

PD Quinlan SC
Legal and Governance Review
Level 17, Allendale Square
77 St Georges Terrace
Perth WA 6000
23 March 2016

Dear Mr Quinlan,

Legal and Governance Review of Policies and Process of the Environmental Protection Authority

I refer to your invitation dated 8th February for the ECA to meet with you and make a submission on your review of EPA policy and processes. The ECA welcomes the review and hopes that it results in further clarification of how policy is developed and applied by the EPA.

Our members rely on clear and succinct guidance in order to effectively perform our roles and discharge our responsibility to our clients, the OEPA and ultimately, the public. In general, we hope for the following outcomes from the review:

- Recommendations to ensure that the hierarchy of EPA policy is clear. As outlined by you during the meeting, there are a range of genera of policy developed by the EPA and it is unclear which have priority. A system based approach to presenting these documents would assist in understanding how to prioritise their application, particularly in the event that there is inconsistency between different documents.
 - Policy needs to be clear and easily understood. The ECA would be disappointed for this process to result in a more legalistic approach to policy. The consumer of EPA policy extends from regulators, through highly experienced and technically focussed consultants and proponents, to members of the public with little or no technical expertise in the subject. Policy must be accessible to the full spectrum of users.
 - Policy needs to find that balance between being fully flexible (hence providing less certainty) and rigid. The review needs to take into account the fact that EIA isn't one size fits all – there are circumstances where application of policy is more necessary than in others. This may be a result of application of the precautionary principle, heterogeneity of the landscape the subject of the assessment, or any number of other varying factors. However, proponents (and their consultants) need to know that what they are proposing to do will be considered adequate for EIA purposes, and therefore some level of consistency is essential.
 - Policy needs to be adaptive. In many cases, policy has been developed in response to an emerging factor or industry on the basis that little is known about the environmental impacts (ie application of the precautionary principle). As understanding improves, there needs to be either a more frequent reconsideration of policy, or the flexibility to amend it.
 - Policy needs to be publicly accessible, both physically and also in terms of its ability to be
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understood and applied.

- There are grounds for some immediate restructuring of the current policy set, not only to put it in a hierarchy, but also there is some older documentation that could be removed or significantly modified/updated. GS 33 is a good example of one that needs to be reviewed and updated to provide a more practical guide for EPA's involvement in the land use planning process.
- The referral and assessment of schemes and scheme amendments is not very well covered in the current body of policy.
- There are elements of the EP Act that are not covered by guidance at all (for example Section 46). A more complete suite of policy would clarify all relevant processes for proponents.
- Policy has to describe how it should be used for assisting in the decision making process. This is particularly true for policies that articulate scientific requirements. Policies with a scientific focus should also articulate the appropriate level of investigation required to assist in decision making.
- The ECA applauds the current initiative to update the current web site to a more user friendly platform. As a result of the range of policy genera and topics, it is very difficult to intuitively find a certain document that is known to exist.

Taking into account the above, the ECA sees the review as an opportunity to clarify and rationalise the broad suite of EPA policy statements, in a manner that supports a core premise of impact assessment – that is, to inform the determination of significance of potential impacts from a proposal, through the lens of acceptability and manageability. There is inherent tension between policies that define expectations for scientific rigour in specific disciplines, and those policies that are more designed to facilitate sound decision-making.

The ECA would be pleased to share further insights or support the forward process if the opportunity arises, recognising that our membership has depth of experience from an environmental practitioner's perspective.

Yours faithfully



Jamie Shaw
President
Environmental Consultants Association
