



THIRTY-EIGHTH PARLIAMENT

REPORT 37

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

**NATIONAL ENVIRONMENT PROTECTION
COUNCIL (WESTERN AUSTRALIA) AMENDMENT
BILL 2009**

Presented by Hon Adele Farina MLC (Chairman)

May 2009

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“8. Uniform Legislation and Statutes Review Committee

8.1 *A Uniform Legislation and Statutes Review Committee* is established.

8.2 The Committee consists of 4 Members.

8.3 The functions of the Committee are -

- (a) to consider and report on Bills referred under SO 230A;
- (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
- (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
- (d) to review the form and content of the statute book;
- (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
- (f) to consider and report on any matter referred by the House or under SO 125A.

8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

Members for this inquiry:

Hon Adele Farina MLC (Chairman)

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LIST OF ABBREVIATIONS AND DEFINED TERMS

2007 Bill	National Environment Protection Council (Western Australia) Amendment Bill 2007
2009 Bill	National Environment Protection Council (Western Australia) Amendment Bill 2009
Committee	Standing Committee on Uniform Legislation and Statutes Review
NEPC	National Environment Protection Council
NEPC Acts	<i>National Environment Protection Council Act 1994</i> (Cth) and mirror legislation in the States and Territories
NEPM	National environment protection measure
Principal Act	<i>National Environment Protection Council (Western Australia) Act 1996</i>

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

IN RELATION TO THE

**NATIONAL ENVIRONMENT PROTECTION COUNCIL (WESTERN AUSTRALIA) AMENDMENT
BILL 2009**

1 REFERENCE

1.1 On 5 May 2009, the National Environment Protection Council (Western Australia) Amendment Bill 2009 (**2009 Bill**) stood referred to the Standing Committee on Uniform Legislation and Statutes Review (**Committee**) pursuant to Standing Order 230A.

2 INQUIRY PROCEDURE

2.1 An advertisement was lodged by the Committee in *The West Australian* newspaper on 9 May 2009 advising the public of the inquiry and seeking public submissions in relation to the 2009 Bill.

2.2 Based on the subject matter of the 2009 Bill, the Committee wrote to, and sought written submissions from, the following organisations:

- The Conservation Commission of Western Australia.
- The Conservation Council of Western Australia Inc.
- The Environmental Defender's Office WA (Inc).

2.3 Details of the inquiry were available on the Parliament website, www.parliament.wa.gov.au.

2.4 At the time of printing this report, the Committee had not received any submissions regarding the 2009 Bill.

**3 NATIONAL ENVIRONMENT PROTECTION COUNCIL (WESTERN AUSTRALIA)
AMENDMENT BILL 2007**

3.1 The Committee noted that the 2009 Bill is, in substance, essentially a replica of the National Environment Protection Council (Western Australia) Amendment Bill 2007 (**2007 Bill**), which was introduced into the 37th Parliament. The 2007 Bill was referred to the Committee on 5 September 2007 and the report for the inquiry, the

Committee's 22nd report¹, was tabled on 16 October 2007 with the recommendation that the 2007 Bill be passed without amendment.² After the tabling of the Committee's 22nd report, the debate on the 2007 Bill progressed no further and the bill lapsed with the prorogation of the Parliament on 7 August 2008 for the 2008 State Election.

3.2 Accordingly, this Report should be read in conjunction with the Committee's 22nd report.

4 MINOR TYPOGRAPHICAL ERRORS

4.1 The Committee noted the following minor typographical errors in the 2009 Bill:

- Clause 7 proposes to insert, among other things, section 22B into the *National Environment Protection Council (Western Australia) Act 1996* (**Principal Act**). Proposed section 22B(3) currently reads as follows:

*The period specified in each notice under subsection (1) must end no less than 1 month after the day on which subsection (2)(b) has been fully complied **within** all participating jurisdictions.* (emphasis added)

The Committee was of the view that the word 'within' should be replaced with the words 'with in'.

- Clause 9 proposes to, among other things, delete the phrase "*Subject to section 87E of the Public **Services** Act 1922 of the Commonwealth, the*" (emphasis added) from section 43(1) of the Principal Act. The correct reference is the '*Public Service Act 1992*'.

5 MINOR VARIATIONS TO NATIONAL ENVIRONMENT PROTECTION MEASURES

5.1 One of the main aspects of the 2009 Bill is the proposed relaxation of the procedures with which the National Environment Protection Council (**NEPC**), a Ministerial council, must comply before making any minor variations to its national environment protection measures (**NEPM**).³

¹ Parliament of Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 22, National Environment Protection Council (Western Australia) Amendment Bill 2007, 16 October 2007.

² Recommendation 1: *ibid*, p6.

³ See mainly, clauses 6 and 7 of the National Environment Protection Council (Western Australia) Amendment Bill 2009. Compare this to sections 15, 17, 18, 19 and 20 of the *National Environment Protection Council Act 1994* (Cth) and *National Environment Protection Council (Western Australia) Act 1996*.

5.2 NEPMs are essentially national policy statements regarding various environmental matters which are prescribed in section 14 of the *National Environment Protection Council Act 1994* (Cth) and mirror legislation in the States and Territories (**NEPC Acts**), such as ambient air quality. NEPMs consist of one or more of the following: national environment protection goals, guidelines, protocols and standards.⁴ While NEPMs are not laws:

- the Western Australian Parliament has committed to implementing NEPMs, whether by laws or other arrangements, which relate to activities which are subject to Western Australian laws;⁵ and
- they may be disallowed by the Commonwealth Parliament.⁶

Ministerial Council Powers and Accountability

Committee Comment

5.3 The Committee acknowledged that, under the NEPC Acts, the NEPC is already authorised to vary or revoke NEPMs.⁷ However, the Committee was of the view that the proposed relaxation of the procedural requirements for making minor variations to NEPMs lowers the public accountability of the NEPC. It also raises the issue of the increasing powers of Ministerial councils, sometimes at the expense of the role of the Parliament. This issue, and the evolution of Ministerial councils, was canvassed in the Committee's 35th report at paragraphs 5.22 to 5.29.

What Constitutes Minor Variations?

5.4 The Committee noted that the less onerous procedures which are proposed for amending a NEPM will only apply to variations which, in the opinion of the NEPC, do not “*involve a significant change in the effect of*” the NEPM.⁸ However, there is no guidance provided in the 2009 Bill, nor any of the NEPC Acts in the other jurisdictions, as to what does or does not constitute a significant change in the effect of a NEPM.

⁴ Section 14 of the *National Environment Protection Council Act 1994* (Cth) and *National Environment Protection Council (Western Australia) Act 1996*.

⁵ See sections 6(2) and 7 of the *National Environment Protection Council (Western Australia) Act 1996*. See also, clauses 17 to 22 of the *Intergovernmental Agreement on the Environment*, 1 May 1992.

⁶ Section 21 of the *National Environment Protection Council Act 1994* (Cth) and *National Environment Protection Council (Western Australia) Act 1996*.

⁷ See section 20 of the *National Environment Protection Council Act 1994* (Cth) and *National Environment Protection Council (Western Australia) Act 1996*.

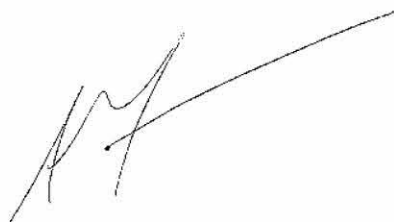
⁸ Proposed section 22A of the *National Environment Protection Council (Western Australia) Act 1996*. See also, section 22A of the *National Environment Protection Council Act 1994* (Cth).

5.5 In her second reading speech for the 2009 Bill, the Minister for the Environment suggested that the correction of the name of an organisation whose name has changed is an example of a minor variation. Conversely, a change in monitoring procedures would be a significant variation.⁹ The *Explanatory Memorandum* for the 2009 Bill indicates that the simplified procedural requirements would apply to “*minor administrative variations*”.¹⁰

5.6 The Committee alerts the House to the recommendation in the second statutory review of the NEPC Acts, which commenced in July 2006,¹¹ that there be more prescription in the Acts as to what constitutes a significant change in the effect of a NEPM.¹² As the 2009 Bill proposes to implement some of the recommendations from the first statutory review of the NEPC Acts in 2001,¹³ the clarification of what amounts to a significant change in the effect of a NEPM may be the subject of a future amendment bill.

6 CONCLUSION

6.1 The Committee commends this Report to the House.



Hon Adele Farina MLC
Chairman

21 May 2009

⁹ Hon Donna Faragher, Minister for the Environment, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 5 May 2009, p12.

¹⁰ *Explanatory Memorandum* for the National Environment Protection Council (Western Australia) Amendment Bill 2009, p2.

¹¹ This is also known as the Ramsay Review: John Ramsay Consulting, *Report of the Second Review of the National Environment Protection Council Acts (Commonwealth, State and Territory): Prepared for the National Environment Protection Council*, June 2007, p7.

¹² Recommendation 3a: *ibid*, pp9, 35-36 and 89.

¹³ Hon Donna Faragher, Minister for the Environment, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 5 May 2009, p12; and *Explanatory Memorandum* for the National Environment Protection Council (Western Australia) Amendment Bill 2009, p1.
