

A review of the environmental approval processes in Western Australia

The Government of Western Australia has commissioned an Industry Working Group to review the environmental approval processes in WA and that working group has now delivered the outcome of their investigations in a report dated April 2009 (and released publicly in November 2009).

It is clear from the outcome of the review that there is a high level of criticism in relation to how all approvals are progressed. The principal rationale for the criticism arises out of the impact of political attitudes on environmental matters and indigenous issues which have evolved since the 1960s, and the fact that the cumulative effect of these impacts have vastly increased cost, delay and uncertainty in the approvals process.

The report provides a two phased approach to improving approval processes in Western Australia, namely:

- Phase 1 recommendations which are extensively administrative and can be addressed prior to legislative change; and
- Phase 2 recommendations which require legislative change.

The key recommendations for each of those phases are as follows:

Phase 1

Recommendation 1 – it is recommended that the government clearly define their vision and policy for economic and social development.

Recommendation 2 – despite the merger of the Department of Conservation and Land Management (**CALM**) and the Department of Environment into the Department of Environment and Conservation (**DEC**), significant cultural, philosophical and policy differences continue to create impediments to the efficiency and effectiveness of the State approval process. It is recommended that a natural resources agency be established to support the delivery of efficient and effective environment or management services and approvals.

Recommendation 3 - it is recommended that the Environment Protection Authority (**EPA**), its service unit and advisory role have a 'stand alone' responsibility. In addition, in order to reduce duplication and streamline approvals, it is recommended that the requirements for works approvals and licences for mining and petroleum activities are incorporated into mining and petroleum approvals processes.

Recommendation 4 – the establishment of an independent 'approvals reform office' responsible for overseeing the implementation of government endorsed reform recommendations.

Recommendation 5 – a reform of native title and Aboriginal heritage processes.

Recommendation 6 – reform of the *Environmental Protection Act 1986 (EP Act)* appeals process, including a recommendation to transfer the responsibility for appeals from the Office of the Appeals Convenor to the State Administrative Tribunal.

Recommendation 7 – reduce the objections backlog in the Warden's Court.

Recommendation 8 – reform the administration of environmental offsets.

Recommendation 9 – review government policy.

Recommendation 10 – encourage agency use of external resources.

Recommendation 11 – improve cross-agency access to technical information.

Recommendation 12 – conduct a review of internal approvals processes and timelines across all government departments involved in approvals, publishing key approval timeline targets and performance measures on departmental web sites on a quarterly basis.

Phase 2

Recommendation 13 – it is recommended that government establish a single decision making authority for all mining and petroleum proposals.

Recommendation 14 – it is recommended that section 41 of the EP Act be amended to avoid the interpretation currently being made by certain decision makers effectively preventing them from continuing the normal proposal assessment process until a Ministerial Statement is issued.

Recommendation 15 – amend the *Mining Act 1978* to allow for railways and miscellaneous licences.

It remains to be seen whether or not this review of the environmental approvals process will have any greater impact than the reviews that have gone before, however it is encouraging to see that the report deals succinctly with those impediments which are most debilitating to the process as a whole, namely:

- policy shortcomings;
- the lack of communication between government departments;
- the conflicting roles of the Environmental Protection Authority and the Department of Environment and Conservation; and
- the appeals process before the Office of the Appeals Convenor.

We will continue to keep an eye on the developments in this area and will continue to make representations to the relevant departments, when and if necessary.

If you would like any assistance and/or advice in relation to the amendments proposed to the environmental approvals process or indeed are having difficulty with the progress of an existing proposal under the current regime, please do not hesitate to contact Paul McQueen, Partner, or Craig Wallace, Senior Associate or any member of the environmental focus group at Lavan Legal.

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