

ADAPTING FOR ENVIRONMENTAL COMPLIANCE

COVID-19 RESPONSE

December 2020

Although restrictions imposed by Governments across Australia are being relaxed, wound back or lifted, we understand that operational changes may still be required in what continues to be uncertain times and this will have implications for the continuity of environmental compliance particularly as businesses continue in their COVID-19 response.

In previous months, we have seen planning legislation changes introduced to relax the requirement to obtain a planning approval in certain circumstances or to comply with an existing development consent during the COVID-19 pandemic. Similarly, we have seen environmental legislation changes introduced to allow for the approval of temporary authorities where a response to the COVID-19 emergency will impact the intensity or scale of environmentally relevant activities.

There are also existing legislative tools under environmental legislation which could provide some opportunity for relief from or changes to environment protection licences and approvals, allow for certain exemptions or provide for the grant of emergency authorisations during the COVID-19 pandemic. Environment regulators also have discretion as to whether to enforce compliance and take enforcement action at this time.

This tool helps you understand what environmental compliance and/or planning measures are available and how they can be utilised to respond to, or prepare for, implications associated with COVID-19, so that you can take necessary steps to remain in legal compliance.

If you would like any further information and advice on which tool would be relevant to your organisations operations, please contact our [Environment and Planning Team](#).

Also see our [CU SAFE app](#) in the event of a serious safety or environmental incident.

And you can keep up with the latest thinking and guidance on our [Natural Disasters and Business Continuity hub](#).

See Legislative Tools for The Commonwealth, Queensland, New South Wales, Western Australia and South Australia

ADAPTING FOR ENVIRONMENTAL COMPLIANCE COVID-19 RESPONSE



COMMONWEALTH

Steps for applying for an EPBC Act exemption

Key Terms

SOUTH AUSTRALIA

Applying for an EP Act emergency authorisation

Vary a development authorisation

Key Terms

QUEENSLAND

Environmental compliance tools for COVID-19

Steps for applying for a TEL During COVID-19

Steps for applying for a TEP During COVID-19

Steps for applying for a TUL During COVID-19

Steps for applying for a temporary authority and process for exemption declarations

Key Terms

NEW SOUTH WALES

Environmental compliance tools for COVID-19

Response from the Regulators

Applying for an EPL variation or exemption

Complying with your development consent

Practical Tips and Key Terms

WESTERN AUSTRALIA

Applying for an EPA variation or exemption

Applying for a Planning Act exemption

Assessment of significant proposals

Key Terms

COMMONWEALTH: STEPS FOR APPLYING FOR AN EPBC EXEMPTION



When can I apply for an exemption under the EPBC Act?

Do you propose to take an EPBC Act controlled action without approval because of COVID-19?

Is it in the national interest, in the fight against COVID-19, for an exemption to be granted for the proposal?

Apply to the
Minister for an
exemption

Clearly detail the
proposal and its
environmental impacts

Explain why the
exemption is in the
national interest

Ensure all supporting
information and evidence
is included

The Minister will make a decision within 20 business days of the application,
the exemption cannot apply retrospectively

COMMONWEALTH: KEY TERMS

EPBC Act

Environmental Protection and Biodiversity
Conservation Act 1999 (Cth)



ADAPTING FOR ENVIRONMENTAL COMPLIANCE COVID-19 RESPONSE



QUEENSLAND

Environmental
compliance tools for
COVID-19

Steps for applying for a
TEL During COVID-19

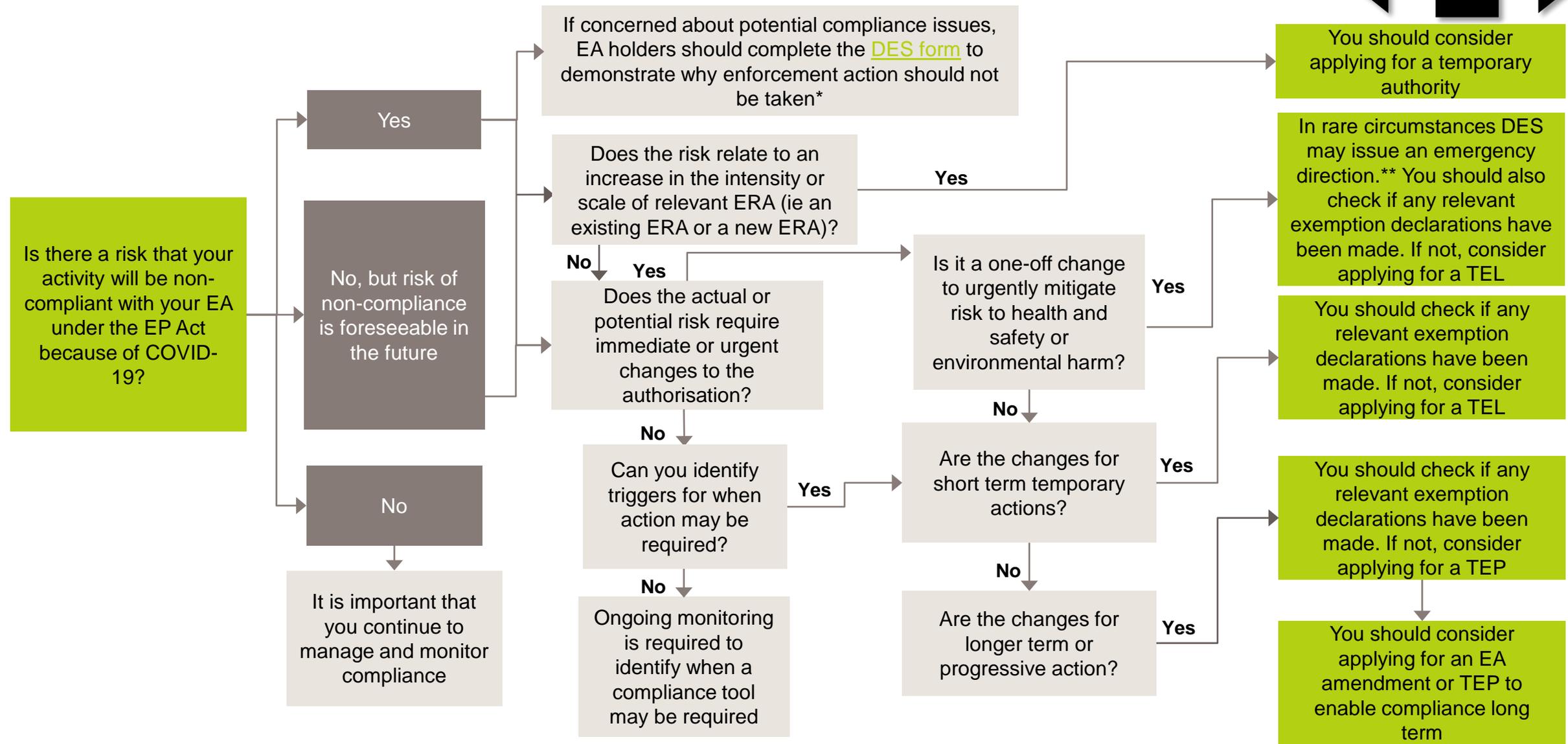
Steps for applying for a
TEP During COVID-19

Steps for applying for a
TUL During COVID-19

Steps for applying for
a temporary authority
and process for
exemption declarations

Key Terms

QUEENSLAND: ENVIRONMENTAL COMPLIANCE TOOLS FOR COVID-19



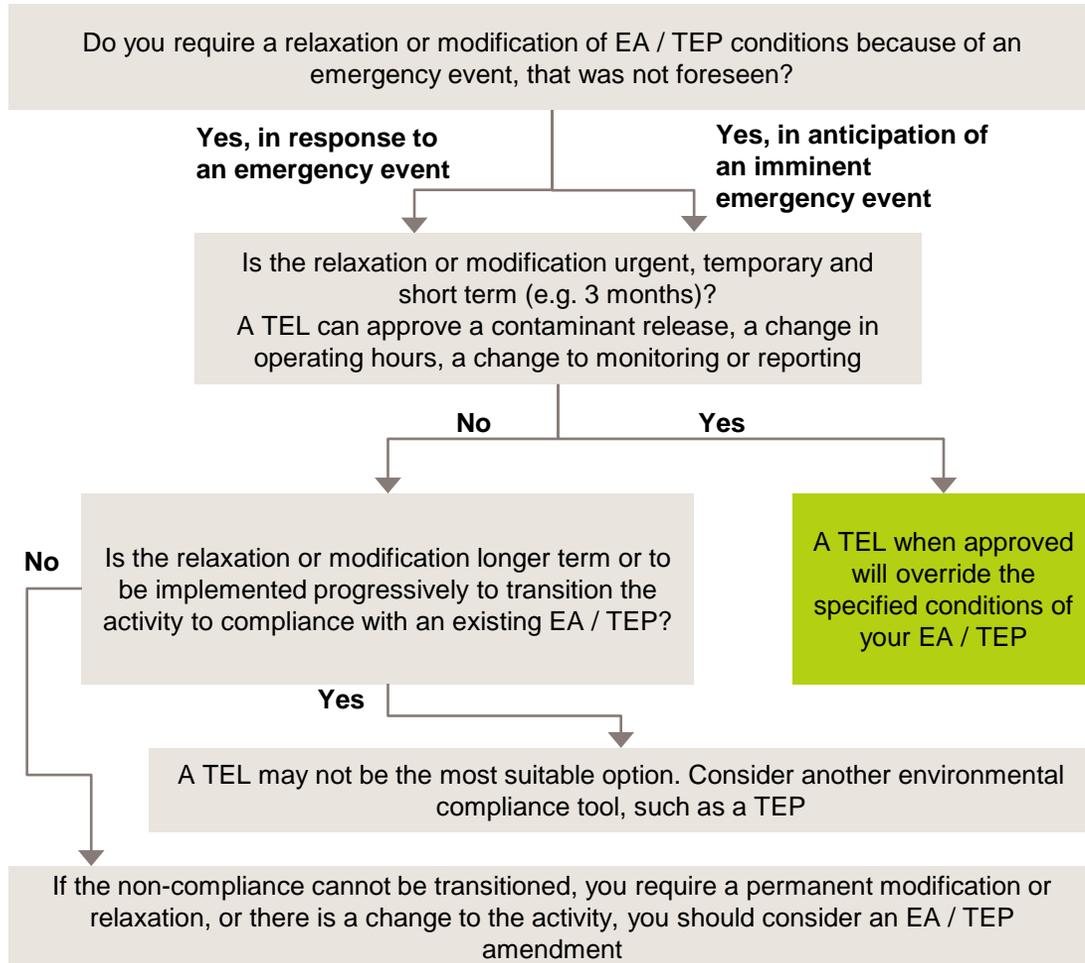
*An EA holder will need to demonstrate to the satisfaction of DES that it will be unable to comply with an EA condition because of a direction of the Chief Health Officer and it will otherwise take and has taken all reasonable and practicable measures to prevent environmental impacts.

**Generally DES will only give an emergency direction where a threat of serious or material environmental harm or a threat to human health is actually occurring as a result of an emergency incident. An emergency direction is not likely to be issued to deal with an anticipated emergency event.

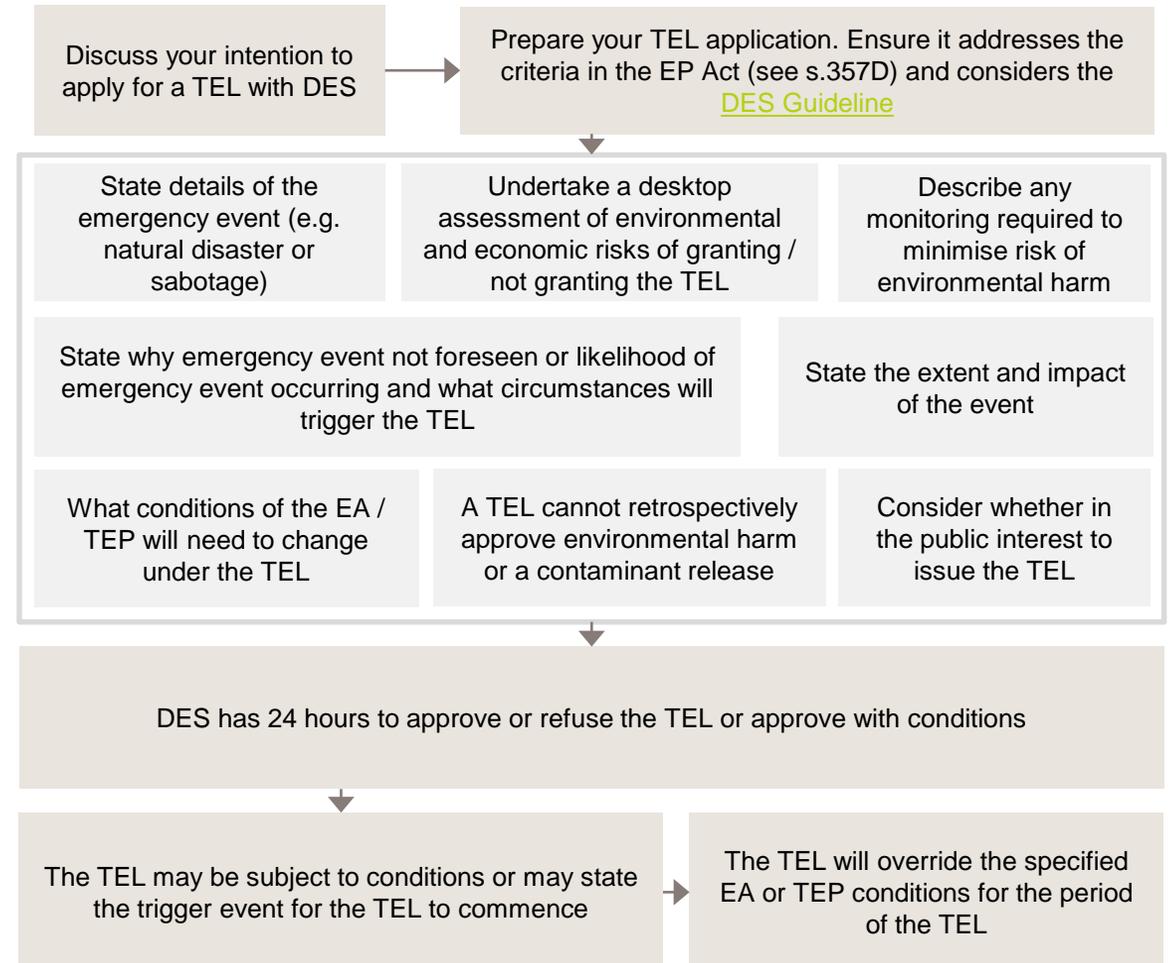
QUEENSLAND: STEPS FOR APPLYING FOR A TEL DURING COVID-19



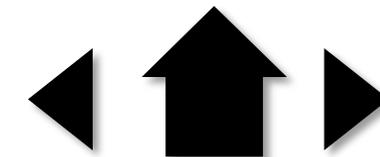
When can I use a TEL?



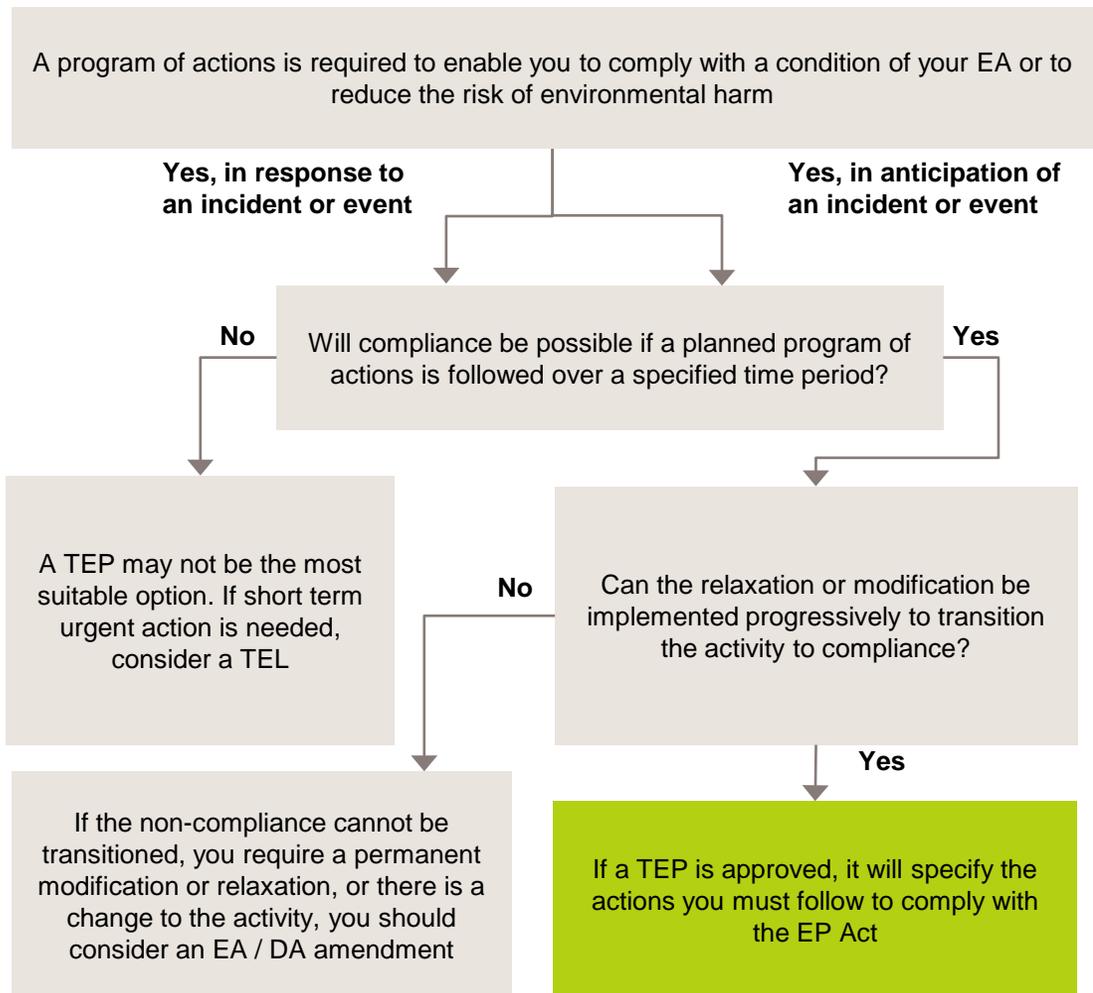
What are the steps to apply for a TEL?



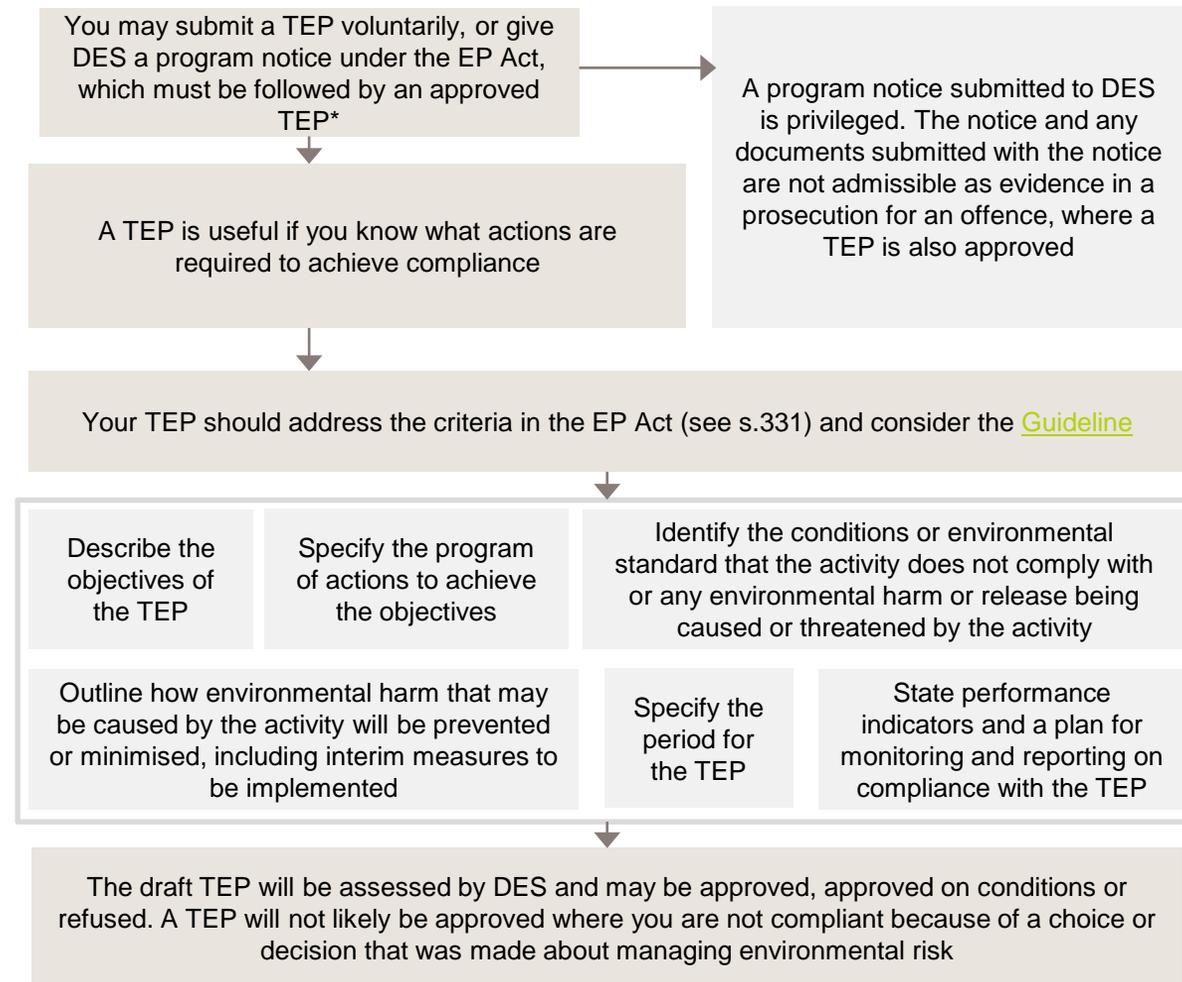
QUEENSLAND: STEPS FOR APPLYING FOR A TEP DURING COVID-19



When can I use a TEP?

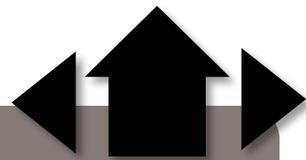


What are the steps to apply for a TEP?

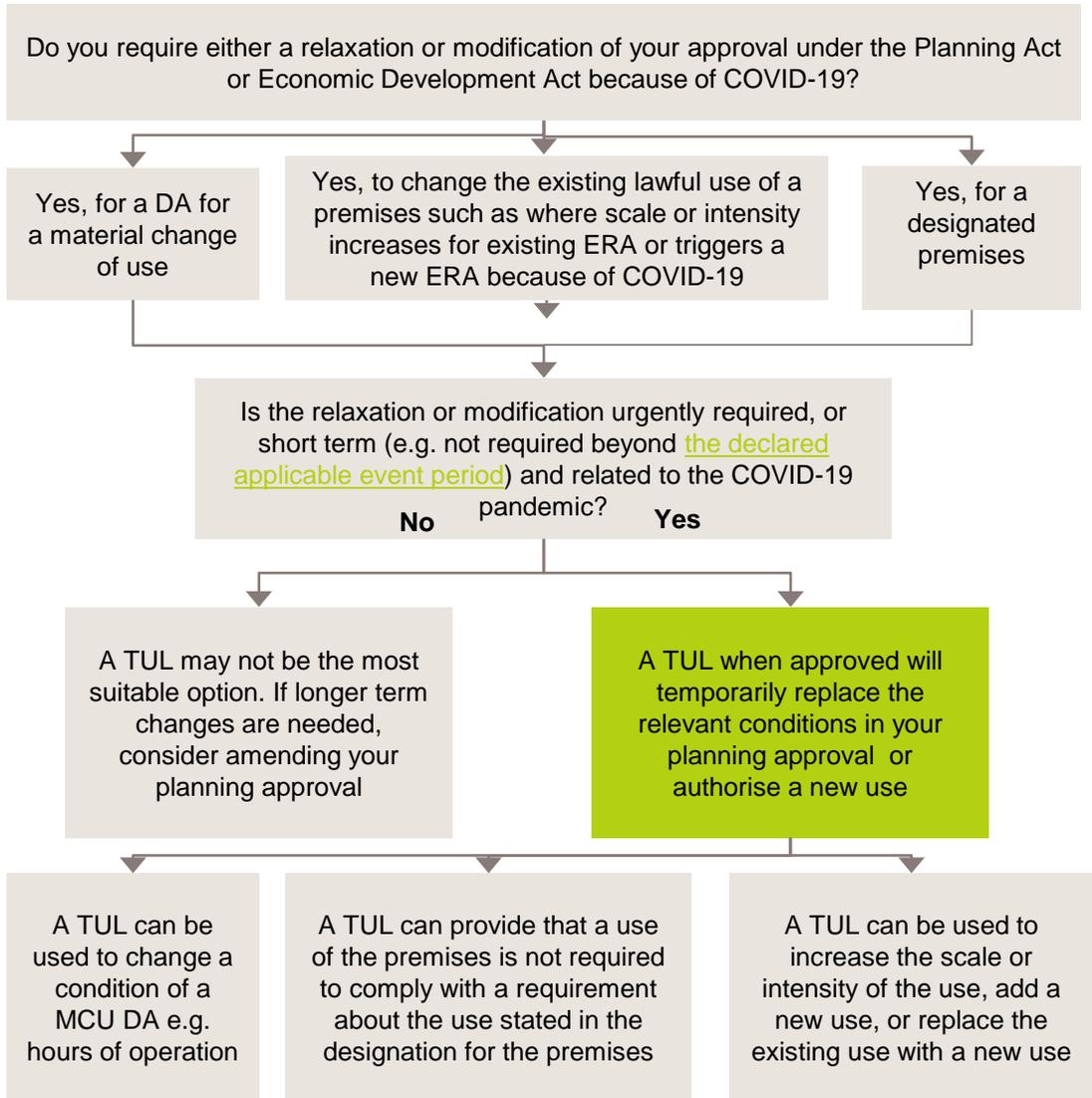


*If you are not in compliance with your authorisation under the EP Act, DES may require you to submit a draft TEP

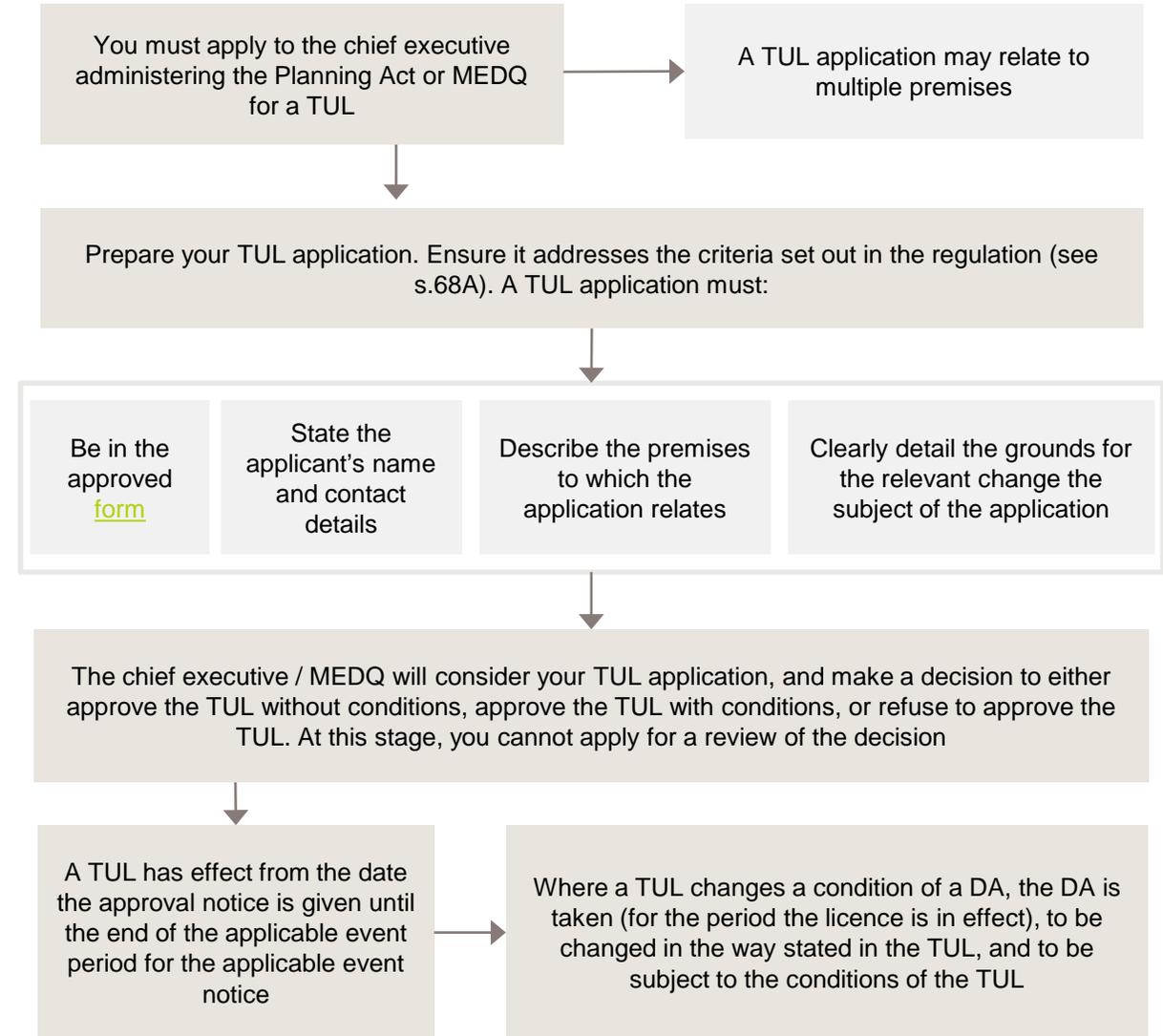
QUEENSLAND: STEPS FOR APPLYING FOR A TUL DURING COVID-19



When can I use a TUL?



What are the steps to apply for a TUL?



QUEENSLAND: STEPS FOR APPLYING FOR A TEMPORARY AUTHORITY AND PROCESS FOR EXEMPTION DECLARATIONS



When can I request a Temporary Authority?

Has or will your response to the effect of the COVID-19 emergency impact the intensity or scale of your operations?

Yes

Does your response increase the intensity or scale of your existing ERA which would normally require either an amendment of the EA or a new EA?

Yes

Is a temporary authority a necessary and reasonable response to the effect of the COVID-19 emergency?

Yes

A temporary authority can be applied for until the COVID-19 legislation expiry date and when approved will authorise the increased intensity or scale of an existing ERA or a new ERA for the period stated in the temporary authority, ending no later than 30 June 2021

No

Does your response increase intensity or scale resulting in a new ERA for which an EA would normally be required under the EP Act?

Yes

No

The administering authority must decide to refuse to issue the temporary authority and as soon as practicable after making the decision, give the person written notice of the decision and the reasons for the decision.

No

Declarations about Exemptions

The Minister may make a declaration giving an exemption from complying with specified conditions. This can be made for a TEP, an EA, a temporary authority or a TEL or for the holders of a relevant approval. The declaration may:

The Minister may make the declaration only if the Minister is satisfied that:

As a result of the COVID-19 emergency, the holder of a relevant approval is unable to comply with a condition of the approval

The making of the declaration is a necessary and reasonable response to the effect of the COVID-19 emergency

The declaration must state:

The exemption period for which the exemption has effect, including the day the period starts; and the day, not later than 30 June 2021, the period ends for any relevant approval

The area to which the declaration relates

QUEENSLAND: KEY TERMS



COVID-19	Coronavirus disease 2019
DES	Queensland Department of Environment and Science
DA	Development Approval
EA	Environmental Authority
Economic Development Act	Economic Development Act 2012 (Qld)
EP Act	Environmental Protection Act 1994 (Qld)
ERA	Environmentally Relevant Activity
MEDQ	the Minister for Economic Development Queensland
Planning Act	Planning Act 2016 (Qld)
TUL	Temporary Use Licence
TEL	Temporary Emissions Licence
TEP	Transitional Environmental Program

ADAPTING FOR ENVIRONMENTAL COMPLIANCE COVID-19 RESPONSE



NEW SOUTH WALES

Environmental
compliance tools for
COVID-19

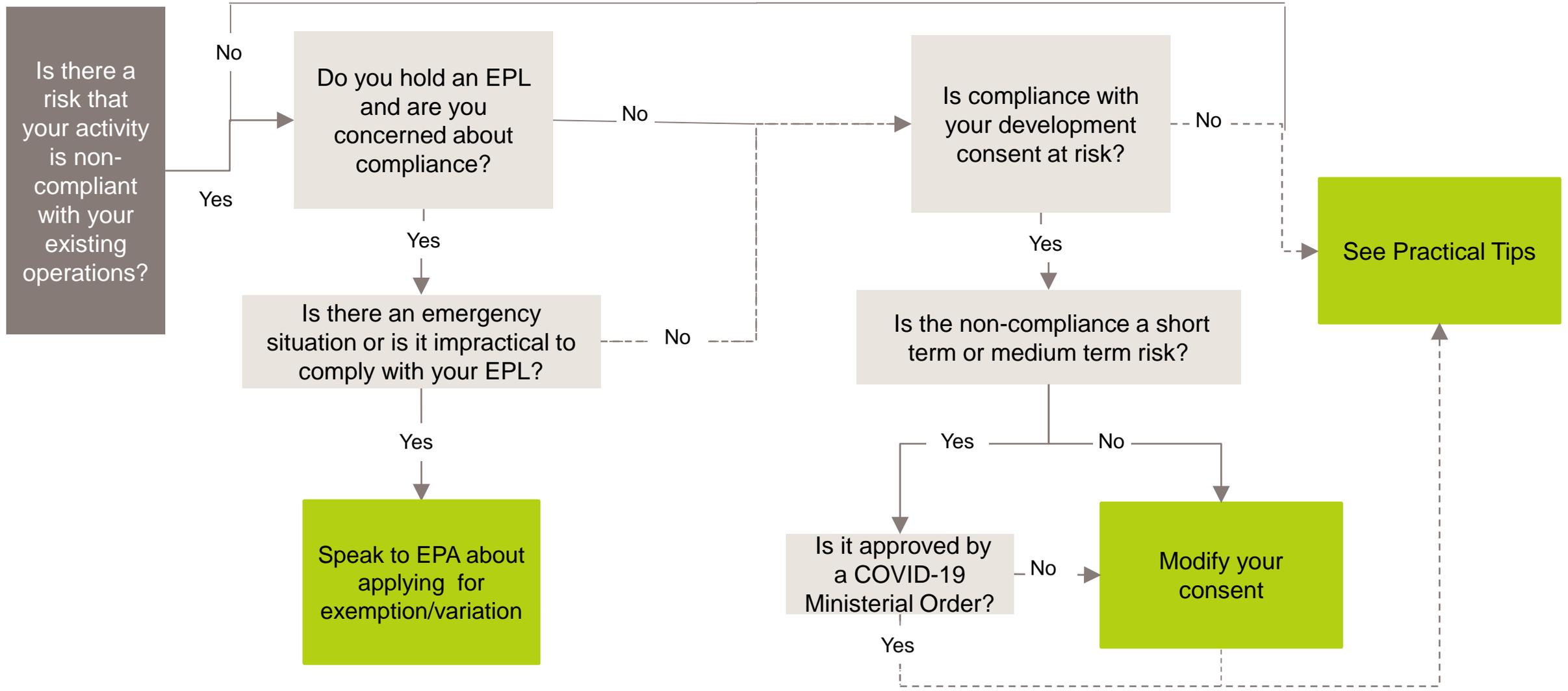
Response from the
Regulators

Applying for an EPL
variation or exemption

Complying with your
development consent

Practical Tips
and Key Terms

NEW SOUTH WALES: ENVIRONMENTAL COMPLIANCE TOOLS FOR COVID-19



NEW SOUTH WALES: RESPONSE FROM THE REGULATORS



NSW Department of Planning, Industry and Environment

The NSW DPIE has introduced:

1. New Ministerial Orders
 - ▶ Allows development to be carried out without planning approval in certains circumstances
 - ▶ Measures in place until crisis is over, and reviewed as new issues arise
2. Planning System Acceleration Program
 - ▶ Stated focus to "cut red-tape"
 - ▶ Criteria established for projects to be included in program – see NSW Planning website

NSW Environment Protection Authority

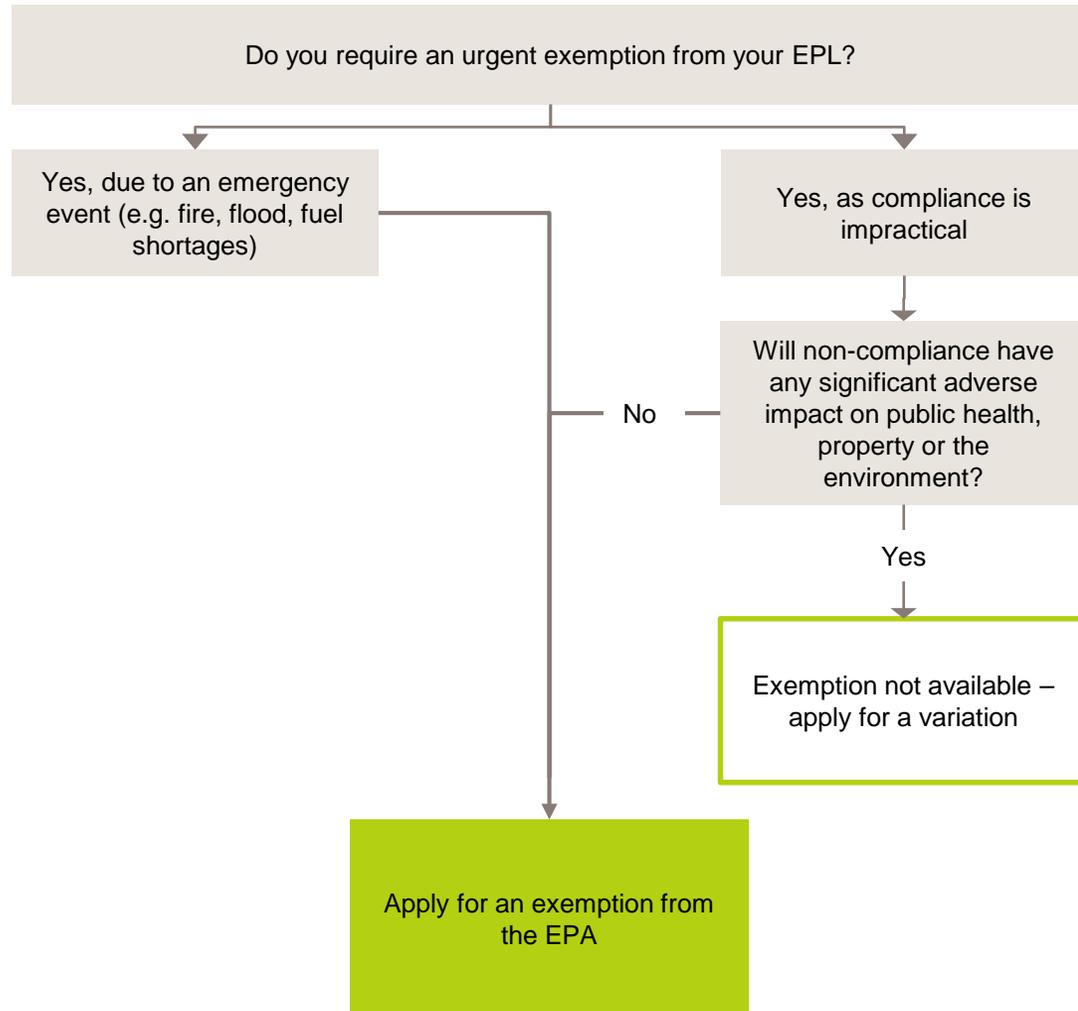
The EPA has clarified its approach to compliance:

1. Require compliance
 - ▶ EPA will continue enforcing licence conditions and issuing clean-up notices and prevention notices where necessary
2. Consider requests for exemptions
 - ▶ EPA will consider requests for exemptions on a case-by-case basis
3. Exercise discretion in enforcement action
 - ▶ EPA will act in accordance its regulatory discretion to consider individual circumstances on a case-by-case basis and take into consideration relevant circumstances such as coronavirus prevention measures.

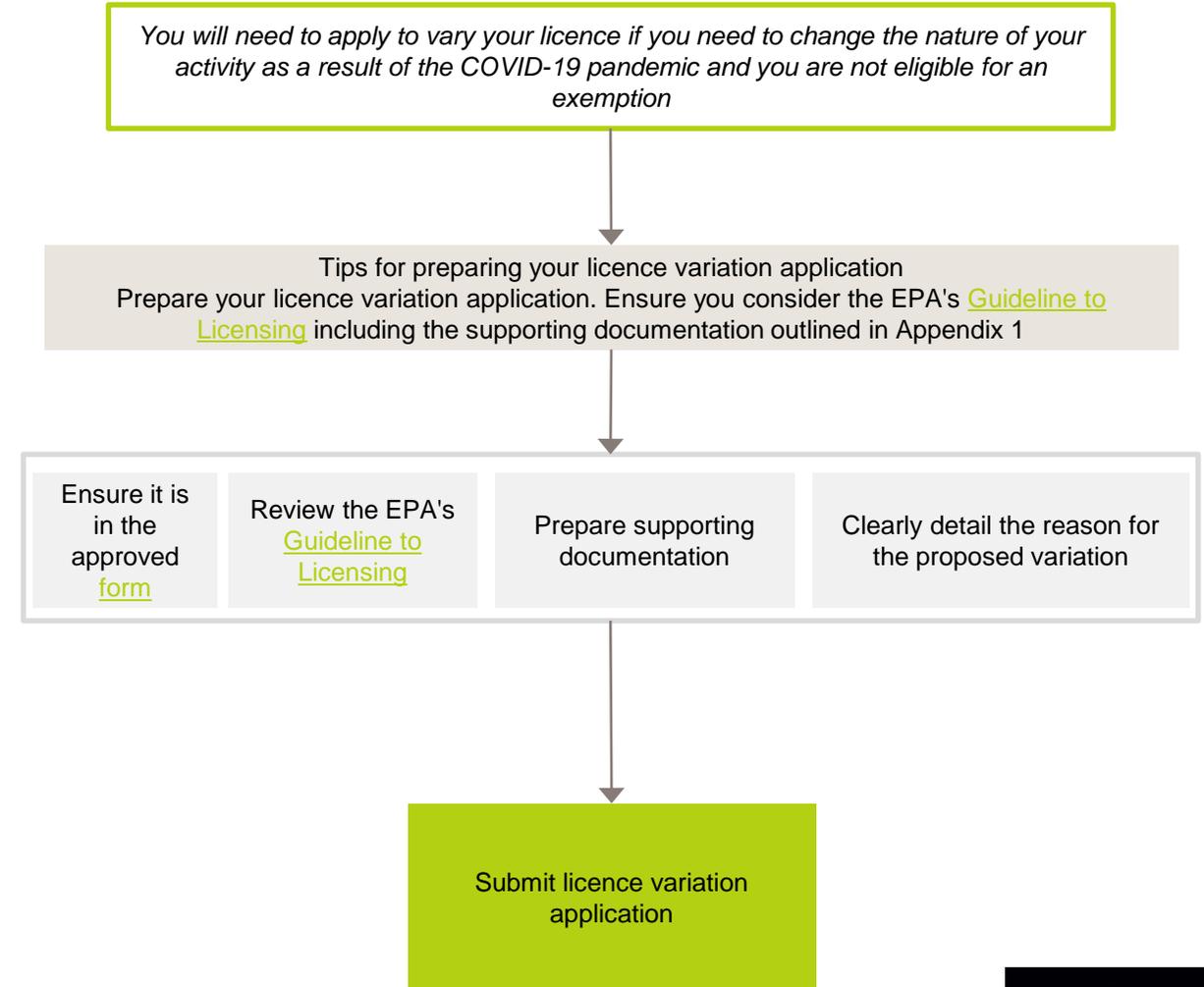
NEW SOUTH WALES: STEPS FOR APPLYING FOR AN EPL VARIATION OR EXEMPTION DURING COVID-19



Applying for an exemption



Applying for an EPL Variation



NEW SOUTH WALES: COMPLYING WITH YOUR PLANNING APPROVAL



Ministerial Orders

- ▶ The Minister for Planning and Public Spaces has been given new powers to make Ministerial Orders to authorise development during COVID-19 without the need for planning approval.
- ▶ The Minister can make an order if the Minister has consulted with the Minister for Health and Medical Research and it is necessary to protect the health, safety and welfare of members of the public.

Examples of Ministerial Orders

- ▶ Extended hours of trading permitted for retail premises (supermarkets, pharmacies and corner stores)
- ▶ Construction, buildings works and state significant infrastructure can be carried out on Saturday, Sunday and Public Holidays

Are you at risk of breaching your development consent during COVID-19?

If yes, consider whether your activity is the subject of a Ministerial Order

If a Ministerial Order does not apply, you will need to seek a modification of your approval

NEW SOUTH WALES:

COVID-19 PRACTICAL CONSIDERATIONS – A CHECKLIST



In order to ensure environmental management obligations are met in light of the COVID-19 pandemic, businesses should:

1. Continue to comply with ongoing EPA obligations including:

- Licence conditions which remain reasonably practicable to comply with
- Identify any conditions such as pollution reduction programs which will not meet specified timelines for compliance and seek extensions at earliest opportunity
- Refresher training on the duty to report pollution under the Protection of Environment Operations Act or contamination under the Contaminated Land Management Act
- Contact the EPA if there is a significant risk to their capacity to comply with licence conditions

2. Review and update Business Continuity Plans to account for:

- Measures necessary to reduce environmental and public health risk (e.g. social distancing protocols, providing protection equipment and training, etc.)
- Business disruptions to staffing, supply and demand
- Ensuring correct management of pollution control equipment and proper waste management
- Means to keep staff informed on business developments and employee impact and keep people connected e.g. virtual tool box talks
- Any other business specific measures necessary to deal with COVID-19 related impacts

3. Review and update Pollution Incident Response Plans (PIRMP), noting that:

- There is no change to existing PIRMP training and testing requirements triggered by the COVID-19 pandemic at this stage
- Additional staff training may be required in light of COVID-19 and should receive appropriate training
- Testing exercises may be able to be implemented in a manner adhering to social distancing principles (e.g. remotely via various online and virtual platforms)

4. Assess environmental management in light of corporate considerations:

- Environment compliance requirements including EPL conditions may require variation to reflect commercial measures dealing with fluctuations to company production, demand, supply, staffing and cash flow (consider corporate need to "scale up" or "scale down")

5. Be wary of further regulatory reform

- Monitor NSW Government announcements for further change necessary throughout the COVID-19 pandemic
- Check Clayton Utz [Natural Disasters and Continuity hub](#)

KEY TERMS

Contaminated Land Management Act

Contaminated Land Management Act 1997 (NSW)

EPA

New South Wales Environment Protection Authority

EPL

Environment Protection Licence

Protection of Environment Operations Act

Protection of Environment Operations Act 1997 (NSW)

ADAPTING FOR ENVIRONMENTAL COMPLIANCE COVID-19 RESPONSE



WESTERN AUSTRALIA

Applying for an EPA
variation or exemption

Applying for a planning
requirement

Assessment of
significant proposals

Key Terms

WESTERN AUSTRALIA: STEPS FOR APPLYING FOR AN EPA VARIATION OR EXEMPTION DURING COVID-19



Do you hold a licence or work approval under the EPA and are concerned about compliance?

Do you require an urgent exemption from or variation to your licence or work approval?

Yes, due to a temporary emergency
(e.g. fire, flood etc)

Apply to DWER for an exemption to
part V of the EPA

Exemptions cannot exceed 14 days
and may be subject to such conditions
DWER specifies

Yes, for reasons other than
a temporary emergency

Exemption
not available
– apply for a
variation

Applying for a variation to an existing licence or work approval

Are you in danger of non-compliance with an existing licence or work approval because of COVID-19?

Apply to DWER for a variation to your licence or work approval

Ensure it is
in the
approved
form

Ensure it is
accompanied by
the correct fee

Prepare
supporting
documentation

Clearly detail the
reason for the
proposed variation

Submit work approval or licence
variation application

WESTERN AUSTRALIA: APPLYING FOR A PLANNING REQUIREMENT EXEMPTION



When can I apply for an exemption?

Do you require an exemption from a planning requirement under the LPS Regulations because of COVID-19?

Yes, from obtaining a development approval

Yes, from a requirement under a development approval

Yes, in relation to the permissibility of uses of land

Yes, from a requirement relating to works

Yes, in relation to consultation, advertisement, applications, time limits or forms

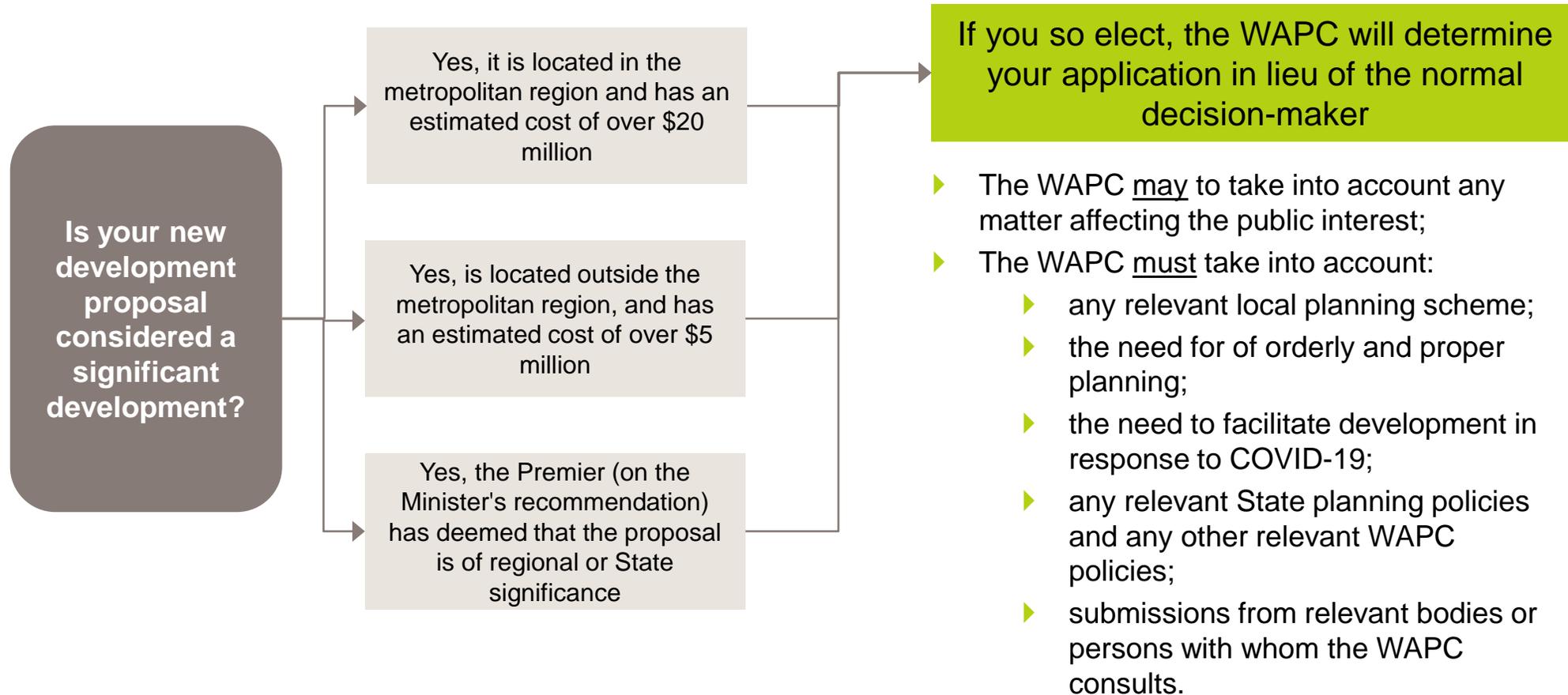
Is the exemption necessary for the purpose of facilitating a response to, or recovery from, COVID-19, while the state of emergency declaration is ongoing?

Apply to the Minister for an exemption

The Minister will assess the application in consultation with the WA Planning Commission and WA Local Government Association

The exemption will apply from the date the notice is signed until either the date that the state of emergency ceases, or a date and time stated in the notice (no longer than 5 years)

WESTERN AUSTRALIA: NEW PLANNING APPROVALS PROCESS FOR SIGNIFICANT DEVELOPMENTS



WESTERN AUSTRALIA: **KEY TERMS**



<i>EPA</i>	Environmental Protection Act 1996 (WA)
<i>DWER</i>	Department of Water and Environmental Regulation
<i>LPS Regulations</i>	Planning and Development (Local Planning Schemes) Regulations 2015 (WA)
<i>WAPC</i>	Western Australian Planning Commission



ADAPTING FOR ENVIRONMENTAL COMPLIANCE COVID-19 RESPONSE



SOUTH AUSTRALIA

Applying for an EP Act
emergency
authorisation

Vary a development
authorisation

Key Terms

SOUTH AUSTRALIA: **APPLY FOR AN EP ACT EMERGENCY AUTHORIZATION**



Do you require an emergency authorisation to protect life in response to COVID-19?

Do circumstances of urgency exist such that obtaining an exemption is not practical?

Is the authorisation justified by the need to protect life, the environment or property?

Apply to the EPA for an authorisation for an act or omission that would otherwise contravene the EP Act

An emergency authorisation will only be issued if it is justified to the satisfaction of the EPA

An emergency authorisation does not absolve a party from compliance with a clean-up order issued in respect of the relevant act or emission

An emergency authorisation may be subject to such conditions that the EPA considers appropriate

Do you require a non-urgent variation to an existing authorisation in the wake of COVID-19?

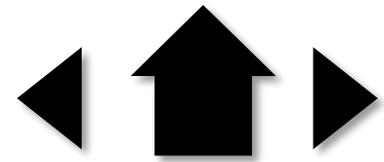
Write to the EPA to request a variation of the relevant condition

If the EPA proposes to make the variation, they must publish a public notice to invite interested persons to make submissions

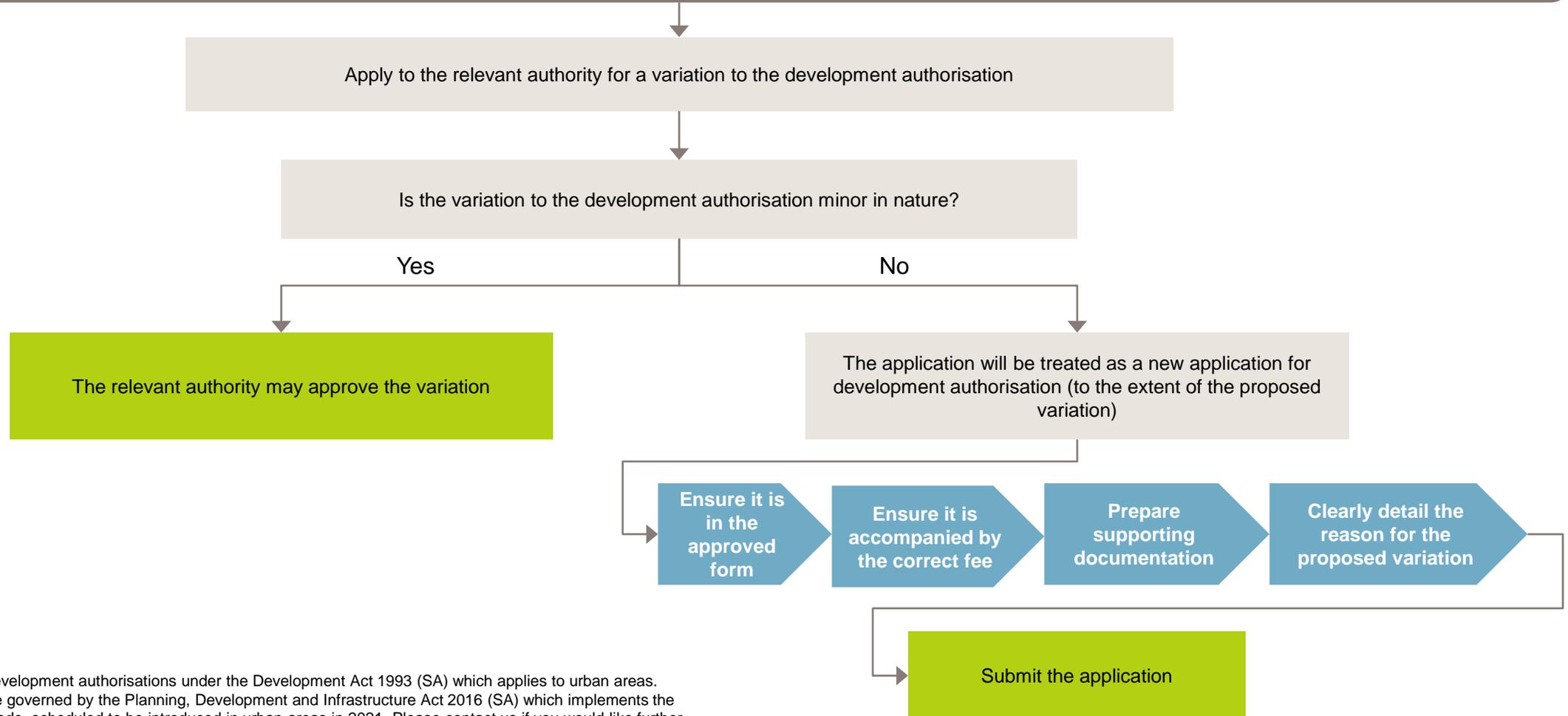
The EPA will have regard to (amongst other things) the objects of the EP Act, any environmental policies, and any submissions received

The EPA will determine whether to grant the variation

SOUTH AUSTRALIA: VARY A DEVELOPMENT AUTHORISATION



Are you in danger of failing to comply with a development authorisation* because of COVID-19?



*This slide considers development authorisations under the Development Act 1993 (SA) which applies to urban areas. Rural developments are governed by the Planning, Development and Infrastructure Act 2016 (SA) which implements the Planning and Design Code, scheduled to be introduced in urban areas in 2021. Please contact us if you would like further information on the implementation of the Planning and Design Code and how it may affect your business.

SOUTH AUSTRALIA: **KEY TERMS**

EP Act

Environmental Protection Act 1993 (SA)

EPA

South Australian Environmental Protection
Authority

