

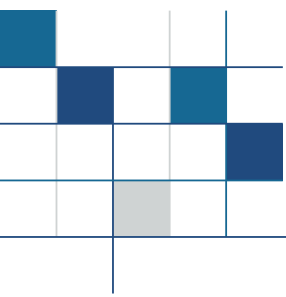


Interim Guideline

Determining compliance priority rating for cost recovery

Priority rating of Ministerial statements for cost recovery

June 2023



Department of Water and Environmental Regulation
8 Davidson Terrace

Joondalup Western Australia 6027

Telephone +61 8 6364 7000

Facsimile +61 8 6364 7001

National Relay Service 13 36 77

www.dwer.wa.gov.au

© Government of Western Australia

June 2023

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 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

- 1. Introduction4
- 2. Compliance priority rating method.....4
 - 2.1 Level of assessment.....5
 - 2.2 Complexity factor6
 - 2.3 The performance of the proponent7
 - 2.4 The potential consequence of non-compliance9
 - 2.5 Determination of compliance priority rating and fees payable11
- 3. Post-assessment guidelines and forms.....12



1. Introduction

When a Ministerial statement (statement) is issued under section 45(8) of the *Environmental Protection Act 1986* (EP Act), the proponent must ensure the proposal is implemented in accordance with the implementation conditions of that statement. The Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation (the department) may monitor the implementation of the proposal to determine compliance with the implementation conditions of the statement. The department undertakes an annual compliance program which includes compliance activities relating to statements such as audits, site inspections and data verification.

The proponent of the proposal is liable to pay an annual compliance fee in accordance with the *Environmental Protection (Cost Recovery) Regulations 2021* (Cost Recovery Regulations). The fee is payable each financial year for each approved proposal in effect immediately before the financial year.

A compliance priority rating is set for each proposal to guide the scale and frequency of compliance activities undertaken by the department and to determine the fees payable by a proponent, as set out in the Cost Recovery Regulations.

The purpose of this guideline is to outline how and when the department determines a compliance priority rating for an approved proposal authorised by a statement.

It should be noted that the department will only request fees payable under the Cost Recovery Regulations per proposal rather than per statement.

2. Compliance priority rating method

The compliance priority rating for a proposal is determined by the CEO for the purposes of monitoring the implementation of proposals under Part IV, Division 2 of the EP Act.

The compliance priority rating of a proposal is determined using an assessment of the proposal (risk to the environment and complexity) and proponent performance. This includes consideration of the:

- level of assessment (LoA)
- number of environmental factors with conditions applied
- number of plans, procedures and strategies etc. required by the implementation conditions
- performance of the proponent
- potential consequence should the proponent not comply with the conditions.



2.1 Level of assessment

The Environmental Protection Authority (EPA) sets the LoA as either Assessment on Referral Information (ARI) or Public Environmental Review (PER) according to criteria included in the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2021*. The LoA is set down in the public record, in the [Chair's determination](#), pursuant to section 39(1) of the EP Act on the [EPA website](#).

A PER assessment is determined for proposals that are likely to meet any one of the following criteria:

- The proposal is of regional and/or statewide significance.
- The proposal has several significant environmental issues or factors, some of which are considered to be complex or of a strategic nature.
- Substantial and detailed assessment of the proposal is required to determine whether, and if so, how the environmental issues could be managed.
- The level of interest in the proposal warrants a public review period.

For these reasons, PER proposals are more complex, generally require greater regulatory oversight and are therefore given a higher priority rating.

An ARI assessment is determined for proposals with a limited number of significant environmental factors that can be readily managed and where the proponent can demonstrate that stakeholder consultation has occurred. An ARI LoA is determined for proposals that meet all the following criteria:

- The proposal raises a limited number of significant environmental factors that can be readily managed and for which there is an established condition-setting framework.
- The proposal is consistent with established environmental policy frameworks, guidelines and standards.
- The proponent can demonstrate that it has conducted appropriate and effective stakeholder consultation.
- There is only limited or local interest in the proposal.

For these reasons ARI proposals are less complex, generally require less regulatory oversight and are therefore given a lower priority rating.

Before 2012, proposals were assessed at levels including:

- Consultative Environmental Review or Environmental Review and Management Programme (considered a PER)
- Assessment on Proponent Information A and Environmental Protection Statement (considered an ARI).

Information on the proposal's LoA is publicly available on the [EPA website](#).



2.2 Complexity factor

For both ARI and PER levels of assessment (LoA), the number of environmental factors and number of EMPs are reviewed together to determine the statement complexity factor.

Number of environmental factors with conditions applied

Section 44(1) of the EP Act requires the EPA, should it assess a proposal, to prepare a report on the outcome of its assessment and give that report to the Minister for Environment. Section 44(2) of the EP Act provides that the report must set out what the EPA considers to be the key environmental factors identified during the assessment.

Environmental factors are those parts of the environment that may be impacted by an aspect of the proposal. The EPA has 14 environmental factors, organised into five themes: sea, land, water, air and people. The environmental factors relevant and practical to the environmental impact assessment process are detailed on the [EPA website](#).

The number of environmental factors that are assigned conditions in a statement is used to indicate the proposal's complexity, temporal and spatial scale and potential environmental impact.

Statements assigned conditions for multiple environmental factors are therefore assigned a higher priority rating than those with less environmental factors.

When determining the number of environmental factors included in a statement, the department only considers those associated with implementation conditions and not those related to proponent commitments detailed in the statement.

Number of plans required by conditions

Environmental Management Plans (EMP) are typically conditioned by the EPA to ensure the proponent implements sound management and monitoring measures to minimise or avoid impacts to environmental factors.

The number of conditions in a statement requiring an EMP, procedure (defining a process within the statement) or strategy (a management process) is used to indicate the level of effort required to manage and monitor the proposal. Having a requirement for the preparation and submission of plans, procedures or strategies results in more compliance elements that require ongoing monitoring by the CEO and additional elements to be evaluated and verified through compliance activities.

Statements with more EMPs, procedures or strategies are assigned a higher rating than those with a requirement for limited numbers or no EMPs.

When determining the number of EMPs included in a statement, the department only considers those associated with implementation conditions and not those related to proponent commitments.



Determining the complexity factor

The below matrixes outline how the statement complexity factor is determined for each LoA.

Table 1: ARI statement complexity factor matrix

Number of EMPs	Number of environmental factors				
	0	1	2	3	4 or more
None	1	1	1	2	2
1	1	1	2	2	3
2	1	2	2	3	3
3	2	2	3	3	4
4 or more	2	3	3	4	4

Table 2: PER statement complexity factor matrix

Number of EMPs	Number of environmental factors				
	0	1	2	3	4 or more
None	1	1	2	3	3
1	1	2	3	3	4
2	2	3	3	4	4
3	3	3	4	4	5
4 or more	3	4	4	5	5

2.3 The performance of the proponent

Proponent performance is determined by the number and type of non-compliances reported by the proponent or identified by the department through the implementation of an individual proposal. Non-compliances are categorised by their potential to impact the environment.

An administrative non-compliance is considered to have no impact on the environment and typically relates to a failure to undertake an administrative activity within a required timeframe. This can include, but is not limited to, providing Compliance Assessment Plans and Compliance Assessment Reports to the department by the due date. These non-compliances are assigned a lower rating.

Technical non-compliances relate to a failure to comply with implementation conditions that require an action, such as monitoring or management actions which are needed to avoid or limit impacts to the environment. These non-compliances are assigned a higher priority rating.

The department will determine proponent performance following a review of the most recent Compliance Assessment Report, a compliance audit, a site inspection, the issuing of a Notice of non-compliance or following a request from the proponent for a review of the priority rating.



Table 3: Proponent performance definitions

Proponent performance	Definition
Fully compliant	The proponent is fully compliant with all implementation conditions. A new proposal will be determined to be fully compliant until demonstrated otherwise.
Administrative non-compliance	The non-compliance is of an administrative nature (e.g. late submission of a compliance report) with no possibility of environmental impact resulting from the non-compliance.
Technical non-compliance with no/unlikely impact	There is non-compliance with an implementation condition that requires an action, such as monitoring or management actions, which are required to avoid or limit impacts to the environment.
Technical non-compliance with minor to moderate impact on the environment	There is non-compliance with an implementation condition that requires an action, such as monitoring or management actions. The impact on the environment is minor to moderate (e.g. localised, with a short duration, and minor/moderate detectable impacts) that can be mitigated through contingency actions over a period of months.
Technical non-compliance with major to catastrophic impact on the environment	There is technical non-compliance with an implementation condition that requires an action, such as monitoring or management actions. The impact on the environment is major to catastrophic and takes years to mitigate.

Proponent performance is determined in accordance with the proponent performance factor matrix below.

Table 4: Proponent performance factor matrix

Proponent performance	(ARI/PER) statement complexity factor				
	1	2	3	4	5
Fully compliant	1	1	1	2	3
Administrative non-compliance	1	1	2	3	4
Technical non-compliance with no/unlikely impact	1	2	3	4	5
Technical non-compliance with minor to moderate impact on the environment	2	3	4	5	5
Technical non-compliance with major to catastrophic impact on the environment	5	5	5	5	5



2.4 The potential consequence of non-compliance

The potential consequence of non-compliance for a proposal is considered upon the issuing of the statement. When determining the environmental consequence of non-compliance, the department considers factors such as the spatial or temporal scale of potential impacts, the receiving environment, whether the impact is permanent or reversible, the likelihood of impacts occurring and information in the relevant EPA assessment report. These potential impact factors are considered in isolation.

Table 5: Non-compliance consequence definitions

Consequence (worst case)	Potential impact	
Insignificant	Temporal scale:	Several days, but less than one week
	Flora and fauna:	No observable impacts on individuals
	Amenity impacts:	No impacts on amenity
	Human health:	No impacts on human health
	Remediation difficulty:	Easy or not required
Minor	Temporal scale:	One week or more, but less than one month
	Flora and fauna:	Detectable but not significant impacts on individuals
	Amenity impacts:	Detectable but not significant impacts on amenity
	Human health:	Temporary minor impacts on human health
	Remediation difficulty:	Easily managed
Moderate	Temporal scale:	Several months, but less than one year
	Flora and fauna:	Impacts which disrupt the lifecycle (reproductive, feeding, migration or resting behaviour) of an ecologically significant proportion of the population of the species
	Amenity impacts:	Detectable impacts on amenity
	Human health:	Non-life threatening, non-debilitating impacts
	Remediation difficulty:	Not easily managed; requires a short-term management approach and remediation
	Major	Temporal scale:
Major	Flora and fauna:	Destruction of local populations of native species, seriously disrupting the lifecycle (reproductive, feeding, migration or resting behaviour) of an ecologically significant proportion of the population of the species, including rare or declared species
Major	Amenity impacts:	Significantly impacted – significant nuisance
Major	Human health:	Non-life threatening, but permanent disability or health impacts



	Remediation difficulty:	Complex, long-term management and remediation
Catastrophic	Temporal scale:	Five years or more
	Flora and fauna:	Destruction of local populations of native species – loss of local populations of rare or declared species
	Amenity impacts:	Significantly impacted – significant nuisance
	Human health:	Life-threatening, permanent disability or death
	Remediation difficulty:	Irreversible

When considering the significance of an environmental impact or effect as a result of non-compliance, the department may consider various matters, including the:

- values, sensitivity and quality of the environment which is likely to be impacted
- extent (intensity, duration, magnitude and geographic footprint) of the likely impacts
- consequence of the likely impacts (or change), including off-site impacts (such as impacts on a wetland from chemicals discharged into upstream river systems) and indirect impacts (such as reduced fish harvest because of decreased water quality)
- resilience of the environment to cope with the impacts or change (including considering pressures such as climate change)
- cumulative impacts with other past, existing or reasonably foreseeable activities, developments and land uses
- connections and interactions between parts of the environment to inform a holistic view of impacts to the whole environment
- level of confidence in the prediction of impacts and the success of proposed mitigation.

The potential consequence of non-compliance for the proposal is determined in accordance with the environmental consequence factor matrix below.



Table 6: Environmental consequence factor matrix

Environmental consequence	(ARI/PER) statement complexity factor				
	1	2	3	4	5
Insignificant	1	1	1	2	3
Minor	1	2	2	3	4
Moderate	2	3	3	4	5
Major	3	4	4	5	5
Catastrophic	5	5	5	5	5

2.5 Determination of compliance priority rating and fees payable

The compliance priority rating is determined before the implementation of the proposal. Until ground disturbance or construction associated with the proposal starts, the risk to the environment is considered to be low. Therefore, all new statements issued to proponents will be allocated a default priority rating of “low”.

Once ground disturbance or construction associated with the proposal starts, the compliance priority rating will be revised to the priority rating that was determined when the statement was originally issued. Revised proposals will be considered to be operating under the designated priority rating at the time the statement is issued unless that proposal is yet to commence ground disturbing or construction activities.

The compliance priority rating for a proposal is calculated upon determination of the:

- statement complexity factor (Tables 1 and 2)
- environmental consequence factor (Table 6)
- proponent performance factor (Table 4).

The statement complexity factor is used to determine both the environmental consequence factor and the proponent performance factor. The sum of the environmental consequence factor and proponent performance factor determines the compliance priority score and hence the compliance priority rating of the proposal.

The compliance priority rating for the proposal is determined in Table 7. The proponent is liable to pay a fee based on the outcome of the compliance priority rating. The fee amount is set out in the Cost Recovery Regulations according to the compliance priority rating for the proposal in effect immediately before the financial year. A worked example of determination of a compliance priority rating is provided in Table 8.



Table 7: Compliance priority rating

Compliance Priority rating	Compliance Priority score
Very high	≥ 9
High	7 or 8
Medium	5 or 6
Low	≤ 4

Table 8: Worked example – compliance priority rating

Assessment level	PER
Number of environmental factors with conditions	4 or more
Number of plans required (management, monitoring, etc.)	4 or more
Environmental consequence of non-compliance	Moderate
Proponent performance	Fully compliant
Statement complexity factor	5
Proponent performance factor	5
Environmental consequence factor	5
Compliance priority rating	8

If there is no compliance priority rating for the proposal in effect immediately before the financial year, the compliance priority rating for the proposal is considered to be low for that financial year.

The priority rating for each proposal, and the resulting fee, may change throughout the life of the proposal because of reasons including, but not limited to, outcomes from compliance audits, the stage of implementation of the proposal and the outcomes of a proponent-requested compliance priority review.

3. Post-assessment guidelines and forms

The department's CEO is responsible for monitoring compliance statement conditions. Post-assessment guidelines and forms can be found under the "Implementation" section of the [EPA website](#).