



Government of **Western Australia**
Department of **Water and Environmental Regulation**

Modernising the Environmental Protection Act





Introduction

- The Premier made a commitment to Parliament to modernise the *Environmental Protection Act 1986* (EP Act)
- The EP Act is over 30 years old and amendments are needed to ensure it has the capacity to respond to current and future environmental challenges
- There is an opportunity to make changes that will streamline processes and reduce regulatory burden, while improving environmental protection



Key drivers for the EP Act Amendments

- Modernising Western Australia's environmental protection legislation for the benefit of future generations
- Supporting the creation of a 'one stop shop' for industry and developers, by streamlining and simplifying Western Australia's water and environmental regulation
- Promoting best practice environmental protection and sustainable development through effective regulation
- Addressing legislative issues that can undermine the effective and efficient implementation of the EP Act



Presentation Overview

- Key changes to Parts I, II and III
- Key changes to Part IV – Environmental impact assessment
- Key changes to Part V – Environment Regulation
- Key changes to Part VI – Enforcement
- Key Changes to Part VII – Appeals
- New areas of environmental reform
- Further issues for consideration
- How to have your say



Part I - Preliminary

Part II - Environmental Protection Authority

Part III - Environmental Protection Policies

- Part I amendments – updating definitions, consequential amendments
- Part II amendments to provide more flexibility for members of the EPA and provide for the use of modern technology to support EPA meetings
- No amendments in Part III are proposed



Part IV

Environmental Impact Assessment

- Recognition of other regulatory processes by the EPA in deciding whether to assess a proposal, and in the scope of its assessment report to the Minister
- EPA given discretion to identify relevant decision-making authorities to be notified of decision to assess
- Streamlined consultation processes for Minister making an implementation agreement and when changing previously approved conditions
- Improved flexibility to change implementation conditions without triggering an EPA inquiry if the changes will not have a significant detrimental effect on the environment
- Strategic assessments



Part IV

Environmental Impact Assessment continued

- Ability to withdraw Ministerial implementation statements
- Powers for other agencies to monitor and enforce compliance
- Ability for the EPA to recommend, and the Ministers for Environment and Planning to agree, that a scheme may not be implemented.
- Stop-the-clock for schemes, pending receipt of adequate information to enable a decision.



Part IV

Environmental Impact Assessment continued

- Proponent to have the ability to amend proposal after referral
- Minister has greater power to approve changes to conditions without the need for the changes to be referred to the EPA
- Minister for Environment may direct the EPA to assess or further assess a proposal which the EPA decided not to assess
- Clarify how changes to approved proposals (currently “revised proposals”) are assessed
- Include a head of power to allow a levy to be imposed on a proponent for Part IV assessments to allow for cost recovery



Part V Division 2

Clearing of Native Vegetation

- Environmentally sensitive areas
 - Current regime: declared by notice
 - New regime: to be made under regulations
- Referral to CEO for decision whether a clearing permit is needed
- Evidentiary matters – remotely sensed images
- New condition – can impose environmental protection covenant under new Part VB



New - Environmental Protection Covenants

- Current regime
- New Pt VB allows environmental protection covenants to be a condition of a clearing permit or a Ministerial statement
- Greater flexibility and will support better environmental outcomes



Current regime Part V Division 3 Industry Regulation

- Based on “prescribed premises”
(listed in Schedule 1 of Environmental Protection Regulations)
- Works approval required to change a premises to a
“prescribed premises”
- Changes to premises or emissions are an offence without
an approval
- Defence to offence of pollution if emissions are done
“in accordance with” a licence



Key changes to Part V Division 3 Industry Regulation

- Replace prescribed premises with a licence for “controlled work” and “prescribed activity”
- Makes it a requirement to hold a licence for prescribed activities above the threshold specified in Schedule 1 of the *Environmental Protection Regulations 1987*
- Provides for voluntary licences for prescribed activities that are below the threshold amount
- Removal of works approvals – can have one “licence” instrument for construction and/or operation
- New Offence – carrying out controlled work or a prescribed activity without a licence
- Any person who contravenes a licence commits an offence (not just the licensee)
- Confines the defence to the offence of pollution to emissions which are listed in the licence and for which a limit has been set



Rationale for Industry Regulation changes

- Flexibility – licences are not restricted to a premises, a licence can authorise works, any person can hold a licence
- Simpler and more certainty – both for what is regulated and for the scope of defences
- Targets activities and emissions that present a real risk of harm to the environment
- Reduces unnecessary regulatory burden – trivial changes will not be captured



Other changes to Part V Division 3 & 4 Environmental Regulation

- Decision-making criteria for CEO clarified and made explicit
- Grounds for revocation by CEO to include that a planning approval is no longer in place
- Closure notice for suspension



Key changes to Part VI and VIA Enforcement & Legal Proceedings

- Entry to premises and collect samples
- Submission of books and answering questions
- Electronic statements
- Modified penalties
- Power for an injunction similar to that for clearing for industry regulation applies to Part IV and V offences



Key changes to Part VII – Appeals

- Appeals to be lodged with the Appeals Convenor rather than with the Minister for Environment.
- Where a change to implementation condition is subject to appeal, implementation may continue.
- Minister decision on appeal



New areas of environmental reform

- Facilitating bilateral agreements with the Commonwealth
- Update requirements for advertising, publishing and confidentiality
- Environmental monitoring programs to assess cumulative industry impacts
- Certification of Accredited Environmental Practitioners
- Additional improvements to support administrative efficiency, and reduce unnecessary delays.



Further issues for consideration

- The role of the Environmental Protection Authority
- Environmental Protection Policies
- Assessment of proposals under Part IV
- Improving decision-making under the EP Act



Further issues for consideration - continued

- Broader powers for strategic assessments
- Offsets
- Compliance and enforcement
- Banning of certain products or product classes



How to have your say

- We are seeking your feedback on the proposed changes to the EP Act
- Please visit the DWER website which outlines how you can lodge an online submission.
- Public consultation will end on 28 January 2020.
- Following a review of submissions, the draft Bill for the amendments to the EP Act amendments Bill will be updated and prepared for Parliament



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Questions?

