

# **ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT 1974**

**No. 164 of 1974**

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# ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT 1974

## No. 164 of 1974

An Act to make provision for Protection of the Environment in relation to Projects and Decisions of, or under the control of, the Australian Government, and for related purposes.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

1. This Act may be cited as the *Environment Protection (Impact of Proposals) Act 1974*.<sup>1</sup> Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commencement.
3. In this Act, unless the contrary intention appears— Definitions.
  - “Australia” includes the Territories to which this Act extends;
  - “authority of Australia” does not include a court but includes an authority of a Territory and all authorities and bodies (not being companies or societies) established by or appointed under the laws of Australia and of the Territories and also includes a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of Australia;
  - “environment” includes all aspects of the surroundings of man, whether affecting him as an individual or in his social groupings, and “environmental” has a corresponding meaning;
  - “Territory” means an internal Territory or an external Territory to which this Act extends.
4. This Act extends to all the external Territories other than Papua New Guinea. Extension to Territories.
5. (1) The object of this Act is to ensure, to the greatest extent that is practicable, that matters affecting the environment to a significant extent are fully examined and taken into account in and in relation to— Object of Act.
  - (a) the formulation of proposals;
  - (b) the carrying out of works and other projects;
  - (c) the negotiation, operation and enforcement of agreements and arrangements (including agreements and arrangements with, and with authorities of, the States);

(d) the making of, or the participation in the making of, decisions and recommendations; and

(e) the incurring of expenditure,

by, or on behalf of, the Australian Government and authorities of Australia, either alone or in association with any other government, authority, body or person.

(2) The matters referred to in sub-section (1) extend to matters of those kinds arising in relation to financial assistance granted, or proposed to be granted, to the States.

Approved  
procedures.

6. (1) The Governor-General may, from time to time, by order, approve, and approve variations of, administrative procedures for the purpose of achieving the object of this Act, being procedures that are consistent with relevant laws, as affected by regulations under this Act.

(2) Without limiting the generality of sub-section (1), the approved procedures may provide for—

(a) the supplying to the Minister of information for the purpose of consideration, by him or on his behalf, of the necessity for environmental impact statements;

(b) authorizing the Minister to direct the preparation or obtaining, and the submission to the Minister, of statements to be known as environmental impact statements;

(c) defining, or authorizing the Minister to determine, the matters to be dealt with by, and the form of, those statements;

(d) the making of those statements available, in cases or circumstances specified by or in accordance with the procedures, for public comment;

(e) inquiries in accordance with this Act, and action to be taken in respect of reports resulting from such inquiries;

(f) the revision of those statements;

(g) the examination of those statements by or on behalf of the Minister and the making by or on behalf of the Minister of comments, suggestions or recommendations concerning the matters to which those statements relate, including suggestions or recommendations concerning conditions to which approvals, agreements and other matters should be subject; and

(h) exemptions from all or any of the requirements of the procedures.

Orders to be  
notified and  
may be  
disallowed.

7. (1) Where an order is made by the Governor-General under section 6—

(a) notice shall be published in the *Gazette* of the order having been made, and of the place where copies of the order can be purchased;

- (b) the order shall, subject to this section, take effect from the date of publication of the notice or, where another date is specified in the order, from the date specified; and
- (c) the order shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the order.

(2) If an order is not laid before each House of the Parliament in accordance with sub-section (1), it shall be void and of no effect.

(3) If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after an order has been laid before that House, passes a resolution disallowing the order or part of the order, the order or that part of the order, shall thereupon cease to have effect.

(4) If, at the expiration of 15 sitting days after notice of a motion to disallow an order or part of an order has been given in a House of the Parliament, being notice given within 15 sitting days after the order has been laid before that House—

- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the order, or part of the order, specified in the motion shall thereupon be deemed to have been disallowed.

(5) If, before the expiration of 15 sitting days after notice of a motion to disallow an order or part of an order has been given in a House of the Parliament—

- (a) that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and
- (b) at the time of the dissolution, expiry or prorogation, as the case may be—
  - (i) the notice has not been withdrawn and the motion has not been called on; or
  - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the order or part of an order shall, for the purposes of sub-sections (3) and (4), be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

**8.** Each Minister shall give all such directions and do all such things as, consistently with any relevant laws as affected by regulations under this Act, can be given or done by him— Duties of Ministers.

- (a) for ensuring that procedures for the time being approved under this Act are given effect to in and in connexion with matters dealt

with by the Department administered by him and that any authority of Australia in relation to which he has ministerial responsibilities observes, and assists in giving effect to, those procedures; and

- (b) for ensuring that any final environmental impact statement formulated in accordance with those procedures, and any suggestions or recommendations made in accordance with those procedures, are taken into account, in matters to which they relate, in the Department administered by him and by any authority of Australia in respect of which he has ministerial responsibilities.

Modification of operation of laws.

**9.** Without prejudice to any right, power or duty of any authority of Australia, apart from this Act, to take into account matters relating to the environment in the exercise of any power or function, the regulations may—

- (a) make provision for or in relation to requiring or permitting a prescribed authority of Australia to take into account, either generally or in accordance with the regulations, matters affecting the environment in the taking of any action or the making of any decision or recommendation; and
- (b) prescribing matters necessary or convenient to be prescribed as incidental to provision so made, including matters relating to procedures and times,

and regulations so made have effect notwithstanding any other law.

Minister to furnish certain information.

**10.** In respect of a particular matter of a kind referred to in any of the paragraphs of section 5, any person may, by notice in writing, require the Minister to inform him in writing as to what action, if any, has been taken, or is proposed, for ensuring consideration of the environmental aspects of the matter, and the Minister shall promptly inform the person in writing accordingly.

Inquiries by Commissioners.

**11.** (1) For the purposes of procedures approved under this Act or for achieving the object of this Act, the Minister may direct that an inquiry be conducted in respect of all or any of the environmental aspects of a matter referred to in any of the paragraphs of section 5, whether or not an environmental impact statement has, in accordance with procedures under this Act, been furnished to the Minister.

(2) The Minister shall appoint a Commissioner or Commissioners to be a Commission to conduct an inquiry under this section and may appoint a person or persons to advise the Commission.

(3) Where there is more than one Commissioner, the Minister shall appoint one of the Commissioners to preside at the inquiry.

(4) The Commission shall report its findings and recommendations to the Minister and shall, after so reporting but subject to sub-section (5), make public those findings and recommendations.

(5) The Commission shall not make public any evidence or matters in respect of which directions have been given under paragraph 14 (2) (b) or matters the publication of which is excepted from sub-section 14 (5).

(6) Subject to sub-section (1), a Commission is not subject to directions by the Minister, or otherwise by or on behalf of the Australian Government, in or in relation to the conduct of an inquiry.

12. (1) A Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed. Remuneration of Commissioners.

(2) A Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

13. Before a Commission commences to hold an inquiry, the Commission shall give reasonable notice, by advertisement published in the *Gazette* and in such newspapers as it thinks necessary, of its intention to hold the inquiry, the subject of the inquiry and the time and place at which the inquiry is to be commenced. Notice of inquiries.

14. (1) Subject to this section, an inquiry by a Commission shall be held in public and evidence in the inquiry shall be taken in public on oath or affirmation. Procedure at inquiries.

(2) Where a Commission is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—

- (a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission.

(3) A Commission may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.

(4) Where a Commission considers that the attendance of a person as a witness before the Commission would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission allows.

(5) Where evidence is given to a Commission by a written statement in accordance with sub-section (3) or (4), the Commission shall

make available to the public in such manner as the Commission thinks fit the contents of the statement other than any matter as to which the Commission is satisfied that its publication would be contrary to the public interest by reason of its confidential nature or for any other reason.

(6) Subject to this section, the regulations and orders under section 6—

- (a) the procedure to be followed at an inquiry by a Commission is within the discretion of the Commission; and
- (b) a Commission is not bound by the rules of evidence.

(7) Nothing in this section derogates from any law relating to Crown privilege.

Power to  
summon  
witnesses.

15. A Commissioner may, by writing signed by him, summon a person to appear before the Commission at a time and place specified in the summons to give evidence and produce such books and documents (if any) as are referred to in the summons.

Failure of  
witness to  
attend.

16. A person served with a summons to appear as a witness at an inquiry by a Commission shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Penalty: \$1,000 or imprisonment for 6 months.

Power to  
administer  
oath or  
affirmation.

17. A Commissioner may administer an oath or affirmation to a person appearing as a witness before the Commission.

Refusal to be  
sworn or to  
answer  
questions.

18. A person appearing as a witness at an inquiry by a Commission shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that he is required to answer by the Commissioner presiding at the inquiry; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him.

Penalty: \$1,000 or imprisonment for 6 months.

Protection of  
Commissioners and  
witnesses.

19. (1) A Commissioner has, in the performance of his duties as a Commissioner, the same protection and immunity as a Justice of the High Court.

(2) Subject to this Act, a person appearing before a Commission as a witness at an inquiry has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

**20.** A person shall not—

- (a) insult or disturb a Commissioner in the exercise of his powers or the performance of his functions or duties as a Commissioner;
- (b) interrupt an inquiry by a Commission;
- (c) use insulting language towards a Commissioner;
- (d) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where a Commission is holding an inquiry; or
- (e) do any other act or thing that would, if a Commission were a court of record, constitute a contempt of that court.

Contempt of court.

Penalty: \$1,000 or imprisonment for 6 months.

**21.** (1) A Commissioner, or a person assisting a Commission and authorized by a Commissioner to do so, may inspect any books or documents furnished to the Commission for the purposes of the performance of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.

Powers of Commission in relation to documents produced.

(2) Books or documents so furnished may be retained by the Commission for such reasonable period as the Commission thinks fit.

**22.** A witness summoned under this Act to appear at an inquiry by a Commission is entitled to be paid by Australia such allowances for his travelling and other expenses as are prescribed.

Allowances to witnesses.

**23.** (1) A person shall not—

- (a) use violence to or inflict injury on;
- (b) cause or procure violence, damage, loss or disadvantage to; or
- (c) cause or procure the punishment of,

Witness not to be prejudiced.

a person for or on account of his having appeared, or being about to appear, as a witness at an inquiry by a Commission or for or on account of any evidence given by him before a Commission.

Penalty: \$1,000 or imprisonment for 6 months.

(2) Without limiting the generality of sub-section (1), an employer shall not—

- (a) dismiss an employee from his employment, or prejudice an employee in his employment, by reason that the employee has appeared as a witness, or has given any evidence, at an inquiry by a Commission; or
- (b) dismiss or threaten to dismiss an employee from his employment or prejudice, or threaten to prejudice an employee in his employment, by reason that the employee proposes to appear as a witness or to give evidence at an inquiry by a Commission.

Penalty: \$1,000 or imprisonment for 6 months.



- (3) In any proceedings arising out of sub-section (2)—
- (a) if it is established that the employee was dismissed from, or prejudiced in, his employment and that, before he was so dismissed or prejudiced, he appeared as a witness, or gave any evidence, at an inquiry by a Commission—the burden lies on the employer of proving that the employee was not dismissed or prejudiced by reason that he so appeared as a witness or gave evidence; or
  - (b) if it is established that the employee was dismissed, or threatened with dismissal, from his employment, or was prejudiced, or threatened with prejudice, in his employment and that, before he was so dismissed, threatened with dismissal, prejudiced or threatened with prejudice, he proposed to appear as a witness, or to give evidence, at an inquiry by a Commission—the burden lies on the employer of proving that the employee was not so dismissed, threatened with dismissal, prejudiced or threatened with prejudice by reason that he proposed so to appear as a witness or to give evidence.

(4) This section binds Australia as an employer, but does not render Australia liable to prosecution.

Power to enter on land, &c.

24. For the purposes of an inquiry under this Act, a Commissioner, or a person acting with the authority of a Commissioner, may, after giving reasonable notice to the occupier of any land, building or place—

- (a) enter and inspect the land, building or place; and
- (b) inspect any material on the land, or on or in the building or place.

Regulations.

25. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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#### NOTE

1. Act No. 164, 1974; assented to 17 December 1974.