

[Act 1995 No 4]



New South Wales

National Environment Protection Council (New South Wales) Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to ensure that, by means of the establishment and operation of the National Environment Protection Council:

- (a) people enjoy the benefit of equivalent protection from air, water or soil pollution and from noise, wherever they live in Australia, and
- (b) decisions of the business community are not distorted, and markets are not fragmented, by variations between participating jurisdictions in relation to the adoption or implementation of major environment protection measures.

This Bill forms part of a legislative scheme that involves the enactment of the *National Environment Protection Council Bill 1994* by the Commonwealth (“the Commonwealth Bill”) and a complementary Bill by each of the participating States, the Northern Territory and the Australian Capital Territory. The scheme is based on the Intergovernmental Agreement

on the Environment, entered into by the Commonwealth, the States, the Northern Territory, the Australian Capital Territory and the Australian Local Government Association on 1 May 1992.

The legislative scheme was agreed to at a meeting of the Council of Australian Governments on 25 February 1994. However, Western Australia did not agree to the legislation at that meeting. The participating jurisdictions will be the Commonwealth and those States and Territories which enact complementary legislation in the form of this Bill.

The Commonwealth Bill has been enacted by the Commonwealth Parliament and complementary Bills have now been enacted by the Parliaments of Queensland, Victoria, South Australia, Northern Territory and the Australian Capital Territory.

The Agreement

On 31 October 1990 the Heads of Government of the Commonwealth and the States and Territories and representatives of Local Government met at a Special Premiers' Conference and agreed to develop and conclude an Intergovernmental Agreement on the Environment. The Agreement was executed on 1 May 1992.

The objects of the Agreement are:

- (a) to develop a co-operative national approach to the environment, and
- (b) to better define the roles of the respective governments in environmental protection, and
- (c) to reduce the number of disputes between the States and Territories and the Commonwealth over environmental issues, and
- (d) to promote greater certainty of government and business decision making, and
- (e) to obtain better environment protection.

Under Schedule 4 of the Agreement, the Commonwealth, the States and Territories agreed to establish a Ministerial Council to make national environment protection standards, guidelines, goals and protocols (referred to in this Bill as measures).

It was agreed that the Council would be established by Commonwealth legislation and recognised by State and Territory legislation and that the legislation would provide a mechanism for the application of those measures in each of the States and Territories.

A copy of the Agreement is set out in the Schedule to the Bill.

The scheme of the legislation

This Bill and the Commonwealth Bill are complementary. The Bills establish the Council, set out the Council's functions and powers and make various administrative provisions in relation to the Council. The establishment of the Council and the conferral of functions and powers in identical terms confers the necessary constitutional authority for a body acting for the purposes of Commonwealth, State and Territory law. The legislative scheme is modelled on the Coal Industry Tribunal of the Commonwealth and New South Wales whose constitutional validity was recently confirmed by the High Court in *Re Construction, Forestry, Mining and Energy Union; Ex parte Colliery Officials' Association of NSW* (1993) 68 ALJR 104.

The Bills recognise that national environment protection measures adopted under the formal mechanism provided by the Bills will be implemented by other laws and arrangements. This is because measures will comprise ambient air or water quality and similar standards. The Bills also recognise that government activities will be subject to the adopted measures. In the case of Commonwealth activities, their implementation is proposed to be effected by the application of the relevant State or Territory law to those Commonwealth activities.

Outline of provisions

The following is a summary of the provisions of the Bill.

Part 1 Preliminary

Part 1 contains preliminary provisions, including name of Act, commencement, the objects of the proposed Act, definitions and interpretation provisions. **(Clauses 1, 2, 3, 5 and 6)**

The Bill binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament permits, the Crown in right of the Commonwealth and of each other State and Territory. **(Clause 4)**

The Bill provides that it is the intention of the Parliament of New South Wales to implement national environment protection measures in respect of activities that are subject to the law of New South Wales by such laws or other arrangements as are necessary. This extends to activities of the Government and its instrumentalities. **(Clause 7)**

Part 2 Establishment and membership of the National Environment Protection Council

The Bill establishes the National Environment Protection Council (“the Council”). **(Clause 8)**

The Council is to consist of Government Ministers from each participating jurisdiction, that is, one from the Commonwealth Government and one from each of the participating State and Territory Governments. The Prime Minister, the State Premiers and Chief Ministers each nominate a Ministerial member and may replace that member at any time. **(Clause 9)**

The Council is to be chaired by the Ministerial member from the Commonwealth Government. **(Clause 10)**

The Bill also provides that the Prime Minister, State Premiers and Chief Ministers may each nominate a Minister to be the deputy of the Minister nominated by them to be a member of the Council. **(Clause 11)**

Part 3 Functions and powers of the Council

Functions and powers (Division 1)

The Bill sets out the functions and powers of the Council. The principal functions of the Council are to make national environment protection measures and to assess and report on the implementation and effectiveness of the measures. For this purpose the Council may consult with the public and Government bodies, undertake or commission research and publish reports. **(Clauses 12 and 13)**

Making of national environment protection measures (Division 2)

The Council is authorised to make measures comprising national environment protection standards, goals, guidelines and protocols. The measures must relate to ambient air quality, ambient water quality, the protection of amenity in relation to noise, site contamination, environmental impacts associated with hazardous wastes, or the re-use and recycling of used materials. The Council may also, in conjunction with the National Road Transport Commission, develop measures relating to motor vehicle noise and emissions. **(Clause 14)**

In making any national environment protection measure, the Council must take into account such factors as whether the measure is consistent with the Agreement, the environmental, economic and social impact of the measure, the simplicity and effectiveness of the administration of the measure, the most effective means of achieving the desired environmental outcome and relevant international agreements to which Australia is a party. **(Clause 15)**

Before making a national environment protection measure, the Council must give notice of its intention to prepare the measure by advertisement in the Commonwealth Gazette and in a newspaper circulating in each State and Territory. It must prepare a draft of the proposed measure together with an impact statement which includes a statement of the desired environmental outcomes, the reasons for the proposed measure and the reasons why alternative methods of achieving the desired outcome have not been adopted, and which identifies and assesses the economic and social impact of the proposed measure. The statement also includes the timetable (if any) for the implementation of the proposed measure. **(Clauses 16 and 17)**

The Council must publish a notice in the Commonwealth Gazette and a newspaper circulating in each State and Territory which states how a copy of the proposed measure and impact statement can be obtained and invites submissions relevant to the proposed measure. The Council must take these submissions into account when formulating measures. **(Clauses 18 and 19)**

A national environment protection measure may be varied or revoked by the same procedure as it is made. **(Clause 20)**

A national environment protection measure may be disallowed by either House of the Commonwealth Parliament. In that case, it ceases to have effect. **(Clause 21)**

A failure to comply with a particular procedural requirement for making a measure will not invalidate the measure if the Council has substantially complied with the procedural requirements. **(Clause 22)**

Assessment and reporting on implementation and effectiveness of measures (Division 3)

Each Ministerial member of the Council is required to report annually to the Council on the implementation of national environment protection measures in their respective jurisdictions and the effectiveness of those measures. **(Clause 23)**

The Council must prepare an annual report of its operations, which is to include copies of the reports submitted by the Ministerial members and an assessment of the implementation and effectiveness of national environment protection measures (having regard to the members' reports). The report is to be laid before each House of Parliament of each State and Territory within 7 sitting days of that House after the Council has formally adopted the report. **(Clause 24)**

Part 4 Meetings of the Council and establishment and meetings of its committees

Meetings of Council (Division 1)

A meeting of the Council may be convened at any time by the Chairperson or on request of at least two-thirds of the members. The Council may regulate the conduct of its meetings as it thinks fit. A quorum of the Council is constituted by two-thirds of the members. A decision of the Council must be supported by the votes of at least two-thirds of the members, whether present at the meeting or not. The presiding member has a deliberative vote only. **(Clauses 25–28)**

Committees of Council (Division 2)

The Council is to establish a committee called the National Environment Protection Council Committee ("the NEPC Committee") to assist and advise the Council. The NEPC Committee will consist of the NEPC Executive Officer and nominees of each of the members of the Council. The President of the Australian Local Government Association may nominate a person who is entitled to attend and be heard at Committee meetings but who is not entitled to vote at such meetings. **(Clauses 29 and 32)**

The nominee of the Chairperson of the Council is to be Chairperson of the NEPC Committee. A meeting of the NEPC Committee may be convened at the request of the Council or by the Chairperson of the Committee. The procedures to be followed at such meetings are to be determined by the Committee. **(Clauses 30 and 31)**

The Council may also establish other committees to assist it. **(Clause 33)**

If a State or Territory withdraws from the Agreement, the member of the NEPC Committee (or any other committee established by the Council)

nominated by that party ceases to be a member of that committee. Similarly, if the Australian Local Government Association withdraws from the Agreement, the person nominated by it to attend meetings of the NEPC Committee ceases to be entitled to attend and be heard. **(Clause 34)**

Part 5 NEPC Service Corporation, NEPC Executive Officer and staff

The NEPC Service Corporation (Division 1)

The NEPC Service Corporation is established as a body corporate under the Commonwealth Bill. The Service Corporation is to provide assistance to the Council, the NEPC Committee and any other committee established by the Council. The Service Corporation has power to do all things that are necessary or convenient to be done in connection with the performance of its functions (including entering contracts, acquiring and disposing of property). However, the Service Corporation must not, without the written approval of the Council, enter into a contract for the payment or receipt of an amount exceeding \$250,000 (or any higher amount prescribed by regulation) or take any land or buildings on lease for a period exceeding 3 years. **(Clauses 35–38)**

The NEPC Executive Officer (Division 2)

The Council must appoint a NEPC Executive Officer to conduct the affairs of the Service Corporation. The NEPC Executive Officer is to act in accordance with any directions given by the Council. The Bill also contains provisions dealing with the conditions of employment of the NEPC Executive Officer (such as entitlement to remuneration and allowances and to leave of absence). Any employment conditions not provided for by the Bill may be determined by the Council. **(Clauses 39–46)**

The Council may also appoint a person to act as the NEPC Executive Officer during a vacancy in the office of the NEPC Executive Officer or while he or she is absent from Australia. A person acting in that office has the powers and functions of the NEPC Executive Officer. **(Clauses 47 and 48)**

Staff of the Service Corporation and Consultants (Division 3)

The Service Corporation may employ Commonwealth Public Service and non-Public Service staff and consultants. **(Clauses 49–52)**

Part 6 Finance

The Service Corporation is to be financed by the money appropriated for that purpose by the Parliaments of the Commonwealth and each of the participating States and Territories. The NEPC Executive Officer is to prepare estimates of the Service Corporation's receipts and expenditure for each financial year. The money of the Service Corporation must be spent in accordance with estimates of expenditure approved by the Council. **(Clauses 53-57)**

The Service Corporation must prepare an annual report under the *Audit Act 1901* of the Commonwealth but is not required to prepare such a report under similar State and Territory legislation. **(Clauses 58 and 59)**

Part 7 Miscellaneous

The constitutional basis of the legislative scheme is supported by recognition that each participating jurisdiction may confer powers and functions on the Council, each committee of the Council, the NEPC Service Corporation and the NEPC Executive Officer. **(Clause 60)**

The Council may delegate any of its functions, other than the functions of making national environment protection measures and recommending the making of regulations. **(Clause 61)**

The Bill also provides for certificate evidence that the Council has done any act or thing or formed any opinion. **(Clause 62)**

Regulations may be made in each participating jurisdiction for the purposes of the proposed Act, but only on the recommendation of the Council. **(Clause 63)**

The Council is to cause the operation of the proposed Act (and of the corresponding legislation of the Commonwealth and each of the States and Territories) to be reviewed at the end of 5 years after the commencement of the corresponding Act of the Commonwealth. **(Clause 64)**

Schedule Intergovernmental Agreement on the Environment

The Schedule sets out the text of the Intergovernmental Agreement on the Environment.