Tasmania

DEPARTMENT *of*
PRIMARY INDUSTRIES,
WATER *and* ENVIRONMENT

LRP REVIEW OF THE *ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994*

FEES, SCHEDULE 2 ACTIVITIES & ASSESSMENT TIMEFRAMES

DPIWE'S PREFERRED OPTIONS

Environment Division
Department of Primary Industries, Water and Environment
GPO Box 44, Hobart Tas 7001

AUGUST 2004

SUBMISSIONS

Comments are invited on any aspect of this document. Comments on potential impacts, costs and benefits of the DPIWE's preferred options to particular industries or other sectors of the community are especially invited.

Written submissions in relation to this document must be forwarded to:

The Director of Environmental Management
Department of Primary Industries, Water and Environment
Environment Division
GPO Box 44
Hobart, Tas 7001

Submissions may also be hand delivered at the Lands Building, 6th floor, 134 Macquarie Street, Hobart.

Submissions must be received by **5.00 p.m., 1st October 2004**.

If you have any queries about these documents, please contact:

Dr Frank Cattell
Environment Division
Department of Primary Industries, Water and Environment
Telephone: (03) 6233 2770
Facsimile: (03) 6233 3800
Email: Frank.Cattell@dpiwe.tas.gov.au

Please note

- Respondents are advised that the contents of submissions will not be treated as confidential unless they are marked 'confidential' and they are capable of being classified as such in accordance with the *Freedom of Information Act 1991*.

- Disclaimer: Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith but on the basis that the Department of Primary Industries, Water and Environment, its agents and employees are not liable (whether by reason of negligence, lack of care or otherwise) to any person for any damage or loss whatsoever which has occurred or may occur in relation to that person taking or not taking (as the case may be) action in respect of any representation, statement, opinion or advice referred to herein.

- This document may be freely copied and distributed.

EXECUTIVE SUMMARY

In 1998, the *Environmental Management and Pollution Control Act 1994* (EMPCA) and its associated subordinate legislation underwent a review by the Tasmanian Government's Legislation Review Program (LRP) resulting in the publication of a report in February 1999[1]. The Legislation Review Program (LRP) was conducted as a requirement of an inter-governmental agreement under the National Competition Policy.

The purpose of the review was to:

- identify restrictions on competition in the legislation;
- identify the broader impact on business and assess whether this impact is warranted in the public interest; and
- where there were restrictions on competition, ensure that the objectives of the legislation could not be met other than by restricting competition.

The objectives of EMPCA seek to facilitate sustainable economic development by ensuring that environmental qualities are protected. The LRP Review Panel recognised that many of EMPCA's provisions fall within the scope of "community standards legislation" where the overall public benefits outweigh the economic cost to society of that activity or restriction. The Review Panel determined that there were no restrictions on competition contained within the provisions of EMPCA. Nonetheless, it found some of the provisions in the Regulations made under EMPCA did have a negative impact on business and should be reviewed in more detail.

The Review Panel recommended that the following three aspects of EMPCA and its subordinate legislation be reviewed in more detail:

1. Given that there are considerable impacts imposed on a business as a consequence of being treated as a level 2 activity (see section 2.2.2.), the list of level 2 activities should be critically reviewed to ensure that the activities on it warrant the additional level of scrutiny and assessment.

2. The fees charged for a number of functions and services under EMPCA should be reviewed to make them more equitable and more closely reflect cost recovery.

3. The time limit on the assessment of level 2 activities, currently set down in the *Approvals Deadlines Act 1993*, should be reviewed and replaced with time limits established within EMPCA that are intermediary between the current limits and those specified for level 1 activities in the *Land Use Planning and Approvals Act 1993 (LUPAA*).

The following paper presents the results of the initial public consultation process and DPIWE's preferred options for each of the three review tasks. DPIWE's preferred options for each review task are summarised below.

[1] Legislation Review Program, *Environmental Management and Pollution Control Act 1994* Regulatory Impact Statement, February 28 1999.

a. Preferred Options for Schedule 2

Recommendations resulting from the review of Schedule 2 are as follows.

- The majority of activities currently on Schedule 2 remain on the Schedule because the potential of risk to the environment warrants the existing level of regulation.
- To introduce the capacity to reduce on a case by case basis the level of regulation, associated annual permit fees (see section 3.2) and assessment timeframes (see section 4.0) for a number of activities on the schedule that are considered to be 'low risk'. This would generally include activities of low intensity or low production, and will depend on criteria such as location and compliance history.

  The reduced level of regulation would be achieved through administrative arrangements. These activities would remain on Schedule 2 and the capacity would exist to increase the level of regulation (and associated fees) if the need arose.
- To remove laundries and racing and testing venues from Schedule 2 because they pose a relatively low level of environmental risk.
- To redefine a number of activities including fish processing plants, wood-processing plants, waste depots and oil refineries to increase certainty about the type of activities that fall within these industry categories.
- To add wind energy facilities with a generating capacity of 30 megawatts or greater to Schedule 2, because of environmental risk and public interest criteria.
- To use the 'call in' provisions of EMPCA to assess and regulate other activities that are currently not on the schedule on a case by case basis.
- Other industry categories may be reviewed in future for inclusion on Schedule 2.

b. Preferred Options for the Fees Charged under EMPCA

Environmental Assessment Fees

An evaluation of costs and revenue revealed that there is no significant reason to change the current fee structure. Some adjustments within the fee structure are proposed to address some anomalies that have arisen since the fee structure was developed. The basic principle that small activities be charged a fixed fee and that large activities be charged an hourly rate remains unchanged.

Recommended changes to assessment fees are as follows.

- Extending the capacity for DPIWE to recover direct costs associated with the assessment of a development proposal not covered by the hourly rate.
- Charging the hourly rate fees from the time DPIWE receives a Notice of Intent.
- Charging an hourly rate fee for further assessments of large development proposals (level 2C) during their construction and commissioning phases.

Annual Permit Fees

It is proposed to adopt a two-part fee structure composed of a fixed fee capacity-based component equivalent to approximately the current fee, plus a variable fee component that reflects the permit holder's level of commitment to best practice environmental management. The variable component may consist of a three-step model with fee reductions for each level of environmental management achieved by the permit holder. The maximum fee would be set at the level that achieves full cost recovery.

Annual Permit Fees for Low Risk Activities

It is proposed to reduce the permit fees of activities on Schedule 2 that are considered 'low risk'. These are small-scale activities that pose a low risk of causing environmental harm and require a minimal regulatory effort from DPIWE. It is proposed these activities pay a flat fee of $300 per annum to cover annual administrative costs. This will almost halve the fee payable in most cases.

Ozone Protection Authorisation Fees

The Australian Government has passed legislation to regulate end users of ozone depleting substances. The new system will be introduced in the near future, and in the meantime it is inappropriate to make changes to the current system.

Environmental Improvement Program Fees (EIP)

It is proposed to remove the penalty component in the existing fee structure so that all capital can be diverted to addressing the environmental problem. This option satisfies the fees recommendation of the LRP Review Panel and will have minimal impact on revenue, as there has been only one EIP implemented in the past three years.

c. Preferred Options for Environmental Impact Assessment Timeframes

It is proposed to introduce three levels of assessment based on a range of criteria. It is also proposed to introduce statutory timeframes for the three critical stages of the assessment process: the development of assessment guidelines, the assessment of the DPEMP and the Board of Environmental Management and Pollution Control's determination. It is also proposed to introduce a requirement for a Notice of Intent (NOI) to initiate the assessment process, a sunset clause to limit the permissible lifetime for the submission of a DPEMP, and a requirement for councils to make a determination on a development within a statutory timeframe following the Board's decision.

It is proposed that the three levels of assessment have the following statutory timeframes (in business days). There would be the capacity to extend the timeframes on a case by case basis if required.

Table 1: Proposed statutory timeframes for environmental assessments under EMPCA.

	DPEMP Guidelines Development	Preparation of Assessment of Report	Board determination
Level 2A	15	20	5
Level 2B	20	35	5
Level 2C	45* *includes advertising	55	10

Table of Contents

ABBREVIATIONS

ADA	*Approvals Deadlines Act 1993*
BD	Business Days
Board	Board of Environmental Management and Pollution Control (refer to sections 12-17 of EMPCA)
CPI	Consumer Price Index
Director	Director of Environmental Management (refer to section 18 of EMPCA)
DPEMP	Development Proposal and Environmental Management Plan
DPIWE	Department of Primary Industries, Water and Environment
EIA	Environmental Impact Assessment
EIN	Environmental Infringement Notice
EIP	Environmental Improvement Program
EMPCA	*Environmental Management and Pollution Control Act 1994*
GST	Goods and Services Tax
ISO	International Standards Organisation
LBL	Load Based Licensing
LRP	Legislation Review Program
LUPAA	*Land Use Planning and Approvals Act 1993*
MW	Megawatts
NOI	Notice of Intent
PA	Permit Application
RIS	Regulatory Impact Statement
RMPS	Resource Management and Planning System
STW	Sewage Treatment Works
SRAD	Standard Recommended Attenuation Distance
WWTP	Waste Water Treatment Plant

1. INTRODUCTION

1.1 THE LEGISLATION REVIEW PROGRAM AND EMPCA

The *Environmental Management and Pollution Control Act 1994* (EMPCA) and its associated subordinate legislation is part of the Resource Management and Planning System (RMPS) of Tasmania. The RMPS comprises a suite of legislation with a common set of objectives based on the concept of sustainable development.

In 1998, the *Environmental Management and Pollution Control Act 1994* (EMPCA) and its associated subordinate legislation underwent a review by the Tasmanian Government's Legislation Review Program (LRP) resulting in the publication of a report in February 1999[2]. The Legislation review Program (LRP) was conducted as a requirement of an inter-governmental agreement under the National Competition Policy.

The purpose of the review was to:

- identify restrictions on competition in the legislation;
- identify the broader impact on business and assess whether this impact is warranted in the public interest; and
- ensure that the objectives of the legislation could not be met other than by restricting competition.

The objectives of EMPCA seek to facilitate sustainable economic development by ensuring environmental qualities are protected. The LRP Review recognised that many of EMPCA's provisions fall within the scope of "community standards legislation" where the overall public benefits outweigh the economic cost to society of that activity or restriction. The LRP Review Panel determined that there were no restrictions on competition contained within the provisions of EMPCA. Nonetheless, it found some of the provisions in the Regulations made under EMPCA did have a negative impact on business and should be reviewed in more detail.

1.2 RECOMMENDATIONS OF THE LRP REVIEW

Three recommendations for further review of aspects of EMPCA and its subordinate legislation were an outcome of the LRP Review. The three recommendations were:

1. Given that there are considerable impacts imposed on a business as a consequence of being treated as a level 2 activity, the list of level 2 activities should be critically reviewed to ensure that the activities on it warrant the additional level of scrutiny and assessment. The review should not only assess current level 2 activities but also the elevation of current level 1 activities to level 2 if it is shown that they have a clear potential to cause environmental harm. The Review Panel recommended that: " … the

[2] Legislation Review Program, *Environmental Management and Pollution Control Act 1994* Regulatory Impact Statement, February 28 1999.

fundamental basis of the critical review should be that all activities to be included on Schedule 2 should be so included because they clearly warrant additional scrutiny, restriction and regulation under the Act."

2. The fees charged for a number of functions and services under EMPCA should be reviewed to make them more equitable and more closely reflect cost recovery.

3. The time limit on the assessment of level 2 activities, currently set down in the *Approvals Deadlines Act 1993*, should be reviewed and replaced with time limits established within EMPCA that are intermediary between the current limit and those specified for level 1 activities in the *Land Use Planning and Approvals Act 1993(LUPAA*).

1.3 CONSULTATION

In December 2000 an Issues Paper[3] discussing all three LRP recommendations was released for public comment. Copies were sent to councils and industry groups inviting submissions and public comment was invited through newspaper advertisements. A number of information sessions were held around the State. The purpose of the Issues Paper was to raise issues and discuss options with respect to the LRP recommendations. Comments received on the Issues Paper and information from other jurisdictions have been used to assist with the development of the Preferred Options described in this Paper.

This Paper outlines DPIWE's preferred options and provides the basis for further consultation with local government, industry, stakeholders and the general public. Following consideration of feedback, a final position will be determined. Amendments will be made to EMPCA and new fee regulations developed. These will be subject to the normal legislation and subordinate legislation review processes, which will provide a further opportunity for consultation.

1.4 STRUCTURE OF THIS PAPER

The remainder of the Paper is divided into three sections. Section 2 discusses in detail the preferred options for Schedule 2 of EMPCA, describing the changes proposed for particular activities. Section 3 discusses the various changes proposed to the EMPCA fees structure. Section 4 discusses proposals for new categories of environmental impact assessment under EMPCA and associated timeframes.

[3] DPIWE (2000), *Review of Level 2 activities, the Time-Limit for Assessment of Level 2 Activities, and the Fees Charged under EMPCA Issues Paper,* December 2000.

2. SCHEDULE 2

2.1. BACKGROUND

The recommendations in the LRP report relating to Schedule 2 of EMPCA were as follows.

> Given that there are considerable impacts imposed on business as a consequence of being treated as a level 2 activity, the list of level 2 activities should be critically reviewed to ensure that the activities on it warrant the additional level of scrutiny and assessment. The review should not only assess current level 2 activities but also the elevation of current level 1 activities to level 2 if it is shown that they have a clear potential to cause environmental harm.
>
> The Review recommended that: " … the fundamental basis of the critical review should be that all activities to be included on Schedule 2 should be so included because they clearly warrant additional scrutiny, restriction and regulation under the Act."

The Issues Paper (December 2000) reviewed:

- a number of activities currently on Schedule 2 that may not warrant the current level of regulation;
- activities that would benefit from reclassification or redefinition; and
- a number of activities that are currently not on Schedule 2 that may warrant an increase in regulatory effort.

The Issues Paper also reviewed options for increasing the flexibility of Schedule 2 with respect to environmental impact assessment and ongoing regulation through the creation of an annexe to the schedule. The proposed annexe would be a list of activities that would benefit from undergoing an environmental impact assessment by the Board but may or may not require ongoing regulation. Following the assessment process, the Board would determine whether the activity would pose a risk of material or serious environmental harm in the operation phase. If the risk(s) were high is would be regulated as a level 2 activity. If the risk(s) were low, it would be regulated as a level 1 activity.

Twelve submissions were received on this issue. While some industry and council submissions opposed any change to the status quo, the view was expressed in other submissions that DPIWE should more closely examine these annexe-based options. Subsequent investigation suggested that the disadvantages of the annexe options outweighed the benefits. The annexe would be overly prescriptive and make the schedule excessively complicated.

A number of submissions were received on the options relating to the individual activities under review. Feedback from industry and council stakeholders was varied and has been taken into consideration in determining the preferred options. In order to determine and justify whether an activity should be retained on Schedule 2 (either as it is, or with modified criteria) or whether it should be removed, the following criteria were taken into consideration:

- the potential for serious or material environmental harm (including nature of

impact);
- the level of ongoing regulation required;
- consistency of regulatory provisions (either across planning schemes or between jurisdictions);
- the impact on an industry of inclusion on Schedule 2; and
- the level of public interest in an activity.

In addition, the LRP Review acknowledged the need to take into account the potential impact of any major changes to the schedule on local government.

2.2 DPIWE PREFERRED OPTIONS

2.2.1 Regulation Of 'Low Risk' Activities

The review of activities currently on Schedule 2 has highlighted a number of activities that, at certain scales, or in certain environmental locations, may not generally pose a serious risk of significant environmental harm.

While the review suggests that some activity classes currently on Schedule 2 may not warrant State government level regulation in terms of potential for serious environmental harm, the number of individual premises within these classes is such that de-classification to level 1 would impose a significant burden on local government. Depending on location, past history, public interest and the complexity of operation, there may still be a need for some individual premises within these activity classes to be regulated at the State government level.

It is proposed to introduce the capacity to reduce the financial burden of regulation on 'low risk' activities through amendments to the *Environmental Management and Pollution Control (General Fees) Regulations 1996*. Decisions on any reduction in regulation will be made on a case by case basis by the Director of Environmental Management using guidelines issued by the Board of Environmental Management and Pollution Control. This will allow the Director to retain flexibility in the regulation of difficult or problem premises, which may otherwise (in terms of the scale or nature of activity) qualify for a reduction in regulation. The proposed criteria to determine which level 2 activities will be classified as low risk are at Appendix 2.

The lowered regulatory burden will include reductions in:
- planned inspection frequency;
- annual permit fees; and
- reporting requirements (e.g. submission of monitoring data).

The General Fees Regulations currently allow for the remission of fees but will require amendment to provide for a reduced annual fee associated with 'low risk' activities and for the ability to revert to normal fees if warranted. For example, if the environmental performance of a 'low risk' operation deteriorates the Board or Director may determine that a higher level of regulation is required.

2.2.2. Current level 2 activities not considered in detail

The Issues Paper proposed that it was not necessary to examine a number of activities currently on Schedule 2 in detail. No submissions objected to leaving these activities on the Schedule.

Such activities are widely recognised as having significant potential for serious or material environmental harm (because of process complexity, nature of materials handled, nature and/or volume of emissions, waste management and disposal issues, or scale of operation). These activities may generate significant public attention, and it is appropriate that they are subject to a consistent regulatory approach across all areas of the State. Further, these activities, at the scale at which they are categorised as level 2 activities in Tasmania, are generally those that are recognised as worthy of State government level regulation in other States and Territories.

It is proposed that the following activities remain on Schedule 2 of EMPCA at the threshold levels currently applicable.

Table 2. Activities to remain unchanged on Schedule 2

• Chemical works (item 1{a})	• Woodchip mills (item 2{i})
• Coal processing works (item 1{b})	• Waste transport businesses (item 3{c})
• Oil refineries (item 1{c})	• Abattoirs and slaughterhouses (item 4{a})
• Wood preservation works (item 1{d})	• Breweries and distilleries (item 4{b})
• Cement works (item 2{a})	• Milk processing works (item 4{d})
• Ceramic works (item 2{b})	• Produce processing works (item 4{e})
• Ferrous and non-ferrous metal melting (item 2{c})	• Rendering or fat extraction works (item 4{f})
• Metallurgical works (item 2{d})	• Wool scourers, tanneries or fellmongeries (item 4{g})
• Mineral works (item 2{e})	• Mines (item 5{c})
• Pulp and paper works (item 2{f})	• Coal handling and washing (item 7{b})
• Textile bleaching and dyeing works (item 2{h})	• Pre-mix bitumen plants (item 7{d})

2.2.3. Racing and Testing Venues (item 7{b})

The main environmental impact associated with racing and testing venues is noise nuisance. Those facilities that are within 500m of residential areas, and that conduct competition or speed trials, are on Schedule 2. However it appears that complaints relating to such facilities are infrequent, and the vast majority are lodged with, and investigated by, local government.

Of the approximately 15 venues currently operating in Tasmania:

- as many as six do not meet both criteria necessary to qualify as level 2 activities (either they are not within 500m of residences, or they don't conduct racing or speed trials and

- of the nine that do qualify, only one does not pre-date EMPCA (racing venues were not scheduled premises under the former *Environmental Protection Act 197*3, and were not regulated by the State government under that Act).

Six submissions on the Issues Paper considered that it may be appropriate to include these

activities on an annexe, with the decision on level of regulation to be made on a case by case basis (the option of an annexe is, however no longer being considered). Others indicated that there should be no change due to the complexity and cost of noise testing.

While clearly having a nuisance potential, historically these activities have not given rise to significant levels of public complaint or environmental harm. There appears to be little need for ongoing environmental regulation of such facilities, apart from during events. Ongoing regulation is probably best conducted under dangerous goods and work-place safety legislation. Further, it is DPIWE's understanding that all facilities are currently required to hold land use planning permits that include appropriate hours of operation and nuisance conditions.

DPIWE considers that while large-scale facilities close to residential areas have the potential to cause significant levels of noise nuisance, they pose limited risk of causing serious or material environmental harm. There have been no new large-scale facilities proposed in the State since the commencement of EMPCA. If new ones are proposed they may be 'called in' under existing provisions of EMPCA for assessment.

As environmental issues associated with racing and testing venues are event related with a low risk to the environment, and as there appear to be more appropriate options for regulating both facilities and individual events, it is proposed to remove this category from Schedule 2. DPIWE will continue to provide councils with technical support for noise issues on an as-needs basis.

2.2.4. Laundries (item 7{c})

There is only one laundry in Tasmania that is regulated by DPIWE. This is because it uses fuel-burning equipment at a rate that triggers regulation under the fuel-burning category of Schedule 2 (item 7a). No change is proposed to the fuel-burning category. Water use does not trigger the need for regulation of this facility under the laundry category of Schedule 2 (item 7{c}). This facility and the other smaller laundries in Tasmania discharge soap-rich waste water to local government sewerage systems, for treatment at appropriate council-run plants, in accordance with Trade Waste Agreements. The potential for serious or material environmental harm from such facilities (through discharge directly to receiving waters) is therefore remote.

Seven submissions were received relating to this issue, four of which acknowledged that the minimal environmental risk posed by laundries does not warrant inclusion on Schedule 2. The other submissions considered there should be no change.

It is proposed that the category relating to laundries be removed from Schedule 2. Proposed laundries that present significant environmental risk could be called in under EMPCA if they use electric boilers or captured under item 7{a} of the schedule if they use fuel-burning equipment.

2.2.5. Fish Processing Facilities (item 4{c})

There are a number of fish factories around the State that "chill", "freeze" or "pack" fish without any form of processing that produces solid or liquid wastes or odour. Only one such facility is of a capacity that triggers the current Schedule 2 definition. Local government regulates the bulk of such facilities. The potential for serious or material

harm, or nuisance, from such non-processing works is limited and these types of activities would therefore be considered to be low risk and not warrant inclusion on Schedule 2.

Six submissions were received on this issue of which two were opposed to any change. The other four supported the re-definition to remove the factories that exclusively chill, freeze or pack from Schedule 2.

It is proposed that the Schedule 2 category relating to fish processing be redefined to exclude freezing, chilling or packing of fish without any other form of processing.

2.2.6. Wood Processing Works (item 2{g})

There are two issues that require consideration with respect to the category of wood processing works. The first relates to the possible need to redefine this category so that it does not capture firewood depots. The second relates to the possibility of raising the threshold to remove the smaller lower risk activities from this category. Both of these issues were discussed in detail in the Issues Paper.

Firewood depots that process timber at capacities of 1,000 cubic metres per year or more are currently caught by the definition of 'Wood Processing Plants' as 'processing' includes sawing of timber. While there are numerous firewood depots around the State, none currently are of the capacity that would cause it to be included in the definition. The potential for serious or material environmental harm from such premises is limited, with the most likely impacts being noise nuisance from chainsaws. Five submissions were received, two of which were opposed to any change and three of which indicated support for removal of firewood depots from Schedule 2.

With respect to sawmills and other mills, DPIWE's experience suggests that for facilities producing less than 5,000 cubic metres of product per year, significant levels of environmental harm are generally associated with equipment such as boilers and woodchippers, and with processes in fibreboard manufacture. There are, however, a large number of mills not having such equipment or processes, which produce less than 5,000 cubic metres per year. Such mills constitute more than half of this class of activity currently regulated by DPIWE. These activities would generally be considered to be of lower risk to the environment.

Seven submissions were received with two wanting no change, two agreeing with the option of raising of the threshold from 1,000 to 5,000 cubic metres per year, and three considering that there may be value in investigating one or more of the Annexe options (no longer being considered). Concerns were expressed that any change upwards of the threshold should not include works that include chippers or boilers, or fibreboard mills.

One of the problems that may be regularly associated with these 1,000-5,000 cubic metre sawmills is noise associated with woodchippers. The common experience in Tasmania is that mills of this size do not usually possess their own chippers. Instead, they contract mobile units to come in when the quantity of residue makes it commercially viable. Mobile woodchippers are not on Schedule 2 but, where appropriate, are regulated through the permit conditions for the premises.

It is proposed that firewood depots be removed from Schedule 2 by appropriate re-

definition of 'Wood Processing Works'. It is further proposed that no threshold changes are made to this category, however activities producing less than 5,000 cubic metres per year may be determined, on a case by case basis, to require low risk regulation. Issues associated with chippers and boilers would be considered in making a determination.

2.2.7. Sewage Treatment Works (item 3{a})

There are about 300 sewage treatment works in Tasmania, of which 95 are currently level 2 activities, as defined by Schedule 2.

Sewage treatment works with a design capacity of 100,000 litres per day (average dry weather flow) or above are classified as level 2 activities. Nonetheless, it has been recognised that the sensitivity of the receiving environment may also need to be taken into consideration when determining the appropriate level of regulation.

In addition, the current classification uses the term "Sewage Treatment Works". This does not recognise the trade waste component of most urban treatment plants, and hence the term "Waste water Treatment Plant" is preferred.

Nine submissions were received. One submission raised concerns that all sewage treatment works should be strictly assessed and regulated, in view of the need to protect groundwater. Submissions generally supported the proposed name change. Submissions also generally supported the need to take into account the sensitivity of the receiving environment, and particularly those options that would elevate plants in sensitive environments to Schedule 2.

Attempts to define 'sensitive locations' so as to catch all relevant possibilities, whilst not creating loopholes, proved difficult and cumbersome definitions resulted. This approach would not negate the need for, and usefulness of the call-in powers of EMPCA.

It is therefore concluded that, while the activity title should be changed to 'Waste Water Treatment Plants' to reflect the treatment of a wide range of waste waters at municipal treatment plants, no other change should occur to the Schedule category or threshold.

The capacity to 'call-in' level 1 activities that pose a significant environmental risk and regulate them as level 2 activities will be retained.

2.2.8. Waste Depots (item 3{b})

Schedule 2 includes three activities under the Waste Treatment and Disposal category: including Sewage Treatment Works, Waste Depots and Waste Transport Businesses. Waste Depots are defined as "the conduct of depots for the reception, storage, treatment or disposal of at least 100 tonnes per annum of waste (other than temporary storage awaiting transport to a depot, domestic waste management at a residence, and waste transfer stations)".

In 2000 the definition of waste in EMPCA was amended to bring it into line with national initiatives. Waste is now defined as meaning any:-

(a) discarded, rejected, unwanted, surplus or abandoned matter, whether of any value or not; or
(b) discarded, rejected, unwanted, surplus or abandoned matter, whether of any value or not, intended-
    (i) for recycling, reprocessing, recovery, reuse or purification by a separate operation from that which produced the matter; or
    (ii) for sale.

The original category of Waste Depots has become less workable with the amended definition of waste. There has also been confusion as to what type of waste activities should be regulated under the category. Activities such as biosolid application, composting and mushroom substrate production which have traditionally been considered to be waste depots in the context of Schedule 2 need to be recognised in their own right. There is ample evidence that such activities pose a significant risk of causing serious or material harm, particularly when conducted at large scale, and that such risk clearly warrants the activities remaining on Schedule 2.

Nine submissions on this issue were received. There was general support for redefinition and sub-classification, although concern was expressed that care should be taken to minimise ambiguity in the definitions. Suggestions were also made for additional categories, such as waste receiving facilities, which would include waste transfer stations. Biosolid application was considered to need clarification to differentiate between organic sludge from waste water treatment plants and sludge from agricultural activities.

This review provides the opportunity to amend Schedule 2 and the General Fees Regulations to clearly delineate various waste management and waste recovery activities that have traditionally been considered worthy of being on Schedule 2 but have been the subject of some confusion. There is also the opportunity to facilitate a more equitable fee structure that recognises different levels of environmental risk caused by different waste management activities.

It is therefore proposed expand the Schedule 2 category Waste Treatment and Disposal to include Resource Recovery. This will include composting/mushroom substrate production and biosolid application.

Schedule 2 composting activities will not include any of the following:-

- backyard operations for own domestic use;
- composting (including silage production) for utilisation on agricultural land under the same owndership.

However, class 2 and class 3 biosolids as defined in the Tasmanian Biosolids Reuse Guidelines 1999 (DPIWE), where the application rate of 50 wet tonnes per hectare per 3 year period, or more would be classed as level 2 activities.

In addition the existing category of Waste Depot will be redefined to ensure the activities discussed above are only included in one category.

It is proposed to include a fourth sub-category to the exceptions from waste depots in Schedule 2, saying "the deposition of clean fill", and to include in EMPCA a definition of clean fill consistent with that currently in the Environmental Management and Pollution

Control (Waste Management) Regulations 2000. This approach will allow these sites to be exempt from classification as waste depots while retaining the recognition of clean fill as a waste.

The Issues Paper also canvassed the possibility of including a new category for waste separation and re-processing. This was aimed mainly at waste oil re-processing where that activity utilises processes that are not already included in the Schedule 2 category of Oil Refineries (item 1{c}). Such processes include separation by gravitation. The preferred option is to redefine the existing Oil Refineries category to rectify the anomaly.

It is also proposed to modify the General Fees Regulations to provide fee categories for various types of waste depots dependent on the level of environmental risk associated with the different operations. In the first instance this fee differentiation will apply to landfill operations. Two fee categories will apply, one for secure landfills (those taking controlled waste and hence having a greater risk to the environment) and one for general landfills. Details of this, and other proposed changes to the General Fees regulations will be outlined in the Regulatory Impact Statement that will be prepared as part of the Subordinate Legislation process.

2.2.9. Quarries and Extractive Pits (items 5{a and b})

It is generally considered that extractive operations producing less than 10,000 cubic metres of rock, gravel, sand or clay per annum pose less of a risk of causing environmental harm. The potential for environmental nuisance from these operations is primarily influenced by the proximity of neighbouring residences to the operation, or to its access route. Production level and frequency of blasting also significantly affect the potential for environmental nuisance. DPIWE's experience has been that these smaller extractive activities generally operate sporadically rather than continuously, require infrequent blasting, if at all, and are less likely to be adjacent to urban areas. The environmental impacts from small to medium sized quarries can however, be more significant when crushing occurs on-site (such operations are covered by item 6{a} of the schedule).

There were 10 submissions associated with this issue. Four submissions considered that no change should occur, that is the threshold should remain at 5,000 cubic metres per year. Three submissions supported raising the threshold from 5,000 to 10,000 cubic metres per year. Two submissions considered that all extractive and processing operations should be on Schedule 2, principally on the basis of ensuring regulatory consistency.

Quarries producing less than 5,000 cubic metres per year are generally considered to be of low risk to the environment and with the use of publications such as the Quarry Code of Practice[4] and Extractive Industries Assessment Report Template can be regulated in a consistent manner by local government. It is proposed that quarries less than 5,000 cubic metres per year not be added to Schedule 2 and regulation will remain with local government.

It is proposed those quarries and extractive pits producing more than 5,000 cubic metres per annum be retained on the schedule. Quarries and extractive pits of between 5,000 and

[4] DPIWE (1999), *Quarry Code of Practice*, June 1999.

10,000 cubic metres per annum are likely to be considered as low risk. It is proposed that no threshold changes be made to this category, however activities producing less than 10,000 cubic metres per annum may be determined on a case by case basis, to require low risk regulation. This will be dependent on location, history, blasting and crushing activities.

2.2.10 Material Handling: Crushing, grinding or milling works (item 6{a})

Processing of rock by crushing, screening and washing occurs in conjunction with quarrying operations. Rock crushing operations producing 1,000 cubic metres per year or more are currently classified as level 2 activities. Because of the predominant co-location of quarrying and crushing, decisions regarding each should not be made in isolation. Further, virtually all material destined for rock crushing derives from operations that employ blasting. There are also mobile crushing/screening units operating for hire, and these are contracted when stockpiled raw material is of sufficient quantity to make the crushing operation viable. This is generally accepted to be in the region of 5,000 cubic metres.

The principal environmental impacts from this class of activity are noise and dust nuisance, and waste water from washing operations. DPIWE's experience has shown that the risk of significant environmental harm from operations of less than 5,000 cubic metres per year is low if the operation is located so as to provide an adequate buffer, particularly if the activity is operated in compliance with the Quarry Code of Practice. The risk may not be low in circumstances where the activity is located in close proximity to developed areas, where the nuisance level of noise and/or dust is significant.

Seven submissions were received addressing this issue some of which supported retaining the status quo and also regulating mobile crushing and screening plants. Two submissions supported changing the name of this category to 'materials processing' and expressed the view that the threshold limits should be raised.

Removing quarries between 5,000 and 10,000 cubic metres per year, and crushers between 1,000 and 5,000 cubic metres per year from the schedule would result in a total of 62 premises being devolved to local government control. This could significantly increase the regulatory burden on some councils.

It is proposed that the category not be redefined and that all crushers that produce more than 1,000 cubic metres per year be retained on Schedule 2. Nonetheless, it is proposed that where the Director considers it appropriate, having regard to sensitivity of location, receiving environment and performance record, the option of "low-risk regulation" be considered on a case by case basis for activities in the 1,000 to 5,000 cubic metres per annum range.

2.2.11 Wind energy facilities

Wind energy facilities are currently not included on Schedule 2. Inclusion of wind energy facilities on Schedule 2 was not considered as an option in the Issues Paper due to the lack of a significant number of definite development proposals at the time the paper was prepared. Since the release of the Issues Paper a number of significant wind energy facility developments have been assessed by the Board under the 'call in' provisions of EMPCA.

A number of proponents and councils have recently sought greater certainty as to whether prospective wind energy facilities will be assessed as level 1 or level 2 activities.

Wind energy facilities present a number of potential environmental and planning issues. These include noise, flora, fauna and visual impacts and transmission line issues. In Tasmania, the most significant environmental issues associated with wind energy facilities have been the potential impacts on birds. A number of State and Australian government listed threatened and migratory species occur in high wind resource areas currently targeted for wind energy facility development. Four of the five wind energy facilities assessed by the Board to date have triggered Australian government involvement under the *Environment Protection and Biodiversity Conservation Act 1999* on the basis of the projects' potentially significant impacts on listed threatened and migratory species. Wind energy facilities have also been proposed for high value wilderness areas and have attracted a high level of public interest.

The current maximum commercially proven capacity of individual wind turbines is in the order of two to three megawatts (MW). In NSW and Victoria, State governments carry out environmental assessments under their respective legislation for all wind energy facilities that are 30 MW or greater. This is in recognition of their potential environmental impact.

It is proposed that wind energy facilities with a generating capacity of 30 MW or greater be included on Schedule 2 of EMPCA. Depending on the location and nature of a particular proposal, it may also be appropriate for projects of less than 30 MW capacity to be assessed by the Board. The 'call in' provisions of EMPCA could be used in these cases.

Including wind energy facilities producing 30 MW or greater in Schedule 2 of EMPCA will increase certainty for proponents, the community and planning authorities and is consistent with the scale of environmental impacts that could be expected for large scale facilities. The financial impact on proponents of including wind energy facilities of this capacity on the Schedule should not change significantly from current practice. To date, all large scale proposals have warranted assessment by the Board and have thus been called in, have been subject to the same assessment timeframes and fees as would occur if the activity were on Schedule 2.

2.1.3 SUMMARY

The key benefits of the proposed amended schedule and associated changes may be summarised as follows.

- It will implement the main thrust of the LRP review recommendations by reducing the regulatory burden on activities that do not pose sufficient environmental risk to warrant the current level of regulation applied to level 2 activities. At the same time the proposed changes will not result in a significant shift in regulatory responsibility from State to local government and should address the concerns of those industry sectors that were concerned that an inconsistent regulatory regime may eventuate.
- Greater flexibility for a lower level of State government regulation through the case by case use of a "low-risk regulation" option.
- Greater clarity regarding waste management regulation through the re-defining of the Waste Depot category to more clearly separate varying types of depots and waste activities.

- The capacity to 'call-in' level 1 activities that pose a significant environmental risk and regulate them as level 2 activities will be retained. While it can be argued some uncertainty will remain regarding the regulation of current non-scheduled activities, DPIWE believes that this is offset by the benefits of not having a totally inflexible list of level 2 activities and allowing a more risk-based approach in a small number of cases.

3.0 FEES CHARGED UNDER EMPCA

3.1 ASSESSMENT FEES

3.1.1 Background

Fees to conduct environmental assessments are charged in two ways:

- Proposed activities with low to medium production capacities are charged a fixed fee.
- Proposed activities with high production capacities are charged an hourly rate

Environmental officers within the Waste and Industrial Operations Sections of the Environment Division of DPIWE carry out environmental assessments. A separate Assessment Section is located within the Branch to assess major projects. These are activities that warrant a more detailed level of assessment due to their size, complexity, degree of public interest or number of jurisdictions involved (local, state and Federal governments).

The LRP Review Panel identified that the objective of assessment fees was to recover *"a proportion of the cost to government of providing environmental management services…and should facilitate improved environmental outcomes*"[5]. The Review Panel recommended that the current system of charging an hourly rate for the time spent conducting an assessment should be retained provided that the hourly rate *"is justified on the basis of cost recovery and that there is a system for ensuring time is spent efficiently."* The current hourly rate is $91.58 (including GST which is charged on assessment fees) and is increased annually in line with rises in the Consumer Price Index (CPI). The Review Panel noted and supported the fixed fee structure for small developments as a means for ensuring that the cost of environmental assessments for smaller developments did not become disproportionate to the size of the development proposal.

The Issues Paper outlined a number of options that sought to address the principles of 'user pays'[6] and 'polluter pays'[7] and the Tasmanian Government's policy approach on cost recovery. There were fourteen submissions that addressed the structure of fees. Four submissions directly addressed assessment fees with all supporting the use of time-based charging to recover costs. One submission recommended that a public good component be incorporated into the fee. One option presented in the Issues Paper was for proponents to pay an initial deposit when lodging their Development Proposal and Environmental Management Plans (DPEMP), which may be refundable on completion of the assessment process. Two submissions gave qualified support for further exploration of such a proposal although did not support charging an automatic deposit for all assessments.

---

[5] Legislation Review Program, *Environmental Management and Pollution Control Act 1994* Regulatory Impact Statement, February 28 1999 p.28.

[6] The User Pay's Principle states that the cost of producing goods and services should be borne by the beneficiary(s).

[7] The Polluter Pay's Principle states that those who generate the pollution should incur the full cost, or an appropriate share of the costs that arise from their activity(s), including the costs of pollution containment, abatement, management and impacts.

3.1.2 Issues

The estimated cost to the Environment Division to conduct environmental assessments is approximately $1.2 million per annum. This is based on the estimated number of hours spent on environmental assessments and includes salaries, on-costs and corporate overheads. The estimated number of person hours per year spent on environmental assessments by the Division is 20,000. This includes time spent on reviewing and commenting on drafts of DPEMPs, guideline preparation and other tasks that are generally not charged to the proponent.

Advertising can be an additional cost where a proposal triggers the Australian Government's *Environment Protection and Biodiversity Conservation Act 1999* and is assessed in accordance with the intergovernmental agreement made under that Act. Based on data over a three-year period, the average annual cost per proposal associated with major project advertising is $18,800.

Of the 12 assessments that were conducted during 2001-02, eight were charged at a fixed rate and four at the hourly rate. The total revenue from environmental assessments for 2001-02 was $116,300 (excluding GST). The rate of cost recovery for assessments is therefore, approximately 10 per cent in that year. It should be noted that the number of assessments carried out, the mix of these (in terms of fixed versus hourly rate) and the scale of the projects (and therefore the assessments) can vary markedly from year to year. The level of cost recovery will similarly vary from year to year, although would be of the order of 10 per cent.

The reason why the level of cost recovery for environmental assessments is relatively low can be attributed to two factors. First is the fact that the current fee structure includes fixed assessment fees for activities with small production capacities. Since EMPCA was enacted the number of developments that attract a fixed fee has exceeded the number of developments that are charged at the hourly rate. The fixed rate ranges from $916 up to $2747 in proportion to the scale of the development. However, these fees do not recover full costs. The proportion of costs recovered would vary considerably with each development. Some small-scale developments can still generate considerable controversy due to their location and for such developments quite a low proportion of total costs would be recovered. Over the 2001-02 financial year, eight out of the twelve assessments carried out were for a fixed fee but the fixed fee assessments contributed only about 10 per cent of total revenue.

The fixed fee policy was designed to offset the cost of assessment against the need to ensure that assessment charges for small to medium sized businesses do not impose a significant cost burden on proponents. While the broader economic benefits of small business are widely recognised, it is a requirement of government to ensure future developments are sustainable and do not adversely impact neighbours and the wider community. Hence, the fees charged by the Division for environmental assessments need to reflect this public good component.

The second factor concerns the 'user pays' hourly charging rate that is used to determine assessment fees for high production capacity proposals. The full costs associated with these types of assessment are not reflected in current rates for a variety of reasons. Under current legislation and administrative policies, the following tasks are not charged for in hourly rate assessment fees, nor reflected in the fixed fees for smaller developments:

- discussions and advice to proponents considering development proposals;
- preparing guidelines for the preparation of public documents;
- publicly scoping the guidelines for larger proposals;
- reading draft DPEMPs and providing feedback to proponents on the adequacy of these prior to going on public display;
- comments on guidelines, draft and final DPEMPs by other DPIWE Divisions or other Government agencies; and
- dealing with appeals against permit decisions.

Larger projects require public scoping of guidelines, generate very substantial volumes of documentation, and may involve impacts on nature conservation values, which require substantial input from the Resource Management and Conservation Division of DPIWE. These are non-chargeable costs to Government and represent a substantial proportion of the overall cost of the assessment. For some of the larger projects it is estimated that the number of non-chargeable hours would be as much as the number of chargeable hours for assessments.

The current fee structure also sets out lower assessment fees for development proposals that dispose of waste water to an approved waste water treatment plant. This reflects the fact that such assessments are likely to be simpler (and therefore cost Government less) than developments where there is a significant waste water discharge to the environment.

For larger, more complex proposals it is becoming common for proponents to commit to preparing construction, commissioning and operational management plans as part of a DPEMP. Because the necessary level of detail is often not available at the assessment stage, proponents submit these plans for assessment after a permit has been granted. The Basslink, Southwood and Duke Energy assessments provide recent examples of this approach. This places an increased resourcing burden on the Environment Division during the post approval stage, where, in addition to regulation, further assessment work is required.

Under the current fee regulations, these post-approval assessment activities are not considered to be part of the environmental assessment and do not attract a fee. While the proponent pays an annual permit fee, these are fees designed to recover the costs associated with the regulation of the day-to-day operation of an activity and do not compensate for further assessment work. With complex projects, it is considered that the annual permit fee should only apply to the operational phase of a development. The capacity to recover greater costs (at an hourly rate) is required to adequately recover the costs of any post-approval assessment work associated with this type of development.

A contrary view for the above has been expressed however. In a forum on the major project assessment process organised by the Board of Environmental Management and Pollution Control in 2002, several proponents were critical of the level of assessment fees charged in Tasmania. It was stated that Tasmanian fees (which for the largest projects have been in the range of $40,000 - $60,000 recovering around 40 to 60 per cent of total costs) were much higher than in other Australian jurisdictions where Governments absorbed the majority or all of such costs.

3.1.3 Preferred Option

The preferred option is to retain the current basic principles of the fee structure. Activities with small production capacities should continue to be subject to a fixed fee that bears a relationship to assessment costs but takes account of capacity to pay. The basis for not pursuing full cost recovery with assessment fees is the recognition that there is a public good component concerned with encouraging sustainable economic development in the State.

It is proposed that large-scale activities continue to be subject to an hourly rate, in line with the LRP Review Panel's recommendation.

It is also proposed to recover direct costs such as advertising and the use of external technical expertise associated with the assessment of a permit application.

The current hourly rate of $91.58 (2003-04) with annual adjustment for changes in the Consumer Price Index has been analysed against DPIWE's Pricing Policy[8] and was found to be reflective of costs.

While there remains a public good component to the assessment of major development proposals, the capacity to pay increases with the scale of development and total capital cost. Therefore it is considered reasonable to increase the proportion of cost recovery for the assessment of larger development proposals. It is proposed to change the time point from which the fees are charged to more accurately reflect costs for this type of assessment. It is proposed to amend legislation to require proponents of level 2 activities to lodge a Notice of Intent (NOI) to commence the assessment process (refer to section 4.2). Hourly rate fees would be charged from the point at which the NOI is lodged and would, therefore, encompass time associated with the preparation of guidelines and examination of draft documentation. Nonetheless, there would still be a public good component in the assessment of larger projects as the changes outlined above would not recover all the costs involved with such assessments as outlined in the previous section. The proportion of total cost recovery would vary from project to project, but is likely to increase from being in the range of about 40 – 60 per cent to 80 – 90 per cent.

The recommended changes to hourly rate assessment fees are as follows.

- Introducing the capacity for DPIWE to recover further direct costs associated with the assessment of a development proposal such as advertising and the use of external technical experts.
- Changing the point from which hourly rate fees can be charged to earlier in the assessment process – from the time DPIWE has received a Notice of Intent, so that costs associated with commenting on draft DPEMPs can be recovered.
- Introducing the capacity to charge an hourly rate assessment fee for large development proposals (level 2C refer to section 4.2) during their construction and commissioning phases. This will recover costs associated with the assessment of detailed plans prepared for these phases of the development and which were not submitted in the original DPEMP.

[8] DPIWE (2003), *Pricing Policy 2nd Edition*, Internal Departmental Document.

3.2 ANNUAL PERMIT FEES

3.2.1. Background

Annual permit fees are charged for activities on Schedule 2 of the *Environmental Management and Pollution Control Act 1994* (EMPCA). Applicants must obtain a permit to construct and operate these activities from the relevant planning authority (local council) under the *Land Use Planning and Approvals Act 1993* (LUPAA). Once approval has been granted, an annual permit fee is charged by the State Government to recover the cost of ongoing regulation of the activity.

Environment officers within the Industrial Operations, Waste Management and Major Projects sections of the Environment Division carry out environmental regulation.

The LRP Review Panel recommended retaining annual permit fees and reforming the current fee structure. The following issues were identified in the Review Panel's report:

- Annual permit fees have the potential to affect viability of small to medium businesses if the fee represents two per cent or more of annual turnover.

- Annual permit fees have been determined on the basis of the average amount of time required to regulate an activity, and that officers spend more time with poorly managed operations than with good operators, resulting in the latter cross subsidising the former.

- No permit holders who could demonstrate adoption of environmental management practices beyond the minimum legislative requirements have signed an Environmental Agreement under section 28 of EMPCA and benefited from lower annual permit fees. (Note: one Environmental Agreement has been signed since the LRP Review Panel report was tabled).

The LRP Review Panel expressed concern about the level of cross subsidisation and inequity that occurs across level 2 activities. The Panel believed the only way for fees to reflect the true cost of regulation was to charge on a direct cost recovery basis. However, several problems were identified with this method such as inequitable outcomes for permit holders in remote locations. It was recommended that a fee structure composed of fixed and variable components instead be investigated. This two-part model is common to fee structures in other jurisdictions, whereby the fixed component recoups a large proportion of expected costs of regulation and the variable component is based on the amount of pollution emitted. The Review Panel acknowledged that this system would not avoid all the inequities of the current system but warranted further investigation.

Of the submissions that were received in response to the fees section in the Issues Paper, all favoured some form of fee structure that achieved better cost recovery and had some form of economic incentive to reduce pollution loads and minimise the risk of environmental harm. Over half of the submissions indicated they preferred an annual fee structure consisting of two parts: a fixed capacity-based fee plus a variable, emissions based component. The fixed base component would be determined on a cost recovery basis and vary for each level 2 activity depending on the regulatory effort required by the Division. This applies the principle of "user pays".

The second component of the fee applies the 'polluter pays' principle. Seven submissions supported charging fees on a direct cost recovery basis – applying the user pay's principle whereby an hourly rate is charged directly to the operator. Some submissions preferred partial cost recovery between 50 and 70 per cent acknowledging the need for a 'public good' component in the fee structure. Others wanted greater use of environmental performance agreements and/or recognition and reward for adopting best practice environmental management practices.

3.2.2 Issues

Annual permit fees for level 2 activities are presently based upon the design capacity or production level of the operation. Fees range from a minimum of $285 up to a maximum of $18,810 for 2004-05 and are increased annually in line with the CPI. Goods and Services Tax (GST) is not payable on annual permit fees. The table below outlines the range of annual permit fees for 2004-05:

Table 3: Annual permit fees for 2004-05 charged under EMPCA General Fees Regulations.

Example of a Level 2 Activity	Production Capacity or level of activity	2004-2005 Fee
Racing and Testing Venue	A venue where less than 3 competitions events a year are held	$285
Waste Depots (Tonnes of waste received or likely to be received a year, not including materials for recycling)	More than 100 but not more than 500 t/yr	$570
Mineral Works (tonnes of raw material processed a year)	More than 1000 but not more than 5000	$1140
Oil Refineries (tonnes of raw material refined or produced per year) discharging waste-water to an external treatment plant approved by the Director	More than 10,000 but not more than 50,000 t/yr	$2052
Pulp & Paper Works (Tonnes of product produced a year)	More than 10000 but not more than 25000 t/yr	$3876
Rendering or Fat extraction works (kg an hour) – discharging waste-water to an external treatment plant approved by the Director	More than 1000 but not more than 5000 kg/yr	$8550
Woodchip Mills (Tonnes of product produced a year)	More than 1,000,000 t/yr	$12,540
Mines (Tonnes of Product produced a year)	More than 500,000 t/yr	$18,810

Current Cost of Regulation

The estimated cost to the Environment Division for regulating Level 2 activities is $2 million in 2004-05. This is based on the estimated number of hours spent on environmental regulation and includes salaries, on-costs and corporate overheads. It includes 85 per cent of incident response costs in relation to Level 2 activities.

Current Revenue from Annual Permit Fees

The estimated total revenue from annual permit fees for 2004-05 is $1.4 million. The estimated level of cost recovery for environmental regulation for 2004-05 is 70 per cent

The number of permits assigned to level 2 activities varies but currently about 500 are issued to about 270 permit holders with the majority falling within the small to medium sized business category. The table below shows the number of level 2 permits for each permit fee category for 2001 to 2002, when the number of permits issued was 492.

Table 4: Number of permit holders for each fee category as of June 2002.

Annual Permit Fee (2004-05 fee levels)	**No. of Permits**	**Percentage of total Permits (%)**
$285	8	1.6
$570	148	31
$1140	100	20
$2052	100	20
$3876	69	14
$8550	37	7.5
$12,540	18	3.5
$13,110	1	0.2
$18,810	11	2.2
TOTAL	**492**	**100%**

As the table, shows the majority of permit holders pay permit fees within the range of $570 to $3,876 per annum. The average permit fee is $2,917 and the median is $1,140.

Load Based Licensing Model

The LRP Review Panel and several submissions to the Issues Paper suggested investigation of a two-part fee structure, consisting of a fixed capacity-based fee plus a variable, emissions based component. An emission-based or pollution load-based licensing (LBL) fee component was considered and rejected for the following reasons:

- The high establishment and ongoing administrative costs associated with such a scheme.

- The difficulties in the design and administration of emission-based systems due to the variability in types of pollutants, their volumes and their receiving environments. These factors all impact on the degree of environmental risk of the activity and increase the complexity of designing a fee system where one structure suits all types of activities, pollutants and risks.

- The difficulties in capturing and measuring pollutants emitted from non-point sources, raising equity and fairness issues between point source and non-point source polluters.

- The high level of demand on resources for both government and business in identifying and measuring various pollutants – effective monitoring and reporting systems are essential in order to provide an accurate basis for fee charging.

- The perceived benefits are yet unproven – jurisdictions with greater resources and larger industries are yet to demonstrate a reduction in pollution levels.

- Tasmania does not have the number and range of large polluting activities found in other jurisdictions that might justify the costs. Given the small number of large activities in Tasmania, there are more cost-effective measures to achieve better environmental outcomes.

3.2.3 Preferred Option

The preferred option for all level 2 activities, except those deemed as low risk (see section 2.2.1) is to adopt a two-part fee structure. This would consist of a fixed fee capacity-based component and a variable fee component that is based on the permit holder's demonstrated level of commitment to best practice environmental management.

The fixed fee component would cover the average cost of basic administrative and regulatory activities incurred for level 2 activities.

The variable fee component would be a three-step model with fee reductions for each environmental management tool implemented by the permit holder. These tools and details of the criteria to be met by permit holders are outlined in more detail at Appendix 1.

Permit holders could apply to pay a lower annual permit fee if they demonstrate that they have implemented certain tools to improve the management of the environmental risks associated with their level 2 activity. Permit holders that do not qualify for a fee discount would be required to pay the full fee. This is aimed at reducing the level of cross subsidisation between well-managed operations and those that require more regulatory effort. It is based on the assumption that operations that adopt some or all of the nominated environmental management tools will require less regulatory effort than those that do not.

The aim of this proposed model is to encourage permit holders to take greater responsibility for environmental management and internalise more of the costs associated with operation of their level 2 activity. Implementation of the model will encourage permit holders to be more pro-active in the management of the environmental risks associated with their level 2 activity. The model seeks to recognise and reward those permit holders who have taken steps to integrate the management of their environmental risks within overall management systems, with the aim of improving their environmental performance.

It is proposed to set the quantum of fees at levels that will achieve the objective of recovering 80 per cent of the total cost of regulating Level 2 activities. This should enable funding of an additional four positions in the Environment Division to improve the current level of regulatory service to clients. Some business clients and the public have expressed dissatisfaction with the Division's capacity to respond to their needs in a timely matter. The cost of these additional positions is $522,032 including, all Departmental overheads. The level of 80 per cent global cost recovery for regulatory activities is broadly consistent with the level of recovery in other jurisdictions for similar activities. The

remaining 20 per cent of costs are considered to be associated with a public good. These are costs associated with investigating public concerns and complaints, which may or may not be associated with the nominated level 2 operation. Other costs arise from dealing with general inquiries about environmental management and pollution control issues and administering environmental programs that provide information in the public interest such as air quality monitoring and education.

The following changes are proposed to achieve the 80 per cent cost recovery objective.

- The fixed fee component will be set at a level that is about 10 per cent higher than current fees. This will recover about 60 per cent of the total regulatory costs (or $1.5m of the total regulatory costs of $2.5m);
- The variable fee structure will be set such that the total revenue initially equals 67 per cent of the fixed fee. In total, if there were no reductions in the variable fee component, the total fee revenue would equate to the full cost of regulation ($2.5m). However it is estimated that, in the first two years of operating the variable fee system, 40 per cent of activities (excluding low risk activities) will achieve a full reduction of the variable fee.
- "Low risk" activities (see section 2.1.2.1) will be charged a flat fee of $300 which will cover the base administrative cost of maintaining these activities in the system and any infrequent or incidental regulatory activity associated with them. No variable fee will apply. The fee model assumes that 124 (about 25 per cent) of current level 2 activities will be granted low-risk status. In most cases, this will halve the fee payable by these operators.

New fees regulations will be developed and be subject to the normal processes as set out in the *Subordinate Legislation Act 1992*. This process will include the preparation of a Regulatory Impact Statement, which will be available for public comment.

The new fee model would be phased in over a two year period in order to minimise the impact of the fee increases and to allow operators time to plan, develop and implement the prescribed environmental management tools. Fees would rise by half of the planned increase in year 1 and the remaining increase would be applied in year 2.

An example illustrating how the proposed fee model would work.
The maximum annual permit fee for a waste water treatment plant treating 'More than 200 but not more than 500 kL per day' would be $3,770 composed of $2,257 (fixed capacity based fee) plus $1,513 (variable fee). The operator would be able to reduce the fee to a minimum of $2,257 by adopting the specific environmental management practices or systems outlined in Appendix 1. The current fee for this type of activity is $2052. Under the new system the annual fee would increase by $205 if all of the environmental management measures are implemented, or up to $1513 per year if none or only some of the measures are implemented.

The table below illustrates the proposed new annual permit fees.

Table 5: Proposed annual permit fees.

2004-05 Fee $ (existing fee structure)	New fixed fee $	New total fee $ (Maximum)	Total increase on current fee $ (Maximum)	Variable fee component which can be recovered by permit holders $
285	313	**524**	239	211
570	627	**1047**	477	420
1140	1254	**2094**	954	840
2052	2257	**3770**	1718	1513
3876	4264	**7120**	3244	2856
8550	9405	**14,707**	7157	6302
12,540	13,794	**23,037**	10,497	9243
13,110	14,421	**24,084**	10,974	9663
18,810	20,691	**34,555**	15,745	13,864

The impact on total permit fee revenue will be dependent on the number of operations that qualify for a fee reduction. It is anticipated that revenue will initially increase to levels close to achieving full cost recovery but will decrease over time as permit holders increase their level of environmental management to meet the fee discount conditions.

The requirements of DPIWE's Pricing Policy to achieve full cost recovery in all circumstances except where there is a demonstrable and transparent public good component to the provision of the good or service by the agency would be satisfied by adoption of this fee structure.

Cross Subsidisation and Equity Impacts

The preferred option for annual permit fees and fees for low risk activities addresses some of the issues of cross subsidisation that were raised by the LRP Review Panel. The creation of a category of low risk Level 2 activities will result in activities requiring lower levels of regulation paying a lower fee than activities that require higher levels of regulation. The fee structure is more equitable as it better reflects the level of regulatory effort (and therefore cost) required for regulating activities that pose different levels of environmental risks.

The proposed variable component of annual permit fees is also designed to address the issue of cross subsidisation. Those permit holders that actively plan and manage their environmental risks by adopting one or more of the three tools to receive a fee discount should not require the same level of regulatory effort by the Environment Division as those that do not adopt these tools. Therefore, those requiring greater regulatory effort will bear a greater proportion of the cost of environmental regulation in line with the user pay's principle. This also addresses the fairness and equity issues raised by the Review Panel.

3.3 OZONE AUTHORISATION FEES

3.3.1. Background

The *Environmental Management and Pollution Control (Ozone Protection Authorisation Fees) Regulations 1995* set out the fees for the authorisations under EMPCA to:

- buy or sell "controlled" ozone depleting substances (ranging from $277.50 to $444 per

annum in 2003-04);
- carry out the installation, servicing or decommissioning of equipment containing controlled substances ($55.50);
- manufacture foam using controlled substances ($1110);
- sell (but not manufacture) foam that has been manufactured using a controlled substance ($111);

There is also an application fee for the possession of a portable halon extinguisher ($111) and for the recognition of an interstate authorisation ($55.50).

The fees are based primarily on the cost of administering the authorisation system.

No submissions were received on ozone authorisation fees in response to the Issues Paper. In March 2002, those on the ozone protection authorised client list held by DPIWE were contacted regarding the proposed changes outlined in the Issues Paper. Ten submissions were received that raised a number of concerns with the existing fee structure.

The Australian Government has passed legislation to regulate end users of ozone depleting substances and their synthetic greenhouse gases alternatives. The purpose of the legislation is to provide for national consistency in end-use regulation of ozone depleting substances and their synthetic greenhouse gases alternatives, replacing State and Territory end-use regulations. Administration of ozone depleting substances, including fees and licenses, will therefore be the responsibility of the Australian Government negating the need to make any changes to the State's regulations as it will no longer have responsibility for ozone licences.

3.3.2. Preferred Option

It is proposed that no change be made to Ozone Authorisation Fees Regulation, in view of the impending Australian Government takeover of responsibilities in this area.

3.4. ENVIRONMENTAL IMPROVEMENT PROGRAM FEES

3.4.1. Background

The *Environmental Management and Pollution Control (Environmental Improvement Program Fees) Regulations 1994* set out the fees for Environmental Improvement Programs (EIPs refer to sections 34-42A of EMPCA). The objective of an EIP is to set out a program of works to address an environmental problem that has resulted in an operator not complying with EMPCA. The fee structure consists of a base fee calculated on the estimated cost to the Environment Division associated with an EIP. The Regulations set a scale of base fees using production levels as an indicator ranging from $5550 to $22,200 in 2003-04. There is also a time penalty component for an EIP that extends over two or three years, calculated by multiplying the base fee by 1.5 or 2 respectively.

The LRP Review Panel noted that EIP fees were calculated on the basis of cost recovery in the same way as annual permit fees but there was also a penalty component in situations where an EIP covered more than one year. While the Panel acknowledged that the penalty component could act as an incentive for solving the environmental problem more quickly, they also noted that the Board could set the time period for the completion of the works.

This period will likely be the shortest amount of time in which the EIP can be reasonably completed. The Panel concluded that the influence of the penalty component in terms of ensuring the quick completion of the EIP would therefore be minimal. It also found that charging large EIP fees could act as an impediment to small to medium sized enterprises (SME) completing their EIPs. It argued that a large fee would divert resources away from a better or quicker solution to the environmental problem.

Two Issues Paper submissions addressed fees in relation to EIPs. One submission stated that large scale EIPs can take over a year to implement and that the penalty component could delay the program by diverting funds away from developing solutions to the environmental problem. It also stated that maintenance of the penalty component should be balanced by some form of reward or recognition for early compliance (such as a fee reduction). The other submission agreed with the removal of the penalty component.

3.4.2. Preferred Option

The preferred option for EIPs is to remove the penalty component in the fee structure while retaining the existing fee structure. The base fee broadly reflects the direct costs incurred by DPIWE for the initial preparation of guidelines, site visits, meetings, review of documentation and monitoring. Removal of the penalty component would enable all capital to be diverted to addressing the environmental problem. This option satisfies the recommendation of the LRP Review Panel.

3.5. SUMMARY

The preferred options attempt to satisfy, wherever possible, the 1998 LRP recommendations and the requirements of DPIWE's Pricing Policy. The following is a summary of the major changes proposed for the fees charged under EMPCA.

3.5.1. Environmental Assessment Fees

- Charging hourly rate fees from a point earlier in the assessment process. This would make proponents more accountable for submitting good quality information and recover costs that are incurred for time spent on commenting on draft DPEMPs.
- Ability to pass on external costs currently borne by the Division to the proponent i.e. advertising and use of external expertise for hour rate fee assessments.
- Retaining the fixed fee structure for proposals with small production capacity. This provides some certainty for potential developers with determining their start-up costs.
- Ability to charge hourly rate fees for post-approval assessments of large development proposals.

3.5.2. Annual Permit Fees

- Charge a two part fee composed of a fixed fee payable by all permit holders and a variable fee, payable by those who do not implement environmental tool(s) to manage

environmental risks.

- A lower scale of fees will apply to activities identified as 'low risk' and that continue to meet all the criteria for this category.

- Recognition and incentive for improving management practices to achieve better environmental outcomes will be provided to permit holders not deemed to be low risk. The preferred fee structure encourages self-regulation and emphasises the need for permit holders to include the management of environmental risks as a core component of their overall management systems.

- The preferred fee model applies the spirit of the polluter pays principle by clearly placing responsibility for the management of environmental risk(s) associated with the conduct of a level 2 activity with the permit holder.

- The user pays principle is also applied as level 2 activities requiring a large amount of regulatory effort will pay higher fees than those activities requiring less effort. Resources can be allocated to regulating those activities that fail to integrate the management of their environmental risks into their core management systems. This will also address the cross-subsidisation between level 2 activities raised as an issue by the Review Panel.

- Annual permit fees will rise initially for all permit holders, except those classified as low risk. Nonetheless, the preferred fee model includes a capacity for fees to be reduced by adopting best environmental management practices and systems.

- The new fee model will be phased in over a two year period to allow permit holders time to demonstrate their environmental management and pollution control practices.

3.5.3. Ozone Authorisation Fees

The preferred option is not to make any changes to ozone authorisation fees, as the Australian Government has passed legislation assuming responsibility for the future administration of ozone depleting substances.

3.5.4 Environmental Improvement Program Fees

The preferred option is to remove the penalty component of EIP fees.

4.0 ENVIRONMENTAL IMPACT ASSESSMENT TIMEFRAMES

4.1. BACKGROUND

The LRP Review Panel made the following recommendations with respect to assessment timeframes.

- The time limit on the assessment of level 2 activities, currently set down in the *Approvals (Deadlines) Act 1993* (ADA), should be reviewed and replaced with time limits established within EMPCA. These time limits should be intermediary between the current limit and those specified for level 1 activities in the *Land Use Planning and Approvals Act 1993* (LUPAA).

- The Review Panel acknowledged the range of concerns raised during the public consultation process, and recognised that this issue is a complex and difficult one which needs to be worked through carefully with proper consultation with all relevant parties before any decision is made on what model should be adopted.

Nine submissions relating to assessment timeframes were received in response to the Issues Paper. Several submissions indicated that timeframes should be reduced, with one submission suggesting that timeframes should be more closely aligned to those required under LUPAA. Several submissions supported a staged assessment process with an ability to have an appropriate level of assessment applied to development proposals. The Environment Division in its response to the LRP draft Regulatory Impact Statement also supported this approach. One submission indicated that this option could over complicate the process. Several submissions suggested implementing statutory timeframes for the following stages in the assessment process:

- timeframe after a permit application for a level 1 activity has been received by a council within which the Director may call in the project for environmental impact assessment (EIA);
- timeframe for determination by the Board as to whether the project requires EIA by the Board;
- maximum time for the Board to produce EIA Guidelines;
- maximum time for the request of further information; and
- maximum time for completion of assessment report and notification of the relevant council.

There was some support for external accreditation of assessments and in doing so a reduction in the assessment fees and timeframes. There was support for the ability to outsource technical issues where DPIWE does not have the relevant expertise. Several comments were made about the need for better communications between DPIWE, proponents and councils to ensure that there is an understanding of the timeframes involved and clarity and feedback on the progress of the assessment process. There was some support for the adoption or development of guidelines to assist regulatory authorities and proponents with the assessment of specific activities.

4.2. PREFERRED OPTION

It is proposed to introduce three levels of assessment based on a range of criteria. It is also proposed to introduce statutory timeframes for the three critical stages of the assessment process:

- the development of assessment guidelines;
- the preparation of the assessment report; and
- the Board's decision.

The three levels of assessment would be categorised as Level 2A, 2B and 2C. The statutory timeframes for assessments will reflect the level of complexity associated with each level.

Level 2A will apply to small-scale activities with a low risk of causing environmental harm.

Level 2B will apply to the majority of assessments carried out and are activities that raise a number of significant environmental issues but do not warrant public scoping of assessment guidelines.

Level 2C will apply to large-scale activities that raise a significant number of environmental issues of significant and widespread public interest warranting detailed scrutiny and requiring public scoping of assessment guidelines.

It is also proposed to introduce:

- a requirement for a Notice of Intent (NOI);
- a sunset clause for the submission of a DPEMP; and
- a requirement for councils to make a determination on a development within a statutory timeframe following the Board decision.

Under this option it would also be desirable to change statutory timeframes in EMPCA and other associated legislation from calender days to business days. This would eliminate the confusion, which occurs when public holidays fall within the current statutory time period.

The capacity for three levels of assessment would recognise that complex proposals, with greater public interest, greater environmental risks and/or cross-jurisdictional requirements, require longer assessment timeframes than low risk, less complex proposals. It would also recognise that there are a number of activities on Schedule 2 that are low risk and should attract a lower level of assessment.

The requirement for a NOI will provide a clear beginning point for assessments and enable early determination of the level of environmental assessment (2A, 2B or 2C).

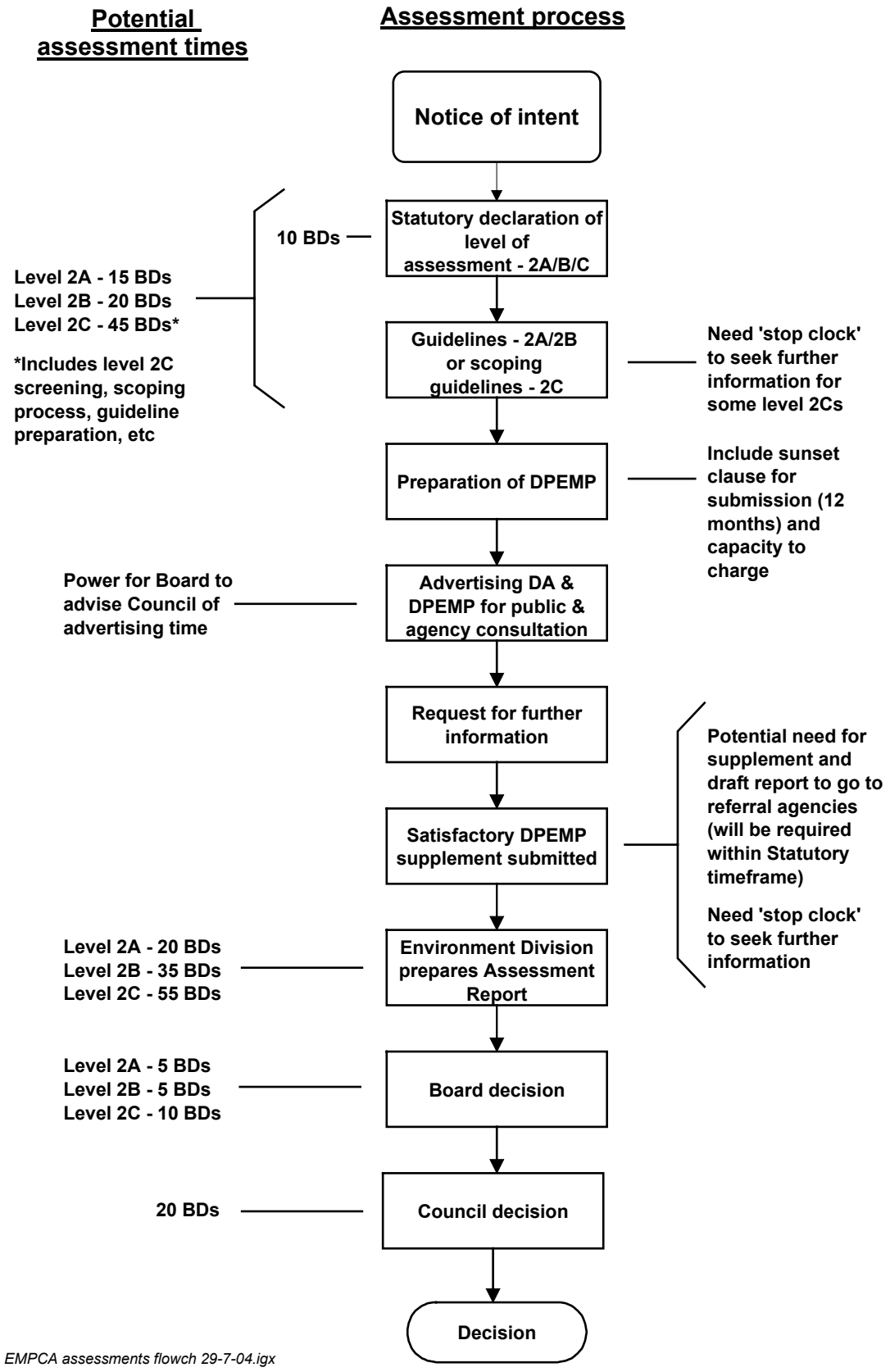
The requirement for statutory timeframes on the development of assessment guidelines, the preparation of the assessment report and the Board's determination will provide clear limits on the steps in the assessment process which are dependent on government processing. This option would not include statutory timeframes for review of draft DPEMPs. This may encourage proponents to submit high quality drafts in order to reduce the time required by DPIWE for review. Administrative procedures could also guide DPIWE in managing this process, for the rejection of substandard drafts and in negotiating timeframes with proponents.

It is proposed to introduce a time limit of 12 months for the lodgement of a DPEMP after guidelines have been issued. This will ensure that the assessment remains current in the context of changing circumstances. There would be the capacity to extend the time for lodging the DPEMP by agreement between the proponent and the Board.

It is proposed to introduce a requirement for council to make a determination on permit applications (PA) for level 2 activity(s) within a specified period of receiving the Board's determination under section 25(5) of EMPCA. This is consistent with the thrust of the LRP recommendations and the treatment of level 1 activities under the *Land Use Planning and Approvals Act 1993*. It is proposed that a Council must make a decision on an application within 20 business days of receiving the Board's determination.

Figure 1 illustrates the proposed changes to the assessment process and the proposed statutory timeframes for three sections of the process.

Figure 1. Proposed Timeframes for Environmental Assessments.



DPIWE's proposals would require amendments to legislation as follows.

The *Approvals (Deadlines) Act 1993*

Timeframes for the assessment of level 2 activities would be removed from the ADA and put into EMPCA. This is consistent with the LRP recommendation. The ADA was intended to be transitional legislation until statutory timeframes were included in the parent legislation. Statutory timeframes are included in more recent legislation such as the *Water Management Act 1999*.

The *Environmental Management and Pollution Control Act 1994*

A person proposing to establish a level 2 activity would be required to submit a NOI providing sufficient information for the Director to make a decision on the level of assessment and to prepare guidelines. If a development application were submitted before a NOI is received, then the development application would be taken to be the NOI.

EMPCA would be amended to give the Director responsibility to determine the level of assessment (level 2A, 2B or 2C), with appropriate definitions. The level of assessment would be based on Environmental Impact Assessment Principles (section 74 of EMPCA) and guidelines for determining the level of assessment issued by the Board.

Under amendments, the Director would be required to declare a project to be level 2A, 2B or 2C for the purposes of environmental assessment, within 10 business days of a NOI being lodged, within a time agreed with the proponent, or as determined by the Minister. This period would be included in the statutory timeframe for development of guidelines (see below). Under this model a level 2B assessment would be the default in which case no administrative decision would be needed.

The proposed statutory timeframes for assessments under EMPCA are as follows. These times are inclusive of the 10 business days requirement for the Director to determine the level of assessment.

Table 6: Proposed statutory timeframes for environmental assessments under EMPCA.

	DPEMP Guidelines Development	**Preparation of Assessment of Report**	**Board determination**
Level 2A	15	20	5
Level 2B	20	35	5
Level 2C	45* *includes advertising	55	10

To deal with the situation where the relevant statutory timeframe is exceeded, it is proposed that a provision along the lines of that in the ADA be inserted into EMPCA. The ADA currently provides that:

> ss5(1): Where an application for an approval is not determined by the appropriate person or body within the period specified in Schedule 1 in relation to the approval,

the responsible Minister may require that person or body to determine the application within 14 days of the expiration of that period, or such lesser period as the Minister may specify.

s(2): The responsible Minister may extend the 14 day period, or the lesser period specified by the responsible Minister under subsection (1), if the responsible Minister considers that exceptional circumstances exist for extending that period.

There would be the capacity to extend any of the timeframes by agreement between the proponent and Board. The Director would also have the power to 'stop the clock' to seek further information at any stage.

EMPCA would be amended to change calender days to business days. This would require amendment of timeframes throughout EMPCA. Alternatively, a provision could be inserted that stated the statutory timeframes do not include statewide public holidays.

Appropriate amendments would be required to specify requirements for DPEMP guidelines. Guidelines for a level 2A or 2B assessment would not be advertised. Generic guidelines or a general application form would be used for Level 2A assessments. Draft guidelines for a 2C assessment would be publicly advertised for comment.

Another amendment would require that a final DPEMP must be submitted no later than 12 months after the guidelines for its preparation are issued. If the DPEMP is not submitted during this period then a further NOI must be submitted to restart the assessment process. There would be the capacity to extend the timeframe of 12 months where there is agreement between the proponent and the Board.

Other miscellaneous amendments proposed are:

- amend section 25(2)(c) of EMPCA by adding 'as soon as reasonably practical' to the requirement for a planning authority to give the Board copies of any representation received under section 74(3) of the LUPAA.

- amend section 25(2) of EMPCA to give the Board the power to require a council to advertise an application for a period determined by the Board.

The *Land Use Planning and Approvals Act 1993*

Amendments to LUPAA would be required as follows:

- to change calendar days to business days would be required for consistency with EMPCA, if such a change is made to EMPCA;.

- to allow for extended advertising periods for level 2C assessments (up to six weeks); and

- to provide for a requirement for planning authorities to make a decision on a permit application for a level 2 activity within 20 business days following the Board's completion of an assessment.

In respect of the third point above, a consequence of the non-determination would need to be addressed. Currently under LUPAA, if a determination is not made within the statutory timeframe, the proposal is deemed approved with conditions to be set by the Resource Management and Planning Appeals Tribunal. An alternative would be for the Minister to require the planning authority to make a determination within a specified time period. The capacity to increase the time period by agreement between planning authority and applicant could also be included.

4.3. OUTSOURCING OF ASSESSMENTS

The LRP Review Panel recommended that the possibility of outsourcing assessments to the private sector, as a means of reducing any additional resourcing impacts on the Environment Division and improving service delivery to clients, should be investigated. The Issues Paper detailed a range of issues that would require further consideration if this recommendation were to be implemented. Feedback on the Issues Paper relating to this recommendation was limited but was generally not in favour of outsourcing assessments.

There was one suggestion to develop a list of accredited assessors that could be used by proponents. Issues associated with accreditation are currently being worked through in the development of a contaminated site auditing system and lessons will be learnt from this process. A recent scheme in Victoria is relevant to this discussion. Through recent amendments to fee regulations, Victoria has introduced a system whereby proponents receive a 25 per cent fee reduction if an environmental auditor has stated, in writing, that a works approval application contains adequate information of suitable quality to assess whether the application meets the Authority's requirements. These requirements are set out in guidelines published by the Authority from time to time and must be met should the works proceed. However, Victoria already has a system for accrediting auditors and it would be difficult for a jurisdiction of Tasmania's size to support such a system.

At this stage it is not intended to outsource complete assessments. However, it is proposed to put in place a mechanism to outsource technical advice and recover costs incurred. It is not expected that this facility would often be used.

4.4. SUMMARY

The proposed timeframes are shorter than the ones that currently exist under the ADA. They are also more closely linked to environmental risk, complexity and public interest. Lower risk, less complex activities will have shorter timeframes.

The preferred option is consistent with the Environmental Impact Assessment Principles in EMPCA and the Inter-governmental Agreement on the Environment[9].

The capacity to have different levels of assessment with associated statutory timeframes is consistent with the approach taken by most other jurisdictions.

[9] Commonwealth of Australia (1992b), Intergovernmental Agreement on the Environment, Australian Government Publishing Service, Canberra.

The proposed should increase certainty for proponents. The proposed statutory timeframes will result in increased pressure on the Board, the Environment Division and referral agencies. Flexibility will be reduced and in some cases the proposed timeframes will not be able to be met with existing resources. The proposal to create another four environment officers to be filled (see section 3.2.3) if implemented, would significantly improve the Environment Division's capacity to meet the proposed timeframes.

APPENDIX 1

PROPOSED ANNUAL PERMIT FEE VARIABLE FEE COMPONENT

Introduction

The proposed fee structure for annual permits would consist of two components. The first component would be a fixed fee and the second part a variable fee. It would be possible for the permit holder to apply for a reduction for part, or all of the variable fee component provided the permit holder can demonstrate a commitment to improving the management of environmental risks associated with the permitted activity and implementation of specified measures.

A graduated discount will apply if the permit holder can demonstrate to the Director of Environmental Management (the Director) adoption and effective implementation of one or more of the following:

1. An appropriate Environmental Policy in relation to the activity
2. A public environmental reporting system
3. An environmental management system (EMS).

Fee Discount Scheme

If a permit holder implements one of the three tools, a fee discount equivalent to a third of the value of the variable fee component is available. If two of the tools are implemented, a discount of two-thirds of the value of the variable fee component is available. If all three tools are implemented, then no variable fee component is payable– only the fixed fee component.

The new fee structure would be phased in over a two year period to allow permit holders time to plan, develop and implement the tools required to receive the fee discount.

The new fee structure would not apply to 'low risk' Level 2 activities. Low risk level 2 activities would be charged a flat annual permit fee of approximately $300 per annum.

Principle, Procedure and Criteria for Variable Fee Discount

The level of effort and degree of sophistication required to qualify for each element of the fee reduction would depend upon the scale and size of the level 2 activity under consideration.

The procedure would involve permit holders indicating on the permit renewal form if and which tool(s) they have adopted to qualify for the fee reduction. The permit renewal form for all existing permit holders would be modified to have a section allocated to each tool required to receive the reduced fee. New permit holders would have the opportunity to apply and demonstrate that they will adopt the required tools for the fee discount during the assessment and approval process.

Providing a permit holder can satisfy the criteria below and provide satisfactory evidence to support their claim, the permit holder ticks the box next to relevant tool(s) and then would be charged the reduced fee. Documentary evidence would be placed on permit holder's file held by the Environment Division. Acceptable evidence includes:

- A copy of the permit holder's environmental policy and a statement that the policy has been implemented in accordance with the criteria below.
- Copies of written and electronic communications with the local community and external organisations about how environmental risks are being managed, e.g. copies of advertisements for a public meeting, media reports and releases about environmental achievements, publicly available brochures, flyers, reports etc.
- Evidence that is satisfactory to the Director that an EMS has been developed and implemented, e.g. a copy of an independent consultant's report or environmental auditor's report or a Statutory Declaration from a responsible officer of the organisation.

Criteria that would to be met in relation to each of the three tools are as follows. More detailed criteria may be issued by the Director if the proposed fee structure is adopted.

Environmental Policy Criteria

- Has the owner/manager a written publicly available environmental policy that includes a commitment to:
    - pollution prevention;
    - continuous improvement; and
    - compliance with environmental regulations.
- Has the policy been provided to all staff?
- Is the environmental policy displayed in the workplace, appropriately publicised and built into training systems?

Criteria for Public Environmental Reporting

- Have effective attempts been made to communicate with the community and interested parties about how the business is complying with environmental regulations? That is, permit holders are required to publicly report on environmental performance and compliance.
- Is information freely available to the public about how environmental aspects and impacts are managed by the business?

Criteria for an Environmental Management System

- Permit holders paying the current maximum fee threshold ($18,000 plus), would be required to have an EMS that is ISO 14001 accredited and to supply regular audit reports to the Director.
- All other permit holders that are eligible for the fee reduction would be required to supply evidence that they have developed and implemented an environmental management system commensurate with their activity. This EMS must be able to satisfy an independent consultant that all the major environmental risks have been

identified and are being managed to minimise their potential for causing environmental harm. This consultant's report must be provided to the Director.

Permit holders who are not required to meet ISO 14001 accreditation standards must consider the following:

- Has an environmental action plan been developed using the current environmental permit conditions of the planning permit as the basis of the plan?
- Has a procedure for the implementation of this plan been developed and communicated to all staff and has this been documented?
- Has an emergency response plan for environmental incidents been prepared and documented?
- Has the emergency response plan been communicated to all staff?
- Have training needs been identified?
- Has appropriate training been undertaken?
- Are there procedures for regularly checking the environmental aspects and impacts of the organisation's activity?
- Is the EMS regularly audited?
- Is regular monitoring taking place and being documented?
- Are there procedures to ensure that the organisations' compliance with legal requirements is regularly checked and documented?
- Has a procedure been developed for reporting and correcting non-conformance?

DPIWE Administration of Scheme.

The Director may revoke the fee discount for an activity in the following circumstances:

- Where an environmental infringement notice (EIN) has been issued and paid. The permit holder will then be precluded from receiving the fee discount for one year.
- Where a successful prosecution has been carried out by the Director against the permit holder. The permit holder will then be precluded from receiving the fee discount for two years.
- Non-compliance with any of the criteria for fee reduction. The Director would have the right to conduct 'spot audits' of any permit holder's claim to be eligible for a fee reduction.

No attempt will be made to recoup the discounted variable fee portion in the year that the non-compliance has taken place.

APPENDIX 2

CRITERIA FOR IDENTIFYING 'LOW RISK' LEVEL 2 ACTIVITIES

The Director will apply the following criteria to determine which Level 2 activities will be categorised as 'low risk level 2 activities'. Permit holders will need to satisfy most of the criteria to be eligible for 'low risk' status in respect of their activity.

- Low production levels and/or design capacity
- Has not required inspection in the past 2 years.
- Review of permit conditions the past 5 years.
- Does not require emission limits or monitoring in permit conditions.
- Do not have any sensitive premises within the Standard Recommended Attenuation Distance (SRAD) for the relevant activity. The SRAD is the distance within which there is a potential for land-use conflict from an activity which may cause pollution or a hazard to other land uses, particularly those sensitive to reduction in environmental quality[10].
- Demonstrated compliance with an Industry Code of Practice.
- Has not had an EIN, prosecution or formal warning in the past 5 years.

If a permit holder at some future time ceases to comply with one or more of the criteria above, low risk status maybe withdrawn. Permit holders and the Director will have the capacity to review low risk status as circumstances change.

[10] Department of Land Management (1996), *Environmental Assessment Manual*, Version 1, January 1996.