

# PHYSICAL ENVIRONMENT PROTECTION.

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No. 93 of 1970.

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AN ACT to make provision for the establishment of a Department of Environmental Protection and a Physical Environment Council for the prevention and reduction of environmental pollution and the protection of the physical environment, and for incidental and other purposes.

[Assented to 30th November, 1970.]

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:—

## PART I.—PRELIMINARY.

1. This Act may be cited as the *Physical Environment Protection Act, 1970.* Short title.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Definitions.

3. In this Act, unless the contrary intention appears—

“air pollution” means the presence in the air of any pollutant;

“Chairman” means the Chairman of the Council;

“Council” means the Physical Environment Council constituted under section 11;

“Department” means the Department of Environmental Protection established under section 7;

“Deputy Chairman” means the Deputy Chairman of the Council;

“Director” means the Director of Environmental Protection appointed under section 9;

“environmental pollution” means the contamination or the rendering unclean or impure of the air, waters or land or making any of them injurious to public health, harmful for commercial or recreational use, or injurious to animal or plant life;

“land pollution” means the presence on or under any land of any pollutant;

“member” means a member of the Council;

“pollutant” means solids, liquids or gases which, if discharged into the air or waters or on to land, will result in injury to human, animal, or plant life or to property or which unreasonably interferes with the enjoyment of life and property;

“section” means a section of this Act;

“water pollution” means the presence in any lake, river, bay or other internal waters or in the territorial sea of any pollutant.

4. This Act is divided into Parts as follows:— Arrangement  
of Act.

PART I.—PRELIMINARY, sections 1-6.

PART II.—ESTABLISHMENT OF DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND ADMINISTRATION, sections 7-10.

PART III.—ESTABLISHMENT OF PHYSICAL ENVIRONMENT COUNCIL AND FUNCTIONS, POWERS AND DUTIES THEREOF, sections 11-25.

PART IV.—MISCELLANEOUS, sections 26-29.

5. This Act binds the Crown in right of the State. Crown  
bound.

6. Where there is inconsistency between— Saving.

- (a) the provisions of any Act or delegated legislation made thereunder, which provisions relate to air, land or water pollution or to any matter concerning environmental pollution in general; and
- (b) the provisions of this Act or delegated legislation made thereunder,

the provisions referred to in paragraph (b) of this section prevail.

PART II.—ESTABLISHMENT OF DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ADMINISTRATION.

7. For the purposes of this Act there is hereby established as a department of the Public Service of the State, a department to be known as the Department of Environmental Protection. Establish-  
ment of  
Department  
of Environ-  
mental  
Protection.

Administra-  
tion of Act.

8. (1) The administration of this Act and the control of the Department is vested in the Minister.

(2) Subject to the Public Service Act, 1904, and to any direction of the Minister, the Director has the general administration of the Department.

Director of  
Environ-  
mental Pro-  
tection.

9. (1) A person shall be appointed to the office of Director of Environmental Protection and he shall be the permanent head of the Department.

(2) The Director may be appointed—

(a) by the Governor for a term not exceeding seven years; or

(b) under and subject to the Public Service Act, 1904.

(3) Where the Director is appointed by the Governor for a term of years—

(a) the conditions of service of the Director shall be such as the Governor determines;

(b) the Director shall be paid such remuneration and allowance as the Governor may, from time to time, determine;

(c) the Director may be re-appointed, from time to time, at the expiration of the term, unless he has been previously removed from office by the Governor under paragraph (d) of this subsection;

(d) the Director may, at any time, be removed from office by the Governor for disability, bankruptcy, neglect of duty or misconduct;

(e) the Director may at any time resign his office by writing under his hand addressed to the Governor; and

(f) the Director, for the purposes of the Public Service Act, 1904, shall be deemed to be the permanent head of the Department and shall have the same powers and authority in relation thereto as if he were an officer and a permanent head under that Act.

10. (1) There shall be appointed under and subject to the Public Service Act, 1904, such officers and temporary employees as may be necessary to provide technical, scientific and administrative services to the Department and to undertake studies and research concerning environmental pollution and the protection of the physical environment and to make investigations and reports with regard to the carrying out of this Act. Staff of  
Department.

(2) The Minister may engage under contract for services such professional and technical or other assistance as the Minister may consider necessary to enable the Department to effectively carry out the provisions of this Act.

(3) The Minister may enter into arrangements with—

(a) a Minister of the Crown of another State of the Commonwealth, a Minister of State of the Commonwealth, a department or an instrumentality of the Commonwealth or any other State of the Commonwealth;

(b) a university; or

(c) any other body or person,

with respect to any investigation, study or research that he deems necessary or desirable for the purposes of this Act.

### PART III.—ESTABLISHMENT OF PHYSICAL ENVIRONMENT COUNCIL AND FUNCTIONS, POWERS AND DUTIES THEREOF.

11. (1) For the purposes of this Act there shall be a council to be known as the Physical Environment Council. Environment  
Council.

(2) Subject to subsection (5) of section 20, the performance or exercise of the functions, powers, rights, authorities, duties or obligations of the Council shall not be affected by reason only of there being a vacancy in the office of a member of the Council.

Constitution  
of Physical  
Environment  
Council.

12. (1) The Council shall consist of thirteen members, namely—

- (a) the Director and he shall be the Chairman and Chief Executive Officer thereof;
- (b) twelve other members appointed by the Governor, of whom—
  - (i) six shall be representative of State Government departments and State instrumentalities;
  - (ii) one shall be representative of the councils of the municipalities constituted under the Local Government Act, 1960;
  - (iii) three (not being persons who are employed by the Crown in right of the State and of whom not less than two shall have special knowledge of, or experience in, some aspect of the conservation of natural resources) shall be representative of individuals and bodies of persons having a special interest in the prevention and reduction of environmental pollution and the protection of the physical environment;
  - (iv) one shall be representative of primary industry; and
  - (v) one shall be representative of secondary industry.

(2) Of the twelve members referred to in paragraph (b) of subsection (1) of this section who are first appointed under that subsection, four designated by the Governor at the time of their appointment—

- (a) shall be appointed for a period of one year;
- (b) shall be appointed for a period of two years; and
- (c) shall be appointed for a period of three years.

(3) After the appointment of the twelve members first appointed as provided in subsection (2) of this section, each subsequent appointment of a member other than the Director shall, subject to section 13, be for a period of three years.

13. If a member ceases to hold office before the expiration of the period of his appointment, another person may, if he has the qualifications, if any, required to be held by the member in whose place he is being appointed, be appointed in the place of that member for the remainder of that period and shall be representative of the same interests as that member.

Appoint-  
ments to fill  
casual  
vacancies.

14. (1) The Minister shall appoint a person to be the Deputy Chairman.

Deputy  
Chairman.

(2) The appointment of a person as Deputy Chairman may be terminated at any time by the Minister.

15. (1) If the Chairman is absent on leave of absence or the office of Chairman is vacant, the Deputy Chairman shall, subject to subsection (2) of this section, act as Chairman during the period of the absence or vacancy.

Acting  
Chairman.

(2) The Council may appoint a member, other than the Chairman or the person who is the Deputy Chairman, to act as Chairman during any period when—

- (a) the Chairman is absent on leave of absence or the office of Chairman is vacant; and
- (b) the Deputy Chairman is absent on leave of absence or the office of Deputy Chairman is vacant.

(3) The Deputy Chairman or a member appointed to act as Chairman under subsection (2) of this section has, when acting as Chairman, all the powers, functions and duties conferred by this Act on the Chairman.

Deputies of  
members.

16. (1) The Governor may appoint a person to be a deputy of a member other than the member who is Chairman, and may terminate such appointment at any time.

(2) A person so appointed is, in the event of the absence from a meeting of the Council of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, shall be deemed to be a member.

Remunera-  
tion, etc. of  
members and  
deputies.

17. (1) Subject to subsection (2) of this section, the members, other than the member who is the Chairman, and the deputies of members, shall be paid such remuneration and allowances as the Governor determines.

(2) The Governor shall not determine the remuneration and allowances to be paid—

- (a) to a member or a deputy of a member; or
- (b) to a person appointed a member of a committee under section 22,

who is a person to whom the Public Service Act, 1904, applies except with the prior approval, in writing, of the Public Service Commissioner appointed under that Act

Vacation of  
office.

18. If a member—

- (a) is an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) becomes permanently incapable of performing his duties as a member;
- (c) resigns his office by writing under his hand addressed to the Governor;
- (d) absents himself, except on leave duly granted by the Minister, from three consecutive meetings of the Council,

the office of that member becomes vacant.

Leave of  
absence.

19. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.



20. (1) The Council shall hold meetings at such times and places as the Council determines. Meetings of Council.

(2) The Minister or the Director may at any time convene a meeting of the Council.

(3) The Chairman shall preside at all meetings of the Council at which he is present.

(4) In the event of the absence of the Chairman from a meeting of the Council, the Deputy Chairman shall preside at that meeting.

(5) At a meeting of the Council a majority of the members for the time being holding office constitutes a quorum.

(6) A question arising at a meeting of the Council shall be decided by a majority of the votes of the members present and voting.

(7) At a meeting of the Council at which the Chairman presides, the Chairman does not have a deliberative vote but, in the event of an equality of votes, has a casting vote.

21. (1) Subject to this Act, and as directed by the Minister, the functions of the Council are— Functions of the Council.

- (a) to advise on all activities for the protection of the physical environment;
- (b) to advise on measures taken or to be taken to prevent or reduce environmental pollution and to control the disposal of liquid, solid or gaseous wastes;
- (c) in collaboration with the appropriate departments and instrumentalities of the State, to advise on schemes for the prevention, abatement and control of air, water, and land pollution and noise;
- (d) in collaboration with the appropriate departments and instrumentalities of the State, to conduct or arrange studies, investigation and research relating to the causes, effects, prevention, abatement and control of air, water and land pollution and noise and to determine the extent of environmental pollution by means of field studies, scientific investigations and inquiries;

- (e) to co-operate with and seek the advice of, the appropriate authorities of the Commonwealth or any other State of the Commonwealth with respect to any matters associated with the carrying out of its functions;
- (f) to examine and report to the Minister upon any matter relevant to its functions;
- (g) to advise the Minister upon any matter arising under this Act that is referred by him to it;
- (h) to do all things necessary to be done for the effectual performance of its functions.

(2) The Council shall, as directed by the Minister, confer and co-operate with State Government departments and public authorities in the State that are concerned with the protection of the physical environment and it is the duty of those departments and public authorities to give all practicable assistance to the Council in carrying out its functions under this Act.

**Committees.**

22. (1) The Council may, from time to time, appoint a committee or committees, consisting in each case of two or more persons to advise the Council on such matters relating to its functions as are referred by the Council to the committee;

(2) A person may be appointed to be a member of any such committee notwithstanding that he is a member.

(3) Subject to subsection (2) of section 17, members of any such committee shall be paid such remuneration and allowances as the Governor may determine.

**Certain  
matters to  
be referred  
to Minister.**

23. (1) A Minister of the Crown under whose administration any of the following matters are being done, namely—

- (a) planning stages are being prepared for a construction or developmental project the nature of which requires the protection of the physical environment in relation thereto, to be considered;

- (b) planning stages are being prepared for an industrial project the nature of which requires the protection of the physical environment in relation thereto, to be considered;
- (c) applications are being dealt with for a mining tenement on or in any land reserved under the Land Act, 1933, any State forest or timber reserve within the meaning of the Forests Act, 1918, any water catchment area constituted under any Act, any beach, river, estuary or the territorial sea or for any other mining tenement which the Minister for Mines considers could, if it is worked, cause serious damage to the physical environment;
- (d) a request or application to reserve any land under the Land Act, 1933, or to change the area of any such land or the purpose for which it was reserved under that Act, is being considered,

shall, as soon as practicable, refer the matter to the Minister for his consideration and advice.

(2) Where any matter is referred to the Minister pursuant to subsection (1) of this section, the Minister may require the Council to furnish him within such period with such report thereon as the Minister thinks fit and may require the report to be accompanied by the recommendation of the Council with respect to the matter.

(3) All reports and recommendations of the Council relating to a matter referred under subsection (1) of this section shall be submitted in writing to the Minister, who shall, as soon thereafter as is practicable, forward a copy thereof to the Minister of the Crown who so referred the matter and a copy thereof to the Premier of the State; and each copy shall be accompanied by such recommendations and comments on the reports and recommendations of the Council so forwarded, as the Minister thinks fit to make.

Annual  
report of  
Council.

24. (1) The Council shall in the month of July in each year or as soon thereafter as is practicable, prepare and furnish to the Minister a report on its operations and proceedings during the year ending on the last preceding thirtieth day of June.

(2) The Minister shall cause the report of the Council to be laid before each House of Parliament within nine sitting days of that House after its receipt by the Minister.

Referral of  
certain  
matters to  
Minister by  
persons, etc.

25. (1) Any individual or any body of persons, whether incorporated or not, may refer in writing to the Minister any matter, which he believes or they believe on reasonable grounds, requires investigation for the purpose of preventing environmental pollution or injury to the physical environment.

(2) Where any matter is referred to the Minister pursuant to subsection (1) of this section, the Minister may require the Council to furnish him within such period with such report thereon as the Minister thinks fit and may require the report to be accompanied by the recommendation of the Council with respect to the matter.

(3) All reports and recommendations of the Council relating to a matter referred under subsection (1) of this section shall be submitted in writing to the Minister, who shall, as soon thereafter as is practicable, forward a copy thereof to the Minister of the Crown to whose administration the matter relates and a copy thereof to the Premier of the State; and each copy shall be accompanied by such recommendations and comments on the reports and recommendations of the Council so forwarded, as the Minister thinks fit to make.

#### PART IV.—MISCELLANEOUS.

Gifts, etc.  
made for  
purposes of  
this Act.

26. The Minister may accept any gift, devise or bequest of any property that is made for the purpose of carrying out the objects of this Act and the Minister may, subject to any trusts relating thereto,

apply the proceeds of the property in such manner as he thinks fit towards preventing and reducing environmental pollution and protecting the physical environment from injury.

27. (1) Subject to this section, the Director and any officer of the Department authorized in that behalf by the Minister, may for the purpose of carrying this Act into effect, on the production of his authority, if it is so required, enter on and inspect any land or premises on which he suspects on reasonable grounds a source of air, water or land pollution exists.

Power of Director and other authorized officers to enter land and premises.

(2) An entry on, and inspection of, any land or premises pursuant to subsection (1) of this section shall be made at any reasonable time agreed upon by the occupier of the land or premises or by a person on his behalf and the person proposing to make the entry and inspection, but if the occupier or a person on his behalf refuses or fails to agree upon such a time, may be made at any reasonable time.

(3) Where a question of the safety of any person or property arises or is likely to arise on any such entry or inspection or where any matter or thing that is to be inspected is of a scientific or technical nature, the person making the entry and inspection shall be accompanied by an officer of a department of the State having a special knowledge of safety precautions or the scientific or technical matter or thing, as the case requires, or the occupier or an employee of the occupier having such special knowledge.

(4) A person who prevents or obstructs the entry for the purpose of this Act upon any such land or such premises of any person authorized under this section commits an offence.

Penalty: Two hundred dollars.

28. (1) This section applies to any person who is or has been the Director, an officer, whether permanent or temporary, of the Department, a member, member of a committee appointed by the Council, or a person engaged under subsection (2) of section 10.

Secrecy.

(2) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act.

Penalty: Five hundred dollars.

Regulations.

29. The Governor may make regulations, not inconsistent with this Act, that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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