirement for applicants to include a map showing siting and locations of premises to a 5km radius including identification of distances to sensitive receptors.

Given the DER has released the draft Guidance Statement on Separation Distances, which includes a methodology for calculating separation distances (Appendix 2), this should be referenced in the form.

**CME recommends Attachment 7 is updated to include a reference to the separation distances methodology included in DER’s Guidance Statement on Separation Distances.**

### Attachment 9: Proposed fee calculation

The detailed breakdown of proposed licence fees requires applicants to list the discharges to air. The “*Discharges to air*” includes “*Particulates*”. However, a definition is not provided and it is unclear whether this means particulate matter 10 micrometers or less in diameter (PM<sub>10</sub>) or particulate matter 2.5 micrometers or less in diameter (PM<sub>2.5</sub>).

**CME recommends Attachment 9 is updated to include a definition for “*Particulates*”.**

## Licence Documentation – Consultation Paper, Template and Conditions Library

Table 2: CME feedback on Licence Documentation – Consultation Paper, Template and Conditions Library

General Comments
<p>The Licence Documentation – Consultation Paper, states the following:</p> <p><i>“The application form enables and requires multi-category applications. The applicant must specify all activities that will be undertaken on the premises that constitute activities within the categories of prescribed premises under Schedule 1 to the EP Regulations.”</i></p> <p><i>“The licence template clearly provides for, and requires, the licensing of multi-category premises within a single instrument. If a licensee has not specified other activities which:</i></p> <ul style="list-style-type: none"> <li>• <i>are also activities within categories of prescribed premises under Schedule 1 to the EP Regulations; and</i></li> <li>• <i>are <b>above</b> the prescribed thresholds or limits in Schedule 1 to the EP Regulations, the licensee commits an offence under section 56 of the EP Act.”</i></li> </ul> <p>In accordance with the EP Act, unless the emission from any prescribed premises (irrespective of the source or activity causing the emission) is caused in accordance with a licence or a condition of a licence, an offence is committed. CME considers the Licence Documentation is unclear for circumstances where non-prescribed activities are conducted within the prescribed premise. Specifically, whether the non-prescribed activities will then be considered “<i>authorised</i>” and must be conducted in accordance with the licence, or if they are excluded from the licence.</p> <p><b>CME recommends DER amends the Licence template to clarify what the licensee obligations are for non-prescribed activities which are conducted within the prescribed premises.</b></p> <p>The Licence Documentation – Consultation Paper states “<i>Fees must also be paid for there to be a valid application under the EP Act. If fees are not paid, the CEO must decline to deal with the application.</i>” It is unclear whether a fee will be required for licence amendments or renewals. CME considers fees for amendments and renewals are not appropriate as a fee would have been paid at the initial application.</p> <p><b>CME recommends fees are waived for licence amendments and renewals.</b></p>
Licence template, Conditions – Environmental Compliance and Emissions
<p>Conditions 1 and 5 of the Licence template duplicate parts of the EP Act (and EP Regulations). This creates compliance issues for licensees in the event of a breach. Specifically, this could result in a breach of the Act itself as well as the licence condition. CME considers unnecessary duplication should be removed from the Licence template.</p> <p><b>CME recommends Conditions 1 and 5 are deleted from the Licence template to remove duplication with the EP Act.</b></p>
Licence template, Reports
<p>Condition 12 of the Licence template states “<i>The licensee must submit to the CEO within 30</i></p>

*days after the Anniversary Date, an Annual Audit Compliance Report...*

This condition doesn't provide flexibility for licensees to align annual periods with other reporting obligations. To ensure cross-government annual reporting is streamlined as much as possible, **CME recommends Condition 12 is updated to allow proponents, in consultation with DER, to nominate the due date for the Annual Audit Compliance Report.**

#### Licence template, Request for Information

Condition 13 replaces the mandatory Annual Environment Report with the requirements for applicants to provide reports or information "*if requested by the CEO*". Condition 15 specifies the information requested must be provided within 7 days of request. CME is concerned this doesn't afford licensees enough time to collate reports or information. 30 business days is considered a more appropriate timeframe to comply with this condition.

**CME recommends Condition 15 is updated to state "The Licensee must comply with a CEO Request, within 30 business days from the date of the CEO Request or such other period specified in the CEO Request."**

#### Conditions Library

The DER has published part of the *Conditions Library* for consultation to obtain initial comments and feedback from industry. In accordance with DER's Regulatory Principles for transparency, CME considers the full Conditions Library should be made available to industry and the public following finalisation.

**CME recommends the full Conditions Library is made publicly available to industry (following finalisation).**

## Conclusion

CME welcomes the review and the opportunity to comment on the suit of Licence Documentation for the licencing and conditioning of prescribed premises under Schedule 1 of the *Environmental Protection Regulations 1987* and looks forward to ongoing engagement with DER.

If you have any further queries regarding the above matters, please contact Kirillie Caldwell, Policy Adviser - Environment on (08) 9220 8507 or [k.caldwell@cmewa.com](mailto:k.caldwell@cmewa.com).

Authorised by	Position	Date	Signed
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