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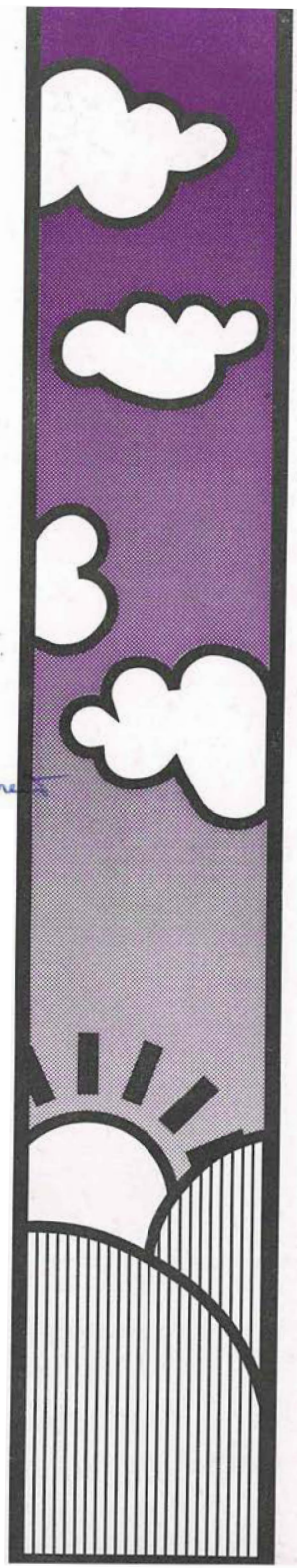
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ENVIRONMENTAL PROTECTION ACT 1986

# ENVIRONMENTAL IMPACT ASSESSMENT

ADMINISTRATIVE PROCEDURES 1993

EIA  
Assessment



Environmental Protection Authority



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ENVIRONMENTAL PROTECTION ACT 1986

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**ENVIRONMENTAL**

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ADMINISTRATIVE PROCEDURES 1993

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# 1. Preliminary

## 1.1 Citation

These procedures may be cited as *Environmental Impact Assessment Administrative Procedures 1993*.

## 1.2 Purpose of procedures

The *Environmental Protection Act 1986* establishes the process of environmental impact assessment in Western Australia.

Part IV of the Act sets out the statutory requirements. These administrative procedures address Division 1 of Part IV of the Act and provide the detailed principles and practices of the environmental impact assessment process, and describe the responsibilities of the proponent, the public and the Environmental Protection Authority.

They do not address the procedures for the setting of, amendment to and compliance with environmental conditions which are the responsibility of the Minister under Division 2 of Part IV of the Act.

The *Environmental Impact Assessment Administrative Procedures 1993* are established under Section 122 of the *Environmental Protection Act 1986*.

## 1.3 Interpretation

In these procedures:

“Act” means the *Environmental Protection Act 1986*;

“assessment report” means the document prepared by the Authority for the Minister under Section 44 of the Act reporting on —

- (a) the environmental factors relevant to a proposal;
- (b) the conditions and procedures, if any, to which any implementation of that proposal should be subject; and
- (c) containing any recommendations made by the Authority.

“Authority” means the Environmental Protection Authority;\*

“decision-making authority” means public authority empowered by or under —

(a) a written law; or

(b) any agreement —

(i) to which the State is a party; and

(ii) which is ratified or approved by an Act,

to make a decision in respect of any proposal and, in Division 2 of Part IV of the Act, includes, in relation to a particular proposal, any Minister prescribed for the purposes of this definition as being the Minister responsible for that proposal;\*

“environment”, means living things, their physical, biological and social surroundings, and interactions between all of these. 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;\*

“environmental review document” means the document prepared by a proponent to present their case for the assessment of a proposal as part of the environmental impact assessment process;

“environmental impact assessment” means an orderly and systematic process for evaluating a proposal including its alternatives and objectives and its effect on the environment including the mitigation and management of those effects. The process extends from the initial concept of the proposal through implementation to commissioning and operation and, where appropriate, decommissioning;

“Minister” means the Minister for the Environment;

“proponent”, in relation to a proposal, means person who or which is nominated under Section 38 of the Act as being responsible for the proposal;\*

“proposal” means project, plan, programme, policy, operation, undertaking or development or change in land use, or amendment of any of the foregoing;\*

“public” means any individual or group;

\* *definitions contained in Section 3 of the Act.*

## 2. Objectives of environmental impact assessment

*The purpose behind environmental impact assessment in Western Australia recognises that people want a process which looks at new development proposals to ensure the environment will be protected.*

*It also recognises that people want a say before Government decides on new developments.*

*As a result, the process is aimed at protecting the environment by ensuring development is environmentally sound and well managed. Proponents are required and assisted to make their proposals environmentally acceptable. The aim is to resolve how a proposal should be developed, to minimise impacts to acceptable levels. In general most proposals can be designed to achieve minimal impact. However sometimes proposals may be found unacceptable regardless of design through, for example, inappropriate siting in a highly sensitive environment.*

*The process is interactive and maximises the opportunity for all issues to be covered before decisions are made. The process is public and ensures people are informed about proposals and have the opportunity to comment before decisions are made.*

*Decision-making on proposals is by Government after it receives the Authority's environmental advice and public comment.*

### 2.1 The objectives of the environmental impact assessment process are:

- (a) to facilitate environmentally sound proposals by minimising adverse impacts and maximising benefits to the environment;
- (b) to ensure that decisions are taken by the Government following timely, sound and independent environmental advice;
- (c) to encourage and provide opportunities for public participation in environmental aspects of proposals before decisions are taken;
- (d) to ensure that proponents of proposals take primary responsibility for protection of the environment relating to their proposals;
- (e) to provide a basis for ongoing environmental management including changes in response to monitoring; and
- (f) to promote awareness and education in environmental values.

2.2 The objectives of environmental impact assessment can be implemented through the formal environmental impact assessment process, and also through other mechanisms such as the planning process and resource assessment.

### 3. Environmental significance

*The environmental impact assessment process is initiated if a proposal appears likely, if implemented, to have a significant effect on the environment .*

*The concept of environmental significance may be applied at several points in the process including referral, when the Authority decides whether to assess a proposal, the level of assessment applied to a proposal, in the evaluation of potential impacts and in making judgements on environmental acceptability.*

*Environmental significance is determined by the character of the environmental effects, and the importance of the environment being affected. Environmental effects have both ecological and social dimensions, although the social dimension are limited to those directly affected by or affecting the physical or biological surroundings.*

3.1 Environmental significance is a judgement made by the Authority and is based upon the following factors:

- (a) character of the receiving environment and the use and value which society has assigned to it;
- (b) magnitude, spatial extent and duration of anticipated change;
- (c) resilience of the environment to cope with change;
- (d) confidence of prediction of change;
- (e) existence of policies, programmes, plans and procedures against which the need for applying the environmental impact assessment process to a proposal can be determined;
- (f) existence of environmental standards against which a proposal can be assessed; and
- (g) degree of public interest in environmental issues likely to be associated with a proposal.



## 4. Referral of proposals

*The range of proposals which may require environmental impact assessment is extensive, based on the definitions of "proposal" and "environment" contained in the Act.*

*The environmental impact assessment process begins formally when a proposal is referred to the Authority. However, informal discussions with the Authority prior to referral are normal and are often a useful way of identifying issues and opportunities early in the development of a proposal.*

*Contact with the Authority at an early stage, either by referral or informally, allows protection of the environment to be considered as an integral part of a proposal rather than after all other decisions have been made.*

### 4.1 Mechanisms

The Act provides explicitly for several mechanisms for referring a proposal to the Authority (Sec 38(1)(2) and (3)).

A proposal may be referred to the Authority for assessment by the proponent, by a member of the public, or by the Minister for the Environment.

In addition, decision-making authorities involved with a proposal shall refer it to the Authority if it appears likely, if implemented, to have a significant effect on the environment.


Finally, if an environmentally significant proposal comes to the notice of the Environmental Protection Authority but has not been referred, then the Authority shall require either the relevant decision-making authority or the proponent to refer the proposal. The Authority may also prescribe a class or classes of proposals for referral.

Where there is more than one proposal associated with a development, the Authority shall endeavour to assess all aspects of the development at the same time.

### 4.2 Memoranda of Understanding

The Authority may develop Memoranda of Understanding with state or local government agencies to facilitate and guide the environmental impact assessment process.

The Memoranda of Understanding may include guidance on specific categories of proposals which must be referred to the Authority, and also set out environmental guidelines and objectives to be achieved for proposals not referred. A Memorandum of



Understanding may require that certain proposals be subject to agreed conditions, and if, so the proposals would not be environmentally significant and would not need to be referred to the Authority.

All signed Memoranda of Understanding shall be publicly available, and may be issued in draft form for public comment.

#### **4.3 Information required**

The referral of a proposal is to be in writing and may occur by letter, or by a more comprehensive document. Sufficient information about the proposal is required to determine whether the Authority should assess, and if so, at what level. To assist in this, a proponent may complete a 'Proposal Application Form' available from the Authority, and shall supply further information if requested by the Authority.

#### **4.4 Record of proposals**

Once a proposal is referred, the Authority shall record it on a list which is available for public inspection at all Authority offices. A brief description of the proposal and the level at which it is being assessed is provided in the list (Section 39(1)).

The proponent, the person who referred the proposal, and any relevant decision-making authorities shall be advised by the Authority whether the proposal will be assessed, within 28 days of it being received (Section 40(1)).

## 5. Decision to assess

*The Authority determines whether environmental impact assessment is required, and if so at what level. If the potential environmental impact of a proposal is considered to be significant, then formal environmental impact assessment is required.*

*However, formal assessment is not necessary for most proposals. Instead, the principles of environmental impact assessment may be applied outside the formal process administered by the Authority under Part IV of the Act.*

*A proposal may be reviewed informally by the Authority, and non binding public advice provided to assist proponents and decision-making authorities. For proposals not assessed by the Authority, there are opportunities for state and local government agencies to assume a role in environmental protection as part of their normal decision-making operations by meeting the objectives of environmental impact assessment in their decision-making processes.*

When a proposal is referred, the Authority shall determine the potential environmental significance, and then whether to assess the proposal, and if so, at what level (Section 40(1)). A number of options are available.

### 5.1 No assessment

A proposal is not assessed formally nor is advice offered when the Authority considers that it is not environmentally significant (Section 40(1)(a)). Nevertheless, the Authority expects the proponent and relevant agencies to ensure that the proposal is environmentally acceptable. To facilitate this, the Environmental Protection Authority may publish generic guidelines and Codes of Practice.

### 5.2 Informal review with public advice

A proposal may not have the potential to be environmentally significant, but the Authority may consider the environmental aspects sufficient to require attention.

The Authority may give advice on environmental aspects of the proposal to assist the proponent and relevant agencies to ensure the environment is safeguarded. This advice will not be binding on decision-making authorities or proponents. (Section 40(1)(a)). The Authority's advice shall be available to the public for information, and will be forwarded on request.



### 5.3 Formal assessment

If the Authority considers a proposal may have a significant effect on the environment and should be assessed, the proponent, the referrer and all relevant decision-making authorities are advised as soon as practicable (Section 40(1)(b)) but within 28 days.

Once advised, the decision-making authorities are prevented from making decisions that could have the effect of causing or allowing the proposal to be implemented until the Minister's authority is served (Section 41(2)(d)). However, other assessment or decision-making processes can progress in parallel with environmental impact assessment, providing no decisions are made which would allow implementation.

The Authority determines the level of assessment on the basis of a judgement of environmental significance. The level of assessment set reflects the form, content, timing, and procedure of the environmental review (Section 40(3)).

Three levels of assessment are normally used, each with a different degree of evaluation and public review:

- (a) Consultative Environmental Review (CER) — This is the level of assessment generally used for proposals which are likely to have relatively easily managed environmental impacts and public interest is restricted to the local community and/or special interest groups. All CER documents prepared by proponents are publicly available, and a public review period of up to four weeks is normally required.
- (b) Public Environmental Review (PER) — This level of assessment is used for proposals with either major public interest or potential for significant environmental impacts on at least of regional interest. PERs are also used where changes are proposed to a proposal which has already been subject to an ERMP, and where a proposal is ancillary to one already subject to an ERMP. PERs normally have an eight week public review.
- (c) Environmental Review and Management Programme (ERMP) — This is the most comprehensive and detailed level of assessment and is used mainly for major projects which have strategic environmental implications and are of state wide interest. Proposals of this type have a need for detailed evaluation, extensive public review, and a comprehensive environmental management programme. The public review period is normally ten weeks.

The Authority may extend the public review period of an environmental review document due to, for example, where the public's ability to comment on the proposal has been constrained such as major public holidays during the public review period (Easter and Christmas).

#### **5.4 Public Inquiry**

For the assessment of a proposal the Authority may also initiate a Public Inquiry with the approval of the Minister (Section 40(2)(c)). A Public Inquiry may be conducted by the Authority, a combination of the Authority and others, or a committee appointed by the Authority. A Public Inquiry is an appropriate form of assessment for a proposal which has many indirect consequences (such as the development of associated infrastructure), a large number of major and significant impacts, and is of significant concern to the public, and is of state or national significance.

#### **5.5 Staged assessment**

When appropriate, the Authority may elect to assess a proposal in stages, especially in situations where there is a range of alternatives requiring assessment and where environmental acceptability can or needs to be determined at different stages.

The process of staged assessment can allow major environmental impacts to be addressed and mitigated before detailed planning for a proposal is completed. It may also provide the opportunity for addressing proposal alternatives, and allow public involvement in the initial stages of proposal decision-making.

The second stage and subsequent of an assessment will normally be subject to full formal assessment with public review.

#### **5.6 Works approval and licence**

In addition to environmental impact assessment under Part IV of the Act, some proposals may require a Works Approval to construct and a Licence to operate under Part V of the Act (Control of Pollution). The types of proposals which require a Works Approval and Licence are generally industrial developments and are prescribed under the Act.

## 6. Timelines

*Proponents expect decisions on proposals to be made in a reasonable time. The environmental impact assessment process must be efficient while maintaining its integrity, and should parallel other government approval processes where possible.*

*The timing of the environmental impact assessment process is determined in part by the legislation, but also by the proponent, the Authority, and the Minister.*

- 6.1 The Authority shall consult with the relevant decision-making authorities and the proponent to establish a timetable for the production of the proponent's environmental review document and the Authority's assessment report. The publicly available timeline will detail each stage of the environmental impact assessment process and, where appropriate, may also address the timing of other Government approval processes after consultation with the relevant agencies.

Any proposed change to an agreed timeline should be discussed and a new timeline agreed by the same process. All parties should use their best endeavours to meet the agreed timeline.

A proposal which is not meeting the agreed timeline and has not been actively pursued by the proponent for 12 months may be suspended and removed from the Authority's record of proposals, but only after written notice is sent to the proponent.

## 7. Proponent's environmental review document

*The proponent is responsible for preparing the environmental review document. The review document should describe the proposal, examine the expected environmental impacts, and propose a programme for management of the impacts.*

*Environmental impact assessment is more than an assessment of whether a proposal is acceptable. It also entails a review of the expected environmental impacts and the proponent's plans to manage the impacts. Environmental management programmes and commitments to environmental protection are therefore integral parts of the proponent's environmental review document.*

*The Authority will provide guidance in the preparation of environmental review documents, determine their suitability for public review, and specify how they should be distributed.*

- 7.1 The key purpose of guidelines is to focus the assessment on the important environmental issues by identifying them as early as possible.

### 7.2 Guidelines

After a level of assessment has been set for a proposal, the Authority shall normally issue guidelines for the preparation of the proponent's environmental review document.

A draft of the guidelines shall list the key environmental issues to be addressed in the environmental review document, and the Authority may circulate the draft guidelines for comment to the proponent, involved agencies, interest groups and the public. For ERMPs the Authority shall seek public comment on the content of the draft guidelines.

Guidelines may not be issued by the Authority when proposals are straightforward and the initial documentation submitted to the Authority is adequate (e.g. some CERs).

The final guidelines issued to the proponent address the issues or justify why they are not relevant. They are not intended to be prescriptive or exhaustive, and it is the responsibility of the proponent to ensure that all significant issues are included in the document. The final guidelines shall be publicly available and published in the proponent's environmental review document.



### 7.3 Content

The environmental review document shall present the environmental aspects of the proposal and should respond to the issues raised in the guidelines. It should be presented in a form and style that is readily understandable, and present conclusions fairly-based upon sound principles.

The environmental review document should concentrate on the key issues associated with the proposal and these key issues should be set in a proper context.

The setting of the context and discussion of the key issues should be based upon elements of the following:

- a description of the proposal and its objectives, its broad benefits and disbenefits and where they are borne within the community, and justification for the proposal;
- a description of the existing environment;
- a description of relevant policies, plans and programmes;
- alternatives and associated potential environmental impacts including the 'no-development' option;
- predictions of environmental impacts (in terms of their nature, magnitude, extent, duration, reversibility, uncertainty and significance) and their consequences ; and
- a programme for minimising, ameliorating, managing and monitoring impacts, and a commitment to implement the programme;

During the preparation of the environmental review document, the proponent is encouraged to liaise with the Authority to facilitate the Authority's role in ensuring an environmentally sound development is proposed.

### 7.4 Suitability for public review

The proponent shall submit a draft of the environmental review document to the Authority to obtain advice on the suitability of the document for public review. The Authority will decide upon the acceptability of an environmental review document on whether it satisfies the following grounds:



- are the relevant environmental issues addressed?
- is it technically sound?
- is the format, content and style in a form suitable to be understood by the educated lay person?

The analysis should not be superficial, subjective or non-informative. It should be comprehensive and objective. It need not cover every issue, only those predicted to be relevant to the proposal. Other issues may emerge during the public review and evaluation stages.

The Authority may request the proponent to modify and resubmit a draft of the document if it is inadequate.

An environmental review document shall not be distributed for the purpose of environmental impact assessment until the Authority advises it is satisfactory for public review. The Authority may not assess an environmental review document which has been published and released without the Authority's clearance.

The advice of the Authority that a document is suitable for public review does not in any way imply that the proposal has been assessed to be environmentally acceptable. It is not uncommon for issues or details to be raised in public or technical comment which necessitate the provision of information additional to that provided in the environmental review document.

## 8. Public review of proponent's document

*The environmental impact assessment process is designed to be open and accountable to the public, and includes specific points for public involvement.*

*Public involvement occurs throughout the process as follows: access to information on proposals, comment on proponent's draft guidelines; appeal to the Minister against level of assessment and the Authority's assessment report; and, public review of the proponent's environmental review document.*

*Public review of the proponent's document is a fundamental part of the process and provides the opportunity for individuals, organisations and government agencies to comment on a proposal.*

*The public review process ensures that people are informed about a proposal, they have the opportunity to comment, and their comments are heard before a decision is made by Government. It also ensures that environmental issues of public concern are raised and addressed, and provides the community with the opportunity to have an input to the apportionment of environmental benefits and disbenefits.*

*The proponent is expected to respond to issues raised during the public review, and where appropriate amend the proposal and change the management commitments.*

*Public involvement in the process enables the public to both advise on and learn more about environmental issues and values.*

### 8.1 Review process

Public comment on a proposal is normally through written submissions on the environmental review document during a specified review period. The information in written submissions is deemed public information while the identity of private individuals remains confidential to the Authority unless the submittor agrees otherwise. Written submissions from Government agencies are deemed public information unless that agency specifically requests that the submission be confidential with the general principles in S.39(3) and S.120 of the Act.

The public review may also include public meetings and presentations by the proponent. Submissions may also be sought by the Authority from relevant government agencies and expert persons during the public review period.

The Authority shall specify the minimum requirements for the public review process:

- (a) content of environmental review documents;
- (b) distribution and cost of environmental review documents; and
- (c) content and timing of media advertisements.

The Authority may also offer advice to the proponent on any other matters or activities needed to ensure adequate public review.

## 8.2 Distribution of review document

Where there is a public review period, the proponent shall make the environmental review document available to the public throughout the review period and charge no more than a nominal fee specified by the Authority (Section 40(6)(a)). The fee is not designed to recover costs but to discourage frivolous acquisition of documents at the proponent's expense.

The fees (including postage and packaging) are:


- (a) Consultative Environmental Review - \$5.00;
- (b) Public Environmental Review - \$10.00 for the main document and \$10.00 for appendices; and
- (c) Environmental Review and Management Programme - \$10.00 for the main document and \$10.00 for appendices.

The proponent shall provide copies of the environmental review document after approved by the Authority for release for public review without charge to individuals and organisations specified by the Authority (eg government agencies, local libraries) to coincide with the commencement of the review period.

The proponent shall also provide 20 copies of the documentation without charge to the Authority for its own use, public access in the Authority's library, and distribution.

## 8.3 Advertising

The proponent is responsible for advertising the release and availability of an environmental review document as specified by the Authority.



The approved advertisement shall appear in the news section of the main local newspaper, and for Public Environmental Reviews/Environmental Review and Management Programmes, shall also appear in the news section of the state wide daily newspaper's Saturday edition. The advertisement should appear at the commencement of the public review period and again two weeks prior to the closure of the public review period.

#### **8.4 Environmental Review and Management Programme**

In addition to publishing the environmental review document, the proponent for an Environmental Review and Management Programme shall ensure that:

- a summary of information about the proposal is made freely available to the public as soon as possible after the level of assessment has been set; and
- a summary of the environmental review document is made freely available to the public coincident with the public review period.

#### **8.5 Response to issues raised**

After the public review period, the Authority shall provide the proponent with a summary of issues raised in submissions, and any other issues the Authority may consider need to be addressed. Confidentiality of submissions shall be maintained by the Authority in that submitters shall not be identified with issues without their permission.

The proponent shall respond to the summary of issues provided by the Authority (Section 40(6)(b)), and the Authority normally awaits this response before finalising its assessment of the proposal. In responding to the issues raised the proponent may amend the proposal and change management commitments.

A copy of the issues raised and the proponent's response is normally provided in the Authority's assessment report.

The Authority may consider that a change made to a proposal during the assessment process is so substantial that it becomes a new proposal requiring further assessment. If so, the Authority is not constrained in any way by the assessment process already undertaken for the former proposal.

## 9. Authority's assessment

*The Authority shall assess a proposal on the basis of the environmental review document, and any issues raised during the public review, the proponent's response to the issues raised, the Authority's own research and information provided by expert persons.*


- 9.1 The Authority shall report on the environmental factors relevant to a proposal, and the conditions and procedures, if any, to which any implementation of that proposal should be subject. The Authority may make recommendations in its report as it sees fit (Section 44(1)).

The Authority's report to the Minister is normally based upon elements of the following:

- (a) the proposal as described in the environmental review document;
- (b) environmental issues raised by the public and government agencies;
- (c) the proponent's response to issues raised during the public review;
- (d) information from the Authority's own inquiries and received from expert persons;
- (e) whether or not the proponent is likely to be able to fulfil environmental commitments and responsibilities;
- (f) findings on the environmental benefits and disbenefits of the proposal, and a recommendation on whether the proposal could proceed.

The findings may consider (based upon information derived from the above):

- whether and why environmental impacts are manageable within tolerable limits;
  - whether and why the degree of uncertainty of impacts (ie the risk to the environment) is sufficiently low to be confident about not encountering unforeseen problems;
  - whether there are ways to eliminate avoidable impacts, minimise adverse impacts and maximise benefits to the environment;
  - whether the impacts are likely to be cumulative;
  - what the implications are of using community assets;
  - whether and why the programme for minimising, ameliorating, managing; and monitoring all impacts is sound and is likely to protect the environment; and
- (g) conditions for environmental protection which should be applied.



The Authority may finalise its assessment without the proponent's response to the issues raised during the public review if a reasonable time has elapsed after the summary of issues has been provided and notice given to the proponent that the Authority intends to proceed.

On completion of its assessment but within six weeks of this time, the Authority shall submit its report and recommendations on the proposal to the Minister who then publishes and circulates the report as soon as the Minister is reasonably able to do so. (Section 44(1)(3)).

## **9.2 Expert advice**

To assist in the assessment of a proposal, the Authority may engage expert persons to provide advice to the Authority on specific matters associated with a proposal.

## **9.3 Environmental Management Programmes**

Provided the Authority has sufficient information to make a judgement upon a proposal's environmental acceptability it may provide such advice but seek details of specific management provisions at subsequent stages of the implementation of the proposal. Approval of an environmental management programme does not consider whether or not the proposal should proceed but how various potential environmental impacts should be managed.

## 10. Delegation

*The Authority has previously delegated several of its powers, and information on these can be obtained from the Authority.*

- 10.1 The Authority may, with the approval of the Minister, delegate any of its powers and duties under the Act. The Authority shall ensure that the name and title of the delegate to be published in the Gazette (Section 19).
- 10.2 The Authority shall keep a public record of all delegations.

## 11. State/Commonwealth assessments

Where the Commonwealth Government has a decision-making role in a proposal, the Authority shall endeavour to reach agreement with the Commonwealth environment agency responsible for administration of the Commonwealth's Environment Protection (Impact of Proposals) Act 1974 (as amended) to ensure duplication of effort by all involved is minimised. In particular, joint guidelines may be issued, the environmental review document may serve for both assessments, public review may be combined, and both agencies may review the submissions received. Each agency shall then report as required under its own legislation.



## Suggested reading

- Australian and New Zealand Environment and Conservation Council (1991) — 'A National Approach to Environmental Impact Assessment in Australia' and 'The Background Paper of the Working Group', ANZECC, Canberra.
- Compendium of Ecologically Sustainable Development Recommendations, December 1992.
- Environmental Protection Authority (1992) — 'Environmental Protection', Western Australia.
- Environmental Protection Authority (1992) — 'Guidance notes — from Environmental Protection Authority reports 1971-1992, Western Australia'.
- Government of Western Australia (1992) — 'State of the Environment Report'.
- Intergovernmental Agreement on the Environment (1 May 1992).
- National Strategy for Ecologically Sustainable Development (December 1992).
- Western Australia Environmental Protection Act, 1986
- Environmental Protection Authority (1993) — 'A Guide to Environmental Impact Assessment in Western Australia'.
- Environmental Protection Authority (1993) — 'Environmental Reviews — Guidelines for Proponents'.