

EP Regulation Reform  
Legislation and National Policy Branch  
Department of Water and Environmental Regulation  
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## **WESTERN AUSTRALIA ENVIRONMENTAL PROTECTION AUTHORITY SUBMISSION TO**

Thank you for the opportunity to make a submission to the Department of Water and Environmental Regulation's *Environmental Regulation Reform: A strategic review of regulatory delivery and fees for industry regulation*.

The Environmental Protection Authority (EPA) supports reforms to the regulatory framework for emissions and discharges being risk based, and that regulation is fit for purpose, streamlined and effective in achieving environmental protection and preventing, controlling and abating pollution and environmental harm.

### **Support for use of environmental performance objectives (*proposal 4 and 5*)**

The EPA supports the adoption of environmental performance objectives for Part V industry regulation, and the development of appropriate guidelines to support this.

The EPA considers there would be value in the Part V objectives adopting, or at least being consistent with, the factor objectives the EPA has already developed for assessment of proposals under Part IV of the *Environmental Protection Act 1986* (WA) (EP Act). This will ensure there is a consistent environmental factor based framework under the EP Act, so proponents, the public and regulators are all using the same objectives regardless of what part of the EP Act they are engaging with. Adopting the EPA's factor objectives will also allow a standard framework under which achievement of the EP Act objectives under the Act can be measured.

### **Support for focus on environmental outcomes (*reform context 3.1*)**

The EPA supports the adoption of environmental outcomes-based decision making for Part V industry regulation. This would be consistent with the EPA's focus on environmental outcomes, as explained in its *Interim Guidance – Environmental outcomes and outcomes-based conditions*.

Adoption of environmental outcomes-based decision making for Part V industry regulation under the EP Act would mean proponents, the public and regulators are all adopting the same environment centric approach.

### **Support for review of prescribed activities (*reform roadmap 5.3*)**

Since amendments to Part IV of the EP Act came into force in October 2021, the EPA has had the power to take into account other statutory decision making processes (such as Part V industry regulation) that can mitigate the potential impacts of the proposal on the environment (s. 38G (4) and 44 (2AA)). To exercise this power the EPA needs to be if satisfied that the decision-makers processes can mitigate the potential impacts of the proposal on the environment to meet the EPA's environmental factor objectives.

The EPA considers that its use of this power, combined with a comprehensive review of the Part V activity categories, could deliver significant gains in both regulatory efficiency and environmental outcomes. This could especially be the case if the activity category review was part of a holistic review of the best mechanism to assess and regulate issues under the EP Act overall – including Part IV, Part V clearing, Part V industry regulation, and general regulation.

The activity category review should be designed to ensure the resulting activity categories are comprehensive enough that:

- the EPA can have confidence at referral stage under s. 38G (4) that it can decide not to assess proposals because the EPA's environmental factor objectives can be met under both the Part V clearing principles and the Part V emissions and discharges objectives.
- the EPA can have confidence at Part IV EPA report and recommendation stage under 44 (2AA) that it can decide not to recommend conditions on emissions and discharges because EPA environmental factor objectives can be met by Part V emissions and discharges regulation.
- proponents and third parties can have confidence that Part V regulation can deal with the primary clearing, discharge and emission issues they are concerned about, so referrals aren't made to the EPA for proposals which aren't likely to be significant.
- The EPA can focus on assessing proposals which are likely to have a significant impact and can't be regulated by other decision-making processes and does not need to assess proposals to address "gaps" in Part V regulation.
- Activities categories are aligned to proposals (as defined by proposal content documents), so there is alignment between the "project" being considered under Part IV and Part V. The EPA's experience is that Part V prescribed premises are defined more narrowly than proposals, which leads to confusion, and to the regulatory gaps noted above.

The EPA notes that a prescribed premises review which focuses only on streamlining Part V industry regulation without consideration of how this will impact on Part IV, will not necessarily achieve the improved regulatory efficiency of end to end process and environmental outcomes objectives behind the EP Act amendments.

**Support for greenhouse gas emissions to be regulated under Part V of the EP Act (question 14)**

The EPA supports Part V industry regulation considering and conditioning greenhouse gas emissions (GHG). The EPA considers this would contribute to the emissions reduction needed to protect Western Australia's environment by:

- increasing coverage of GHG emissions in Western Australia – and so decreasing the State's emissions;
- tending to apply the requirement for GHG emissions reductions equitably across existing and new sectors and proponents; and
- efficiently assessing greenhouse gas reduction projects where the primary environmental factor is residual GHG emissions.

This is also consistent with the EPA's draft revised GHG environmental factor guideline (EFG), which was released for public consultation from July to September 2022. The draft GHG EFG states that *"the EPA encourages other decisions-makers under the EP Act and other legislation to also have regard to this guideline... The EPA will consider statutory decision-making processes that can regulate GHG emissions to meet the EPA's objectives"*. The EPA advises that public comments on the draft GHG EFG have not raised material concerns with this approach.

The EPA has also previously advised the Minister for Environment that Part V could regulate GHG for existing proposals as an alternative to a s.46 inquiry under the EP Act into GHG emissions for Ministerial statements (such as in EPA Report 1706). This would also be expected to be a more efficient process.

The EPA considers that that regulation of GHG by Part V could adopt and be consistent with the approach outlined in the EPA's GHG EFG and advises that it is developing tools (such as a template GHG management plan) which would simplify and streamline the Part V process.

The EPA appreciates this opportunity to provide input into the reforms and would welcome further opportunities for engagement.

Yours sincerely



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