

## EXECUTIVE SUMMARY

- 1 The major provision of the Environmental Protection Bill 2009, clause 5(1), proposes deletion of certain rights of appeal currently conferred by the *Environmental Protection Act 1986* in respect of decisions made by the Environmental Protection Authority in the environmental impact assessment of proposals and schemes.
- 2 The Committee has recommended deletion of clause 5(1) of the Environmental Protection Bill 2009 and made consequential recommendations in respect of other clauses of the Environmental Protection Bill 2009.
- 3 In summary, the practical effect of clause 5(1) of the Environmental Protection Bill 2009 is to remove from the *Environmental Protection Act 1986* provision of a right for the public to review critical decisions of the Environmental Protection Authority made prior to the Environmental Protection Authority issuing its report and recommendations. Instead of this legislative right, the Executive suggests reliance on EPA administrative procedures which, it is proposed, will allow for limited opportunity for public comment on the referral of a proposal or scheme. The proposed period for public comment will be prior to the Environmental Protection Authority's decision on whether to assess a proposal or scheme. The Committee has concerns at this transfer of public participation from the legislative (Parliamentary) to the administrative (Executive) realm.
- 4 The Committee also has concerns with deletion of the right to review critical Environmental Protection Authority decisions, which constitute an important 'check and balance' in respect of the exercise of administrative power.
- 5 In making its recommendations, the Committee has given careful consideration to the Executive's position that the rights of appeal that it is proposed to delete by clause 5(1) of the Environmental Protection Bill 2009 are "*duplicative and unnecessary*" due to the proposed administrative provision for prior comment in the context of the later right of appeal against the Environmental Protection Authority report and recommendations (which may be made at the conclusion of the environmental impact assessment process) and the Ministerial power to intervene in an assessment (conferred by section 43 of the *Environmental Protection Act 1986*). The position of the Executive is that deletion of the relevant appeals will not derogate from the "*rigour and transparency*" of the environmental impact assessment process and that the proposed administrative opportunity to make comment to the Environmental Protection Authority on a proposal meets community expectations in respect of public participation in the early stages of the assessment process.
- 6 However, an opportunity to comment on a proposal or scheme prior to the Environmental Protection Authority making a decision should not and cannot be equated with a right of appeal against that decision. The submissions made to the Committee do not support the Executive's position that community expectations in respect of public participation in the relevant decisions have been met.
- 7 In making its recommendations, the Committee has had regard to the fact that it is not necessary to delete the relevant rights of appeal to implement the proposed administrative changes.
- 8 The Committee's inquiry was, in some respects, premature. By reason of the uniform scheme in respect of environmental impact assessment, the final content of the proposed administrative changes (and whether they will, in fact, be

implemented) is uncertain. The Legislative Council is, therefore, asked to consider the Environmental Protection Bill 2009 at a time when one of the critical circumstances on which it relies is uncertain. Further, at the time of the Committee's hearings, the period that would be allowed for public consultation, and information that would be available to the public for that purpose, was not available to the Committee or the public.

9 The Committee is of the view that provision of early opportunity for public comment has the potential, as the Executive says, to result in a more efficient and streamlined assessment process in respect of some proposals through earlier identification and resolution of issues with consequent reduction in resort to appeal.

10 However, the Committee has found that the practical effect of enactment of clause 5(1) of the Environmental Protection Bill 2009 may simply be to transfer challenge of the Environmental Protection Authority decisions to avenues such as: the appeal on the Environmental Protection Authority report and recommendations (which occurs later in the process); use of section 43 of the *Environmental Protection Act 1986* to make submissions for intervention by the Minister for Environment; or appeals to the courts, which may result in greater uncertainty, lengthier approval times and more cost.

11 The evidence presented to the Committee, and submissions of community stakeholders, raise serious questions as to whether the practical effect of enactment of clause 5(1) of the Environmental Protection Bill 2009 will be an unintended reduction in the rigour and transparency of environmental impact assessment under the *Environmental Protection Act 1986*.

12 The Environmental Protection Bill 2009 has raised the following fundamental legislative scrutiny principles directed at the Parliament's interest in the legislative framework governing the exercise of administrative power:

- *Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?, and*
- *Does the Bill allow delegation of administrative power only in appropriate cases and to appropriate persons? ... The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.*

13 The Committee's findings and recommendations are set out below.

#### **FINDINGS AND RECOMMENDATIONS**

14 Findings and Recommendations are grouped as they appear in the text at the page number indicated:

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**Finding 1: The Committee finds that in order for the EPA's environmental impact assessment processes to be accredited for the purposes of the EPBC Act, formal execution of a replacement bilateral agreement between the State and the Commonwealth is required.**

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**Finding 2:** The Committee finds that the final content of the EPA's new administrative procedures are unknown and dependent on negotiations with the Commonwealth for a replacement bilateral agreement.

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**Finding 3:** The Committee finds that there is no certainty that a replacement bilateral agreement will be entered into with the Commonwealth or that the proposed Draft Administrative Procedures will be adopted by the EPA.

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**Finding 4:** The Committee finds that in the absence of the replacement bilateral agreement and EPA proposed administrative procedures being finalised, the Legislative Council should not consider the Bill.

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**Finding 5:** The Committee finds that the Bill ratifies or gives effect to the National Approach IGA, Environment IGA and the 1997 Heads of Agreement, imposing an ongoing obligation on the State to improve consistency in internal and intergovernmental regulation of environmental impact assessment with a view to streamlining approval processes for development (Standing Order 230A(1)(a)).

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**Finding 6:** The Committee finds that the Bill is intended to give effect to/implement the various COAG and Ministerial Council Intergovernmental Agreements set out in this Chapter of its Report (Standing Order 230A(1)(a)).

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**Finding 7:** The Committee finds that the percentage of proposals referred to the EPA that have been assessed by it over the past six years varies between 19% and 37%. On average, the EPA assesses some 28% of the proposals referred to it.

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**Finding 8:** The Committee finds that the right of appeal conferred by section 100(1)(b) of the EP Act against the decision of the EPA as to the recorded level of assessment of a proposal is used to challenge not only the level designated in accordance with gazetted administrative procedures of the EPA but also the 'scoping' of the assessment and length of any period for public comment.

**Recommendation 1:** The Committee recommends that the Minister for Environment identify the provision of the EP Act (or other legislation) conferring power on the Minister to remit a proposal to the EPA for "*reconsideration*" as to:

- whether it should assess the proposal notwithstanding its recommendation that the proposal be dealt with pursuant to Part V, Division 2 of the EP Act; and
- the level of assessment of a proposal.

**Finding 9:** The Committee finds that proponents do utilise the current right, conferred by section 100(1)(b) of the EP Act, to appeal against the decision of the EPA as to level of assessment.

**Finding 10:** The Committee finds that in the event the Minister for Environment determines an appeal against level of assessment by referring a proposal back to the EPA for a fresh decision, the EPA may impose a lower level of assessment, a higher level of assessment or the same level as previously imposed.

**Finding 11:** The Committee finds that where the EPA has set a non-public level of assessment on the basis that a proposal is unlikely to be environmentally acceptable, proponents may seek imposition of a higher level of (public) assessment.

**Recommendation 2:** The Committee recommends that the Minister for Environment clarify for the Legislative Council:

- that "*strategic environmental assessment*" is a "*level of assessment*" for the purposes of section 100(1)(b) of the EP Act;
- if not, the relationship between designating a proposal referred to the EPA pursuant to section 38 of the EP Act as one that will be subject to "*strategic environmental assessment*" and section 39(1)(b) of the EP Act;
- whether the SEA level of assessment falls within the accredited assessment processes of the Bilateral IGA (and has been accredited by the Commonwealth government).

**Finding 12:** The Committee finds that there is uncertainty amongst stakeholders as to what constitutes:

- a strategic proposal as distinct from a strategic assessment of a scheme; and
- a strategic proposal as distinct from a proposal,

and, where a scheme has been subject to strategic assessment, what constitutes:

- a proposal under the assessed scheme as distinct from a proposal that requires referral to the EPA under section 38 of the EP Act; and
- a proposal under the assessed scheme as distinct from a derived proposal.

**Finding 13:** The Committee finds that the appeals against the EPA's:

- decision as to level of assessment of a strategic proposal (if such an appeal does exist);
- instructions as to the scope and content of an environmental review of a scheme; and
- declaration that a proposal is a derived proposal,

provide a critical mechanism for public and proponent comment, and Ministerial review, of the validity of the distinctions drawn by the EPA between schemes, strategic proposals, proposals under an assessed scheme and derived proposals in the circumstances of uncertainty set out in Finding 12.

**Finding 14:** The Committee finds that in order to give effect to the stated intent of the Executive, the Bill requires amendment to provide for:

- deletion of section 100(2) of the EP Act; and
- consequential amendments to sections 100(3a)(d), 101(1) - line 1, 101(1)(dc), 101(2) and 101(3).

**Finding 15:** The Committee finds that the CEO makes a decision on whether a clearing permit is required independent of any recommendation of the EPA that a proposal is to be dealt with under Part V, Division 2, of the EP Act.

**Recommendation 3:** The Committee recommends that the Minister for Environment identify for the Legislative Council the type of mining tenements and petroleum titles that are referred to the EPA for assessment under Part IV of the EP Act and those that undergo environmental impact assessment by the DMP.

**Recommendation 4:** The Committee recommends that the Minister for Environment:

- identify for the Legislative Council the type of mining tenements and petroleum titles in respect of which applications for permits to clear native vegetation are dealt with by the DMP pursuant to a Memorandum of Understanding between that Department and the Department of Conservation and Environment; and
- confirm if clause 5(1)(a) of the Bill will have the effect that there will be no appeal against the EPA's decision not to assess a proposal where there is a recommendation that the proposal be dealt with under Part V, Division 2 where, in fact, the decision on the clearing permit application will be made by the DMP.

**Recommendation 5:** The Committee recommends that the Minister for Environment provide the Legislative Council with an explanation as to why deletion of the right to appeal against the EPA's decision not to assess a proposal does not include the circumstance where the EPA makes a recommendation that the proposal be dealt with under Part 5, Division 3 (*Prescribed premises, works approvals and licences*) of the EP Act.

**Finding 16:** The Committee finds that the practical effect of clauses 5(1)(a), (b) and (d) of the Bill will be, in the event the proposed administrative changes are implemented in their current terms, to move the governing framework for public participation in the following decisions from legislative provision of a right to require a review of the decision that has been made by the EPA to an administrative opportunity to make comment to the EPA on the decision that it will make. The EPA's decision:

- not to assess a proposal where there is a recommendation that the proposal be dealt with under Part V, Division 2 (clause 5(1)(a) of the Bill);
- as to the recorded level of assessment of a proposal (clause 5(1)(b) of the Bill); and
- to declare that a proposal is a derived proposal (clause 5(1)(d) of the Bill).

**Finding 17:** The Committee finds that the Parliament is asked to consider enactment of the Bill at a time when the administrative changes said to render some of the appeals deleted by the Bill unnecessary (whether in tandem with other factors or not) have not yet been put in place and may not be implemented in their current terms.

**Recommendation 6:** The Committee recommends that consideration of the Bill be deferred until:

- a replacement bilateral intergovernmental agreement has been entered into between the State and the Commonwealth; and
- the EPA's proposed administrative procedures have been gazetted pursuant to section 122 of the EP Act,

in order that the Bill can be considered in its final context.

**Recommendation 7:** The Committee recommends that the Minister for Environment advise the Legislative Council whether the EPA's proposed administrative procedures made pursuant to section 122 of the EP Act will apply to any mining proposal assessed by the DMP.

**Finding 18:** The Committee finds that enactment of the Bill is not necessary to give effect to the proposed administrative reforms to the EPA's assessment of proposals and schemes.

**Finding 19:** The Committee finds that, on the evidence made available to it, at least 50% of the time taken to resolve appeals under Part IV of the EP Act is due to proponent delay.

**Finding 20:** The Committee finds that, on the basis of the information provided to it, it is unable to conclude that deletion of the rights of appeal against the EPA's:

- decision not to assess a proposal but record a recommendation that the proposal be dealt with under Part V, Division 2, of the EP Act (clause 5(1)(a) of the Bill);
- decision on recorded level of assessment (clause 5(1)(b) of the Bill);
- instructions as to the environmental review of a scheme (clause 5(1)(b) of the Bill); or
- declaration that a proposal is a derived proposal (clause 5(1)(d) of the Bill),

from the EP Act will have the practical effect of significant reduction in the time taken to assess any significant number of proposals.

**Finding 21:** The Committee finds that while there will be a seven day opportunity for comment on notice of referral of a proposal, which will occur prior to EPA decisions on:

- whether to assess a proposal;
- the level of assessment;
- the scope and content of an assessment of a proposal;
- whether a proposal should be declared a derived proposal; and
- possibly, whether a proposal should be assessed as a strategic proposal,

as currently drafted, the Draft Administrative Procedures in respect of consultation have the practical effect that:

- less information than that available through the appeals proposed to be deleted by the Bill may be available to third parties regarding a particular proposal; and
- there will be less time to consider the information that is made available.

**Finding 22:** The Committee finds that in the event the Bill is enacted, stakeholders are likely to utilise alternate avenues for challenging the decisions in respect of the appeals deleted by the Bill, resulting in increased use of:

- the later appeal right against the EPA report and recommendations in respect of proposals and schemes;
- section 43 of the EP Act; and
- judicial review.

**Finding 23:** The Committee finds that in the circumstance set out in Finding 22, the practical effect of enactment of clause 5(1) of the Bill may not be to transfer public participation in the environmental impact assessment process to an earlier stage of that process, but to transfer public participation to avenues such as the appeal on the EPA report and recommendations (which occurs later in the process); use of section 43 of the EP Act; or appeals to the courts, which may result in greater uncertainty, lengthier approval times and more cost.

**Finding 24:** The Committee finds that the practical effect of greater utilisation of the right of appeal against the EPA report and recommendations, section 43 submissions to the Minister and appeal to the courts as a consequence of enactment of clause 5(1) of the Bill may be to create greater uncertainty and lead to increased costs and delay

**Recommendation 8:** The Committee recommends that the Minister for Environment provide the Legislative Council with the Executive's remedy in respect of the greater uncertainty and increased costs that may result from stakeholders increased recourse to the right of appeal against the EPA report and recommendations, section 43 submissions to the Minister and appeal to the courts as a consequence of enactment clause 5(1) of the Bill.

**Finding 25:** The Committee finds that the third party rights of appeal against the decisions of the EPA made under Part IV of the EP Act are integral to the transparency and accountability of the framework legislative scheme underpinning the industry self-management philosophy of that Act.

**Finding 26:** The Committee finds that each of the following decisions made under Part IV of the EP Act, currently subject to a right of appeal that clause 5(1) of the Bill proposes to delete, is a decision that affects the interests of persons and is of the nature generally regarded, as a matter of administrative law, as requiring appropriate merit review. The EPA's decision:

- not to assess a proposal where there is a recommendation that the proposal be dealt with under Part V, Division 2 (clause 5(1)(a) of the Bill);
- as to the recorded level of assessment of a proposal (clause 5(1)(b) of the Bill);
- as to instructions regarding the scope and content of an environmental review of a scheme (clause 5(1)(b) of the Bill); and
- to declare that a proposal is a derived proposal (clause 5(1)(d) of the Bill).

**Finding 27:** The Committee finds that that the rights of appeal that it is proposed to delete by enactment of clauses 5(1)(b), (c) and (d) of the Bill:

- have not been found to be unnecessary in any recent review of environmental impact assessment/approval processes;
- have been found to be necessary in certain reviews; and
- are considered to be necessary by community stakeholders.

**Finding 28:** The Committee finds that the following rights of appeal that it is proposed to delete by enactment of the Bill confer on third parties, decision-making authorities and responsible authorities a right to challenge a decision of the EPA in circumstances that may not give rise to a right to challenge that decision through judicial review. The rights of appeal are those against the EPA's decision:

- not to assess a proposal where there is a recommendation that the proposal be dealt with under Part V, Division 2 (section 100(1)(a) of the EP Act amended by clause 5(1)(a) of the Bill);
- as to the recorded level of assessment of a proposal (section 100(1)(b) of the EP Act to be deleted by clause 5(1)(b) of the Bill);
- as to instructions regarding the scope and content of an environmental review of a scheme (section 100(1)(c) of the EP Act to be deleted by clause 5(1)(b) of the Bill); and
- to declare that a proposal is a derived proposal (section 100(1)(f) of the EP Act to be deleted by clause 5(1)(d) of the Bill).

**Finding 29:** The Committee finds that the merits review process available by way of the appeals that it is proposed to delete by enactment of the Bill (see Finding 28 for those appeals) provides (by reason of sections 101(1)(b) and (1)(c), 101(2a) to (2c) and 101(1)(dc) of the EP Act ) the remedy of substitution of a better, correct or preferable decision, which remedy is not available by way of judicial review.

**Finding 30:** The Committee finds that a legally enforceable right to merits review is dependent on legislative provision.

**Finding 31:** The Committee finds that the Draft Administrative Procedures provide for:

- a lesser contribution to a "*better decision*" being made and no contribution to "*correct*" or "*preferable*" decision; and
  - less transparency and accountability in decision-making,
- than the rights of appeal that it is proposed to delete by enactment of clause 5(1) of the Bill and that the Draft Administrative Procedures do not provide a mechanism for resolution of conflicts and disputes arising during the assessment process, which is provided by the relevant appeals.

**Finding 32:** The Committee finds that as the public comment occurs prior to the following decisions of the EPA, the opportunity to make public comment does not constitute a “*review*” of those decisions. The EPA’s decision:

- not to assess a proposal where there is a recommendation that the proposal be dealt with under Part V, Division 2 (review deleted by clause 5(1)(a) of the Bill);
- as to the recorded level of assessment of a proposal (review deleted by clause 5(1)(b) of the Bill);
- as to instructions regarding the scope and content of an environmental review of a scheme (review deleted by clause 5(1)(b) of the Bill); and
- to declare that a proposal is a derived proposal (review deleted by clause 5(1)(d) of the Bill).

**Finding 33:** The Committee finds that the right of appeal at the conclusion of the EPA assessment process, being against the EPA report and recommendations, is problematic as an appropriate review of the EPA’s decisions on level of assessment of a proposal, the scope of the environmental impact of a proposal and whether a proposal should be declared a derived proposal as:

- government departments and stakeholders agree that early identification and resolution of issues is important;
- reliance on an appeal at that stage to raise issues that arise early in the environmental impact assessment process creates greater uncertainty for proponents;
- there is difficulty in identifying omission at that stage and remedying identified omission may cause delay and expense and may be less likely to occur by reason of the matters in the bullet points below;
- by the time of completion of the environmental impact assessment process the proposal has become more developed and is less flexible, with the consequence that there is less scope to implement environmental improvements;
- appeal at the stage of EPA report and recommendations is likely to have significant adverse financial implications for a proponent (even in the event the appeal is not successful).

**Finding 34:** The Committee finds that the powers conferred on the Minister by section 43 of the EP Act do not confer any rights on a proponent, decision-maker or third party to request or require the Minister to respond to a view that the relevant EPA decision is incorrect. Ministerial intervention under section 43 of the EP Act is a matter for Ministerial discretion.

**Finding 35:** The Committee finds that there is no formal process for Ministerial intervention under section 43 of the EP Act and the exercise of Ministerial discretion under section 43 is not as transparent a process as that required under the EP Act in respect of appeals made under section 100(1) of the EP Act.

**Finding 36:** The Committee finds that section 43 of the EP Act is a provision directed at the inherently political nature of environmental impact assessment. It allows the Minister to intervene on the ground of public interest in a proposal rather than merit *per se*.

**Finding 37:** The Committee finds that section 43 of the EP Act does not provide for review of the following EPA decisions, which are the subject of the rights of appeal it is proposed to delete by clause 5(1) of the Bill. The EPA's decision:

- not to assess a proposal where there is a recommendation that the proposal be dealt with under Part V, Division 2 (review deleted by clause 5(1)(a) of the Bill);
- as to the recorded level of assessment of a proposal (review deleted by clause 5(1)(b) of the Bill);
- as to instructions regarding the scope and content of an environmental review of a scheme (review deleted by clause 5(1)(b) of the Bill); and
- to declare that a proposal is a derived proposal (review deleted by clause 5(1)(d) of the Bill).

**Finding 38:** The Committee finds that the proposed administrative procedures said to render the appeal rights conferred by sections 100(1)(b), (c) and (f) of the EP Act unnecessary - in providing for public comment prior to the relevant decision being made - may be altered or withdrawn by the EPA without the input, or agreement, of the Parliament or the Minister.

**Finding 39:** The Committee finds that the replacement of statutory appeal rights with administrative opportunity for comment removes an element of legislative certainty, and an important check and balance, from the framework of the environmental impact assessment process.

**Recommendation 9:** The Committee recommends that the Minister for Environment provide the Legislative Council with the Executive's explanation as to why it is appropriate for prescription of the:

- period for public comment; and
- information to be made available to the public,

in respect of the environmental impact assessment of a proposal to be by way of administrative procedure, rather than in regulation.

**Recommendation 10:** The Committee recommends that, subject to the response of the Minister for Environment to Recommendation 9, in the event clause 5(1) of the Bill is passed by the Legislative Council, the Legislative Council seek an assurance from the Minister for Environment that the Executive will exercise the powers conferred on the Governor by section 123 of the EP Act to make regulations prescribing guidelines for the environment impact assessment processes of the EPA, which guidelines will include:

- appropriate minimum periods for public consultation;
- measures to ensure sufficient information is made available prior to the period for public consultation for that consultation to be meaningful; and
- appropriate transparency and accountability for EPA treatment of public comment in its decision making.

**Finding 40:** The Committee finds that the rights of appeal conferred by sections 102(1) (applicant), (3) and (4) (both third party) of the EP Act in respect of the CEO's decision to grant a clearing permit, or the conditions imposed on grant of a clearing permit, is a narrower right of appeal than that conferred by section 100(1)(a) of the EP Act.

**Finding 41:** The Committee finds that if enacted, clause 5(1)(a) of the Bill will delete the current right to appeal against the EPA decision not to assess a proposal:

- on grounds unrelated to the issue of a permit to clear native vegetation; and
- on the ground that the proposal should be subject to Part IV assessment, rather than being dealt with under Part V, Division 2,

in the event the EPA makes a recommendation that a proposal be dealt with under Part V, Division 2, and that there is no equivalent appeal process available under Part V, Division 2.

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**Finding 42:** The Committee finds that in the event clause 5(1)(a) of the Bill is enacted, the decision of the EPA not to assess a proposal, when there is a recorded recommendation that the proposal be dealt with under Part V, Division 2, of the EP Act, will not be subject to appropriate review.

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**Recommendation 11:** The Committee recommends that subclause 5(1)(a) of the Bill be deleted from the Bill. This may be effected in the following manner.

**Page 3, lines 13-17 - To delete the lines.**

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**Finding 43:** The Committee finds that the EPA's proposal to reduce the number of levels of assessment of a proposal stipulated in its gazetted administrative procedures does not impact on the necessity for section 100(1)(b) of the EP Act.

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**Finding 44:** The Committee finds that the EPA decision as to the recorded level of assessment of a proposal will not be subject to appropriate review in the event of enactment of clause 5(1)(b) of the Bill.

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**Recommendation 12:** The Committee recommends that subclause 5(1)(b) of the Bill be amended to delete the reference to section 100(1)(b) of the EP Act. This can be effected in the following.

**Page 3, line 19 - To delete "(b) and"**

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**Recommendation 13:** The Committee recommends that references to section 100(1)(b) of the EP Act be deleted from clauses 5(2) and 6(1) of the Bill. This can be effected in the following manner.

**Page 4, line 2 - To delete "(b),"**

**Page 4, line 15 - To delete "or (b)"**

**Page 4, line 20 - To delete ", (b)"**

**Page 5, line 1- To delete ", (b)"**

**Page 5, lines 7-11 - To delete the lines**

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**Finding 45:** The Committee finds that the content of any EPA instructions set out in the public record under section 48B(1) of the EP Act in respect of the scope and content of the environmental review of a scheme will not be subject to appropriate review in the event of enactment of clause 5(1)(b) of the Bill.

**Recommendation 14:** The Committee recommends that subclause 5(1)(b) of the Bill be amended to delete the reference to section 100(1)(c) of the EP Act. This can be effected in the following.

**In the event Recommendation 12 is adopted**

**Page 3, line 19 - To delete the line**

**In the event Recommendation 12 is not adopted**

**Page 3, line 19 - To delete "and (c)"**

**Recommendation 15:** The Committee recommends that references to section 100(1)(c) of the EP Act be deleted from clauses 5(2), 6(2) and 6(3) of the Bill. This can be effected in the following manner.

**Page 4, line 2 - To delete "(c),"**

**Page 5, line 6 - To delete the line**

**Page 5, line 8 to 15 - to delete the lines**

**Page 5, lines 21 to 30 - to delete the lines**

**Finding 46:** The Committee finds that the EPA decision to declare a proposal a derived proposal will not be subject to appropriate review in the event of enactment of clause 5(1)(d) of the Bill.

**Recommendation 16:** The Committee recommends that that subclause 5(1)(d) of the Bill be deleted from the Bill. This recommendation may be effected in the following manner:

**Page 3, line 24 - To delete the line**

**Recommendation 17:** The Committee recommends that the following consequential amendments be made to the Bill on deletion of subclause 5(1)(d). This can be effected in the following manner

**Page 3, lines 3-10 - To delete the lines**

**Page 3, lines 25-27 - To delete the lines**

**Page 4, line 2 - To delete "or (f)"**

**Page 4, line 20 - To delete "or (f)"**

**Page 4, lines 26 to 30 - To delete the lines**

**Recommendation 18:** The Committee recommends that, in the event the Legislative Council passes clause 5(1)(d) of the Bill it amend the Bill to provide for deletion of section 100(2) of the EP Act and consequential amendments to sections 100(3a)(d), 101(1), 101(1)(dc), 101(2) and 101(3). This can be effected in the following manner

**Page 4, line 10 - To insert**

**(3) In section 100 delete paragraph (2)**

**(4) In section 100(3a) delete paragraph (d)**

**Page 4, 14 - To insert after line 14**

**(aa) delete ", (2)"**

**Page 4, lines 26 to 30 - To delete the lines and to insert**

**(d) delete (dc)**

**Page 5, line 10 - To delete "or (2)"**

**Recommendation 19:** The Committee recommends that the Legislative Council give effect to the deletion of clauses 4 to 8 of the Bill in the following manner

**Page 3, lines 1 to 28 - To delete the lines**

**Page 4, lines 1 to 30 - To delete the lines**

**Page 5, lines 1 to 30 - To delete the lines**

**Finding 47:** The Committee finds that clauses 9(1) and (2) of the Bill do not raise any issues under the fundamental legislative scrutiny principles.

**Finding 48:** The Committee finds that clauses 9(3) and 10 of the Bill raise no issues under the fundamental legislative scrutiny principles.

**Recommendation 20:** The Committee recommends that the Minister for Environment advise the Legislative Council whether it is proposed that the process for applying for EPA consent to minor or preliminary works under section 41A(3) of the *Environmental Protection Act 1986* will remain a purely administrative process.

**Recommendation 21:** The Committee recommends that the Minister for Environment confirm for the Legislative Council:

- whether it is intended to extend the ambit of "*minor or preliminary work*" used in section 41A(3) of the EP Act to include work that would permit decisions "*incidental or of minor significance to the Minister for Environment's decision after consultation*"; and
- if so, the additional works encompassed by the extension.