



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

Referral of Proposals to the Environmental Protection Authority under Section 38(1) of the Environmental Protection Act 1986

INTRODUCTION

In Western Australia, the *Environmental Protection Act 1986* (the 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 Authority and one of its primary functions is to conduct environmental impact assessments (EIA).

ROLE OF STATE GOVERNMENT DEPARTMENTS AND LOCAL AUTHORITIES AS 'DECISION-MAKING AUTHORITIES'

The Act defines a 'decision-making authority' (DMA) as a 'public authority empowered... to make a decision in respect of a proposal ...'(Section 3 the Act). Therefore, State Government Departments and Local Authorities will often be DMAs in respect of the Act and need to consider whether development proposals brought to their attention need to be referred to the EPA.

This guide has been prepared to assist DMA's in deciding when and how to make referrals to the EPA.

Section 38(1) of the EP Act requires that a 'decision-making authority' (DMA) must refer a proposal to the EPA for a decision on whether the proposal should be subject to environmental impact assessment under the Act, if it considers the proposal is likely to have a significant effect on the environment (except where it has been considered previously as part of an assessed planning scheme or amendment (see below)). 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 Act).

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.

Where a proposal will give rise to the initiation of an amendment to a planning scheme, the DEP should be approached for advice on whether formal referral of the proposal to the EPA is required. It is noted that all amendments to planning schemes require referral to the EPA, as specified in the relevant planning legislation.

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 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.

A proposal under an assessed scheme that is likely to have a significant effect on the environment requires referral to the EPA only if it does not comply with the assessed scheme, or if the proposal raises environmental issues that were not considered by the EPA when it set the level of assessment for the scheme (Section 48I the Act).

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. Because of the wide range of environmental values which exist, and potential impacts, it is not practical to attempt to provide prescriptive criteria identifying all impacts and circumstances which might be considered significant.

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 State Government Departments 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;
- affect a wetland protected by an Environmental Protection Policy or area of wetland or vegetation with significant environmental values; or
- result in significant emissions off-site which may exceed accepted standards,

should be referred to the EPA.

A list of proposals that have been subject to formal assessment by the EPA can be found at www.epa.wa.gov.au.

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 Act, if it is likely to generate significant public concern relating to environmental issues associated with the proposal.

'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 Department of Environmental Protection (DEP) 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 list of prescribed premises is available at www.environ.wa.gov.au/regulations/guide.

Local Authorities generally need not refer applications they have received for developments which are prescribed premises, to the EPA. They should, however, advise the applicant to contact the Environmental Regulation Division (9222 7104) or the relevant Regional Operations Division of the DEP (Kwinana, Bunbury, 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 DEP 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.

MAKING A REFERRAL: HOW TO, AND WHAT INFORMATION IS NEEDED

A referral to the EPA under Section 38(1) must be made on the appropriate forms. There are separate forms for proponents and DMAs. These forms are available at www.epa.wa.gov.au.

The forms set out the information required in relation to the description of the proposals, their potential impacts and proposed management measures. The forms also provide information to assist DMAs in deciding whether referral to the EPA is appropriate.

It is important that the forms are 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 forms will be returned seeking further information and the decision will be delayed.

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, an officer of the Environmental Impact Assessments Division of the EPA Service Unit may be contacted on the following numbers

Planning Assessments Branch	Ph: (08) 9222 7069	for scheme amendments and subdivisions
Industrial Assessments Branch	Ph: (08) 9222 7121	for large scale industrial proposals
Infrastructure and Major Projects Assessments Branch	Ph: (08) 9222 7036	for large scale infrastructure & agricultural proposals
Mining and Petroleum Assessments Branch	Ph: (08) 9222 7085	for mining/extraction proposals
Administrative Procedures Section	Ph: (08) 9222 7186	for general enquiries

Alternatively, write to the Environmental Impact Assessments Division, Department of Environmental Protection, PO Box K 822, PERTH WA 6842.

Completed forms should be sent to:

Environmental Protection Authority
PO Box K 822
PERTH WA 6842