

Professors for Environmental Responsibility

www.thebeeliargroup.com

23 January 2020

EP Act Discussion Paper
Department of Water and Environmental Regulation
Locked Bag 10,
Joondalup DC, WA 6919

By Email: EPActamendments@dwer.wa.gov.au

Modernising the Environmental Protection Act; Discussion Paper

We are writing to you on behalf of the Beeliar Group of Professors for Environmental Responsibility. Our group of 35 Professors was formed in January 2017 out of concern over the process used to plan and implement the Perth Freight Link and Roe Highway Stage 8.

We are pleased to see that the Government has decided to modernise the Environmental Protection Act as it has many deficiencies, which have been noted by various commentators since its enactment in 1986, and with few of these having been addressed.

The Discussion Paper and Draft Bill contain several useful amendments and we agree with most of them, except where noted below.

1. Bilateral agreements with the Commonwealth

We have concerns about the delegation of Commonwealth powers to carry out assessments under the EPBC Act to the States as history shows that the States sometimes overlook key factors of national importance. The effect of the proposed amendments is unclear, and we strongly recommend retention of the current arrangements where the Commonwealth has the power to separately assess projects. Two independent assessments can be of greater value than one alone.

2. Certification of Environmental Practitioners

The environmental consulting industry reports to and can influence proponents. This is beneficial but can affect scientific objectivity in the environmental reviews it carries out. This is understandable because the consultants are hired and paid for by the proponents. Documents should be certified by independent auditors and/or peer reviewed by independent scientists, both explicitly acting free from conflict of interest, to ensure they are both fit for purpose and consistent with best practice.

3. Referral of proposals

We have serious concerns about not assessing proposals where other government agencies have the power to regulate them. Fundamentally these other agencies do not operate under legislation with environmental protection as an object. We mention in particular the Mines Department, the Planning Department and Main Roads in this regard. We believe that the EPA should assess all proposals that have the potential to significantly affect the environment. In particular we consider

that Environmental Reviews carried out under section 48A are subjected to public review and that DWER should have a role in overseeing the implementation of environmental conditions applied to planning proposals.

Many of the items listed in Section 3 of the Discussion Paper as *Further Issues for Consideration* are very important as they address key deficiencies in the current legislation. We have previously submitted a detailed position paper that covers many of these suggestions. An amended copy is attached to this submission.

Specific comments on *Further Issues for Consideration* are listed below.

1. New Ideas: These all sound reasonable
2. Delegations: We agree with this proposal
3. Role of the EPA: The first two dot points are covered in detail in our position paper. We do not support the third dot point as culture and heritage are often closely linked to the environment. See recommendations 1,4 and 5 our position paper.
4. Environmental Protection Policies: The first two dot points are covered in detail in our position paper (recommendation 7) and we strongly support them. We also support the third dot point as we are concerned that Part III is not being used as widely as it could be or as widely as was intended when the Act was first drafted.
5. Assessment: We agree with all of these proposals; they are covered in detail in our position paper. See recommendations 6, 8, 9, 10 and 13. This is an area requiring urgent attention. In particular, section 48 requires rewriting to cover the legal issues raised by the recent assessment of the Maddington Kenwick Strategic Employment Area.
6. Decision-making: We agree with all of these proposals and most of them are covered in our position paper. See recommendations 1, 11, 12.
7. Offsets: We strongly agree with this proposal and it should be combined with amendments to the Act to require the EPA to follow its own policies and guidelines. See recommendation 14 in our position paper.
8. Clearing of Native Vegetation: We support these suggestions but would prefer the second dot point to the first. This is a crucial issue for sustainability and it deserves its own Act. In the interim the Clearing Principles should be written as duties that flow from; 'native vegetation should only be cleared if', rather than the present wording that 'native vegetation should not be cleared if'. See recommendation 18.
9. Industry regulation: We agree with this suggestion.
10. Compliance and Enforcement: We support all of these amendments, they are covered in our position paper. See recommendations 15 and 16. These amendments are urgent as the EPA currently lacks the resources to ensure compliance with Ministerial Conditions. This undermines public support for the EPA and DWER and leads to the perception that we have poor standards of environmental protection. The post-assessment follow-up is just as important as the initial assessment, but it is currently under resourced and ineffective.
11. Appeals: We agree with both of these suggestions. We have a detailed section on appeals in our position paper (recommendation 17). We would like to see an independent appeals process, rather than the current Ministerial model which we regard as flawed and outdated. We believe it is time to establish an environmental tribunal or court to assess appeals, as exists in most other States at present, or at the very least to provide for referral to the State Administrative Tribunal.

Additional Issues

In our attached submission, we raise three additional issues:

- i. The need to amend the EP Act to include a requirement for greenhouse gas emissions and climate change to be considered throughout the administration of the Act. See recommendation 2
- ii. A new provision be added to the Act requiring the EPA and DWER to ensure that all practicable measures are taken to prevent the injury, pain and distress of animals whose well-being falls under areas currently subject to their oversight. See recommendation 3.
- iii. There is a need for WA to contribute to regular State of the Environment reporting as is done in all other States and the Commonwealth. See recommendations 19 and 20. This will require an amendment to section 21 of the Environmental Protection Act.

Thank you for giving us the opportunity to comment on this important and timely review of the EP Act. As stated above, we believe that the Act is in urgent need of modernisation and we hope that you will carry out a comprehensive set of amendments as outlined above.

Yours sincerely,

Philip Jennings, Patricia Harris, John Bailey

On behalf of the Beeliar Group