

ENVIRONMENTAL PROTECTION.

No. 78 of 1980.

AN ACT to amend the Environmental Protection Act 1971-1975 and to amend section 7 of the Metropolitan Region Town Planning Scheme Act 1959-1979.

[Assented to 5 December 1980.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Environmental Protection Amendment Act 1980*.

Short title
and citation.

(2) In this Act the Environmental Protection Act 1971-1975 is referred to as the principal Act.

Act No. 63
of 1971 as
amended by
Acts Nos. 61
of 1972 and
8 of 1975.

(3) The principal Act as amended by this Act may be cited as the Environmental Protection Act 1971-1980.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Insertion of
new
definitions.

3. Section 4 of the principal Act is amended in subsection (1)—

(a) by deleting the definitions of “Authority member” and “Council member”; and

(b) by inserting, in their appropriate alphabetical positions, the following definitions—

“ “Authority member” means a member of the Authority, and includes the Chairman and the Deputy Chairman thereof;

“Council member” means a member of the Council, and includes the President and the Deputy President thereof;

“Director” means the person appointed as Director of Conservation and Environment under section 13;

“President” and “Deputy President” mean respectively the persons appointed under section 19 as President and Deputy President of the Council;

“protection”, in relation to the environment, includes the conservation, care and management thereof;

“Schedule” means the Schedule to this Act. ” .

4. (1) Section 9 of the principal Act is repealed and the following section is substituted—

Section 9
repealed
and
substituted.

“ 9. (1) For the purposes of this Act there shall be a body to be known as the Environmental Protection Authority.

Environ-
mental
Protection
Authority.

(2) The Authority shall consist of 3 members appointed by the Governor, of whom—

- (a) one shall be a legal practitioner, within the meaning of the term “practitioner” in the Legal Practitioners Act 1893, of not less than 7 years’ standing; and
- (b) at least one shall be a person with a knowledge of and experienced in environmental matters,

but no Council member or person who is employed under the Public Service Act 1978 shall be eligible for appointment.

(3) Except as otherwise provided by this Act, a member of the Authority shall hold office for such term, not exceeding 4 years, as is specified in his instrument of appointment, but may from time to time be re-appointed.

(4) An Authority member—

- (a) may be removed from office by the Governor if he—
 - (i) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
 - (ii) becomes permanently incapable of performing his duties;
 - (iii) absents himself, except on leave duly granted by the Minister, from 3 consecutive meetings of the Authority; or

(iv) after his appointment as a member, becomes a person employed under the Public Service Act 1978; and

(b) may resign his office by notice in writing delivered to the Minister.

(5) The Governor shall appoint a member of the Authority to the office of Chairman and another member to the office of Deputy Chairman of the Authority, and any member so appointed may—

(a) be removed from such office by the Governor on any ground mentioned in subparagraph (i), (ii) or (iii) of subsection (4) (a) of this section; or

(b) resign his office by notice in writing delivered to the Minister.

(6) A member of the Authority shall be paid such remuneration and allowances as are determined in his case by the Governor. ” .

(2) Each person holding office as a member of the Environmental Protection Authority immediately before the coming into operation of this section, other than the Director of Conservation and Environment, shall continue to hold office as such until the expiry of his term, subject to this Act and to the terms of his appointment, and shall be eligible for re-appointment.

Section 10
amended.

5. Section 10 of the principal Act is amended in subsection (1) by deleting “other than the Director,”.

Section 11
amended.

6. Section 11 of the principal Act is amended—

(a) in subsection (1) by deleting “Director” and substituting the following—

“ Chairman ”;

(b) in paragraph (a) of subsection (2) by deleting "Director", in both places where it appears, and substituting the following—

“ Chairman ”; and

(c) by inserting after subsection (2) the following subsection—

“ (2a) Notice of meetings of the Authority or any committee of the Authority shall be given to the Department, and the Director or his representative shall be entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but he shall not vote on any matter. ” .

7. Section 12 of the principal Act is amended by deleting “, 1904” and substituting the following—

Section 12
amended.

“ 1978 ” .

8. Section 13 of the principal Act is amended by deleting “Subject to subsection (3) of section 14, a” and substituting the following—

Section 13
amended.

“ A ” .

9. Section 14 of the principal Act is amended—

Section 14
amended.

(a) in paragraph (b) of subsection (1) by deleting “, 1904” and substituting the following—

“ 1978 ”;

(b) in paragraph (f) of subsection (2) by deleting “, 1904” and substituting the following—

“ 1978 ”; and

(c) by repealing subsection (3).

Section 15
amended.

10. Section 15 of the principal Act is amended in subsection (1) by deleting “, 1904” and substituting the following—

“ 1978 ” .

Section 17
amended.

11. (1) Section 17 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “, namely—

(a) the Director, who shall be the
Chairman of the Council; and

(b) fifteen other members”;

(ii) by re-designating subparagraphs (i) to (vii) respectively as paragraphs (a) to (g);

(iii) in paragraph (c) by deleting “, 1904” and substituting the following—

“ 1978 ”;

(iv) in paragraph (f) by deleting the “and” after the semicolon;

(v) in paragraph (g) by deleting the full stop and substituting the following—

“ ; and ” ; and

(vi) by inserting after paragraph (g) the following paragraph—

“ (h) one shall be a person possessing such qualifications or representing such bodies or persons as the Governor thinks fit. ”; and

(b) by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) Each appointment of a Council member shall, subject to this Act, be for a term not exceeding four years, but he may from time to time be re-appointed.

(3) An Authority member shall not be eligible for appointment as a Council member. ” .

(2) Each person holding office as a member or deputy member of the Conservation and Environment Council immediately before the coming into operation of this section, other than the Director of Conservation and Environment, shall continue to hold office as such until the expiry of his term, subject to this Act and the terms of his appointment, and shall be eligible for re-appointment.

12. Section 19 of the principal Act is repealed and the following section is substituted—

Section 19
repealed
and
replaced.

“ 19. (1) The Governor shall appoint one of the members of the Council to the office of President and another member to the office of Deputy President of the Council.

President
and Deputy
President.

(2) The President or the Deputy President may resign his office as such by notice in writing to the Minister but, subject thereto, each of them continues to hold office until the expiry of the term of office as member during which he was appointed as President or Deputy President, and may be re-appointed under subsection (1) of this section. ” .

13. Section 20 of the principal Act is repealed and the following section is substituted—

Section 20
repealed
and
replaced.

“ 20. (1) Where during any period the office of President is vacant or the President is unable to act by reason of sickness, absence or other cause the Deputy President shall act as President during that period, but where in such circumstances the office of Deputy President is also vacant or he is also unable to act for any period by reason of sickness, absence or other cause, the Council may appoint a Council member to act as President of the Council during that period.

Acting
President.

(2) When acting under this section the Deputy President or a person appointed by the Council under subsection (1) of this section has all the powers, functions and duties of the President of the Council. ” .

Section 22
amended.

14. Section 22 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) Subject to subsection (2) of this section, a Council member (including a deputy of a Council member while acting for him) shall be paid such remuneration and allowances as are determined in his case by the Governor. ”; and

(b) in subsection (2) by deleting “, 1904” and substituting the following—

“ 1978 ” .

Section 23
amended.

15. Section 23 of the principal Act is amended by deleting “member of the Council” and substituting the following—

“ Council member ” .

Section 24
amended.

16. Section 24 of the principal Act is amended in subsection (2)—

(a) by deleting “three” and substituting the following—

“ four ”; and

(b) by deleting “Director” and substituting the following—

“ President ” .

17. Section 25 of the principal Act is amended—

Section 25
amended.

(a) by repealing subsections (1) and (2) and substituting the following subsection—

“ (1) The President or, where section 20 applies, the Deputy President or other person acting as President shall preside at all meetings of the Council. ”; and

(b) by repealing subsection (5) and substituting the following subsections—

“ (5) At a meeting of the Council the President, Deputy President or other member appointed under section 20 does not, while presiding, have a deliberative vote but in the event of an equality of votes has a casting vote.

(6) Notice of meetings of the Council shall be given to the Department, and the Director or his representative shall be entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but he shall not vote on any matter. ” .

18. Section 26 of the principal Act is amended—

Section 26
amended.

(a) in subsection (3)—

(i) by deleting “chairman of” and substituting the following—

“ member presiding at ”; and

(ii) by deleting “chairman” and substituting the following—

“ member presiding ”; and

(b) in subsections (5) and (6) by deleting “chairman” and substituting the following—

“ member presiding ” .

Section 27
amended.

19. Section 27 of the principal Act is amended by inserting after subsection (3) the following subsection—

“ (4) Notice of meetings of committees of the Council shall be given to the Department, and the Director or his representative shall be entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but he shall not vote on any matter. ” .

Section 29
amended.

20. Section 29 of the principal Act is amended by inserting after paragraph (c) the following paragraph—

“ (ca) to advise the Minister on any matter which he may refer to it for advice, including the environmental protection aspects of any project, development or undertaking and on the evaluation of information relating thereto; ” .

Sections 33
and 34
repealed
and
replaced.

21. Sections 33 and 34 of the principal Act are repealed and the following section is substituted—

Functions
of Council.

“ 33. (1) The functions of the Council are—

(a) to assist and advise and to make recommendations to the Minister and the Authority as to environmental protection and enhancement generally;

(b) to assist and advise the Authority on any matter pertaining to—

(i) the preparation and implementation of declarations as to environmental policy; and

(ii) the functions, powers and duties of the Authority generally,

and to make recommendations as to any such matter, irrespective of whether the matter has been referred to the Council for its advice;

- (c) to investigate and report to the Minister or the Authority, as the case may be, on any matter mentioned in subparagraph (i) or (ii) of paragraph (b) of this subsection which is referred to it by the Minister or the Authority, and to make recommendations as to any such matter.

(2) The Council shall as soon as is practicable after the 30th day of June in each year make to the Minister a report of the proceedings of the Council during the year ending on that day, and the Minister shall cause the report to be laid before each House of Parliament within 9 sitting days of the House after the receipt of the report by the Minister. ” .

22. Sections 54, 55, 56 and 57 of the principal Act are repealed and the following sections are substituted—

Sections 54
to 57
repealed
and
replaced.

“ 54. (1) The Authority may from time to time request a responsible officer to submit to the Authority particulars of—

Recommend-
ations of
Authority
as to the
exercise
of powers
relating
to land,
mining and
town
planning.

- (a) any application or proposal mentioned in the Schedule; or
- (b) such types or classes only of those applications and proposals as the Authority specifies in the request,

being an application or proposal which comes under the administration of that officer, and may at any time revoke or vary a request so made.

(2) An officer to whom a request is so made shall comply with it.

(3) The Authority shall consider particulars of an application or proposal submitted to it under this section, and for that purpose may consult with the responsible officer.

(4) In considering the particulars submitted to it and in making its recommendations thereon the Authority shall, in particular, have regard to the terms of any relevant declaration of environmental protection policy made under section 39.

(5) The Authority shall furnish to the Minister to whom the administration of this Act has been committed (in this and in sections 55 and 56 referred to as the "Minister for Conservation and the Environment") its recommendations in writing as to whether an application or proposal ought to be carried into effect and whether, or to what extent, the Authority considers that the application or proposal ought to be modified, and the reasons on which the Authority's recommendations are based.

(6) The Minister for Conservation and the Environment shall communicate those recommendations and reasons to the responsible Minister, who may refer to the Governor for determination any difference or dispute which arises as a result thereof.

(7) In respect of the matters referred to in item 3 of the Schedule the responsible Minister shall, subject to subsection (6) of this section, communicate the recommendations and reasons to the town planning authority empowered to grant or carry out the application or proposal.

(8) Unless and until the responsible Minister or, where subsection (7) of this section applies, the relevant town planning authority, has received and considered the recommendations

of the Authority under this section, he or it shall not grant or carry out any application or proposal or exercise any power in respect of which a request under subsection (1) of this section is in force.

(9) In this section—

“responsible officer”, in relation to an application or proposal referred to in subsection (1) of this section, means the officer specified in the second column of the Schedule opposite the description in the first column of that application or proposal;

“responsible Minister”, in relation to such an application or proposal, means the Minister of the Crown specified in the third column of the Schedule opposite the description in the first column of that application or proposal.

55. (1) Where it comes to the notice of a Minister of the Crown (in this section referred to as the responsible Minister) that a proposed development, project, industry, or other thing may have a detrimental effect on the environment, he shall so advise the Minister for Conservation and the Environment and shall thereafter, in relation to that matter, furnish to that Minister and the Authority all such aid, information and facilities as are practicable to enable the Authority to report thereon.

Authority
to report
on matters
referred
by a
Minister.

(2) The Minister for Conservation and the Environment shall notify the Authority of any matter referred to him under subsection (1) of this section, and the Authority shall report to that Minister on the matter when and as often as that Minister requires.

(3) The Minister for Conservation and the Environment shall communicate any report made to him under subsection (2) of this section

to the responsible Minister, who may refer to the Governor for determination any difference or dispute which arises as a result thereof.

Authority to report on matters referred by a member of the public.

56. (1) Any person or body may in writing refer to the Authority any matter which gives rise to concern as to a possible cause of pollution.

(2) Where any matter is referred to the Authority under subsection (1) of this section the Authority shall consider the matter and may report and make recommendations thereon to the Minister for Conservation and the Environment.

(3) The Minister for Conservation and the Environment shall communicate any such report to any Minister of the Crown to whose administration the matter relates, and that Minister may refer to the Governor for determination any difference or dispute which arises as a result thereof. ” .

Section 60 amended.

23. Section 60 of the principal Act is amended—

(a) in subsection (3) by deleting “of the Crown to whose administration the matter relates”; and

(b) by inserting after subsection (3) the following subsection—

“ (4) The Minister shall communicate any recommendation made to him under subsection (3) of this section to the Minister of the Crown to whose administration the matter relates. ” .

Section 68 amended.

24. Section 68 of the principal Act is amended—

(a) in subsection (1) by deleting “Any” and substituting the following—

“ Subject to subsection (3) of this section, any ”; and

(b) by inserting after subsection (2) the following subsections—

“ (3) No person shall enter any premises under subsection (1) of this section unless—

(a) the occupier has consented to the entry;

(b) a Justice of the Peace has issued a warrant under subsection (4) of this section; or

(c) subsection (5) of this section applies.

(4) A Justice of the Peace may issue a warrant empowering a member of the Authority or any inspector together with other persons as mentioned in subsection (1) of this section, on such occasions as may be required in the circumstances, to enter any premises if the Justice is satisfied by information on oath that such entry is required for the purposes of subsection (1) of this section but that the consent of the occupier has been withheld, or the premises are unoccupied, or the occupier cannot be found or his identity is not known.

(5) A member of the Authority or any inspector may, together with other persons as mentioned in subsection (1) of this section, enter any premises for the purposes of that subsection without a warrant and without the consent of the occupier if a member of the Authority considers that such entry is urgently required for the purposes of that subsection and the delay in obtaining a warrant under subsection (4) of this section, or obtaining the consent of the occupier, would significantly impede the purpose of the entry. ” .

Schedule
added.

25. The principal Act is amended by adding, at the end, the following Schedule—

“ SCHEDULE.

(Section 54)

APPLICATIONS AND PROPOSALS TO WHICH SECTION 54(1)
APPLIES

Applications and Proposals	Responsible Officer	Responsible Minister
<p>1. An application or proposal for the exercise of powers under Part III of the Land Act 1933, which would constitute or include the reservation of any land, the classification of any reserved land, the leasing or vesting of any reserved land, the alteration of the boundaries of any reserved land or the alteration of the purpose for which any reserved land is reserved or for the exercise of powers under Part IV, V, VI or VII of that Act, which would constitute or include the alienation or grant, by or on behalf of the Crown, of any interest in land.</p>	The Under Secretary for Lands.	The Minister to whom the administration of the Land Act 1933 has been committed.
<p>2. An application or proposal for the exercise of a power which could result in the grant of any right, title, tenement, estate, or interest in any land to be used for the purpose of mining or a purpose ancillary thereto.</p>	The Under Secretary for Mines.	The Minister to whom the administration of the Mining Act 1904 has been committed.
<p>3. An application or proposal for the exercise of a power to approve—</p> <p>(a) a town planning scheme;</p> <p>(b) an interim development order;</p> <p>(c) the subdivision or amalgamation of any lot or lots;</p> <p>(d) the development of any land;</p> <p>(e) the change of use of any land taken for parks or open spaces.</p>	<p>The Chairman of the Town Planning Board.</p> <p>The Chairman of the Metropolitan Region Planning Authority.</p> <p>The Town Planning Commissioner.</p>	The Minister to whom the administration of the Town Planning and Development Act 1928 has been committed.

1980.]

Environmental Protection.

[No. 78.]

26. Section 7 of the Metropolitan Region Town Planning Scheme Act 1959 is amended in subsection (4) by deleting paragraph (f) and substituting the following—

Consequen-
tial amend-
ment to
Metro-
politan
Region Town
Planning
Scheme
Act 1959.

“ (f) the Director of Conservation and Environment appointed under the Environmental Protection Act 1971, by virtue of his office. ” .
