

TASMANIA

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL AMENDMENT
(HEARINGS) BILL 2004**

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**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL AMENDMENT
(HEARINGS) BILL 2004**

*(Brought in by the Minister for Environment and
Planning, the Honourable Judith Louise Jackson)*

A BILL FOR

**An Act to amend the *Environmental Management
and Pollution Control Act 1994* in relation to
hearings by the Environment Protection Policy
Review Panel**

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

Short title

1. This Act may be cited as the *Environmental
Management and Pollution Control Amendment
(Hearings) Act 2004*.

Commencement

2. This Act commences on the day on which this Act
receives the Royal Assent.

Principal Act

3. In this Act, the *Environmental Management and Pollution Control Act 1994** is referred to as the Principal Act.

Section 96A amended (Environment Protection Policy Review Panel)

4. Section 96A(3) of the Principal Act is amended by omitting “membership, meetings and proceedings” and substituting “membership, proceedings, meetings and hearings”.

Schedule 5A amended (Membership, meetings and proceedings of Panel)

5. Schedule 5A to the Principal Act is amended as follows:

- (a) by omitting the heading and substituting the following heading:

**SCHEDULE 5A – MEMBERSHIP,
PROCEEDINGS, MEETINGS AND
HEARINGS OF PANEL**

- (b) by inserting the following heading after the heading to Schedule 5A:

**PART 1 – MEMBERSHIP AND PROCEEDINGS
OF PANEL**

- (c) by inserting the following heading after clause 4:

PART 2 – MEETINGS CONDUCTED BY PANEL

- (d) by inserting the following Part after clause 7:

*No. 44 of 1994

PART 3 - HEARINGS CONDUCTED BY PANEL**Interpretation**

8. In this Part –

“**hearing**” means a hearing conducted by the Panel.

Convening of hearing of Panel

9. A hearing may be convened by –

- (a) the chairperson of the Panel; or
- (b) any 2 members of the Panel.

Directions about hearings

10. (1) The Panel may give directions about –

- (a) the times and the places of hearings; and
- (b) matters preliminary to hearings; and
- (c) the conduct of hearings.

(2) The Panel may refuse to hear any person who fails to comply with a direction of the Panel.

Hearings**11. (1)** If the Panel conducts a hearing –

- (a) the procedure of the hearing is, subject to this Part, to be determined by the Panel; and
- (b) the Panel –
 - (i) may inform itself about any matter in any way that it considers appropriate; and
 - (ii) may receive oral or written evidence; and
 - (iii) may consult with such persons as it thinks appropriate; and
 - (iv) is not bound to act in a formal manner; and
 - (v) is not bound by the rules of evidence; and
 - (vi) must observe the rules of natural justice.

(2) Before beginning a hearing, the Panel must give reasonable notice of the hearing in at least 2 daily newspapers published in Tasmania, of which at least one circulates in the region in which the hearing is to be conducted.

(3) The notice under subclause (2) is to state –

- (a) the subject of the hearing; and
- (b) the time when, and place at which, the hearing is to be conducted.

Hearings procedure generally

12. (1) Subject to this clause, a hearing is to be conducted in public.

(2) At its discretion, or on the application of a person, the Panel may take evidence in private if the Panel considers that –

- (a) the evidence to be given at a hearing is of a confidential nature; and
- (b) the interest in confidentiality is greater than the interest in having the evidence taken in public.

(3) The Panel may permit or require a person who is to give evidence at a hearing to do so in writing.

(4) At a hearing, the Panel may take evidence, or require evidence to be given, on oath or affirmation.

Representation at hearing

13. (1) At a hearing, a party to the hearing may –

- (a) appear in person; or

- (b) be represented by some other person, whether or not that other person is enrolled or admitted as a legal practitioner, barrister, solicitor or barrister and solicitor of the High Court or the Supreme Court of a State.

(2) Despite subclause (1), the Panel may refuse to allow a party to the hearing to be represented by another person if the Panel is satisfied that another party to the hearing would be significantly disadvantaged by the representation.

Written evidence and submission documents to be made public

14. (1) The Panel is to make available to the public, in any way it thinks appropriate –

- (a) the particulars of written evidence given at a hearing; and
- (b) the contents of written submissions to the Panel.

(2) Despite subclause (1), the Panel may refuse to make the particulars of written evidence, or the contents of a written submission, available to the public if the Panel considers that the evidence or submission would have been taken in private if it had been given orally at a hearing.

Power to obtain information and documents

15. (1) The Panel, by notice in writing, may require a person to do one or more of the following:

- (a) to appear at a hearing to give evidence;
- (b) to produce a document specified in the notice;
- (c) to give to the Panel, on or before a day specified in the notice –
 - (i) a statement signed by the person setting out the information specified in the notice; or
 - (ii) a document specified in the notice.

(2) If a document is produced or given to the Panel under subclause (1), the Panel –

- (a) may take possession of the document and make copies of, or take extracts from, it; and
- (b) may retain possession of the document for such period as is necessary for the purposes of the hearing to which the document relates; and
- (c) must permit the document to be inspected at all reasonable times

by persons who would be entitled to inspect the document if it were not in the possession of the Panel.

Failure to comply with requirement

16. (1) A person who has been given notice under clause 15 must not, without reasonable excuse –

- (a) refuse or fail to comply with the notice; or
- (b) when appearing at a hearing pursuant to the notice, refuse or fail –
 - (i) to take an oath or make an affirmation, if required; or
 - (ii) to answer a question that the person presiding at the hearing requires to be answered.

Penalty: Fine not exceeding 20 penalty units.

(2) It is a reasonable excuse for the purposes of subclause (1) if compliance with the notice or the answer to the question will incriminate the person or make the person liable to forfeiture or a penalty.

(3) A person who has been given notice under clause 15 requiring the person to appear at a hearing must not, without reasonable excuse, refuse or fail to attend from day to day

unless excused or released from further attendance by the person presiding at the hearing.

Penalty: Fine not exceeding 20 penalty units.

False or misleading evidence or information

17. (1) A person must not –

- (a) give to the Panel information, or a document, that the person knows to be false or misleading in a material particular; or
- (b) give evidence, or produce a document, at a hearing that the person knows to be false or misleading in a material particular.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months.

(2) Subclause (1) does not apply to a document if, at the time when the person gives it to the Panel or produces it at a hearing, the person informs the Panel that it is false or misleading in a material particular and specifies in which respect it is, to the person's knowledge, false or misleading.

**Allowances to persons giving evidence,
&c.**

18. (1) A person who appears at a hearing as required by a notice under clause 15 is entitled to be paid any allowances for travelling and other expenses as are prescribed.

(2) The Panel may pay any allowances for travelling and other expenses as are prescribed to any other person who appears at a hearing to give evidence or produce a document.

(3) If a person gives evidence to, or produces a document at, a hearing, the Panel may do one or more of the following:

- (a) pay for the performance of work involved in collecting and preparing the evidence or document;
- (b) reimburse expenses reasonably incurred in the collection and preparation of the evidence or document;
- (c) compensate for such losses as were reasonably incurred in collecting and preparing the evidence or document.

(4) In subclause (3) –

“**person**” includes a Government department, or a State authority, within the meaning of the *State Service Act 2000*.

Obstruction or improper influence of hearing

19. A person must not obstruct or improperly influence the conduct of a hearing of the Panel or attempt to do so.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months.

Protection of members, &c.

20. (1) A member of the Panel does not incur any personal liability in respect of any act done or omitted to be done by the member in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the Panel or in the administration or execution, or purported administration or execution, of the Act under which the Panel is established.

(2) A person summoned to attend or appearing before the Panel as a witness has the same protection as a witness in a proceeding in the Supreme Court.