

WESTERN AUSTRALIA
LEGISLATIVE COUNCIL
AMENDMENTS AND SCHEDULES
Supplementary Notice Paper No. 181
Issue No. 6
WEDNESDAY, 4 NOVEMBER 2020

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2020 [181-1]

When in committee on the *Environmental Protection Amendment Bill 2020*:

Clause 2

Minister for Environment: To move –

18/2 Page 2, lines 4 to 11 — To oppose the clause.

Hon Michael Mischin: To move –

34/2 Page 2, lines 4 to 11 — To oppose the clause.

New Clause 2

Minister for Environment: To move –

19/NC2 Page 2, after line 11 — To insert:

2. Commencement

- (1) This Act comes into operation as follows —
 - (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
 - (b) section 4(3A) — on the later of the following —
 - (i) the day on which the *Planning and Development Amendment Act 2020* section 64 comes into operation;
 - (ii) immediately after section 4(2) comes into operation;
 - (c) section 59 — on the day on which section 83 comes into operation;
 - (d) section 116A — on the day after assent day;

- (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.
- (2) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and Development Amendment Act 2020* section 68(2) comes into operation, the 2nd row in the Table to section 112 —
 - (a) does not come into operation; and
 - (b) is deleted on that day.
- (3) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and Development Amendment Act 2020* section 70 comes into operation, the 4th row in the Table to section 112 —
 - (a) does not come into operation; and
 - (b) is deleted on that day.

Hon Michael Mischin: To move –

35/NC2 Page 2, after line 11 — To insert:

2. Commencement

- (1) This Act comes into operation as follows —
 - (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
 - (b) section 4(3A) — on the later of the following —
 - (i) the day on which the *Planning and Development Amendment Act 2020* section 64 comes into operation;
 - (ii) immediately after section 4(2) comes into operation;
 - (c) section 59 — on the day on which section 83 comes into operation;
 - (d) section 116A — on the day after assent day;
 - (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.
- (2) However —
 - (a) if no day is fixed under subsection (1)(e) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends; or
 - (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on assent day, that provision is repealed on the day after that period ends.
- (3) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and Development Amendment Act 2020* section 68(2) comes into operation, the 2nd row in the Table to section 112 —
 - (a) does not come into operation; and
 - (b) is deleted on that day.
- (4) Despite subsection (1), if section 112 has not come into operation before the day on which the *Planning and Development Amendment Act 2020* section 70 comes into operation, the 4th row in the Table to section 112 —

- (a) does not come into operation; and
- (b) is deleted on that day.

Clause 4

Minister for Environment: To move –

20/4 Page 3, lines 5 to 15 — To delete the lines and insert:

- (1) In section 3(1) delete the definitions of:

bilateral agreement

Chairman

Deputy Chairman

implementation agreement or decision

implementation conditions

proposal

- (1A) In section 3(1) delete the definitions of:

applicant

licensee

prescribed premises

works approval

Minister for Environment: To move –

21/4 Page 5, lines 4 and 5 — To delete the lines.

Minister for Environment: To move –

22/4 Page 6, after line 6 — To insert:

- (2A) In section 3(1) insert in alphabetical order:

prescribed activity means an activity prescribed as a prescribed activity for the purposes of Part V;

Minister for Environment: To move –

23/4 Page 6, after line 31 — To insert:

- (3A) In section 3(1) in the definition of *planning instrument* paragraph (b) delete “section 29 and published in the *Gazette*; or” and insert:

Part 3; or

Clause 15**Hon Robin Chapple:** To move –

42/15 Page 15, after line 20 — To insert:

37C. Aboriginal cultural heritage

- (1) In this section —
Aboriginal cultural heritage matter means a matter for which provision for preservation, protection or management is made under the *Aboriginal Heritage Act 1972* or any Act that replaces that Act.
- (2) In deciding whether to assess a referred proposal, and in assessing a referred proposal, the Authority must consider any Aboriginal cultural heritage matter that is likely to be significantly affected by the implementation of the proposal.
- (3) If, after the assessment of a proposal, the proponent of the proposal becomes aware of an Aboriginal cultural heritage matter that is likely to be significantly affected by the implementation of the proposal, the proponent must give the Authority written notice of the matter.
- (4) If the Authority becomes aware of an Aboriginal cultural heritage matter that is likely to be significantly affected by the implementation of an approved proposal, the Authority must carry out an inquiry under section 46 as to whether or not the implementation conditions relating to the proposal, or any of them, should be amended.
- (5) Section 46 applies to an inquiry under subsection (4) as if the Minister had requested the inquiry under section 46(1).

Hon Dr Steve Thomas: To move –

1/15 Page 20, lines 23 and 24 — To delete the lines and insert:

- (b) if a requisition is issued to the person who referred the proposal and is not complied with within the compliance period — the compliance period;
- (c) if a requisition is issued to a Government Department and is not complied with within the compliance period — 14 days.

Clause 16**Hon Dr Steve Thomas:** To move –

3/16 Page 24, lines 24 to 27 — To delete the lines and insert:

The Authority must keep a public record of each referred proposal, and shall in that public record set out —

- (a) whether or not that proposal is to be assessed under this Part; and
- (b) if the proposal is to be assessed under this Part, the level of assessment.

Clause 18**Hon Dr Steve Thomas:** To move –**4/18** Page 25, after line 1 — To insert:

(1) After section 40(3) insert:

- (3a) The Authority shall provide an indicative outline of the timing of any environmental review as determined under section 40(3) to the proponent of a referred proposal and the Minister as soon as is reasonably practicable.

Minister for Environment: To move –**24/18** Page 25, after line 1 — To insert:

(1A) In section 40(3) delete “subsection (2)(b).” and insert:

subsection (2)(b) and publish an indicative outline of the timing of the environmental review.

Clause 27**Hon Dr Steve Thomas:** To move –**5/27** Page 32, lines 2 to 5 — To delete the lines and insert:

(1) Delete section 44(1) and insert:

- (1) If the Authority assess a proposal, it must prepare a report on the outcome of its assessment of the proposal and give the report (the *assessment report*) to the Minister within one calendar year of the date of the Authority giving written notice of its decision to assess the proposal under section 39A(3).
- (1a) If the Authority is unable to complete its assessment in the time period stipulated in section 44(1), it may seek in writing an extension of time from the Minister.
- (1b) If the Minister grants in writing the extension of time sought by the Authority under section 44(1a), the Minister must —
- (a) give notice to the person who submitted the proposal; and
 - (b) cause the written notice of that extension to be published.

Clause 28**Minister for Environment:** To move –**25/28** Page 33, lines 25 to 27 — To delete the lines and insert:

under section 45(2).

Minister for Environment: To move –

26/28 Page 33, line 34 to page 34, line 3 — To delete “has a role, or have roles, in making major decisions in relation to matters in the proposal that may have significant effects on the environment.” and insert:

the Minister considers to be a key decision-making authority.

Hon Dr Steve Thomas: To move –

6/28 Page 34, line 17 — To insert after “must”:

within 60 days of receiving a report from the Authority under section 44(1) of this Act

Hon Dr Steve Thomas: To move –

7/28 Page 34, line 24 — To insert after “must”:

within 60 days of receiving a report from the Authority under section 44(1) of this Act

Hon Dr Steve Thomas: To move –

8/28 Page 35, line 4 — To delete “must — ” and insert:

must within 30 days of the agreement or decision being made —

Hon Dr Steve Thomas: To move –

9/28 Page 36, line 29 — To insert after “must”:

within 30 days of the agreement or decision being made

Hon Dr Steve Thomas: To move –

2/28 Page 37, lines 23 and 24 — To delete “on the environment;” and insert:

that cause material environmental harm or serious environmental harm;

Clause 31

Minister for Environment: To move –

27/31 Page 47, line 10 — To insert after “Minister”:

and the proponent of the proposal

Hon Dr Steve Thomas: To move –

10/31 Page 47, line 12 — To delete “with.” and insert:

- with; and
- (c) the CEO gives the proponent of the proposal written notice of their advice to the Minister under section 47A(2)(b).

Clause 32

Minister for Environment: To move –

37/32 Page 51, line 28 — To delete “prescribing” and insert:

prescribing, or providing for the determination of,

Clause 34

Hon Dr Steve Thomas: To move –

11/34 Page 53, lines 12 and 13 — To delete the lines and insert:

- (b) if a requisition is issued to the person who referred the proposal and is not complied with within the compliance period — the compliance period;
- (c) if a requisition is issued to a Government Department and is not complied with within the compliance period — 14 days.

Clause 44

Hon Dr Steve Thomas: To move –

12/44 Page 59, lines 21 to 28 — To delete the lines and insert:

51B. Registration of an environmentally sensitive area by regulation

- (1) Regulations may declare as an environmentally sensitive area for the purposes of this Part —
 - (a) an area of the State specified in the regulations; or
 - (b) an area of the State of a class specified in the regulations.
- (2) Before a regulation is declared under this section, the CEO must —
 - (a) notify each owner or occupier of the land to which the environmentally sensitive area would relate of their intention to declare by regulation an environmentally sensitive area; and
 - (b) take into account any comments received from any owner or occupier of the land to which the environmentally sensitive area would relate.
- (3) The CEO must deliver a memorial of an environmentally sensitive area to the relevant land registration officer.
- (4) The memorial must be in a form approved by the relevant land registration officer.

- (5) The relevant land registration officer must register the memorial and accordingly endorse or note the appropriate register or record in respect of the land to which the environmentally sensitive area declaration applies.

Minister for Environment: To move –

36/44 Page 59, after line 28 — To insert:

- (2) Before regulations are made declaring an area of the State as an environmentally sensitive area for the purposes of this Part —
- (a) the CEO must, in a prescribed manner, notify each owner or occupier of land in that area of the State of the proposed regulations and invite comments about the proposed regulations to be made within the period specified in the notification; and
 - (b) the Minister must take into account any comments about the proposed regulations made by an owner or occupier of land in that area of the State pursuant to an invitation under paragraph (a).
- (3) Subsection (1) does not apply to regulations proposing to declare an area of the State as an environmentally sensitive area if a declaration of that area as an environmentally sensitive area already has effect under section 133B(2) or subsection (1).
- (4) The CEO must notify the agency (as defined in the *Public Sector Management Act 1994* section 3(1)) principally assisting the Minister administering the *Transfer of Land Act 1893* in its administration of the declaration or amendment of an environmentally sensitive area with a view to that agency including information as to the environmentally sensitive area in information disseminated by it as to property interests in land.

Hon Rick Mazza: To move –

That the Legislative Assembly be requested to make the following amendment:

17/44 Page 59, after line 28 — To insert:

51BA. Persons affected by declaration entitled to compensation

- (1) A person who suffers loss or damage as a result of a declaration made under section 51B is entitled to make an application to the CEO for compensation for the loss or damage.
- (2) The application must be made in the form and in the manner approved by the CEO and must state —
- (a) the details of the person's loss or damage; and
 - (b) the amount of compensation claimed and the grounds for the amount claimed.
- (3) If an application is made under subsection (1), the CEO must determine whether or not compensation should be paid to the person.
- (4) The amount of compensation payable is to be determined by agreement between the person applying for that compensation and the CEO or, in default of any such

agreement, by the Magistrates Court on the application of the person so applying or of the CEO.

Clause 60

Minister for Environment: To move –

38/60 Page 82, line 18 — To insert after “licence”:

and payment of the application fee prescribed by or determined under the regulations,

Minister for Environment: To move –

39/60 Page 84, line 3 — To insert after “licence”:

and payment of the application fee prescribed by or determined under the regulations,

Minister for Environment: To move –

40/60 Page 89, line 12 — To insert after “application”:

and payment of the application fee prescribed by or determined under the regulations,

Minister for Environment: To move –

41/60 Page 90, line 5 — To insert after “licence”:

and payment of the application fee prescribed by or determined under the regulations,

Clause 71

Hon Dr Steve Thomas: To move –

13/71 Page 111, line 20 — To delete “may” and insert:

must

New Clause 98A

Hon Dr Steve Thomas: To move –

14/NC98 Page 145, after line 27 — To insert:

98A. Section 122 amended

(1) In section 122(1) delete “may” and insert:

must

(2) In section 122(1)(a) delete “assessment;” and insert:

assessment, including reasonable timelines for the stages in progress;

Clause 104

Minister for Environment: To move –

28/104 Page 165, lines 14 to 16 — To delete the lines and insert:

(3) In Schedule 1 Part 2 Division 1 insert in alphanumerical order:

2	53A(1)	\$62 500	\$12 500
3	53B(1)	\$62 500	\$12 500
4	62	\$62 500	\$12 500
5	63(3)	\$62 500	\$12 500

(4) In Schedule 1 Part 2 Division 1 insert in alphanumerical order:

11B	86O(1)	\$62 500	\$12 500
11C	86P(2)	\$62 500	\$12 500

Clause 105

Minister for Environment: To move –

29/105 Page 166, lines 3 to 5 — To delete the lines and insert:

(3) In Schedule 1 Part 2 Division 2 insert in alphanumerical order:

2	53A(1)	\$125 000	\$25 000
3	53B(1)	\$125 000	\$25 000
4	62	\$125 000	\$25 000
5	63(3)	\$125 000	\$25 000

(4) In Schedule 1 Part 2 Division 2 insert in alphanumerical order:

11B	86O(1)	\$125 000	\$25 000
11C	86P(2)	\$125 000	\$25 000

Clause 108**Minister for Environment:** To move –**30/108** Page 167, after line 15 — To insert:

(1A) In Schedule 2 item 1 insert in alphabetical order:

fee includes charge;**Minister for Environment:** To move –**31/108** Page 168, after line 5 — To insert:

(3A) In Schedule 2 item 2A:

(a) in paragraph (b) delete “regulations.” and insert:

regulations;

(b) after paragraph (b) insert:

(c) prescribing fees that are payable before or when the authorisation is amended, transferred or surrendered.

Minister for Environment: To move –**32/108** Page 169, after line 5 — To insert:

36C. Specifying timelines for steps in processes contained in Part V.

Hon Dr Steve Thomas: To move –**15/108** Page 169, after line 10 — To insert:

(10) After Schedule 2 item 37 insert:

38. The specifying of timelines for steps in processes contained in Part V.

Clause 110**Hon Dr Steve Thomas:** To move –**16/110** Page 171, after line 13 — To insert:

17. Clearing that —

(a) is done to minimise the risk of flames contacting a private dwelling-house;
and

- (b) is not more than 25 metres from the private dwelling-house; and
- (c) is done in a way that limits damage to neighbouring native vegetation.

Clause 116A

Minister for Environment: To move –

33/NC116 Page 180, after line 11 — To insert:

116A. *Planning and Development Amendment Act 2020* amended

- (1) In this section —

section 71 means the *Planning and Development Amendment Act 2020* section 71.

- (2) Despite the *Planning and Development Amendment Act 2020* section 2, if section 71 has not come into operation before the day on which section 55(1) of this Act comes into operation, section 71 —
 - (a) does not come into operation; and
 - (b) is deleted on that day.

