



Government of **Western Australia**
Conservation and Parks Commission

POSITION STATEMENT No. 13
THE CONSERVATION AND PARKS COMMISSION'S
DEVELOPMENT OF POSITION STATEMENTS

1. Context and background

Section 19 of the *Conservation and Land Management Act 1984* (the Act or CALM Act) lists the functions of the Conservation and Parks Commission (the Commission)¹. Two of these functions specifically deal with the development of policies, as follows:

- CALM Act section 19(1)(c) relates to the development of policies for:
 - the preservation of the natural environment of the State and the provision of facilities for the enjoyment of that environment by the community²
 - for promoting the appreciation of flora and fauna and the natural environment³
 - to achieve or promote the objectives referred to in section 56(1)(a), (b), (c), (d) and (e) and (2) of the Act⁴.
- CALM Act section 19(1)(d) deals with the development of policies for the conservation and management of biodiversity⁵ and biodiversity components⁶ throughout the State.

The importance of the Commission's policy development functions is heightened under recent amendments to the Act which connect the policy development functions under s19(1)(c) to the provision of advice to the Minister for Environment. It is noted that both sections 19(1)(c) and 19(1)(d) reflect the Commission's role as covering not only matters strictly pertaining to lands vested in it, but also for the preservation of the natural environment and the conservation and management of biodiversity and biodiversity components throughout Western Australia.

Although s19(1)(c) and 19(1)(d) are examples of direct references to policy development functions in the Act, Appendix 1 covers all the functions of the Commission under which policy development would be desirable in the administration of its responsibilities. In this regard, it is important to note s20(1) stating that "the Commission has the power to do all things necessary

¹ See Appendix 1

² CALM Act section 19(1)(c)(i)

³ CALM Act section 19(1)(c)(ii)

⁴ CALM Act section 19(1)(c)(iii). See also the objectives of management plans outlined in section 56 of the CALM Act.

⁵ Under section 3 of the CALM Act "*biodiversity* means the variability among living biological entities and the ecosystems and ecological complexes of which those entities are a part and includes – (a) diversity within native species and between native species; (b) diversity of ecosystems; and (c) diversity of other biodiversity components.

⁶ Under section 3 of the CALM Act "*biodiversity components* includes habitats, ecological communities, genes and ecological processes".

or convenient to be done for or in connection with the performance of its functions under the Act.”

Accordingly, it can be presumed that the Commission will develop policies in the interests of good governance and consistent with the exercise of powers conferred through the Act.

Currently, the Commission’s policies comprise twelve Position Statements prepared by the Conservation Commission of Western Australia and six policy style documents prepared by the Marine Parks and Reserves Authority (collectively called hereafter Position Statements). As described in Section IV below, the Position Statements cover a wide range of matters from the specifics provided for in different parts of the Act including matters from tenure amendments, leases and licences, to management plan preparation, performance assessment and matters relevant to mining legislation processes.

In considering the functions of the Commission under the Act in conjunction with s20(1), the Commission is of the view that in combination they support the Commission’s development of Position Statements for the delivery of its responsibilities under the Act.

The Commission sees Position Statements as necessary or convenient⁷ policy development in connection with the performance of its functions which include its advisory role to the Minister for Environment and its preparation of management plans for land and waters vested in or under the control and management, whether solely or jointly with a joint responsible body.

Figure 1 illustrates the context for the Commission’s development of Position Statements as necessary or convenient in connection with the performance of its functions (see section 20(1)). In particular, Figure 1 highlights the functions relevant to the provision of advice to the Minister for Environment and the preparation and evaluation of the implementation of management plans under the CALM Act.

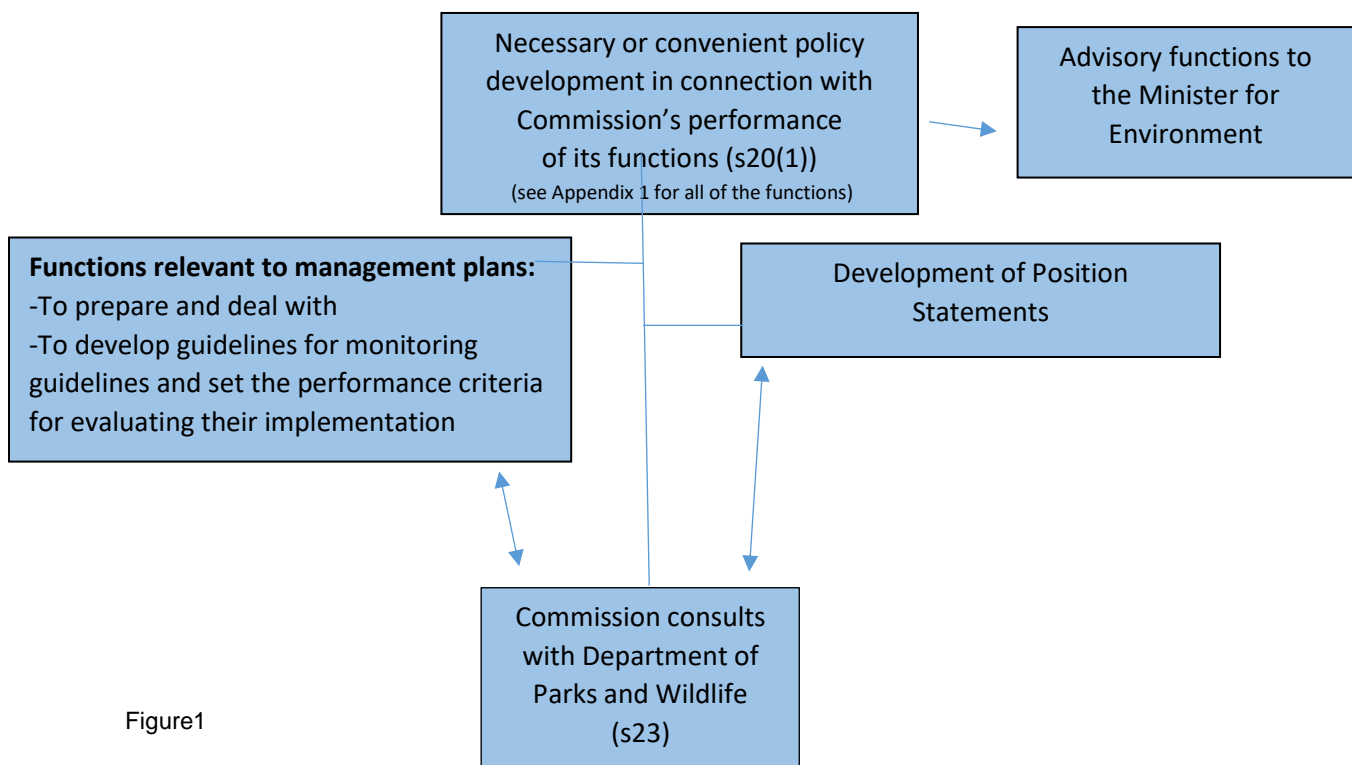


Figure1

⁷ CALM Act s20(1)

The aim of this Position Statement is to situate the Commission’s policy development functions not only as expressly provided for under s19 of the Act, but also as necessary and convenient in connection with its functions and as part of the broader ethical governance framework within the Western Australian Public Sector.

2. Principles of good corporate governance

In addition to its policy development functions under the Act, the Commission operates within the principles of good corporate governance and ethical framework as overseen by the Western Australian Public Sector Commission.

Good corporate governance is at the core of the Commission’s policy development functions. Figure 2 illustrates the principles of good corporate governance that are supported by the Commission’s development of Position Statements. The principles are in accordance with the Western Australian Public Sector Commission principles of good corporate governance for Western Australian public sector boards and committees.⁸

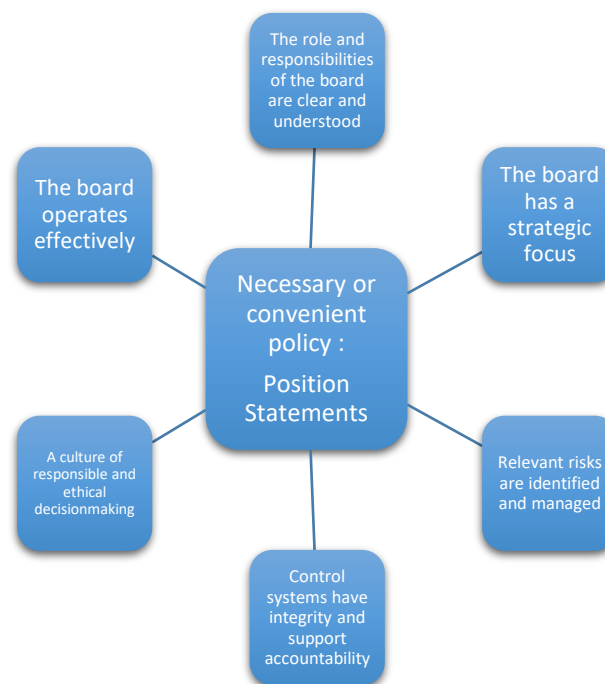


Figure 2: Position Statements as necessary or convenient policy development for the delivery of principles of good governance within the Western Australian Public Sector

3. The value of the Commission’s policy development functions

All of the Commission’s Position Statements have been developed to inform the Commission’s functions under section 19 of the Act. The Position Statements do not seek to constrain the Commission’s consideration or decision-making, but to serve as a decision-making framework on matters ranging from the operational management of conservation reserves (such as mosquito control, sea wrack management and drainage) to broader matters of environmental impact (such as mining and the protection of biodiversity values of lands vested in the Commission under the Act).

⁸ Western Australian Public Sector Commission (2015) Good governance principles for boards and committees available through www.publicsector.wa.gov.au

The wide ranging matters addressed through its Position Statements reflects the value of policy instruments to the Commission and, notwithstanding the context-specific nature of most environmental issues, demonstrate that it is possible to build a process and principle based framework for designing policy for any given circumstance.

The Commission seeks active state protection of the intrinsic values of the human and non-human world such that irreversible damage to the environment is prevented without any danger that needs of existing and future persons will not be met. The Commission is receptive to the diversity of cultures and human experiences ensuring that the grounds for decisions will indeed differ and therefore decision-making in the context of environmental ethics invites a plurality of approaches to designing instruments for environmental protection.⁹

As Ushedo and Ehiri (2006) explain, environmental problems and solutions are constantly evolving: hence a “one best way” approach will necessarily be inadequate. Nonetheless, each context-sensitive decision-making process has to be open to new visions, and be capable of enriching itself with ideas from other contexts. The Commission’s policy functions are part of the mix of government instruments for environmental protection in Western Australia, bringing together science and governance procedures to best inform our approaches to conservation reserve management and impact assessment, particularly within a framework for continual improvement.¹⁰

4. Policy themes and structure

The Commission’s functions encompass a wide range of matters from the specifics provided for in different parts of the Act, such as tenure amendments and leases and licences to management plan preparation, performance assessment and ministerial consultation in mining legislation processes.¹¹

In addition, the Commission has traditionally held an important role as part of interagency consultation for matters affecting lands vested in it under the Act. This fundamentally stems from the Commission’s responsibilities in relation to management planning and the protection of the value of the land in connection to all management objectives as mandated by the Western Australian Parliament. By way of example, interagency consultation can take place through processes under environmental and planning legislation ranging from environmental impact assessment processes to matters pertaining to zoning laws and town planning schemes.

A recognition of the wide ranging nature of this role becomes particularly important when issues affecting lands vested in the Commission are considered outside the rigour of environmental impact assessment processes under either Part IV or Part V of the *Environmental Protection Act 1986* (EP Act) but nevertheless fall under planning processes where environmental protection is not the main goal of legislation.

The Commission therefore values its ample responsibility of overseeing the protection of lands vested in it, and considers this role to be both adaptive and responsive to the plethora of issues that may impact on lands subject to its vesting under the Act (CALM Act).

⁹ See Cunningham N and Sinclair D (2004) *Designing Environmental Policy*. Smart Regulation: Designing Environmental Policy. Oxford University Press

¹⁰ See the Commission’s Position Statement No 10 and No 9 on monitoring strategies for assessing the implementation of management plans and criteria for developing key performance indicators for management plans, respectively. See also reference to Ushedo and Ehiri (2006)

¹¹ See the Commission’s Position Statement No 3 Mining in lands vested in the Conservation Commission of Western Australia

Position Statements in this sense provide an essential operational vehicle for the Commission to tackle its functions across its wide CALM Act responsibilities in a way that is not only strategic and mindful of cumulative environmental impact in vested lands but also as necessary adaptive instruments considering issues in a dynamic environment subject to evolving pressures.

In relation to their structure, whilst policy themes are developed within a diverse spectrum of environmental issues, position statements ordinarily contain contextual background that assist the Commission in situating its responsibilities within a decision-making context that is strongly based on science and cognisant of wider policy landscapes. The contextual background therefore sees a relevant issue against the policy and legal variables at stake.

As their name suggests, Positions Statements are essentially formulated by the Commission on a particular theme (which as previously discussed can range from specific issues to broader principles) to guide its consideration of matters of a diverse nature in connection with its functions, by virtue of its vesting role under the Act, and also through relevant interagency consultation within WA's Public Sector.

5. Principle-based and issue specific Position Statements

In developing its Position Statements, the Commission draws fundamental guidance from principles for environmental protection including those articulated in the Act and the EP Act (see Appendix 2). Position Statements can therefore become principle-based instruments as opposed to issue-specific policies.

An example of the latter is when the Commission develops a Position Statement on a particular theme that applies to a specific issue of species conservation across its vested lands: such as the Commission's *Position Statement No 11: the protection of surface and groundwater biodiversity values of lands vested in the Conservation Commission*¹². It is important to note that whilst in some cases it is easier to determine which policies align to specific issues, both types of policies become intrinsically linked as they inform complex issues affecting the natural environment.

Appendix 2 presents a comparison of principles of ecologically sustainable forest management in the CALM Act and principles for environmental protection under the EP Act.

From the standpoint of environmental policy, the Commission agrees with the view that it is not always possible to take precise decisions because long-term effects of actions or inactions are not always clear due to the failure of the empirical sciences and technology to provide all the exact answers to specific questions regarding the needs of those who will exist in the future¹³.

Accordingly, the Commission emphasises the importance of developing policies that guide decision-making which are informed not only by principles of environmental protection but also by internationally recognised approaches to conservation such as those of the International Union for the Conservation of Nature (IUCN).

¹² Available through www.conservation.wa.gov.au

¹³ Ushedo and Ehiri (2006)

6. Summary of the Commission's Position

The Commission:

- will continue its development of Position Statements as necessary or convenient policy development for or in connection with the performance of its functions under the Act.
- believes that its Position Statements are policy instruments that not only assist the Commission deliver its functions under the Act but also contribute to consistent and accountable decision-making as part of its statutory functions.
- expects the Department of Parks and Wildlife to use the Commission's Position Statements in the preparation of management plans, Departmental policies and in the presentation of matters before the Commission.

References

Conservation Commission of Western Australia (May 2014) Position Statement No. 9. *Criteria for developing Key Performance Indicators for management plans prepared under the Conservation and Land Management Act 1984*. Conservation Commission. Kensington, Western Australia. Available through www.conservation.wa.gov.au.

Conservation Commission of Western Australia (June 2014) Position Statement No. 10 *Monitoring Strategy for assessing the implementation of management plans prepared by the Conservation Commission under the Conservation and Land Management Act 1984*. Conservation Commission. Kensington, Western Australia. Available through www.conservation.wa.gov.au.

Conservation Commission of Western Australia (May 2015) Position Statement No. 3 *Mining in lands vested in the Conservation Commission of Western Australia*. Conservation Commission. Kensington, Western Australia. Available through www.conservation.wa.gov.au.

Cunningham N, Sinclair D (2004) *Smart Regulation: Designing Environmental Policy*. New York: Oxford University Press.

Ushedo B, Ehiri J (2006) *Ethical challenges in ecological policy: Global thinking and local action*, *Management of Environmental Quality: An International Journal*, Vol. 17 Iss: 1, pp.31–42

Western Australian Public Sector Commission (2015) *Good governance principles for boards and committees*. Available through www.publicsector.wa.gov.au. Perth, Western Australia.

Appendix 1. Conservation and Parks Commission Functions

CALM Act Section	Function
19(1)(c) (i) – (iii)	To advise the Minister on the development of policies (i) for the preservation of the natural environment of the State and the provision of facilities for the enjoyment of that environment by the community; and (ii) for promoting the appreciation of flora and fauna and the natural environment; and (iii) and to achieve or promote the objectives in s56(1)(a) to (e) and (2).
19(1)(d)	To advise the Minister on the development of policies for the conservation and management of biodiversity ¹⁴ and biodiversity components ¹⁵ throughout the State.
31(1)	Preparation of an Annual Report
9(3) (a) – (d)	Amendment to State forest for the purpose of correcting one or more unsurveyed boundaries (area of forest ≤ 5%); excision from State forest of 5% or 5 ha (whichever is the less) for the purpose of public utility works or roads; redescribe location or lots within State forest boundaries; amalgamate two or more State forests which have similar purposes.
10(3) (a) - (d)	Amendment to timber reserves for the purpose of correcting one or more unsurveyed boundaries (area of reserve ≤ 5%); excision from timber reserve of 5% or 5 ha (whichever is the less) for the purpose of public utility works or roads; redescribe location or lots within timber reserve boundaries; amalgamate two or more timber reserves.
13(2) (a) - (c)	Reservation of marine reserves – amalgamation of two or more marine nature reserves; marine parks; or marine management areas.
13AA(2) (a) - (b)	Amendment to Class A marine reserve for the purpose of correcting one or more re-surveyed or previously unsurveyed boundaries; excision of 5% or 1 ha (whichever is the less) for the purpose of public utility works.
19(1)(e)	In accordance with s17, consider any cancellation or change of purpose or boundary alteration of land (for those categories of land contemplated by the section).
19(1)(fa)	Advise the Minister in relation to proposals for reservations for the purpose of s14 (marine reserves)
19(1)(f)	In accordance with Part V of the Act, to prepare and deal with proposed management plans for land and waters vested in or under the care, control and management of the Commission, whether solely or jointly with a joint responsible body.
19(1)(g)(i)	Develop guidelines for monitoring the implementation of management plans.
19(1)(g)(ii)	Set performance criteria for evaluating the implementation of management plans.
19(1)(g)(iii)	Conduct periodic assessments of the implementation of management plans.

¹⁴ By CALM Act s3 “biodiversity means the variability among living biological entities and the ecosystems and ecological complexes of which those entities are a part and includes —
(a) diversity within native species and between native species; and
(b) diversity of ecosystems; and
(c) diversity of other biodiversity components”

¹⁵ By CALM Act s3 “biodiversity components includes habitats, ecological communities, genes and ecological processes.”

19(1)(h) – (i)	Advise Minister on the application of principles of ecologically sustainable forest management and on the production and harvesting, on a sustained yield basis, of forest produce.
19(1)(j)	To inquire into and advise the Minister on any matter, upon request.
19(1)(k)	Upon request, provide advice to anybody or person (public interest and practicable)
26(1)	Engagement of consultants
87A(1)(b), 97A(2) & 99(1)	<i>Permits, licences, contracts, leases etc</i> State forests, timber reserves and certain Crown land (s8C land where ordered by the Governor). All land other than State forest and timber reserves, and land classified under Div2 of PartV as wilderness areas.

Appendix 2. A comparative view of principles for environmental protection in Western Australia¹⁶

CALM Act Principle	EP Act Principle
Precautionary Principle	
<p>“...if there are threats of serious or irreversible environmental damage, the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation...”</p>	<p>Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.</p> <p>In the application of the precautionary principle, decisions should be guided by —</p> <p>(a) careful evaluation to avoid, where practicable, serious or irreversible damage to the environment; and</p> <p>(b) an assessment of the risk-weighted consequences of various options.</p>
The Principle of intergenerational equity	
<p>“...that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations...”</p>	<p>The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.</p>
The Principle of the conservation of biological diversity and ecological integrity	
<p>“...that the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making...”</p>	<p>Conservation of biological diversity and ecological integrity should be a fundamental consideration.</p>
Principles relating to improved valuation, pricing and incentive mechanisms	
<p>“...that improved valuation, pricing and incentive mechanisms should be promoted...”</p>	<p>Environmental factors should be included in the valuation of assets and services.</p> <p>The polluter pays principle — those who generate pollution and waste should bear the cost of containment, avoidance or abatement.</p> <p>The users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes.</p> <p>Environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.</p>

¹⁶ Collated in reference to the Conservation and Land Management Act 1984 (WA) s19(2) and the Environmental Protection Act 1986 (WA) s4A. It is noted that the reference provided does not include all the principles enunciated in both Acts of Parliament. For all of the principles, refer to the relevant section under legislation. The EP Act also includes the principle of waste minimisation, namely “that all reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment.” Although this Principle is considered to be reflective of modern governance conventions at the time of the EP Act’s enactment (after the CALM Act) it is one of the highly regarded principles of the Commission in considering matters before it.

