

ENVIRONMENT COURT BILL 2019

INTRODUCED BY
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EXPLANATORY MEMORANDUM

Overview of the Bill

The purpose of the Bill is to establish a new Environment Court to deal with merits and legal review of environmental decision-making, including through amendments to the *Environmental Protection Act 1986* (WA).

Clause 1

This clause contains the title of the Bill.

Clause 2

This clause provides for commencement of the Act.

Sections 1 and 2 come into operation on the day on which the Act receives Royal Assent.

The rest of the Act will come into operation on a day fixed by proclamation. The delay in commencement is to provide a period in which the administrative arrangements for creating the new Environment Court may be made.

Clause 3

This clause provides for the establishment of the Environment Court as a superior court of record.

Clause 4

This clause provides for the Environment Court to be composed of duly appointed judges and members, who are empowered to exercise the jurisdiction of the Court.

Clause 5

This clause provides for the Governor to appoint as judges persons who are lawyers with at least 8 years' legal experience, for terms of up to five years.

Clause 5A

This clause provides for the Governor to appoint a judge to the position of Chief Judge of the Environment Court.

Clause 6

This clause provides for the Governor to appoint as members persons with special knowledge and experience in specific areas relevant to the jurisdiction and business of the Environment Court, for terms of up to five years. These members are to be appointed from a wide range of the areas specified.

Clause 7

This clause provides for the Environment Court to have jurisdiction vested in it by other legislation or the Act itself, being proceedings under Part VII of the *Environmental Protection Act 1986* (WA) and for judicial review relevant to that Act, as well as incidental jurisdiction to deal with other matters which may relevantly arise in those applications. For judicial review applications, this jurisdiction is to be exercised by a judge of the Environment Court, rather than a member.

Clause 8

This clause provides for the Environment Court to make orders it considers appropriate, being not limited to particular kinds of orders.

Clause 9

This clause provides for the Chief Judge to arrange the business of the Environment Court, including through allocation of proceedings between judges and members and ensuring cases are disposed of in an orderly and expeditious manner.

Clause 10

This clause provides for the Environment Court to sit at the Chief Judge's direction.

Clause 11

This clause provides for the Environment Court, as both a merits tribunal and judicial review court, to act according to equity, good conscience and the substantial merits of cases before it, rather than being bound by traditional technicalities and legal forms such as the rules of evidence.

The Environment Court is created to hear applications de novo and therefore may hear fresh evidence which was not before the original decision-maker.

This clause also provides for the Environment Court to seek specialist assistance from duly qualified and experienced experts in areas relevant to proceedings before it.

In determining applications, the Environment Court is explicitly required to consider the public interest, as well as other relevant legislation and its objects.

Clause 12

This clause provides for proceedings to be open to the public.

Clause 13

This clause provides for parties to have a right of appearance before the Environment Court with representation (by a lawyer or another appropriate agent) or without.

Clause 14

This clause provides for rules to be made by the Chief Judge, with other judges of the Environment Court, as to procedure and practice, costs and other matters. The Chief Judge may also approve forms required in proceedings.

Clause 15

This clause provides for decisions of the Environment Court to be final and conclusive.

Clause 16

This clause provides for appeals against decisions of the Environment Court in relation to questions of law or judicial review proceedings to be made to the Supreme Court.

Clause 17

This clause provides that the Act amends the *Environmental Protection Act 1986*, replacing Part VII.

Clause 18

This clause amends Part VII of the *Environmental Protection Act 1986*, replacing the current provisions with new clauses.

Inserted Clause 100

This clause provides for particular matters to be reviewable by either a limited set of persons or the public at large.

Inserted Clause 101

This clause provides for the effect of an application for review being lodged to prevent the operation of the relevant decision only when ordered by the Environment Court.

Inserted Clause 102

This clause provides for the Environment Court to make orders in disposing of an application for review, including providing to the Court all the powers of the original decision-maker.

Inserted Clause 103

This clause provides for the Environment Court's determination of applications to be final and conclusive, appealable only on questions of law.