



FIRST PRINT

**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL 1985 (No. 2)**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Local Government (Subdivision) Amendment Bill 1985;

Statutory and Other Offices Remuneration (Commissioners of Inquiry) Amendment Bill 1985.

The objects of this Bill are to amend the Environmental Planning and Assessment Act 1979 so as—

- (a) to enable the Minister for Planning and Environment, pursuant to a direction given under section 101 of the Principal Act, to grant consent to the carrying out of prohibited development, that is, development the carrying out of which is specified to be prohibited under the Principal Act (Schedule 1);
- (b) to make further provision with respect to the appointment and functions of Commissioners of Inquiry (Schedule 2);
- (c) to facilitate the preparation of draft environmental planning instruments (Schedule 3);
- (d) to make further provision with respect to the imposition of conditions of development consents which require the dedication of land or the payment of a monetary contribution towards the provision or improvement of public amenities and public services (Schedule 4);
- (e) to make further provision with respect to the continuance of existing uses (Schedule 5);
- (f) to facilitate the application of Part V of the Principal Act relating to environmental assessment (Schedule 6);
- (g) to make provision with respect to the validity of environmental planning instruments and development consents (Schedule 7); and

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(h) to make other miscellaneous amendments to the Principal Act (Schedule 8).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on such day or days as may be appointed by the Governor-in-Council.

Clause 3 provides that the Environmental Planning and Assessment Act 1979 is referred to in the proposed Act as the Principal Act.

Clause 4 specifies the Schedules contained in the proposed Act.

Clause 5 gives effect to the Schedules of amendments.

Clause 6 gives effect to the Schedule of savings, transitional and other provisions.

Schedule 1 relates to the carrying out of prohibited development.

Schedule 1 (1) and (2) make amendments consequential on other amendments made by the Schedule.

Schedule 1 (3) inserts section 100A into the Principal Act and substitutes section 101 of the Principal Act. Proposed section 100A contains a definition of "prohibited development" meaning development which cannot be carried out either with or without development consent or development the carrying out of which is specified to be prohibited under the Principal Act. The section also empowers the Minister, subject to and in accordance with section 101, to grant consent to the carrying out by a person of prohibited development. The substituted section 101 extends the provisions of the existing section to enable a direction to be given under that section with respect to an application for consent to carry out prohibited development.

Schedule 1 (4), (5), (6) and (7) make amendments consequential on the amendments made by Schedule 1 (3).

Schedule 2 relates to the appointment and functions of Commissioners of Inquiry.

Schedule 2 (1) makes an amendment consequential on the other amendments made by the Schedule.

Schedule 2 (2) substitutes section 18 of the Principal Act so as—

- (a) to enable the Governor to appoint a person to be the Chairman of Commissioners of Inquiry and a person to be the Deputy Chairman of Commissioners of Inquiry;
- (b) to enable the Governor to appoint a person to be a Commissioner of Inquiry for the purposes only of a particular inquiry directed to be held by the Minister; and
- (c) to enable the Minister to make use of the services of a Commissioner in the administration of any other Act administered by the Minister.

Schedule 2 (3) provides for the Chairman of Commissioners of Inquiry or a Deputy Chairman to preside at the proceedings of a Commission of Inquiry.

Schedule 3 relates to the preparation of draft environmental planning instruments.

Schedule 3 (1) provides that the Minister shall determine the steps, if any, appropriate to the publicising of a draft State environmental planning policy.

Schedule 3 (2), (3) and (6) enable a draft regional environmental plan to be prepared in respect of a part of a region.

Schedule 3 (4), (5) and (7) provide for the concurrent, rather than the sequential, public exhibition of an environmental study and a draft regional environmental plan.

Schedule 3 (8) removes, with a view to prescribing a period by regulation, the period within which a council is required to inform the Secretary of the Department of Environment and Planning of a decision to prepare a draft local environmental plan.

Schedule 3 (9)—

- (a) removes the requirement that the Secretary shall cause to be published in the Gazette a notice setting out details of any specifications given by the Director of Environment and Planning to a council concerning an environmental study; and
- (b) enables a council to recover certain costs and expenses incurred in the preparation of an environmental study, which is prepared on behalf of a person seeking an amendment to an environmental planning instrument in order to carry out particular development on particular land, from the person.

Schedule 3 (10), (11), (12) and (14) provide for the concurrent, rather than the sequential, public exhibition of an environmental study and a draft local environmental plan and for the submission of a copy of the draft plan to the Department.

Schedule 3 (11) also removes the restriction that a council cannot prepare a draft local environmental plan unless it is not substantially inconsistent with any State environmental planning policy, regional environmental plan or relevant direction under section 117 of the Principal Act which applies to the land to which the draft local environmental plan applies.

Schedule 3 (12) also provides that a council shall, in relation to the preparation of an environmental study or a draft local environmental plan, include in its statement to the Secretary under section 64 of the Principal Act, the names of the public authorities, bodies and other persons which it has consulted.

Schedule 3 (13) makes further provision with respect to the issue by the Director to a council of a certificate certifying that a draft local environmental plan may be publicly exhibited and enables the certificate to be granted subject to conditions requiring the amendment of the draft plan before its public exhibition.

Schedule 3 (15)—

- (a) provides that an alteration made by a council to a draft local environmental plan following its public exhibition need not relate to a submission made with respect to the draft plan; and

(b) makes it clear that deferred matter does not have to be publicly re-exhibited.

Schedule 3 (16) (a) enables the Minister, in making a draft local environmental plan, to make alterations relating to any matter which in the opinion of the Minister is of significance for State or regional environmental planning.

Schedule 3 (16) (b) provides that the Minister does not have to give reasons for a decision to make a local environmental plan without alterations.

Schedule 3 (17) amends section 72 of the Principal Act relating to development control plans to make it clear that that section applies to draft local environmental plans as well as local environmental plans.

Schedule 3 (18) (a) provides that an instrument which amends an environmental planning instrument does not have to apply to the land to which the latter instrument applies.

Schedule 3 (18) (b) and (c) make amendments consequential on the other amendments made by the Schedule.

Schedule 3 (19) makes further provision with respect to the power of the Minister to give directions under section 117 of the Principal Act and, in particular, includes a power to require the inclusion in a draft local environmental plan of provisions which will achieve or give effect to such aims, objectives or policies, not inconsistent with the Principal Act, as may be specified in a direction.

Schedule 4 relates to the imposition of conditions of development consents which require the dedication of land or the payment of a monetary contribution towards the provision or improvement of public amenities and public services.

Schedule 4 (1)—

- (a) removes the restriction that such a condition may be imposed only where an environmental planning instrument identifies a likely increased demand for those amenities and services and stipulates that a dedication or contribution may be required as a condition of any such consent;
- (b) enables a consent authority, where it has provided those amenities and services in preparation for or to facilitate the carrying out of development and it is satisfied that a proposed development will benefit from the provision of those amenities and services, to impose such a condition in order to require a reasonable contribution towards recoupment of the costs incurred by the consent authority in providing those amenities and services; and
- (c) enables a consent authority to accept the provision of a material public benefit, instead of the dedication of land or the payment of a monetary contribution, in part or full satisfaction of any such condition.

Schedule 4 (2) inserts section 94A into the Principal Act which enables the Minister to give directions to a consent authority as to—

- (a) the public amenities and public services in relation to which any such condition may or may not be imposed;
- (b) the means by which any monetary contribution may or may not be calculated and the maximum amount of any such contribution; and

(c) the things which may or may not be accepted as a material public benefit.

Schedule 5 contains amendments to the Principal Act relating to existing uses.

Schedule 5 (1) imposes a restriction on the enlargement, expansion or intensification of an existing use.

Schedule 5 (2) imposes the same restrictions on the continuance of existing consents as are imposed under the Principal Act in relation to the continuance of existing uses.

Schedule 5 (3) inserts section 109A into the Principal Act which provides, contrary to the decision of the High Court of Australia in *Vumbaca and another v. Baulkham Hills Shire Council* (1979) 141 C.L.R. 614, that a use unlawfully commenced shall not be rendered lawful by the occurrence of any subsequent event except—

- (a) the commencement of an environmental planning instrument which permits the use without the necessity for a development consent to be obtained; or
- (b) the granting of development consent to that use.

Schedule 6 contains amendments to the Principal Act relating to environmental assessment.

Schedule 6 (1) substitutes section 110 of the Principal Act and inserts section 110A into the Principal Act. Section 110 is an interpretation provision for the purposes of Part V of the Principal Act. The section clarifies the definition of "activity" and the meaning of the term "approval" for the purposes of that Part and inserts a definition of "nominated determining authority". Proposed section 110A provides that where the approval of more than one determining authority is required for the carrying out of an activity, the Minister may nominate one determining authority to be the nominated determining authority in relation to the activity and to thereby have the responsibility, to the exclusion of the other determining authorities, of obtaining an environmental impact statement concerning the activity.

Schedule 6 (2) substitutes section 112 of the Principal Act to clarify the duty of a determining authority to consider the environmental impact of matters affecting the environment and to make amendments consequential on the other amendments made by the Schedule.

Schedule 6 (3) and (4) make amendments consequential on the other amendments made by the Schedule.

Schedule 7 makes provision with respect to the validity of environmental planning instruments and development consents.

Schedule 7 (1) and (2) respectively substitute section 35 of the Principal Act and insert section 104A into the Principal Act, each of which limits to 3 months the period in which the validity of the various matters may be questioned in legal proceedings.

Schedule 8 contains miscellaneous amendments to the Principal Act.

Schedule 8 (1) makes an amendment by way of statute law revision.

Schedule 8 (2) (a) inserts into section 4 (1) of the Principal Act a definition of "land" which includes the sea, bays, inlets, lakes and other bodies of water and rivers, streams and watercourses.

Schedule 8 (2) (b) clarifies the definition of "objector" in section 4 (1) of the Principal Act.

Schedule 8 (2) (c) makes an amendment by way of statute law revision.

Schedule 8 (3) abolishes the Environment and Planning Advisory Committee.

Schedule 8 (4) (a) and (b) extend the category of persons to whom functions may be delegated under the Principal Act.

Schedule 8 (4) (c) provides protection from liability for delegates in respect of the exercise in good faith of the functions delegated to them.

Schedule 8 (5) (a) removes the necessity for Ministerial consent to a development application by the occupier of Crown land to whom the land has lawfully been contracted to be sold.

Schedule 8 (5) (b) removes the necessity for the consent of an owner of land to a development application by a public authority which serves a copy of the application on the owner.

Schedule 8 (5) (c) enables the regulations under the Principal Act to provide for the information required to accompany a development application for consent to carry out development, not being designated development.

Schedule 8 (6) makes further provision with respect to the notice required to be given of a development application for consent to carry out designated development and provides, in particular, for notice to be given to interested public authorities.

Schedule 8 (7) extends the list of matters to be taken into consideration by a consent authority in determining a development application so as to include soil erosion and matters specified to be relevant in an environmental planning instrument.

Schedule 8 (8) omits a provision relating to the avoidance of development consents.

Schedule 8 (9) inserts section 91A into the Principal Act to control the circumstances in which a consent authority can refuse consent or impose conditions of consent in respect of a development application made by or on behalf of the Crown or a prescribed person.

Schedule 8 (10) clarifies the circumstances in which a development consent may be modified by a consent authority.

Schedule 8 (11) inserts sections 117A and 117B into the Principal Act. Proposed section 117A provides a power of entry on land for the purposes of the Principal Act by a person authorised by the Director or a council. Proposed section 117B makes it an offence to obstruct a person so authorised in the exercise of the person's functions.

Schedule 8 (12) enables the appointment of an administrator without the necessity for first holding an inquiry.

Schedule 8 (13) makes an amendment consequential on other amendments made by the Schedule.

Schedule 8 (14) provides that the person appointed to settle a dispute in accordance with section 121 of the Principal Act shall be a Commissioner of Inquiry.

Schedule 8 (15) makes further provision with respect to the power of the Minister to alter a proposal relating to the constitution of a development area under section 132 of the Principal Act.

Schedule 8 (16) enables the assessment of loan commitments under section 143 of the Principal Act to be determined in accordance with the regulations.

Schedule 8 (17) makes an amendment by way of statute law revision.

Schedule 8 (18) provides that the matters to be specified in a certificate issued under section 149 of the Principal Act shall be as prescribed by the regulations.

Schedule 8 (19) omits Schedule 4 to the Principal Act as a consequence of the abolition, pursuant to Schedule 8 (3), of the Environment and Planning Advisory Committee.

Schedule 9 contains various savings, transitional and other provisions.

