

Environmental Protection Amendment (Validation) Bill 2014

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Western Australia

LEGISLATIVE ASSEMBLY

**Environmental Protection Amendment
(Validation) Bill 2014**

A Bill for

An Act to amend the *Environmental Protection Act 1986* to validate certain proceedings of the Environmental Protection Authority and for related purposes.

The Parliament of Western Australia enacts as follows:

1 **135. Grounds of invalidity**

2 These are the grounds of invalidity —

- 3 (a) the participation (whether by taking part in the
4 consideration or discussion of a matter, or
5 voting on a matter or participating in any other
6 way), in any purported proceedings of the
7 Authority, by Authority members who were
8 disqualified from participation because of —
- 9 (i) their direct or indirect pecuniary interest
10 in a matter, whether or not that interest
11 was disclosed in accordance with
12 section 12(1) or determined under
13 section 12(3) and whether or not a
14 decision was purportedly made under
15 section 13 in relation to the interest; or
- 16 (ii) a reasonable apprehension of bias;
- 17 (b) the lack of a quorum at a meeting purportedly
18 held by the Authority, where the lack of a
19 quorum resulted from Authority members being
20 disqualified from participation in the
21 circumstances set out in paragraph (a)(i) or (ii);
- 22 (c) the failure of the Authority to decide a question
23 at a meeting purportedly held by the Authority,
24 where —
- 25 (i) the failure resulted from
26 non-compliance with the requirements
27 of section 11(2)(e) for at least
28 3 Authority members to vote on the
29 question or with any other requirement
30 of section 11(2) with respect to voting;
31 and
- 32 (ii) that non-compliance resulted from
33 Authority members being disqualified

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- 1 from participation in the circumstances
2 set out in paragraph (a)(i) or (ii);
- 3 (d) the purported exercise of a power or duty of the
4 Authority under a delegation made under
5 section 19, where —
- 6 (i) the delegation was purportedly invoked
7 in order to avoid the proceedings of the
8 Authority being invalid on any of the
9 grounds of invalidity set out in
10 paragraphs (a) to (c); and
- 11 (ii) the delegation could not be invoked in
12 the circumstances in which it was
13 purportedly invoked, or did not
14 authorise the exercise of the power or
15 duty in the circumstances in which they
16 were purportedly exercised.

17 **136. Certain proceedings of Environmental Protection**
18 **Authority and other things validated**

- 19 (1) This section applies to anything done, or purportedly
20 done, by or on behalf of the Authority before the
21 decision date that, if this section had not been enacted,
22 is or may be invalid on a ground of invalidity.
- 23 (2) The things to which this section applies are to be taken
24 to be, and to have always been, valid and effective to
25 the same extent as they would have been if they had
26 not been invalidated by a ground of invalidity.
- 27 (3) The rights, obligations and liabilities of all persons are
28 to be taken to be, and to have always been, the same as
29 if the things to which this section applies had been
30 validly done.
- 31 (4) Anything done, or purportedly done, before the
32 *Environmental Protection Amendment (Validation)*
33 *Act 2014* section 4 comes into operation as a result or

1 consequence of, or in reliance on or in relation to, a
2 thing to which this section applies (a *validated thing*) is
3 as valid and effective, and is to be taken to have always
4 been as valid and effective, as it would have been if the
5 validated thing had been valid at the time the other
6 thing was done or purportedly done.

7 (5) This section is subject to section 137.

8 **137. Exclusions from validation**

9 Section 136 does not validate —

10 (a) any of the following things that were held to be
11 invalid by the Supreme Court of Western
12 Australia in *The Wilderness Society v Minister*
13 *for Environment* —

14 (i) the report and recommendations of the
15 Environmental Protection Authority on
16 the Browse Liquefied Natural Gas
17 Precinct strategic proposal (Report
18 1444, July 2012);

19 (ii) the statement of the Minister for
20 Environment, published on
21 19 November 2012, that, in the event of
22 a declaration by the Environmental
23 Protection Authority pursuant to
24 section 39B of the *Environmental*
25 *Protection Act 1986* that it is a derived
26 proposal, a proposal to do one or more
27 of the Developments, Activities,
28 Operations or Changes in Land Use
29 listed in Column 2 of Table 1 in
30 Schedule 1 of the statement, and which
31 was identified in the Strategic Proposal
32 to which Report 1444 relates, may be
33 implemented (Ministerial Statement
34 No. 917);

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- 1 (iii) the declaration made by the
2 Environmental Protection Authority on
3 17 December 2012 that the proposal by
4 Woodside Energy Ltd for the Browse
5 LNG Downstream Development 25
6 Mtpa is a derived proposal identified in
7 the Browse LNG Precinct strategic
8 proposal, James Price Point, Shire of
9 Broome;
- 10 (b) anything that is invalid as a consequence of the
11 invalidity of the things listed in paragraph (a).
12

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