

## DWER discussion paper “*Modernising the Environmental Protection Act*”

The EPA(WA) is strong in some regards and the work of the EPA is highly valued. Even so there is much community dissatisfaction about EPA's performance and its limitations. There is widespread scepticism about EPA's ability to properly fulfil its role and purpose under the current EP Act 1986, evidenced by cases where EPA has failed to achieve environmental protection and justice, eg fracking, Roe 8 court case, relentless bushland clearing and GM crops. Also because EPA is grossly understaffed and under-resourced. Also because of cases of perceived political interference. This situation is totally unacceptable and in urgent need of repair.

The health, well-being and resilience of the WA community and its supporting environment depends more than ever before on a healthy, thriving, resilient environment. A healthy environment is fundamental to a sound economy. Australia has a climate emergency. Our communities require binding assurances through swift legislative reform and a genuinely independent and effective EPA. EPA's commitment to ecologically sustainable development principles is commendable, if only those principles can always be acted upon.

These following failings and weaknesses need fixing urgently:

- a) the damaging effects of the 1996 amendments designed to undermine the EP Act, and diminish the powers of the EPA and the Environment minister. Other damaging effects from apparent favouring of business interests over the interests of human and environmental health and safety.
- b) the allowing of precedents to be set which rolled back agreed-upon implementation conditions and formulation of ERs attached to rezoning and development proposals.
- c) lack of transparency and undemocratic exclusion of public input in important issues (eg revocation of EPPs)
- d) Excessive 'discretionary' decision making by EPA, in the knowledge that its policies and guidelines were capable of being rendered ineffectual..

[eg WA failed to do its required work towards the Australia SoE 2016 Report. \*. The public has been disadvantaged and 'left in the dark' since 2016. Such up-to-date scientific WA research information is vital to decision making, including matters coming before the courts.

At the same time, the 2017 Roe 8 / Save Beeliar Wetlands court case demonstrated how every single Policy (State, national and International) formulated to protect the environment, was ignored - rendered ineffectual - by the giving of discretionary powers to the environment minister. See Appendix A.

Arguably then, WA currently has no legal means of protecting and conserving its key environments, its exceptional biowealth, its most valuable natural assets, even in a Regional Park.

Yet these natural assets provide the essential ecosystem services upon which community health and survival ultimately depend. Arguably these serious failings in the current WA system of governance jeopardises public health, safety and well being.

Who is accountable for what?

e) Up-to-date information is essential. Unlike other states, WA failed to do its required work towards the SoE 2016 Report. The next SoE Report is due next year, so we expect to see a fit and proper contribution by WA. The 2016 SoE Report is only available online, and the detailed sections are difficult for the public to access. Every local government library should have a hard copy available.

f) Failure to provide a specialised environment court or tribunal.

**[A] Urgent reform and appropriate modernisation of the EP Act is an adaptive imperative.**

Reasons:

- a) Our WA government must acknowledge overwhelming and indisputable scientific evidence and opinion that climate change / climate disruption is occurring. Community majority opinion agrees. There is no mention of climate change in the EP Act even in relation to pollution and greenhouse gases. This is totally unacceptable.
- b) Extreme weather events are increasing nationally and globally : more frequent heatwaves, catastrophic bushfires on an unprecedented scale, prolonged droughts, more frequent flash floods, consequent loss of priceless biodiversity and wildlife extinctions have become the norm, with devastating consequences, unprecedented sea level rise as ice caps melt. NOAA confirms that the melting permafrost is unleashing massive amounts of more climate pollution. Human suffering is increasing. Economic losses are in the millions of dollars, potentially billions eventually as already in USA.
- c) Environmental security has fast become more important than military security.
- d) Clearly without drastic legislated improvements in government, this is what we can expect in the future. Many scientists consider tipping points for our ecosystems are close.
- e) Government has an overarching duty to protect the environment, beginning with the EP Act. Questions of negligence will be raised if the EP Act is not modernised, in the ways suggested below.
- f) If the EP Act does not modernise, if it continues to have serious failings of its role, then the EP Act will remain a defective instrument of fundamental law. It will remain in the state it is now of being in urgent need of reform and modernisation of the existing statutory assessment and offence frameworks, in order to address and regulate greenhouse gas emissions, and properly and effectively respond to Climate Change.
- g) Preservation of our life-support systems is at stake. There is a biological and adaptive imperative to conserve and protect what relatively little remains of our natural environment and the essential ecosystem services it provides. Major restoration is essential and the EPA must be a guiding force. The community expectation is that urgent reorientation of the law as it stands is essential, to ensure these imperatives are met, and to ensure that further harm and suffering to people and the environment is ultimately prevented
- h) Arguably the failings of the EP Act influence and warp the purpose and structure of all other parliamentary Acts. More emphasis has been placed on domestic economic and electoral concerns than perceptions of environmental citizenship and responsibility. This has enabled relentless plunder and ruthless exploitation of environment primarily for financial benefit of a few. Consequent environmental harm has increasingly undermined our life support systems and the welfare of this and future generations. Economic losses are increasingly felt. There has been a high national cost to Australia (and WA ) of Australia's rejection of the international consensus on climate change.
- i) Western Australians, as do all Australians, have a right to a healthy environment.

j) The current EP Act does not provide avenues for the community to ensure environmental justice, to protect their own health and well-being. The EP Act fails the needs of society, it must be upgraded.

**[B] The EP Act must acknowledge climate change and anthropogenic causes.** The EP Act must acknowledge Climate Change along the lines of mitigation in the process.

**[C] The EP Act must consider Climate Change an 'environmental impact'.** EPA talks about pollution but doesn't actually mention Climate Change, even in association with greenhouse gases.

Government more generally must consider Climate Change an environmental impact. Climate Change impacts are a real and present danger on many levels - cumulative, devastating, many leading to irreversible harm.

**[D] Government must declare a climate change emergency, and a health emergency** linked to climate change impacts. EPA must consult with the Directorate of Department of Health (DoH), as environmental health and human health are inseparable.

**[E] Purpose of the EP Act :**

**An Amendment to the EP Act must be to mitigate the effects of climate change - to make mitigation the purpose of the Act.**

**This triggers all subsidiary legislation, which has to be consistent with the purpose of the main part of the EP Act. The Approvals process under the Act has to pick up climate change.**

**A Consequential Amendment Bill needs to be created, amending the purpose of all other Acts to include mitigation of effects of climate change. This spreads the workload over whole of government.**

Eg in a Public Transport Act, the purpose would be to mitigate and reduce greenhouse gas emissions.

If a Treasury and Finance Bill, then the Act would use financial mechanisms to help mitigate climate change.

If agriculture, the Biodiversity and Agriculture Management AM Act would then ensure climate change mitigation is used to greatly reduce environmental harm and repair soil and land degradation as much as possible.

**[F]The Amendment must include Climate Change as an express requirement for all decisions under the EP Act.**

**[G] The definitions of 'pollution', 'emission' and 'environmental harm' must be amended** so that it is absolutely clear these include greenhouse gases linked to climate change...

**[H] It must be clarified that the ultimate purpose of the amended EP Act and all other Acts, is to ultimately serve as a mechanism for survival at every ecosystem level.** There must be an

acknowledgement that the environment\comprises our life support systems, and that green infrastructure is more important than built infrastructure.

**[I] Western Australia needs to follow the lead of many other of this nation's states and territories,** eg New South Wales, Victoria, South Australia and the Australian Capital Territory, which have introduced legislation that specifically deals with climate change and greenhouse gas emissions. Worthy of introducing is specific climate change legislation such as a Zero Carbon Act for Western Australia, as recently proposed by a group of distinguished scientists and academics.

**[j] The EP Act among other legal frameworks, does not provide appropriate avenues for our communities to seek climate justice.** Nor can we find an administrative framework for decision-making on matters of climate change. The failure of the EP Act to address climate change undermines the whole purpose, objective and foundation of the EP Act ie to protect the environment of WA. It is the area most urgently in need of reform.

## Appendix A

### **FAILURES IN PROTECTION OF ENVIRONMENTAL HEALTH**

As a result of the highly contentious decision by the WA Court of Appeal in 2017 which overturned the Chief Justice's ruling in regard to the Roe 8 freeway, (after bulldozing began through the wetlands of the Beeliar Regional Park), government policies are now considered to be non-binding guidance and cannot be enforced. The same applies to the Ministerial Conditions placed on projects that have been subjected to environmental impact assessment.

**Yet these are the very Policies, sound Procedures, Conditions and Agreements designed to protect human health s well as environmental health and safety.**

To summarize the absurd situation we now have :

1)Vital Policies are rendered ineffectual by a government which is not acting in the public interest.

2) Environmental Protection (if any) seems to be in the hands of ministers who are ignoring the sound policies of their own departments.

3) Crucial Environmental Protection Authority (EPA) Policies and Procedures are being ignored.

4) Department of Health is evidently ignoring the vital principles of Environmental Health Australia (EHA)'s Environmental Protection Policy.

5) Department of Health is evidently also ignoring the national Inter Governmental Agreement on Environment (IGAE).

6) Department of Health is evidently also ignoring the Goal, Core Objectives and Guiding Principles of environmental policy in the National Strategy for Ecological Sustainable Development.

7) WA's Biosecurity Strategy 2016 has seriously weakened state Biosecurity.

8) The new Biodiversity Bill 2016 provides no legislative protection of threatened and

endangered species.

9) Nor the Wildlife Conservation Act 1950.

10) Nor the Conservation and Land Management Act 1984.

11) Nor international Agreements for protection of migratory birds.

12) The EP Act 1986 is currently under review.

13) The Commonwealth EPBC Act is currently under review.

Effectively then, WA now has no legal protection of key environments.

And because of that, WA has no fundamental protection of public health and well-being.

WA now has no fundamental protection of its economy either. A healthy thriving environment is the foundation of the economy.

Such grand-scale eco-mismanagement points to an extraordinary and extreme failure in governance and duty of care.

Sincerely,

Meg Wilson