



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 22**

**STANDING COMMITTEE ON UNIFORM  
LEGISLATION AND STATUTES REVIEW**

**NATIONAL ENVIRONMENT PROTECTION  
COUNCIL (WESTERN AUSTRALIA) AMENDMENT  
BILL 2007**

Presented by Hon Simon O'Brien MLC (Chairman)

October 2007

## **STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW**

### **Date first appointed:**

17 August 2005

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **“8. Uniform Legislation and Statutes Review Committee**

- 8.1 A *Uniform Legislation and Statutes Review Committee* is established.
- 8.2 The Committee consists of 4 members.
- 8.3 The functions of the Committee are -
- (a) to consider and report on Bills referred under SO 230A;
  - (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
  - (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
  - (d) to review the form and content of the statute book;
  - (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
  - (f) to consider and report on any matter referred by the House or under SO 125A.
- 8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

### **Members as at the time of this inquiry:**

Hon Simon O’Brien MLC (Chairman)

Hon Donna Faragher MLC

Hon Matt Benson-Lidholm MLC

Hon Sheila Mills MLC

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES  
REVIEW**

**IN RELATION TO THE**

**NATIONAL ENVIRONMENT PROTECTION COUNCIL (WESTERN AUSTRALIA) AMENDMENT  
BILL 2007**

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**1 REFERENCE AND PROCEDURE**

1.1 The National Environment Protection Council (Western Australia) Amendment Bill 2007 (**Bill**) was introduced into the Legislative Council on 5 September 2007 by Hon Dr Sally Talbot, Parliamentary Secretary to the Minister for the Environment (**Parliamentary Secretary**).

1.2 Following its Second Reading by the Parliamentary Secretary, the Bill stood referred to this Committee pursuant to Standing Order 230A(3) which reads:

*Unless otherwise ordered, a Bill [to which Standing Order 230A applies] stands referred to the Uniform Legislation and Statutes Review Committee at the conclusion of the second reading speech of the Minister or Member in charge.*

1.3 The Committee is required to report to the Legislative Council on its inquiry into the Bill pursuant to Standing Order 230A(4) which reads:

*The Uniform Legislation and Statutes Review Committee, or other committee, receiving a Bill under subclause (3) is to present its final report not later than 30 days of the day of the reference (exclusive of the referral day) or such other period as may be ordered by the House.*

1.4 The Committee has adopted the practice of tabling its reports on Bills referred to it pursuant to Standing Order 230A(3) in the Legislative Council on the first sitting day following the expiration of the 30 days referred to in Standing Order 230A(3).

1.5 The last date for tabling the Committee's report into the Bill is therefore 16 October 2007.

## 2 REASON FOR REFERENCE

- 2.1 On 1 May 1992 the Commonwealth Government together with all State and Territory governments acceded to the “*Intergovernmental Agreement on the Environment*”<sup>1</sup> (IAGE) which, at Sch 4, cl 2 established a National Environment Protection Ministerial Council (NEPMC).
- 2.2 The NEPMC was formally constituted by the *National Environment Protection Council Act 1994* (Cth) s 8, and is empowered by that Act at s 14 to make “*a measure, to be known as a national environment protection measure*” regarding certain matters of environmental concern.
- 2.3 The Parliament of Western Australia enacted its own mirror legislation in 1996 in the form of the *National Environment Protection Council (Western Australia) Act 1996* giving full effect to the IAGE within Western Australia.
- 2.4 An inquiry into the National Environment Protection Council (Western Australia) Bill 1996 was conducted by the relevant committee of the Legislative Assembly. That review helpfully summarizes the background to the *National Environment Protection Council Act 1994* (Cth) and the relevant agreements requiring mirror legislation at a state level.
- 2.5 The establishment of the IAGE and NEPMC, together with the background to the *National Environment Protection Council (Western Australia) Act 1996* were previously reported to the Legislative Assembly in 1996 by the then Standing Committee on Uniform Legislation and Intergovernmental Agreements.<sup>2</sup>
- 2.6 As stated by the Parliamentary Secretary in the Second Reading of the Bill:<sup>3</sup>

*The bill is uniform legislation and its amendments will ensure that Western Australia’s legislation complies with the 1992 Intergovernmental Agreement on the Environment, in which it was agreed that commonwealth legislative changes affecting the commonwealth National Environment Protection Council Act 1994 would be incorporated into the corresponding legislation in all states and territories.*

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<sup>1</sup> See: <http://www.environment.gov.au/esd/national/igae/index.html>, (viewed on 6 September 2007).

<sup>2</sup> Western Australia, Legislative Assembly, Standing Committee on Uniform Legislation and Intergovernmental Agreements, Report 15, *Review of the National Environment Protection Council (Western Australia) Bill 1996*, October 1996.

<sup>3</sup> Hon Dr Sally Talbot MLC, Parliamentary Secretary to the Minister for the Environment, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 5 September, p4827.

2.7 The Parliamentary Secretary in the Second Reading of the Bill further advised that:<sup>4</sup>

*In 2001 the commonwealth, state and territory acts were reviewed, as required by section 64 of the commonwealth act. The review analysed the operation of the legislation to determine the degree to which the objects of the act were being attained. In responding to the review, the council concluded that substantial progress had been made on issues of national environmental protection and that only minor amendments to the legislation, which were highlighted in the review, were needed. These amendments are the establishment of a simplified procedure for implementing minor variations to national environment protection measures, allowing the National Environment Protection Council Service Corporation to provide support and assistance to other ministerial councils, and the introduction of five-yearly reviews of the act.*

2.8 The “*Review of the National Environment Protection Council Acts*” was conducted by Dr Donald McMichael. His report was received by the NEPMC on 16 February 2001.<sup>5</sup> (**McMichael review**)

2.9 The NEPMC published its response to the McMichael review on 2 June 2001 (**NEPMC response**).<sup>6</sup>

2.10 On 19 December 2002, the *National Environment Protection Council Amendment Act 2002* (Cth) (**Commonwealth Act**) was proclaimed, giving effect to the amendments proposed by the McMichael review as agreed by the NEPMC. The Commonwealth Act is reproduced at Appendix 1.

### **3 IS THE BILL SUFFICIENTLY UNIFORM?**

3.1 The Committee was assisted in its consideration of the Bill by the attendance of Departmental officials at a public hearing on 26 September 2007. A transcript of the Hearing is provided at Appendix 2.

3.2 The Committee noted that the NEPMC response made the following relevant recommendations for amendments to the existing National Environment Protection Ministerial Council arrangements:

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<sup>4</sup> Hon Dr Sally Talbot MLC, Parliamentary Secretary to the Minister for the Environment, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 5 September, p4828.

<sup>5</sup> National Environment Protection Council, *Annual Report 2000-1*, p3.

<sup>6</sup> National Environment Protection Council, *Report of the Review of the National Environment Protection Council Acts (Commonwealth, State and Territory)*, 2 June 2001. Available at <[http://www.ephc.gov.au/pdf/nepc/NEPC\\_Act\\_Review.pdf](http://www.ephc.gov.au/pdf/nepc/NEPC_Act_Review.pdf)>, (viewed on 27 September 2007).

- 3.2.1 The NEPMC Service Corporation should be empowered to provide secretariat functions for other Ministerial councils.<sup>7</sup>
- 3.2.2 There should be a streamlining of the process of establishing minor national protection measures without compromising the existing consultation mechanisms.<sup>8</sup>
- 3.2.3 Annual reports of the NEPMC should comply with such reporting requirements as are agreed to by the NEPMC in addition to any existing reporting requirements of such entities.<sup>9</sup>
- 3.2.4 The operation of the co-operative NEPMC legislative scheme should be subject to a five-yearly review.<sup>10</sup>
- 3.3 Reference to the Commonwealth Act at Appendix 1 confirms that it does, in fact serve to put each of the above recommendations of the NEPMC into legislative form.
- 3.4 Reference to the Bill reveals that it is virtually identical (with the exception of cll 9-13) to the Commonwealth Act. The relevant equivalencies are as follows:

<b>Clauses of the Bill</b>	<b>Schedule 1 of The Commonwealth Act</b>
Cl 4	Items 1 and 2
Cl 5	Item 3
Cl 6	Item 4
Cl 7	Item 5
Cl 8	Items 6 and 7
Cl 14	Item 8

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<sup>7</sup> National Environment Protection Council, *Report of the Review of the National Environment Protection Council Acts (Commonwealth, State and Territory)*, 2 June 2001 at p 5 para 28.

<sup>8</sup> Ibid at p 4 para 20.

<sup>9</sup> Ibid at p 6 para 30.

<sup>10</sup> Ibid at p 6 para 31.

- 3.5 The remaining provisions in the Bill, namely cll 9-12, are all consequential amendments required to ensure the continued comparability of the *National Environment Protection Council (Western Australia) Act 1996*. The consequential amendments in question relate to matters where the operations of the NEPMC Service Corporation have been affected by changes to the Commonwealth Public Service.
- 3.6 In light of the foregoing, the Committee makes the following findings relating to the Bill:

**Finding 1**

The National Environment Protection Council (Western Australia) Amendment Bill 2007 gives statutory effect to an intergovernmental agreement to which the Government of the State is a party namely, the “*Intergovernmental Agreement on the Environment*”.

**Finding 2**

The Intergovernmental Agreement on the Environment was amended on 2 June 2001 by virtue of recommendations made in a report of the National Environment Protection Council entitled “*Report of the Review of National Environment Protection Council Acts (Commonwealth, State and Territory)*”.

**Finding 3**

The National Environment Protection Council (Western Australia) Amendment Bill 2007 does, in fact, implement the amendments to the Intergovernmental Agreement on the Environment recommended by the National Environment Protection Council in 2001 and as enacted by the *National Environment Protection Council Amendment Act 2002 (Cth)*.

- 3.7 The Committee noted that the Western Australian response to the *National Environment Protection Council Amendment Act 2002 (Cth)* has taken almost five years to reach the Legislative Council.

3.8 The Committee therefore recommends as follows:

**Recommendation 1: The Committee recommends that the National Environment Protection Council (Western Australia) Amendment Bill 2007 be passed without amendment.**



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**Hon Simon O'Brien MLC**  
Chairman

16 October 2007

**APPENDIX 1**  
***NATIONAL ENVIRONMENT PROTECTION COUNCIL***  
***AMENDMENT ACT 2002 (CTH)***





## National Environment Protection Council Amendment Act 2002

No. 142, 2002

### An Act to amend the *National Environment Protection Council Act 1994*, and for related purposes

[Assented to 19 December 2002]

The Parliament of Australia enacts:

#### 1 Short title

This Act may be cited as the *National Environment Protection Council Amendment Act 2002*.

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	19 December 2002
2. Schedule 1	A single day to be fixed by Proclamation, subject to subsection (3)	19 December 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table does not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

#### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendment of the National Environment Protection Council Act 1994

### 1 Subsection 6(1)

Insert:

*Ministerial Council* means a council, comprising one or more Ministers of the Commonwealth and Ministers of one or more of the States or Territories, that includes environmental protection in its functions.

### 2 Subsection 6(1)

Insert:

*minor variation*, in relation to a national environment measure, means a decision made under subsection 22A(1) to vary a national environment measure.

### 3 At the end of section 13

Add:

; and (h) direct the Service Corporation to provide assistance and support to other Ministerial Councils.

### 4 At the end of section 20

Add:

(5) Subsections (2) to (4) do not apply to a minor variation of a national environment protection measure under Division 2A.

### 5 After Division 2 of Part 3

Insert:

## Division 2A—Minor variation of national environment protection measures

### 22A Minor variation of measures

- (1) The Council may vary any national environment protection measure if:
  - (a) the variation is supported by a unanimous resolution of all of the members; and
  - (b) the resolution states that the variation does not involve a significant change in the effect of the national environment protection measure.

A variation under this section is a *minor variation*.

- (2) If the Council decides that a variation does not involve a significant change in the effect of the national environment protection measure, the Council must prepare:
  - (a) a draft of the proposed variation; and
  - (b) a statement relating to the variation that explains:
    - (i) the reasons for the proposed variation; and
    - (ii) the nature and effect of the proposed variation; and
    - (iii) the reasons why the Council is satisfied that the variation is a minor variation.

### 22B Public consultation for minor variation

- (1) Before making a minor variation to a national environment protection measure, the Council must publish a notice:
  - (a) stating how the draft of the proposed variation and the explanatory statement may be obtained; and
  - (b) inviting submissions to the Council on the proposed variation, or on the explanatory statement, within a specified period.
- (2) A notice must:
  - (a) be published in the *Gazette*; and
  - (b) in each participating State or Territory concerned—also be published, on at least 1 day during the month when the *Gazette* notice is published, in a newspaper circulating in that State or Territory.

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- (3) The period specified in each notice under subsection (1) must end not less than 1 month after the day on which paragraph (2)(b) has been fully complied with in all participating jurisdictions.

**22C Council to have regard to submissions etc.**

In making a minor variation to a national environment protection measure, the Council must have regard to:

- (a) any submissions it receives that relate to the proposed variation or the explanatory statement; and
- (b) whether the measure is consistent with section 3 of the Agreement; and
- (c) relevant international agreements to which Australia is a party; and
- (d) any regional environmental differences in Australia.

**6 After paragraph 36(a)**

Insert:

- (aa) to provide assistance and support to other Ministerial Councils as directed by the Council; and

**7 At the end of paragraph 36(b)**

Add "or (aa)".

**8 At the end of section 64**

Add:

*Subsequent 5 yearly reviews*

- (3) As soon as possible after the end of every 5 year period following the review under subsection (1), the Council must cause a further review of the kind set out in subsection (1) to be undertaken.
- (4) The report of each further review is to be tabled in each House of the Parliament within 12 months after the end of the period to which it relates.

Note: The following heading to subsection 64(1) is inserted "*Initial review after fifth anniversary of commencement of Act*".

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[Minister's second reading speech made in—  
House of Representatives on 26 June 2002  
Senate on 12 December 2002]



**APPENDIX 2**  
**TRANSCRIPT OF EVIDENCE**



**APPENDIX 2**  
**TRANSCRIPT OF EVIDENCE**

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**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND STATUTES REVIEW**

**NATIONAL ENVIRONMENT PROTECTION COUNCIL (WESTERN AUSTRALIA)  
AMENDMENT BILL 2007**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 26 SEPTEMBER 2007**

**SESSION ONE**

**Members**

**Hon Simon O'Brien (Chairman)**  
**Hon Matthew Benson-Lidholm**  
**Hon Sheila Mills**  
**Hon Donna Faragher**

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**Hearing commenced at 9.52 am**

**ATKINS, MR ROBERT**

**Director, Environmental Regulation Division, Department of Environment and Conservation,  
Level 4, The Atrium, 168 St Georges Terrace  
Perth 6000, examined:**

**SIMPKIN, MS LEIGH**

**Legal Officer Legislation, Department of Environment and Conservation,  
Level 4, The Atrium, 168 St Georges Terrace  
Perth 6000, examined:**

**The CHAIRMAN:** I would like to open the proceedings by welcoming Ms Simpkin and Mr Atkins, who are here today as witnesses into this hearing by the committee into the National Environment Protection Council (Western Australia) Amendment Bill 2007. You have signed a document entitled "Information for Witnesses". Have you read and understood the document?

**The Witnesses:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, would you please quote the full title of any document that you refer to during the course of the hearing. Your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. I invite you to make a brief opening statement.

**Mr Atkins:** I have a statement here that I will hand out. I will not read it in full. These amendments are mirror legislation for the commonwealth National Environment Protection Council Act 1994. That act is underpinned by the Intergovernmental Agreement on the Environment 1992, which laid the foundation for the mirror legislation, enabling each state to introduce legislation giving effect to the intergovernmental agreement and to mirror the commonwealth legislation. The primary purpose of the legislation was to establish the National Environment Protection Council, which is a council of environment ministers of the states and territories and shared by the commonwealth Minister for the Environment. The primary purpose of the council is to develop and oversee national environmental protection measures for environmental standards and procedures where it is agreed to have a national consistency to the approach. The mirror legislation allows the states to administer those national environment protection measures and have the benefits of national consistency and approach.

There is no express requirement in the intergovernmental agreement or state legislation to continue enacting amendments. Obviously, it is desirable to ensure that the state legislation is consistent with the commonwealth legislation. The main outline of amendments is to allow streamlining for minor variations to the national environment protection measures. Before that streamlining process became available, all amendments to the national environment protection measures had to go

through the full amendment process, which is fairly demanding and is obviously necessary where you are doing major amendments but where you are doing minor amendments, it is a streamlined process. There are a number of procedural and minor amendments to the bill for the administration of the council. The most notable one is that it allows the supporting secretariat to support other ministerial councils such as the Environment Protection and Heritage Council and the Natural Resource Management Council. The secretariat provides those supporting services. It is now a matter of amending our legislation to mirror the commonwealth amendments. I will leave it at that. It is better for me to deal with questions and answers rather than go on.

**The CHAIRMAN:** Thank you for that opening statement accompanied by these notes. Mr Atkins has provided a two-page summary of his remarks. We will take that document to be tabled for the purpose of the hearing. It addresses a few obvious questions. I wish to tidy up one in my mind. Who comprises the National Environment Protection Council? Did I gauge correctly from your remarks that that is the ministerial council?

**Mr Atkins:** It mirrors the Environmental Protection and Heritage Council. The one difference is that the EPHC includes New Zealand, whereas the National Environment Protection Council does not. It comprises the states' and territories' environment ministers, chaired by the commonwealth minister. The two councils are almost the same except for New Zealand's membership.

**The CHAIRMAN:** So there is a relevant cabinet minister from each state and the commonwealth?

**Mr Atkins:** That is right.

**The CHAIRMAN:** Could you give us several quick examples of what would be covered by a national environment protection measure so we know the sort of thing that this council will consider?

**Mr Atkins:** There are currently seven national environment protection measures. There is one covering ambient air quality, which covers air quality parameters. There is one on air toxics, specifically toxic elements of air quality, things such as nitrogen oxide, sulphur oxides and those sorts of chemicals. There is one for the assessment of contaminated sites. That sets the benchmarks for standards for assessment and remediation of contaminated sites. This state's contaminated sites legislation has a series of guidelines and procedures that underpin that legislation that are based on the national environment protection measures. There is consistency across the country for cleanup standards of contaminated sites.

[10.00 am]

There is one for moving hazardous wastes between states. In this state we call them controlled wastes, and the state's controlled waste regulations under the Environmental Protection Act are consistent with the national environment protection measure for the transport of hazardous waste within Western Australia. It also covers crossing of the state borders. There is one for the national pollutant inventory. The national pollutant inventory requires all industries over a certain size to report their emissions profiles in terms of what they emit and the quantities they emit each year. That is collated nationally, and a national report is released in January each year, which is on the national website. You can go in and interrogate any industry or location in the country and see what the emissions profiles are. In terms of public transparency about industry regulation, that is a particularly important one. There is one for diesel vehicle emissions, which is aimed at reducing emissions from diesel vehicles. We are active in that in Western Australia. The last one is used packaging, which underpins the national packaging covenant, which requires non-signatories to the national packaging covenant to achieve the same reductions in packaging targets that signatories to the covenant do. So you can see that the measures cover a broad range of issues. There is obviously scope for introducing additional national environment protection measures, but that is the range we have at present.

**The CHAIRMAN:** The national level of these measures is obviously established. Thank you for that explanation; it will help us understand the nature of the sorts of measures that are produced. Although you have given us a good summary for the record, is a simple written summary of all those measures available?

**Mr Atkins:** There is, on the EPHC website. I have actually quoted from the minister's second reading speech to the bill. That list is contained in the third paragraph of the minister's second reading speech.

**The CHAIRMAN:** I just wanted to see whether there was a little more detail on those. If the description of the measures is freely available, the house would probably be interested in it.

**Mr Atkins:** It is ephc.gov.au. That is the national website. While you are looking at that, the way in which we use the national environment protection measures, where there are environmental standards and limits, is that we then use those for setting standards and limits in our licensing of industry under the Environmental Protection Act, and, as I said before, when we develop guidelines for things like contaminated sites clean-up, so that the standards that we are using in Western Australia are consistent across the country. That is particularly important when people challenge the validity of the standards we use. We can say that it is consistent with the national approach.

**The CHAIRMAN:** Are there any proposals at this stage to introduce amendments to the bill that is before the house?

**Mr Atkins:** Not that I am aware of.

**The CHAIRMAN:** We have an intergovernmental agreement, which was the subject of an inquiry by the predecessor of this committee when the parent legislation went through. Obviously, that intergovernmental agreement is not only relevant but reflected in the things we are talking about. Is there evidence of a further intergovernmental agreement or memo of understanding to reflect the changes that are now proposed in this amendment bill before us?

**Mr Atkins:** Not that I am aware of. I am not fully familiar with the intergovernmental agreement, but from my quick read of it a day or so ago, it is a fairly general agreement and would allow the sorts of amendments we are talking about. The amendments we are talking about are minor changes to the existing process. I might say that the streamlining of minor variations to the national environmental protection measures still requires consultation with the jurisdictions and still requires, I think it is, the unanimous agreement of the jurisdictions to pass the minor variation. My colleague has just passed me the communiqué from 2001 which was released by the National Environment Protection Council. That communiqué provides or foreshadows minor variations to the legislation. I understand a copy of that communiqué is in the materials that you have.

**The CHAIRMAN:** When was the actual agreement at NEP council level struck? Was it after that communiqué, or did the communiqué actually reflect an agreement that had already been reached on the council?

**Mr Atkins:** The communiqués reflect agreements that have been reached by councils. What both the EPHC and the NEPC do is when they reach an agreement following their meetings, they release a communiqué as a media statement, which reflects, obviously, the business of the previous meetings.

**The CHAIRMAN:** Just to clarify this absolutely, part of our committee's role is to ensure that the bill before the house accurately reflects the provisions of the relevant intergovernmental agreement. In order to do that, we want to see and examine the evidence of that agreement. So, if the reflection of that is that communiqué, that is the evidence available. Is that what you are saying?

**Mr Atkins:** There will be three pieces of information: the agreement, the communiqué, and the amendment bill that the commonwealth passed before amending the commonwealth legislation. If

you line those up, you will see that the amendments to the commonwealth legislation are reflected in the amendments to this bill. We can table that.

**Ms Simpkin:** We have a copy of the communiqué and of the commonwealth legislation.

**The CHAIRMAN:** Excellent. I was just about to ask for that. We have a document here, draft National Environment Protection Council media release, dated 2001, review of the NEPC Act, which we will receive as a tabled document. We have a second document, National Environment Protection Council Amendment Act 2002, No 142, 2002, an act to amend the National Environment Protection Act 1994, and for related purposes, that being the commonwealth act that we have discussed. We will receive that document as well.

[10.10 am]

**Hon DONNA FARAGHER:** I wish to ask one question relating to the length of time it has taken for the bill to come before the Parliament. I note that it relates primarily to amendments to the 2002 commonwealth act. In the notes that you have already tabled, it states that cabinet authorisation to draft the amendment bill was issued on 1 December 2003 and the bill was introduced into Parliament on 28 March 2007. I also understand that an almost identical bill was passed in the Victorian Parliament in 2003. Why has it taken five years to come to this Parliament?

**Mr Atkins:** Essentially for administrative reasons. There have been a number of changes to the department's administration over that period which have caused disjuncts in processing this sort of thing. We have also had a fairly heavy legislation program, including the introduction of the contaminated sites bill and amendments to the Environmental Protection Act in December 2003, two major pieces of legislation. They had priority over progressing this amendment.

**Hon DONNA FARAGHER:** Is there any concern that there has been such a significant delay, in that it has taken five years? Have any problems arisen as a result of that?

**Mr Atkins:** No, they have not. It would have been desirable to progress it much faster than we did. In terms of administration of the function, there were major variations to both the National Pollutant Inventory and the contaminated sites national environment protection measures, so they were going through the full variation process. There have not been minor variation issues in that time.

**Hon MATT BENSON-LIDHOLM:** I wish to raise one point about one of the statements you provided to us. I have only had a very quick perusal of it. The second last paragraph of the paper you provided states -

There is no express requirement in the IGA or in the State legislation to continue to enact amendments made by the Commonwealth . . .

Is there a likelihood or a possibility of issues arising from that statement that there is no express requirement for the state to continue to enact amendments made? Are there likely to be issues stemming from that?

**Ms Simpkin:** There are issues about the sovereignty of this Parliament. It was considered that it would not be appropriate in the IGA to commit Parliaments to pass further variations not knowing what they are. As I understand it, that is a concern of this committee as well. The communiqué indicates the agreement of the ministers of the NEPC on that date to make the changes. The decision has to be made by the Parliaments of the states. That is why it works in the way that it does. It could be a problem if some states decided not to pass it but, generally, because this is mirror legislation, it is an accepted category of legislation that usually gets passed.

**The CHAIRMAN:** This is a very interesting and important area of government activity. As we draw to a close, I would like to thank Mr Atkins and Ms Simpkin for their kind assistance to the committee this morning. We appreciate having had the benefit of your advice and expertise.

**Hearing concluded at 10.14 am**