

# POSITION STATEMENT

## The Role of the EPA in Attaining Sustainability

October 2005

### Introduction

Sustainability is not a new concept, it has been at the forefront of community and regulatory consciousness since 1987 when the Brundtland Report was published. The term 'sustainable development' was defined in the report as 'development which meets the needs of the present without compromising the ability of future generations to meet their own needs'. The South Australian *Environment Protection Act 1993* (the Act) was one of the first contemporary pieces of Australian environmental legislation that incorporated sustainability objectives.

The fundamental aim of sustainable development is to reduce the environmental footprint of humans and thereby protect natural ecosystems so that they are able to provide the support mechanisms needed to maintain a good quality of life, not only for humans, but also for all other organisms that live on this planet. This is to be achieved largely by changing the attitudes of people and their institutions to their environment, through the use of a range of tools and approaches as discussed in this statement.

Sustainability is a major component of South Australia's Strategic Plan, in which it is stated that 'Our priority is to make South Australia world-renowned for being clean, green and sustainable. This will boost community wellbeing, safeguard future generations and contribute to our State's prosperity. The focus will be on protecting our biodiversity, securing sustainable water and energy supplies, and minimising waste'.

This statement describes how the Environment Protection Authority (EPA) uses its decision-making powers, and program and policy development, to raise the profile of sustainability, ensuring that it is taken into account by decision makers and the general community. Two ways in which the EPA contributes to sustainability—addressing local environmental impacts, and managing and influencing others to address the cumulative effects of waste and pollution on our environment—are discussed.

## What is the purpose of the EPA?

The EPA is South Australia's primary environmental regulator. Its mission is to manage and influence human activities to protect, restore and enhance the environment and to support human wellbeing. This is seen in the EPA's capacity to regulate environmentally significant activities. Beyond its regulatory role, the EPA also influences others and builds partnerships with stakeholders and the broader community to protect and enhance the environment. Stakeholders in this context include key interest groups from industry, the community and government. The EPA uses a range of ways to manage environmental risk, and to ensure that the environment is considered by business, government and the community. Without a regulator and access to strong regulatory tools, pollutants and wastes from human activity may unacceptably affect our environment.

The functions of the EPA are detailed in the *Environment Protection Act 1993*<sup>1</sup> (the Act); in summary, they are to:

- administer and enforce the Act, and advise the Minister on administration of the Act and of other legislation that might affect the environment
- prepare draft environment protection policies, contribute to national environment protection measures, and regularly review the effectiveness of policies, regulations, measures and practices, and advise the Minister about them
- facilitate the pursuit of the Objects under the Act by government, the private sector and the public, by advising on, and assisting with, the development of best environmental management practices
- regulate, control and/or monitor activities through an authorisation system for controlling and minimising pollution and waste, and through investigation, compliance assessment, environmental monitoring and evaluation and enforcement.

### ***Contribution to achieving State Government policy***

In its role as South Australia's primary environmental regulator, the EPA supports and contributes to State Government policy. It also supports other organisations that play a role in environment protection and enhancement, such as SA Police, local government and other agencies such as Zero Waste SA. *South Australia's Strategic Plan* includes a number of objectives that the EPA directly or indirectly supports. These are:

- attaining sustainability by promoting the principles of sustainable development in its decision making and policy development for the benefit of present and future generations
- improving wellbeing by protecting, restoring and enhancing the condition of our environment so as to sustain good public health

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<sup>1</sup> section 13(1) of the Act

- increasing prosperity by ensuring that the EPA considers the economic and social environment when making decisions.

The EPA is considering the challenges contained in the report from the Premier's Round Table on Sustainability, *three, four, five: 3 Challenges, 4 Principles and 5 Actions*. The EPA can:

- provide leadership by demonstrating its commitment to pursuing sustainable environmental outcomes
- manage natural systems by promoting state-wide targets, based on good science and sound policy, for healthy ecosystems and sustainable resource use
- promote better resource efficiency (i.e. doing more with less) to reduce SA's ecological footprint
- stimulate cultural and behavioural change by encouraging the community, industry and business to go beyond simple compliance with regulations.

### ***Objects of the Act***

The EPA, and its governing Board, is created through the Act. This provides the EPA with a set of powers and a mandate in relation to environment protection and enhancement. The Act is focused on promoting a set of objectives called the 'Objects of the Act'<sup>2</sup>. The EPA is required to have regard to and further these Objects.

The Objects promote the principles of ecologically sustainable development (ESD) and seek to 'ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment...'. The ESD principles include that of intergenerational equity: 'sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations'. A further ESD principle promotes 'that proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement'. These principles direct the EPA towards a comprehensive, beyond environmental, assessment of matters in its role of determining reasonable and practicable measures to protect and enhance our environment.

There is a need to take a precautionary approach when assessing environmental risk. The EPA is often asked to provide policy advice or make decisions with incomplete, unavailable or imperfect information. This uncertainty must be balanced against the need to make timely decisions and the EPA therefore uses a risk management approach. The EPA applies precaution sensibly and reasonably, undertaking an effective assessment of the extent and nature of the environmental risk, and the likely success of cost-effective measures to reduce risk.

The Objects also promote transparency and understanding of the EPA's activities and decisions by ensuring that information about significant environmental incidents and

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<sup>2</sup> section 10 of the Act

hazards is available. The EPA educates, and involves, industry and the community in decisions about the protection, restoration and enhancement of the environment.

### ***Link to public health***

Understanding the link between poor environmental quality and human health is acknowledged in the Act as one of its fundamental objects<sup>3</sup>. Worldwide studies show that, for a number of pollutants, any level of exposure is a health risk.

The EPA recognises the need to fill the gaps in our knowledge. This will require collaboration with public health and other experts. The Act guides the EPA towards solutions that are not necessarily zero risk—there will be residual environmental effects, but within acceptable limits. Although zero risk may be desirable, it is not reasonable and practicable in all situations, particularly for existing activities.

Equally important is the need for the EPA to be effective in how it communicates on environmental risk with industry and the community. New organisational skills need to be developed to complement the traditional technical, scientific and policy skills normally associated with an environmental regulator.

For a complete account of the principles and measures that form the Objects of the Act, the reader is referred to section 10 of the Act.

### ***General environmental duty***

The General Environmental Duty<sup>4</sup> (the Duty) is fundamental to the Act. This imposes a general duty, or standard, on all individuals and organisations and requires all reasonable and practicable measures to be taken to prevent or minimise any resulting environmental harm. The Duty is often a critical consideration in the EPA's decision-making process when ensuring compliance with the Act.

When determining measures to be undertaken to satisfy the Duty, the EPA is required to consider the following:

- the nature of the pollution and the sensitivity of the receiving environment
- the financial implications of control measures compared to those deemed reasonable for the industry sector undertaking that activity
- the state of technical knowledge and the likelihood that the measures will be successful.

Government policy, as well as functions, Objects and the Duty under the Act summarise the key regulatory and policy facets that determine the scope of the EPA's role in sustainability.

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<sup>3</sup> section 10(1)(a) of the Act

<sup>4</sup> section 25 of the Act

## How does the EPA meet its purpose?

The EPA is committed to a risk management approach. It concentrates its efforts on issues that pose the greatest environmental risk, and uses (and promotes) tools, programs and systems that reduce and manage environmental risk.

The EPA applies the principles of sustainability in two key areas—managing local environmental impacts, and pursuing outcomes that go beyond those required to meet minimum compliance standards—in order to effectively address longer-term cumulative effects on the environment.

### *Localised environmental impacts*

The EPA expends considerable resources managing industrial–residential interface problems arising from a planning decision (or decisions) that has not given sufficient regard to the environmental impact of a development. This includes cumulative effects of industrial and commercial development or growth, and tensions created due to urban residential encroachment on land used for industry, commerce and agriculture. There may be a limitation on the economic growth of a business due to community pressure for an improved environment.

The Act provides regulatory tools, such as licences and environment protection orders, to ensure that industrial and commercial activities comply with a minimum standard. In promoting sustainability, solutions accepted by the EPA will often still have some residual risk or effect on the environment.

The EPA promotes and often requires best practice environmental management for new or expanded developments. There are often more opportunities available to manage pollution in new operations than in those that have been functioning for some time. The EPA's role in the land-use planning and development assessment system is critical in ensuring sustainable development and the prevention of future problems.

From time to time trade-offs between environmental, economic and social outcomes need to be considered when developing and accepting solutions to address local environmental impacts. Whilst these should be minimised, the EPA, through its governing Board, plays a key role in determining the scope and manner of any compromise that is required.

### *Wide-scale cumulative effects on the environment*

The production and consumption of goods and services by society often results in adverse, and often poorly understood, cumulative effects on the environment. The environment is put at greater risk as we consume more goods or expand our activities. The challenge is to break the link between economic growth and cumulative environmental degradation.

In striving to achieve sustainability, the cumulative impacts of our activities must be well understood, recognised and managed by society. Innovative methods will be necessary to deal with this issue.

Urban air quality, for example, can affect public and environmental health in a number of ways. The predominant source of pollutants is the motor vehicle. While individual vehicle emissions may not be significant, the cumulative effect of all vehicle emissions is significant. Similarly, the health of our aquatic environments is put at risk by pollutants derived from a large number of smaller sources, including domestic, small business, agriculture and transport.

In addition, while waste can affect the environment, its generation often implies an inefficient and unsustainable use of resources such as water, energy and raw materials.

To encourage sustainability the EPA needs to:

- facilitate understanding and ownership of individual and collective impacts on the environment arising from human activities, as well as support and encourage the involvement of the community, business and government in creating innovative, sustainable solutions
- recognise that a 'beyond-compliance' mindset is necessary in creating sustainable outcomes, and that this is more likely to be achieved through means other than traditional forms of regulation
- promote resource efficiency, thereby eliminating or reducing waste and pollution.

Traditional ways of regulating are often not effective or efficient in managing cumulative effects—significant national and international effort is being made to develop environment protection tools to manage diffuse sources of pollution and waste, and to influence industry and community behaviour. Often referred to as 'smart regulation', programs are being designed to promote beyond-compliance outcomes and encourage innovative solutions.

The EPA continues to pursue a number of programs such as Greening the Supply Chain, as well as other initiatives promoting cleaner production to minimise waste and resource usage whilst improving profitability. Other Australian states are developing competitive business advantages in this way.

Tools being considered in SA, interstate and internationally to achieve beyond-compliance outcomes include:

- economic instruments (both incentive and disincentive based) such as load-based licensing, extended producer responsibility, pollution trading schemes
- programs designed to change community or business behaviour using tools such as sustainability covenants or agreements with industry sectors, Greening the Supply Chain, and locally agreed (community based) environment improvement programs
- monitoring, reporting and scientific investigation—provision of best available science and understanding of our environmental systems and the pressures placed on these systems
- development of strategic partnerships with key interest groups
- the use of better and more holistic analysis tools (e.g. lifecycle analysis)

- policies, codes of practice and position statements
- improved access to, and delivery of, information and knowledge.

The challenge facing all environmental regulators is how to best use this suite of tools to achieve behavioural change and environmental goals at the lowest cost and with the least regulatory intervention.

### ***Engaging and communicating with others***

Effective and open communication is a key operational principle in attaining sustainability. The EPA recognises the value of, and is committed to, effective engagement and communication with community, government and business. This gives the EPA a better understanding of expectations, priorities and emerging issues, as well as feedback on how it is meeting its obligations under the Act. It also enables the EPA to review its decision-making processes to ensure it is appropriately and effectively managing environmental risk.

The EPA and its Board consult with peak industry and business organisations, with industry sectors, environmental advocacy groups, and with local and State Government organisations. Both metropolitan and regional areas of South Australia are covered in this program of engagement.

In addition, the EPA develops procedures and policies that aim to maintain consistency of approach and transparency for the community, industry and government. Examples include guidance in its regulatory approach through its *Compliance and Enforcement Guidelines*, and a number of environment protection policies and codes of practice for specific environmental issues, developed in collaboration with relevant stakeholders and the community.

## **Challenges**

In determining its role in achieving sustainable environmental outcomes, the EPA Board is currently focusing on the following challenges:

- organisational decision making—two significant challenges for the EPA are to ensure that it takes into account the complex array of sustainability principles when making decisions, and to communicate the rationale behind its decisions. Related to this is the need for the EPA to enhance its skills in both the assessment and communication of environmental risk.
- finding a balance between the needs of present and future generations—the EPA recognises the difficulty of predicting future societal values. However, it is committed to its role in ensuring the protection, restoration and enhancement of our ecosystems to ensure future needs are not compromised. The challenge is to better account for the distribution of costs and benefits within and between generations.
- resource allocation—in seeking to pursue the functions of the Act, the Board must determine how best to apply its resources. Care is needed to balance the level of

resources used to manage local concerns with those used for cumulative effects, and to address immediate environmental issues versus long-term issues.

- legacy issues—the Board has recommended in the 2003 *State of the Environment Report* that there is a review into the state's land-use planning system to ensure more effective environmental management for priority environmental issues. The government has responded positively and is reviewing the planning system to ensure a greater focus on sustainability. Greater attention will need to be given to ensure an effective strategic policy and assessment framework for development.

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