

Western Australia

Environmental Protection Amendment (Validation) Act 2014

(No. 27 of 2014)

Contents

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Part X inserted	2
Part X — Validation		
134.	Terms used	2
135.	Grounds of invalidity	3
136.	Certain proceedings of Environmental Protection Authority and other things validated	4
137.	Exclusions from validation	5

Western Australia

Environmental Protection Amendment (Validation) Act 2014

No. 27 of 2014

An Act to amend the *Environmental Protection Act 1986* to validate certain proceedings of the Environmental Protection Authority and for related purposes.

[Assented to 27 November 2014]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Environmental Protection Amendment (Validation) Act 2014*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Act amended

This Act amends the *Environmental Protection Act 1986*.

4. Part X inserted

After section 133 insert:

Part X — Validation

134. Terms used

(1) In this Part —

decision date means 19 August 2013, which is the date on which the decision in *The Wilderness Society v Minister for Environment* was delivered;

ground of invalidity means a ground of invalidity set out in section 135;

The Wilderness Society v Minister for Environment means the decision of the Supreme Court of Western Australia in *The Wilderness Society of WA (Inc) v Minister for Environment* [2013] WASC 307.

(2) In this Part, a reference to the doing of anything includes a reference to an omission to do anything.

135. Grounds of invalidity

These are the grounds of invalidity —

- (a) the participation (whether by taking part in the consideration or discussion of a matter, or voting on a matter or participating in any other way), in any purported proceedings of the Authority, by Authority members who were disqualified from participation because of —
 - (i) their direct or indirect pecuniary interest in a matter, whether or not that interest was disclosed in accordance with section 12(1) or determined under section 12(3) and whether or not a decision was purportedly made under section 13 in relation to the interest; or
 - (ii) a reasonable apprehension of bias;
- (b) the lack of a quorum at a meeting purportedly held by the Authority, where the lack of a quorum resulted from Authority members being disqualified from participation in the circumstances set out in paragraph (a)(i) or (ii);
- (c) the failure of the Authority to decide a question at a meeting purportedly held by the Authority, where —
 - (i) the failure resulted from non-compliance with the requirements of section 11(2)(e) for at least 3 Authority members to vote on the question or with any other requirement of section 11(2) with respect to voting; and
 - (ii) that non-compliance resulted from Authority members being disqualified

- from participation in the circumstances set out in paragraph (a)(i) or (ii);
- (d) the purported exercise of a power or duty of the Authority under a delegation made under section 19, where —
- (i) the delegation was purportedly invoked in order to avoid the proceedings of the Authority being invalid on any of the grounds of invalidity set out in paragraphs (a) to (c); and
 - (ii) the delegation could not be invoked in the circumstances in which it was purportedly invoked, or did not authorise the exercise of the power or duty in the circumstances in which they were purportedly exercised.

136. Certain proceedings of Environmental Protection Authority and other things validated

- (1) This section applies to anything done, or purportedly done, by or on behalf of the Authority before the decision date that, if this section had not been enacted, is or may be invalid on a ground of invalidity.
- (2) The things to which this section applies are to be taken to be, and to have always been, valid and effective to the same extent as they would have been if they had not been invalidated by a ground of invalidity.
- (3) The rights, obligations and liabilities of all persons are to be taken to be, and to have always been, the same as if the things to which this section applies had been validly done.
- (4) Anything done, or purportedly done, before the *Environmental Protection Amendment (Validation) Act 2014* section 4 comes into operation as a result or

consequence of, or in reliance on or in relation to, a thing to which this section applies (a *validated thing*) is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if the validated thing had been valid at the time the other thing was done or purportedly done.

- (5) This section is subject to section 137.

137. Exclusions from validation

Section 136 does not validate —

- (a) any of the following things that were held to be invalid by the Supreme Court of Western Australia in *The Wilderness Society v Minister for Environment* —
- (i) the report and recommendations of the Environmental Protection Authority on the Browse Liquefied Natural Gas Precinct strategic proposal (Report 1444, July 2012);
 - (ii) the statement of the Minister for Environment, published on 19 November 2012, that, in the event of a declaration by the Environmental Protection Authority pursuant to section 39B of the *Environmental Protection Act 1986* that it is a derived proposal, a proposal to do one or more of the Developments, Activities, Operations or Changes in Land Use listed in Column 2 of Table 1 in Schedule 1 of the statement, and which was identified in the Strategic Proposal to which Report 1444 relates, may be implemented (Ministerial Statement No. 917);

s. 4

- (iii) the declaration made by the Environmental Protection Authority on 17 December 2012 that the proposal by Woodside Energy Ltd for the Browse LNG Downstream Development 25 Mtpa is a derived proposal identified in the Browse LNG Precinct strategic proposal, James Price Point, Shire of Broome;
 - (b) anything that is invalid as a consequence of the invalidity of the things listed in paragraph (a).
- =====