



Government of **Western Australia**
Department of **Transport**

Maritime Business Unit

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Ms Sarah McEvoy
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Dear Ms McEvoy

***ENVIRONMENTAL PROTECTION ACT 1986 AMENDMENTS – DEPARTMENT OF
TRANSPORT MARITIME BUSINESS UNIT – SUBMISSION***

The Department of Transport's (DoT) Maritime Business Unit appreciates the Department of Water and Environmental Regulation's (DWER) briefing on the proposed amendments to the *Environmental Protection Act 1986* (EP Act) held on 18 December 2019.

DoT is supportive of the proposed amendments to the EP Act, which aim to improve the Act's regulatory efficiency and effectiveness, while delivering better environmental protection and sustainable development outcomes. DoT is committed to working closely with DWER while modernising the EP Act, to facilitate continuous improvement and streamlined regulatory processes within the Business Unit's maritime operations.

DoT provides its comments and recommendations in Attachment 1 to this submission. DoT notes that it has identified several opportunities to improve the efficiency of its maritime functions through this process, however; the key amendments that would benefit the Business Unit relate to the Regulations of the EP Act. DoT understands that amending the EP Act's Regulations are not a current focus of this process, but will occur in later stages once the head powers of the EP Act are ratified. DoT would appreciate the opportunity to consult further with DWER during these later stages.

Should you require further clarification on the comments and recommendations provided in this submission please contact Matt Spence on (08) 9435 7714 or alternatively via email matthew.spence@transport.wa.gov.au.

Yours sincerely


Steve Jenkins
General Manager

21 January 2020

Issue	DoT Maritime Business Unit's Advice
<i>Environmental Protection Act 1986</i>	
Classification and definition of dredge material	<p>Comments</p> <p>DoT notes that materials dredged from navigation channels and berth pockets have generally been referred to as 'spoil' by regulatory agencies, which may currently be considered consistent with the definitions of waste and pollution in the EP Act. The amendments to the EP Act provide an opportunity to consider the latest science in dredging and the composition of these materials, which usually comprise clean/ inert sediments suitable for on-use.</p> <p>DoT also notes that inert dredge material can provide several beneficial on-uses, such as a local source of material for beach nourishment activities and construction material. Regulatory barrier that have implications for the on-use of this resource should be identified and removed from the EP Act and its Regulations.</p> <p>Recommendations</p> <ul style="list-style-type: none"> • Amend the EP Act's definition of waste, pollution and/or emissions to exclude inert dredge material, consistent with other WA legislation. • The term 'spoil' should be removed from future references to dredge material to recognise the material as a resource that has potential for beneficial on-uses.
Clearing of native vegetation	<p>Comment</p> <p>DoT notes the proposed new referral system process for regulating the clearing of native vegetation. DoT is supportive of this, but requires clarity on whether this process will be additional to the current 60-day processing time for native vegetation clearing applications.</p> <p>Recommendations</p> <ul style="list-style-type: none"> • Amend the EP Act to include a statutory timeframe for a determination via the referral process. • DoT recommends that this should fall within the current 60-day processing time for native vegetation clearing applications and not be an additional timeframe on top of the existing process.

Issue	DoT Maritime Business Unit's Advice
<p>Capture and reporting of post-assessment survey data</p>	<p>Comment</p> <p>DoT's Maritime Business Unit captures, manages and relies upon a large dataset of met-ocean, hydrodynamic and sediment transport information to analyse coastal erosion and accretion trends and events. DoT has identified an opportunity for expanding the Business Unit's dataset through the capture of post-assessment monitoring data, required by Ministerial conditions established in accordance with the EP Act.</p> <p>DoT experienced a recent situation where the lack of publicly available data in Cockburn Sound limited the Business Unit's ability to analyse the cause-effect pathways for erosion events along the Sound's coastline. Proponents who operate in Cockburn Sound have collected long-term post-dredging seabed survey data that was not readily available to DoT at the time. Access to this data would have expedited DoT's analysis and reporting of the coastal erosion events. Several Ministerial requests were required to eventually access the required datasets.</p> <p>DoT is of the view that a similar model to the <i>Index of Biodiversity Surveys for Assessments</i> (IBSA) Project is adopted to capture post-assessment survey work and monitoring data, including post-dredging hydrographic survey work and met-ocean data. The data collected should be made publicly available, or at a minimum available to regulators and/or Government Departments for official use.</p> <p>Recommendation</p> <ul style="list-style-type: none"> DoT recommends that similar reporting protocols to the EPA's IBSA Project are legislated in the EP Act to ensure the capture of post-assessment survey work and monitoring data, including post-dredging hydrographic survey and met-ocean data, which is then made publicly available, or for use by Government Departments.
Regulations of the Environmental Protection Act 1986	
<p><i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i></p>	<p>Comments</p> <p>DoT has identified an opportunity to amend the clearing exemptions provided for in the <i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i> – Schedules 2 and 3. The Regulation's exemptions should be expanded to acknowledge maritime infrastructure in the definition of 'Transport Corridors' (r.22), which currently only recognise road and rail, and in the scope of the term 'Infrastructure' (r. 23).</p> <p>The inclusion of maritime components in the Regulations will align with the intent of the EP Act amendments, notably by</p>

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	<p>preventing unnecessary regulatory processes and subsequent delays when undertaking maintenance dredging and low impact clearing activities within maritime development envelopes.</p> <p>Recommendations</p> <p>Noting the comments provided above, future amendments to the EP Act's Regulations could benefit from considering the following key matters:</p> <ul style="list-style-type: none"> Consider amendments to the <i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i> Schedules to include maritime operations within the definition of 'Transport Corridors'. Expand the scope of the term 'Infrastructure' in the Schedules to accommodate maritime infrastructure.
<p><i>Environmental Protection (Unauthorised Discharges) Act 2004</i></p>	<p>Comments</p> <p>DoT notes that an objective of the EP Act amendments includes modernising the EP Act to acknowledge the advancements in best practice and technologies. DoT is supportive of this objective and has identified an opportunity to facilitate efficient maritime maintenance functions and activities that could reduce the disruption to operational activities, specifically through 'in-water hull cleaning' of vessels within their facilities.</p> <p>A key barrier to undertaking these activities is the prescriptive list of contaminants in Schedule 1 that prohibit the discharged of chromium, nickel, zinc and copper into the environment. DoT understands the environmental harm that can occur from the release of these contaminants and is not advocating for permission to discharge contaminants at DoT facilities, however; DoT does note that new technologies and practices could provide for the controlled release, capture and removal of these contaminants. The feasibility for providing exemptions within the Regulations for these activities, particularly in semi-enclosed marina environments, should be investigated and considered.</p> <p>Recommendations</p> <p>Noting the comments provided above, future amendments to the EP Act's Regulations could benefit from considering the following key matters:</p> <ul style="list-style-type: none"> Revise the contaminants list in the Regulations to facilitate 'in-water hull cleaning', or consider providing exemptions for these activities. Alternatively, consideration for capturing these activities in Part V of the EP Act's licencing provisions could provide the regulatory oversight required.