

***Approval and Related Reforms (No 1) (Environment) Bill 2009***

**EXPLANATORY MEMORANDUM**

**Overview of the Bill**

The Approval and Related Reforms (No 1) (Environment) Bill amends the *Environmental Protection Act 1986* (EP Act) to remove duplicative or unnecessary appeal rights, align appeal periods across regulatory processes and to permit decision making authorities to approve minor and preliminary works to which the Environmental Protection Authority has consented.

**CLAUSE NOTES**

**Part 1 — Preliminary matters**

**Clause 1. Short title**

Clause 1 cites the short title of the Act.

**Clause 2. Commencement**

Clause 2 provides that this Act comes into operation as follows —

- (a) part 1 other than section 3 — on the day on which this Act receives the Royal Assent;  
and
- (c) the rest of the Act — on a day fixed by proclamation and different days may be fixed for different provisions.

**Clause 3. Act amended**

This clause specifies that the amendments are made to the *Environmental Protection Act 1986*.

**Part 2 — Appeals**

**Division 1 - Appeals in respect of proposals**

This division amends appeal provisions that apply to proposals assessed by the Environmental Protection Authority under Part IV.

**Clause 4. Section 45A amended**

This clause removes the requirement for an appeal process to be completed and substitutes a requirement for the Minister to be notified before the declaration that a proposal is a derived proposal can take effect.

### **Clause 5. Section 100 amended**

(1)(a) This sub-clause provides that an appeal right does not apply in respect of the Environmental Protection Authority's decision not to assess a proposal if that decision includes a recommendation that the proposal be dealt with under the clearing permit process.

(1)(b) This sub-clause removes appeal rights on the Environmental Protection Authority's recorded level of assessment where it decides to assess a proposal, and on the content of instructions set out in a public record concerning the scope and content of an environmental review of a planning scheme.

(1)(c) The word "or" is deleted from section 100(1)(e) to reflect the reordered appeal provisions.

(1)(d) This sub-clause removes the right of appeal against the Environmental Protection Authority's decision that a proposal is a derived proposal identified in a strategic proposal assessed under Part IV.

(1)(e) The word "or" is added to section 100(1)(d) to reflect the reordered appeal provisions.

(1A) This sub-clause removes the proponent's right of appeal against the Environmental Protection Authority's decision to refuse a request to declare a referred proposal a derived proposal.

(2) This sub-clause deletes references to appeal provisions that have been removed by clause 5(1).

The heading to amended section 100 is changed to **Lodging of appeals in respect of proposals** to better reflect the scope of appeals under this section.

### **Clause 5A. Section 48F(3)(a) amended**

This clause corrects a previous error. By this amendment section 48F(3)(a) will correctly refer to section 100(3a)(c).

### **Clause 6. Section 101 amended**

(1) This sub-clause deletes cross-references to appeal provisions that have been removed by clause 5(1).

(1A) This sub-clause deletes cross-references to appeal provisions that have been removed by clause 5(1).

(2) This sub-clause deletes the Minister's powers in respect of appeals on the content of instructions set out in a public record under section 100(c) because these are no longer necessary as the appeal provisions have been removed by clause 5(1)(b).

(3) This sub-clause is amended to delete references to redundant appeal rights.

**Clause 7. Section 106 amended**

This clause is amended to delete references to redundant appeal rights.

**Clause 8. Section 107 amended**

This clause is amended to delete references to redundant appeal rights.

## **Division 2 - Appeals in respect of clearing permits**

This division amends appeal provisions that apply to clearing permits decided by the CEO under Part V Division 2.

### **Clause 9. Section 101A amended**

- (1) This sub-clause reduces the period for applicants to appeal the refusal of the CEO to grant a permit or holders to appeal the specification by the CEO of any condition in a permit from within 28 days to within 21 days of being notified. This sub-clause has the effect of reducing the appeal period for third parties as this is specified to be the same period within which the holder can lodge an appeal.
- (2) This sub-clause reduces the period for the holder of a permit to appeal the amendment, revocation or suspension of the permit by the CEO from within 28 days to within 21 days of being notified.
- (3) This sub-clause removes appeal rights for third parties against the refusal, revocation or suspension of a permit.

## **Division 3 - Appeals in respect of works approvals and licences**

This division amends appeal provisions that apply to works approvals and licences decided by the CEO under Part V Division 3.

### **Clause 10. Section 102 amended**

This clause removes appeal rights for third parties against the refusal, revocation or suspension of a works approval or licence.

## **Division 4 — Transitional provisions**

### **Clause 11. Part IX Division 1 heading inserted**

This clause inserts a new divisional heading into Part IX **Division 1 - Transitional provisions for *Environmental Protection Act 1986***.

### **Clause 12. Part IX Division 2 inserted**

This clause inserts a new division into Part IX **Division 2 - Transitional provisions for *Approvals and Related Reforms (No. 1) (Environment Act 2009 Part 2)***.

The new division defines the *Approvals and Related Reforms (No. 1) (Environment Act 2009 Part 2)* as the amended Act.

The division contains transitional arrangements that apply for the purposes of Part 2 to decisions made before the amended Act comes into force.

For appeals in respect of proposals, the transitional provisions provide that the EP Act as in force immediately before the amending Act comes into operation continues to apply in respect of decisions made by the authority before the day the amended Act comes into operation.

For appeals in respect of clearing permits, works approvals and licences, the transitional provisions provide that the EP Act as in force immediately before the amending Act comes into operation continues to apply in respect of decisions made by the CEO before the day the amended Act comes into operation.

### **Part 3 - Decisions about minor or preliminary work that has Authority's consent**

#### **Clause 13. Section 41 amended**

This clause inserts a provision so that the constraints on decision makers which apply under section 41 to prevent a decision that could have the effect of causing or allowing the proposal to be implemented would not apply if decision relates to minor or preliminary work to which the Authority has consented.

#### **Clause 14. Section 51F amended**

This clause inserts a provision so that the constraint on the CEO which applies under section 51F(1) to prevent a decision on a clearing permit application that is related to a proposal which has been referred to the Environmental Protection Authority would not apply if the application relates to minor or preliminary work to which the Authority has consented.

#### **Clause 15. Section 54 amended**

This clause inserts a provision so that the constraint on the CEO which applies under section 54(4) to prevent a decision on a works approval application that is related to a proposal which has been referred to the Environmental Protection Authority would not apply if the application relates to minor or preliminary work to which the Authority has consented.

#### **Clause 16. Section 57 amended**

This clause inserts a provision so that the constraint on the CEO which applies under section 57(4) to prevent a decision on a licence application that is related to a proposal which has been referred to the Environmental Protection Authority would not apply if the application relates to minor or preliminary work to which the Authority has consented.

#### **Clause 17. Part IX Division 3 inserted**

This clause inserts a new division into Part IX **Division 2 - Transitional provisions for Approvals and Related Reforms (No. 1) (Environment Act 2009 Part 3.**

The division species the transitional arrangements that apply to proposals or applications for the purposes of Part 3 referred or made before the amending Act comes into force.

The new division defines the *Approvals and Related Reforms (No. 1) (Environment Act 2009 Part 3* as the amended Act.

The amended Act applies to proposals irrespective of when they were or are referred to the Environmental Protection Authority.

The amended Act applies to applications for clearing permits, works approvals and licences irrespective of when they were or are made to the CEO.