

ENVIRONMENTAL LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

FOR

AMENDMENTS TO BE MOVED IN COMMITTEE BY THE HONOURABLE DEAN WELLS MP

Title of the Bill

Environmental Legislation Amendment Bill 2003

Objectives of the Amendments

To clarify the transitional arrangements under the *Coastal Protection and Management Act 1995* that the local government certification process replaces the now repealed *Canals Act 1958* certification process, and that applications for reconfiguration of a lot in a coastal management district lodged with a local government but not decided prior to 20 October 2003 must be lodged with the EPA for assessment.

Achievement of the Objectives

The objectives of the Bill will be achieved by enacting amendments to the *Coastal Protection and Management Act 1995* to:

- (a) clearly identify that references to the certification process under section 8(1) of the *Canals Act 1958* are to be taken as references to the local government certification process under section 119(2) of the *Coastal Protection and Management Act 1995*; and
- (b) clearly identify that applications for the reconfiguration of a lot in a coastal management district made to local government but not decided by 20 October 2003 must be referred to the Environmental Protection Agency for assessment.

Alternative Ways of Achieving Policy Objectives

Crown Law advice identified legislative amendments as being the only certain way of ensuring that the policy objectives will be achieved.

Estimated Cost for Government Implementation

Clarifying the transitional arrangements will provide clarity to Government and the community at no additional cost to the Government.

Consistency with Fundamental Legislative Principles

Section 4(3)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard for the rights and liberties of individuals. The proposed amendments clarify the original intent of the legislation that the local government certification process under section 119(2) of the *Coastal Protection and Management Act 1995* replaces the certification process under section 8(1) of the now repealed *Canals Act 1958*. The proposed amendments also ensure that the requirement for applicants to have their application for reconfiguration of a lot in a coastal management district assessed by the Environmental Protection Agency is not affected by the transition of these applications from the *Beach Protection Act 1968* to the *Coastal Protection and Management Act 1995*.

Consultation

Limited consultation has occurred with stakeholders affected by the amendments. The Urban Development Institute of Australia (UDIA) requested that the issue of a direct legislative replacement for the certification process under section 8(1) of the *Canals Act 1958* be addressed and is supportive of the amendments. No direct consultation has occurred regarding the clarification of applications for reconfiguration of a lot in a coastal management district lodged with a local government but not decided prior to 20 October 2003, however the UDIA were consulted in the development of the original transitional provisions. Local Government will not be affected by these amendments. Senior Officers of the Department of the Premier and Cabinet and the Crown Solicitor have been involved in drafting the amendments. Key State agencies relevant to coastal zone management were consulted in the development of the original transitional provisions, the intent of which remains unchanged.

NOTES ON PROVISIONS

Clause 1 Schedule

Clause 1 clarifies that an indictable offence under section 144(1) of the *Coastal Protection and Management Act 1995* is a misdemeanour in accordance with *clause 22* of the Bill. This clause was originally contained in *Clause 28* of the Bill but the existing section number has been updated to reflect the new section number resulting from the impending renumbering of the *Coastal Protection and Management Act 1995*.

Clause 2 After section 176—

Clause 2 inserts section 176A of the *Coastal Protection and Management Act 1995*, after section 176.

176A References to certification and notification under the repealed Canals Act, s 8(1)

Subsection 1 identifies that subsection 2 applies to contracts for the sale of land that have been the subject of a provisional approval under section 5(4)(b) of the *Canals Act 1958*, and/or final approval under section 7(3) of the *Canals Act 1958*, but for which the certification process had not taken place prior to 20 October 2003 (commencement of the *Coastal Protection and Management and Other Legislation Amendment Act 2001*).

Subsection 2 provides explicit direction that, in a contract for the sale of land, any reference to certification or notification identified in subsection 1 is considered to be a reference to the local government certification process under section 119(2) of the *Coastal Protection and Management Act 1995*.

Clause 3 Section 181(1), ‘This section applies’—

Clause 3 rewords section 181(1) to ensure that the intent and application of the section is not affected by the insertion of new section 181(1A).

Clause 4 Section 181—

Clause 4 inserts a new subsection 1A into section 181 that applies to a person who has lodged an application for reconfiguration of a lot in a coastal management district with a local government, but that application was not decided prior to 20 October 2003. Subsection 1A clarifies that if the application is subsequently approved by the local government, the

person must apply to the chief executive administering the *Coastal Protection and Management Act 1995* for a development approval for reconfiguration under the *Integrated Planning Act 1997*.