



Regulatory Performance Report Quarter 3 2015–16

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Accessibility

This document is available in alternative formats and languages on request.

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Introduction

The Department of Environment Regulation (DER) is a regulatory agency responsible for administering environment legislation in Western Australia (WA).

The following legislation administered by DER is relevant to the quarterly report:

- *Contaminated Sites Act 2003* (CS Act);
- *Environmental Protection Act 1986* (EP Act); and
- *Waste Avoidance and Resource Recovery Act 2007* (WARR Act).

DER has adopted a multi-faceted approach to delivering its regulatory role, which broadly fits into three main functions:

- approvals and licensing supported by education, policy and science;
- monitoring, audit and compliance inspections; and
- enforcement, including complaint and incident investigation.

This quarterly report outlines DER's performance in two principal functioning areas, namely Licensing and Approvals (sections 1–3) and Compliance and Enforcement (sections 4–5). This report provides information on:

- works approvals and licences—number and timeliness of decisions made on works approvals and licences for major resource projects and other projects;
- native vegetation clearing permits—number and timeliness of decisions on clearing permit applications made by DER and the Department of Mines and Petroleum (DMP) (through delegation under the EP Act);
- contaminated sites—number of classifications of reported known or suspected contaminated sites, and number and timeliness of review of mandatory auditor's reports;
- environmental compliance—environmental regulation proactive compliance inspection program; and
- environmental enforcement—statistical and supporting information outlining DER's enforcement activity and outcomes.

DER has responsibility under Part V of the EP Act for the licensing and registration of prescribed premises, clearing permits, and administration of a range of regulations.

DER also monitors and audits compliance with works approvals, licences, clearing permits and their conditions, and regulations. Enforcement action is taken as appropriate.

Under the CS Act, DER receives reports of known or suspected contaminated sites, assesses and classifies contaminated sites, maintains public information on contaminated sites, and orders and monitors their remediation.

Under the WARR Act, metropolitan landfill operators and regional landfill operators receiving metropolitan waste are required to report and pay a landfill levy quarterly on the amount of waste received. DER monitors and enforces compliance with these requirements.

DER plans its environmental compliance activities annually, setting inspection targets and reporting on its performance. DER aims to be an effective regulator, using a balance of proactive engagement and enforcement tools to achieve appropriate environmental outcomes in regulation.

1. Works Approvals and Licences

DER assesses and decides new works approval and licence applications, as well as applications for amendments, renewals, transfers and surrender/revocation of instruments for prescribed premises, as authorised under Part V Division 3 of the EP Act.

Commencing Q1 2015–16, DER is reporting on its performance on deciding applications to amend works approvals and licenses and renewals, transfers, surrender and revocation of works approvals and licenses.

DER refocused its industry regulation business improvement program in 2015 to deliver a range of significant reforms. The reform program aligns with DER's [Guidance Statement: Regulatory Principles](#) and the recently published [Guidance Statement: Setting Conditions](#).

DER is developing a comprehensive risk-based approach to its regulatory functions under Part V Division 3 of the EP Act. [Guidance Statement: Regulatory Principles](#) will be supported by a series of detailed documents and process improvements for more efficient, effective, transparent, consistent and accountable environmental regulation in WA.

A schedule for these reform deliverables is available on DER's website at www.der.wa.gov.au/our-work/consultation.

1.1 Major Resource Projects

DER and its predecessor agencies have tracked and reported performance in deciding major resource project works approval and licence applications since the first quarter of 2006. A 'decision made' means an application for a works approval or licence has been granted or refused.

For major resource project approvals, DER has set a target to decide 100 per cent of works approval and licence applications within 60 working days.

The quarterly figures for major resource project works approval and licence applications are summarised in Tables 1.1 and 1.2.

Works Approvals

During Q3 2015–16, there were no new works approval applications for major resource projects received, compared with four, 19 and 18 in the preceding quarters. The reduction in applications may be a result of publication of DER's [Guidance Statement: Licensing and Works Approvals Process](#) in September 2015, which encourages existing licence holders to seek approval for changes to their prescribed premises through a licence amendment application, rather than a works approval application. Seven works approvals were decided, compared to 21 in the previous quarter.

In Q3 2015–16 DER decided 86 per cent of new works approval applications for major resource projects within the target time frame, compared with 76 per cent achieved in the previous quarter.

A targeted risk-based program was implemented in Q4 2014–15 to reduce the number of open applications, particularly those that are protracted, and to appropriately manage the timely assessment of all applications in future. One of the seven works approvals decided in the quarter was a protracted assessment.

The average processing time for works approval applications during Q3 2015–16 was 72 working days, similar to the previous quarter – which was 73 working days. There was a decrease in the number of open applications from 19 to eight.

Table 1.1 Major resource project works approval applications

	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
Works approval applications				
No. of applications carried over from previous periods	24	42 ¹	37	19
No. of applications received	18	19	4	0
No. of applications granted	10	21	21	7
No. of applications refused	0	0	0	0
No. of applications withdrawn ²	2	0	1	2
No. of applications declined ³	n/a	3	0	1
No. of open applications as of end of quarter	30	37	19	8 ⁴
Percentage of applications that were finalised within time frame of 60 working days (target = 100% of applications finalised)	80%	71%	76%	86%
Average time for decision (working days)	53	50	73	72

¹ This figure has been updated to include all received applications that have been carried over from the previous quarter. Previously this figure only included those applications accepted for assessment.

² Withdrawn means the applicant withdrew the application.

³ Declined means the application did not meet the Chief Executive Officer's (CEO's) requirements to accept. The figure was reported on for the first time in Q1 2015–16.

⁴ One application moved to other projects.

Figure 1.1 Summary of major resource project works approvals



Licences

Two new licence applications for major resource projects were received in Q3 2015–16, compared with five in the previous quarter. Seven licences were determined, compared with four licences in the previous quarter.

DER decided 100 per cent of licence applications for major resource projects within the target time frame, 50 per cent higher than the previous quarter. The average decision time for licence applications decreased from Q2 2015–16, from 85 to 40 working days.

Figures 1.1 and 1.2 provide a quarterly summary since Q3 2014–15 for major resource project approvals decided by DER, the average time taken to decide these applications and DER’s performance in meeting the time frame.

Table 1.2 Major resource project licence applications

	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
Licence applications				
No. of applications carried over from previous periods	11	14 ⁵	15 ⁶	16
No. of applications received	4	7	5	2
No. of applications granted	5	5	4	7
No. of applications refused	0	0	0	0
No. of applications withdrawn ⁷	0	2	0	1
No. of applications declined ⁸	n/a	0	0	0
No. of open applications as of end of quarter	10	14	16	8 ⁹
Percentage of applications that were finalised within time frame of 60 working days (target = 100% of applications finalised)	40%	100%	50%	100%
Average time for decision (working days)	58	44	85	40

⁵ This figure has been updated to include all received applications that have been carried over from the previous quarter. Previously this figure only included those applications accepted for assessment.

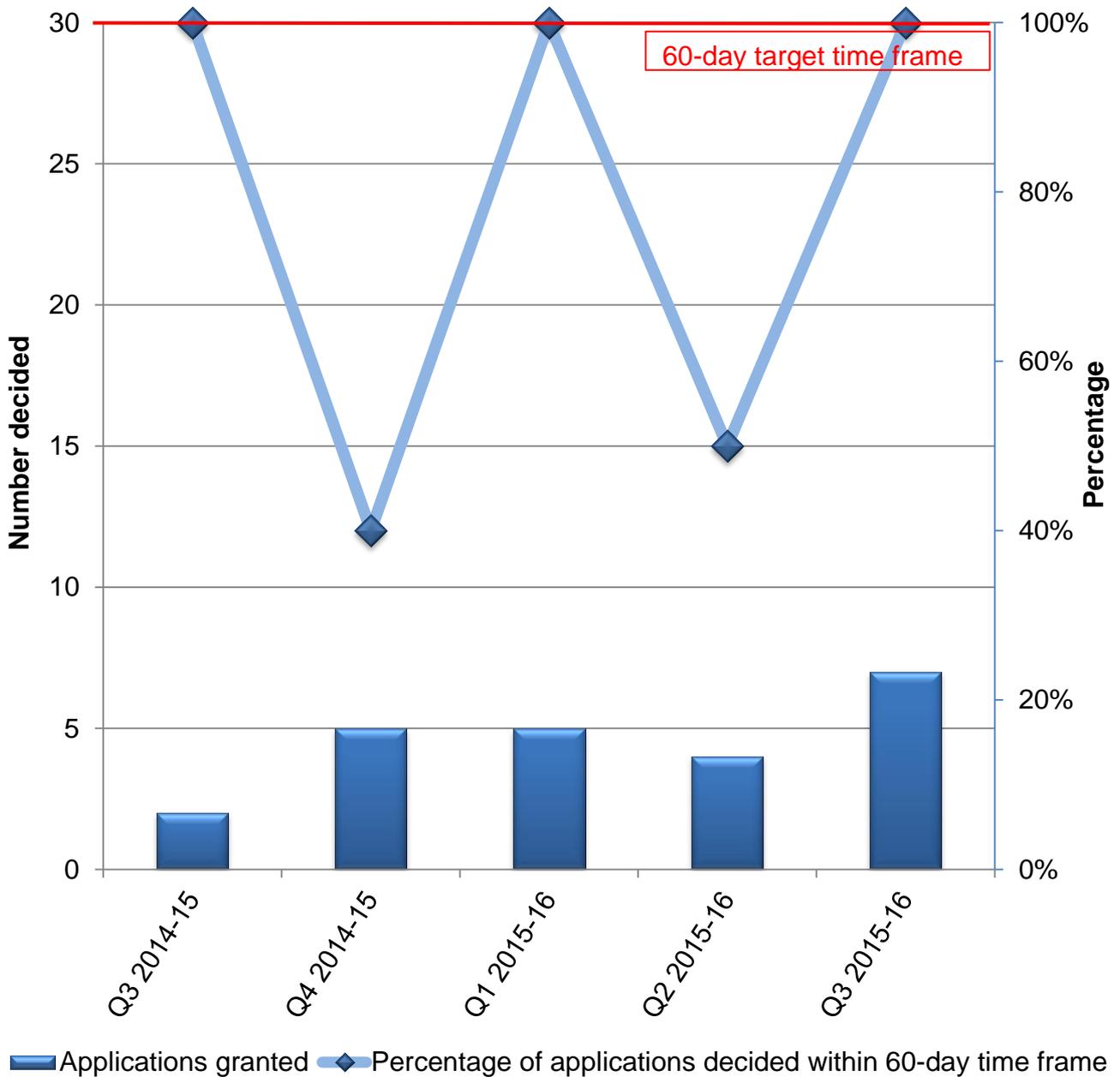
⁶ One open licence application was re-categorised a major resource project (previously listed as an “other project” application).

⁷ Withdrawn means the applicant withdrew the application.

⁸ Declined means the application did not meet the CEO’s requirements to accept. The figure was reported on for the first time in Q1 2015–16.

⁹ Two expired Application Identification Numbers with no application lodged have been excluded.

Figure 1.2 Summary of major resource projects licence applications



1.2 Other Projects

For non-major resource project (other project) approvals, DER has set a target to decide 80 per cent of works approval and licence applications within a 60-working day time frame. The quarterly figures for other project works approval and licence applications are summarised in Tables 1.3 and 1.4.

Works Approvals

Thirty-four other project works approval applications were decided by DER in Q3 2015–16, a significant increase from 16 decided in the previous quarter. The percentage of works approvals decided within the target time frame was 62 per cent, compared with 63 per cent in the previous quarter.

The average decision time for other project works approvals during this quarter was 80 working days, compared to 62 working days in the previous quarter.

As outlined in section 1.1 (major resource projects), a targeted risk-based program was implemented in Q4 2014–15, to reduce the number of open applications and ensure the timely assessment of all applications. Six works approval applications determined in Q3 2015–16 were protracted applications.

Table 1.3 Other project works approval applications

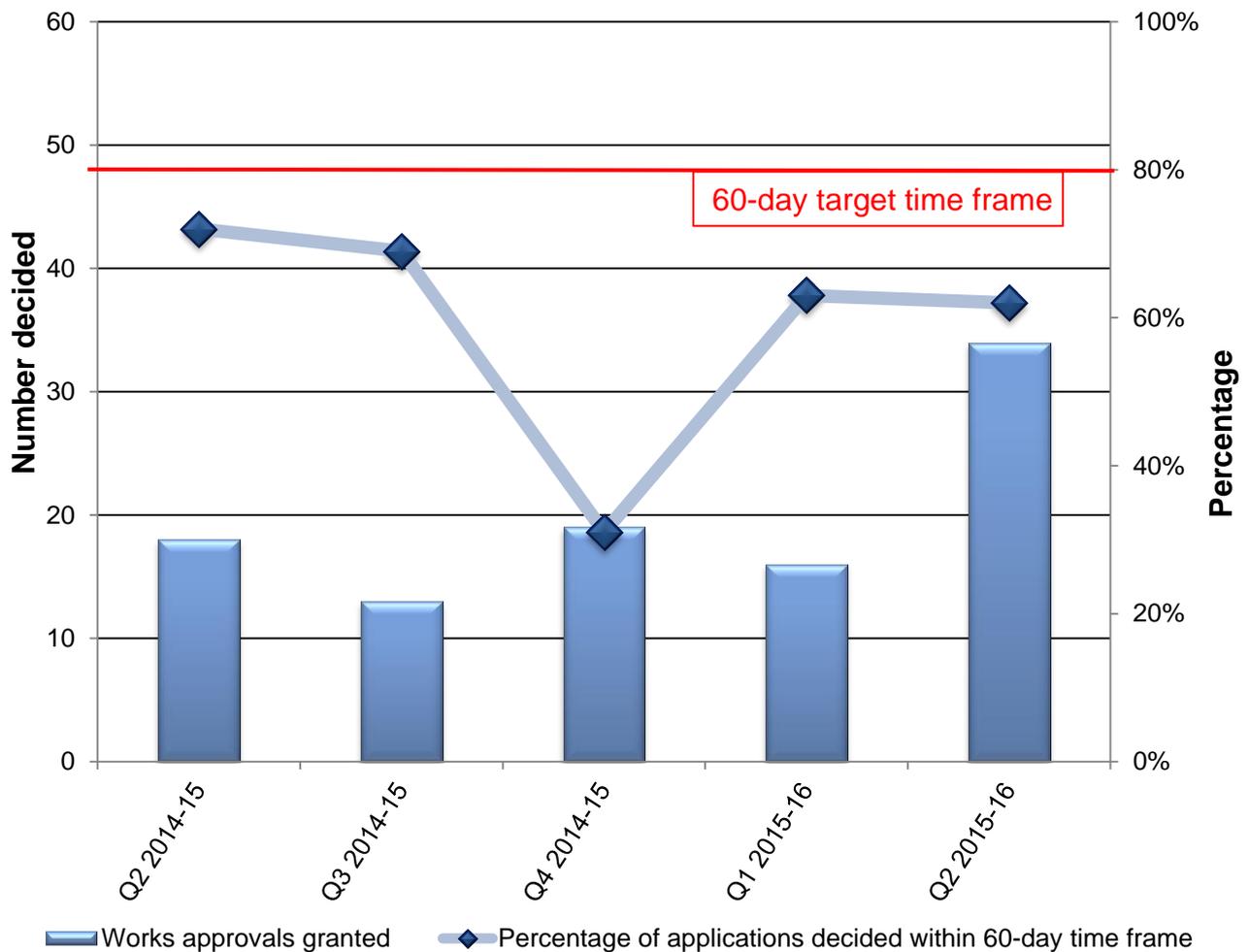
	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
Works approval applications				
No. of applications carried over from previous periods	34	53 ¹⁰	54	56
No. of applications received	16	35	30	15
No. of applications granted	13	19	16	34
No. of applications refused	0	0	0	0
No. of applications withdrawn ¹¹	2	7	5	7
No. of applications declined ¹²	n/a	8	7	2
No. of open applications as of end of quarter	35	54	56	28
Percentage of applications that were finalised within time frame of 60 working days (target = 80% of applications finalised)	69%	31%	63%	62%
Average time for decision (working days)	71	97	62	80

¹⁰ This figure has been updated to include all received applications that have been carried over from the previous quarter. Previously this figure only included those applications accepted for assessment.

¹¹ Withdrawn means the applicant withdrew the application.

¹² Declined means the application did not meet the CEO's requirements to accept. The figure was reported on for the first time in Q1 2015–16.

Figure 1.3 Summary of other projects works approvals



Licences

Fifteen other project licences were decided by DER this quarter. Eighty-seven per cent of other project licence applications were decided within the target time frame in Q3 2015–16. This is an increase of eight per cent over the previous quarter.

The average time to decide other project licence applications decreased during this quarter to 44 working days, compared to 66 working days in the previous quarter. There was a decrease in the number of open applications from 28 to 20.

DER continues to monitor its performance and maintain its targeted risk-based program. This is carried out to ensure the number of open applications are reduced and all applications are assessed in a timely manner.

The quarterly figures for other projects works approval and licence applications are summarised in Figures 1.3 and 1.4.

Table 1.4 Other project licence applications

	Q3 2014–15	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
Licence applications					
No. of applications carried over from previous periods	32	20	28 ¹³	33 ¹⁴	28
No. of applications received	9	7	17	14	15
No. of applications granted	19	7	7	14	15
No. of applications refused	0	0	0	0	0
No. of applications withdrawn ¹⁵	2	1	3	5	6
No. of applications declined ¹⁶	n/a	n/a	1	0	2
No. of open applications as of end of quarter	20	19	34	28	20
Percentage of applications that were finalised within time frame of 60 working days (target = 80% of applications finalised)	84%	71%	71%	79%	87%
Average time for decision (working days)	49	37	41	66	44

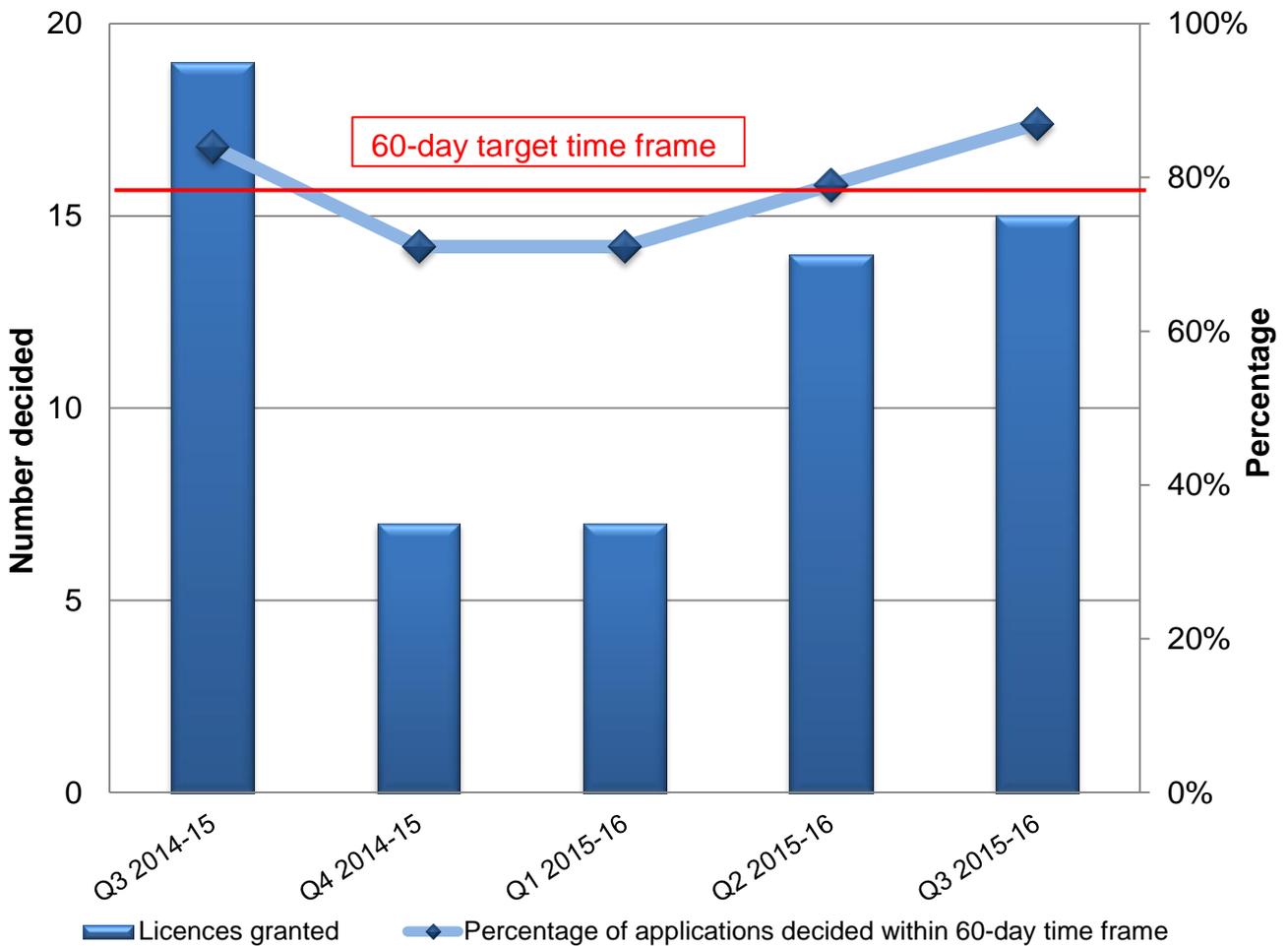
¹³ This figure has been updated to include all received applications that have been carried over from the previous quarter. Previously this figure only included those applications accepted for assessment.

¹⁴ One open licence application was re-categorised a major resource project.

¹⁵ Withdrawn means the applicant withdrew the application.

¹⁶ Declined means the application did not meet the CEO's requirements to accept. The figure was reported on for the first time in Q1 2015–16.

Figure 1.4 Summary of other project licence applications



1.3 Amendments

Performance reporting on determining applications to amend works approvals and licences commenced in Q1 2015–16, when DER implemented a target time frame to determine these applications.

Consistent with DER’s [Guidance Statement: Regulatory Principles](#), the Department set an initial target to decide 100 per cent of all applications to amend works approval and licence applications within 40 working days from Q1 2015–16. This will assist in DER delivering better customer service, with greater transparency and certainty for industry in the management of applications for amendment.

DER intends to review the target time frames during Q4 2015–16 to determine the appropriateness of the time frames, noting the variability of the types of amendment applications received.

There were 25 works approval amendment applications received during Q3 2015–16 with 27 applications decided. Forty-eight per cent of these applications were decided within the target time frame. The average decision time for works approval amendment applications was 42 working days, a decrease from 59 working days in Q2 2015–16.

DER received 102 licence amendment applications in the Q3 2015–16 period and 129 were decided. DER decided 29 per cent of licence amendment applications within the target time frame in Q3 2015–16. The average time to decide licence amendment applications was 88 working days, an increase from the previous quarter of 60 working days. The quarterly figures for works approval and licence amendment applications are summarised in Table 1.5.

The Department is implementing a targeted program to reduce the number of protracted amendment applications and ensure appropriate management, to improve decision time frames in the future. As part of its ongoing review of amendment applications, DER also reduced the number of applications that were open at the start of Q3 2015–16, to 24 for works approvals amendments and 181 for licence amendments. This includes applications to amend works approvals and licences (for both major resource projects and also other projects).

Table 1.5: Summary of amendment applications

	Q1 2015–16	Q2 2015–16	Q3 2015–16
Works approval amendment applications¹⁷			
No. of applications carried over from previous periods	10	42 ¹⁷	24 ¹⁸
No. of applications received	8	39	25
No. of applications determined	10	15	27
No. of open applications as of end of quarter	8 ¹⁷	66 ¹⁸	22 ¹⁸
Percentage of applications that were finalised within time frame of 40 working days (target = 100% of applications finalised)	60%	43%	48%
Average time for decision (working days)	62	59	42
Licence amendment applications¹⁷			
No. of applications carried over from previous periods	114	242 ¹⁷	181
No. of applications received	68 ¹⁸	172	102
No. of applications determined	38	91	129
No. of open applications as of end of quarter	144 ¹⁷	323 ¹⁸	154
Percentage of applications that were finalised within time frame of 40 working days (target = 100% of applications finalised)	29	59%	29%
Average time for decision (working days)	130	60	88

¹⁷ Following further review of open amendment applications, the number carried forward from Q1 to Q2 has been revised upwards.

¹⁸ Data cleansing is still in progress and the number of open applications may be further revised.

1.4 Licence Renewals

Performance reporting on applications for licence renewals commenced in Q1 2015–16. DER has set a target time frame of 100 per cent of decisions within 60 working days. The quarterly figures for licence renewal applications are summarised in Table 1.6.

DER has revised the number of open applications at the start of Q3 2015–16 downwards to 45, due to the Licence Renewal Program. There were 15 licence renewal applications received during Q3 2015–16 and 32 applications were decided. Ninety-four per cent of licence renewal applications were decided within the target time frame. The average time to make a decision decreased from 42 to 35 working days.

Table 1.6: Summary of licence renewals

	Q1 2015–16	Q2 2015–16	Q3 2015–16
Licence renewal applications¹⁹			
No. of applications carried over from previous periods	26	55	45 ²⁰
No. of applications received	65	23	15
No. of applications granted	39	53	32
No. of applications refused	1 ¹⁹	1	0
No. of open applications as of end of quarter	55 ¹⁹	88 ²¹	28
Percentage of applications that were finalised within time frame of 60 working days (target = 100% of applications finalised)	94%	87% ²²	94%
Average time for decision (working days)	46	42	35

1.5 Transfers and Revoke/Surrender

DER implemented target time frames for applications to transfer and revoke/surrender works approvals and licences during Q1 2015–16. The target time frame to determine all transfer and revoke/surrender applications is 100 per cent within 40 working days.

The quarterly figures for transfer and revoke/surrender applications are summarised in Table 1.7.

There were eight licence transfer applications determined and four licence revocations following applications to surrender the licence during Q3 2015–16. There were also three works approval transfer applications determined and no works approval revocations or surrender works approvals during Q3 2015–16.

¹⁹ Data correction.

²⁰ Reduced due to the amend to extend Licence Renewal Program.

²¹ This figure is a calculated figure as DER's business systems do not take into account those renewals that have been amended to extend. The reported number of open licence renewals from DER's business systems is 88.

²² Based on 40 of the 54 applications determined for which all required data was available.

Table 1.7: Summary of transfer and revoke/surrender applications

	Q1 2015–16	Q2 2015–16	Q3 2015–16
Surrender/revoke/transfer works approval applications²³			
No. of transfer applications determined	0	0	3
No. of surrender/revocation applications determined	0	0	0
Surrender/revoke/transfer licence applications¹			
No. of transfer applications determined	4	4	8
No. of surrender/revocation applications determined	4	1	4

²³ Performance on deciding applications to amend works approvals and licences has historically not been tracked and therefore not reported.

2 Native Vegetation Clearing Permits

2.1 Clearing Provisions

Clearing of native vegetation requires a permit unless an exemption applies.

Under s 20 of the EP Act, the CEO of DER has delegated powers relating to clearing applications to the DMP for the following:

- clearing carried out under an authority granted, or a requirement imposed, under the *Mining Act 1978*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*; and
- clearing carried out under a government agreement administered by the Department of State Development.

DER's clearing permit system database records the details of clearing permit applications and decisions made for both DER and DMP, and forms the basis of the published records available on DER's website.

The quantitative information presented in the tables in this report is provided for both DER and DMP. The qualitative information in the text relates to DER only.

More information on the clearing provisions is available at www.der.wa.gov.au.

Targets and Time Frames

Targets are 80 per cent of applications to be decided within 60 calendar days, with 100 per cent of applications to be decided within 90 calendar days.

The time frame commences from the date an application is received and ends on the date a decision is made, excluding the time in 'stop the clock'.

'Stop the clock' may only be used where there is legislative power or requirement to do so, as outlined under the 'Clearing Permits' section of this report on page 17.

A 'decision made' means an application to clear has been granted, given an undertaking to grant, refused, declined, withdrawn, amended, revoked, surrendered or suspended.

2.2 Delivery Status

In the first five years of the clearing provisions being contained in the EP Act, the total number of permit applications received annually was consistent at about 600.

The number of applications steadily increased during the following three financial years, with 689 applications received during 2009–10, 758 applications in 2010–11 and 833 applications in 2011–12.

In 2012–13 the number of applications received decreased to 752 applications, with a further decrease in 2013–14 to 674 applications, and 642 applications in 2014–15.

DER received 96 clearing permit applications in Q3 2015–16, which is more than the 95 applications received in the previous quarter and less than the 98 applications received the same time last year.

There were 181 open applications at the end of Q3 2015–16, which is more than the 173 open applications at the end of the previous quarter, and more than the 153 open applications at the same time last year.

During Q3 2015–16, DER made 88 decisions, which is less than the previous quarter’s 102 decisions and fewer than the 93 decisions made at the same time last year.

Of the 88 decisions made on applications in Q3 2015–16, 60 clearing permits were granted, 26 applications were withdrawn or declined and two applications for a clearing permit were refused.

The average time to make a decision was 67 calendar days, which is less than the previous quarter’s average of 74 calendar days and more than the 54-calendar day average for the same time last year. There was a decrease in the number of decisions made (88 compared to 102 in the second quarter), leading to an increase in the number of outstanding applications to be finalised (181 compared to 173 in the previous quarter).

DER notes that the applications carried over from the previous quarter have contributed to the percentage of finalised applications not meeting the targeted time frames. During Q3 2015–16, 40 per cent of applications were determined within 60 calendar days, 73 per cent within 90 calendar days and 27 per cent after 90 calendar days.

It is acknowledged that significant improvements to performance are required to address this trend. DER’s program to address the backlog of applications was re-focused to ensure the backlog of protracted applications are largely resolved by Q4 2015–16 and time frames are continually monitored to ensure improvement. Additional resources were re-allocated within the Department to address the clearing permit time frames.

Figure 2.1 Number of decisions made by DER and DMP in Q3 2015–16 compared to the previous four quarters

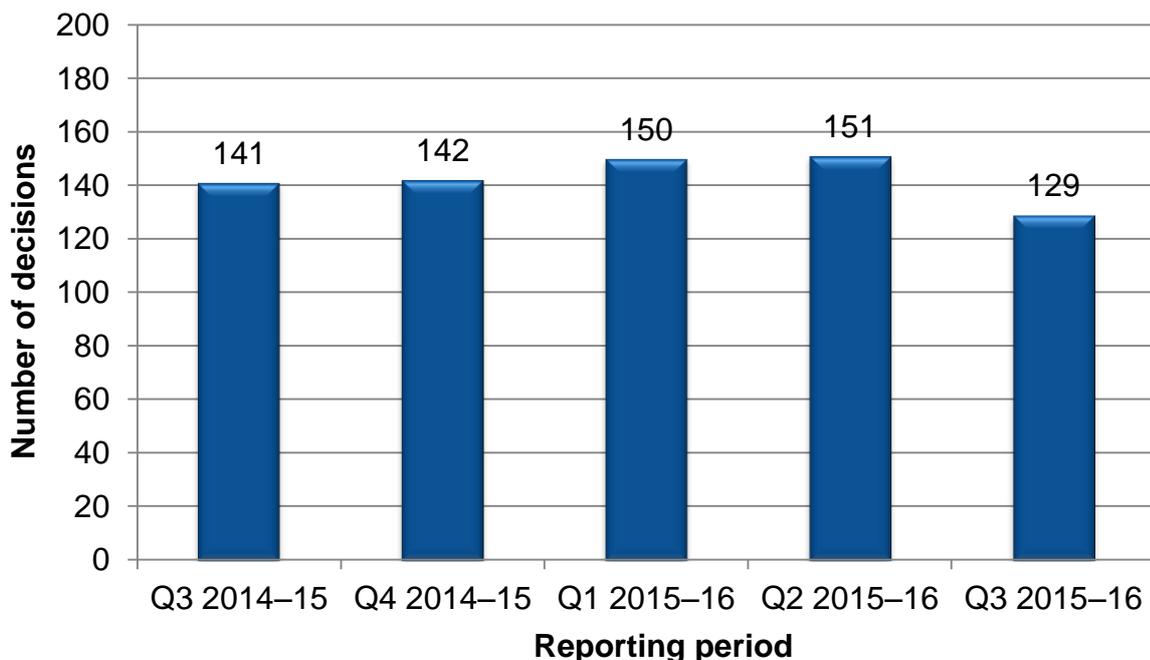


Table 2.1 Number of decisions made in Q3 2015–16 by DER and DMP by purpose

Purpose	Number of decisions made in Q3 2015–16				
	Less than or equal to 60 days ²⁴	61 to 90 days ²⁴	91 to 120 days ²⁴	More than 120 days ²⁴	Total
State development	36	3	1	0	40
Local government	14	13	9	0	36
Utilities	3	3	3	0	9
Agriculture/horticulture/forestry	4	4	3	3	14
Basic raw materials	0	0	0	0	0
Other development	17	8	4	1	30
Total	74	31	20	4	129

²⁴ Calendar days.

Table 2.2 Description of clearing purpose

Purpose	Description
State development	Clearing for purposes of mineral production, mineral exploration, petroleum production, petroleum exploration (for applications administered by DER and DMP) and other state development (including state agreements) administered under delegation by DMP.
Local government	All clearing by local government authorities. This could include purposes such as road construction and maintenance, building or structures and other infrastructure.
Utilities	Clearing by utilities including Water Corporation, Western Power, Horizon Power, Main Roads Western Australia, Verve Energy, Telstra, Alinta Energy, Westnet Rail and the Public Transport Authority. Purposes include infrastructure construction and maintenance, railway construction, road construction and maintenance.
Agriculture/ horticulture/forestry	Clearing for the purposes of timber harvesting, plantation, horticulture, grazing and pasture, cropping, drainage, pastoral diversification and aquaculture.
Basic raw materials	Clearing for the purposes of extractive industry (for example sand, rock and gravel extraction).
Other development	All other purposes not listed above, including buildings or structures, industrial, landscaping, fire hazard reduction, geotechnical investigations and fence line maintenance.

2.3 Clearing Permits

Tables 2.3 and 2.4 show the number of decisions that have been made on clearing permit applications by DER and DMP, including the percentage of applications that were decided within target time frames.

Statistics show how many decisions were subject to ‘stop the clock’ and the mean time (in days) that applications were in ‘stop the clock’.

‘Stop the clock’ may only be used where there is a legislative power or requirement to do so as follows.

‘Stop the Clock’—Waiting on Applicant

This status is assigned when an initial assessment has been undertaken and, based on the outcome of assessment, significant environmental or planning issues, have been raised such that before making a decision the CEO requires further information under s 51E(1)(d) of the EP Act.

Further information includes where the CEO advises the applicant that a decision will be deferred until the applicant is able to provide evidence of planning or other relevant approvals.

This status is also assigned when the applicant requests in writing that the process be put on hold.

‘Stop the Clock’—Decision Pending

This status is assigned when the CEO, based on an initial assessment, considers that the application raises such significant environmental, planning or other relevant issues that it is likely to be refused.

In accordance with the principles of natural justice, the CEO provides an opportunity for the applicant to respond for a period of at least 30 calendar days.

‘Stop the Clock’—Referred to the Environmental Protection Authority (EPA)

This status is assigned when DER/DMP have been notified by the EPA that a proposal has been referred and that DER or DMP is constrained from making a decision that could implement the proposal or a related proposal under ss 41 and/or 51F of the EP Act.

Table 2.3 Time frame data for DER applications/decisions

Category—DER	Q3 2014–15	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
No. of applications carried over from previous periods	148	153	169	180	173
No. of applications received	98	101	129	95	96
No. of decisions that were subject to ‘stop the clock’	38	32	60	64	37
Average time in ‘stop the clock’ for decisions in calendar days	107	59	67	67	71
Average time for decisions in calendar days (excluding time in ‘stop the clock’)	54	57	58	74	67
No. of decisions on applications	93	85	97	102	88
No. of outstanding applications at end of quarter	153	169	201	173	181
Percentage of applications that were finalised within time frames					
60 calendar days (target = 80% of applications finalised)	59	53	57	29	40
90 calendar days (target = 100% of all applications finalised)	86	85	86	76	73
More than 90 calendar days	14	15	14	24	27

Table 2.4 Time frame data for DMP applications/decisions

Category—DMP	Q3 2014–15	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
No. of applications carried over from previous periods	42	51	41	49	46
No. of applications received	57	47	59	46	51
No. of decisions that were subject to 'stop the clock'	21	30	22	15	19
Average time in 'stop the clock' for decisions in days	67	14	8	19	15
Average time for decisions in days (excluding time in 'stop the clock')	22	50	48	43	46
No. of decisions on applications	48	57	53	49	41
No. of outstanding applications at end of quarter	51	41	47	46	56
Percentage of applications that were finalised within time frames					
60 calendar days (target = 80% of applications finalised)	96	91	94	98	95
90 calendar days (target = 100% of all applications finalised)	100	96	98	100	100
More than 90 calendar days	0	4	2	0	0

Figure 2.2 Number of decisions made in Q3 2015–16 compared to target time frames in the previous four quarters

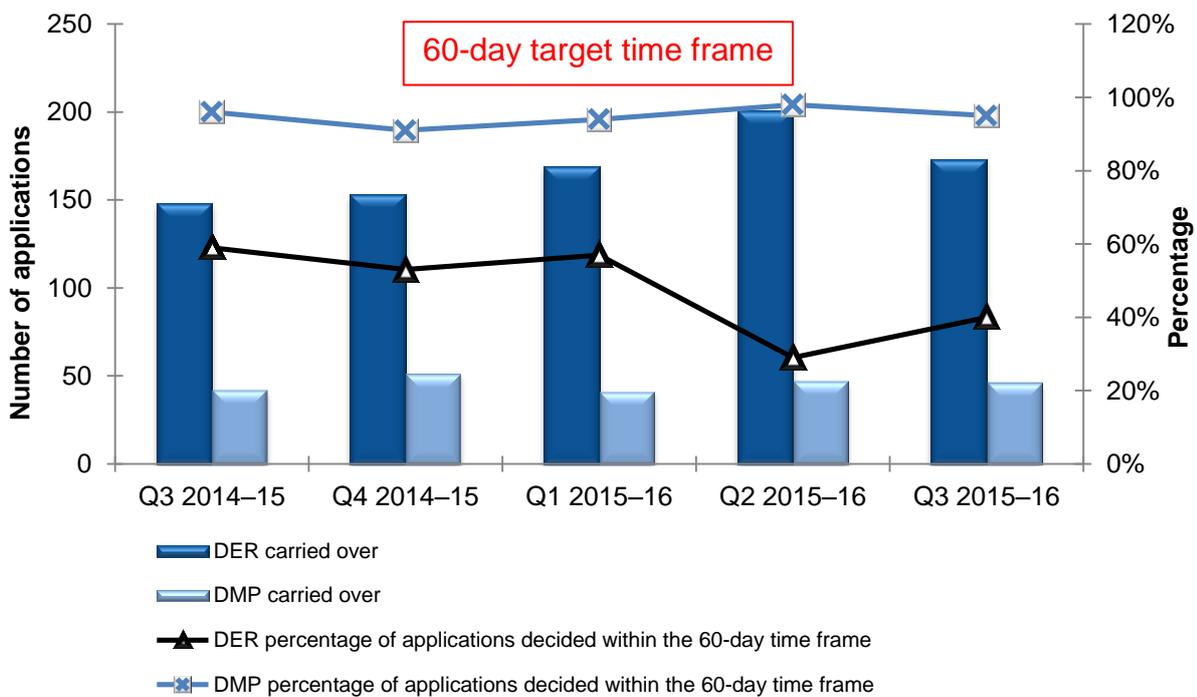
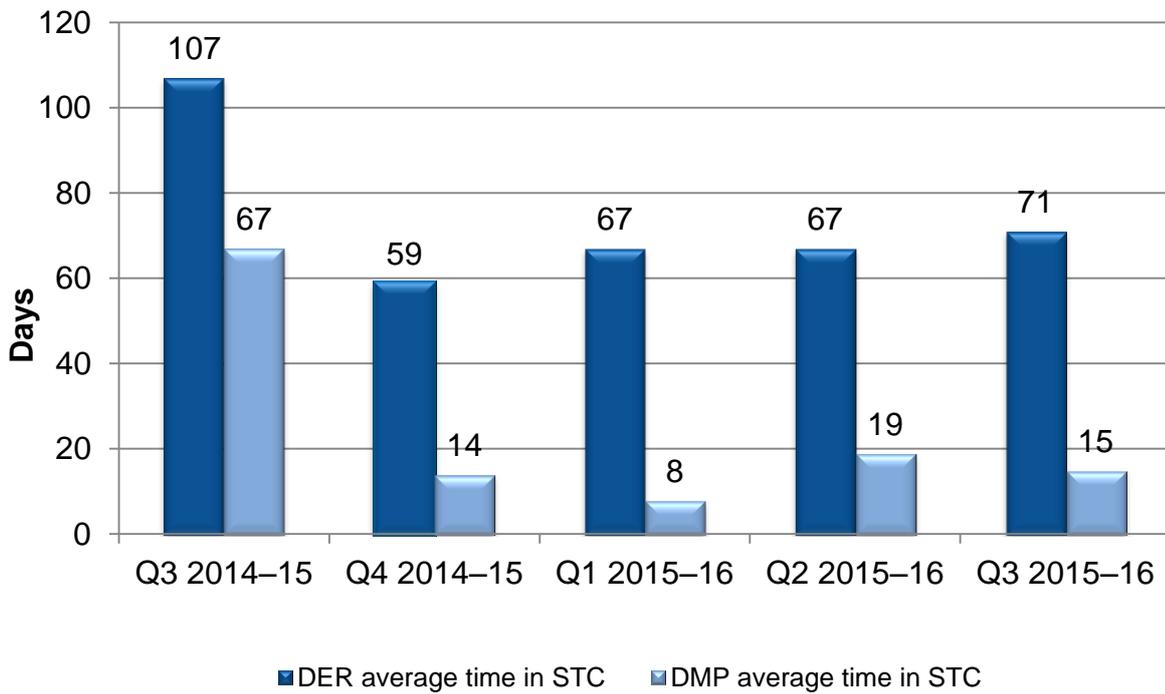


Table 2.5 Decisions subject to ‘stop the clock’²⁵

‘Stop the clock’ decisions	DMP		DER		Overall	
	Number of decisions	Average days per decision	Number of decisions	Average days per decision	Number of decisions	Average days per decision
Total/average	19	15	37	71	56	52

Figure 2.3 Average time in ‘stop the clock’ (STC) in Q3 2015–16 compared to the previous four quarters



²⁵ The total/average values in Table 2.5 may not match the total/average values shown in Tables 2.3 and 2.4 because a decision may be the subject of more than one reason for an incident of ‘stop the clock’.

3 Contaminated Sites

3.1 Overview

Under the CS Act, DER classifies known or suspected contaminated sites reported to it, in consultation with the Department of Health (DoH).

The CS Act commenced on 1 December 2006 and introduced mandatory reporting of known or suspected contaminated sites. Owners and occupiers of such sites; any person who caused or contributed to the contamination; and contaminated sites auditors engaged to report on such sites have a duty to report known contaminated sites within 21 days, and suspected contaminated sites as soon as practicable.

From the commencement of the CS Act up until 31 March 2016, DER had received 3,732 reports of known or suspected contaminated sites (also referred to as Form 1s). Of the total number of reports, 54 per cent were received during the three-month period from April to June 2007.

Reporting of sites continues, with an average of 13 reports received each month.

After receiving a report of a known or suspected contaminated site, DER, in consultation with DoH, assigns one of seven possible classifications (set out in Schedule 1 of the CS Act) to the site. This is based on the risk that the contamination poses to human health and the environment.

3.2 Site Reporting and Classification

In Q3 2015–16, 34 sites were reported (see Table 3.1 and Figure 3.1) and 71 sites were classified.

By 31 March 2016, a total of 3,212 sites (made up of 21,786 individual lots or land parcels) had been classified under the CS Act (see Figures 3.1 and 3.2).

Under the CS Act, DER must classify the sites within 45 calendar days of receiving the report, unless there are particular circumstances that make it necessary to extend the time.

The most common reason DER extends the classification time frame is because a proponent requests it and informs DER that investigation of the site is underway, but that the resulting technical report (which will inform the appropriate classification category) is not yet complete.

If DER decides to extend the classification time frame, DER must give written notice of its decision, within 45 calendar days of receiving the report, to all parties. These parties must be notified of the site classification – including site owners and occupiers, relevant public authorities such as the Western Australian Planning Commission and local government authority, the person who reported the site, those responsible for remediation, and any other person whom there is particular reason to notify.

Due to the very large peak in the number of sites reported over the period April to June 2007, the then Department of Environment and Conservation (DEC) was unable to classify all the 'peak period' sites within the statutory 45-calendar day time frame, and it is likely to take a number of years to process this backlog.

DEC prioritised classification of the 'peak period' sites based on a screening review of the information submitted. Priority was given to sites where the available information indicated there may be an immediate or serious risk to human health or the environment that was not being appropriately managed.

Table 3.1 Form 1s processed by quarter

	Q3 2014–15	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
Carried over from previous quarter	13	19	6	8	19
New Form 1s received	43	25	38	48	34
Processed within statutory 45 calendar days	36	38	35	37	40
Open at end of quarter ²⁶	19	6	8	19	13
Exceeding statutory 45 calendar days	1	0	1	0	0

²⁶ Form 1s received in the last four weeks of the quarter which are within the statutory 45-calendar days and will be processed in the next quarter.

Figure 3.1 Number of sites reported and classified each period

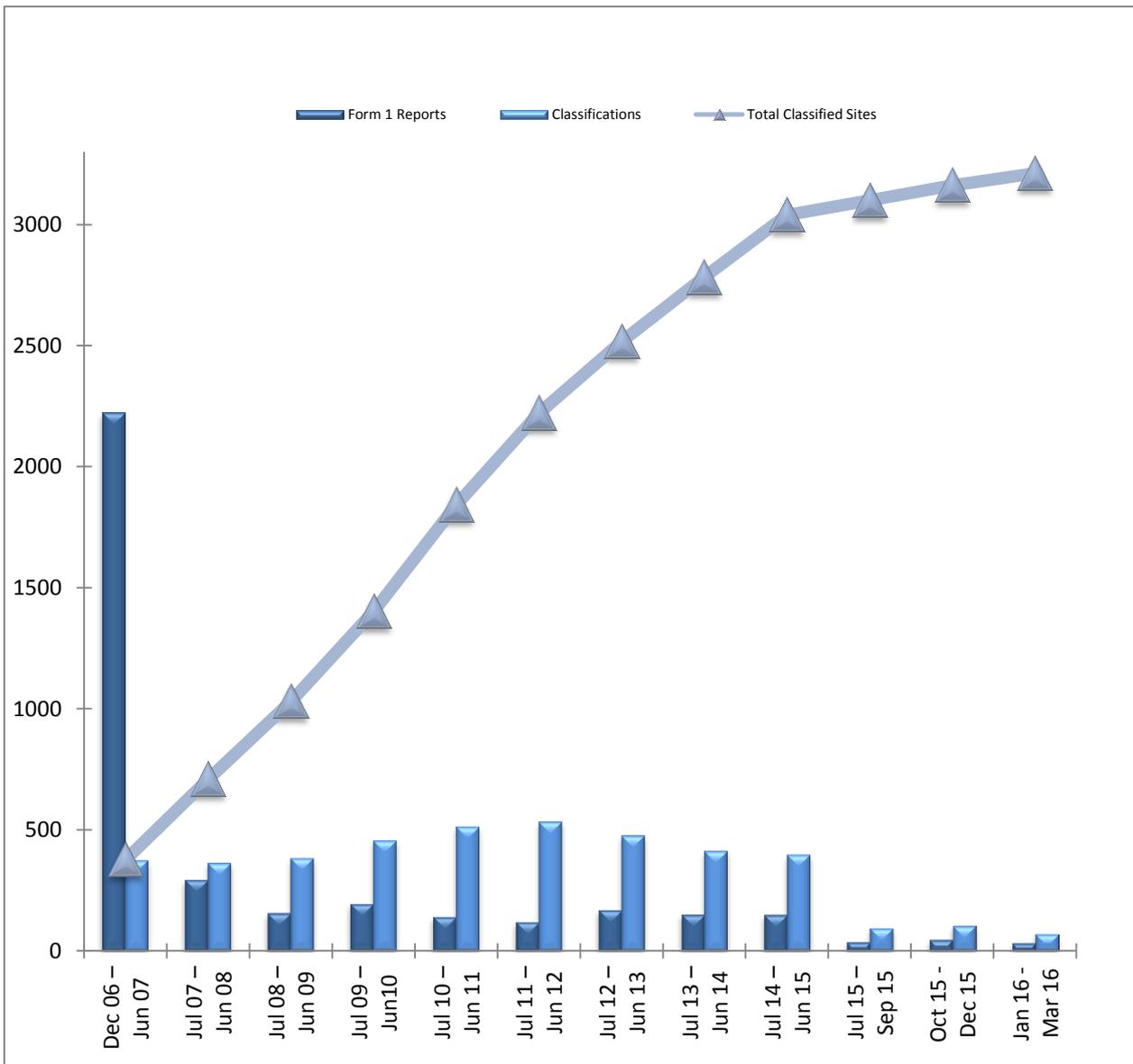
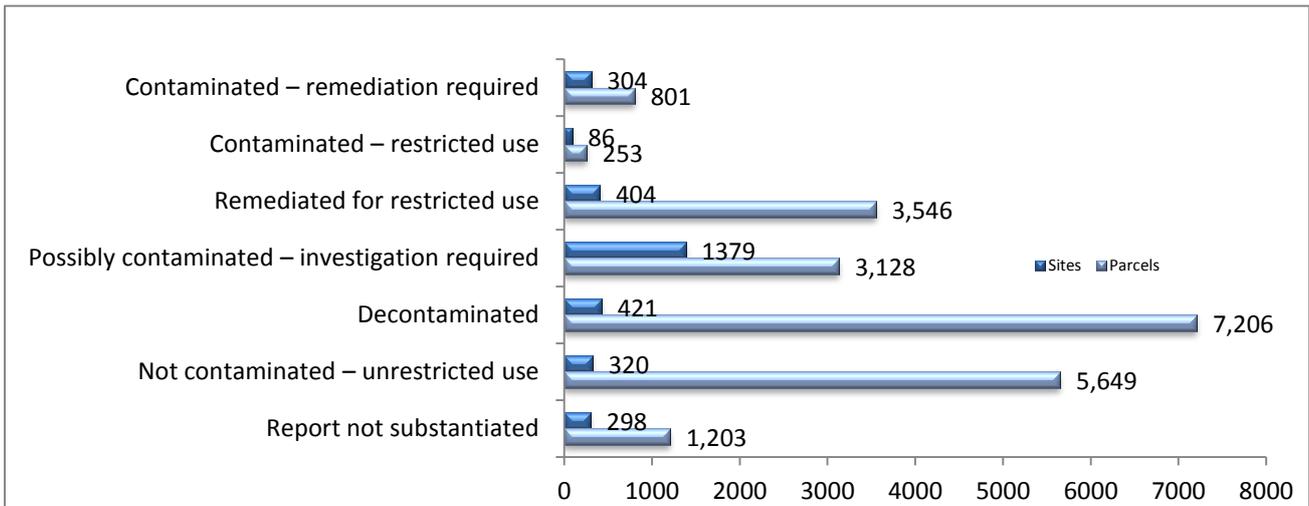


Figure 3.1 shows the number of sites reported and classified each financial year until June 2015, and quarterly since July 2015, as well as the steady increase in the total number of classified sites at the end of each period.

Figure 3.2 Distribution at 31 March 2016 of classified sites and parcels across the seven classification categories



Mandatory Auditor’s Report

A mandatory auditor’s report (MAR) is required under the CS Act for some sites. For example, an MAR may be required where:

- a site is a source of contamination that has moved off-site to affect other properties;
- a site is subject to a regulatory notice; or
- investigation and remediation is conducted to comply with a planning or Ministerial condition.

Some MARs are reviewed only by DER, apart from routine consultation with DoH under the classification process. For other MARs, DER requires specialist technical advice from other agencies before MAR processing can be completed. This can occur where asbestos or radiological contamination is present, or where a quantitative human health risk assessment was undertaken.

DER received eight MARs in Q3 2015–16 and six MARs were processed. In addition, two MARs carried forward from the previous reporting period were also processed, bringing the total number of MARs processed within this period to eight.

Three MARs received within this period were reviewed by DER only and did not require referral to other agencies. The average processing time for the three MARs received within this period, which were reviewed by DER only, was 19 calendar days. This was within DER’s 21-calendar day target. The average processing time for all MARs completed during this reporting period was 26 calendar days, exceeding DER’s 21-calendar day target by five calendar days.

DER continues to explore opportunities with other agencies to improve processing times.

Table 3.2 MAR review performance by quarter

	Q3 2014–15	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
MARs received	10	11	10	23	8
MAR reviews completed	8	13	8	19	8
MARs carried forward	6	3	4 ²⁷	6	5 ²⁷
Average processing time (calendar days)	34	44	37	26	26
MARs processed by DER only	2	6	1	8	3
Average time for MARs processed by DER only (calendar days)	16	19	26	19	19

²⁷ One MAR carried forward from the previous reporting period was determined to be non-mandatory.

4 Environmental Compliance

DER has a number of inspection programs to assist compliance with relevant legislation, as stated below (also, refer to Table 4.1 below).

Table 4.1 Environmental Compliance inspections programs Q3 2015–16

Inspection program	Program description	Q3 inspections	Year to date inspections	2015–16 inspection target	Target achieved
Waste Compliance Program	Landfills and associated waste industries	37	281	300	94%
Controlled Waste Compliance Program	Controlled waste carriers, drivers, vehicles and tanks, and waste facilities	48	215	200	108%
Prescribed Premises Compliance Program (PPCP)	High Risk	18	19	384	55%
	Moderate Risk	114	125		
	Low Risk	63	69		
	Total (PPCP)	195	213		
Pollution Response Activities	Light Industry Program	146 ²⁸	367 ²⁸	250	147%
	Environmental Risk Reduction Program	12	31	40	78%
Total		438	987	1,174	

Waste Compliance Program

The WARR Act provides for a landfill levy to be applied to waste received at metropolitan landfills and metropolitan waste received at landfills outside the metropolitan area. The landfill levy is intended to discourage waste disposal to landfill and encourage resource recovery.

DER audits landfill levy returns to verify accuracy of the data submitted and exemptions applied. During Q3 2015–16, 37 inspections of landfills and associated waste industries were undertaken to assist compliance with the *Waste Avoidance and Resource Recovery Levy Regulations 2008*.

²⁸ Note these figures include 117 follow up inspections carried out to date.

Prescribed Premises Compliance Program

DER is responsible for granting works approvals, registrations and licences to regulate activities prescribed under Part V of the EP Act.

Through the PPCP, the Department assesses compliance with prescribed premises' licence conditions and the general provisions of the EP Act. During Q3 2015–16, DER's Environmental Compliance carried out 195 inspections.

Controlled Waste Regulation

The purpose of the *Environmental Protection (Controlled Waste) Regulations 2004* (CW Regulations) is to enable the safe and authorised transportation of controlled waste on public roads in WA.

The CW Regulations place obligations on controlled waste generators, carriers, drivers and disposal sites. DER is responsible for assessing applications of new controlled waste carriers.

During Q3 2015–16, 118 licence applications were received, with 100 per cent assessed within the 30-day statutory time frame.

Controlled Waste Compliance Program

The Controlled Waste Compliance Program focuses on assessing obligations of controlled waste carriers, drivers and waste facilities in accordance with licence conditions and the general provisions of the CW Regulations. During Q3 2015–16, DER completed 48 inspections.

Pollution Response Activities

Light Industry Program

This two-year program involves joint inspections carried out with officers of seven local governments within priority catchments in the Swan-Canning River system. The inspections target light industrial premises that conduct activities that present a risk of pollution of the river systems and aim to ensure compliance with the EP Act and the *Environmental Protection (Unauthorised Discharges) Regulations 2004*.

Positive collaborative engagement and uptake of the Light Industry Program by local government has enabled efficient and effective delivery against planned targets. One hundred and forty six inspections have been completed under the program in Q3 2015–16 resulting in the program exceeding planned inspection targets.

Environmental Risk Reduction Program

This program includes inter-agency inspections with DMP and the Department of Fire and Emergency Services. It focuses on hazardous materials handling and storage. The aim is to ensure appropriate measures are in place to prevent, minimise, mitigate and abate risks to human health and/or the environment in the event of a large scale emergency or incident.

It also includes intelligence-based reactive inspections to identify potential environmental hazards and take action to reduce the risk of pollution.

During Q3 2015–16, 12 environmental risk reduction inspections were completed.

Statutory Submissions

There were 677 Annual Environmental Reports (AERs) and Annual Audit Compliance Reports (AACRs) due for submission to DER during Q3 2015–2016. Of these, DER received 561 AERs and AACRs (83 per cent).

5. Environmental Enforcement

This section summarises the performance of DER in delivering its regulatory role in enforcing Western Australia's major environmental legislation—the EP Act, CS Act, and WARR Act.

5.1 Incident Management and Complaints

The statistical data appearing in this section are obtained from DER's Incident and Complaint Management System (ICMS). The ICMS is a tool designed to record complaints and incidents, and provide a case management framework through which investigations are conducted and enforcement outcomes are decided.

Table 5.1(a) Environmental complaints²⁹/incidents³⁰ by DER region³¹

Region	Q1 2014–15		Q2 2014–15		Q3 2014-15	
	Complaint	Incident	Complaint	Incident	Complaint	Incident
Goldfields	5	30	2	42	6	49
Greater Swan	203	84	209	90	196	75
Indian Ocean Territories (IOT)	0	2	1	2	1	1
Midwest	4	21	11	30	18	23
North West	32	24	17	47	7	34
Perth	98	216	106	68	156	90
South Coast	11	26	10	25	10	29
Total	353	403	356	304	394	301

Table 5.1(b) Environmental complaints²⁹/incidents³⁰ by DER region³¹

Region	Q1 2015–16		Q2 2015–16		Q3 2015–16	
	Complaint	Incident	Complaint	Incident	Complaint	Incident
Goldfields	10	44	9	42	5	37
Greater Swan	194	74	265	131	404	58
Indian Ocean Territories (IOT)	0	3	0	5	0	0
Midwest	8	20	6	20	3	8
North West	20	70	37	45	95	25
Perth	126	111	165	129	159	123
South Coast	20	16	15	13	6	6
Total	378	338	497	385	672	257

²⁹ A complaint is the provision of information to DER concerning a potential breach of the legislation administered by DER.

³⁰ An incident is a confirmed event, which may involve a potential breach of the legislation administered by DER.

³¹ DER regional boundaries changed on 1 March 2014; figures associated with the former regional boundaries are incorporated in the new regional boundaries.

Figure 5.1 Analysis—complaints, incidents and sanctions over five quarters

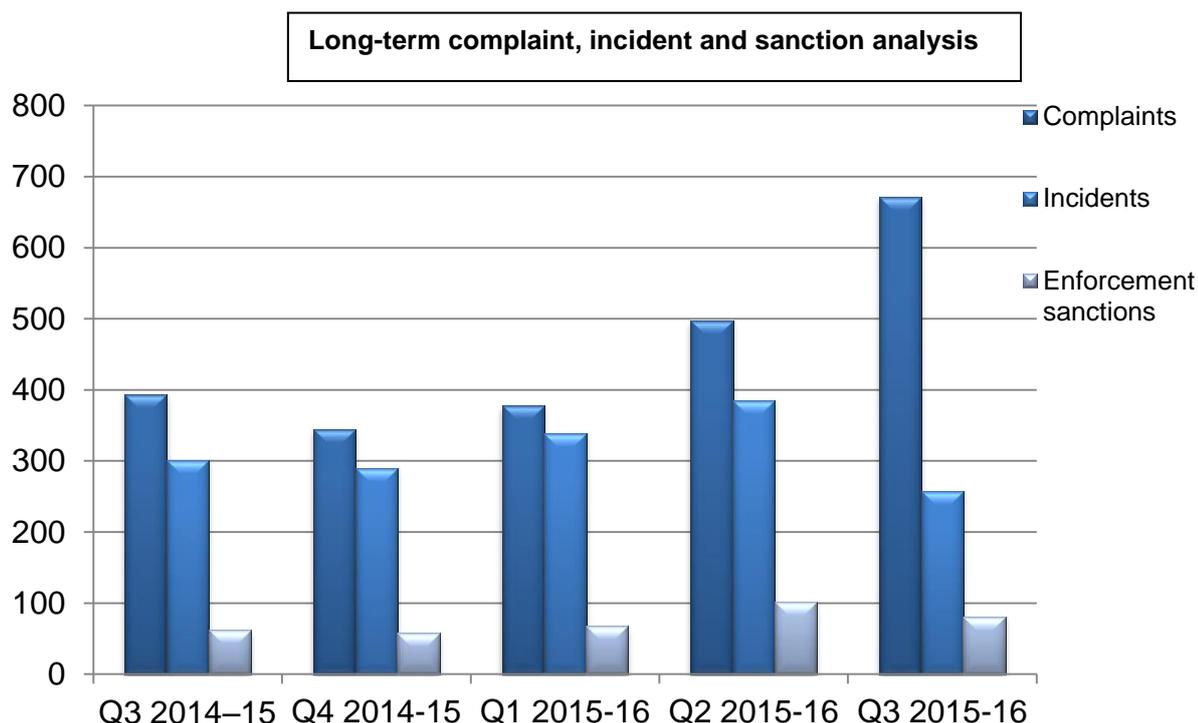


Table 5.2 Environmental complaints/incidents reported by sub-category, Q3 2015-16

Category	Complaints/ Incidents	Enforcement Actions
Clearing of native vegetation including:	50	9
Burning	0	
Cutting	48	9
Draining	1	
Grazing	0	
Poisoning	1	
Unspecified	0	
Compliance including:	48	28
Clearing permit	1	
Industry licence	25	27
Industry registration	1	
Proactive compliance	7	
Statutory reporting requirement	8	
Works approval	2	1
Unspecified	4	
Contaminated sites	0	0
Controlled waste including:	7	0
Disposal site	2	
Unauthorised disposal	3	
Unauthorised transport	2	
Waste generator	0	
Unspecified	0	

Category	Complaints/ Incidents	Enforcement Actions
Dumping including:	77	6
Asbestos	1	
Construction & demolition	15	
Green waste	9	
Hazardous materials	2	
Household waste	49	6
Tyres	1	
Unspecified	0	
EP licence breach including:	55	0
Condition breach—late report	11	
Condition breach—licence limit	13	
Condition breach—reporting condition	22	
Condition breach—other	9	
Unspecified	0	
Emission including:	629	30
Air quality	4	2
Dumping waste	6	
Dust	129	
Hazardous material	16	2
Light	1	
Liquid waste	79	3
Noise	65	
Odour	266	
Pesticide	3	
Smoke	17	
Solid waste	8	
Unauthorised discharge	35	23
Unspecified	0	
Landfill levy	0	0
Non-payment of levy	0	
Fail to submit return	0	
Threat/Aggression/Assault³²	0	0
Risk rating: Low	0	
Other	63	8
Total	929	81

³² Incidents where a DER employee is assaulted or subject to threatening or aggressive behaviour.

Figure 5.2 Complaints and incidents received by DER region, Q3 2015–16

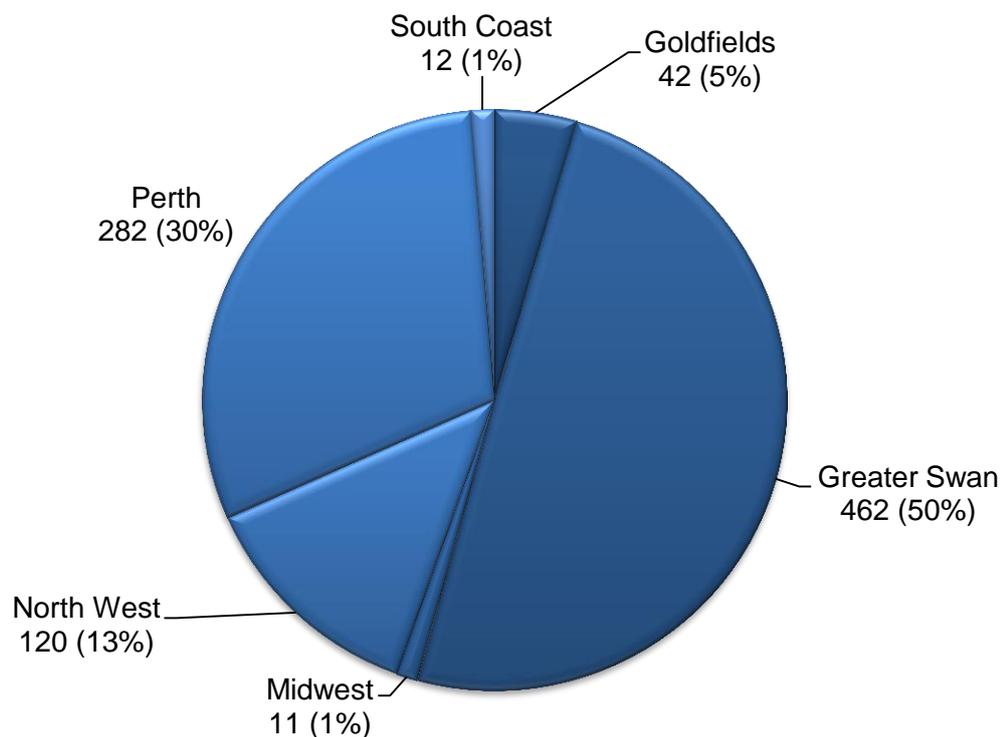


Figure 5.3 Complaints and incidents as percentages, Q3 2015–16

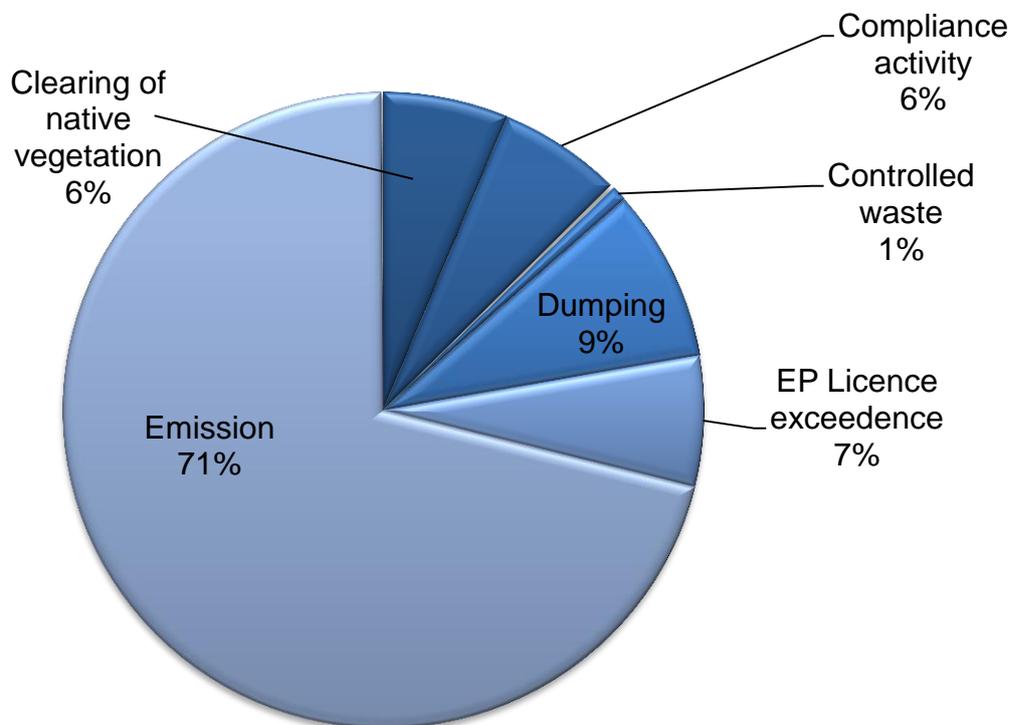


Table 5.3 Enforcement sanctions undertaken over six quarters

Type of action	Q2 2014–15	Q3 2014–15	Q4 2014–15	Q1 2015–16	Q2 2015–16	Q3 2015–16
Environmental field report (EFR) ³³	3	28	31	18	64	65
Letter of warning ³⁴	16	26	20	30	27	10
Infringement notices ³⁵	3	4	5	4	6	1
Environmental protection notice (EPN) ³⁶	0	0	0	0	0	0
Stop work order ³⁷	0	0	0	0	0	0
Statutory direction/notice ³⁸	1	0	0	0	0	0
Modified penalty ³⁹	0	0	0	4	0	3
Prosecutions commenced ⁴⁰	2	4	2	9	5	2
Pending prosecutions	8	5	9	12	10	8
Current prosecutions before the court	3	5	8	11	11	10

³³ An EFR replaced the EFN effective end of Q2 2014–2015. The EFR is a non-statutory written notice identifying an alleged offence, and may include a request to the recipient to take remedial action.

³⁴ A letter of warning is a non-statutory notice to an offender that prima facie evidence of a legislative breach is alleged and has been noted on record.

³⁵ An infringement notice is a modified penalty for an alleged offence requiring the payment of a fine or election to have the matter heard in court.

³⁶ An EPN is a statutory notice issued pursuant to section 65 of the EP Act.

³⁷ A stop work order is a statutory order made by the Minister pursuant to section 69 of the EP Act.

³⁸ A statutory direction/notice is a written direction requiring certain action be taken or ceased within a specified time; for example, a pollution prevention notice.

³⁹ A modified penalty is a statutory notice that an offence has occurred and that, in the opinion of DER, the offence has met the prescribed legislative requirements to minimise and remedy the environmental impact.

⁴⁰ A DER prosecution action commences when a complaint is made (or sworn) that an entity has committed an offence under the legislation.

Table 5.4 Enforcement actions undertaken by corresponding financial year quarter

Type of action	Number of actions undertaken by quarter ⁴¹			
	Q3 2012–13	Q3 2013–14	Q3 2014–15	Q3 2015–16
Licence review/amendment ⁴²	7	2	1	0
Prescribed action ⁴³	5	2	0	0
EFR	226	34	28	65
Letter of warning	108	11	26	10
Infringement notices	66	4	4	1
EPN	1	0	0	0
Stop work order	0	0	0	0
Statutory direction/notice	5	3	0	0
Modified penalty	2	0	0	3
Prosecution	5	3	4	2

Table 5.5 Native vegetation regulation activity, Q3 2015–16

Activity	Number
Vegetation conservation notice (VCN) ⁴⁴	2 issued (45 active)
Clearing applications	96
Clearing approvals	88
Letters of warning	5
Prosecutions	0

⁴¹ Quarters 4 for 2011–12 and 2012–13 include actions/sanctions undertaken by the Swan River Trust (SRT). Following machinery of government changes and the establishment of DER on 1 July 2013, Quarter 4 figures for 2013–14 do not include actions/sanctions undertaken by SRT.

⁴² DER may amend or revoke an existing licence for the conservation, preservation, protection, enhancement and management of the environment.

⁴³ A prescribed action is any physical intervention undertaken by DER to remedy a breach of legislation or when undertaking remedial action. If this occurs, the occupier or polluter may be pursued for the cost of the clean-up. Such action will be taken only where authorised by legislation and in accordance with that legislation.

⁴⁴ A vegetation conservation notice is a statutory notice given under s 70 of the EP Act when the CEO of DER suspects, on reasonable grounds, that unlawful clearing of native vegetation is likely to take place, is taking place, or has taken place on the land.

6. Contact Details

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Regional Locations

See www.der.wa.gov.au/about-us/72-regional-offices-contact-details

6.2 Quarterly Reports

Approvals Summary
Executive Director Licensing and Approvals

Works Approvals and Licences
Senior Manager Industry Regulation

Environmental Compliance
Senior Manager Environmental Compliance

Native Vegetation Clearing Permits
Senior Manager Clearing Regulation

Contaminated Sites
Senior Manager Contaminated Sites

Environmental Enforcement
Environmental Enforcement Senior Analyst