

Environmental Planning and Assessment Amendment (Public Participation and Environmental Protection) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the *Environmental Planning and Assessment Act 1979* in relation to environmental planning control so as to modify the effect of the amendments made to that Act by the *Environmental Planning and Assessment Amendment Act 1997*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1], [3] and [4] relate to exempt development. **Schedule 1 [1]** inserts a definition of ***environmentally sensitive area*** into the Act. The definition is relevant to the determination of whether development is appropriate to be classified as exempt development. **Schedule 1 [3] and [4]** prevent development from being classified as exempt development if it is proposed to carry out the development on certain environmentally fragile land. **Schedule 1 [1]** also inserts a definition of ***principles of ecologically sustainable development*** into the Act. The definition is relevant to the objects of the Act and the matters that are required to be taken into consideration in determining a development application.

Schedule 1 [2] amends the objects of the Act so that it is an object "to encourage development in accordance with the principles of ecologically sustainable development" rather than "to encourage ecologically sustainable development".

Schedule 1 [5]–[10] relate to complying development. **Schedule 1 [5]** prevents development consent from being granted by the issue of a complying development certificate. **Schedule 1 [6]** prevents development that requires the concurrence of the Director-General of National Parks and Wildlife from being classified as complying development. **Schedule 1 [7]–[10]** add several categories of environmentally fragile land to the list of land on which it is inappropriate that complying development be permitted.

Schedule 1 [11] relates to State significant development. It prevents the Minister for Urban Affairs and Planning from declaring development to be State significant development.

Schedule 1 [13] extends the classes of persons to whom notice of the making of a development application is to be given to include:

- adjoining owners
- persons who may be detrimentally affected by the proposed development
- the secretary of any precinct committee
- persons to whom notice is required to be given under a development control plan,

and makes other provisions concerning the giving of notice.

Schedule 1 [12] and [14] relate to designated development. **Schedule 1 [12]** requires a development application for designated development to be accompanied by a social impact statement in addition to an environmental impact statement. **Schedule 1 [14]** requires the consent authority to give notice of its decision not to place the amendment, substitution or withdrawal of a development application for designated development on public exhibition not only to the applicant but also to any person who

made a submission when the original application was exhibited.

Schedule 1 [15] requires a person who makes a decision with respect to a development consent or concurrence to give the reasons for the decision.

Schedule 1 [16] expands, and specifies with greater particularity, the matters that must be taken into consideration by a consent authority in determining a development application.

Schedule 1 [17] requires the Director-General of the Department of Urban Affairs and Planning, in cases where the Minister has determined a development application for designated development after a Commission of Inquiry has been held, to notify the applicant, the consent authority and each person who made a submission concerning the development of the Minister's determination and the reasons for it.

Schedule 1 [18] enables a condition to be imposed in granting development consent for the protection of any items identified for retention by the consent.

Schedule 1 [19] requires adjoining owners to be given 2 days' notice of an intention to commence the erection of a building.

Schedule 1 [20] requires a council to give notice of a request for the review of a development application for advertised development to be given to each person who made a submission concerning the application and to consider any further submissions made by those persons.

Schedule 1 [21]–[23] relate to complying development certificates. **Schedule 1 [21]** provides that a complying development certificate alone is not sufficient to authorise the use of a building erected in compliance with it. **Schedule 1 [22]** requires an accredited certifier, in dealing with an application for a complying development certificate, to make proper inquiry as to the existence of any threatened species on the land to which the application relates. **Schedule 1 [23]** extends, from 7 days to 21 days, the period within which an application for a complying development certificate must be determined.

Schedule 1 [24] requires that notice be given to persons who made submissions in respect of a development application that is referred to the Minister for determination whether or not the Minister directs that a Commission of Inquiry be held.

Schedule 1 [25] clarifies the rights of appeal that apply to the determination of certain development applications for State significant development.

Schedule 1 [26]–[33] relate to integrated development. **Schedule 1 [26]** expands the list of integrated development to include authorisations, permits and consents under sections 86, 87 and 90 of the *National Parks and Wildlife Act 1974*. **Schedule 1 [27]** clarifies the circumstances in which development that may involve a relic is, or is not, integrated development. **Schedule 1 [28]** and **[30]** limit and regulate the circumstances in which a consent authority, in the absence of a response from an approval body, may determine a development application in respect of integrated development that requires an authorisation, permit or consent under section 86, 87 or 90 of the *National Parks and Wildlife Act 1974*. **Schedule 1 [29]** requires the Premier, in settling a dispute between the Minister and an approval body concerning State significant development that is integrated development, to give reasons for the decision. **Schedule 1 [31]** inserts proposed sections 92B and 92C into the Act. Proposed section 92B imposes additional requirements relating to the public exhibition of, and the making and consideration of submissions concerning, integrated development. Proposed section 92C specifies the period within which an approval body must notify the consent authority of its decision concerning an application for integrated development. **Schedule 1 [32]** and **[33]** enable an approval body to give an approval that is inconsistent with a development consent for integrated development in specified circumstances.

Schedule 1 [34] requires a draft contributions plan to be publicly exhibited for a period of not less than 28 days.

Schedule 1 [35]–[37] relate to the modification of development consents. **Schedule 1 [35]** requires a consent authority to be satisfied, in addition to the other specified matters, that no prejudice will be caused to any person who objected to the development application before it modifies a development consent. **Schedule 1 [36]** requires notice to be given to persons who made submissions before a consent can be modified. **Schedule 1 [37]** requires the consent authority to take into consideration the cumulative impacts of previous modifications before further modifying a consent.

Schedule 1 [38] requires a council to enter in the register of particulars concerning applications for development consent details of submissions made concerning the application and modifications of

consent applications and determinations.

Schedule 1 [39] and [40] limit the scope of a compliance certificate.

Schedule 1 [41] permits the replacement of one accredited certifier with another only if the first accredited certifier dies or becomes a mentally incapacitated person or bankrupt.

Schedule 1 [42] requires an accredited certifier to lodge a bond with a council if the accredited certifier issues a notice to a person requiring the person to carry out work.

Schedule 1 [43] clarifies the circumstances in which an authorisation by the Minister of a professional association as an accreditation body remains in force and may be renewed.

Schedule 1 [44] and [45] relate to the accreditation of accredited certifiers. **Schedule 1 [44]** extends the grounds on which an accreditation body may refuse to accredit a person as an accredited certifier.

Schedule 1 [45] clarifies the circumstances in which the accreditation of a person remains in force and may be renewed.

Schedule 1 [46] and [47] relate to the auditing of accredited certifiers. **Schedule 1 [46]** removes the discretion of the Director-General of the Department of Local Government, in circumstances where the Director-General has been given a report that an accredited certifier is or may be guilty of unsatisfactory professional conduct or professional misconduct, to give a copy of the report to the relevant accreditation body and to apply to the Administrative Decisions Tribunal for a disciplinary finding. **Schedule 1 [47]** requires the Director-General to carry out a minimum of 50 audits each year.

Schedule 1 [48] and [49] relate to the action to be taken by an accreditation body after an investigation into a complaint against an accredited certifier has been completed. **Schedule 1 [48]** enables the complainant to apply to the Tribunal for a disciplinary finding. **Schedule 1 [49]** removes the requirement that the consent of the accredited certifier must be obtained before disciplinary action may be taken against the accredited certifier where an accreditation body is satisfied that there is a reasonable likelihood that the accredited certifier will be found guilty by the tribunal of unsatisfactory professional conduct.

Schedule 1 [50]–[52] and [57] increase penalties for various offences by accredited certifiers.

Schedule 1 [53] and [54] prevent the exclusion from the definition of *activity* for the purposes of Part 5 of the Act of exempt development or development that is prescribed by the regulations.

Schedule 1 [55] and [56] extend the list of items of the environmental heritage in respect of which the impact of a proposed order under Division 2A of Part 6 of the Act must be considered before the order can be given to include items listed in the Register of the National Estate kept in pursuance of the *Australian Heritage Commission Act 1975* of the Commonwealth.

Schedule 1 [58] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.