

EDOWA Law Reform Alert

Proposed Changes to Environmental Laws will Remove Appeal Rights

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The government is proposing to make some significant changes to the environmental assessment and planning approvals system in Western Australia. The EDO believes that these changes will have a negative impact on environmental accountability and public participation in the planning and approvals system.

Removal of Appeals on Level of Assessment

Changes to the *Environmental Protection Act 1986* would remove the right for members of the public to appeal against levels of assessment for proposals which are likely to have a significant effect on the environment, provided the EPA has decided to formally assess the proposal. This is an important provision because if the level of assessment for a project is set too low, the impacts of a proposal are unlikely to be properly assessed. The EDO believes that the right of appeal against levels of assessment is just as important as the right of appeal against the EPA's report and recommendations on the proposal.

Removal of Appeals where the EPA Recommends a Clearing Permit

The proposed amendments would also remove the right of appeal against a decision not to assess a proposal in cases where the EPA recommends that a proposal should be assessed as an application for a clearing permit under Part V of the Act. The changes would not stop the EPA from deciding in some cases that proposals involving the clearing of native vegetation are environmentally significant and therefore require approval under both Part IV and Part V. However, in cases where the EPA decided the impacts were *not* significant, there would be no right of appeal.

In our view there is no justification for the removal of appeal rights in these circumstances. Approval processes under Part V are essentially designed for controlling impacts which are deemed to be environmentally acceptable so long as certain standards are adhered to. They are no substitute for the more rigorous assessment of significant impacts which should occur under Part IV. We cannot see any reason why there should be less appeal rights for developments which require a clearing permit, compared to developments which do not require a clearing permit.

Removal of Appeals on Derived Proposals

The changes would also take away the rights of objectors to appeal against the declaration that a project is a "derived proposal". If the EPA declares that a project constitutes a derived proposal, it is effectively saying that the impacts of a proposal have already been adequately assessed under a strategic assessment process, therefore the project itself does not require an environmental assessment. In our view this is a very significant decision for the future determination of the project, and one which should be subject to a right of appeal.

Development Assessment Panels

There are also some important changes proposed to planning laws, the most radical of which would see local government lose the power to determine larger-scale development proposals in their local area. The power to determine these development applications would be given to Development Assessment Panels (**DAPs**) comprised of state government-appointed experts, with only a minority of local government representation.

The categories of development that will be subject to determination by DAPs are not known, because this and other important details are to be provided in the regulations which are yet to be released. The Discussion Paper released in September 2009 proposes that developments over the value of \$1M, including commercial and industrial development, and residential developments comprising more than 10 dwellings should go to DAPs.

The EDO is concerned that handing over these decisions to panels of experts will erode the community's power to influence important development decisions in their local area through their elected representatives.

Other amendments give the Western Australian Planning Commission greater powers to make improvement plans for redevelopment of certain areas, including the power to make improvement schemes which would override local planning schemes. The Minister would also have the power to "call-in" and determine applications which are before the DAP which the Minister decides are "significant". Criteria for deciding what is a "significant" development are to be contained in the regulations, which have not been released at this stage.

Bills to implement these changes were introduced into Parliament in late November 2009, and may be voted on when Parliament resumes in early 2010. The Approvals Bill has been referred to the Standing Committee on Uniform Legislation and Statutes Review. Submissions to the Committee closed on Monday 11 January 2010.

The EDO will be actively engaging with government and stakeholders to ensure that there is a well-informed debate about the effect of the proposed amendments.

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