



Environmental Protection Authority

GENERAL GUIDE FOR STATE GOVERNMENT DEPARTMENTS AND LOCAL AUTHORITIES (AS DECISION-MAKING AUTHORITIES)

Referral of Proposals to the Environmental Protection Authority under Section 38(5) of the *Environmental Protection Act 1986*

INTRODUCTION

In Western Australia, the *Environmental Protection Act 1986* (the EP Act) provides that the Environmental Protection Authority (EPA) may require development proposals to undergo environmental impact assessment under the Act before they can be implemented.

The EPA is an independent statutory Authority and one of its primary functions is to conduct environmental impact assessments.

This guide has been prepared to assist Decision-Making Authorities (DMAs) in deciding when and how to make referrals to the EPA. DMAs should also familiarize themselves with the EPA's Guidance Statement No. 33 (Environmental Guidance for Planning and Development, June 2005), together with any relevant Memorandum of Understanding between the EPA and DMAs.

ROLE OF STATE GOVERNMENT DEPARTMENTS AND LOCAL AUTHORITIES AS 'DECISION-MAKING AUTHORITIES' IN THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

The EP Act defines a 'decision-making authority' as a 'public authority empowered... to make a decision in respect of a proposal ...'(Section 3 the EP Act). Therefore, State Government Departments and Local Authorities will often be DMAs in respect of the EP Act and need to consider whether development proposals brought to their attention need to be referred to the EPA under Section 38. A proposal can be a project, plan, programme, policy, operation, undertaking or development or change in land use, or amendment of any of these (Section 3 the EP Act).

A DMA refers a proposal to the EPA under section 38(5) of the EP Act. Section 38(5) provides that as soon as a DMA has notice of a proposal that appears to it to be likely, if implemented, to have a significant effect on the environment, including a proposal under an assessed scheme, the DMA **is to** refer the proposal to the EPA. [Note qualification by Section 48], as explained below in section on 'Referral of a proposal under an assessed scheme'.]

If a DMA does refer a proposal to the EPA under Section 38(5) of the EP Act, the EPA will then decide whether or not to assess the referred proposal and, if it is to be assessed, the level of assessment.

Under Section 41 of the EP Act, where a DMA has referred a proposal to the EPA, the DMA may not make any decision that could have the effect of causing or allowing the proposal to be implemented until either:

- (a) the DMA is informed that the EPA is not going to assess the proposal, and:
 - (i) the 14 day appeal period has expired without an appeal being lodged; or
 - (ii) any appeal has been determined;

or

- (b) if notice has been given that the proposal is to be assessed, the environmental assessment of the proposal is complete and the Minister for the Environment has issued an authority in writing permitting implementation of the proposal.

If a DMA intends to refuse to grant approval for a proposal, then referral to the EPA is not required. However, if the DMA's decision is appealed, then referral of the proposal to the EPA may be required, if implementation of the proposal may have a significant effect on the environment.

DMAs are encouraged to seek comment from the EPA prior to referral. However, in doing so, DMAs should make it very clear in their communications whether the purpose is referral or seeking comment.

A referral to the EPA by a DMA under Section 38 should be made on the appropriate referral form (see 'Referral of a Proposal to the Environmental Protection Authority under Section 38 of the Environmental Protection Act 1986 – Referral by the Decision Making Authority', on the EPA website at www.epa.wa.gov.au).

REFERRAL OF A PROPOSAL UNDER AN ASSESSED SCHEME

Special referral requirements apply to a proposal that is an application for the approval of any development or subdivision under what is known as an assessed scheme. An assessed scheme is defined in Section 3 of the EP Act. Usually, an assessed scheme will be a planning scheme or planning scheme amendment that has been referred to the EPA and is the subject of either a level of assessment set by the EPA as "not assessed" or a statement of environmental conditions set by the Minister for the Environment following the formal EIA process.

An assessed scheme may also be a scheme that is required to be made following an amendment to a regional scheme where the amendment to the regional scheme is itself an assessed scheme.

For a proposal under an assessed scheme, the DMA's obligation to refer the proposal to the EPA is qualified by Section 48I of the EP Act. Section 48I of the EP Act requires that, when such a proposal comes to the notice of a DMA, the DMA shall determine whether or not

- (a) the environmental issues raised by the proposal were assessed in the environmental assessment of the assessed scheme; and
- (b) the proposal complies with the assessed scheme and any conditions to which the assessed scheme is subject.

If the DMA answers these questions in the affirmative, then it need not refer the proposal to the EPA. However, if it determines either question in the negative then it must either refer the proposal to the EPA or refuse to approve the subdivision or development on the land.

WHAT KINDS OF IMPACTS ARE CONSIDERED SIGNIFICANT AND WHAT TYPES OF PROPOSALS SHOULD BE REFERRED TO THE EPA?

Most development proposals will have some level of impact on the environment. The EPA's Guidance Statement No. 33 provides an indication of the wide range of environmental values which exist, and potential impacts.

In the first instance, proponents should generally liaise with the appropriate State Government Departments and Local Authorities regarding the impacts of their proposal, to see whether the environmental impacts can be managed through the design of the proposal and conditions imposed by those authorities to meet recognised environmental criteria. If they can, then it may not be necessary to refer the proposal to the EPA. The relevant State Government Departments responsible for management of the environment or Local Authority should assist in advising in this regard. In some cases the EPA has established Memoranda of Understanding (MoU) with DMAs on what proposals should be referred.

The following list provides a general guide to the types of development proposals the EPA considers require formal environmental impact assessment:

- major mining projects such as iron ore, nickel and mineral sand mining;
- major mineral and gas refining projects such as Liquefied Natural Gas plants;

- major infrastructure projects, such as roads, airports, waste water disposal, water supply and irrigation developments;
- significant contaminated sites where redevelopment is proposed; and
- major marine and coastal developments, such as ports and marina developments.

In addition, any other development proposal which is likely to:

- affect an area with identified high environmental values such as an existing National Park or Nature Reserve or an area identified in the EPA's Conservation Through Reserves reports or;
- result in significant emissions off-site which may exceed accepted standards,

should be referred to the EPA.

A DMA may also consider referring a development proposal to the EPA for a decision on whether it requires formal environmental impact assessment under the EP Act, if it is likely to generate significant public concern.

'PRESCRIBED PREMISES' SUBJECT TO REGISTRATION AND/OR WORKS APPROVAL AND LICENSING UNDER PART V OF THE ACT

Certain types of developments have been prescribed in regulations under the Act as requiring Registration and/or Works Approval and Licensing under Part V of the Act. These are referred to as 'Prescribed Premises'. These types of developments have generally been prescribed because they involve activities/operations with potential to result in pollution. The DEC is directly responsible for carrying out functions under Part V of the Act. The purpose of Registration and/or Works Approval and Licensing is to ensure prescribed premises are constructed and operated in a manner to avoid unacceptable pollution. [A Guide to the Licensing System](#) includes a list of prescribed premises.

Local Authorities generally need not refer to the EPA applications they have received for developments which are prescribed premises. They should, however, advise the applicant to contact the Environmental Management Division (6467 5000) or the relevant Regional Office of the DEC (Kwinana, Bunbury, Albany, Karratha, Kalgoorlie and Geraldton), to discuss whether an application needs to be made for Registration and/or Works Approval and Licensing.

In considering any application, the DEC will decide whether the development also needs to be referred to the EPA under Section 38(1) for a decision on whether or not the development proposal should be subject to formal environmental impact assessment under the Act.

LANDCLEARING UNDER PART V OF THE ACT

If a development involves clearing of native vegetation, the proponent may require a clearing permit under Part V of the EP Act and in accordance with the provisions of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. For more information contact the relevant regional office of the DEC or telephone 6467 5000.

MAKING A REFERRAL: HOW, AND WHAT INFORMATION

A referral to the EPA under Section 38 must be made on the appropriate form. There are separate forms for proponents and DMAs. The forms set out the information required in relation to the description of the proposals, their potential impacts and proposed management measures.

It is important that a form is completed fully and accurately. If insufficient information is provided, the EPA will not be able to make its decision on whether the proposal should be assessed and the decision will be delayed while further information is sought. The hard copy of the referral document should be accompanied by an electronic copy, if possible. Section 39(2) of the EP Act provides for matters of a confidential nature not to be kept on the public record. This information should be submitted in a separate hard copy attachment to the referral document, and not included in the electronic copy of the referral.

If a DMA is unsure whether a development proposal should be referred to the EPA, or has queries about the information that should be submitted, the Office of the EPA may be contacted on the following numbers:

Planning & Infrastructure Assessments Branch	Ph: (08) 6467 5427	for scheme amendments and subdivisions, and large scale infrastructure proposals
Mining & Industrial Assessments Branch	Ph: (08) 6467 5403	for large scale mining/extraction and industrial proposals
Administrative Procedures Section	Ph: (08) 6467 5421	for general enquiries

Alternatively, write to Assessment and Compliance Services, Office of the Environmental Protection Authority, Locked Bag 33, CLOISTERS SQUARE WA 6850.

Completed forms should be sent to:

Environmental Protection Authority
Locked Bag 33
CLOISTERS SQUARE WA 6850