RESPONSE OF THE WESTERN AUSTRALIAN GOVERNMENT

TO THE

WESTERN AUSTRALIAN LEGISLATIVE COUNCIL

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

REPORT 48

IN RELATION TO THE

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

AUGUST 2010

GOVERNMENT OF
WESTERN AUSTRALIA

STRUCTURE OF THE RESPONSE

GLOSSARY

DEC	Department of Environment and Conservation
EIA	environmental impact assessment
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999* (Cth)
EP Act	*Environmental Protection Act 1986*
EPA	Environmental Protection Authority
OEPA	Office of the Environmental Protection Authority

1.0 INTRODUCTION

The Approvals and Related Reforms (No. 1) (Environment) Bill 2009 was introduced to the Legislative Council on 19 November 2009.

The Bill was referred to the Legislative Council Standing Committee on Uniform Legislation and Statutes Review on the basis that it is intended to give effect to various COAG and Ministerial Council intergovernmental agreements on the environment (Standing Order 230A(1)(a)).

The Committee published its report on the Bill on 28 April 2010 and the report was tabled on 4 May 2010.

This Government response addresses the findings generally and provides a specific response to each recommendation made by the Committee.

The Committee's final report contains 48 findings and 21 recommendations addressing a range of issues, with particular focus on:

- the Bill as uniform legislation;
- the scope and rationale of the proposed amendments; and
- the relationship between the proposed amendments and the EPA's administrative procedures and the bilateral agreement under the EPBC Act between the Western Australian and Australian Governments.

2.0 BACKGROUND

The Government is implementing reforms to both improve environmental outcomes and ensure processes are efficient and effective.

The Approvals and Related Reforms (No. 1) (Environment) Bill 2009 is one of a suite of legislative changes contained in four separate Bills which implement approvals reform.

The process has been overseen by a Ministerial Taskforce on Approvals, Development and Sustainability supported by a Directors General group, which also includes the Chairman of the Environmental Protection Authority (EPA).

The Bill amends the EP Act as follows through:

1. Removal of appeal rights against:
   - the EPA's decision not to assess a proposal where it provides advice that it can be managed under Part V Division 2 (clearing of native vegetation),
   - the recorded level of assessment of a proposal,
   - the scope and content of an assessment of a scheme,
   - the declaration by the EPA that a proposal is a derived proposal,
   - the refusal to grant a clearing permit, works approval or licence by a third party, and
   - the revocation and suspension of a clearing permit, works approval or licence by a third party.

2. Alignment of appeal periods to 21 days for:
   - the period in which an applicant can appeal against the grant of a clearing permit, and

- the period in which an applicant and a third party may appeal against the specification of any condition of a clearing permit.

3. Removal of the constraint against decision making authorities under sections 41(2), 41(3), 51F, 54 and 57 of the EP Act where the EPA has given consent for minor or preliminary works under s.41A(3).

3.0 RESPONSE TO FINDINGS

3.1 The Bill as Uniform Legislation

Relevant findings: Numbers 5 and 6

The Intergovernmental Agreement on the Environment (IGAE), signed on 1 May 1992, was an agreement of the Commonwealth, State and Territory governments to work cooperatively towards improving intergovernmental management of the environment. It sets out broad statements regarding the responsibilities and interests of all three levels of government, (national, State and local) and general principles to guide environmental policy. It also included schedules detailing agreements on more specific areas: data collection and handling, land use and approval procedures, environmental impact assessment, national environment protection measures, climate change, biological diversity and the national estate. The goals of the IGAE are to secure protection of the environment through a 'co-operative national approach' in a spirit of 'co-operative federalism'.

Schedule 3 is relevant to environmental impact assessment legislation. Clause 3 of Schedule 3 sets out the principles on which environmental impact assessment processes are to be based. Western Australia's environmental impact assessment processes under the EP Act were compliant at the time of signing of the IGAE agreement in 1992, and thus there was no need to introduce any new provisions.

The EPBC Act gave form to many of the outcomes of both the Council of Australian Governments Heads of Agreement (1997) and the IGAE, including the concept of ecologically sustainable development, and the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity, and improved valuation, pricing and incentive mechanisms. The EP Act was amended in 2003 to similarly include some of these principles as part of the Act's object.

The IGAE, to the extent that it imposed requirements for standards for environmental impact assessment, has been overtaken by the EPBC Act and the bilateral agreement between the Australian and Western Australian Governments in relation to proposals impacting on matters of national environmental significance. The underlying nationally agreed principles have not altered, nor is the Bill inconsistent with these.

3.2 Administrative procedures and bilateral agreement

Relevant findings: Numbers 1, 2, 3, 4, 17, 18, 31, 32 and 38

Administrative procedures are developed by the EPA under section 122 of the EP Act for the purpose of establishing the principles and practices of environmental impact assessment. The current administrative procedures were published in the *Gazette* in 2002.

The EPBC Act provides for assessment of actions that are likely to have a significant impact on a matter of national environmental significance. The EPBC Act is premised on cooperative arrangements between the Commonwealth and state and territory governments, which are given effect through bilateral agreements and case-by-case accreditation of assessment processes that meet benchmark standards.

The Australian and Western Australian Governments signed a bilateral agreement in 2002, which was amended in 2007 following its five year statutory review. The current bilateral agreement applies to proposals assessed at a public level of assessment (environmental review and management program and public environmental review) but not to the "non-public" levels of assessment.

The administrative procedures are being revised primarily to implement the outcomes of the EIA review which was done in consultation with the EPA's Stakeholder Reference Group. The Group has broad representation from industry, developers, the conservation sector, universities, State and local government. The revised draft administrative procedures were publicly released on 29 March 2010.

The EPA revision of its administrative procedures, in particular the reduction in the number of levels of assessment from five to two, has triggered a review of Western Australia's bilateral agreement.

If necessary, interim arrangements for case-by-case accreditation of assessment of proposals can be put in place with the Australian Government to deal with any matters that might arise before a new bilateral agreement is signed.

3.4 Appeals in relation to Part IV of the EP Act

Relevant findings: Numbers 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 45 and 46

General

The Government is committed to the principles of transparent decision making and the public's participation throughout the environmental impact assessment process whilst facilitating an administratively more efficient appeal regime. Under this legislation, rights of appeal will remain on the decision of the EPA not to assess a proposal, other than where the EPA's decision recommends that the proposal be dealt with under a clearing permit, and on its report and recommendations to the Minister for Environment under section 44 of the EP Act.

The Government is of the view that the appeal rights that the Bill seeks to remove are not essential to achieving the principles of transparent decision making and the public's participation throughout the environmental impact assessment process. The Government is of the view that the EPA's administrative processes will provide for alternative ways for the community to contribute to and influence decision-making, whilst improving the timeliness of the environmental impact assessment process.

The sections below provide information in relation to the appeal rights which are to be removed. Data on the timeframes to deal with these appeals are also given, noting that appeals may take less or more time than average to resolve for a number of reasons, including the seeking of additional information from a proponent, delays in receiving advice from the EPA or other decision making authorities under section 106 of the EP Act; the number of appellants; and the complexity of issues raised.

It is also noted that no other jurisdiction in Australia has third party appeal rights against the decision on whether to assess a proposal (or on the level of assessment that is set as a result). The Commonwealth provides for a third party to request that the Minister reconsider his decision as to whether an action is a controlled action, but only where there is substantial new information or substantial change to the proposal.

Decision not to assess where the EPA records that the proposal may be managed under Part V Division 2 of the EP Act (clearing permit)

Applications to clear native vegetation and the CEO's decision are advertised in The West Australian newspaper. Records of applications and decisions are maintained on a publicly available website as required under section 51Q of the Act.

The CEO, in making a decision about a clearing permit application under section 51O, must have regard to the clearing principles contained in Schedule 5 of the EP Act so far as they are relevant to the matter under consideration. These clearing principles address all the environmental values of native vegetation, including biodiversity, water quality and land degradation issues.

Section 51O requires that the CEO shall also have regard to planning instruments or any other matter that the CEO considers relevant. Planning instruments include a scheme or a strategy, policy or plan made or adopted under a scheme; a statement of planning policy approved under section 29 of the *Planning and Development Act 2005*; or a local planning strategy made under the Planning and Development Act 2005. The CEO is also required under section 51P(1) to ensure that a clearing permit is consistent with any approved environmental protection policy.

Information available on DEC's website includes the decision report containing an assessment in accordance with section 51O, as well as the application and any permit granted. Therefore, the applicant and community have access to the basis and outcome of the CEO's decision on an application.

Appeal rights on clearing permits are contained in section 101A of the EP 1986. Comprehensive appeal rights (including third party appeal rights) exist on the decision to grant or to refuse to grant a permit or undertaking, the specifications of a permit or undertaking, or the amendment, revocation or suspension of a permit.

The requirement for a clearing permit arises from section 51C of the EP Act and the EPA cannot, by virtue of its advice or recommendation, alter this requirement or direct the proponent to make application for a permit. The EPA therefore has discretion to include the recommendation that the proposal be dealt with under Part V Division 2 (and therefore that the right of appeal on its decision be removed) as its decision not to include such a recommendation would not affect the requirement for a clearing permit.

Data are available from 2005 onwards, as the records maintained by the Office of the Appeals Convenor do not differentiate between "not assessed" and level of assessment appeals data before that time. The number of appeals on the EPA's decision not to assess a significant proposal, with those for which the EPA made a recommendation that the proposal be managed under Part V Division 2 in brackets following, was 21 for 2005 (3), 31 for 2006 (7), 19 for 2007 (6), 12 for 2008 (2) and 19 for 2009 (9). Only one of these appeals (in 2007) resulted in the Minister's decision to require the EPA to assess the proposal.

Level of assessment

The removal of the appeal on level of assessment only applies to those proposals being assessed by the EPA. In addition, appeal rights remain on the EPA's assessment report and recommendations. The EPA's decision on whether to make the level of assessment public or non-public takes into consideration both environmental and public interest factors. The provision of a seven 7 day public submission period before the EPA makes a decision on whether to assess a proposal and if so the level of assessment will assist the EPA in identifying the relevant environmental issues and gauging the level of public interest.

Section 39(1)(b) requires the EPA's decision to assess a proposal and its level of assessment to be set out in a public record. It is this recorded decision on the level of assessment that is the subject of the appeal right under section 100(1)(c). Section 40(3) provides that, subject to any direction made by the Minister under section 43, the EPA shall determine the form, content, timing and procedure of any environmental review. This is analogous to the content of instructions concerning the scope and content of an environmental review of a scheme under section 48C(1)(a). There are no appeal rights on the EPA's determination under section 40(3).

Following the EPA's decision to assess a proposal and the level of assessment that is to apply, the EPA prepares an environmental scoping document, which establishes in detail the form, content, timing and procedure of the environmental review to be undertaken by the proponent to inform the EPA's environmental impact assessment of the proposal and report to the EPA as required under section 40(3). The EPA in signing off on the environmental scoping documents also consults with other relevant agencies and individuals with expertise to obtain advice on the range of relevant issues that should be addressed. Accordingly, an appeal against the level of assessment does not afford the appellant the opportunity to appeal the form, content, timing and procedure of the environmental review. These are matters on which the public would have an opportunity to provide input when either commenting on the proponent's published environmental review (e.g. the scope and timing of the fauna surveys are inadequate) or when the EPA publishes its report under section 44 of the EP Act (e.g. by way of appeal to the Minister that the assessment is flawed because the fauna surveys were inadequate).

Data are available from 2005 onwards, as the records maintained by the Office of the Appeals Convenor do not differentiate between "not assessed" and level of assessment appeals data before that time. The removal of this appeal right will reduce overall timeframes for the Minister's implementation decision. Importantly, of the total of 59 appeals on level of assessment since 2005 when these data were maintained, only 3 resulted in a higher level of assessment. The average time taken to resolve "level of assessment" appeals has been 81 days in 2005 (14 appeals), 170 days in 2006 (18 appeals), 149 days in 2007 (12 appeals), 121 days in 2008 (7 appeals) and 106 days in 2009 (8 appeals).

Content of instructions in record under s. 48B(1)

Every scheme or scheme amendment, whether it relates to a large area, multiple rezonings or changing the use of a single property, must be referred to the EPA by the responsible authority.

Once a scheme or amendment to a scheme is referred to the EPA, it is either assessed formally or defined as being assessed for the purposes of Part IV if it did not require formal assessment (see definition of assessed scheme under section 3 of the EP Act).

If the EPA determines that a scheme is to be assessed, it is to inform the responsible authority of that decision and to issue instructions in relation to the scope and content of the environmental review that the responsible authority is required to undertake (sections 48A(1)(b) and 48C read together).

There have been few appeals on the scope and content of a planning scheme assessment (eight appeals in 10 years). The EPA is enhancing its consultation procedures with responsible authorities to ensure any matters are resolved before the instructions are issued. It is noted that such consultation would not preclude the commencement of the assessment.

The time taken to resolve any appeal on the instructions may be several months. The average time taken for a determination of an appeal on the content of instructions for scheme assessments and the number of appeals was around 101 days in 2001 (one appeal), 285 days in 2007 (3 appeals), 201 in 2008 (2 appeals) and 107 in 2009 (2 appeals). There were not appeals in other years.

In relation to a proposal under an assessed scheme that appears likely, if implemented, to have a significant effect on the environment, section 48I of the EP Act provides that the responsible authority must determine whether the environmental issues raised by that proposal were assessed in any assessment of the assessed scheme and whether the proposal complies with the assessed scheme and any conditions of implementation of the assessed scheme. If any of the environmental issues raised by the proposal were not assessed or the proposal does not comply with the assessed scheme, the responsible authority must refer the proposal to the EPA under section 38 or refuse to approve the implementation of the proposal.

Recorded declaration under 39B

Under section 37B(2) of the EP Act a proposal is a "strategic proposal" if and to the extent which it identifies: (a) a future proposal that will be a significant proposal; or (b) future proposals likely, if implemented in combination with each other, to have a significant impact on the environment. The assessment processes under Part IV Division 1 apply to a strategic proposal. This includes the levels of assessment listed in the administrative procedures and appeal rights on the decision on whether to assess, as well as the report and recommendations of the EPA. The EPA has advised that it considers that strategic proposals would normally be assessed at a public level of assessment. Generally only the proponent can refer a strategic proposal to the EPA.

To the extent that the assessment of a strategic proposal is done in accordance with the terms of Western Australia's bilateral agreement, the bilateral agreement would apply. Alternatively, the Commonwealth may accredit the assessment of a strategic proposal on a case-by-case basis as provided by Part 4 Division 2 of the EPBC Act.

The term "strategic assessment" has been used to refer to the process of environmental impact assessment of a strategic proposal. The EPA is called upon to assess, in advance of a future proposal being implemented, the likely environmental impacts if and when that future proposal is implemented. The environmental impact assessment of a strategic proposal is an opportunity for the EPA to look at a larger area before any development begins to identify which areas can be developed and which areas need to be conserved. The environmental impact assessment of strategic proposals was introduced in response to a call for more guidance on environmental matters at a strategic level.

The term "strategic assessment" is not a defined term under the EP Act or administrative procedures and it is not a level of assessment.

The statement given by the Minister for Environment setting out the implementation agreement or decision in relation to the implementation of a strategic proposal will have a time limit (as do all implementation agreements). This may be for longer than the standard five year limit that applies to ordinary proposals. The duration would depend on the nature of the strategic proposal. Despite any time limit that is given in relation to an authorisation, the test under section 39B(4) would continue to apply to ensure that new significant relevant information or environmental factors that applied were taken into account in a decision in relation to whether a referred proposal was a derived proposal.

A proponent wishing to implement a proposal, which was part of a future proposal assessed at the time the strategic proposal was assessed, may, when referring that proposal to the EPA, request that it be declared to be a derived proposal. This request is made as part of the referral under section 38. Under the draft administrative procedures, the EPA will publish this request and seek public submissions on whether or not the proposal should be declared as a derived proposal.

Section 39B(4) outlines the EPA's considerations for determining whether a referred proposal should be declared to be a derived proposal. These include whether the environmental issues raised by the referred proposal were adequately assessed when the strategic proposal was assessed; whether there is significant new or additional information that justifies the reassessment of the issues raised by the proposal or if there has been a significant change in the relevant environmental factors since the strategic proposal was assessed. In addition, any public submissions received will be taken into account.

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.

3.5 Appeals in relation to Clearing Permits, Works Approvals and Licences

Relevant findings: Numbers 40, 47 and 48

The Committee's finding that appeal rights conferred by sections 102(1), (3) and (4) are narrower than that under section 100(1)(a) refers in error to the provisions of the EP Act that relate to the appeals on works approvals and licences. These do not include a third party right of appeal on the decision to grant a works approval or licence. Appeals on clearing permits are provided for under section 101A. Appeals for applicants, permit holders and third parties can be made on the decision on whether to either grant or refuse a clearing permit application, any conditions that are applied to or any amendment made on a clearing permit, and a decision to revoke or suspend a clearing permit. The appeal right under section 100(1)(a) is restricted to whether or not the EPA should assess a referred proposal.

3.6.1 Minor and Preliminary Works Consented to by the EPA

The Committee made no findings in respect of this amendment.

4.0 SPECIFIC RESPONSES TO RECOMMENDATIONS

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
Recommendation 1: The Committee recommends that the Minister for Environment identify the provision of the EP Act (or other legislation) conferring power on the Minister to remit a proposal to the EPA for "*reconsideration*" as to: whether it should assess the proposal notwithstanding its recommendation that the proposal be dealt with pursuant to Part V, Division 2 of the EP Act; and the level of assessment of a proposal.	Section 43 of the EP Act provides that the Minister may direct the EPA to assess, or reassess a proposal more fully or more publicly when either the EPA has considered that a proposal should not be assessed by it, or during or after the assessment (but before a statement issued under section 45). While the nature of the direction is ultimately a matter for the Minister, such a direction can not be given until the Minister has consulted with the EPA. This consultation affords the EPA an opportunity to reconsider the matter and may also assist in forming the scope of the direction. In dealing with an appeal against the EPA's decision as to the level of assessment, the Minister may remit the proposal to the EPA for the making of a decision or a fresh decision on the level of assessment. In such circumstances, the ultimate decision is made by the EPA and not the Minister. The Government's Bill removes the appeal right against the level of assessment because the Minister, in determining the appeal, cannot direct the EPA to set a lower level of assessment (or make a decision not to assess the proposal), such appeals by proponents are rare and even more rarely successful, and there are other avenues to correct a decision where the EPA agrees with the proponent that an error was made. It is noted that there is no equivalent appeal right in other Australian jurisdictions.	Minister for Environment	Completed
Recommendation 2: The Committee recommends that the Minister for Environment clarify for the Legislative Council: that "*strategic environmental assessment*" is a "*level of assessment*" for the purposes of section 100(1)(b) of the *EP Act*; if not,	"Strategic environmental assessment" is neither a legal concept in the EP Act nor a level of assessment in the current or draft administrative procedures. It is acknowledged that the term "strategic assessment" has been used to refer to the assessment of a strategic proposal.	Minister for Environment	During debate on the Bill

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
the relationship between designating a proposal referred to the EPA pursuant to section 38 of the *EP Act* as one that will be subject to "*strategic environmental assessment*" and section 39(1)(b) of the *EP Act*; whether the SEA level of assessment falls within the accredited assessment processes of the Bilateral IGA (and has been accredited by the Commonwealth government).	The distinctions between scheme assessments and strategic proposals are a matter of law, and are not drawn by the EPA. "Strategic proposal" is defined in section 37B(2) of the EP Act. A proposal is a "strategic proposal" if and to the extent which it identifies: (a) a future proposal that will be a significant proposal; or (b) future proposals likely, if implemented in combination with each other, to have a significant impact on the environment. The assessment processes under Part IV Division 1 of the EP Act for referral and assessment of proposals also apply to strategic proposals. In addition, the levels of assessment listed in the administrative procedures and appeal rights on the decision on whether to assess, as well as the report and recommendations of the EPA also apply to strategic proposals. To the extent that the assessment of a strategic proposal is done in accordance with the terms of Western Australia's bilateral agreement, the procedures of the bilateral agreement would apply. Alternatively, the Commonwealth may accredit the assessment of a strategic proposal on a case-by-case basis as provided by Part 4 Division 2 of the EPBC Act.		
Recommendation 3: The Committee recommends that the Minister for Environment identify for the Legislative Council the type of mining tenements and petroleum titles that are referred to the EPA for assessment under Part IV of the EP Act and those that undergo environmental impact assessment by the DMP.	The DMP deals with environmental matters under the *Mining Act 1978* and the various Petroleum Acts. It does not undertake environmental impact assessment within the meaning of Part IV of the EP Act. Under section 38(5) of the EP Act, a decision-making authority is to refer a proposal that is likely to have a significant effect on the environment to the EPA. Therefore any mining or petroleum proposal for which the DMP is a decision-maker, and which is a significant proposal, must be referred to the EPA for a decision on whether they are to be assessed under	Minister for Environment	During debate on the Bill

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
	Part IV of the EP Act. There is a memorandum of understanding between the EPA and the DMP to provide guidance as to where impacts are likely to be significant and therefore trigger the requirement for referral.		
Recommendation 4: The Committee recommends that the Minister for Environment: identify for the Legislative Council the type of mining tenements and petroleum titles in respect of which applications for permits to clear native vegetation are dealt with by the DMP pursuant to a Memorandum of Understanding between that Department and the Department of Conservation and Environment; and confirm if clause 5(1)(a) of the Bill will have the effect that there will be no appeal against the EPA's decision not to assess a proposal where there is a recommendation that the proposal be dealt with under Part V, Division 2 where, in fact, the decision on the clearing permit application will be made by the DMP.	There is a delegation made under section 20 of the Act of a number of the CEO's powers in respect of Part V Division 2 to the Director General, and separately to the office of the Director, Environment in the Department of Mines and Petroleum. The delegation applies to clearing done as a result of mining and petroleum activities done under the authority of the Mining Act and various Petroleum Acts, or a government agreement administered by the Department of State Development. Under the delegation, the DMP administers the clearing provisions in accordance with the requirements of the Act, and decisions are made according to the same principles and rules as those of the CEO. Records are maintained in the same database management system and accessed from the Department of Environment and Conservation's website. The same appeal rights apply as to decisions made by the CEO of DEC, and appeals are administered by the Office of the Appeals Convenor and decisions on appeals made by the Minister for Environment. The EPA is aware of the delegation. The EPA would continue to make its decision as to whether or not to assess a proposal or recommend that it be dealt with under Part V Division 2 on the merits of each case.	Minister for Environment	During debate on the Bill
Recommendation 5: The Committee recommends that the Minister for Environment provide the Legislative Council with an explanation as to why deletion of the right to appeal against the EPA's	Under clause 2 of Schedule 6 of the EP Act, clearing in accordance with an implementation agreement or decision made by Minister under section 45 is an exemption from the requirement for a clearing permit. In other words, the EP Act	Minister for Environment	During debate on the Bill

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
decision not to assess a proposal does not include the circumstance where the EPA makes a recommendation that the proposal be dealt with under Part 5, Division 3 (*Prescribed premises, works approvals and licences*) of the EP Act.	envisages that clearing will either be dealt with under the environmental impact process under Part IV or under the clearing permit process under Part V. In the case of works approvals and licences, there is no such exemption and activities relating to prescribed premises may require both Ministerial consent under section 45 and a works approval and licence under Part V Division 3 of the EP Act. In addition, there are no appeal rights against the grant of a works approval or licence, as appeal rights attach only to the conditions of the works approval/licence or refusal. Therefore the range of appeal rights is not as broad as those that apply for a clearing permit.		
Recommendation 6: The Committee recommends that consideration of the Bill be deferred until: a replacement bilateral intergovernmental agreement has been entered into between the State and the Commonwealth; and: the EPA's proposed administrative procedures have been gazetted pursuant to section 122 of the EP Act, in order that the Bill can be considered in its final context.	The Government does not consider that there is any relationship between the Bill and the bilateral agreement and therefore does not support this recommendation.	Not applicable	Not applicable
Recommendation 7: The Committee recommends that the Minister for Environment advise the Legislative Council whether the EPA's proposed administrative procedures made pursuant to section 122 of the EP Act will apply to any mining proposal assessed by the DMP.	The administrative procedures do not apply to DMP. DMP's assessment under the *Mining Act 1978* is unaffected by any provisions of this Bill which amends only the Environmental Protection Act.	Minister for Environment	During debate on the Bill
Recommendation 8: The Committee recommends that the Minister for Environment provide the Legislative Council with the Executive's remedy in respect of the greater uncertainty and increased costs that may result from stakeholders increased recourse to the right of appeal against the EPA report and recommendations, section 43	The Government does not anticipate greater uncertainty or increased costs will result from these amendments.	Minister for Environment	During debate on the Bill

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
submissions to the Minister and appeal to the courts as a consequence of enactment clause 5(1) of the Bill.			
Recommendation 9: The Committee recommends that the Minister for Environment provide the Legislative Council with the Executive's explanation as to why it is appropriate for prescription of the: period for public comment; and information to be made available to the public, in respect of the environmental impact assessment of a proposal to be by way of administrative procedure, rather than in regulation.	The administrative procedures are based on the powers of section 122 of the EP Act, and are an expression of the principles of EIA and procedures to guide the administration of EIA. The administrative procedures set out procedures for public involvement, availability of information and reporting over and above that required by the EP Act. The transparency of the environmental impact assessment process ensures that any inconsistency with the administrative procedures would be apparent to both proponents and the community. The EPA has not made its administrative procedures as regulations since the commencement of the EP Act.	Minister for Environment	During debate on the Bill
Recommendation 10: The Committee recommends that, subject to the response of the Minister for Environment to Recommendation 9, in the event clause 5(1) of the Bill is passed by the Legislative Council, the Legislative Council seek an assurance from the Minister for Environment that the Executive will exercise the powers conferred on the Governor by section 123 of the EP Act to make regulations prescribing guidelines for the environment impact assessment processes of the EPA, which guidelines will include:. appropriate minimum periods for public consultation; . measures to ensure sufficient information is made available prior to the period for public consultation for that consultation to be meaningful; and . appropriate transparency and accountability for EPA treatment of public comment in its decision making.	The Government refers the Committee to the response to Recommendation 9, noting that the EPA does not support the making of its administrative procedures as regulations.	Minister for Environment	During debate on the Bill

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
Recommendation 11: The Committee recommends that subclause 5(1)(a) of the Bill be deleted from the Bill. This may be effected in the following manner. Page 3, lines 13-17 - To delete the lines.	The Government does not support this recommendation.	Not applicable	Not applicable
Recommendation 12: The Committee recommends that subclause 5(1)(b) of the Bill be amended to delete the reference to section 100(1)(b) of the EP Act. This can be effected in the following. Page 3, line 19 - To delete "(b) and"	The Government does not support this recommendation.	Not applicable	Not applicable
Recommendation 13: The Committee recommends that references to section 100(1)(b) of the EP Act be deleted from clauses 5(2) and 6(1) of the Bill. This can be effected in the following manner. Page 4, line 2 - To delete "(b)," Page 4, line 15 - To delete "or (b)" Page 4, line 20 - To delete ", (b)" Page 5, line 1- To delete ", (b)" Page 5, lines 7-11 - To delete the lines	The Government does not support this recommendation.	Not applicable	Not applicable
Recommendation 14: The Committee recommends that subclause 5(1)(b) of the Bill be amended to delete the reference to section 100(1)(c) of the EP Act. This can be effected in the following. In the event Recommendation 12 is adopted Page 3, line 19 - To delete the line In the event Recommendation 12 is not adopted Page 3, line 19 - To delete "and (c)"	The Government does not support this recommendation.	Not applicable	Not applicable
Recommendation 15: The Committee recommends that references to section 100(1)(c) of the EP Act be deleted from clauses 5(2), 6(2) and 6(3) of the Bill. This can be effected in the	The Government does not support this recommendation.	Not applicable	Not applicable

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
following manner. Page 4, line 2 - To delete "(c)," Page 5, line 6 - To delete the line Page 5, line 8 to 15 - to delete the lines Page 5, lines 21 to 30 - to delete the lines			
Recommendation 16: The Committee recommends that that subclause 5(1)(d) of the Bill be deleted from the Bill. This recommendation may be effected in the following manner: Page 3, line 24 - To delete the line	The Government does not support this recommendation.	Not applicable	Not applicable
Recommendation 17: The Committee recommends that the following consequential amendments be made to the Bill on deletion of subclause 5(1)(d). This can be effected in the following manner Page 3, lines 3-10 - To delete the lines Page 3, lines 25-27 - To delete the lines Page 4, line 2 - To delete "or (f)" Page 4, line 20 - To delete "or (f)" Page 4, lines 26 to 30 - To delete the lines	The Government does not support this recommendation.	Not applicable	Not applicable
Recommendation 18: The Committee recommends that, in the event the Legislative Council passes clause 5(1)(d) of the Bill it amend the Bill to provide for deletion of section 100(2) of the EP Act and consequential amendments to sections 100(3a)(d), 101(1), 101(1)(dc), 101(2) and 101(3). This can be effected in the following manner Page 4, line 10 - To insert (3) In section 100 delete paragraph (2) (4) In section 100(3a) delete paragraph (d) Page 4, 14 - To insert after line 14 (aa) delete ", (2)" Page 4, lines 26 to 30 - To delete the lines and to insert	The Government thanks the Committee for advising of this error. The Minister for Environment will move amendments that achieve the changes identified by the Committee.	Minister for Environment	During debate on the Bill

Committee Recommendation	*Government Response/Position*	*Responsibility*	*Timing*
(d) delete (dc) Page 5, line 10 - To delete "or (2)"			
Recommendation 19: The Committee recommends that the Legislative Council give effect to the deletion of clauses 4 to 8 of the Bill in the following manner Page 3,lines 1 to 28 - To delete the lines Page 4, lines 1 to 30 - To delete the lines Page 5, lines 1 to 30 - To delete the lines	The Government does not support this recommendation.	Not applicable	Not applicable
Recommendation 20: The Committee recommends that the Minister for Environment advise the Legislative Council whether it is proposed that the process for applying for EPA consent to minor or preliminary works under section 41A(3) of the *Environmental Protection Act 1986* will remain a purely administrative process.	It is intended that the EPA's consent as to what is "minor and preliminary" will continue to be an administrative process and is based on the significance of the environmental impact of the works, and whether the works are necessary and incidental to the proposal being assessed. The decision is not subject to public scrutiny, however, the EPA may seek information from any persons or decision-making authorities that it considers necessary.	Minister for Environment	During debate on the Bill
Recommendation 21: The Committee recommends that the Minister for Environment confirm for the Legislative Council: whether it is intended to extend the ambit of "*minor or preliminary work*" used in section 41A(3) of the EP Act to include work that would permit decisions "*incidental or of minor significance to the Minister for Environment's decision after consultation*"; and if so, the additional works encompassed by the extension.	The amendments do not extend the ambit of what the EPA considers to be "minor and preliminary". The amendments in the Bill, by removing the constraints against decision-making authorities in respect of works to which the EPA has consented, could have the effect of allowing decisions that authorise these works where a statutory approval is required.	Minister for Environment	During debate on the Bill