

# **Role and Functions of the EPA**

## **1. Background**

The Environmental Protection Authority (EPA) came into existence on 1 January 1972 and operates under the *Environmental Protection Act 1986* (hereafter referred to as the Act). This document aims to assist the public and stakeholders gain a better understanding of the EPA, and to indicate where the public can become involved in environmental protection processes.

Activities undertaken by the EPA are prescribed in the Act. Accordingly, where appropriate, the relevant sections of the Act are referred to.

## **2. Environmental Protection Authority**

The EPA is a statutory authority and is the primary provider of independent environmental advice to Government. It consists of five members, who are not public servants, and includes a full-time chairman. They are appointed by the Governor on the recommendation of the Minister for the Environment (hereafter referred to as the Minister) on account of their expertise and interest in matters affecting the environment generally.

The EPA's objectives are to protect the environment and to prevent, control and abate pollution. To this end, the EPA advises the Minister on the environmental acceptability of new development proposals (including planning schemes and scheme amendments), it formulates environmental protection policies to protect specific parts of the environment, and advises the Minister on environmental issues generally.

The EPA receives information from many sources, including the public, developers, peak bodies, universities, interest groups and government departments, particularly the Department of Environment.

A standing committee of people with an interest in and knowledge of the environment also advises the EPA. Members of this committee, known as the Advisory Council to the Environmental Protection Authority (ACTEPA), offer a range of perspectives and expertise from areas such as industry, conservation, technical fields and community affairs, rather than representing particular organisations or sectors.

## **3. Relationship between the EPA and the Minister for the Environment**

The EPA's recommendations to Government, through the Minister, are advice only. The Government, through the Minister, makes the final decisions. The EPA is not a

regulatory agency nor does it issues approvals, but can, at the Minister's request, become involved in such processes. For instance, from time to time, the Minister may delegate his/her power to the EPA to approve items such as 'Environmental Management Plans' on a case-by-case basis.

The Minister also determines appeals against EPA recommendations or against EPA decisions on how to assess development proposals.

Appeals are managed through the Appeals Convenor attached to the Minister's office. The system run by the Appeals Convenor is designed to resolve disagreements, deliver natural justice, provide fair hearings for relevant parties and provide advice to the Minister. Following the EPA's assessment and the resolution of any matter subject to appeal, the Minister then sets environmental conditions on development proposals that have been approved in consultation with other relevant Ministers.

The Minister ensures that the EPA has the resources and facilities necessary for the EPA to function.

#### **4. Establishment of the EPA and the importance of the Act**

The Act establishes the EPA, defines the environment, notes the range of functions of the EPA and empowers it.

Part I of the Act:

- defines environment to mean '*living things, their physical, biological and social surroundings, and interactions between all of these*' (section 3(1)). Specifically, section 3(2) notes – *For the purposes of the definition of "environment" ...the social surroundings of man are his aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings.*
- specifies that *the Act binds the Crown* (section 4);
- provides for the Act to override other laws that are inconsistent with it (section 5).

Part II of the Act:

- describes the make-up of the EPA, its independence, general objectives and functions, powers and how it conducts its business.

Part III of the Act:

- empowers the EPA to draft Environmental Protection Policies (EPPs) through a process involving all interested parties.

Part IV of the Act:

- empowers the EPA to carry out ‘environmental impact assessment’ (EIA) on any activity or proposal that has the potential to impact the environment.

## **5. Independence of the EPA and Chairman**

The Act provides for the independence of the EPA’s advice.

Part II, section 8 notes:

*Subject to this Act, neither —*  
 (a) *the Authority; nor*  
 (b) *the Chairman,*  
*shall be subject to the direction of the Minister.*

Additionally, Part II, section 10 notes:

*Subject to this Act, the business of the Authority shall be conducted in such manner as the Authority determines.*

Notwithstanding the above, Part IV, section 43 notes that the Minister can direct the EPA to assess a proposal that EPA initially chose not to assess, and section 44 empowers the Minister to seek the EPA’s report in a specified time.

## **6. The Principles to be followed by the EPA in Policy Development**

Section 4A of the *Environmental Protection Amendment Bill 2002* provides for the EPA to consider the following principles when carrying out its functions:

### **1. The precautionary principle**

*Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*In the application of the precautionary principle, decisions should be guided by —*

- (a) *careful evaluation to avoid, where practicable, serious or irreversible damage to the environment; and*
- (b) *an assessment of the risk-weighted consequences of various options.*

**2. *The principle of intergenerational equity***

*The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.*

**3. *The principle of the conservation of biological diversity and ecological integrity***

*Conservation of biological diversity and ecological integrity should be a fundamental consideration.*

**4. *Principles relating to improved valuation, pricing and incentive mechanisms***

- (1) Environmental factors should be included in the valuation of assets and services.*
- (2) The polluter pays principle — those who generate pollution and waste should bear the cost of containment, avoidance or abatement.*
- (3) The users of goods and services should pay prices based on the full life-cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes.*
- (4) Environmental goals, having been established, should be pursued in the most cost-effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.*

**5. *The principle of waste minimization***

*All reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment.*

**7. *Statutory functions of the EPA***

**7a *Statutory functions***

Section 16, as amended by the *Environmental Protection Amendment Bill 2002*, sets out the functions of the EPA. They are as follows:

- (a) to conduct environmental impact assessments;*
- (b) to consider and initiate the means of protecting the environment and the means of preventing, controlling and abating pollution and environmental harm;*
- (c) to encourage and carry out studies, investigations and research into the problems of environmental protection and the prevention, control and abatement of pollution and environmental harm;*

- (d) *to obtain the advice of persons having special knowledge, experience or responsibility in regard to environmental protection and the prevention, control and abatement of pollution and environmental harm;*
- (e) *to advise the Minister on environmental matters generally and on any matter that he/she may refer to it for advice, including the environmental protection aspects of any proposal or scheme, and on the evaluation of information relating thereto;*
- (f) *to prepare, and seek approval for, environmental protection policies;*
- (g) *to promote environmental awareness within the community and to encourage understanding by the community of the environment;*
- (h) *to receive representations on environmental matters from members of the public;*
- (i) *to provide advice on environmental matters to members of the public;*
- (j) *to publish reports on environmental matters generally;*
- (k) *to publish for the benefit of planners, builders, engineers or other persons guidelines to assist them in undertaking their activities in such a manner as to minimize the effect on the environment of those activities or the results thereof;*
- (l) *to keep under review the progress made in the attainment of the objects and purpose of this Act;*
- (m) *to coordinate all such activities, whether governmental or otherwise, as are necessary to protect, restore or improve the environment in the State;*
- (n) *to establish and develop criteria for the assessment of the extent of environmental change, pollution and environmental harm;*
- (o) *to specify standards and criteria, and the methods of sampling and testing to be used for any purpose;*
- (p) *to promote, encourage, coordinate or carry out planning and projects in environmental management; and*
- (q) *generally, to perform such other functions as are prescribed.*

## **7b Environmental Protection Policies (EPPs)**

The EPA can develop EPPs on its own initiative or at Government's request. The EPP development process is very public and all interested parties are encouraged to offer comments to the EPA and the Minister at the appropriate times. EPPs can set environmental values, objectives, standards and/or targets that day-to-day Natural Resource Management (NRM) agencies should adopt when carrying out their environmental responsibilities. Examples of EPPs are the Swan Coastal Plain Lakes EPP 1992, the Swan and Canning Rivers EPP 1998 and the Revised Draft Cockburn Sound EPP 2002. Details of the EPP program are provided on the EPA website.

## **7c Environmental Impact Assessment of Proposals (Part IV of the Act)**

EIA is a key function of the EPA. The objectives of EIA are set out in the *Administrative Procedures 2002* (Government Gazette No. 26, February 2002). The EPA assesses development proposals that it considers are likely to have a significant effect on the environment. Specifically the objectives are:

- *To ensure that proponents take primary responsibility for protection of the environment influenced by their proposals;*
- *To ensure that best practicable measures are taken to minimise adverse impacts on the environment, and that proposals meet relevant environmental objectives and standards to protect the environment, and implement the principles of sustainability;*
- *To provide opportunities for local community and public participation, as appropriate, during the assessment of proposals;*
- *To encourage proponents to implement continuous improvement in environmental performance and the application of best practice environmental management in implementing their proposal; and*
- *To ensure that independent, reliable advice is provided to the Government before decisions are made.*

To this end, EIA involves:

- (a) proponents preparing environmental review documentation on environmentally significant proposals;
- (b) the public review of the documentation;
- (c) the proponent's response to issues raised; and
- (d) the EPA's Assessment Report (EPA Bulletin) to the Minister.

The EPA assessment report is public and can be appealed by any person. Assessments can range from localised issues, such as waste discharges to the environment, to regionally significant developments, such as the Forest Management Plan. Where the EPA addresses broader issues at a more strategic level, it provides advice using its general powers. Details of this transparent and inclusive EIA process are provided on the EPA website.

Generally, when assessing a proposal or activity, the EPA considers the following broad environmental factors:

- i) Integration
  - Biodiversity
  - Sustainability
- ii) Biophysical
  - Flora
  - Fauna
  - Wetlands (wetlands, rivers)
  - Water (surface or ground)
  - Land (terrestrial)
  - Land (marine)
  - Conservation Areas
- iii) Pollution Management

- Air Quality
  - Water Quality (surface, marine or ground)
  - Soil Quality
  - Noise
  - Radiation
  - Light
  - Greenhouse Gases
- iv) Social Surrounds
- Heritage
  - Risk
  - Visual Amenity
  - Recreation
- v) Other
- Decommissioning

The EPA also considers the environmental management framework for each proposal to ensure that the whole proposal and its potential environmental impacts are acceptable and manageable. This includes environmental management plans that set out objectives and performance indicators. Proponents are not only required to meet the requirements of Environmental Conditions and Licensing Conditions placed on their approvals, but are also encouraged to conduct an annual audit and a periodic review of their operations, consistent with the broad philosophy of continuous improvement in environmental management.

The EPA's recommendations to the Minister regarding the environmental acceptability of proposals are made public through EPA Bulletins. The Minister may take into account broader issues than those considered by the EPA and, accordingly, does not have to accept EPA's recommendations. If the EPA's advice is accepted, however, it would normally follow that the Environmental Conditions, and relevant Licensing Conditions placed on a proposal or activity by the Department of Environment, would be consistent with the EPA's recommendations.

## **8. Other Functions of the EPA**

### **8a Ministerial Requests**

The Minister can request the EPA to carry out functions not specifically identified in the Act. Examples are State of the Environment (SOE) Reporting and Natural Resource Management (NRM) environmental performance auditing. Section 16(e) provides for the Minister to seek the EPA's advice on any environmental matter generally or ask the EPA to develop a policy to address any environmental matter.

### **8b EPA Position Statements**

The EPA publishes Position Statements to provide the overarching principles and information which the EPA would use when giving advice to the Minister, the public, proponents, and decision-makers to clarify their responsibilities for managing a particular environmental matter. The principles can also provide the basis for the EPA to evaluate and report upon the achieving of environmental and sustainability objectives and the protection of environmental values in natural resource management. Examples of finalised Positions Statements are: *Environmental Protection of Cape Range Province*, *Environmental Protection of Native Vegetation in Western Australia* and *Terrestrial Biological Surveys as an Element of Biodiversity Protection*.

All Position Statements, both preliminary and final, are presented on the EPA website.

### **8c EPA Guidance Statements**

The EPA formally assesses proposals and activities that have the potential to impact the environment. The EPA pre-empts second-guessing by proponents on the EPA's likely thinking on a particular issue by publishing Guidance Statements against which proponents can develop their proposals. During the development of Guidance Statements, the EPA encourages interested parties to make suggestions that lead to better environmental outcomes for the community as well as saving time for proponents during the development of their proposals. Examples of final Guidance Statements are: *Protection of Tropical Arid Zone Mangroves Along the Pilbara Coastline*, *Deep Well Injection of Liquid Industrial Waste* and *Minimising Greenhouse Gas Emissions*.

All Guidance Statements, both draft and final, are presented on the EPA website.

When drafting the above statements, the EPA is guided by the principles set out in section 6 of this pamphlet. In addition, the EPA emphasises that environmental protection will only be successful if all stakeholders accept their responsibilities.

## **9. Identifying Major Environmental Issues (State of the Environment Reporting)**

Periodically, the status of major environmental issues in WA is reported to the Minister through the SOE report. The 1998 SOE report, prepared by the Department of Environmental Protection (DEP), was the last such report. With the assistance of the primary NRM agencies, the DEP also reviewed progress towards ecologically sustainable development in several key NRM sectors (agriculture, energy, fisheries, forestry, mining and petroleum production, tourism and water supply). The Minister for the Environment has since asked the EPA to take on the task of SOE reporting. The next SOE report will be an EPA publication and its development will provide for public involvement.

## **10. NRM Environmental Performance Evaluation**

The EPA has had a major part to play in NRM for many years, for example, in its leadership in the assessment of the Peel-Harvey Strategy in the late 1980's. Currently the EPA is examining ways of progressing the development of a Water Quality Improvement Plan as part of an integrated catchment management initiative of the Peel-Harvey Catchment Council. The EPA has also become more involved in the protection of rangelands and the issue of salinity.

Whatever role the EPA takes in NRM, it is clear that practical outcomes will be achieved only if there is a partnership between the EPA and those agencies and instrumentalities which have an operational responsibility for the management of natural resources.

In June 2001, the Minister for the Environment issued a statement following the Government's consideration of the report of the Machinery of Government Taskforce. That statement included:

*This plan strengthens the EPA by giving it more flexibility for deploying its own resources and the capacity to hold the resource management agencies accountable for delivering environmental outcomes.*

In June 2002, the Government released its response to the report of the Salinity Taskforce. Included in that response was:

*The framework (for monitoring) should also recognise and support relevant arrangements agreed between the EPA and NRM agencies on the role in auditing the environmental performance of the NRM agencies.*

Both SOE reporting and NRM Environmental Performance Evaluation are interlinked. The EPA has commenced reviewing the performance of NRM sectors (agriculture, fisheries, forestry, water resources, mining, etc) and will report regularly to the Minister. The results of that review will form part of the next SOE report. Details of NRM Environmental Performance Evaluation will be provided on the EPA website in the near future.

## **11. EPA's functions and the Implementation of the State Sustainability Strategy**

The State Sustainability Strategy, presently being developed by the Department of Premier and Cabinet, will outline a vision for attaining a high quality of life for all Western Australians, including sustainability assessment. It will address the sustainable use of the environment, partly in the context of existing environmental problems affecting sectors. The implementation of this strategy will dovetail with the EPA's delegated responsibilities for SOE reporting and NRM auditing. Accordingly, the EPA would play a reporting role regarding the success of the implementation of the strategy as it pertains to the environment.

## **12. Public's Right to be involved**

A basic tenet of the *Environmental Protection Act 1986* is the community's rights to know, to be informed, to be heard and to object. These rights are enshrined in the EPA's processes. Accordingly, all of the EPA functions mentioned above provide opportunities for the public to be involved in the decision-making processes. Mechanisms to assist this involvement are being developed and updated continually. For example,

- the EPA website draws the public's attention to on-going matters in which the EPA is involved;
- the EPA's advertisement in the Monday edition of the *West Australian* newspaper lists levels of assessment assigned and reports released for the week, together with details on closing dates for submissions and appeals; and
- the EPA and Department of Environment have prepared an industry consultation guide to assist industry in engaging with the community and interest groups.

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