

Our ref: 69282

30 April 2014



Hon Elizabeth Behjat MLC
Chair of the Legislative Council Parliamentary
Committee on Public Administration
GPO Box A11
PERTH WA 6837

Dear Ms Behjat

APPROVAL PROCESSES IN PUBLIC SECTOR AGENCIES

On 5 July 2013 I wrote to the Standing Committee on Public Administration (the Committee) requesting approval to contact a number of relevant departments and inquire into the issue of timeframes for approval processes by government agencies. The matter had previously arisen at a private hearing of the Committee the Commissioner attended on 19 June 2013 where the Honourable Nigel Hallett MLC expressed concerns regarding delays to approvals, particularly as they related to the Department of Environment and Conservation. The Committee provided its consent on 8 August 2013 and requested that it be informed of the results of my inquiries.

In response to this undertaking, I wrote to the following four departments based on their involvement in environmental regulation activities:

- Department of Environment Regulation;
- Office of the Environmental Protection Authority;
- Department of Mines and Petroleum; and
- Department of Finance.

My correspondence informed each agency of the Committee's interest in the matter and sought comment regarding any implemented or proposed initiatives aimed at streamlining approvals processes and reducing compliance burdens on business.

I received responses from all four agencies in relation to this request and their submissions have been compiled into the attached information paper. Should you have any further queries in relation to the material submitted, please contact Fiona Roche, Deputy Commissioner Accountability, Policy and Performance on 6552 8801 or by email at Fiona.Roche@psc.wa.gov.au.

Yours sincerely



M C Wauchope
PUBLIC SECTOR COMMISSIONER

Att.

INFORMATION PAPER – APPROVALS PROCESSES IN PUBLIC SECTOR AGENCIES

BACKGROUND

On 19 June 2013 the Public Sector Commissioner (Commissioner) appeared before a private hearing of the Standing Committee on Public Administration (the Committee) as part of a series of regular meetings he has with the Committee to brief it on issues concerning public administration. During the course of this hearing the Honourable Nigel Hallett MLC expressed concerns regarding the timeframes for approval processes in government agencies, particularly in the (then) Department of Environment and Conservation.

In response to these concerns, on 5 July 2013 the Commissioner wrote to the Committee seeking its approval to raise the matter with several agencies that undertake approval processes in order to better understand the reasons for such delays and determine what strategies are under consideration to expedite approval processes. The Committee provided its consent to the Commissioner on 8 August 2013 and requested it be informed of the results of these inquiries.

APPROACH

The Commission contacted three agencies based on their involvement with environmental regulation activities:

- Department of Environment Regulation (DER)
- Office of the Environmental Protection Authority (OEPA); and
- Department of Mines and Petroleum (DMP).

Correspondence to these agencies informed them of the Committee's interest in this matter and sought comment regarding any implemented or proposed initiatives aimed at streamlining approvals processes and reducing compliance burdens on business.

Although not directly involved in administering environmental approval processes, the Department of Finance (Finance) was also contacted as part of the assessment and invited to provide additional comment on the matter. The Economic Reform Division (ERD) within Finance contains the Regulatory Gatekeeping Unit (RGU) and the Regulatory Reform Branch (RRB). The RRB provides advice to Government on regulatory reform issues, and alongside the Department of the Premier and Cabinet, coordinates Western Australia's input to the Business Advisory Forum Taskforce of the Council of Australian Governments. The RRB also provided secretariat support to the Red Tape Reduction Group (RTRG) during 2010 and led the development of *Reducing the Burden – Report of the Red Tape Reduction Group*.

Correspondence was also prepared for the Premier and responsible Minister for each of the agencies contacted advising them of the nature of the Commissioner's

enquiries and providing contact details should further information be sought. For their information, the Commissioner also undertook to provide to each responsible minister a copy of the information paper provided to the Committee.

Responses were received from all four agencies and a summary of the information provided is set out below.

DEPARTMENT OF ENVIRONMENT REGULATION

The DER was created on 1 July 2013 as an outcome of the machinery of government change to separate the former Department of Environment and Conservation into two new agencies. The DER oversees processes relating to work approvals and industry licences for discharges and emissions, controlled waste tracking and native vegetation clearing permits regulated under the *Environmental Protection Act 1986* (EP Act) and various regulations, as well as contaminated sites assessment and classification under the *Contaminated Sites Act 2003* (CS Act).

Approvals reforms undertaken by the DER, and its predecessor the DEC, have been driven through the Ministerial Taskforce for Approvals, Development and Sustainability which was established in 2008 following a government election commitment. The Taskforce has provided the framework for approvals reform across the following areas:

- legislative and regulatory changes;
- improvements to administration and processes;
- IT systems development; and
- timeframes.

Since establishment of the Taskforce, a number of amendments to acts and regulations have been made to improve regulatory effectiveness and streamline approvals processes:

- The *Approval and Related Reforms (No 1) (Environment) Act 2010* amended the EP Act to remove duplicative or unnecessary appeal rights, align appeal periods across regulatory processes and to permit decision-making authorities to approve minor and preliminary works to which the Environmental Protection Authority (EPA) has consented.
- The Waste Avoidance and Resource Recovery Regulations 2008 were amended in 2011 to improve their clarity and operational effectiveness.
- In May 2012, the Environmental Protection Regulations 1987 were amended to remove Schedule 2 relating to the registration of certain premises. This resulted in over 600 premises, predominantly small to medium scale industries, no longer being required to hold a registration for their operations, and relieved new industries in these categories of the burden and associated cost of registration.

- In December 2013, amendments to the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 were made to reduce unnecessary regulatory burdens on land owners and managers while ensuring significant environmental values were upheld. Amendments were also made to the Environmental Protection (Noise) Regulations 1997 at this time to improve their effectiveness and bring them in line with national standards.

The DER advises that it has made improvements to the delivery of key regulatory processes as a result of managing performance and implementation of risk management objectives. The DER undertakes risk management for works approvals and licences, and clearing permit applications based on the sensitivity of the environment and the magnitude of impacts.

The DER has an ongoing program to identify opportunities to amend the regulations and processes to ensure that low risk industry and clearing is not unreasonably regulated. A recent example relates to the aquaculture industry, which is now solely managed by the Department of Fisheries (Fisheries) in line with a memorandum of understanding (MOU) between the DER and Fisheries.

The DER also regularly reviews the efficiency and effectiveness of its regulatory functions. Within industry regulation, a program to overhaul the industry licensing system to improve its clarity, consistency and workability is being implemented. A review of the native vegetation clearing program was conducted in late 2013 to ensure effective delivery in accordance with the objectives of the legislation in an environment of budget constraints.

DER has undertaken improvement to its Industry Licensing System, an electronic approvals system which allows for works approvals and license applications to be lodged online by applicants, and includes electronic work flows with time reminders to ensure that each stage of the approvals process meets allocated timelines. Further improvements are currently being developed, including the ability for applicants to view the status of their applications online.

The Clearing Permit System database for the administration and assessment of clearing has been in place since the commencement of the clearing provisions in 2004. The DMP also utilises this system to fulfil its role in administering the delegation for clearing under mining and petroleum legislation.

The DER has also implemented centralised timeframe reporting for all of its key regulatory processes and these have been published on a quarterly basis since 2009. This, coupled with improved project management and monitoring, has led to a substantial increase in processing timelines since September 2008.

Further amendments to the EP Act are currently being drafted and are intended to be introduced to Parliament in the Autumn session. These amendments are designed to further streamline the processes for environmental impact assessment, clearing permits, and work approvals and licenses. They will also address existing

deficiencies that compromise effective environmental regulation and update the EP Act in accordance with technological developments.

Another focus of both the State and Commonwealth Governments are bilateral agreements under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*. Negotiations between officials are proceeding on an assessment bilateral to cover a greater number of approvals processes than the current agreement, which only applies to Public Environmental Review (PER) assessments. The new agreement will include clearing permit applications under the EP Act and the Assessment on Proponent Information level of assessment by the EPA. It is intended to pursue an approvals bilateral agreement for these processes, as well as the PER process, by the end of 2014. The effect of these agreements will be to reduce duplication between Commonwealth and State environmental approvals processes.

The DER is also developing a MOU with the OEPA, the DMP and the Department of Water to clarify interactions and roles where multiple regulatory approvals apply to the same industrial site. This aims to minimise regulatory duplication by ensuring jurisdictional clarity regarding specific issues on each site.

Since its commencement in July 2013, the DER has achieved strong regulatory performance. In a statement to Parliament on 11 March 2014, the Honourable Albert P Jacob MLA, Minister for Environment, drew attention to the following activities:

- Increased consistency, quality and effectiveness of DER's regulation of prescribed premises through implementation of the Re-Engineering for Industry Regulation and Environment (REFIRE) licensing process. In the last two quarters of 2014 more than 100 works approval applications and 45 licence applications were determined, with the average processing time remaining under 60 days.
- DER's coordination of proactive compliance programs into industry regulation through the annual industry regulation compliance program. As of 20 February 2014, the DER has completed 456 inspections out of a planned total of 806.
- As of 31 December, the DER had received almost 3,400 reports of known or suspected contaminated sites under the CS Act. The DER has achieved 99 per cent compliance in meeting the 45 day target timeframe for classifying new reports of known or suspected contamination. Less than 5 per cent of the 2,700 classifications have been appealed with only six being upheld by the Independent Contaminated Sites Committee.
- The DER's native vegetation conservation branch aims to meet target timeframes of making 80 per cent of permit decisions within 60 calendar days and the balance within 90 calendar days. During 2013, 520 decisions were made with the average time frame for a granted permit being 52 days.

OFFICE OF THE ENVIRONMENTAL PROTECTION AUTHORITY

The OEPA was established in November 2009 to support the Environmental Protection Authority (EPA) following its Review of the Environmental Impact Assessment Process in Western Australia. The Review examined the quality and timeliness of the Environmental Impact Assessment (EIA) process and concluded that there were clear opportunities to deliver better environmental protection while improving efficiency and transparency. The Government adopted 47 recommendations from the review, aiming to improve the EPA's functions through:

- creation of the OEPA to better support EPA's work;
- improved project tracking within the OEPA;
- introducing outcome-based conditions where appropriate;
- use of risk based assessment where applicable;
- greater rigour and consistency in scoping;
- a greater focus on timelines; and
- providing increased guidance to proponents to improve certainty, clarity and consistency.

The OEPA has been working actively with the EPA over the past four years to implement the Review's recommendations. In respect of the environmental impact assessment process, the following initiatives have been implemented:

- The Environmental Impact Assessment Administrative Procedures, which describe the principles and processes applied by the EPA in the Assessment processes, have been updated on two occasions, in 2010 and 2012. These amendments have resulted in a reduced number of assessment levels, as well as introduction of the streamlined Assessment on Proponent Information level of assessment.
- The EPA has introduced a risk-based approach to environmental impact assessment, described in a new suite of Environmental Assessment Guidelines. These new practices ensure that:
 - a. Where possible, regulatory approvals are deferred to other decision-making authorities in situations where the EPA has confidence that the matter can be adequately regulated, avoiding duplication in regulatory approval processes;
 - b. The EPA's assessment is focused only on significant environmental issues, minimising the scope of assessments and ensuring proponents need only undertake studies and provide information on matters of environmental significance; and
 - c. Where possible, outcomes-based rather than prescriptive conditions are recommended.
- The EPA's policy suite is being reviewed to withdraw unclear or unhelpful policies and ensure that all policies are contemporary and assist proponents to facilitate the environmental impact assessment of their proposals.

On request from the Ministers for Environment and Mines and Petroleum, the OEPA has also coordinated the development of draft WA Environmental Offset Guidelines. These provide a consistent approach when determining when offsets are required, and the quantum of those offsets ensuring consistent decision-making across all environmental approval processes.

The OEPA is participating in negotiations, led by the Department of the Premier and Cabinet, to enter into an assessment and approvals bilateral agreement with the Commonwealth Government to accredit Western Australia's environmental impact assessment process. This aims to remove duplication between State and Commonwealth environmental approvals and is an important initiative to reduce burdens on business.

In addition to these initiatives, the OEPA is also working on proposed amendments to the EP Act, including a number of changes aimed at further streamlining the environmental impact assessment process.

The OEPA notes that stakeholder feedback concerning these initiatives indicates the department has achieved considerable reforms and improvements in approval processes since its establishment.

DEPARTMENT OF MINES AND PETROLEUM

The DMP is the State's lead agency in attracting private investment in resources exploration and development through the provision of geoscientific information on minerals and energy resources, and management of an equitable and secure titles systems for the mining, petroleum and geothermal industries. It also bears responsibility for regulating extractive industries and dangerous goods in Western Australia, including the collection of royalties, and ensuring that safety, health and environmental standards are consistent with relevant State and Commonwealth legislation, regulations and policies.

Since 2009, the DMP has progressively simplified and streamlined key approval and reporting processes. Agreed approval target timelines have been set for each process and the agency's performance against these target timeframes published on the website. From 2010 to 2013, the DMP also progressively developed electronic online lodgement and approvals tracking systems for all key mining and petroleum approval processes. The introduction of these systems has reduced approval timeframes; an analysis of online and paper-based applications conducted by the DMP identified an average reduction of five working days between the two systems. The DMP is also working with other government agencies to progressively expand online lodgement and approvals tracking. In early 2014, online lodgement and approvals tracking services will be available for approvals required under the *Aboriginal Heritage Act 1972*.

The DMP has delegated responsibility from the DER under the EP Act to assess and make decisions on Native Vegetation Clearing Permit applications relevant to the

resource sector. The DMP has fully implemented a risk-based approach that has reduced clearing permit approval timelines, resulting in a 36% increase in finalised applications within the 60 day DER target timeline.

Other approval reform initiatives progressed by the DMP include automatic notification to other agencies where their advice or input is required. This initiative, combined with agreed inter-agency target timelines, has helped reduce total approval timelines.

During the remainder of 2014 and into 2015, the DMP is proposing to implement legislative changes to further streamline approvals required under the *Mining Act 1978*. This will include a proposal to incorporate the requirements of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 in the *Mining Act 1978* in order to remove any potential for duplication of assessment processes. The DMP continues to work closely with industry and other government agencies to progress approval reform initiatives.

DEPARTMENT OF FINANCE

The ERD within Finance deals with the issues of regulatory reform, regulatory gatekeeping and access reforms. Key responsibilities of the Division include:

- ongoing commitment to the existing framework for competition policy reform;
- enhanced review of regulations and reform where there is an unnecessary burden on business or undue restriction on markets; and
- review and reform of structures which inappropriately limit competition and impede economic growth.

The ERD is currently engaged in a review of the planning and building approvals processes to identify areas where these processes can be streamlined. The review forms part of the government's Housing Supply Package announced in the 2013-14 State Budget which was established by the government to help alleviate the gap between housing demand and supply.

In cases where approvals processes are established by Acts of Parliament or by regulation, the RGU has the role of ensuring that regulatory processes comply with the Regulatory Impact Assessment (RIA) process. The RIA process is designed to improve the quality of regulation by ensuring decision makers are fully informed when approving new, or amending existing, regulatory instruments. This includes proposals from agencies that relate to improving the efficiency and effectiveness of approvals processes, to ensure that the costs and benefits are identified.