

Policy assessment for sustainability: institutional issues and options

**Response by:
Sustainability Policy Unit, Department of the Premier and Cabinet, WA**

Primary Author: Jenny Pope

Introduction

This paper has been prepared by the Sustainability Policy Unit (SPU) of the Department of the Premier and Cabinet in Western Australia in response to the draft paper prepared by Dr Stephen Dovers entitled "Policy assessment for sustainability: institutional issues and options" (the Paper). The views expressed in this response paper are those of the SPU ('the Unit') and not necessarily those of the Government of Western Australia.

Our response paper outlines the approach to sustainability assessment being proposed by the Unit for Western Australia (noting that this is still in the preliminary stages of development) and discusses the Paper in this context, highlighting where our approaches coincide and differ, and raising points with respect to institutional issues that the Unit believes require some further consideration. While the Paper focuses on the potential for redesigning institutional arrangements to effect sustainability assessment, and particularly the formation of a 'specific independent agency' or 'statutory body' we discuss the alternative approach of working largely within current institutional and legislative frameworks, at least in the immediate future. We also briefly discuss some implications of 'non-formal' institutions in the development and implementation of sustainability assessment processes.

In accordance with its Terms of Reference, the Paper focuses on the institutional issues relevant to sustainability assessment and the role of sustainability assessment in decision-making. It also emphasises the appropriate application of sustainability assessment and briefly discusses some issues of process and methodology. The Unit believes that to be meaningful, institutional arrangements must be discussed in the context of the conceptual basis, application and processes of sustainability assessment, and therefore we attempt to highlight important aspects of the relationships between these issues in this response paper.

Applications of sustainability assessment

The Paper makes the important point that the causes of unsustainability are systemic and are embedded within patterns of production and consumption, settlement and governance, and as such they are the product of past institutional settings that evolved to meet other policy imperatives. The point is also made that the problem, and therefore also the solution, is the responsibility of government and the public sector, since 'it is governments and their agencies that are responsible for the deeper policy, legal and institutional changes that determine indirect threats to sustainability, and it is governments who may be most cautious about opening their own decision making processes to scrutiny'.

Furthermore, the Paper suggests that the sustainability agenda is broad and hence that 'few...policy sectors can argue that they are irrelevant to sustainability', there is perhaps a stronger argument for sustainability to be addressed by all agencies than has generally been the case for environmental issues which has typically been addressed 'at the margins' and as the responsibility of environment departments. Sustainability assessment is suggested as an appropriate tool to enable the shift to

more sustainable decision-making: 'we see the need to spread environment and sustainability concerns more widely and influentially in policy systems. One way of doing this is to enforce consideration of sustainability rigorously and transparently into a wide range of policy processes and decisions – sustainability assessment'.

This emphasis on the role and responsibility of government in driving the sustainability agenda using appropriate policy tools such as sustainability assessment is entirely consistent with the approach taken in Western Australia. *Hope for the Future: The Western Australian State Sustainability Strategy* (Government of Western Australia 2003) was released in September 2003, and includes commitments to undertake sustainability assessment to guide government agency decision-making, including the development of policies, plans, programmes, projects, legislation, Cabinet Submissions, legislation and agreements.

This commitment is also reflected in *Leading By Example: The Sustainability Code of Practice for Government Agencies* (Government of Western Australia 2004), which was released in September 2004. The *Code* consists of 14 commitments binding government agencies, two of which specifically relate to sustainability assessment as follows:

1.3 Sustainability assessment

Commitment: Where appropriate, utilise sustainability assessment in planning and decision-making

Objective: Sustainability assessment informs agency planning and decision making, including the development of government projects, policies, plans, programs, agreements and Cabinet Submissions, and becomes part of relevant areas of government activity

1.4 Legislation

Commitment: Where relevant, incorporate sustainability principles and practices into legislation as it is reviewed, drafted or amended

Objective: Sustainability assessment is utilised to ensure that sustainability principles and practices are considered and where relevant incorporated into legislation when it is drafted reviewed or amended

A *Sustainability Assessment Framework*, currently in preparation, will guide agencies in meeting their commitments under the *Code* with respect to sustainability assessment. The *Framework* will include guidance on screening (identifying which strategic decisions require sustainability assessment), sustainability assessment processes and tools and techniques.

While the Paper is entitled '*Policy assessment for sustainability*', the Western Australian approach appears to encompass a broader range of government decision-making, since in addition to policy it also specifically includes government projects, plans, programs, agreements, legislation and Cabinet Submissions. However, in the discussion of triggers and thresholds the Paper refers to policies, proposals, laws, and legal or institutional change as being potential targets of sustainability assessment, which would suggest that the approach advocated by the paper is not inconsistent with that in Western Australia and that any apparent difference in proposed application is merely semantics.

The discussion of triggers and thresholds provides a useful basis for screening proposals for sustainability assessment. However, perhaps it would be helpful if the Paper discussed in more detail what is meant by the term 'policy' in the context of broader government decision-making, to provide further guidance as to the appropriate application of sustainability assessment. The issue of screening is discussed further under 'Processes for sustainability assessment' below.

It is important to point out that the *Western Australian State Sustainability Strategy* also commits the government to undertaking sustainability assessment of 'complex and strategic projects'¹. Discussions around the implementation of this commitment, including the definition of 'complex and strategic', are currently in their early stages.

It could be argued that sustainability assessment of project proposals, or even of plans, programs and other lower-level strategic decisions (compared with policies), is likely to focus in practice on identifying and mitigating the direct causes of unsustainability, in a similar manner to EIA or 'shallow SEA' and thus be far less effective as a driver for sustainability than assessments conducted at a higher level of decision-making and addressing the indirect causes of unsustainability (analogous to 'deep SEA'). Despite the probable limitations, the Western Australian approach is to promote the consideration of sustainability principles and practices at all levels of government decision-making and 'learning by doing' with the intent of continually refining our processes through experience gained.

Therefore in Western Australia at least, appropriate institutional arrangements must also be considered for project sustainability assessment, and this arrangement may or may not be the same as those required to support government agency decision-making. The institutional requirements of the two forms of sustainability assessment will depend upon their respective aims, applications and roles within decision-making processes. These issues are discussed further in the following section of this response paper.

Role of sustainability assessment within decision-making

The Paper advocates institutional arrangements for sustainability assessment involving a 'specific, independent body' or 'statutory authority' charged with evaluating the sustainability implications of a policy, and subsequently making appropriate 'adjustments to the policy' to address any identified 'threats to sustainability'.

This approach reflects a particular type of sustainability assessment with a particular aim and application. Since the Unit believes that the establishment of appropriate institutional arrangements depends upon the role sustainability assessment is to play within the wider decision-making process, it is useful at this point to identify different forms of sustainability assessment, which have correspondingly different aims, applications and roles. The following discussion distinguishes between *internal* and *external* sustainability assessment.

Internal sustainability assessment is conducted by the agency or body responsible for the development of the policy or strategic proposal, perhaps for purposes of internal governance and to inform the development of the policy. By comparison, external sustainability assessment is conducted by a separate body or group for the purpose of identifying necessary changes to the policy in the interests of promoting

¹ This commitment is also reflected in the recommendations of the recent Keating Review of the Project Approvals System (Government of Western Australia 2002)

sustainability or providing advice to the final decision-makers (e.g. Cabinet). The Paper appears to generally relate to external sustainability assessment undertaken by an appropriately independent body, although it does acknowledge that 'some assessment tasks may be undertaken within proponent agencies' (i.e. internal assessment) and overviewed by an external body.

The Western Australian approach to the sustainability assessment of government decision-making is more closely aligned with the latter model, i.e. that agencies should undertake sustainability assessment internally, in accordance with the *Sustainability Assessment Framework* and with the support of an external body, which under the present institutional arrangements is the Sustainability Policy Unit (SPU). This has implications for resourcing within government agencies, which are discussed further under 'Implementation challenges' below.

Some proposals may require both internal and external sustainability assessment, as will be the case in Western Australia for any government project proposals that are determined to be 'complex and strategic' and may also be the case for major policies and strategic proposals with significant sustainability implications.

In considering appropriate institutional arrangements, it is also important to identify who the final decision-maker is to be in an external assessment process. One possibility is that the external body conducting the assessment is the final decision-maker, and the final decision is the identification of changes the policy maker is required to make to ensure the policy is more sustainable. The alternative is that the external assessment body merely provides advice to a final decision-maker such as Cabinet, which is the model proposed for sustainability assessment of complex and strategic projects in Western Australia.

This is important because of the point made in the Paper that 'values and political judgements will always play a major role in final decisions, along with scientific assessments'. If the assessors themselves are the final decision-makers then this is the point at which politics will come into play. However, if the assessors are merely advisors to the final decision-makers then this allows for more independent sustainability assessment processes. This would be analogous to the current system for EIA in Western Australia in which the Environmental Protection Authority (EPA) provides independent advice to the Minister for the Environment as to the environmental acceptability of a project proposal, and the Minister makes the final decision as to whether the proposal should be approved or not.

In this context, active consideration is currently being given in Western Australia to a model for the sustainability assessment of complex and strategic projects in Western Australia that mirrors and builds upon the current EIA process in terms of providing advice to final decision-makers. This raises the issue of the kind of advice that such a body will be required to provide, which is discussed below under 'Conceptual basis for sustainability assessment'.

Having distinguished between internal and external sustainability assessment, it is also important to distinguish between *proactive* and *reactive* assessment processes. Internal sustainability assessment of government decision-making in Western Australia is proposed for several reasons, firstly so that sustainability assessment can be applied to a broad range of agency decision-making and to encourage the integration of sustainability principles and practices within the core business of the

agencies. However, perhaps the most important reason is that internal sustainability assessment allows for a proactive approach to sustainability assessment.

Whereas reactive sustainability assessment is conducted after a policy or strategic proposal has largely been developed (often by an external body), proactive or *ex ante* sustainability assessment is an integral part of the development of the proposal in the first instance. Drawing from recent SEA theory, particularly that emerging from the UK (see for example Therivel 2004), sustainability assessment can inform the establishment of policy objectives, the identification of alternative options to meet the policy objectives, the selection of the preferred alternative and the refining of the preferred alternative. The Unit suggests that a proactive approach has a much greater potential to deliver more sustainable policy outcomes than a reactive approach, which can only tinker at the margins. A proactive approach encourages a more strategic approach to policy making in which a wide range of policy options are considered and evaluated for sustainability.

Therefore, the role and necessary characteristics of a sustainability institution such as proposed in the Paper will depend upon whether sustainability assessment is external or internal, proactive or reactive. Internal sustainability assessment should ideally, although not necessarily, be proactive while external assessment is by definition reactive. Internal sustainability assessment requires guidance and perhaps overseeing for quality purposes by an external body, but external assessment requires that the external body actually conduct the assessment, which may or may not also be the 'final decision'.

The approach to be taken at least in the short term in Western Australia is that the SPU will guide agencies in conducting internal sustainability assessment by developing the *Sustainability Assessment Framework* and providing other support as required. It is also likely that the SPU will oversee or review at least some of the agency internal assessments and their outcomes, although details of how this might work in practice are still to be resolved. The SPU has the advantage of being located within the Department of the Premier and Cabinet and thus having a Whole-of-Government mandate, although it is not statutorily independent and is clearly not removed from the daily work of the executive arm of government.

With respect to external sustainability assessments for the purpose of providing advice to Cabinet, particularly for complex and strategic projects, consideration is being given to building upon Western Australia's existing statutory EIA process. This may require the formation of bodies charged with addressing economic and social issues in a similar way to that in which the Environmental Protection Authority (EPA) currently addresses the environmental implications of proposals. An overarching 'integration' body may also be required under this model for the purpose of providing consolidated sustainability advice to Cabinet. Members of these additional bodies could be appointed on a case-by-case basis.

Issues raised in the Paper with respect to statutory independence and independence from the day-to-day pressures of the executive arm of government are probably more relevant to these types of body than to an advisory body such as the SPU. The Paper also makes the point that such a body would be more appropriately comprised of agency personnel supported by external consultants as required to ensure an appropriate level of expertise. Consideration is being given in Western Australia to utilising agency personnel under secondment wherever possible, to maintain levels

of expertise within government while ensuring that the individuals involved are removed from their day-to-day agency roles.

Conceptual basis for sustainability assessment

The previous section outlined the proposed approach to sustainability assessment in Western Australia and discussed some of the institutional implications of this approach. One point raised was the possibility of an independent external body (supported by bodies with specific responsibilities for environmental, social and economic assessments respectively) being responsible for sustainability assessments for the purpose of advising Cabinet as the final decision-makers with respect to the sustainability implications of a proposal. It was suggested that this model, analogous to the current EIA process in Western Australia, would perhaps allow for a degree independence from final decision-making.

However, it is important to be very clear what we mean by this statement about independence. The Paper suggests that values and political judgements will always play a major role in final decisions in sustainability assessment, a point with which the Unit agrees, as discussed in the previous section of this response paper. However, we would go further and say that values do not only play a role in the final decision but in the whole process of conducting a sustainability assessment, a point to which the Paper also alludes in the discussion of different perceptions of risk, the burdens of proof operating in political and media debates and the need for 'post-normal science' and the incorporation of different knowledge systems.

Therefore, the Unit is not suggesting that a sustainability assessment can ever be free of values or politics. However, an external sustainability assessment can be separate from final decision-making, since it is possible for an independent sustainability body to make an evaluation of the sustainability implications of a proposal, and advise the final decision-makers accordingly. These decision-makers then have the right to approve the proposal or not, regardless of its sustainability, or more accurately its contribution to sustainability or unsustainability. This is analogous to the role played by the EPA in the EIA process in Western Australia.

This model for assessment and decision-making has as its conceptual basis the idea that sustainability assessment is distinct from final decision-making which may require balancing of environmental, social and economic factors. Sustainability assessment in this context requires a vision of what sustainability means within a given jurisdiction, and a corresponding decision-making sustainability framework within which assessments can be conducted and advice provided to final decision-makers.

In Western Australia, the proposed decision-making framework for sustainability assessment is based upon the following principles:

- Minimising negative environmental, social and economic impacts;
- Ensuring that minimum acceptability limits or 'bottom lines' for sustainability are met;
- Maximising positive outcomes with respect to aspirational objectives and targets – preferably mutually supportive benefits ('win-win-wins') especially for development projects (through environmental offsets where required).

Therefore, external sustainability assessment conducted by an independent body would provide advice to the final decision-makers as to the extent to which these

principles are achieved in any given case. Clearly, this model requires some clarity with respect to sustainability objectives and acceptability limits, which poses a considerable practical challenge yet to be fully addressed in Western Australia. However, the Unit believes that this clarity is an essential part of interpreting sustainability in a meaningful way such that the concept can be incorporated into decision-making, and to enhancing the transparency of government decision-making.

The Paper does not discuss the conceptual basis for sustainability assessment. The Unit suggests that this is vital to any discussion of sustainability assessment processes and their institutional arrangements, since the conceptual basis will define what questions we are asking in conducting sustainability assessment, and who should answer these questions.

Processes for sustainability assessment

It was not the specific purpose of the paper to discuss processes for sustainability assessment, although it does include some discussion of process issues, reflecting once again that institutional issues cannot be meaningfully discussed in isolation. It is not the Unit's intent in this response paper to address process issues in any detail, except to highlight from the previous discussion that processes for internal sustainability assessment will necessarily be different from external sustainability assessment processes, and to reflect on some relevant points made in the Paper.

The Paper highlights the potential benefits of using SEA as an analogy for implementing sustainability assessment. The Unit supports this, and SEA has informed much of the Unit's thinking about sustainability assessment. However, it is important to reiterate the point also made in the Paper that 'it is only in recent years that (SEA) has been implemented in any real fashion, and not in (the USA or Australia)'. Therefore, in developing and implementing sustainability assessment processes, we face procedural and conceptual difficulties that are generations beyond those of the more familiar EIA processes, as well as the associated institutional challenges.

The point has already been made under 'Applications of sustainability assessment' that screening (or triggering) is an important part of any assessment process and the guidance provided in the Paper as to which policies should be subject to sustainability assessment is extremely valuable. However, there is a growing sense in Western Australia that considerable thought must be given to screening, and that any guidance developed as part of the *Framework* must be sufficiently flexible to reflect the specific decision-making processes undertaken by different agencies in carrying out their core business.

Furthermore, in the case of Western Australia where a wide range of government decisions are to be subject to sustainability assessment, there a case for different levels of assessment with corresponding trigger points and degrees of complexity. Therefore, it is likely that the screening process under Western Australian *Framework* will allow for different levels of sustainability assessment, or in other words that screening will not be a 'yes/no' process, as the Paper appears to advocate. However, The question of 'levels of assessment' and what this might mean in practice is yet to be finalised.

The Paper makes the important point that within any sustainability assessment process there is a variety of techniques and methods that may be applied. Flexibility

of technique will also be reflected in guidance provided to government agencies in Western Australia through the *Sustainability Assessment Framework*.

The Paper also recognises that sustainability assessment will require 'post-normal science' and the fact that considering indirect impacts will require qualitative analysis. It mentions the need to consider the role of different knowledge systems, scientific disciplines, modes of inquiry and burdens of proof, although there is little discussion of how such different knowledge systems may be incorporated into the process. These issues may be more appropriately addressed in papers relating more specifically to processes for sustainability assessment than here, but the Unit also believes that they are vital to meaningful sustainability assessment. Similarly, the importance of the involvement of the public and interest groups in the sustainability assessment process is supported.

Institutional and legal structures

The Paper calls for institutional change for sustainability assessment, and the formation of a statutorily independent body to 'embed sustainability considerations across all areas of public policy in a forceful manner'. We have outlined in previous sections of this response paper that the Unit is advocating that sustainability assessment should be done internally and proactively by government agencies in the process of developing policies and strategic proposals and that agencies will be guided in this task by a body such as the SPU. On the other hand, external sustainability assessment may be conducted by several separate bodies under an overarching body responsible for providing consolidated advice to Cabinet, which may be appointed on a case-by-case basis. The Unit believes that this approach is consistent with the point made in the Paper that 'the design of a specific arrangement would need to...reflect the realities of the jurisdiction, specific roles envisaged and targets for assessment'

There is presently no proposal to provide a statutory basis to either internal or external sustainability assessment processes. The possibility of establishing the bodies to undertake external assessment under existing legislation is currently being investigated. The requirement for government agencies to undertake sustainability assessment in accordance with commitments under the *Sustainability Code of Practice for Government Agencies* has been given effect through a Premier's Circular, and the assumption is made that private proponents of projects designated as complex and strategic are unlikely to resist a sustainability assessment by government.

The possibility of establishing the necessary bodies for external sustainability assessment on a case-by-case basis in Western Australia under existing legislation or other legal mechanisms is an alternative to the view of 'hard-wired institutional reform' advocated by the Paper. The Unit believes that well-designed processes with appropriate resources and a proper mandate can contribute to overcoming the potential limitations of the 'softer' approach.

Several sustainability assessments have already been conducted in Western Australia without institutional or legislative change. Although these have varied considerably in process and quality, they are evidence that perhaps we should not be overly hasty in our desire for institutional reform. During recent discussions with agencies around these case studies, a principle was suggested that "sustainability assessment is still 'learning by doing' and the more this is done the better will be the resolution of sustainability assessment institutionally". In other words, experience

with sustainability assessment should drive institutional change and not the other way round.

Therefore, while institutional change for sustainability assessment has been an important topic for discussion in Western Australia for several years, the current approach is to work within existing institutional and legislative structures and to adopt the 'learning by doing' approach advocated by both the *State Sustainability Strategy* and the *Sustainability Code of Practice for Government Agencies*. The approach is also consistent with the conclusion of the Paper, which discusses the 'necessary small steps towards incorporating a new and challenging idea (sustainability) into a historically defined institutional system'.

Implementation Challenges

Since major institutional reform for sustainability assessment is likely to be controversial and difficult, and the Paper appropriately highlights the example of the now-defunct Resource Assessment Commission, perhaps it is more appropriate to focus on the softer, non-formal institutions such as the organisational cultures of the various government agencies and prevailing policy paradigms which may not be entirely compatible with the concept of sustainability. Cultural reform is perhaps particularly important in Western Australia given the emphasis on the internal sustainability assessments conducted by government agencies on their own policies and strategic proposals.

The Paper makes the important point that the sources of unsustainability are the product of past institutional settings that evolved to meet other policy imperatives that now present barriers to addressing the problems they create. Since these institutional systems are 'resilient, powerful and often resistant to change', then any new sustainability institution instated to oversee sustainability assessment would be faced with the challenge of dealing with this intractability, regardless of how 'forceful' it was. Arguably, the challenges are not lessened by formal institutional reform for sustainability assessment, since cultures cannot be changed overnight.

The Paper also makes the point that 'the specific institutional reform is arguably less crucial than the provision of a proper mandate and adequate resourcing and the maintenance of whatever is used.' Appropriate resourcing for agencies is important, particularly under the Western Australian model that promotes internal sustainability assessment. Furthermore, agencies are encouraged to seek input from other relevant agencies in the process to obtain expert advice on impacts and to promote policy consistency, reflecting the principle of 'joined up government', and the provision of such advice to other agencies in addition to conducting their own assessments has the potential to place a significant burden on certain agencies. Additionally, the appropriate level of resourcing for the SPU must also be considered as well as the resourcing of the bodies for external sustainability assessment. The question of appropriate skills for sustainability assessment within all of these organisations must also be addressed.

Conclusion

In this response paper, the Sustainability Policy Unit of the Department of the Premier and Cabinet in Western Australia has discussed possible approaches to the development and implementation of sustainability assessment processes in Western Australia. The points made in Dr Dovers's paper have been considered in this context.

The Unit believes that to be meaningful, institutional arrangements must be discussed in the context of the conceptual basis, application and processes of sustainability assessment, and therefore we have attempted to highlight important aspects of the relationships between these issues in this response paper.

Commitments have been made in Western Australia to utilise sustainability assessment to both guide internal government agency decision-making and to provide information to final decision-makers on the sustainability implications of 'complex and strategic projects'. The Unit is proposing that these commitments should be addressed largely within existing institutional and legislative frameworks as opposed to establishing a permanent independent agency or statutory authority for sustainability assessment, at least in the immediate future.

Specifically, sustainability assessment of government decision-making is to be conducted internally (and proactively) by the agencies, with the support of the SPU. A range of options is being considered for the sustainability assessment of complex and strategic projects, but the process is likely to build upon the existing statutory EIA process and may therefore involve establishing appropriate bodies to address social and economic issues and mirror the role played by the EPA, perhaps guided by an overarching body responsible for providing consolidated advice to Cabinet as the final decision-makers. Consideration is being given to establishing these bodies on a case-by-case basis using existing legislation and other instruments.

Therefore, the intent in Western Australia is to adopt a 'learning by doing' approach to sustainability assessment that may inform institutional reform in the future. The challenge of addressing the sustainability agenda within prevailing cultural institutions, which may have been significant sources of 'unsustainability' in the past, is also acknowledged.

References

- Government of Western Australia (2002). *Review of the Project Development Approvals System: Final Report*. Available on-line. URL: www.doir.wa.gov.au
- Government of Western Australia (2003). *Hope for the Future: The Western Australian State Sustainability Strategy*. Available on-line. URL: www.sustainability.dpc.wa.gov.au
- Government of Western Australia (2004). *Leading by Example: the Sustainability Code of Practice for Government Agencies and Resource Guide for Implementation*. Available on-line. URL: www.sustainability.dpc.wa.gov.au
- Therivel, R. (2004). *Strategic Environmental Assessment in Action*. Earthscan, UK and USA.