

Parliament of the Commonwealth of Australia

House of Representatives Standing Committee on
Environment, Recreation and the Arts

**COMMONWEALTH ENVIRONMENTAL IMPACT
ASSESSMENT PROCESSES**

A review of Audit Report No.10 1992-93 - *Living with our Decisions*

June 1994

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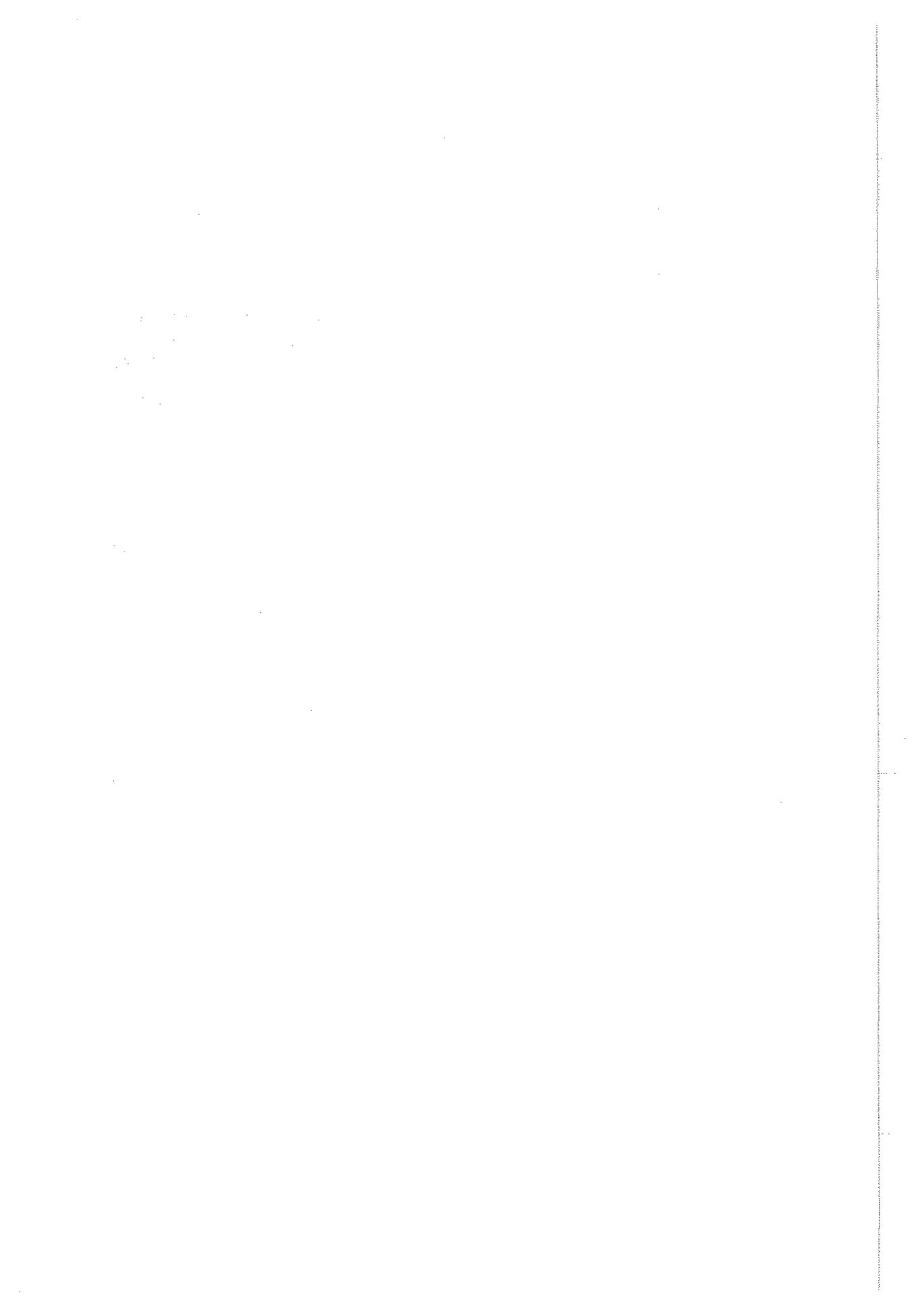
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RECOMMENDATIONS

The Committee recommends that:

- (1) all government departments and agencies with responsibilities under the *Environment Protection (Impact of Proposals) Act 1974* formally consider the recommendations of the audit report and make a commitment to develop in-house expertise in the environmental impact assessment process. (*paragraph 3.10*)
- (2) departments and agencies with responsibilities under the *Environment Protection (Impact of Proposals) Act 1974* support the proposed environmental impact assessment practitioners' network and allocate adequate resources to ensure the success of the network. (*paragraph 3.11*)
- (3) each year, in its annual report, the Department of the Environment, Sport and Territories details its negotiations, whether complete or not, about proposed Memoranda of Understanding. (*paragraph 3.21*)
- (4) all departments and agencies with responsibilities under the *Environment Protection (Impact of Proposals) Act 1974* develop and support training programs for participants in the environment impact assessment process, in consultation with the Commonwealth Environment Protection Agency. (*paragraph 3.31*)
- (5) the Commonwealth Environment Protection Agency concentrates on developing appropriate education and information strategies that will increase the level of expertise of action agency officers and other environmental impact assessment practitioners. (*paragraph 3.32*)
- (6) no consulting charges be introduced by the Commonwealth Environment Protection Agency at this time. (*Paragraph 3.34*)



CHAPTER 1: ENVIRONMENTAL IMPACT ASSESSMENT

The Environment Protection (Impact of Proposals) Act 1974

1.1 The Commonwealth parliament enacted the *Environment Protection (Impact of Proposals) Act* in December 1974 with the objective of ensuring that 'matters affecting the environment to a significant extent' are fully examined and taken account of in any proposed actions of the Commonwealth Government. The act only applies to decisions and proposed actions by the Commonwealth but the range of matters which can be reviewed is very broad, and includes:

- . the formulation of proposals;
- . the carrying out of works and other projects;
- . the negotiation, operation and enforcement of agreements and arrangements (including those with States and Territories);
- . the making of, or participation in the making of, decisions and recommendations; and
- . the incurring of expenditure.

1.2 Government decisions and actions which may impact significantly on the environment can be associated with activities such as projects carried out by Commonwealth departments and authorities; grants to State governments for specific programs; proposals which require Commonwealth approval to export primary products; proposals involving foreign investment approval; and proposals requiring a lease over Commonwealth land.

1.3 The Act was clearly intended to have broad application. It has a number of significant features which have influenced the way it has been administered and the way its objective has been pursued:

- . It is designed to be flexible.
- . The important decisions are discretionary rather than mandatory.
- . The Action Minister (generally not the Minister responsible for the environment) is responsible for designating the proponent of a development project, for making an initial assessment of the environmental significance of the project, and for triggering the environmental assessment provisions of the Act.
- . The proponent is responsible for carrying out the duties and environmental conditions imposed by the Action Minister.

1.4 These factors have necessitated the introduction of formalised administrative processes.

Administration of the Act

1.5 Successive Commonwealth departments responsible for environmental matters have administered the Act since its inception, but the requirement for Action Ministers to make initial assessments of environmental significance has meant that other departments and agencies have also been involved. The Commonwealth Environment Protection Agency (CEPA), an agency within the Department of the Environment, Sport and Territories (DEST), is currently responsible for administering the Act.

1.6 Administrative Procedures promulgated under the Act provide guidance on the preparation of environmental impact statements, public review and the assessment of such statements. Before any decision is taken on a proposal, the Administrative Procedures provide that:

- . the possible environmental effects of the proposal are fully investigated and assessed;
- . alternative means of achieving the objectives of the proposal are adequately investigated and assessed;
- . consideration is given to the means of enhancing and protecting the environment, or minimising adverse environmental effects of the proposal;
- . interested sections of the public are given the opportunity to be involved in consideration of environmental effects; and
- . the environmental consequences of the proposal are considered, together with the economic, technical and political factors, in reaching a decision.¹

1.7 The first stage of an environmental impact assessment begins when a developer or proponent approaches the relevant Commonwealth department or agency with the details of a proposed project. The Minister responsible for the administration of that department, or a delegate from the department, undertakes an initial assessment of the proposal and determines whether it is likely to have a significant effect on the environment.

¹ Information about the Act and the Administrative Procedures has been taken from the Commonwealth Environment Protection Agency's draft *Operational Manual for Commonwealth environmental impact assessment*.

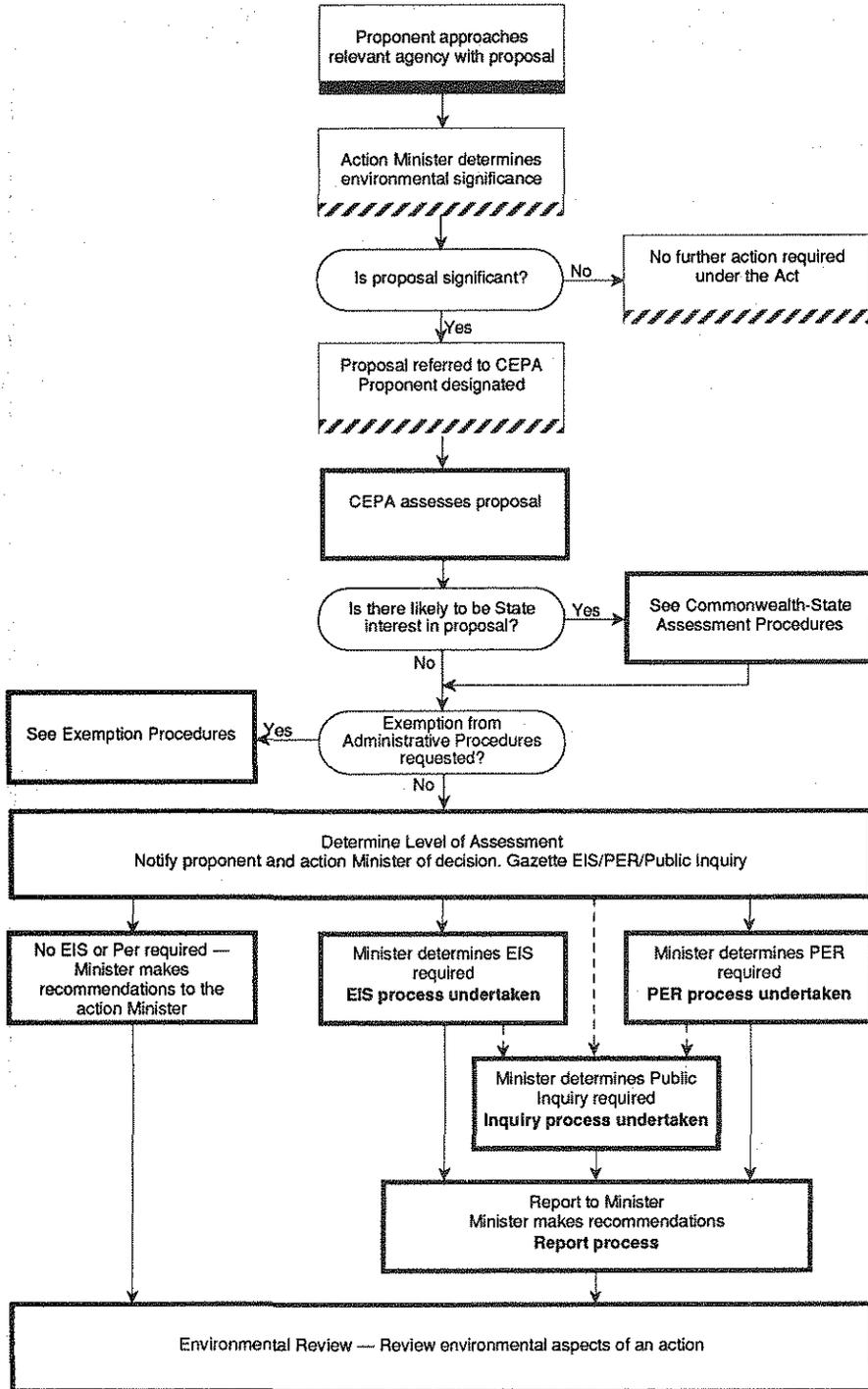
1.8 In some cases formal Memoranda of Understanding (MOUs) have been negotiated between CEPA (or its predecessors) and Commonwealth agencies to provide, among other things, guidance to those agencies at the initial assessment stage of projects. As part of the MOU process, CEPA provides agencies with formal guidelines for the identification of environmental significance. Informal advice and opinion about the environmental significance of a project can also be obtained from CEPA if a department requires it.

1.9 If a project is deemed not to be environmentally significant, the Act is not triggered and no further action is required. If the Action Minister or action department believes the project is likely to have a significant impact on the environment, it is referred to CEPA which then determines the level of assessment that is necessary. Four levels of assessment are possible:

- . an assessment by CEPA without the preparation of either a Public Environment Report (PER) or an Environmental Impact Assessment (EIA);
- . an assessment by CEPA following the preparation and public review of a Public Environment Report;
- . an assessment by CEPA following the preparation and public review of an Environmental Impact Assessment; and
- . examination by a Commission of Inquiry.

1.10 The Minister for the Environment, Sport and Territories informs the Action Minister of the results of any review or assessment of the environmental aspects of a proposal and the Action Minister must then ensure that any suggestions or recommendations made by the Environment Minister are taken into account in any subsequent decisions or actions. Figure 1 is a flow chart of the environmental impact assessment process.

Fig 1 - Overview of EIA Process



Source: Commonwealth Environment Protection Agency. Taken from draft Operational Manual for Commonwealth environmental impact assessment.

CHAPTER 2: THE AUDIT OF ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURES

The audit report

2.1 During 1992, the Australian National Audit Office (ANAO) undertook an efficiency audit of the Commonwealth's environmental impact assessment processes to determine how the 'economy, efficiency and effectiveness' of those processes could be improved. The audit noted the existence of a number of deficiencies in the initial assessment and referral of proposals to CEPA by action agencies as well as with the scoping² of assessments. The auditors also suggested that there were delays in the process and a lack of monitoring of the process once projects were referred. The ANAO suggested that these deficiencies have the potential to cause problems such as:

- . manipulation of the process by creating unnecessary delays;
- . disincentive to invest in major new projects where undue delays in the assessment and approval may be expected;
- . circumvention of the Act for proposals with significant environmental implications; and
- . threats to the quality of the environment.

2.2 In summary, the auditor's main concerns were that the complexity of the process and the discretion provided to Action Ministers could result in the circumvention of environmental impact assessment requirements and that inefficiencies in the administration of the process could lead to delays and further complexity.

The Committee's review of the audit report

2.3 The report of the Auditor-General - Report No. 10 1992-93, *Efficiency Audit Living with our decisions*, an assessment of Commonwealth environmental impact assessment processes, was tabled in the House of Representatives on 16 December 1992. On 17 August 1993, the report was referred to the Committee by the Special Minister of State, the Hon. F J Walker, QC, MP.

2.4 The Committee then sought and received a detailed briefing from CEPA and was provided with a background paper describing CEPAs response to the audit and the action it had taken.

² Scoping is the process by which the scope, extent or subject/issues areas to be dealt with in an Environmental Impact Statement or Public Environment Report are defined.

2.5 In reviewing the audit report, the Committee did not attempt to undertake a detailed review of the Commonwealth environmental impact assessment process and the legislative framework. Rather, the Committee reviewed the audit recommendations and considered the adequacy of CEPAs responses. There is some scepticism in the Committee about the effectiveness of the EIA process and a more rigorous review may well be undertaken in the future. In the meantime, the Committee will observe the extent and effectiveness of the implementation of the recommendations in the audit report and their effectiveness.

CEPAs response to the audit recommendations

2.6 The audit report made nineteen recommendations to streamline and monitor EIA processes and to monitor outcomes. It should be noted that, although CEPA was the focus of the audit and many of the recommendations were addressed to it, the administration of the Act is a shared responsibility. The action agencies have a major role to play and all agencies and departments need to consider and, where appropriate, implement the audit findings.

2.7 The nineteen recommendations made by the Auditor-General together with CEPAs responses are listed in Appendix 1. The follow-up action that has been undertaken by CEPA since the tabling of the audit report in December 1992 is also outlined in Appendix 1.

CHAPTER 3: REFORMING THE PROCESS - THE RESPONSE TO THE AUDIT REPORT

3.1 CEPA is currently undertaking a comprehensive public review of the Commonwealth environmental impact assessment (EIA) process. An initial discussion paper entitled *Setting the Direction* was released in November 1993. The object of the review is to maximise the effectiveness and efficiency of the Commonwealth's environmental impact assessment system and to reflect changing environmental imperatives and industry interests. The results of the submissions received will form the basis of a main discussion paper that will outline a framework for the delivery of an effective and efficient system.

3.2 As part of this major review of the EIA system, CEPA has also commissioned six consultancies which will cover the following areas:

- . public inquiry processes;
- . public participation in the EIA process;
- . assessment of cumulative impacts and strategic assessment;
- . social impact assessment;
- . analysis of EIA practice and procedures in Australian States and Territories; and
- . analysis of EIA practice and procedures overseas.

3.3 Many of the problems inherent in the current EIA system and the use of MOUs should be addressed in the public review process and in the consultants' reports. These initiatives are therefore likely to contribute in a major way to the implementation of the audit recommendations.

3.4 From Appendix 1 it can be seen that CEPA has made a significant effort to implement most of the audit recommendations and has encouraged other departments and agencies to cooperate in the process of revising the administration of the Act.

3.5 To facilitate discussion with action agencies about the implications of the audit report and its recommendations, CEPA sponsored a series of seminars that were intended to:

- . ascertain the needs of action agencies in training and development of their officers in the EIA process, and to identify the assistance that CEPA could provide in meeting these needs;
- . provide recommendations for combined agency/CEPA activities; and
- . identify areas where material to be produced by CEPA could assist agencies in undertaking the roles identified in the audit report.

3.6 As a result of the seminars, CEPA identified a number of areas in which action was required and it began a review of its education and information services. To assist further in the education process, CEPA is proposing to set up an environmental impact assessment practitioners' network. The objective of the network is to bring together a cross-section of people who are participants in the EIA process or who are interested in environmental impact assessment (such as industry representatives, academics, conservation organisations) to facilitate the sharing, evaluation and dissemination of information and to promote stronger relations between all parties. It is intended that membership of the network will enable agencies to have access to a wide range of case study material not otherwise readily available and to provide members with a broader understanding of the types of cases requiring environmental impact consideration.

3.7 CEPA has also written to government departments, action agencies and authorities outlining the recommendations of the audit report and CEPAs proposed actions. In a number of instances CEPA did not receive a response to its letter, or when follow up telephone calls were made, CEPA was unable to locate a person or area that had responsibility for environment related issues.³ This suggests that if there is a problem with the implementation of the audit findings it may be in the response of agencies other than CEPA. The lead is being taken by CEPA but it remains to be seen if others will follow.

3.8 CEPA has been developing an operational manual for Commonwealth environmental impact assessment. The manual, which will be used by CEPA and circulated to action agencies, will be a comprehensive document that aims to promote an understanding of the Act and to provide detailed information on all aspects of the EIA process.

3.9 It appears that CEPA is making a strong effort to overcome the problems noted by the audit. However it is also important that departments and agencies with responsibilities under the Act develop the expertise and experience required to enable their officers to handle the initial assessment process appropriately and confidently. Should clarification of an issue be required, CEPA can provide advice and make recommendations, but greater efficiency will be achieved if action agencies become more competent in this area. The development of greater expertise within action agencies is also likely to encourage the integration of environmental decisions into general administrative processes.

3.10 The Committee therefore recommends that:

- (1) all government departments and agencies with responsibilities under the *Environment Protection (Impact of Proposals) Act 1974* formally consider the recommendations of the audit report and make a commitment to develop in-house expertise in the environmental impact assessment process.

³ Informal advice provided by CEPA, 24 January 1994.

3.11 The Committee also recommends that:

- (2) departments and agencies with responsibilities under the *Environment Protection (Impact of Proposals) Act 1974* support the proposed environmental impact assessment practitioners' network and allocate adequate resources to ensure the success of the network.

3.12 Although CEPA is implementing most of the audit recommendations and is encouraging other agencies to do likewise, there are some matters that require further comment. They are discussed in the remainder of this chapter.

The initial decision - triggering the Act

Register of proposals

3.13 The audit report recommended that a register be maintained by all action agencies to record details of all matters that require a decision on environmental significance as they are lodged for consideration. CEPA informed action agencies and authorities of this recommendation and offered to assist in developing the necessary database.

3.14 For the register to be of value, action agencies, government departments and authorities must make a firm commitment to the establishment of a network system and must allocate resources to the initial implementation of the proposal. A national, standardised approach to the type of information to be recorded will be required. To achieve this, CEPA, action agencies and authorities will need to work closely together to decide on the categories of information and to develop the database. CEPA and action agencies have noted that the implementation of this recommendation is subject to adequate resources being allocated to action agencies.

Memoranda of Understanding

3.15 The purpose of the MOU is to enable the requirements of the Act to be fulfilled in an efficient, economic and timely manner by:

- establishing procedures for determining environmental significance that are compatible with the responsibilities of the action agencies that sign the MOUs;
- providing guidance as to which proposals should be referred for consideration under the Act and which types of proposals are not normally within the scope of the Act; and

ensuring that, where appropriate, relevant State and Territory departments and agencies, and other Commonwealth departments and agencies, are consulted in the assessment of the environmental impact proposals, so that the benefits of their expertise can be utilised and duplication avoided.⁴

3.16 It has been the intention of successive environment departments to negotiate an MOU with all government agencies that make environmentally significant decisions. However, CEPA advised that only 22 MOUs have been agreed (Table 1). Some of these memoranda were made with agencies that no longer exist and at least seven involved agencies that are, or have been, in the environment portfolio. CEPA is negotiating currently with the following agencies:

- the Australian Heritage Commission;
- the Department of the Arts and Administrative Services;
- the Department of the Treasury;
- the Department of Health, Housing, Local Government and Community Services;
- the Civil Aviation Authority; and
- the Department of Primary Industries and Energy.

3.17 The House of Representatives Standing Committee on Environment and Conservation commented on the delays in negotiating MOUs in 1979 and again in 1985. On the second occasion the Committee reported that it was 'appalled' that only two MOUs had been agreed in the six years since the 1979 report, bringing the total to eight.

3.18 Some progress has been made in negotiating MOUs since 1985 but it appears that departments and agencies are still reluctant to finalise negotiations, despite the potential to clarify administrative complexities and streamline the EIA process.

3.19 The auditors suggested that the MOUs have proved to be of limited value as a mechanism through which Government departments and action agencies assess a proposal. It would appear that questions arise whether MOUs are adequately meeting the needs of action agencies.

3.20 The Committee believes that the importance of MOUs has not diminished since the concept was first introduced. MOUs can play an important role in assisting agencies in the very important task of evaluating the environmental significance of proposals. They can also offset some of the potential for environmentally damaging decisions created by the discretionary nature of the provisions of the Act.

⁴ Information taken from a document entitled *Generalised - Memorandum of Understanding*, provided by the Commonwealth Environment Protection Agency.

TABLE 1 - Memoranda of Understanding Negotiated

Agency	Date of Agreement
Office of the Supervising Scientist	26/6/88
Nuclear Codes Section	26/6/88
Great Barrier Reef Marine Park Authority	8/8/89
Antarctic Division	10/10/93
National Library of Australia	3/9/90
Marine Programs Section	13/5/90
National Capital Planning Authority	2/1/92
Department of Housing and Construction	1978
Australian Postal Corporation	1978
Department of Aboriginal Services	pre 1979
Department of Administrative Services (property matters only)	1980
Australian Telecommunications Corporation (now TELSTRA)	23/6/89
Australian Federal Police	2/3/90
Australian Nuclear Science and Technology Organisation	27/6/90
Commonwealth Fire Board	5/7/90
Department of Industrial Relations	6/7/90
Department of Employment, Education and Training	28/8/90
Australian Institute of Marine Science	21/3/91
Department of Defence	30/8/91
Australian International Development Assistance Bureau	17/10/91
Federal Airports Corporation	17/5/93
Department of Transport and Communications	30/11/93

Source: Commonwealth Environment Protection Agency 1994

3.21 The Committee considered that there is a need for a commitment to the use of MOUs by all Commonwealth government departments and agencies and it is concerned that some still have not completed negotiations. In 1985 the Standing Committee on Environment and Conservation recommended that the annual report of the department should contain information about progress and delays in negotiating MOUs. The department administering the Act has from time to time reported on the conclusion of negotiations. It is important for the Parliament to be made aware of the progress in negotiations and the Committee recommends that:

- (3) each year, in its annual report, the Department of the Environment, Sport and Territories details its negotiations, whether complete or not, about proposed Memoranda of Understanding.

Co-ordination of the EIA process

Appointment of facilitators

3.22 The ANAO recommended the introduction of facilitators to guide proposed actions through all approval processes including the EIA process. It was intended that a facilitator would ensure that all relevant parties with an interest in the process were aware of who was responsible for the proposal and were informed as to the status of the proposal. It was also expected that a facilitator would assist in the smooth passage of the proposal through the assessment process.

3.23 CEPA expressed reservations about the role of a facilitator, commenting that the recommendation has the potential of adding a further, unnecessary component to the approvals and assessment processes. CEPA is also opposed to any facilitation that has the potential to undermine the integrity of the assessment process or which complicates intergovernmental co-operation.

3.24 The concept of a facilitator is relatively new. In February 1992, the Commonwealth's Major Projects Facilitation Unit was established to minimise the compliance costs for businesses in obtaining administrative and regulatory approvals for major projects. This facilitation involves:

- prompt provision of accurate information to enable companies to complete government approvals processes as well as information on existing government policies, programs or entitlements from which a project might benefit;
- co-ordination of all government processes so they occur simultaneously as far as possible; and
- prompt consideration by government of policy issues raised by companies.

3.25 Facilitation support is provided only to projects that:

- have a total capital expenditure of \$50 million or more;
- can reasonably demonstrate commercial viability; and
- require Commonwealth Government approval(s) for the project.

3.26 Facilitation is one way to overcome the apparent complexity of the government approvals process and reduce delays. However, because the work of the Major Projects Facilitation Unit is limited to projects of a particular profile, there may be many projects of greater complexity and environmental significance that fall outside the criteria for facilitation support. The Committee considers that facilitators for the EIA process should not be introduced unless the matter has been reviewed by CEPA in consultation with the action agencies and an appropriate facilitation role is identified. In the meantime, priority should be given to developing information and education processes that will make action agencies more competent and efficient in discharging their responsibilities under the Act.

Training and education

3.27 The delays and the uncertainty that surround the assessment and approval process can be reduced not only by the provision of timely and accurate information but also by the education of participants in the process. Action Agencies and CEPA can play a significant role through the provision of information and the development of education and training programs that are accessible to all participants and stakeholders involved in the assessment and approval process.

3.28 The audit found that officers within action agencies have a limited level of corporate knowledge, expertise and skill in the EIA process. This is attributable to high levels of staff turnover and lack of adequate documentation. The audit also found a high level of dependency by action agencies on CEPA for informal advice when making decisions on the environmental significance of proposals. Some of the steps already taken by CEPA will help meet the information and education needs of the action agencies.

3.29 CEPA is primarily an advisory body that can only make recommendations or suggestions to action agencies and Action Ministers. Therefore there is a fundamental obligation on action agencies to have trained professional assessment officers on hand to carry out the EIA tasks effectively. The Act relies heavily on the judgement and assessment of action agency staff in the initial phase of the EIA process. It is therefore crucial that action agency staff fully understand the assessment procedures. This would maximise the effectiveness of their decisions and minimise the uncertainty that surrounds the assessment process.

3.30 It is essential that the provision of training services and appropriate education and information resources not be left to CEPA alone but be provided by action agencies with assistance from CEPA. Many of the problems identified by the audit will be overcome if CEPA continues with initiatives it has already commenced and if the action agencies make a similar response.

3.31 The Committee recommends that:

- (4) all departments and agencies with responsibilities under the *Environment Protection (Impact of Proposals) Act 1974* develop and support training programs for participants in the environmental impact assessment process, in consultation with the Commonwealth Environment Protection Agency.

3.32 The Committee also recommends that:

- (5) the Commonwealth Environment Protection Agency concentrates on developing appropriate education and information strategies that will increase the level of expertise of action agency officers and other environmental impact assessment practitioners.

Consulting fee

3.33 The audit report recommended the introduction of a consulting fee on a cost recovery basis for advice provided by CEPA to action agencies. It considered that the introduction of a fee for service might force action agencies to improve their own capacity to make decisions about the environmental significance of proposals. However, the Committee believes that it is important that open communication channels exist, and advice and support is freely available throughout the process. The introduction of a fee for service may discourage communication and coordination. This could have serious environmental implications, at least until the action agencies become more expert.

3.34 The Committee therefore recommends that:

- (6) no consulting charges be introduced by the Commonwealth Environment Protection Agency at this time.

Monitoring of environmental impacts

3.35 The Act does not establish mechanisms for monitoring the impacts of approved projects or for Action Ministers to monitor the compliance with any conditions they impose on projects. The audit did not comment on this matter in detail but recommended that monitoring of impacts by action agencies become a standard practice in relation to major projects.

3.36 Monitoring of the consequences of decisions and conditions imposed following an environmental impact assessment is a relatively new and unexplored area. To assist in identifying the most appropriate action to take, CEPA commissioned a consultancy following consideration of submissions from a number of experts in the field of monitoring. The object of the consultancy was to evaluate processes for assessing the effectiveness of environmental protection commitments made in environmental impact assessments and of conditions placed on approved projects. The consultancy report provides a basis for CEPA to identify the best options for monitoring projects but this is another area where the response of action agencies will also be important. It is not sufficient or appropriate for CEPA to pursue monitoring by itself. Conditions on approvals are imposed by Action Ministers and their departments have the prime responsibility for managing the government's interests in approved projects.



CHAPTER 4: CONCLUSION

4.1 *The Environment Protection (Impact of Proposals) Act 1974* was introduced at the end of a period of Australia's history during which it had been usual for the environmental impact of development proposals to be given limited consideration. Twenty years later, Australia has undergone dramatic changes and the emphasis on conservation, preservation and protection of the environment for the present and future generations of Australians has taken on new dimensions.

4.2 Environmental impact assessment has become a routine part of decision making but it is far from a perfect planning and environmental management tool. The Act maintains its significance in the 1990s but, as the audit noted and CEPAs subsequent actions confirm, there is considerable scope to reform the administration of the EIA process.

4.3 The Act and the processes it establishes are complex and open to uncertainty. The lack of adequate guidelines set down in the Act and the Administrative Procedures and the discretion given to Action Ministers, complicates the process. This is further compounded by changing government policies and the requirement to incorporate in decisions made about the environment the principles espoused in treaties, sustainable development considerations and intergovernmental agreements.

4.4 Since the report of the efficiency audit was tabled, CEPA has developed a detailed strategic approach to implement (where practicable) the recommendations of the report.

4.5 The need for information and education, particularly within action agencies, is one of the most important findings emerging from the Committee's review of the audit. The Committee notes the development of a comprehensive draft operational manual on environmental impact assessment by CEPA and the opportunity this presents to other agencies to reconsider the allocation of resources to develop their own in-house manuals based on CEPAs manual. This will also present action agencies with opportunities to initiate education and training programs for professional development of staff involved in administering functions under the Act.

4.6 The Committee commends CEPA on its positive and proactive approach to the audit report. The consultancies and the public review are two significant projects that should reap valuable and much needed data on the perception and effectiveness of the EIA process and provide a basis for possible changes to the EIA processes. However, the Committee is concerned that CEPAs approach has not been matched by other departments and agencies with responsibilities under the Act. These agencies have a crucial role to play, particularly at

stages in the EIA process that seem complex or where delays can occur. Their decisions and actions may also have significant environmental implications. Although the audit focussed almost entirely on operations within CEPA, the importance of other agencies cannot be overlooked and the Committee has made several recommendations that seek a more effective response from these agencies.

The Committee proposes to continue to consult with CEPA and to monitor the performance of the agencies that need to participate in the implementation of the audit findings, to ensure that the opportunities for reform created by the audit are not wasted.

John Langmore
Committee Chair

9 June 1994

APPENDIX 1

Audit Report recommendations and CEPAs responses and follow-up action

No.	ANAO Recommendation	CEPAs response and follow up action
1	<p>Efficiency and accountability mechanism</p> <p>ANAO recommended that a three-level filtering approach to processing proposals be formally implemented whereby increasing resources are allocated in line with increasing perception of impact, to ensure a decision is being made at the earliest opportunity and that CEPA resources are used in the most effective manner.</p>	<p>Agreed. During October and November 1993 CEPA developed an information paper on the three-level filtering approach. The paper was distributed to action agencies together with the ANAO recommendations. Initial implementation of the three-level filtering system is regarded as the responsibility of action agencies with CEPA offering assistance to develop the assessment criteria.</p>
2	<p>ANAO recommended that action agencies refer policy decisions to CEPA which would reduce or eliminate the need to refer resulting individual licence, lease or permit proposals. Land use management programs, forestry strategies, national park management plans, national road development programs and fishery management plans are examples of policy proposals which cover a class of individual proposals.</p>	<p>Agreed. CEPA noted that referrals cannot limit the later application of the Act to specific proposals.</p> <p>CEPA wrote to all action agencies alerting them to the recommendation in the report.</p> <p>CEPA wrote to the Department of the Prime Minister and Cabinet requesting that Cabinet submissions and memoranda be required to:</p> <ul style="list-style-type: none"> . identify matters affecting the environment . detail measures to minimise environmental impacts. <p>The Cabinet handbook has been amended to require that Cabinet submissions and memoranda consider the principles of ecologically sustainable development.</p>

3	<p>ANAO recommended that action agencies maintain a register of all matters requiring a decision on environmental significance, and that action agencies and CEPA sample proposals (referred and not referred) for quality assurance.</p>	<p>Agreed. CEPA regarded the recommendation as directed at action agencies and consequently notified relevant agencies. CEPA will provide assistance in developing the register. Quality assurance procedures will be developed by CEPA.</p>
4	<p>ANAO recommended that all referrals be subject to a sunset clause which places responsibility on both the proponent and CEPA to bring the process to a timely conclusion. Time targets would need to be agreed on a case by case basis given the different levels of complexity.</p>	<p>Agreed. CEPA noted that if projects which have passed the sunset date are reactivated, the Act may also need to be reapplied.</p> <p>CEPA indicated that time schedules are already a requirement of the Intergovernmental Agreement on the Environment.</p> <p>During April and May 1993, procedures were developed for arriving at sunset clauses for projects so that they can be incorporated in a project timetable. The procedures have been included in the draft Operational Manual for Commonwealth environmental impact assessment.</p>
5	<p>ANAO recommended that to ensure that the Act was not misused, CEPA should have the power to deem that a proposal had lapsed, where insufficient progress had been made by other parties.</p>	<p>Agreed. CEPA commented that if a lapsed project was reactivated, the Act may need to be reapplied.</p> <p>CEPA is developing procedures for 'lapsing' proposals which have made no progress.</p>
6	<p>ANAO recommended that a time target be agreed for scoping tasks on a case specific basis in line with the principle espoused in the Intergovernmental Agreement on the Environment.</p>	<p>Agreed. CEPA prepared an internal document in January 1993 for comment on time targets.</p> <p>A strategic mechanism and process for arriving at agreed time schedules has been developed.</p>

7	<p>ANAO recommended that each EIS and PER include consideration of:</p> <ul style="list-style-type: none"> . the viability of proponents . the cumulative impacts of related activities 	<p>Agreed. CEPA is not required to form a judgement on the commercial viability of the proponent. CEPA does not have the power under the Act to seek guarantees from proponents.</p> <p>CEPA is in the process of developing procedures to assess and minimise the risk of environmental harm in the event of a business failure.</p>
8	<p>Co-ordination of the Environmental Impact Assessment process.</p> <p>ANAO recommended the introduction of a facilitator (nominated by the agency) to be responsible for guiding a proposed action through the approval processes as well as the EIA process.</p>	<p>CEPA expressed reservations about the role of a facilitator, seeing it as having the potential to add to the approvals process an unnecessary component which might potentially undermine the integrity of the process or complicate intergovernmental cooperation. CEPA will, however, give consideration to its role if facilitators are introduced into action agencies.</p>
9	<p>Recognising that responsibility for finalising MOUs is shared between action agencies and CEPA. ANAO recommended that operational flexibility be built into MOUs.</p>	<p>Agreed. CEPA regards the list of proposals to be selected for referral as the most contentious aspect of the MOU negotiations.</p> <p>A strategy has been developed to complete outstanding MOUs and obtain Ministerial approval by June 1994.</p>

10	<p>ANAO recommended that CEPA consider introducing a fee for informal advice sought by action agencies on whether or not a proposal is environmentally significant. The fee would be calculated on a cost recovery basis and would apply to proposals where a proponent is not designated.</p>	<p>Qualified agreement. CEPA believes that the provision of advice is an important aspect of the administration of the Commonwealth EIA process, particularly for agencies which have few environmentally significant proposals and are unlikely to develop in-house expertise. CEPA has reservations about the introduction of charges for advice and believes that such a scheme may operate as a disincentive to effective communication between CEPA and action agencies.</p>
11	<p>Coordination of legislation and policy affecting EIA</p> <p>ANAO recommended that action agencies develop individual operational manuals for their duties under the Act.</p>	<p>Agreed. CEPA has offered assistance to agencies wishing to implement the recommendation. It is preparing a draft in-house Operational Manual for Commonwealth environmental impact assessment which will form the model for action agency specific manuals.</p> <p>Following the release of the audit report CEPA also undertook a consultancy to ascertain the education and information needs of action agencies. The consultant held a number of focus workshops with action agencies to ascertain their needs.</p>

12	<p>ANAO recommended that CEPA should develop a mechanism to provide agencies with updated guidelines, policies and procedures, and to provide advice when other agencies need to be included.</p>	<p>Agreed. CEPA supported the recommendation and noted that MOUs provide a medium for the regular updating of EIA guidelines, policies and procedures. New guidelines, policies and procedures will be developed by CEPA following analysis of submissions received during the public review of the EIA process and also taking into account the ESD Working group recommendations, the provisions of the Intergovernmental Agreement on the Environment; Australia's international commitments and the findings of the ANZECC Working Group on National Environmental Impact Assessment.</p>
13	<p>ANAO recommended CEPA develop a comprehensive educational program which promotes an understanding of the Act and knowledge of EIA processes, and provides information on data sources, methodology improvements, legislative changes and results of previous environmental protection activities.</p>	<p>Agreed. Resource implications. CEPA is developing an Operational Manual for Commonwealth environmental impact assessment, has prepared training material, manuals, guidelines and audio visual and display material, held a series of seminars and workshops for client agencies and proposes to establish an EIA practitioners' network following consultation with action agencies.</p>
14	<p>ANAO recommended that action agencies should develop an education program specific to their own portfolios which is complementary to the program provided by CEPA.</p>	<p>Agreed. Resource implications. CEPA indicated to action agencies its willingness to assist them in developing portfolio education programs.</p> <p>CEPA is evaluating a consultant's report which was prepared to identify the education and information needs of action agencies.</p>

15	<p>Monitoring of impacts</p> <p>ANAO recommended that monitoring of impacts by action agencies become a standard requirement for proposals of significance. The level of monitoring needs to be on a case by case basis and subject to CEPA recommendations. Where the knowledge of impacts is limited, additional emphasis on monitoring is essential.</p>	Agreed.
16	<p>ANAO recommended that in monitoring impacts of proposals of significance, each EIS and PER address:</p> <ul style="list-style-type: none"> . areas where testable predictions should be made . methods of monitoring and measuring . acceptable levels of error . the course of action in the event of disparities between results and predictions 	<p>Agreed. A significant increase in monitoring activities will have resource implications for CEPA.</p> <p>Mechanisms are being developed to enable monitoring of the efficiency of a project assessment.</p> <p>A consultant was commissioned to identify the options for monitoring the effectiveness of assessments and the extent to which monitoring should be applied.</p>
17	ANAO recommended that action agencies provide feedback on their implementation of conditions suggested by CEPA for a proposal.	Agreed. CEPA has undertaken to develop a strategic approach to monitoring the extent to which action agencies are adopting recommendations made to them by the Environment Minister under the Act.

<p>18</p>	<p>Monitoring the EIA process</p> <p>ANAO recommended that CEPA develop a management information system to record details and status of all referrals including:</p> <ul style="list-style-type: none"> . unique identification for each referral . appropriate categories to differentiate between outcomes . the conditions recommended on proposed actions . monitoring . type of involvement of State and Territory agencies 	<p>Agreed. The computer-based management information system will store information that reflects the ANAO recommendations.</p>
<p>19</p>	<p>Monitoring the use of resources</p> <p>ANAO recommended that CEPA introduce for the Environment Evaluation Division an information system in which the resources expended on referrals and other major tasks can be recorded, enabling a complete picture of resource allocation.</p>	<p>Agreed. The computer-based management information system will record information on the relative resource expenditure of individual referrals, as well as other data.</p>

