

ENVIRONMENTAL PROTECTION AMENDMENT BILL (NO. 2) 2020

EXPLANATORY MEMORANDUM

The Environmental Protection Amendment Bill 2020 (EP Amendment Bill) amends the EP Act by inserting a new head power under s 48AA which allows a fee or charge to be imposed on the proponent for Part IV environmental impact assessment, which will support cost recovery under regulations.

The Second Bill supports this new head power by inserting sections 48AA(3) and (4) to clarify that a prescribed fee or charge imposed by regulations made under section 48AA can include an amount that is a tax.

The Environmental Protection Amendment Bill 2020 (EP Amendment Bill) amends the EP Act by inserting Part VIIB in the EP Act. This establishes the framework for developing EMPs to monitor the cumulative effects on the environment by industry, which is to be supported by cost-recovery.

The Second Bill complements the introduction of Part VIIB to insert Part VIIB Division 2A, which will impose a levy to allow cost-recovery for EMPs.

The Second Bill clarifies that, to the extent s 48AA and Part VIIB Division 2A of the EP Act or regulations made under or for the purposes of s 48AA and Part VIIB Division 2A provide for a tax, the tax is imposed.

Section 46(7) of the *Constitution Acts Amendment Act 1899* requires a Bill imposing taxation to deal only with the imposition of taxation. The Second Bill is such a Bill.

The Second Bill

Clause 1: Short title

This clause provides the short title of the Second Bill.

Clause 2: Commencement

This clause provides for the commencement of the Second Bill and specifies when the *Environmental Protection Amendment Act (No. 2) 2020* will come into operation.

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

Sections 3 and 4 will come into effect immediately after sections 30 and 90 respectively of the *Environmental Protection Amendment Act 2020* come into operation.

Clause 3 Act amended

This clause provides that this act amends the *Environmental Protection Act 1986*.

Clause 4: Section 48AA amended

This clause amends section 48AA, which is a new section introduced under the EP Amendment Bill to enable cost-recovery for environmental impact assessment.

The amendments provide that to the extent that any regulations made under section 48AA impose a tax, that tax is imposed.

The amendments also clarify that section 48AA will not limit the operation of the *Interpretation Act 1984* section 45A which allows fees to be imposed in respect of licences.

Clause 5: Part VIIB Division 2A inserted

This clause inserts a new Division 2A in Part VIIB to enable a tax or levy to be imposed to the extent that Part VIIB Division 2A or any regulations made under or for the purposes of this Division provide for a tax or levy.

Section 110MA sets out the terms used in the Division. It provides that the term 'monitored activity' means a prescribed activity that has its impact monitored under an environmental monitoring programme.

Section 110MB provides for regulations to prescribe an amount by way of a levy payable for persons who carry out a monitored activity.

Section 110MC provides that a levy is imposed when an amount by way of levy is prescribed to be payable by persons carrying out a monitored activity.

Section 110MD provides that if a levy is imposed under section 110MC, the following people are liable to pay the levy amount:

- (a) the holder of the licence if there is a licence authorising the monitored activity;
- (b) if there is no licence in force, the person required to hold a licence to carry out the monitored activity.