

# **State Environmental Policies (SEPs)**

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**An Explanatory Document**



**Environmental Protection Authority**

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Note:

This document has no legal status. It is published to assist in understanding the development of processes for State Environmental Policies.

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# State Environmental Policy (SEP)

## A new initiative – State Environmental Policies (SEPs)

There is a need for an environmental policy instrument which is developed through public consultation and ends in consideration by the Cabinet for adoption on a whole of Government basis. It is proposed that this function be filled through the establishment of a policy instrument to be known as a State Environmental Policy (SEP).

A SEP would be a non-statutory instrument, developed in its first stages by the Environmental Protection Authority (EPA) under the provisions of Part II of the Act. Section 17(3)(d) provides the EPA with the powers to develop a SEP as follows:

*s.17(3) ...the Authority, if it considers it appropriate or is requested to do so by the Minister, may –*

*(d) consider and make proposals as to the policy to be followed in the State with regard to environmental matters;*

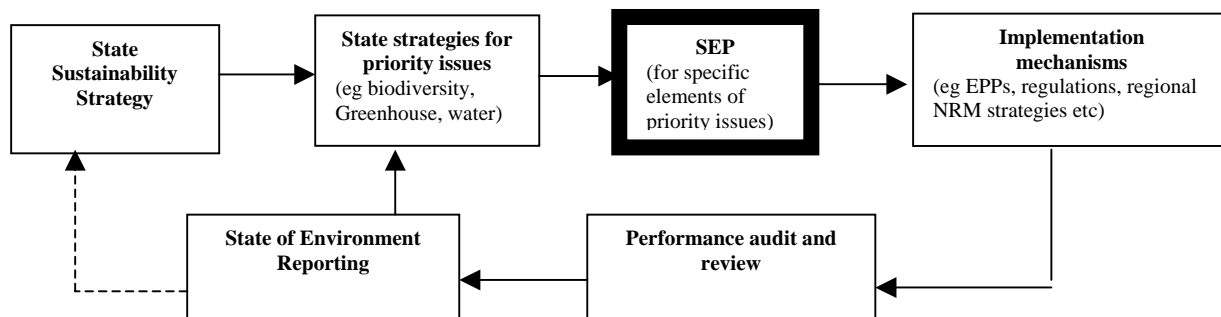
A SEP could have the scope to provide the following:

- establish environmental values (EVs) and environmental quality objectives (EQOs) for a particular environment;
- identify a framework for implementation using existing statutory mechanisms (eg Environmental Protection Policies (EPPs), environmental impact assessment (EIA), licensing, regulations, natural resource management processes), new funding and by guiding other agency mechanisms (such as Town Planning Scheme provisions, Statement of Planning Policies (SPPs) etc); and
- define environmental performance criteria (EQC) against which to audit environmental performance.

## Government coordination of State Environmental Policy

A SEP can be effective if it is developed via the Cabinet process as a whole-of-Government instrument. It would be placed within the existing environmental policy framework of Government (refer Figure1).

**Figure 1: Environmental Policy Framework of Government**



### **The SEP development process**

It is proposed that SEPs are developed by the EPA followed by consideration and approval (or otherwise) by the Minister for the Environment.

The SEP development process (refer Figure 2), consists of 3 distinct phases summarised as follows:

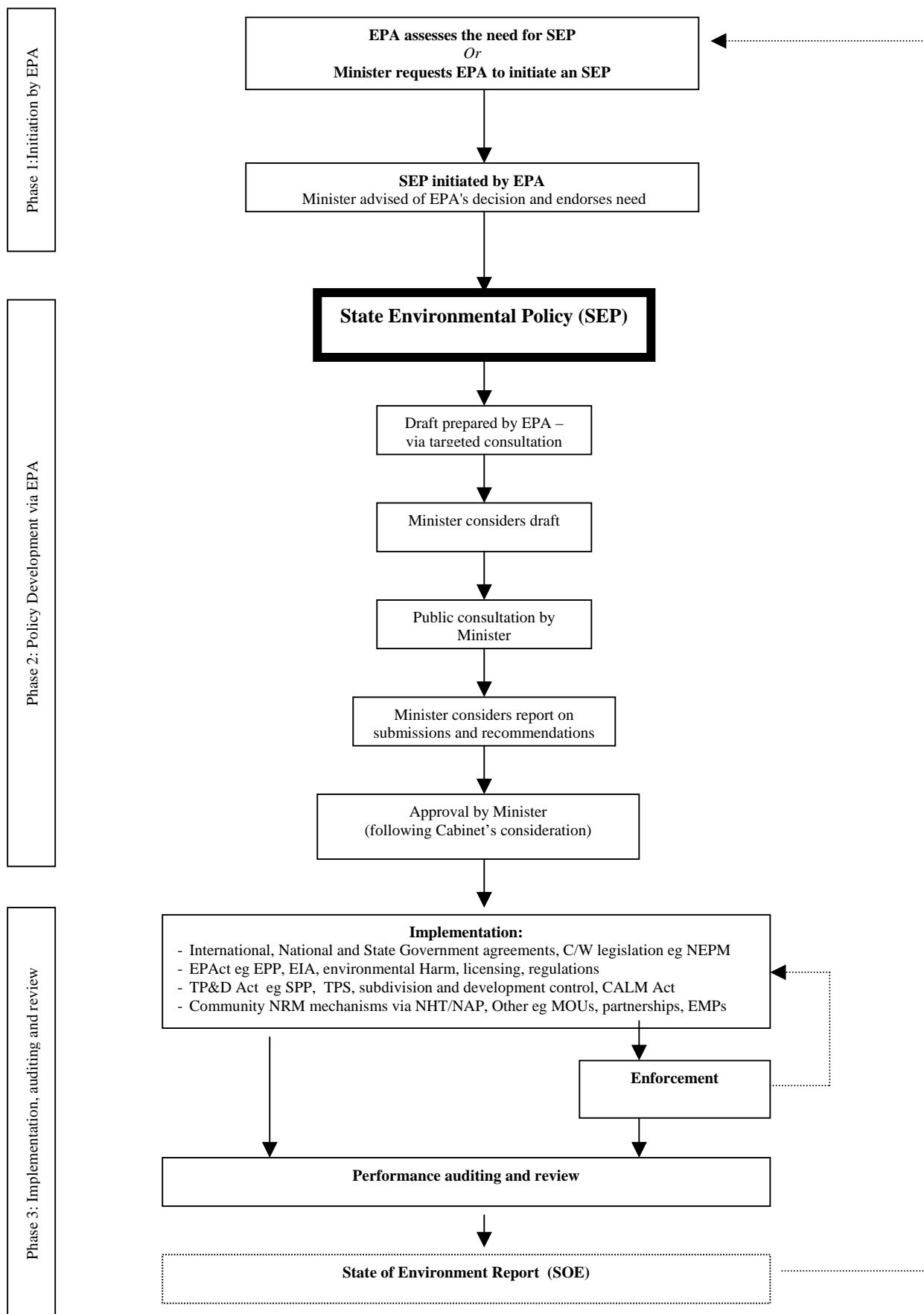
#### *Phase 1: Decision to Initiate SEP*

- ***Minister requests*** EPA to scope the need for SEP ***or EPA decides*** to examine the need for a SEP; and
- ***EPA to advise Minister*** of strategy for development and implementation of SEP (including indicative funding implications).

#### *Phase 2: Policy Development*

- ***Minister agrees*** to develop a SEP via the EPA (including support in principle for SEPs initiated by the EPA);
- ***EPA prepares*** a draft SEP via targeted consultation with key stakeholders (including purpose, Environmental Values, Environmental Quality Objectives, performance measures and recommendations to coordinate an implementation framework based on existing mechanisms);
- ***EPA forwards*** the draft SEP, associated report and recommendations to Minister;
- ***Minister considers*** the draft SEP and requests modifications as appropriate;
- ***Minister consults*** publicly on the draft SEP;
- ***Minister considers*** submissions and revises the draft SEP as required ;

**Figure 2: State Environmental Policy (SEP) development process**



- *Minister seeks* Cabinet endorsement; and
- *Minister releases* approved the SEP on behalf of Government.

Phase 3: Implementation, performance auditing and review

- *SEP Implementation* would be primarily through the powers of the *Environmental Protection Act 1986*, including Environmental Protection Policies (EPPs), environmental impact assessment, industry licensing, clearing regulations, environmental harm and pollution provision; and
- *SEP performance auditing and review* (including performance targets).

## **Relationship of SEPs to Environmental Protection Policies**

Environmental Protection Policies (EPPs) are developed under Part III of the *Environmental Protection Act 1986* (the Act). They are whole-of-Government policies which are ratified by Parliament and have the force of law as if part of the Act.

Due to their legal standing, EPPs have been used by Government to address environmental issues that could not otherwise be adequately addressed via other provisions of the Act. EPPs have been used to provide strong (legal) environmental policy positions.

In the past EPPs have not always been constructed as an instrument of coercive law. Instead, EPPs have been applied to a wide variety of environmental issues across various geographical scales and their provisions have varied in their degree of coerciveness and success. For example, EPPs such as the Swan and Canning Rivers EPP 1998 provided broad scale guidance statements with little or no enforcement provisions and no measurable performance criteria. In contrast, the most legally enforceable EPPs to date have been those which focus on a localised area with locally specific enforcement provisions (eg the Kwinana and Goldfields Sulphur Dioxide EPPs).

Following the recent promulgation of Environmental Protection Act amendments (October 2003), the Act now has clearer and wider reaching powers of protection, such as new Environmental Harm provisions. Accordingly, there may be now much less need to use EPPs as an instrument for establishing a strong basis for non-coercive policy statements.

The development of an EPP under Part III of the Act should be reserved for establishing more detailed law (i.e. analogous to writing clauses in the Act or Regulations under it). The development and use of EPPs should be restricted to two main circumstances:

- to provide a clear statement of intent to use the enforcement powers of the Act, when required, in order to adequately address an environmental issue; or
- to provide the ability in certain areas under controlled conditions, by permitting activities that would otherwise be unclear under the Act.