



Ms Sarah McEvoy
Director – Strategic Policy
Department of Water and Environmental Regulation
Sent by email

Dear Sarah

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2019 (EXPOSURE DRAFT)

Thank you for the opportunity to provide comment on the proposed amendments to the *Environmental Protection Act 1986* (EP Act).

The Department of Mines, Industry Regulation and Safety (DMIRS) provides the following feedback and welcomes the opportunity to discuss this with you further, as some elements are not supported or require clarification.

1. Amendments to section 39A and 41 – ‘relevant decision-making authority’

The Department of Water and Environmental Regulation (DWER) proposes to amend section 39A so that “*the EPA has discretion to determine which decision-making authorities it will notify of its decision to assess a proposal (and are therefore constrained from making a decision which allows its implementation)*”. The discussion paper states that “*the intention of this amendment is to allow the EPA to identify only the major decision-makers in relation to an approval rather than being required to give notice to every government body which must grant an approval connected to the proposal, no matter how minor and unconnected with the proposal’s environmental impacts*”.

DMIRS has many decision makers under the *Mining Act 1978* i.e. the Minister, warden, mining registrars, prescribed officials, State Mining Engineer etc. It is not clear on what basis a decision-maker will be found to be ‘relevant’ in relation to a proposal. Clarification is sought as to what is a ‘major decision-maker’. DMIRS considers that whether a decision maker is notified and subsequently constrained should be linked to the actual decision (approval) not the decision maker and whether that decision maker is ‘major’.

Section 41 of the exposure draft which constrains decision makers from making a decision refers to deleted sections in section 39A i.e. s41(2) and (3) refers to s39A(3)(b) and (c). It is therefore not operable. DMIRS seeks to be able to review and make further submissions when this is amended.

2. Amendment to section 45

DWER proposes to amend section 45 so that *“the Minister for Environment is only required to consult and attempt to reach agreement with those decision-makers relevant to the proposal and its environmental impacts. The intention is to only include those decision-makers who have a significant role in regulating a proposal and the aspects of the proposal likely to have significant environmental impacts, rather than minor, routine approvals.”*

Proposed section 45(1B) refers to *“which or whom of the decision-making authorities in relation to the proposal has a major role, or have a major roles, in making decisions in relation to matters in the proposal”*. Similar to the comment above, DMIRS considers that consultation in section 45 should be linked to those decision-making authorities by reference to the decision (or approval) not the decision maker and whether that decision maker has a ‘major role’. It is also not clear whether those decision makers in section 45 would be the same as those who may be constrained by section 41.

3. Amendment to section 48(2)

With regard to the discussion paper statement that *“section 48(2a) then provides that the decision-maker may exercise any power available to it under written law, where there is non-compliance with the implementation conditions”*. DMIRS seeks clarity on whether this disallows the EP Act provisions for non-compliance.

4. New section 51DA

DMIRS notes the proposed Referral process for clearing permits (i.e. the new section 51DA). DMIRS considers there is subjectivity in the criteria defined in section 51DA (4) and this will need to be supported by adequate data and clear policy and guidance material to ensure the referral process operates as intended. Whilst there will always be some subjectivity and discretion, clear ‘rules’ will assist the CEO to determine which clearing requires a permit and which clearing does not. DMIRS would welcome the opportunity to further discuss how these proposed changes would work in practicality.

5. Referral of proposals

The discussion paper states “In deciding whether to assess a proposal, the scope of that assessment and providing recommendations to the Minister, the Bill provides that the EPA may take into account the role of other statutory decision-making authorities in regulating the environmental impacts of that proposal. The intent is to ensure that the EPA can decide not to assess a proposal, or a particular impact of a proposal, where the impact on a key environmental factor can be adequately regulated under other parts of the Environmental Protection Act or other written laws. This amendment

reduces duplication of assessments and approvals.” The discussion paper states that the amendment is page 52 of the Bill (section 37B). DMIRS would like to clarify whether this is the correct amendment as the amendments to section 37B does not appear to capture the discussion paper comments. DMIRS would like to clarify the process that the EPA goes through to determine whether an impact on a key environmental factor can be adequately regulated under other written laws.

Thank you once again for the opportunity to provide feedback on the proposed amendments. DMIRS looks forward to continuing to liaise with DWER over the coming months on the proposed amendments and welcomes the opportunity to discuss this feedback with you further. Please contact either Tyler Sujdovic General Manager Operational Administration in the first instance, or myself.

Yours sincerely



Karen Caple
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