APPROVALS AND RELATED REFORMS (NO. 1) (ENVIRONMENT) BILL 2009

Receipt and First Reading

Bill received from the Council; and, on motion by **Dr G.G. Jacobs (Minister for Water)**, read a first time.

Explanatory memorandum presented by the minister.

Second Reading

DR G.G. JACOBS (Eyre — Minister for Water) [3.26 pm] — by leave: I move —

That the bill be now read a second time.

Western Australia is on the cusp of another period of significant economic activity and growth. The Liberal–National government is committed to ensuring this is a sustained period of economic development over at least the next 20 years. It has been clear that the approvals system in Western Australia was in need of reform. The approvals system had created uncertainty and delays. We have begun to address these issues through the establishment of a high-level task force that is currently reviewing the approvals system. By reviewing and streamlining approvals, the government is ensuring that resource development in WA occurs in a more efficient and sustainable manner, while not reducing the rigour of environmental impact assessment and regulation. Indeed, our approach is to implement a system that ensures timeliness and certainty, as well as meeting proper environmental, heritage and other legislative requirements. The Liberal–National government pledged to strengthen and streamline the approvals system. We are delivering on that pledge.

A ministerial task force on approvals, development and sustainability established last year has developed four bills to streamline approvals. The Approvals and Related Reforms (No. 1) (Environment) Bill amends the Environmental Protection Act 1986, the EP Act. The amendments within this bill relate to streamlining of both appeal provisions and decision-making processes under other legislation while the Environmental Protection Authority is assessing a proposal.

Appeals: The Environmental Protection Authority recently completed a comprehensive review of its environmental impact assessment process with the general aim of enhancing the quality, timeliness and certainty of advice to government on development proposals. The review identified various reforms to improve the efficiency, transparency and consistency of environmental impact assessment. The Environmental Protection Authority is revising its administrative procedures to implement some of these reforms in consultation with stakeholders to ensure that transparency and accountability are strengthened throughout the administration of its assessments. Implementation of these reforms will ensure the opportunities for public participation are enhanced within the framework of a streamlined and efficient process.

The bill amends part VII to remove duplicative or unnecessary appeal points, and to align appeal periods across environmental regulation processes.

There are currently two appeal points if the recorded decision of the Environmental Protection Authority is not to assess a proposal when the proposal also requires a clearing permit. Appeals under section 100(1)(a) on the level of assessment will not apply when the decision not to assess a proposal includes a recommendation that the proposal be dealt with as a clearing permit. This amendment eliminates an unnecessary appeal point and acknowledges that clearing permit processes are robust, transparent and accountable with their own comprehensive appeal provisions. The bill deletes section 100(1)(b) to preclude appeals on the level of assessment when the Environmental Protection Authority has decided to assess a proposal. The Environmental Protection Authority is reducing the number of assessment levels from five to two. Third parties can make submissions on the public environmental review document and have appeal rights against the report and recommendations of the Environmental Protection Authority. The authority will provide for the publication of referral information and the opportunity for public comment on the level of assessment in its revised administration procedures, as well as providing the outcome of its decision to ensure that transparency and accountability are retained. There is also no benefit for the proponent in appealing the level of assessment as the outcome is restricted to increasing it. The minister maintains the power to remit a proposal to the EPA for reconsideration, as well as the power to direct the authority to assess a proposal more fully or more publicly.

The bill removes appeals on the scope and content of a planning scheme assessment, noting that there is no equivalent provision in respect of proposals. Any issue raised by the scope and content is more appropriately addressed via discussions with the responsible authority and is not a matter that needs to be open to appeal.

Strategic assessments have a number of benefits. These include the early consideration of environmental matters, greater certainty to local communities and developers over future development, capacity to achieve better environmental outcomes, allowing cumulative impacts to be addressed at the landscape level, and flexible time frames commencing early in the planning process. The provision for assessment of strategic proposals, inserted

into the EP act in 2003, has, however, been significantly underutilised. This has been to the detriment of the state's decision making and strategic planning, and has led to perverse outcomes such as the late involvement of the commonwealth on matters of national environmental significance. The failure to have an effective strategic assessment process also reduces the likelihood of a commonwealth bilateral agreement.

A proposal can be declared a derived proposal of a strategic proposal that has been assessed by the Environmental Protection Authority under certain conditions. For a proposal to be declared a derived proposal, the EPA must consider that the environmental issues raised by the strategic proposal were adequately assessed, that there is no significant new or additional information that justifies the reassessment of the issues raised by the strategic proposal, and that there has been no significant change in the relevant environmental factors since the strategic proposal was assessed. It is proposed to remove the right of appeal on the declaration by the Environmental Protection Authority that a proposal is a derived proposal. This is intended to streamline the administrative process for declaring a proposal to be a derived proposal and to encourage greater use of strategic assessments. Strategic proposals are subject to the same appeal rights as other proposals, and the notice declaring a proposal to be a derived proposal must be published. The EPA's administrative procedures will state that the reasons for the declaration are to be included in the published notice. These measures should safeguard expectations for accountability and transparency.

With respect to clearing permits, the appeal periods for various clearing permit appeal types were set at 28 days in the 2003 EP act amendments as a result of concern about inadequate mail service in regional areas. As the appeal period does not commence until the applicant has been notified, the appeal period for clearing permit decisions will be reduced from 28 days to 21 days to align with other environmental regulation functions under part V of the EP act. It is noted that the Department of Environment and Conservation sends decisions to refuse an application as registered mail.

Finally, various appeal provisions apply to third parties in respect of refusals, suspensions or revocations that are not used by third parties, as they affect the rights of the applicant or approval holder only, and are therefore unnecessary. The bill will remove third party appeal rights against the refusal to grant a clearing permit, works approval or licence, and the revocation and suspension of a clearing permit, works approval or licence.

Minor and preliminary works: it is an offence for a person to do anything to implement a proposal if the Environmental Protection Authority has set out in the public record its decision that the proposal is to be assessed before a statement allowing its implementation is published. If the EPA consents to minor or preliminary work, this offence does not apply. However, the authority's consent currently does not affect the constraints on decision makers under section 41 of the EP act. This bill removes that constraint when the authority has given consent for minor or preliminary works under section 41A(3) of the EP act. It is recognised that some decisions are incidental or of minor significance to the Minister for Environment's decision after consultation, and that decision-making authorities should not be constrained from making a decision that could have the effect of causing or allowing these minor and preliminary works to be implemented subject to the authority's consent.

The government is confident that these amendments will minimise impediments to efficient environmental impact assessment and environmental regulation without compromising environmental standards and community expectations for transparency and accountability.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.