

Environment Court Bill 2019

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon Ms Diane Evers, MLC)

Environment Court Bill 2019

A Bill for

An Act to establish the Environment Court and for incidental and related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Environment Court Act 2019*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

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Part 2 — The Environment Court

Division 1 — Establishment of Environment Court

3. Environment Court established

- (1) A superior court of record to be known as the Environment Court is established.
- (2) The Environment Court shall have and use, as occasion may require, a seal bearing a device and impression of the armorial bearings of the State, with an exergue or label surrounding the same, with the inscription, “The Seal of the Environment Court of Western Australia”, and such other seals as are approved by the Attorney General.

4. Environment Court composition

- (1) The Environment Court consists of —
 - (a) any judge holding office under an appointment made under section 5; and
 - (b) any member holding office under an appointment made under section 6.
- (2) All applications to the Environment Court shall be heard, determined, and disposed of by a single judge in accordance with the provisions of this Act and any rules.
- (3) A single judge shall have and may exercise, with respect to any application properly brought before the court, all the jurisdiction, powers, and authorities of the Environment Court, as the circumstances may require to be exercised.

5. Appointment of judges

- (1) The Governor may appoint an eligible person to be a judge of the Environment Court.

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Part 2 The Environment Court

Division 1 Establishment of Environment Court

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1 (2) A person is eligible for appointment as a judge of the
2 Environment Court if that person is a lawyer and has had not
3 less than 8 years' legal experience.

4 (3) The term for which a person is appointed as a judge is to be
5 fixed in the instrument of appointment and is to be not longer
6 than 5 years.

7 **5A. Appointment of Chief Judge**

8 The Governor shall appoint a judge of the Environment Court as
9 the Chief Judge of the Environment Court.

10 **6. Appointment of members**

11 (1) The Governor may appoint an eligible person to be a member of
12 the Environment Court.

13 (2) A person is eligible for appointment as a member of the
14 Environment Court if in the opinion of the Governor that person
15 has special knowledge of and experience in —

16 (a) the administration of environmental planning; or

17 (b) environmental science or matters relating to the
18 protection of the environment and environmental
19 assessment; or

20 (c) cultural heritage, including Aboriginal heritage; or

21 (d) the management of natural resources or the
22 administration and management of Crown lands; or

23 (e) the administration of local government or town
24 planning.

25 (3) In appointing members, the Governor should ensure, as far as
26 practicable, that the Environment Court is comprised of persons
27 who hold qualifications across the range of areas specified in
28 subsection (2).

29 (4) The term for which a person is appointed as a member is to be
30 fixed in the instrument of appointment and is to be not longer
31 than 5 years.

1 **7. Environment Court jurisdiction**

- 2 (1) The Environment Court shall have the jurisdiction vested in it
3 by or under this or any other Act.
- 4 (2) The Environment Court has jurisdiction to hear and dispose of
5 any application under —
- 6 (a) Part VII of the *Environmental Protection Act 1986*
7 (referred to in this Act as “Class 1” of its jurisdiction);
8 or
- 9 (b) Order 56 of the *Supreme Court Rules 1971* where that
10 application relates to the *Environmental Protection*
11 *Act 1986* (referred to in this Act as “Class 2” of its
12 jurisdiction).
- 13 (3) The Environment Court also has jurisdiction to hear and dispose
14 of any matter not falling within its jurisdiction under any other
15 provision of this Act or under any other Act, being a matter that
16 is ancillary to a matter that falls within its jurisdiction under any
17 other provision of this Act or under any other Act.
- 18 (4) Class 2 of the Environment Court’s jurisdiction shall, in
19 accordance with this Act, be exercised by a judge of the
20 Environment Court.

21 **8. Making of orders**

22 The Environment Court has power, in relation to matters in
23 which it has jurisdiction, to make orders of such kinds,
24 including interlocutory orders, as the Environment Court thinks
25 appropriate.

26 **Division 2 — Business of Environment Court**

27 **9. Arrangement of business**

28 Subject to section 7(4), the Chief Judge is responsible for
29 ensuring the orderly and expeditious discharge of the business
30 of the Environment Court and accordingly may, subject to this
31 Act and to such consultation with the judges and members of

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Part 2 The Environment Court

Division 2 Business of Environment Court

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1 the Environment Court as is appropriate and practicable, make
2 arrangements as to the judge, member or members who is or are
3 to exercise the Environment Court's jurisdiction in particular
4 matters or classes of matters.

5 **10. Sittings**

6 (1) The Environment Court shall sit at such places and times as the
7 Chief Judge may direct.

8 (2) More than one sitting of the Environment Court may be held at
9 the same time.

10 **11. Procedure**

11 (1) In exercising its jurisdiction, the Environment Court shall act
12 according to equity, good conscience and the substantial merits
13 of the case, without regard to technicalities or legal forms, shall
14 not be bound by any rules of evidence and may conduct its
15 inquiries in whatever manner it considers appropriate.

16 (2) Proceedings in the Environment Court shall be by way of
17 rehearing, and fresh evidence or evidence in addition to, or in
18 substitution for, the evidence given on the making of the
19 decision may be given on the application.

20 (3) The Environment Court may, in determining proceedings before
21 it, obtain the assistance of any person having professional or
22 other qualifications relevant to any issue arising for
23 determination in the proceedings and may receive in evidence
24 the certificate of any such person.

25 (4) In exercising its jurisdiction, the Environment Court shall have
26 regard to this or any other relevant Act or instrument, the
27 circumstances of the case and the public interest.

28 **12. Proceedings in open court**

29 All proceedings before the Environment Court shall, unless the
30 Environment Court otherwise orders, be heard in open court.

1 **13. Right of appearance**

2 (1) A person entitled to appear before the Environment Court may
3 appear —

- 4 (a) in person; or
5 (b) by an Australian legal practitioner; or
6 (c) by an agent authorised by the person in writing, where
7 leave is granted by the Court to so appear.

8 (2) In determining whether to grant leave for a person to appear by
9 an agent the Environment Court is to consider —

- 10 (a) whether the agent has provided the person with the
11 information required by the rules; and
12 (b) whether granting leave is in the best interests of the
13 person.

14 (3) Leave granted under this section may —

- 15 (a) be granted subject to conditions, and
16 (b) be revoked at any time for any reason.

17 **14. Rules and forms**

18 (1) The Chief Judge and any two other judges of the Environment
19 Court may make rules for or with respect to —

- 20 (a) the procedure (including the method of pleading) and
21 the practice to be followed in the Environment Court in
22 any proceedings (including the procedure and practice to
23 be followed in the offices of the Court) and any matters
24 incidental to, or relating to, any such procedure or
25 practice, including the manner and time of making any
26 application or appeal which under this or any other Act
27 is to be made to the Environment Court; and
28 (b) the joinder of causes of action, the consolidation of
29 proceedings, and the joinder, misjoinder and non-joinder
30 of parties; and

- 1 (c) the means for, and the practice and procedure to be
2 followed in, the enforcement and execution of decisions,
3 judgments and orders of the Environment Court; and
4 (d) the costs of proceedings in the Environment Court; and
5 (e) all matters that by this Act are required or permitted to
6 be prescribed by rules or that are necessary or
7 convenient to be prescribed by rules for carrying out or
8 giving effect to this Act.
- 9 (2) The Chief Judge —
10 (a) may approve forms for documents to be used in
11 connection with proceedings; and
12 (b) in the case of documents filed with a court, or issued by
13 a court, by means of an electronic system, may approve
14 the format in which such documents are to be filed or
15 issued.
- 16 (3) Copies of the forms approved under subsection (2) are to be
17 made available for public inspection at each registry of the
18 Environment Court and on the Environment Court’s internet
19 website.
- 20 (4) If a form is approved in relation to a document to be used in
21 connection with proceedings, a document that is filed with or
22 issued by the Environment Court is to be in that form.

23 **Division 3 — Appeals**

24 **15. Nature of decisions**

25 Except as provided by section 16, a decision of the Environment
26 Court shall be final and conclusive.

27 **16. Appeals to the Supreme Court**

- 28 (1) A party to an application for review may appeal to the Supreme
29 Court against an order or decision (including an interlocutory
30 order or decision) of the Environment Court on a question of
31 law.

- 1 (2) Where a party to proceedings in Class 2 of the Environment
2 Court's jurisdiction is dissatisfied with an order or decision
3 (including an interlocutory order or decision) of the
4 Environment Court, the party may appeal to the Supreme Court
5 against the order or decision.
- 6 (3) On the hearing of an appeal under subsection (1) or (2), the
7 Supreme Court shall —
- 8 (a) make an order reversing, affirming or amending the
9 order or decision appealed against; or
- 10 (b) remit the matter to the Environment Court for
11 determination by the Environment Court in accordance
12 with the decision of the Supreme Court; or
- 13 (c) make an order directing a rehearing by the Environment
14 Court of the proceedings in respect of which the order or
15 decision appealed against was made; or
- 16 (d) make such other order in relation to the appeal as it
17 thinks fit.
- 18 (4) Despite subsections (1) and (2), an appeal does not lie to the
19 Supreme Court against any of the following orders or decisions
20 of the Environment Court except by leave of the Supreme
21 Court —
- 22 (a) an interlocutory order or decision; or
- 23 (b) an order made with the consent of the parties; or
- 24 (c) an order or decision as to costs.

1 **Part 3 — *Environmental Protection Act 1986* amended**

2 **17. Act amended**

3 This Part amends the *Environmental Protection Act 1986*.

4 **18. Part VII amended**

5 (1) Sections 100-110 of the *Environmental Protection Act 1986* are
6 repealed.

7 (2) After section 99ZB of the *Environmental Protection Act 1986*
8 insert:
9

10 **100. Review of decisions**

11 (1) In this section —
12 *person affected* means —

- 13 (a) in relation to a limited reviewable decision, the
14 applicant for that authority or the person upon
15 whom that order is served or against whom that
16 step is taken or caused to be taken; and
17 (b) in relation to a publicly reviewable decision,
18 any person.

19 *limited reviewable decision* means —

- 20 (a) an order of the Minister served under
21 section 48(4)(b); or
22 (b) a step taken or caused to be taken by the
23 Minister under section 48(4)(c) or (d); or
24 (c) a decision by the CEO to refuse to grant a
25 clearing permit under section 51E; or
26 (d) a decision by the CEO to refuse to grant a
27 works approval under section 54; or
28 (e) a decision by the CEO to refuse to grant a
29 licence under section 57.

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publicly reviewable decision means —

- (a) a decision by the EPA under section 39A to not assess a proposal; or
- (b) the content of, or recommendations in, a report published by the EPA under section 44 in relation to a proposal; or
- (c) the content of, or recommendations in, a report published by the EPA under section 48D in relation to a scheme; or
- (d) any conditions or procedures agreed under section 45(1) (or under section 45(1) as applied by section 46(8)); or
- (e) a decision by the CEO to grant a clearing permit under section 51E; or
- (f) a specification by the CEO of a condition on a clearing permit; or
- (g) a decision by the CEO to amend a clearing permit under section 51K; or
- (h) a decision by the CEO to grant a works approval under section 54; or
- (i) a specification by the CEO of a condition on a works approval; or
- (j) a decision by the CEO to amend a works approval under section 59; or
- (k) a decision by the CEO to grant a licence under section 57; or
- (l) a specification by the CEO of a condition on a licence; or
- (m) a decision by the CEO to amend a licence under section 59.

(2) A person affected by a limited reviewable decision or a publicly reviewable decision may apply to the Environment Court for review of that decision.

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101. Effect of review

The lodging of an application for review under section 100 does not prevent the operation of the relevant decision unless and until the Environment Court so orders.

102. Powers on review

- (1) In determining an application for review, the Environment Court may —
 - (a) dismiss the application; or
 - (b) substitute its own decision for the decision the subject of the application; or
 - (c) remit the decision subject to the application to the original decision-maker, and may make an order under subsection (d) in relation to the decision; or
 - (d) declare the state of the law in relation to the decision the subject of the application.
- (2) In determining an application for review the Environment Court has all of the powers, functions and discretions available to the original decision-maker.

103. Nature of determination

- (1) In determining an application for review, except as provided for in this section, the decision of the Environment Court shall be final and conclusive.
- (2) A party to an application for review may appeal to the Supreme Court against an order or decision (including an interlocutory order or decision) of the Environment Court on a question of law.

