

Procedure

Native vegetation clearing permits

Application and assessment processes under:

- *Environmental Protection Act 1986*
- Environmental Protection (Clearing of Native Vegetation) Regulations 2004

October 2021



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Version log

Date	Summary of changes
October 2019	Version 1.0
October 2021	Version 2.0 <ul style="list-style-type: none"> • Reflects amendments to relevant legislation that took effect in October 2021. • Reflects changes to internal processes. • Simplified language.



Purpose

This *Procedure: Native vegetation clearing permit* outlines how the Department of Water and Environmental Regulation (the department; DWER) assesses applications for clearing permits under Part V Division 2 of the *Environmental Protection Act 1986* (EP Act) and to manage granted clearing permits.

Scope

This procedure applies to:

- referrals of proposed clearing (s.51DA of the EP Act)
- applications for a new clearing permit (s.51E)
- applications to amend an existing clearing permit (s.51KA)
- applications to surrender an existing clearing permit (s.51MA)
- notifications of a transfer of land ownership that involves a commensurate transfer of an existing clearing permit (s.51N).

Context

The department manages Western Australia's environment and the environmental impacts of the clearing of native vegetation through the provisions of the EP Act and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (Clearing Regulations).

This procedure aligns with the department's customer service charter. For further information on how the department manages its relationship with external stakeholders, go to the [customer service charter](#) on the department's website.



Stages of assessment

The assessment process has five key stages:

- Stage 1: Pre-application
- Stage 2: Validation
- Stage 3: Assessment
- Stage 4: Decision review
- Stage 5: Instrument management

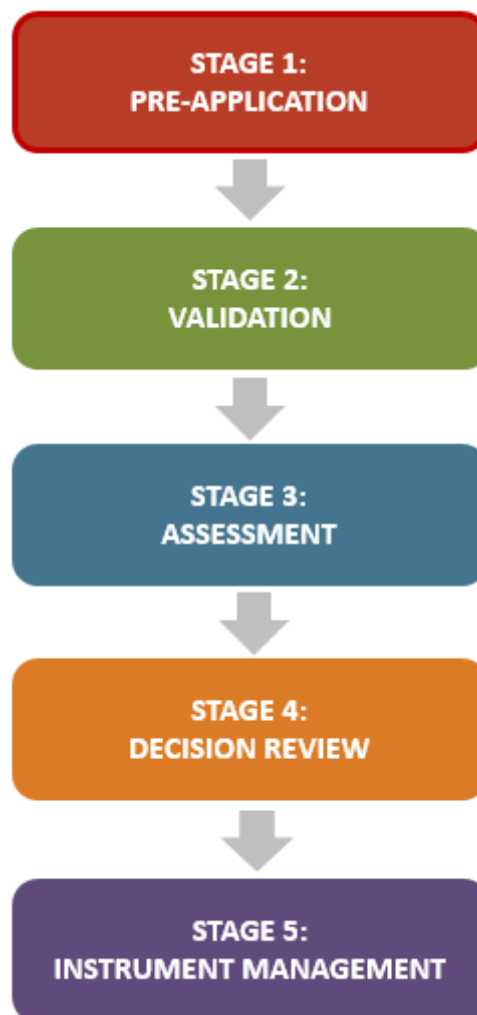


Figure 1. Stages of assessment



Stage 1: Pre-application

Stage 1: Pre-application is split into two parts.

- Stage 1A: Pre-application
- Stage 1B: Clearing referrals (under Part V of the EP Act)

The flowchart below summarises the procedure for Stage 1A: Pre-application.

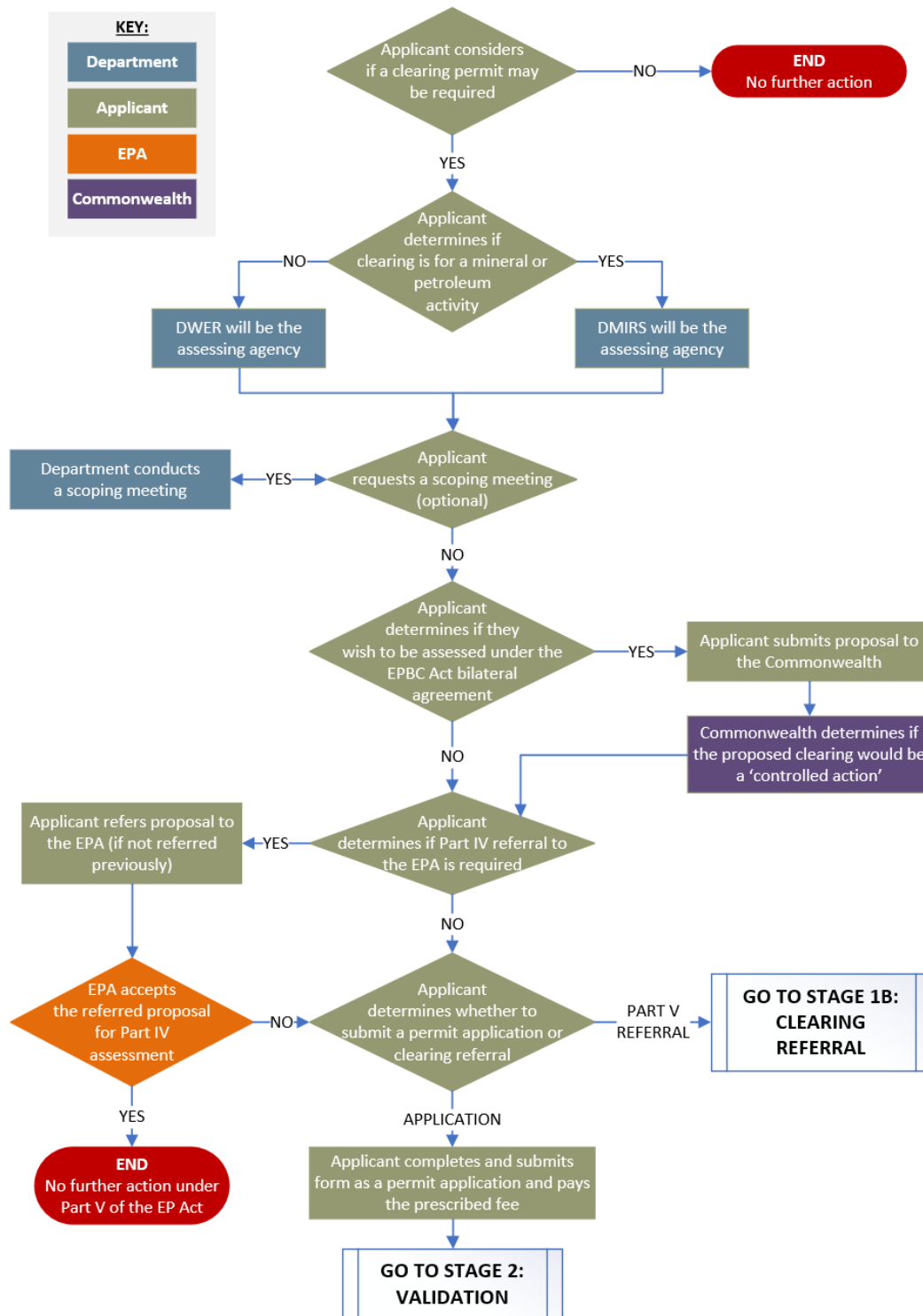


Figure 2. Stage 1A: Pre-application process flowchart



The flowchart below summarises the procedure for Stage 1B: Clearing referrals.

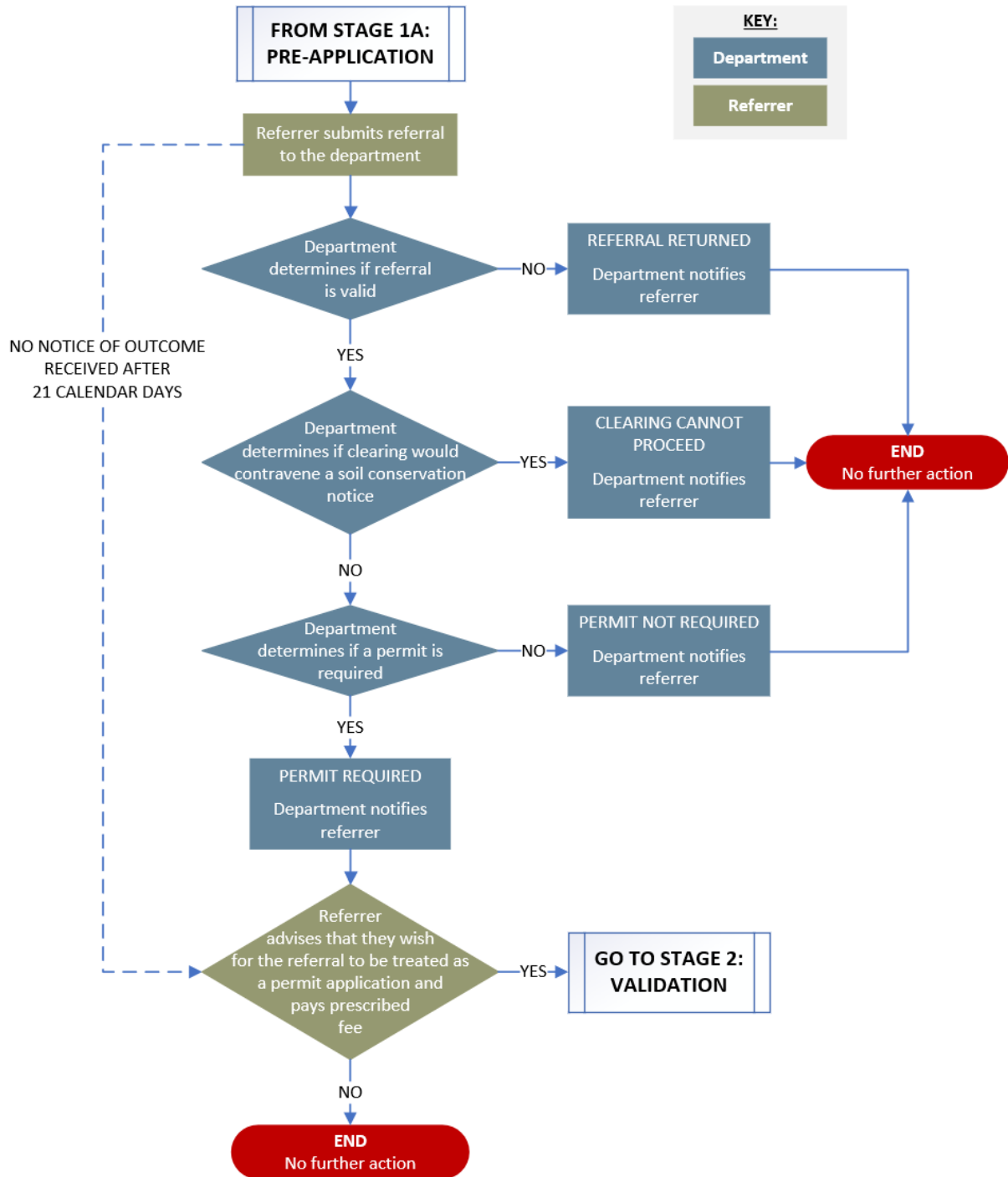


Figure 3. Stage 1B: Clearing referrals process flowchart



1.1 Applicant considers if a clearing permit is required

(s.51C, 51D, 51DA, Sch 6 EP Act; r.4, 5 Clearing Regulations)

Stage 1 begins when the prospective applicant considers whether they need a clearing permit.

Under the EP Act, a clearing permit will be required unless the proposed clearing:

- does not include native vegetation (as defined under the EP Act and the Clearing Regulations)
- is exempt (see [A guide to the exemptions and regulations for clearing native vegetation](#) for further information), or
- is referred to the relevant department and the department notifies the referrer that a permit is not required (see Section 1.6 below).

Types of clearing permits

(s.51E(1), 51E(2), 51E(7), 51E(8) EP Act)

Prospective applicants may apply for either an 'area permit' or a 'purpose permit'.

Area permits are suitable for landowners who want to clear a specific area of their own property. For example, a landowner would apply for an area permit when clearing to establish a market garden, paddock, or gravel pit.

Purpose permits are suitable for a person or entity (who may or may not be the landowner) who wants to clear several different areas from time to time for a specific purpose. For example, it would be appropriate to apply for a purpose permit when clearing:

- for drainage works on crown land
- to install utility services on crown land or private property
- for a gravel pit on land not owned by the applicant.

Clearing native vegetation under a works approval or licence

(Pt V Div 3 EP Act; Sch 6 EP Act; Pt 3 Div 1 EPBC Act)

A clearing permit is not required if the clearing is done in accordance with a works approval or licence. This means prospective applicants may apply for clearing under a works approval or licence (when relevant) or may apply for a clearing permit separately.

Where an applicant has applied for clearing under a works approval or licence, sometimes the department will recommend they make a separate clearing permit application. This might be, for example, when the proposed clearing:

- relates to mineral and petroleum activities
- relates to another existing clearing permit (or application) separate from the current works approval application



- is potentially contentious
- may impact a matter of national environmental significance, as defined under Part 3 Division 1 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) (see Section 1.4 below)
- may require environmental offsets conditions on the relevant clearing permit, in accordance with the *WA Environmental Offsets Policy* and the *WA Environmental Offsets Guidelines* (available on the [Environmental Protection Authority's \(EPA\) website](#)).

Part V Division 3 assessment processes are not accredited under the EPBC Act bilateral agreement. If assessment under the bilateral agreement is preferred or required, it can only be done via a clearing permit application. Go to the department's [Assessment Bilateral Agreement – frequently asked questions page](#) for further guidance.

See the [Procedure: prescribed premises works approvals and licences](#) for guidance on the works approval and/or licence application and assessment processes.

1.2 Applicant considers if clearing is for mineral and petroleum activities

(s.20 EP Act)

The Department of Mines, Industry Regulation and Safety (DMIRS) is a statutory authority delegated under s.20 of the EP Act to receive, assess, and determine applications for clearing permits.

This delegation of authority is restricted to clearing permits relating to 'mineral and petroleum activities' regulated under the following Western Australian laws:

- *Mining Act 1978*
- *Petroleum and Geothermal Energy Resources Act 1967*
- *Petroleum Pipelines Act 1969*
- *Petroleum (Submerged Lands) Act 1982*
- State Agreements administered by the Department of Jobs, Tourism, Science and Innovation.

When the department receives clearing forms that relate to mineral or petroleum activities regulated under these laws, they will be referred to DMIRS. Go to the [DMIRS website](#) for further information.

These types of clearing forms should be submitted to DMIRS directly. This helps avoid administrative delays to approvals. If the applicant/referrer is unsure about whether their proposed clearing is associated with mining and petroleum activities, please contact DMIRS for further advice.



1.3 Applicant requests a scoping meeting (optional)

The prospective applicant may request a scoping meeting with the department prior to submitting an application to discuss:

- what information to provide
- how they intend to avoid or mitigate the impacts of the proposed clearing
- whether the impacts of the proposed clearing are likely to be complex or result in a significant impact to the environment (see Sections 1.5 and 2.2 for further information).

A scoping meeting may enable a more streamlined assessment of an application by potentially reducing the need for follow up requests for further information during validation and assessment.

Coordinating multiple applications across the department

In addition to matters covered by Part V of the EP Act, the department regulates the state's water resources under the *Rights in Water and Irrigation Act 1914* (RIWI Act) and support the Environmental Protection Authority (EPA) to administer Part IV of the EP Act.

The department provides a 'one stop shop' for prospective applicants that may need instruments across several environmental and water regulatory functions. This helps to streamline the application process; for example, the department may hold joint scoping meetings with the applicant and representatives from all relevant regulatory areas.

1.4 Applicant determines if they wish to be assessed under the EPBC Act bilateral agreement

(Pt VIII A EP Act; Bilateral Agreement Regulations; s.45, Pt 3 Div 1 EPBC Act)

The Australian Government and the Government of Western Australia have entered into a bilateral agreement which accredits the department's Part V Division 2 EP Act clearing permit application assessment processes. The EPA's Part IV assessment processes (see Section 1.5) are also accredited under the bilateral agreement.

This agreement allows the department to assess significant clearing impacts on matters of national environmental significance while undertaking an EP Act clearing assessment. These include matters related to:

- world and/or national heritage properties
- wetlands of international importance ('Ramsar wetlands')
- nationally listed threatened species and ecological communities, and
- listed migratory species.

For the bilateral agreement to apply, the proposed clearing must have been referred to the Australian Government and determined to be a 'controlled action' that the federal Minister for the Environment must approve.



Where the proposed clearing is deemed to be a 'controlled action', and the prospective applicant wishes for the department to assess it under the bilateral agreement, the relevant [form](#) with the clearing permit application.

For more information on the bilateral agreement, see the department's [A guide to native vegetation clearing processes under the assessment bilateral agreement](#).

If the proposed clearing will impact on matters of national environmental significance, but the prospective applicant does not wish to be assessed under the bilateral agreement, a separate application must be made to the Australian Government under the EPBC Act. See the [Department of Agriculture, Water and the Environment's website](#) for further information.

1.5 Applicant determines if a Part IV referral to the EPA is required (if applicable)

(s.37B, 38, 51F EP Act; Sch 6 EP Act)

Prospective applicants must determine whether the proposed clearing is considered to be a 'significant proposal' and, if necessary, consult with the EPA about whether to refer it for formal assessment under Part IV of the EP Act. A significant proposal is one that is likely, if implemented, to have a significant effect on the environment. For more information on the interaction between Part IV and Part V assessments, see Sections 1.6 and 2.2.

A clearing permit is not required when the clearing is authorised under a Part IV ministerial statement.

Any clearing the EPA does not authorise cannot be subsequently authorised by a clearing permit.

For more information on the EPA's processes, and the factors it considers when determining a proposal's 'significance', go to the [EPA's website](#).

1.6 Applicant determines whether to submit a Part V clearing referral

(s.51C, 51DA EP Act)

Prospective applicants have the option to submit a Part V clearing referral to the department for very low environmental impact clearing.

The department will assess the referral against the criteria set out in the EP Act and notify the referrer that it has made one of the following determinations:

- a clearing permit is required for the proposed clearing
- a clearing permit is not required for the proposed clearing, or
- the proposed clearing cannot proceed, as it would contravene a soil conservation notice.



Referrals must be submitted using the correct [referral form](#). Referrals that are incomplete and/or not submitted correctly will be returned without assessment.

For more information on Part V clearing referrals, and the criteria used to determine whether a permit is required, see the department's [Guideline: Native vegetation clearing referrals](#).

Publication of referrals and referral outcomes

(s.51DA(7) EP Act; Pt 3 Clearing Regulations)

There is no statutory requirement to advertise referrals for public comment. However, all referrals and referral outcomes will be published on the department's ['Clearing referrals and other matters not for public comment or appeal' webpage](#). Referrals to DMIRS are published on the [DMIRS website](#). There are no appeal rights for referral determinations.

The provisions for keeping certain matters relating to referrals and referral outcomes confidential are the same as those for permit applications. For more information, see 'Confidential matters and other sensitive information' in Section 2.6.

Relationship between Part IV and Part V referrals

(s.37B, 51F EP Act)

The department assesses clearing referrals under Part V of the EP Act. This referral process relates to very low environmental impact clearing. By contrast, referrals submitted to the EPA are assessed under Part IV of the EP Act. These referrals are for proposals that are likely to have a significant impact on the environment. The [EPA's website](#) has further information on Part IV referrals.

The department is not permitted to make a decision on any Part V referrals that are undergoing a Part IV EPA assessment. The department must also not make a decision that contradicts a Part IV determination that has already been issued.

Proposed clearing is 'related to' a Part IV proposal if the clearing would only be needed if the Part IV proposal were approved. This does not include:

- any tests, surveys, investigations, or other work required to support the assessment of the Part IV proposal, or
- minor or preliminary work that the EPA consents to.



1.7 Applicant completes and submits application form and fee

(s.51E, 51KA, 51MA, 51N EP Act)

Where a clearing permit is required, the prospective applicant must complete the appropriate form. The forms have instructions on how to submit them and how to pay the prescribed fee. Go to the department's website to find the [clearing forms](#).

Requesting a Part V referral be treated as an application

(s.51DA(8), 51E EP Act)

If the proposed clearing has gone through the referral process, the referrer may request (in writing) that the referral be treated as an application for a new clearing permit if they:

- have received a referral decision notice that a clearing permit is required, or
- have not received a referral decision notice within 21 calendar days of submitting the referral.

A referral cannot be converted into an amendment application, even if it relates to clearing on land covered by an existing clearing permit. See Section 5.4 for further information on amendments.



Stage 2: Validation

The flowchart below summarises the procedure for Stage 2: Validation.



Figure 4. Stage 2: Validation process flowchart



2.1 Department receives application

(s.51DA, 51E EP Act)

Stage 2 begins when the department receives either:

- an application, or
- written confirmation from the referrer that their referral should be treated as an application (see Section 0).

2.2 Department determines if a Part IV referral to the EPA is required

(s.37B, 38(5), 39A EP Act)

The department must refer 'significant proposals' to the EPA if this has not already been done by the applicant (see Section 1.5).

On receipt of an application, the department will make a preliminary determination on whether it appears to be a 'significant proposal' and should be referred to the EPA under Part IV of the EP Act.

When this occurs, the EPA will review the proposal's subject matter and determine whether a Part IV assessment is required.

Related Part IV proposals

(s.51F, 51KB EP Act)

The department will not make a decision on any clearing permit application that relates to a matter that has been referred to and/or accepted by the EPA for assessment under Part IV of the EP Act. In such cases, the department will recommend that the applicant withdraw their clearing permit application and resubmit it, only if the EPA declines to accept the referral to formally assess the clearing under Part IV. This also applies to clearing permit amendment applications. See Section 5.4 below for further information on clearing permit amendments.

Proposed clearing is 'related to' a Part IV proposal if the clearing would only be needed if the Part IV proposal were approved, and excludes:

- any tests, surveys, investigations, or other work required to support the assessment of the Part IV proposal, or
- minor or preliminary work that the EPA consents to.

For more information on the EPA's processes, go to the [EPA's website](#).

2.3 Department reviews application

(s.3(1), 51A, 51DA, 51E EP Act; r.4, 7(1) Clearing Regulations)

The department will review the application to determine whether the applicant has:

- applied for the correct type of clearing permit
- filled out the application in the approved form and manner



- paid the correct prescribed fee, and
- all the required information.

The department will also confirm whether a clearing permit is required for the proposed clearing. If the proposed clearing relates to non-native vegetation or is exempt (see Section 1.1), the applicant will be contacted and advised to withdraw their application.

If the applicant has met the above criteria, the application is considered 'complete' and the department will progress it to the step outlined in Section 2.4.

If the application does not meet all of the above requirements, it is considered 'incomplete' and the department will contact the applicant (see below).

Incomplete applications

If an application has minor issues, they can be dealt with via phone or informal email (e.g. when the form has missing information, or the required documents were not attached with the form).

If an application has major issues, they will be addressed via a formal 'intent to decline' letter, and may include, for example, requesting that an applicant provide adequate supporting information with their application.

An application assessed under the bilateral agreement (see Section 1.4) must match the proposal submitted to the Australian Government and be deemed a 'controlled action' before submitting the clearing permit application.

After receiving an 'intent to decline' letter, the applicant must resolve the issues within the timeframe specified in the letter. The applicant may request an extension if required, which may be granted at the department's discretion.

If the requested information is not provided within the timeframe specified, the department will decline to deal with the application and notify the applicant accordingly.

Alternatively, the department may identify that the application is 'critically flawed' and decline to deal with it immediately. Critical flaws are when the applicant:

- submits an application for a bilateral assessment without the proposed clearing first being deemed a controlled action (see Section 1.4 above)
- fails to sign the legal declaration on the application form, and/or
- does not pay the prescribed fee when submitting the application.

When an application is declined, Stage 2 ends and the application does not progress to Stage 3.

Resubmission

If an applicant updates and resubmits a previously declined application, the department will treat it as a new application.



2.4 Department determines the application is valid

Once the applicant submits the required information and pays the prescribed fee, the department will determine if the application is 'valid'. If it is valid, the department will notify the applicant that their application has been received and accepted for assessment.

The notification letter will ask the applicant to verify within seven calendar days that the boundaries of the application area, as uploaded to the department's electronic mapping system, are accurate. If no response is received from the applicant within this timeframe, the department will assume the boundaries are accurate.

2.5 Department determines the assessment pathway

The department conducts a preliminary desktop assessment of the application to determine the complexity of the proposed clearing, and to identify the impacts/risks.

Some factors the department may consider in this initial assessment include:

- size and location of the application area
- environmental values present within the application area
- number and nature of any nearby environmentally sensitive receptors
- proposed end-purpose of the clearing
- anticipated/proposed public benefit of the clearing or final land use, such as clearing for public infrastructure, recreational park areas, agricultural purposes, or firebreaks.
- the extent to which the applicant has made efforts to avoid and/or mitigate potential impacts to environmental outcomes, and/or
- planning and other relevant matters.

During the assessment process, the department may identify additional information that will move the application into a different assessment pathway.

2.6 Department publishes application and supporting information

(s.51E, 51Q EP Act; r.8, 8A Clearing Regulations)

The department will publish an accepted application on the department's website, inviting comment from the general public for a specified period of time. The department may also advertise the application in a relevant local newspaper.

The department may also undertake targeted consultation by directly seeking comment from persons, organisations, or public authorities that are likely to have a direct interest in the application ('direct interest stakeholders').

These may include:

- native title holders or claimants



- local government authorities, and
- other relevant government departments or agencies, including Land Conservation District Committees and Pastoral Land Boards.

If the clearing permit application is being assessed under the EPBC Act bilateral agreement, the department will also send the Australian Government a copy of the application acceptance notice.

The application will be made available for public comment on the department's website at the ['applications for public comment' page](#) for up to 21 calendar days. Applications submitted to DMIRS are published on [their website](#).

Highly complex or potentially contentious applications may be made available for public comment for longer periods, at the department's discretion.

After the public comment period closes, the relevant application will remain accessible online via the [Clearing Permit System](#), as per the requirement to keep a public record of all applications. However, no new comments will be accepted, other than in limited exceptional circumstances.

Confidential matters and otherwise sensitive information (s.51Q EP Act; r.8, 8A, Pt 3 Clearing Regulations)

The information submitted in an application will be made publicly available. Applicants may ask in their application or otherwise in writing, not to publish certain information.

On receiving such a request of this nature, the department will acknowledge its receipt and assess it. The department will take reasonable steps to protect any information that is genuinely confidential and/or commercially sensitive; for example, by redacting the information before publication or withholding publication of some documents entirely.

For clearing permit applications, the department is required to keep a public record of:

- the applicant's name
- whether the application is for an area permit or purpose permit
- a description of the area proposed to be cleared (the 'application area' including location)
- the purpose of the proposed clearing
- the period for which the permit is sought
- the size of the application area (area permits only), and
- any additional information requested by the department.

In all cases, the department will redact an applicant's personal details (including bank details and signatures) from the application form before it is published for public comment.



Note that the department will not redact personal information from the supporting documents submitted with the application form. Where the applicant has given sensitive and/or private information in any supporting documents, they must provide additional copies of those documents with all personal information (including signatures) removed or redacted.

Other sensitive information may also be removed from the application or supporting material before publication at the department's discretion; for example, where the precise locations of threatened and otherwise protected species would be revealed.



Stage 3: Assessment

The flowchart below summarises the procedure for Stage 3: Assessment.

See Section 3.5 below for information on how the processes for an ‘undertaking to grant’ differ from the typical processes.

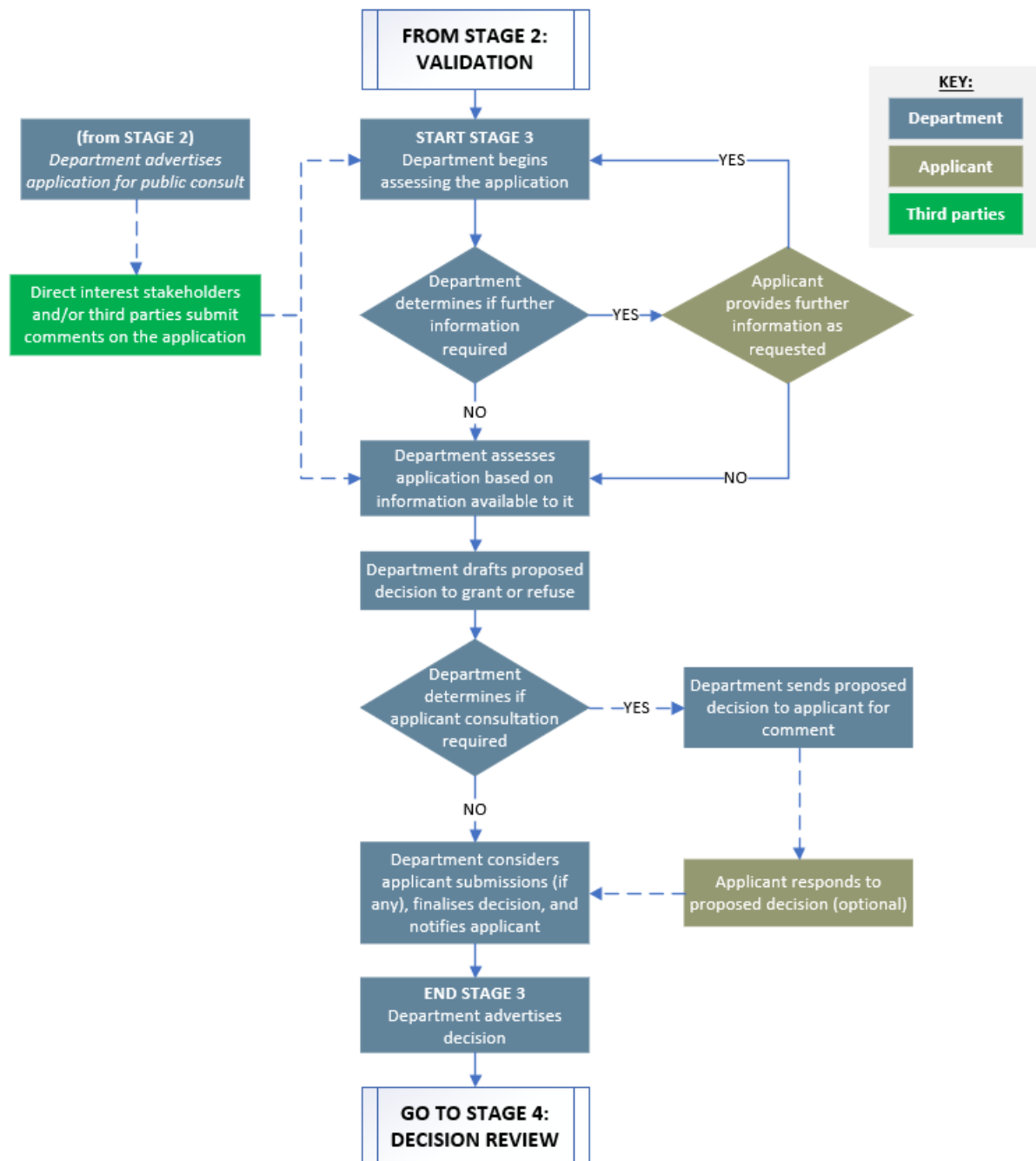


Figure 5. Stage 3: Assessment process flowchart



3.1 Department determines if further information is required

Stage 3 begins when the department notifies the applicant that the application was accepted for assessment and publishes it on the department's website for public comment.

The department will tell the applicant if further information is required to continue the assessment (e.g. a survey of the baseline flora present in the application area) using a formal 'request for further information' letter.

The applicant must provide the requested information within the specified timeframe. In most cases, the applicant will have 30 calendar days to provide the information. The department will give the applicant a longer timeframe if the information request requires more field and detailed desktop work. The applicant may also request a time extension, which may or may not be granted at the department's discretion.

If the applicant does not provide the requested information within the specified timeframe, the assessment will continue, and the department will make a decision based on the information available to it at that time.

Note that this may result in a refusal of the application, or imposing stricter conditions on the clearing permit, if one were granted.

For relatively minor information requests, the department may notify the applicant via email or flag the matter in the draft permit for the applicant to respond, where one is provided for comment (see Section 0).

3.2 Department assesses application

(s.51E, 51O, 51P, 51Q EP Act; Sch 5 EP Act; r.8 Clearing Regulations)

The department will do a risk-based and evidence-based assessment of the environmental impacts of the application to determine whether to grant or refuse to grant a clearing permit. This assessment will include consideration of any comments received from direct interest stakeholders or the general public about the application.

This process principally involves assessing the degree to which the proposed clearing activities are or are not at variance with the Clearing Principles listed in Schedule 5 of the EP Act.

The levels of variance are:

- not at variance
- not likely to be at variance
- may be at variance
- at variance
- seriously at variance.

The department may only make a decision which is 'seriously at variance' with the Clearing Principles if, and only if, in the department's opinion there is a good reason



for doing so; that reason will be clearly documented and published in the decision report (refer to Section 3.3 below).

When DMIRS is assessing proposed clearing activities that may result in a 'seriously at variance' decision, it will refer the application to DWER for finalisation. This is in accordance with the [administrative agreement between DWER and DMIRS](#) (see also Section 1.2).

In assessing the proposed clearing activities, the department will primarily use the following documents:

- [A guide to the assessment of applications to clear native vegetation](#)
- [A guide to native vegetation clearing processes under the assessment bilateral agreement \(for bilateral assessments\)](#)
- [WA Environmental Offsets Policy](#) and [WA Environmental Offsets Guidelines](#).

Additionally, the department will review any submissions from direct interest stakeholders or the general public.

The assessment will also consider:

- other relevant Part V approvals and/or pending applications
- any planning instruments or other matters that the department considers to be relevant (s.51O(4) of the EP Act)
- relevant approved policies under Part III of the EP Act (s.51P).

Updating an application mid-assessment

An applicant may update their application during the assessment process. If the changes make it a different application in substance, the department will treat the updated application as an entirely new one (including adjusting the assessment timeframe – see the *DWER's assessment timeframes* section below).

In such circumstances, the department will seek comments from direct interest stakeholders and publish the application for public comment again (see Section 2.6 above). This would include notations to say what has changed from the original application.

Depending on the nature of the update, this may alter the prescribed fee and/or supporting information requirements for the application. The department will decline to deal with the application if the applicant does not pay the revised fee (see Section 2.4 above).

3.3 Department drafts and (if applicable) sends proposed decision to applicant for comment

(s.51E(7), 51E(8), 51H EP Act)

When the department has completed the assessment, the department will prepare a proposed decision to grant or refuse to grant the clearing permit, noting the reasons in a draft decision report.



When the proposed decision is to grant the clearing permit, the department will prepare a draft permit with any conditions considered necessary or convenient for the purposes of the prevention, control, abatement, or mitigation of environmental harm, or for offsetting the loss of cleared native vegetation.

Types of conditions

(s.51G, 51H, 51I EP Act)

The conditions will be proportionate to the assessed potential impact on the environment. They may include conditions that:

- describe the area(s) that may and/or may not be cleared
- describe the purpose(s) for which the clearing may take place (purpose permits only)
- specify measures the clearing permit holder must take to prevent, control, abate, and/or minimise the likelihood of environmental harm
- require a permit holder to:
 - establish and maintain vegetation on other land to directly or indirectly offset the loss of the cleared vegetation
 - monitor operations relevant to and environmental harms resulting from the clearing activities
 - send periodic audit compliance reports to the department
 - prepare, implement and adhere to environmental management plans
- the department considers necessary or convenient to prevent, control, abate, or mitigate environmental harm.

Unless stated otherwise on the clearing permit, the default duration is:

- two years for an area permit
- five years for a purpose permit.

The department will determine an appropriate clearing permit duration and note it on the draft permit.

Department sends proposed decision to applicant (if applicable)

The department may send the proposed decision draft document(s) to the applicant for comment before issuing its final decision.

If further information is required to finalise a decision, but the information is not significant enough to warrant a formal 'request for further information' letter, the department will request it by highlighting those specific matters in the draft documents for the applicant's attention.



For a bilateral assessment under the EPBC Act, the department will also send the proposed decision documents to the Australian Government at this time, inviting them to provide comment.

3.4 Applicant responds to proposed decision (if applicable)

Where the applicant is sent the draft documents for comment, they will have a minimum of 21 calendar days to do so before a decision is finalised. The proposed decision notice will include instructions on the format for submitting comments.

Alternatively, the applicant may either ask:

- for a time extension (which may or may not be given at the department's discretion)
- to waive the remainder of the comment period and have the decision issued immediately.

If the applicant does not respond within the specified timeframe, the department will assume there are no objections and finalise its decision.

3.5 Department considers applicant submissions, finalises decision, and notifies applicant

(s.51E(5), 51E(6), 51Q EP Act; r.8(1)(b), 8(1)(c) Clearing Regulations)

If the applicant was consulted on the draft proposed decision documents, the department will review the applicant's comments (if any) and record the department's responses in an appendix attached to the final decision report.

The department will then make a final decision to either:

- grant the clearing permit, or
- refuse to grant the clearing permit.

The department will then notify the applicant of the decision.

This decision will be published (see Section 3.6) and recorded in the department's electronic record-keeping system.

Relationship to other decision-making authorities

(s.51F EP Act)

If another decision-making authority has made a determination that would still mean clearing could not occur regardless of whether a clearing permit were granted (e.g. planning approval decisions), the department may elect not to finalise their decision on that application for as long as the other decision-making authority's determination remains in effect.

In the case of the EPA, the department is prohibited under the EP Act from making a decision that would allow the implementation of a proposal undergoing a Part IV



assessment, or that would be not in accordance with an implementation agreement or decision.

Agreements in principle

Applicants may apply for a clearing permit while seeking a related planning approval from the relevant local government authority. Where the assessment of the clearing activities indicates that the department would be likely to grant the application, but the relevant planning approvals are still pending, the department may elect to send the applicant an 'agreement in principle'.

This is a non-statutory non-binding document that gives the applicant (and the relevant decision-making authority) an indication of what clearing permit conditions would likely be on the permit, if it were granted.

Undertakings to grant - decision

(s.51E(2)(a), 51E(9), 51E(10), 51H, 51Q EP Act; r.8(1)(b), 8(1)(c) Clearing Regulations)

Area permit applicants must demonstrate they own the land before they are granted an area permit. Where the area permit applicant would be granted the permit but does not own the land yet, the department will give a written 'undertaking to grant'.

An 'undertaking to grant' will only be converted to a granted permit once the applicant gives the department proof that they have become the landowner. If proof of land ownership is not provided to the department within the specified timeframe, the undertaking will expire and the application will be refused.

The decision to grant an area permit once they become the owner of the relevant land will be subject to such conditions specified in the undertaking.

This decision will be recorded in the department's electronic record-keeping system.

3.6 Department publishes decision

(s. 51E(10A), 51Q EP Act; r.8(2)(b), 8(3)(b) Clearing Regulations)

After finalising a decision, the department will:

- notify any third parties who made submissions during the public consultation process, and
- publish it on the department's ['available for public appeal' webpage](#) for the duration of the appeal period (see Section 4 below). Permits granted by DMIRS are published on the [DMIRS website](#).

The department may also publish the decision to grant in a relevant local newspaper.

In the case of bilateral assessments, the department will also notify the Australian Government that a decision has been issued in relation to the application.

Stage 3: Assessment ends when the department publishes the decision.



Stage 4: Decision review

The flowchart below summarises the procedure for Stage 4: Decision review.

This flowchart does not include the processes relevant to an 'undertaking to grant'. See Section 4 for information about how the processes for undertakings to grant differ from those in this flowchart.

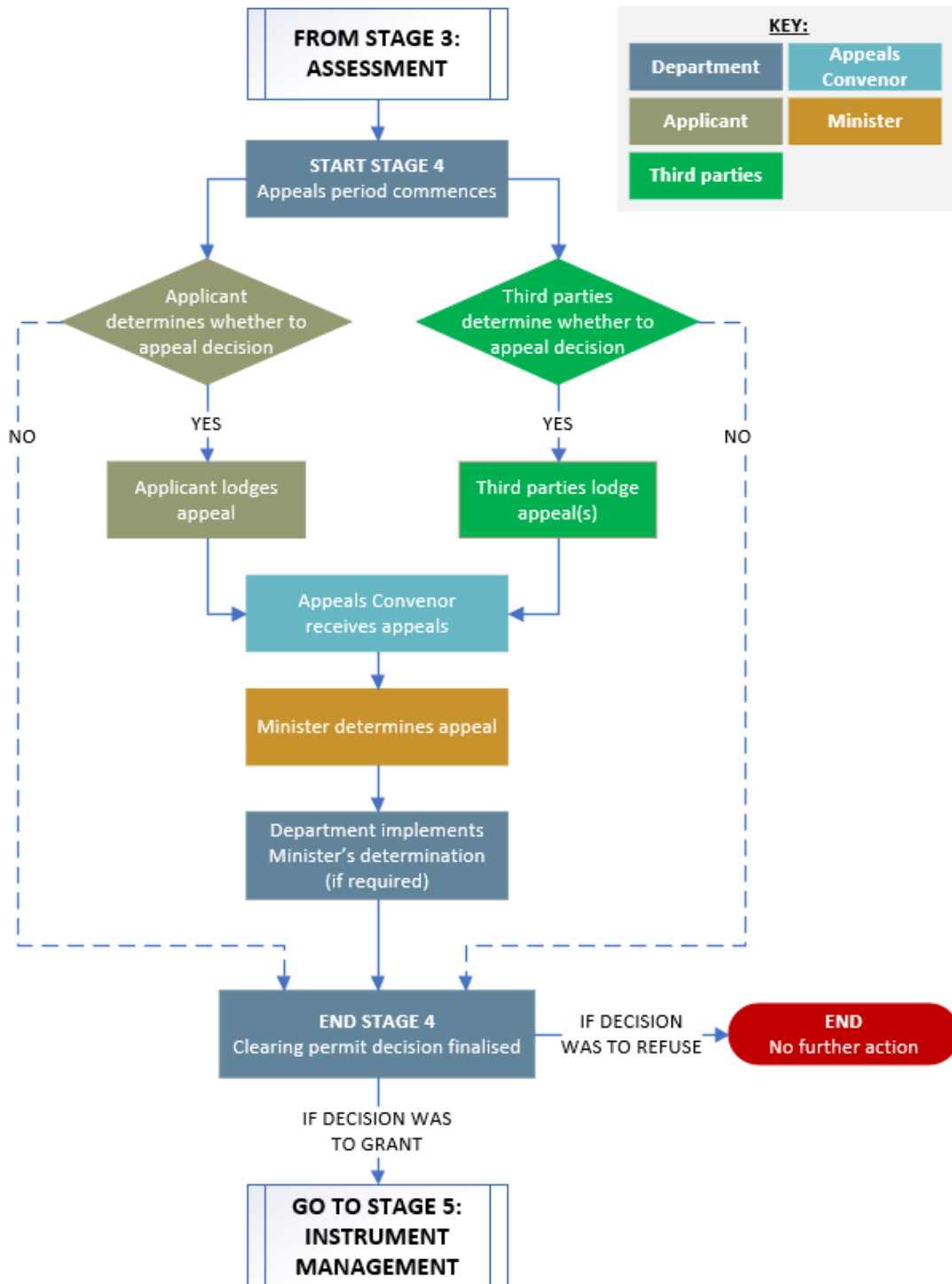


Figure 6. Stage 4: Decision review process flowchart



4.1 Applicant or third party lodges an appeal

(s.101A(1), 101A(3), 101A(4) EP Act)

Applicants or third parties who object to a decision may lodge an appeal with the Minister for Environment (the Minister) via the Office of the Appeals Convenor. Any appeals must be lodged within 21 calendar days of the applicant being notified of the decision.

Applicants may appeal against:

- a refusal to grant a clearing permit
- a permit being granted for less than the area they applied for
- the conditions of a granted permit (as the new clearing permit holder).

Third parties may appeal against:

- the grant of a clearing permit
- the conditions of a granted permit.

Note that until the end of the appeals period, or while the outcome of an appeal is still pending, a decision to grant a clearing permit is deemed not to have effect.

For more information on the Part V appeals process, go to the [Office of the Appeals Convenor's website](#).

If no appeals are lodged within the appeal period, Stage 4 ends.

Undertakings to grant - appeals

(s.51E(11), 51E(12), 101A(5) EP Act)

The appeal rights specified above also apply to decisions for:

- an undertaking to grant, or
- a refusal to give an undertaking to grant.

When clearing permits are granted following an undertaking to grant, these cannot be appealed.

4.2 Minister determines appeal

(s.51K(1)(h), 51K(2), 105(aa), 107, 109, 110 EP Act)

The Minister will consider the appeal and make a determination to either:

- allow/uphold the appeal, either in full or in part, or
- dismiss the appeal.

After the appeal determination, the department will give effect to the Minister's decision, which may include amending the clearing permit. Amendments of this type may not be appealed.

Where an appeal to the Minister is lodged, Stage 4 ends once that appeal is determined and the outcome implemented.



Stage 5: Instrument management

Figure 7 describes the instrument management options for the clearing permit holder and the department.

Stage 5: Instrument management begins when a clearing permit is granted. It continues for the instrument's entire duration, including while any relevant appeals are pending (see Stage 4 above).

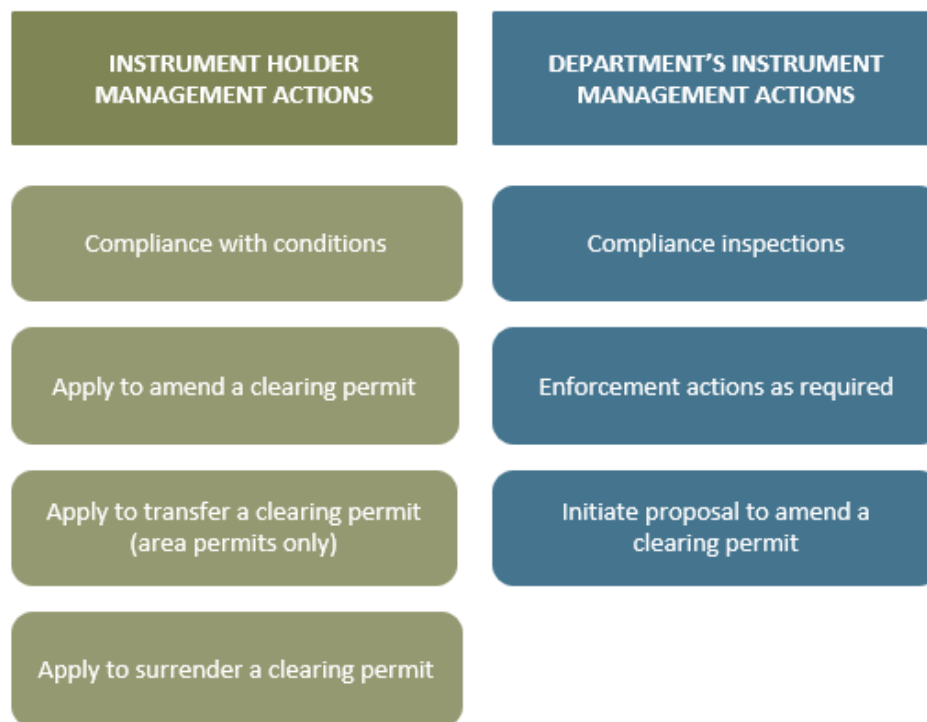


Figure 7. Stage 5: Instrument management activities

5.1 Clearing permit holder complies with conditions

(s.51J EP Act)

It is the responsibility of the clearing permit holder to ensure that they comply with the conditions listed on the permit.

Contravention of the conditions is an offence under the EP Act.

Reporting to the department

Many clearing permits include conditions that require the clearing permit holder to report on various aspects of their clearing activities, including:

- biodiversity survey reports on the health of the local ecosystem after the clearing activities or following revegetation efforts, and/or
- an annual environmental report, which may include information about:
 - the extent of clearing activities undertaken, and
 - monitoring data required by relevant clearing permit conditions.



5.2 Department undertakes compliance inspections

The department may inspect permitted areas from time-to-time to ensure clearing permit holders are complying with their clearing permit conditions.

The department uses a risk-based approach to determine the frequency of inspections.

To inform and provide context for risk, the department will use the best-available information including the following factors:

- the nature, scale, complexity of the operation (including any control measures conditioned on the clearing permit)
- compliance history of the business or person associated with the clearing
- controls and measures a person or business has in place to mitigate impacts on public health, the environment or water resources
- the location of water resources and the environment, including people, and their susceptibility to impacts to their value, beneficial use, quality, vulnerability, or rarity
- any suspected impact to public health, the environment and water resources, with consideration of cumulative impacts.

Those permitted areas considered by the department to have an overall higher risk associated with them are likely to be the subject of more frequent compliance inspections.

5.3 Department undertakes enforcement action as required

(s.70 EP Act)

Enforcement is a response to identified breaches of the law and involves a range of different actions to deter and punish offenders, and to require rehabilitation of damage to the environment.

In this context, enforcement has two key elements:

- Remedy – fixing the problem or ‘making good’ (e.g. issuing a vegetation conservation notice)
- Sanction – enforcement action undertaken to punish, deter and change behaviour (e.g. prosecution).

See the *Compliance and Enforcement Policy and Guideline: Prosecutions*, available on the [department's website](#), for further detail on the department's approach to responding to breaches of the law.



5.4 Clearing permit holder applies to amend a permit (s.51K, 51KA, 51KB, 51Q EP Act; r.7(2) Clearing Regulations)

An application for an amendment follows broadly the same processes as outlined in stages 1 to 4.

A clearing permit holder may apply to amend their permit at any time during the clearing permit's duration. An amendment may:

- add, remove, or vary a condition
- redescribe the boundaries of the area that may be cleared, or of the area assigned under a condition as an environmental offset or conservation covenant
- redescribe any of the principles, criteria, strategies, or processes relevant to the clearing (purpose permits only)
- correct a:
 - clerical mistake
 - figure which has been miscalculated
 - misdescription of any person, thing, or property
- change the format of the existing clearing permit
- align the existing clearing permit to conform with an approved policy
- give effect to a decision of the Minister
- extend the duration of the existing clearing permit.

Figure 8 summarises the application submission and validation processes for amendments.

An application to amend an existing clearing permit must:

- be submitted in the approved form and manner
- pay the correct prescribed fee, and
- provide all relevant required information.

The department will view any amendment applications that do not meet these requirements as incomplete and may send the applicant an 'intent to decline' letter. Following receipt of this letter, the applicant has 21 calendar days to provide the additional requested information.

The applicant may request an extension, which may or may not be allowed at the discretion of the department (see Section 2.3). Critically flawed applications may be declined immediately without first sending an 'intent to decline' letter.

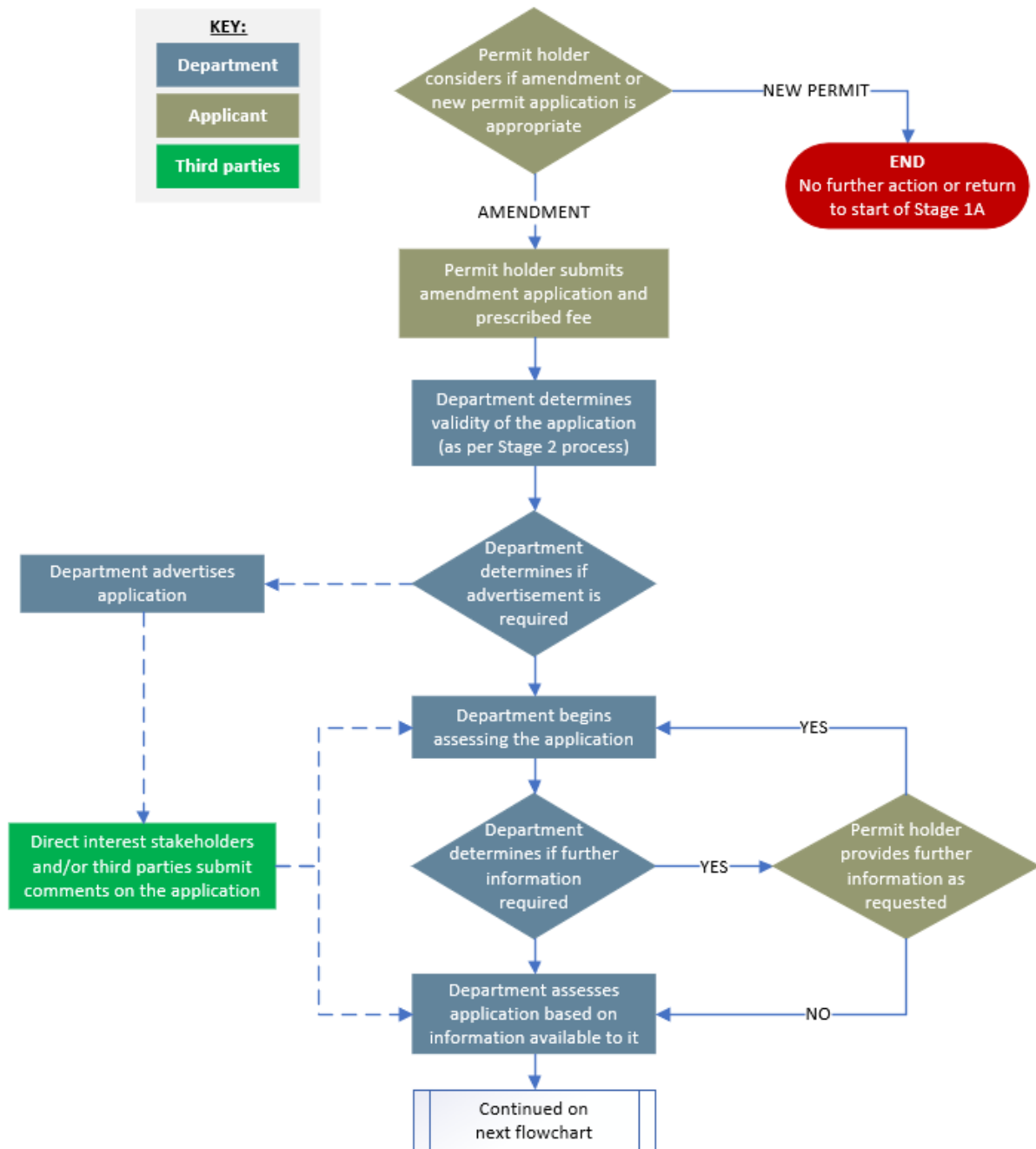


Figure 8. Amendment application process flowchart – application and validation

Although there is no statutory requirement to do so, the department invites public comment on amendment applications [via its website](#), and considers any comments received. Amendment applications submitted to DMIRS are published on the [DMIRS website](#).

After the comment period closes, the amendment application will remain accessible online via the department’s [Clearing Permit System](#), but no new comments will be accepted.

Figure 9 summarises the assessment process for amendment applications.

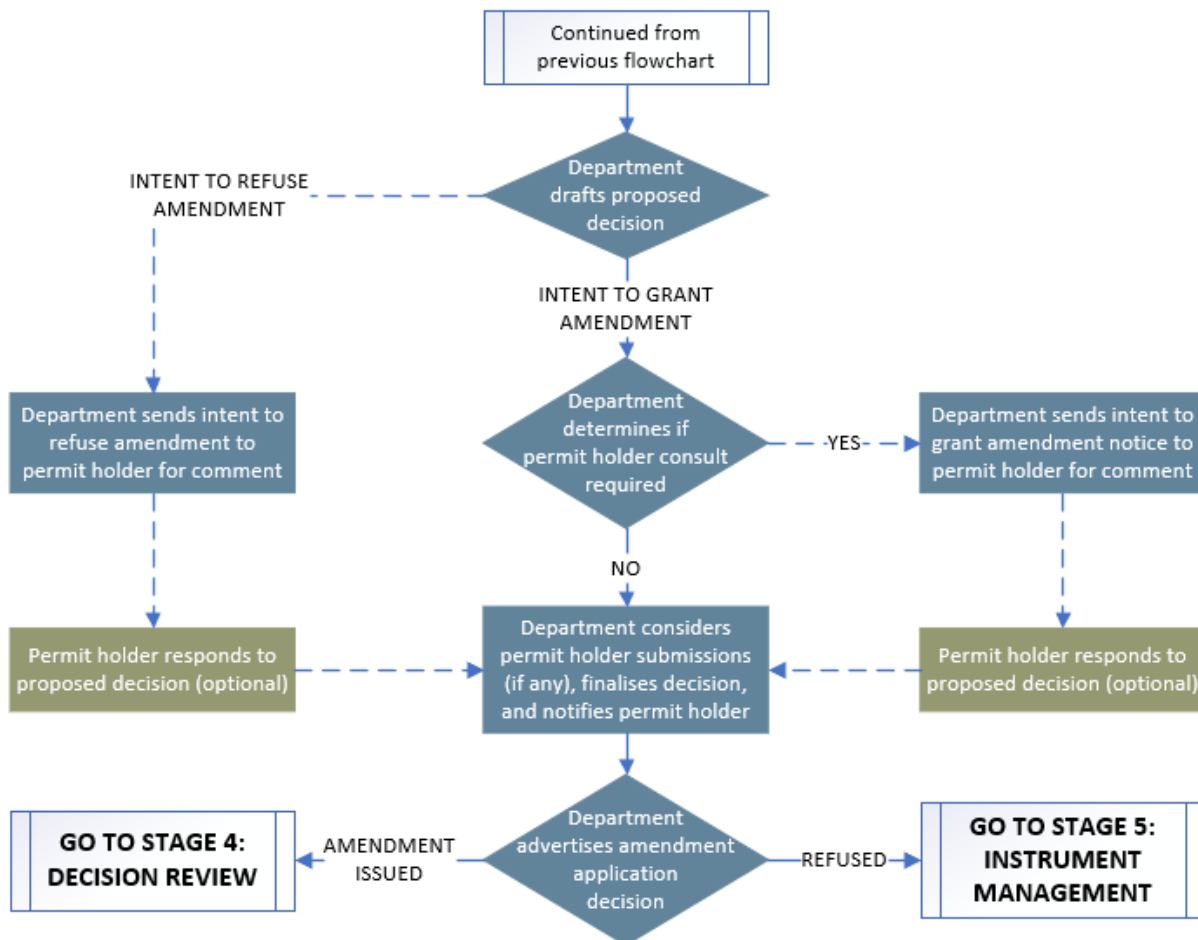


Figure 9. Amendment application process flowchart – assessment and decision

If additional information is required from the applicant to complete the assessment, the applicant will be notified via a ‘request for further information’ letter – see Section 3.1 above for further information.

On finalising their proposed decision, the department may notify the applicant about the intended decision, and allow a minimum of 28 calendar days for them to comment on why the proposed action should not be taken (see Section 0).

At the end of the comment period (or earlier, if waived by the applicant in writing), the department will take into account any comments received, and finalise their decision. The department will publish decisions to grant an amendment on the department’s [‘available for public appeal’ webpage](#). Amendments issued by DMIRS are published on the [DMIRS website](#).

Appeals against amendments

(s.51K(1), 101A, 105, 109, 110 EP Act)

For appeals against clearing permit amendment application decisions (see Stage 4 above), the clearing permit holder or a third party who objects to the decision to amend the clearing permit may appeal in writing to the Minister. The appeal must be



lodged within 21 calendar days of the clearing permit holder being notified of the amendment.

Pending the outcome of an appeal lodged against a granted amendment, the amendment:

- continues to have effect – if the clearing permit holder is the appellant, and the amendment reduces or restricts the extent or method of the authorised clearing
- does not come into effect – if the clearing permit holder is the appellant, and the amendment does not reduce or restrict the extent or method of the authorised clearing
- continues to have effect – where a third party is the appellant.

No appeal rights exist in the following circumstances:

- a refusal to grant an amendment
- an amendment issued to give effect to a decision of the Minister
- the grant of an amendment relating to:
 - correcting clerical mistakes
 - administrative changes that do not alter the obligations of the permit holder
 - amendments to conform with an approved policy or prescribed standard under the EP Act.

Decisions on amendments that are not available for appeal are published on the department's [‘clearing referrals and other matters not for public comment or appeal’ webpage](#). Non-appealable amendments issued by DMIRS are published on the [DMIRS website](#).

See Sections 4 and 4.2 for further information on appeals.

5.5 Department initiates amendment of a clearing permit

(s.51K, 51M, 101A, 105(aa) EP Act)

The department may initiate a clearing permit amendment process at any time during the permit's duration. This may include making any of the changes outlined in Section 5.4 above, although most department-initiated amendments are administrative only, such as to:

- make corrections
- update the format of the permit
- give effect to a decision of the Minister following an appeals process, or
- align the conditions with an approved policy or prescribed standard.

Figure 10 summarises the process for department-initiated amendments.

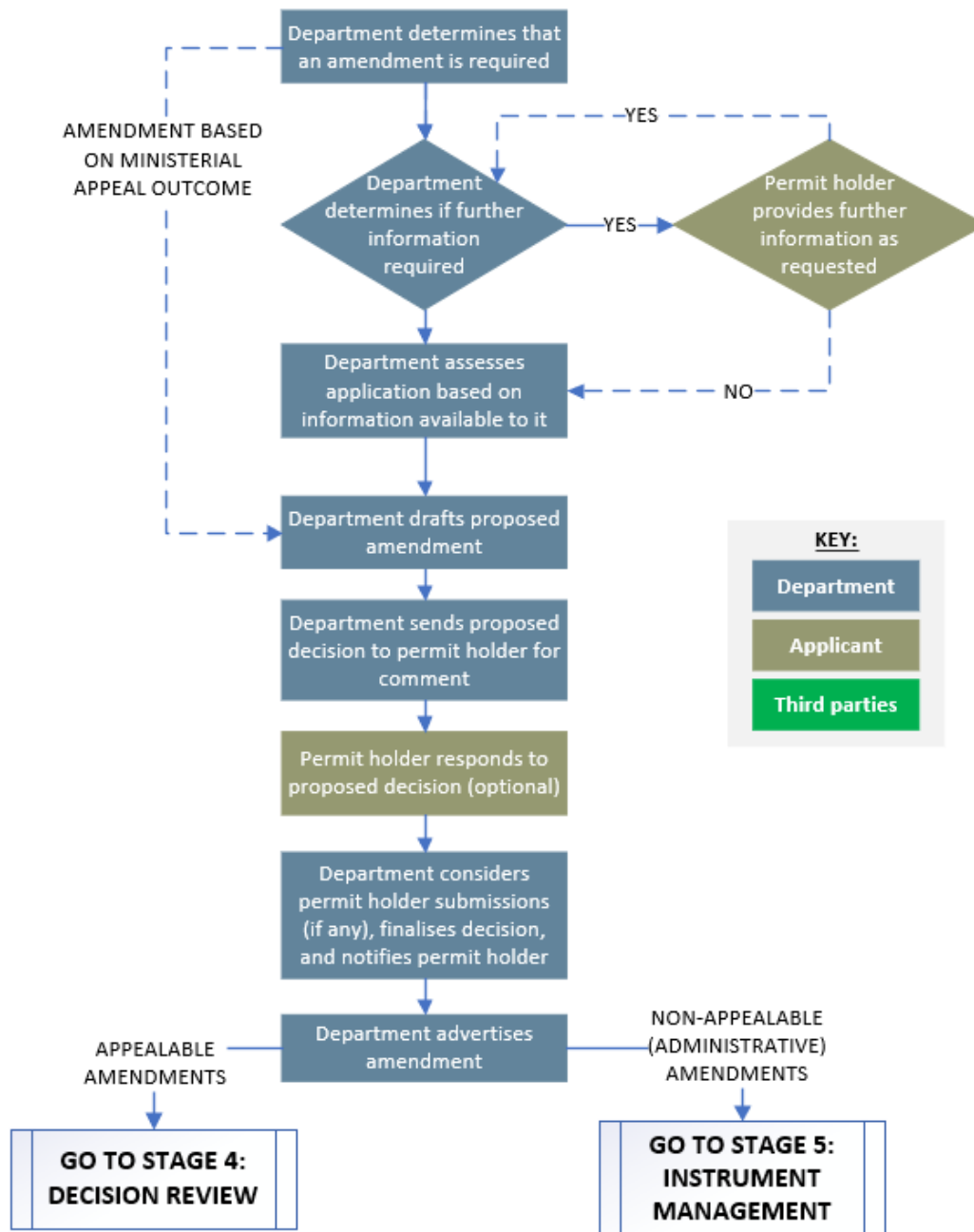


Figure 10. Amendments procedure flowchart – department-initiated amendments

Department-initiated amendments generally follow the same procedures as amendment applications and follow the steps from Stage 3 onwards.

The exception to this is when a permit is amended to reflect the Minister’s decision on an appeal. In this case, an ‘intent to amend’ notice is not required before the amendment is finalised. The department will, however, send an ‘intent to amend’ notice and consult with the permit holder on the wording of a condition, if this is not included in the appeal determination.

While assessing an amendment application that is not an administrative matter, the department may on a case-by-case basis elect to seek comments from direct interest stakeholders through a consultation process.



The same appeal rights and publication requirements exist for department-initiated amendments, as per Section 5.4 'Appeals against amendments'. Amendments that are only administrative in nature are not appealable.

5.6 New landowner notifies of clearing permit transfer

(s.51N, 51Q EP Act; r.8(1)(d) Clearing Regulations)

If the land to which an area permit applies is transferred to a new landowner, and that new landowner wishes to transfer the area permit into their name, they must notify the department of the transfer. The notification must:

- be made in the approved form and manner
- advise that the transfer or passing of the interest has occurred or is about to occur, and
- advise that the new owner wishes to become the holder of the clearing permit.

A clearing permit transfer follows broadly the same processes as those outlined in Stage 1 and Stage 2.

The department will return any incomplete and/or invalid transfer notifications to the clearing permit holder and take no further action.

Once the notification is validated, the area permit will be transferred into the new landowner's name and the department's records will be updated.

Until a valid notification is received by the department, the permit has no further effect, and is in effect suspended.

Decisions on transfers are not available for appeal and are published on the department's ['clearing referrals and other matters not for public comment or appeal' webpage](#). Area permit transfers accepted by DMIRS are published on the [DMIRS website](#).

Purpose permits cannot be transferred.

5.7 Clearing permit holder applies to surrender a permit

(s.51MA EP Act, r.7(2) Clearing Regulations)

An application to surrender an existing clearing permit follows broadly the same processes as those outlined in stages 1 to 4.

An application to surrender an existing clearing permit must:

- be made in the approved form and manner by the clearing permit holder
- be accompanied by the correct prescribed fee, and
- provide all relevant required information.



The department will consider surrender applications that do not meet these requirements as incomplete and may send the applicant an 'intent to decline' letter. Following receipt of an 'intent to decline' letter, the applicant has 21 calendar days to provide the additional requested information. The applicant may request an extension, which may or may not be allowed at the discretion of the department (see Section 2.3). Critically flawed applications may be declined immediately without first sending an 'intent to decline' letter.

The department will assess the application and determine to either:

- accept the surrender, or
- refuse to accept the surrender.

A clearing permit surrender will not be accepted if the permit holder has ongoing commitments that must be met as conditions of the permit. This may include, for example, revegetation management provisions.

The department will give written notice to the clearing permit holder of the final decision on the surrender application.

Decisions on surrenders are not available for appeal and are published on the ['clearing referrals and other matters not for public comment or appeal'](#) webpage. Surrenders accepted by DMIRS are published on the [DMIRS website](#).



DWER's assessment timeframes

The department's assessment timeframes are calculated from the first business day after the application is submitted. Timeframes are not statutory; rather they are in place to provide internal efficiency targets and some degree of certainty for applicants.

The department's target timeframe (see Figure 11) is to make a determination on 80 per cent of permit applications within 60 business days of the date of submission, with the remainder being determined within 90 business days.

The timeframes for an application start from zero days, regardless of whether or not the application has previously gone through the referrals process. However, where the applied-for clearing that was referred previously, opportunities for streamlining are expected to arise during the validation and assessment stages.

Stop the clock

In certain circumstances, the processing of an application may be placed on hold (placing it on 'stop the clock'). The period while the application is on hold does not count towards the department's target timeframes.

The department will 'stop the clock' for an application in the following circumstances:

- waiting for the applicant to submit further information (see Sections 2.3 and 3.1)
- waiting for the applicant to respond to draft decision documents, or a notice of the department's proposed decision (see Section 3.40)
- where the application is with the Australian Government for comment as part of the bilateral assessment processes (see Section 3.3)
- where the department determines not to make a decision while another decision is in force that would prevent the application being implemented (see Section 3.6).

The department requesting further advice or information from another government department or agency does not trigger the 'stop the clock' criteria.

The assessment timeframe ends once the department finalises its decision (end of Stage 3). The implementation of decisions based on appeal outcomes are not subject to assessment timeframes.

Comprehensive and well-supported referrals and/or applications and timely responses to the department's correspondence can reduce the frequency and length of any delays in the timeframes for processing an application.



Target assessment timeframes

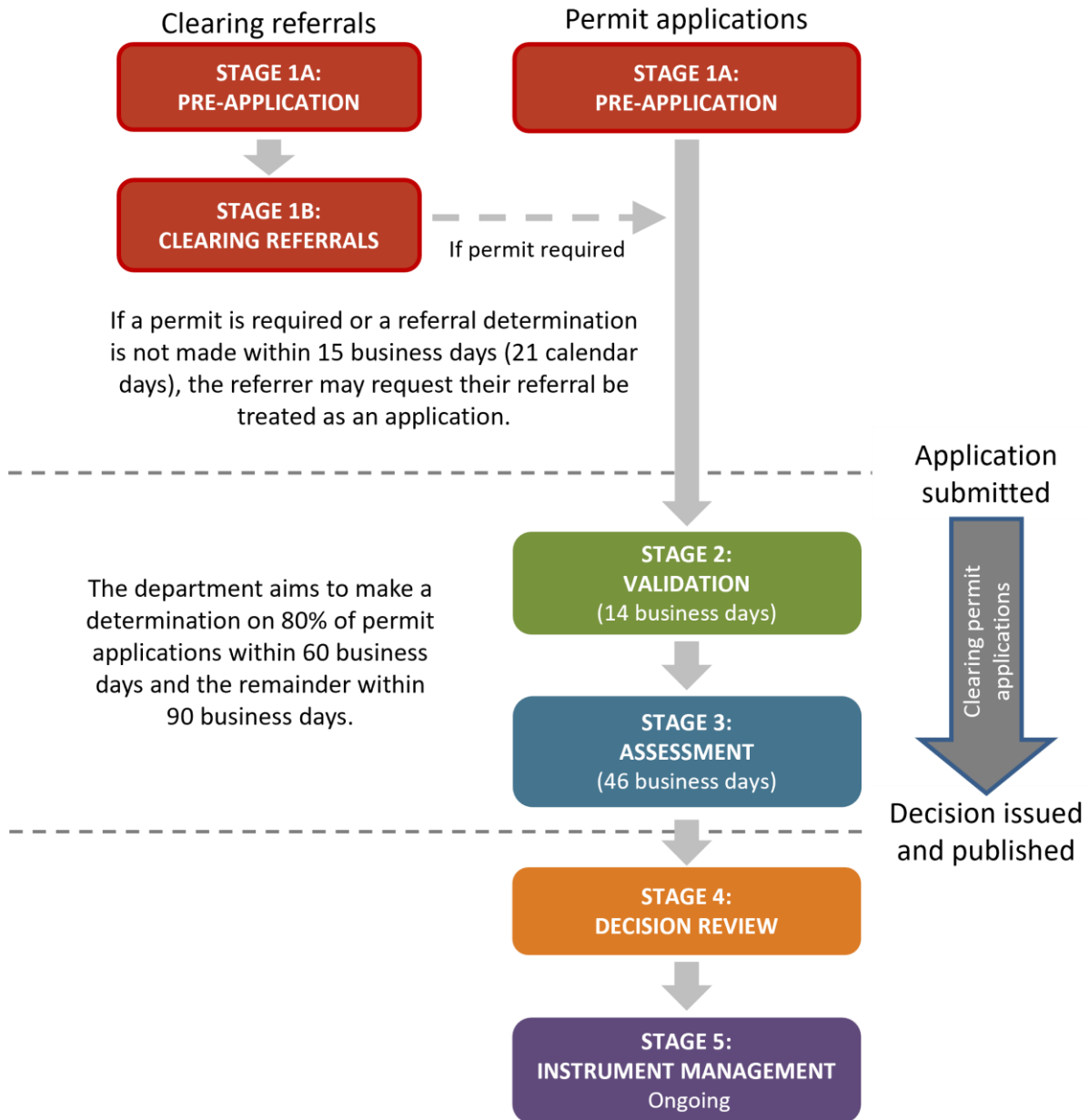


Figure 11. Target assessment timeframes



Delegations

The department manages the state's environment in accordance with the objects and principles of s.4A of the EP Act.

References to the CEO refer to the Director General of DWER, or their delegate exercising the powers or undertaking the duties delegated to them under s.20 of the EP Act. This includes delegated officers from DMIRS (as specified in the relevant delegation), for regulation of native vegetation clearing for purposes relating to mineral and petroleum activities (see Section 1.2 above).

Specific delegations under s.20 are published in the *Western Australian Government Gazette* (s.20(3)), available via the [Western Australian Legislation website](#).

Document implementation

This procedure comes into effect on the day it is published. Applications received after publication will be assessed in line with the information contained herein.

Related documents

WA State legislation
<i>Environmental Protection Act 1986</i>
Environmental Protection (Clearing of Native Vegetation) Regulations 2004
<i>Interpretations Act 1984</i>
<i>Rights in Water and Irrigation Act 1914</i>
Commonwealth legislation
<i>Environment Protection and Biodiversity Conservation Act 1999</i>

Go to the [Western Australian Legislation website](#) for copies of the relevant state legislation and the [Federal Register of Legislation](#) for copies of the relevant Commonwealth legislation.

DWER documents
Policy
Compliance and Enforcement Policy
Guidelines
A guide to native vegetation clearing processes under the assessment bilateral agreement
A guide to the assessment of applications to clear native vegetation
A guide to the exemptions and regulations for clearing native vegetation
Guideline: Native vegetation clearing referrals
Guideline: Prosecutions



DWER documents
Procedures
<i>Procedure: Prescribed premises works approvals and licences</i>
Other
<i>Customer Service Charter</i>

For a list of DWER documents directly relevant to native vegetation clearing, see the on the WA Government’s website.

Non-DWER documents	
Author	Title
WA State Government	<i>WA Environmental Offsets Policy</i>
WA State Government	<i>WA Environmental Offsets Guidelines</i>

Custodian and review

The application of this procedure will be continuously evaluated, with a review no later than two years from the date of issue, or sooner as required, and in line with the implementation of Environment Online.

Document details	
Author(s)	Regulatory Capability Division
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Previous versions	Version 1.0 FINAL (October 2019)
Corporate file number	DWERVT2143



Glossary

Words and expressions used in this document have their respective meanings listed below, or as provided for under the EP Act or Clearing Regulations.

Term	Definition
applicant	Means a person applying for a clearing permit in relation to an application for a clearing permit.
bilateral agreement	As defined in s.3(1) of the EP Act means an agreement referred to under s.45(2) of the Commonwealth’s EPBC Act to which the state is a party.
business day	Any day that does not meet the definition of an ‘excluded day’, as described under s.62(2) of the <i>Interpretations Act 1984</i> (WA).
calendar day	Any day of the week from Monday to Sunday inclusive.
controlled action	As defined under s.67 of the EPBC Act.
CEO	Chief Executive Officer (of the department).
Clearing Regulations	<i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i> (WA)
direct interest stakeholders	Persons, organisations, or public authorities identified during the validation and/or assessment process as likely to have a direct interest in the outcome of a given application.
DMIRS	Department of Mines, Industry Regulation and Safety
DWER, department	Department of Water and Environmental Regulation
environmental offsets	Offsite actions taken to address residual environmental impacts of a development or activity after application of the mitigation framework under the <i>WA Environmental Offsets Guidelines</i> .
EP Act	<i>Environmental Protection Act 1986</i> (WA)
EPA	Environmental Protection Authority
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Commonwealth)
ESA	Environmentally sensitive areas
permit	A clearing permit issued under Part V Division 2 of the EP Act.



Term	Definition
referral (Part IV)	A referral of a significant or strategic proposal to the EPA for assessment under Part IV of EP Act.
referral (Part V); clearing referral	A referral of proposed clearing to DWER or DMIRS (as applicable) under s.51DA of the EP Act.
stop the clock	A business rule where the timeframe for processing an application is paused under specified circumstances.
third party	A person other than the applicant (or clearing permit holder).