

## APPEAL RIGHTS UNDER THE *ENVIRONMENTAL PROTECTION ACT 1986*: **Environmental protection notices**

The *Environmental Protection Act 1986* (the Act) provides an opportunity to appeal decisions in respect to environmental protection notices issued by the Department of Water and Environmental Regulation (DWER) under Part V of the Act.

There are several different types of environmental protection notices that can be issued, including closure notices and vegetation conservation notices.

Appeals can be lodged against:

1. the requirements of a notice; and
2. an amendment of a notice.

Decisions on environmental protection notices are generally made by the DWER. Local governments have delegated authority to issue environmental protection notices in some cases, such as in relation to noise emissions.

### **Who can appeal?**

Any person can lodge an appeal in respect to the requirements or amendment of an environmental protection notice.

### **How do I lodge an appeal?**

Appeals must be:

- in writing and clearly set out the grounds of appeal
- received within 21 days of the date the notice is served - *late appeals cannot be accepted*
- accompanied by the appeal fee of \$25
- signed by the appellant

If your appeal does not comply with these requirements, it may be determined to be invalid and it will not be investigated.

If you rely on supporting documentation, this needs to accompany your appeal.

**A form for lodging an appeal is available on the Appeals Convenor's website.**

### **Effect of lodging an appeal**

Pending the determination of an appeal in respect to an environmental protection notice, the decision against which the appeal was lodged continues to have effect.

### **What happens after an appeal is lodged?**

The Appeals Convenor will provide a copy of the appeal to the DWER (or local government if it was responsible for serving the notice), and request that a written response to the matters raised in the appeal is provided within a set timeframe (usually 21 days).

In the case of appeals lodged by third party, the Appeals Convenor will also provide the person served with the notice the opportunity to respond to the appeal within a set timeframe (usually 21 days).

Depending on the issues raised, the Appeals Convenor may also seek guidance from other public authorities, organisations or persons that may have an interest or technical expertise relevant to the appeal.

### **Key considerations in appeals**

For appeals in respect to environmental protection notices, the Appeals Convenor will consider the appeal in the context of the formal requirements of the Act, including whether the requirements of the instrument are necessary or convenient for the prevention, control, abatement or mitigation of pollution or environmental harm.

In relation to vegetation conservation notices, a key consideration will be whether there is a reasonable basis to suspect that unlawful clearing is occurring, has occurred or is likely to occur on any land. This will include assessing whether the clearing was exempt under the Act or associated regulations.

The appeal investigation may also consider the extent to which conditions can address the issues raised, as well as relevant policies and new information that may not have been available at the time of the original decision.

Appeals under the Act are 'merits' appeals. This means that the Minister can consider all relevant facts before making a decision. While process issues can be raised in an appeal, the focus of investigations will be on the substantive environmental matters raised by the notice.



### **Is there a hearing during the appeal investigation process?**

The Office of the Appeals Convenor will consult the appellant as part of the investigation of the appeal. This may be by telephone, in person or such other means as the Appeals Convenor considers appropriate (for example, email). Where the appeal is lodged by a third party, the Appeals Convenor will also consult the person served with the notice.

These discussions are informal in nature, and are intended to provide a party to an appeal with an opportunity to clarify the issues in contention. Due to the informal nature of the process, appellants do not require, and generally do not seek, legal representation.

Occasionally the Appeals Convenor may convene a combined meeting between the parties where the Appeals Convenor is of the opinion that this will assist in resolving the issues in dispute.

### **What happens if the matter is settled between the parties?**

If the matters in dispute are resolved, the appellant may give not less than seven days notice of an intention to withdraw the appeal. The appeal may then be withdrawn after the seven days, and the file will be closed.

### **What happens after the investigation?**

After the appeal investigation is complete, the Appeals Convenor provides a report with recommendations to the Minister for Environment.

Once the Minister has determined the appeal, the Appeals Convenor's report will be provided to the appellant and published on the Appeals Convenor's website.

### **How long will the appeal investigation take?**

While there are no statutory timelines in respect to appeal investigations, the Appeals Convenor aims to have 80% of appeal reports submitted to the Minister for Environment within 60 days of receiving a final response to the appeal from the DWER or local government, and where applicable, the person served with the notice.

### **What decision can the Minister make, and how is it given effect?**

For appeals in respect to environmental protection notices, the Minister may:

1. dismiss the appeal; or
2. allow the appeal in full or part, which may include changing or amending conditions applying to the notice.

If the Minister determines to allow an appeal in full or in part, the decision is given effect by the DWER (or the relevant local government).

The Minister's appeal decision is final, and not subject to appeal.

The Minister's decision will be communicated to the appellant in writing, and will also be published on the Appeals Convenor's website.

#### **Further information and contact details:**

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