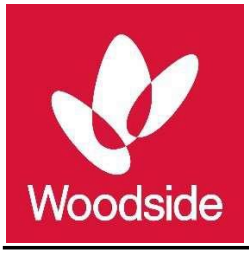


Woodside Submission:

Government of Western Australia
Modernising the Environmental Protection Act

Discussion Paper and Exposure Draft Bill

24 January 2020

Contents

Introduction

Woodside is pleased to contribute to the discussion on proposed amendments to the Western Australian State Government's Environmental Protection Act 1986 (EP Act) as outlined in the Modernising the Environmental Protection Act discussion paper ('the Discussion Paper') and associated Exposure Draft Bill ('the Bill').

Environmental regulation is vital to protect the environment and to uphold standards that instil public confidence in business activities. Those standards are important when they bolster Australia's reputation as a safe and secure place to do business in an environmentally responsible manner. But when environmental regulation processes become mired in red tape, duplicative or ambiguous, they can come at a high cost to Australians without any corresponding environmental benefit.

As the Discussion Paper notes, the State's first Environmental Protection Act was introduced in 1971, and then repealed and replaced in 1986 by the current EP Act. Thirty-three years later, the context within which the EP Act operates has changed in many important ways, including the scientific understanding of key environmental processes such as climate change, the development of more efficient industrial processes by industry, the successful establishment of many protected habitat and species regimes, and evolving community attitudes including the manner in which the community is able to participate in decision making processes. All of these contribute to a changing context in which the Department regulates prescribed premises, the Environmental Protection Authority (EPA) makes assessments, and the Minister for the Environment ('the Minister') takes decisions. The review of the EP Act is therefore timely and will be well served by thorough discussion of the principles that underpin it as well as detailed examination of proposed amendments.

In this submission, Woodside argues for reforms to:

- Retain the independence of the EPA and strengthen the obligations on the Minister to take matters into account when making decisions based on their advice;
- Ensure adequate resourcing of assessments, linked to greater commitment to adhere to reasonable and predictable assessment timelines;
- Remove duplication by promoting bilateral agreements with the Commonwealth; and
- Ensure that broad community views are taken into account during consultation, and that decisions can be conclusively and promptly taken without undue risk of subsequent legal uncertainty.

About Woodside

Woodside is the pioneer of the LNG industry in Australia. We have a global portfolio and are recognised for our world-class capabilities as an integrated upstream supplier of energy. We produce 6% of the current annual global LNG supply. Since 1984, we have been providing cost effective and reliable domestic gas for Western Australian customers, and this secure local supply has benefited Western Australian residents and industry, reducing their vulnerability to fluctuations in supply and pricing of imported fuels. We are now working to deliver our vision for the Burrup Hub in Western Australia's Pilbara region. The vision involves the proposed development of some 20 to 25 trillion cubic feet of gross dry gas resources principally from the Scarborough and Browse fields, through our established LNG facilities at Pluto LNG and the North West Shelf (NWS) Karratha Gas Plant (KGP). If realised, the Burrup Hub vision could deliver LNG to global markets and domestic gas to Western Australia for decades to come. This has the potential to improve energy security in Australia and deliver other significant benefits in the form of jobs, royalties and taxes.

At Woodside we are committed to the highest of safety and environmental standards. Reducing unnecessary regulatory hurdles can have real-world benefits, allowing projects to progress after appropriate review and delivering the investment and jobs that Western Australia needs.

Priorities for reforming the EP Act

The Discussion Paper asserts that the proposed amendments to the Bill will:

- modernise and streamline processes for environmental impact assessment, clearing permits, works approvals and licences;
- improve regulatory effectiveness; update the EP Act to reflect and accommodate technological developments; and
- facilitating the implementation of bilateral assessment and approval agreements under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), and address errors and inconsistencies.

Whilst on the face of it these outcomes appear desirable, no definition of "modernised", "streamlined" or "regulatory effectiveness" is given by the Discussion Paper. It is important to be explicit about what they mean, in order that the proposed amendments can be assessed against them. For example, if all of the proposed amendments to the Act are passed it will be significantly longer than it is today, which even if some of the added text is deregulatory in intent is not an obvious starting point for considering the reforms to be an act of "streamlining".

In Woodside's view, a modern, streamlined and effective EP Act would be one that:

- Protects the environment whilst facilitating responsible development, through clearly articulated and consistently applied standards based upon science and fact;
- Arrives at decisions in a timeline that is reasonable and predictable;
- Is adequately resourced;
- Allows for a single process to deliver outcomes for multiple jurisdictions and Acts;
- Is sufficiently clear in decisionmaker rights and obligations as to reduce the risk of vexatious appeal and delay;
- Allows for the properly weighted consideration of the views of impacted and interested stakeholders as well as the interests of the broader community and commands their confidence.

The first of these – protecting the environment whilst facilitating responsible development – goes to the heart of the judgments that the elected Government as a whole must make on behalf of the community. Given the range of views in the community, these judgments are likely to be contested. This places a burden upon the EP Act system which needs to remain predictable, consistent and merit based notwithstanding external political pressures. The design of the WA system, comprising an independent advisory EPA coupled with a Minister who takes decisions, is a sound one that has stood WA well over the past decades. Its core division of responsibilities should be reinforced by this review, as should the limitation of the EPA's advice to environmental matters whilst the Minister takes holistic considerations into account.

> Priority One: the independence of the Environment Protection Authority should be retained in its current form.

Some of the proposed amendments to Section 45 of the Act (see pages 12-13 of the Discussion Paper) clarify the intent of the Act to allow "a range of matters to be considered" by the Minister, but they do not go far enough. A specific *obligation* (as opposed to an optional ability) for the Minister to consult

Cabinet colleagues and to have regard to the integration of economic, social and environmental factors should be created.

> Priority Two: an obligation for the Minister to take decisions holistically, integrating environmental, social and economic considerations, should be strengthened in the Act.

The desire for processes to be conducted on a reasonable and predictable timeline is linked to the need for it to be adequately resourced. The experience of cost recovery at the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) has been instructive: cost recovery has allowed NOPSEMA to manage not just the volume of resources at its disposal but also their seniority, given it was coupled with an ability to operate outside public sector remuneration norms. It is reasonable for industry, which requests predictable delivery on timelines, to fund the necessary assessment resources in return.

> Priority Three: Cost recovery should be introduced for Part IV Assessments, and explicitly linked to adherence to timelines.

There is no benefit in duplicated effort. Where multiple assessment and reporting requirements exist for large projects, Woodside believes they should be coordinated through a single process to provide a clearer pathway for both project proponents and regulators. To this end, Woodside applauds the Federal and Western Australian State Government's announcement that they will work together to develop a digital environmental assessment and approvals regime to speed up the process for major projects. We also welcome the State Government's request to establish an Environmental Approvals Bilateral Agreement with the Commonwealth.

> Priority Four: The State's proposal to pursue a Bilateral Agreement with the Commonwealth is strongly supported, and the proposed amendments that facilitate the implementation of such an Agreement should be pursued as proposed in the Discussion Paper.

A second form of duplication can arise where regulators come under pressure to include cumulative impacts beyond their jurisdiction in their assessments. This has recently arisen with greenhouse gas emissions in particular, with some projects being asked to account for the emissions arising from their customer's use of their product (see inset box). This risks duplication because those customers are responsible for their own emissions and will be regulated in their own right.

> Direct and indirect greenhouse emissions.
>
> A project emits "Scope 1" emissions directly from its manufacturing processes, and "Scope 2" emissions from imported power. Subsequently when a customer uses the product, they too emit emissions which are both the original project's indirect "Scope 3" emissions and the consumer's direct Scope 1 emissions.

To give an example, where a Woodside project sells pipeline gas to a power station in Western Australia, the emissions from that power station have already been properly assessed and regulated. Likewise, when the sale of gas is to another country, it is for that country's regulators to determine the acceptability of the activities that lead to the consumption of the gas, within their own specific national contexts.

Thus, whilst narration and consideration of those emissions in approvals documents can lead to a more complete picture being presented, the EP Act should be clear that it does not intend to impose conditions which would double-regulate the same emissions.

> Priority Five: Amendments to the Act should be made to guide the EPA and the Minister not to "double-regulate" environmental impacts such as emissions that arise from a project's customers and which are already directly regulated, and/or which arise in other jurisdictions outside WA.

Some commentators have discussed, for several years now, whether Australia's political debate is becoming more polarised (e.g. The Guardian[1], or the Australian Election Study[2] from the Australian National University). In such circumstances, it is inevitable that assessments and decisions under the EP Act will be contested, in some cases vigorously, and that unanimous agreement across the community is not realistically achievable. It is important that all of the views in the community have the opportunity to be heard and taken into account, with due weight given to stakeholders who are directly impacted, those that take an active interest by responding to consultations, and those who choose not to actively express a view outside of their electoral choices, but whose opinions and interests matter all the same. And it is equally important that, having weighed those views, the Minister is able to take a decision and that decision is able to be promptly acted upon. The amendments proposed to Section 45 (see Priority Two above) may go some way to addressing this matter but concerns have been expressed in recent years about the impact of litigation risk to regulatory decisions[3]. Further review should be undertaken to ensure that the Parliament is as clear as possible in the direction it gives to the Courts and Regulators, especially in regard to the powers and obligations of decision makers.

> Priority Six: The Parliament should commission independent legal review of the Act to ensure that the powers and obligations it intends to grant to the EPA and Minister are clear and, to the greatest extent possible, not subject to legal uncertainty and litigation risk.

[1] https://www.theguardian.com/news/datablog/2014/aug/07/australian-politics-becoming-more-polarised
[2] https://australianelectionstudy.org/wp-content/uploads/The-2019-Australian-Federal-Election-Results-from-the-Australian-Election-Study.pdf
[3] https://www.afr.com/policy/wa-epa-chairman-admits-confidence-has-been-damaged-20160523-gp213p

Section 2 of the Discussion Paper:

Key areas of reform in the *Environmental Protection Act 1986*

2.1 New areas of environmental reform

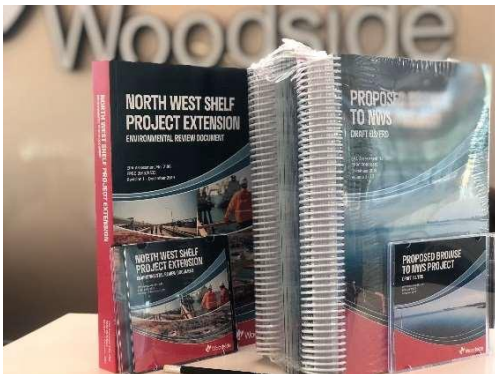
Bilateral Agreements with the Commonwealth

Woodside supports proposed amendments to the EP Act to ensure the State Government is able to fully implement bilateral agreements. This is an effective means of reducing duplication in approvals processes. However, we note that in a world of cost recovery, we would be concerned about any construct that effectively served to charge proponents twice (across State and Commonwealth jurisdictions).

We note that where multiple agencies have jurisdiction over a project, or an aspect of a project, a number of issues can occur. Where dual-processes are required, additional and unnecessary work is created, and where multiple parallel approvals are required across jurisdictions and agencies, there is no central coordinating agency or office, and a lack of coordination and prioritisation can lead to project delay. Importantly, project proponents do not get to choose the relevant regulator(s) and, furthermore, have no mechanism to make recommendations where there could or should be a single regulator to reduce duplication.

Modernise requirements for advertising, publishing and confidentiality

We support the modernisation of advertising and publishing requirements, and the broader application of confidentiality claims to the whole EP Act. The quantity of documents that are now required to be published is very large (see picture for the recent Browse Environmental Impact Statement) and the provision of multiple hard copies is not appropriate when digital copies are both more environmentally appropriate and easier to interrogate.



Moreover, we have concerns regarding the proposed provision to allow regulations to prescribe further types of information and documents that be published, or may be published on a case-by-basis. Further consultation would be required on what documents would be included.

Environmental Protection Covenants

We do not object to the inclusion of Environmental Protection Covenants associated with clearing permits in the EP Act.

Environmental monitoring programs

Woodside supports the idea of “polluter pays” principles being applied to environmental monitoring programs. However, we are wary of niche programs being introduced. We therefore believe any environmental monitoring programs proposed should be of State significance and not reflect academic desires to seek data. We are also wary of the status of these programs, where different methodologies could be used, or outcomes achieved compared to existing data or programs. Questions around how the

data will be integrated and which dataset will take precedence should be appropriately consulted on prior to implementation.

Provide a head power for certified environmental practitioners

Woodside has concerns that requiring documents to be certified prior to submission, via the introduction of a certifier review, will simply introduce another layer of quasi approval, increase approvals costs and timeframes from drafting through acceptance. Costs associated with accreditation will also inevitably be passed through to proponents, so they should be left to make judgements about the adequacy of their documents prior to submission.

Injunction to apply to a broader range of matters

We do not object to the application of powers for an injunction over a broader range of offences under Part IV and Part V of the EP Act.

2.2 Improvements to administrative efficiency

Woodside in principle supports any moves to address administrative inflexibility and inefficiencies as outlined in the Discussion Paper.

2.3 Part I- Preliminary

Woodside would support broader regulatory reform that includes the principles of sustainable development, such that social and economic considerations could be considered within the scope of the EP Act. As per Woodside's Priority Two (above) this is best achieved by strengthening the obligation upon the Minister to consider these broader matters, whilst retaining the sole focus of EPA advice upon the environment.

2.4 Part II –Environmental Protection Authority

We support retaining the Environmental Protection Authority (EPA) Board model as is stands. The independence of the EPA Board has resulted in the EPA being recognised as objective, bipartisan and trustworthy. We support this independence continuing.

EPA Chairman to be either full-time or part-time

We support the EPA Chairman being either full-time or part-time.

Use of modern technology to support EPA meetings

We support use of modern technology to support EPA meetings.

2.5 Part III – Environmental Protection Policies

Woodside supports the view outlined in the Discussion Paper that no changes to Part III of the EP Act are made at this time. We note that the Government is capable of giving public guidance about its intentions, for example by making a statement to Parliament, which can provide clarity to both the EPA and the Proponent or class of proponents. An example of this is the Government's policy in relation to Greenhouse Gas Emissions for Major Projects, which is effective despite not being formally adopted under Part III.

2.6 Part IV –Environmental Impact Assessment

We note that the Discussion Paper talks to cumulative impacts, however no substantive changes are detailed in the Exposure Draft Bill. We would support the position that cumulative impact assessment is already addressed in the Environmental Impact Assessment (EIA) process, and no further change is required, except to clarify the need not to double count customer emissions (see Priority Five above).

Referral of proposals

We support the ability for referred proposals to be withdrawn where a proponent does not wish to proceed.

With respect to third party referrals, we do not consider that proposed amendments go far enough in limiting or preventing them. These referrals may be vexatious in nature and cause significant unnecessary work for proponents. We would support broader regulatory reform for a process or provision that *instead* only allows the Minister for Environment (the Minister) to 'call a proposal in', as per the Commonwealth Government EPBC Act.

We support the reduction of regulatory duplication afforded by the ability for the Minister to consider the role of other statutory decision-making authorities to regulate the environmental impacts of that proposal.

Assessment of proposals

We do not object to the Minister being able to direct the EPA to assess or re-assess a proposal more fully or more publicly.

We support the proposal for the EPA to utilise discretion to identify and notify only relevant decision-making authorities (and therefore constraining them from making subsequent decisions).

We do not support the ability for Minister to direct the EPA to re-assess a proposal after the minister has dismissed an appeal against the proposal not being assessed (Section 43(3A)). We consider that once a recommendation has been made not to assess, an appeal on this basis dismissed, the Minister should consider the proposal may progress.

Strategic assessments

We support alignment of strategic assessment provisions with other regulatory regimes.

Implementation decisions for proposals

We support proposed amendments to allow the Minister's appeal decision to not constrain the outcome of the decision-making process under section 45(1). We also support the proposal to amend section 45 to only include those decision-makers relevant to the proposal and its environmental impacts. However,

we believe that further amendment of Section 45 is needed to bolster the obligation on the Minister to have regard to economic, social and environmental considerations when arriving at a final decision, and to consult with Cabinet colleagues accordingly.

Surrender or Revocation of Implementation Agreement

We support the ability to surrender or revoke the implementation agreement or decision.

Conditions

We support the proposed provision to allow changes to conditions at a proponent's request. We also support the alignment of the test for amendment of conditions with the test currently used in section 45C.

We consider that further amendment to Section 45B could be made to reflect the ability to modify, combine or supersede Ministerial Statements.

Changed proposals and revised proposals

We do not object to the proposal for the Minister to require information to support a section 45C request. We support the proposed changes to section 43A to amend proposals during assessment.

Compliance and enforcement

We do not object to proposed changes to compliance and enforcement.

Schemes

We do not object to proposed changes to schemes.

Cost recovery

We note that while we support a fee for service/cost recovery model in principle, we do so on the basis that they will serve to make approval timelines more consistent and predictable. Any fee for service/cost recovery model must be balanced by quicker assessment processes and stronger delivery to regulatory timelines. We would support significant engagement on the balance between increased cost and timeliness of approvals, including the option for a degree of flexibility in the system to allow the Proponent an element of choice in service level. Cost recovery must be clearly confined such that it funds the assessment process; whilst the decision-making process should be fully funded by the State to remove any perception that its independence could be undermined.

2.7 Part V – Environmental Regulation

Clarifying when decisions on applications for clearing permits or licences are constrained

We note that while we do not object in principle to the ability for the Minister to not make a decision on clearing permits or licences until broader implementation decisions have been made, we note that this may have unintended consequence for related, but separate actions.

Clearing of Native Vegetation

We support providing clarity on clearing provisions for native vegetation so that they are focused on outcomes. We also support the referral process for clearing permits and reference to satellite imagery for vegetation monitoring.

Licences

Woodside supports proposed changes to licencing for prescribed premises to activities and agree that this is likely to reduce technical breaches. We also support the proposed combination of works approvals and licences.

We note that the spatial extent of a licence is typically bounded by the prescribed premise(s) it applies to. We envisage that the proposed changes to prescribed activities would not by necessity reflect the spatial extent of any authorised emission (for example a licence for an activity involving fired equipment would not reflect the airshed potentially impacted by an authorised emission).

We note that the current exclusion under section 60A(5) applies to a section 45C application only. We would support extending these exclusions to subsection (3) and (4) applications when the Authority has consented under section 41(5). For example, if there is an existing proposal under section 38 then it would still be appropriate to allow for a proponent to seek to amend licences.

We would support amendments to allow for elements of licence conditions to be closed at the end of an activity (e.g. construction) following receipt of appropriate information by the CEO. Alternatively, the regulations could provide greater clarity on the transition from licence amendment to licence, similar to the transition from works approval to licence under existing regulation.

We recommend further modification to Section 52(b)(ii) be made to reflect that the intent of the Section is for an (material or significant) increase in volume of authorised emission. As it stands a decrease in authorised emission may necessitate a modification to licence.

Defences

We do not object to proposed changes to clearing defences, however we note that there may be unintended consequence associated with requiring a pollutant or emission to be covered by a licence under defence provisions. This does not count for pollutants or emissions that are considered safe at the time of licencing but are subsequently determined not to be, such as per- and poly-fluoroalkyl substances (PFAS).

2.8 Part VI – Enforcement

We do not object to the proposed changes under Part VI as outlined in the Discussion Paper.

2.9 Part VIA – Legal Proceedings and Penalties

We do not object to the proposed changes under Part VIA as outlined in the Discussion Paper.

2.10 Part VII – Appeals

Woodside would support broader reforms to minimise vexatious appeals by requiring the appellant to demonstrate that they are directly impacted by the implementation of the proposal. We would also support the inclusion of timeframes in the appeals process and note that Section 107 as it stands would provide for Administrative Procedures to give effect to this.

Allowing appeals to be lodged with the Appeals Convenor

We support the proposed change to allow appeals to be lodged with the Appeals Convenor.

Where a change to implementation condition is subject to appeal, implementation may continue

We support the proposed change to allow implementation to continue while an implementation condition is subject to appeal.

Appeals Convenor not required to report where committee appointed

We support the proposed change that the Appeals Convenor is not required to report where a Committee has been appointed.

Minister's decision on appeal

We support repeal of the provision to allow the Minister to make a decision on appeal without receiving or considering a report from the Appeals Convenor or appeal committee.

We note that further amendment could be made to Section 101(1) to allow the Minister the ability to uphold an appeal without remittance of the proposal to the EPA for assessment.

Appeals committee to consider submissions received by the Minister from a decision-making authority for the proposal

We support the proposal for the Appeals Committee to consistently consider submissions received by the Minister from a decision-making authority.

2.11 Part III – General

We do not object to the proposed changes under Part III.

2.12 Schedule I

We do not object to the proposed changes under Schedule 1.

2.13 Schedule 5

We do not object to the proposed changes under Schedule 5.

2.14 Schedule 6

We do not object to the proposed changes under Schedule 6.

Section 3 of the Discussion Paper:
Further issues for consideration

3.1 New ideas

Woodside does not support the further progression of work on these items.

- No detail has been provided on what a ban on certain products or product classes could extend to, or how banned products could be added to such a list.
- No detail has been provided on the proposal to provide resources for third parties or community groups would be funded, how the recipients would be selected, and how they would be accountable for the use of public funds. Nor is there detail on how such an approach would operate with the existing obligations on proponents to demonstrate adequate consultation and engagement with stakeholders.
- No problem or potential remedy to the observation about administered funds is offered.

Therefore, any amendments related to these items would need to be subject to further detailed consultation and assessment.

3.2 Delegations

Appropriate delegation of decision-making is an important part of regulatory effectiveness and can ensure that decisions are made at the level that is best equipped to make them. Delegations, and any limitations to the delegation, should be clearly stated but do not need to be generally constrained beyond the fact that decision-makers can only delegate powers which they themselves are entitled to.

3.3 Role of the Environment Protection Authority

As outlined above, the role of the EPA does not need broad reform.

- The EPA should not be bound to prepare or publish its internal documents in any manner other than being consistent with the Department of Treasury's public sector best practice guidelines such as https://www.treasury.wa.gov.au/uploadedFiles/Site-content/Economic_Reform/RIA_Program/ria_guidelines.pdf.
- Eligibility criteria for EPA Board Members should not be prescribed in the Act, where they are likely to be too general to be of assistance. However, the Minister should be more transparent about selection processes.
- Whilst the removal of duplication between the EP Act and Heritage Act is supported in principle, further work is needed to ensure that Heritage Assessments will be resourced to an equivalent degree and that any interaction with the EPBC Act is clear.

3.4 Environmental Protection Policies

As per our response to Section 2.5 (above), no reform to Part III is required or supported.

3.5 Assessment

Woodside does not support the further progression of work on these items, with the exception of enabling broader powers for strategic assessments which can provide a useful part of regional planning.

- Maintaining the EPA's criteria for determining significance in Guidelines rather than the Act allows them to be updated more easily.
- Matters relates to cumulative assessment are discussed above (Priority Five).
- The independence of the EPA to offer advice to Government should remain unfettered, provided that the Government's ability to make holistic decisions is robust (see Section 2.6 above).
- When Cost Recovery is introduced it should adequately resource the EPA to undertake review by competent practitioners without the need for independent peer review.

3.6 Decision-making

Important reforms to ensure that the obligations on the Minister to consider environmental, social and economic factors are clear have been addressed as part of Section 2.6 above. Other matters raised in this section (such as amending the Act to require decisions to be subject to its object and principles) are unnecessary or (such as requiring each DMA to provide written reasons where requested) duplicative and burdensome. However, the suggestions to make minor amendments to clarify aspects of the Act (such as timelines for the implementation of proposals) are likely to be helpful, subject to consultation on the precise change.

3.7 Offsets

It is not clear from the Discussion Paper what the purpose or effect of such reforms would be, so Woodside does not support this proposal without further specific consultation.

3.8 Clearing of native vegetation

As this is not an area of Woodside expertise we draw the attention of the Government to the submission by the Chamber of Minerals and Energy.

3.9 Industry regulation

Woodside would support an amendment to allow the licencing of an activity rather than a premise, which may be supported by the proposal to licence mobile plant and equipment.

3.10 Compliance and enforcement

Woodside does not support the further progression of work on these items which are either already adequately covered in Section 2 or for which a sufficient case has not been made.

3.11 Appeals

Woodside believes this matter has been adequately addressed in section 2.10 above.