

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

NATIONAL ENVIRONMENT PROTECTION COUNCIL BILL 1994

EXPLANATORY MEMORANDUM

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NATIONAL ENVIRONMENT PROTECTION COUNCIL BILL 1994**EXPLANATORY MEMORANDUM****OUTLINE**

The National Environment Protection Council Bill 1994 (the 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 (the Agreement), 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 and will not be participating in the scheme. The participating jurisdictions will be the Commonwealth and those States and Territories which enact complementary legislation in the form of this Bill.

FINANCIAL IMPACT STATEMENT

The cost of establishing the National Environment Protection Council (NEPC) and the cost of development of national environment protection measures will be shared between the Commonwealth and State/Territory Governments on a 50-50 basis. The State/Territory contributions to these costs will be apportioned on a per capita basis.

The cost of establishing the NEPC will include the establishment and running of a small Secretariat consisting of an Executive Officer and some staff. The ACT's share of establishment and running costs in the first year of operation is estimated to be \$14,500.

CLAUSE NOTES**PART I - PRELIMINARY****Clauses 1-5**

These clauses contain preliminary provisions, including short title, commencement, the objects of the proposed Act, definitions and interpretation provisions.

Clause 6

Clause 6 specifies that it is the intention of the Legislative Assembly to implement national environment protection measures in respect of activities that are subject to the law of the ACT by such laws or other arrangements as are necessary. This extends to activities of the Government and its instrumentalities.

PART II - ESTABLISHMENT AND MEMBERSHIP OF THE NATIONAL ENVIRONMENT PROTECTION COUNCIL**Clause 7**

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.

PART III - FUNCTIONS AND POWERS OF THE COUNCIL

Division 1 - Functions and powers

Clauses 11 and 12

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.

Division 2 - Making of national environment protection measures

Clause 13

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 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.

Clauses 15 and 16

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 17 and 18

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.

Clause 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.

Division 3 - Assessment and reporting on implementation and effectiveness of measures**Clause 22**

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 22 will impose a duty on the Minister who is a member of the Council to prepare the annual report.

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 the Legislative Assembly within seven sitting days of the Assembly after the Council has formally adopted the report.

PART IV - MEETINGS OF THE COUNCIL AND ESTABLISHMENT AND MEETINGS OF ITS COMMITTEES

Division 1 - Meetings of Council

Clauses 24-27

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.

Division 2 - Committees of Council

Clause 28

The Bill establishes a committee called the National Environment Protection Council Committee ("the NEPC Committee"). The NEPC Committee will consist of the NEPC Executive Officer and nominees of each of the members of the Council. 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 30

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.

Clause 31

The function of the Committee is to assist and advise the Council.

Clause 32

The Council may also establish other committees to assist it, the functions, membership and procedures of which are to be decided by the Council.

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.

PART V - NEPC SERVICE CORPORATION, NEPC EXECUTIVE OFFICER AND STAFF***Division 1 - The NEPC Service Corporation*****Clauses 34-37**

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.

Division 2 - NEPC Executive Officer**Clauses 38-45**

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 46 and 47

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.

Division 3 - Staff of Service Corporation and consultants**Clauses 48-51**

The Service Corporation may employ or second Commonwealth Public Service staff, employ non-Public Service staff and engage consultants.

PART VI - FINANCE**Clauses 52-56**

The Service Corporation is to be financed by the money appropriated by the Parliaments of the Commonwealth and each of the participating States and Territories and applied to expenditure related to the discharge of its functions. 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 57 and 58

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 legislation.

PART VII - MISCELLANEOUS**Clause 59**

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. Such delegations may also be revoked or varied by the Council.

Clause 61

A certificate signed by a member of the Council or the NEPC Executive Officer stating that the Council has done any act or thing or formed any opinion is evidence that the act, thing or opinion was done or formed by the Council as a whole.

Clause 62

Regulations may be made by the Executive 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.

**SCHEDULE - INTERGOVERNMENTAL
AGREEMENT ON THE ENVIRONMENT**

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