Environmental Consultants Association

The professional association for environmental consultants in Western Australia

post: PO Box 971 West Perth WA 6872 • phone: 0449 660 621• web: www.eca.org.au

The Environmental Consultants' Association (ECA) represents a diverse range of practitioners from the environmental consulting industry in Western Australia. As such, in considering regulatory reform, the ECA's role is to advocate for a framework which results in robust, transparent decision making that is fit for purpose. As practitioners, we can add value to consultation processes by providing advice on the potential workability of regulatory reform.

The ECA is broadly supportive of the proposed amendments to the EP Act. Specific comments in relation to the Draft Exposure Bill are made below, followed by brief comments on the further issues for consideration.

Part II

The proposed changes to the operation of the Environmental Protection Authority (EPA) are generally supported. However, the appointment of a part time Chair could conceivably affect the availability of that role to participate in consultation with industry generally, or specifically in relation to projects. Therefore, careful consideration should be given to ensuring this independent role is still fully provided under new arrangements.

Part IV

The changes to s.38 which provide additional flexibility for proponents to amend or withdraw a proposal prior to a decision on assessment (without impacting the right to refer the proposal in future) are supported. This should encourage proponents to put their most up to date proposals forward for assessment, regardless of timing.

The ECA suggests that the new provision in S.38A (1) for the EPA to place a time limit on the provision of additional information requested for an assessment, and to declare the referral to have been withdrawn if not provided (s.38A(3)), should be reviewed. This change is not supported as it may result in pressure for consultants to produce work in unreasonable timeframes, potentially resulting in poor quality information. The ECA considers that the existing stop-the-clock mechanisms are sufficient, as they leave the onus on the Proponent to comply before the assessment can progress.

S.40(1A) introduces a new requirement that the EPA must assess amended proposals in the context of the approved proposal and have regard to the cumulative impacts of these. This provision is inflexible and does not have regard to the fact that limited environmental data may be available for historically approved projects as information requirements for impact assessment always change over time. Historical impacts are already considered as part of the environmental baseline in an impact assessment and in the level of conservation significance of threatened species. This provides appropriate historical context for the assessment of proposals and reasonably foreseeable cumulative impacts. The ECA suggests the compulsory nature of this new clause should be reviewed.

S.43A as amended provides more flexibility to amend the proposal during assessment irrespective of whether the change is likely to significantly increase the impact on the environment. This amendment is supported as it removes an assessment of significance of

whether a change is significant before assessment of environmental impacts. This will reduce regulatory burden and does not increase risk to the environment as the EPA has full flexibility to reject the change, increase the level of assessment or change the scoping document (i.e. repeat functions).

The changes to s.46C(1A) are supported as they remove a compulsory assessment process for a change to conditions, irrespective of whether they have environmental implications. The inclusion of a similar test as for s.45C regarding whether there are additional or different significant adverse environmental impacts is a practical and well understood test for changes to conditions.

S.47A introduces a new power for the Minister to revoke an implementation agreement. This power is supported as it is beneficial for all stakeholders to be able to close out project approvals if they are completed or never commenced.

The amendment of s48A to more closely align the assessment of schemes with proposals is supported.

Part V

The ECA is generally supportive of the proposed amendments to Part V regarding clearing permits and licensing. The changes that allow the use of digital imagery in s.51R is fully supported. The power to require the payment of levies into environmental monitoring funds is also supported as this will allow the collection of more consistent and comprehensive environmental data in areas of combined emissions; allowing more informed decision making.

Linking licences and offences to activities rather than premises appears to be a more robust system for preventing environmental harm. Combining works approvals and operating licences is considered beneficial to avoid unnecessary delays and any confusion regarding approvals during the transition from construction, testing and operation.

The associated regulations, yet to be developed, will be critical in establishing the workability of these instruments. Therefore, the ECA would welcome timely consultation on these when appropriate.

Part VII – Appeals

The proposed changes to this Part are supported.

Further Issues for Consideration

The ECA considers that the EP Act is largely an effective regulatory instrument. The ECA is not advocating for any significant additional changes to be made at this time. However, if further amendments are proposed, we request that additional consultation is conducted regarding those changes. It is considered particularly important that assessment and decision-making processes are transparent and that decision-making powers are sufficiently flexible to allow considered and merit based decision making. The ECA would be concerned with any future proposals that did not support these principles.

The only specific change that the ECA would like to see in a modernisation of the EP Act, is a move to gender neutral terminology. This could be simply achieved by changing all references from Chairman to Chair or Chairperson. We understand that that this will not change any legal meaning in the Act, however consider this opportunity to address the use of gendered language in legislation should not be missed.