

## APPEAL RIGHTS UNDER THE *ENVIRONMENTAL PROTECTION ACT 1986*: **Decisions of the Minister for Environment**

The *Environmental Protection Act 1986* (the Act) provides an opportunity to appeal certain decisions made by the Minister for Environment.

This includes rights of appeal in respect to:

1. implementation conditions applying to a proposal under section 45(5) of the Act;
2. orders issued by the Minister under section 48(4)(b) of the Act; and
3. decisions of the Minister under regulation 17 of the *Environmental Protection (Noise) Regulations 1997* to authorise an emission of noise which exceeds prescribed standards.

### Who can appeal?

Any person can lodge an appeal in respect to a decision of the Minister to issue a notice under regulation 17 of the Noise Regulations.

Only the proponent can appeal the implementation conditions issued under section 45(5) of the Act or the content of an order issued under section 48(4)(b) of the Act.

### How do I lodge an appeal?

Appeals must be:

- in writing and clearly set out the grounds of appeal
- received within 14 days of the date the conditions or order is issued, or in the case of noise approval, within 21 days that the decision is published - *late appeals cannot be accepted*
- accompanied by the appeal fee of \$10
- 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 lodged in respect to the **implementation conditions applying to a proposal**, the lodging of an appeal prevents the implementation, or continued implementation, of the proposal concerned.

For an appeal in respect to an **order issued by the Minister** under section 48(4)(b) of the Act, the operation of the order is suspended.

For an appeal in respect to a **noise exemption**, the exemption is deemed to have been made.

### What happens after an appeal is lodged?

The Appeals Convenor will provide a copy of the appeal to the Environmental Protection Authority (EPA), and request that a written response to the matters raised is provided within a set timeframe (usually 21 days).

In the case of appeals lodged by a party other than the proponent, the Appeals Convenor will also provide the proponent the opportunity to respond to the appeal within a set timeframe (usually 21 days).

The Appeals Committee 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 lodged in objection to a decision of the Minister, the Appeals Committee will determine the key considerations for investigation.

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 Appeals Committee will consult the appellant as part of the investigation process. This may be by telephone, a meeting or such other means as the Committee considers appropriate (such as email). Where the appeal is by a third party, the Appeals Committee will also consult the proponent.



Other aspects of the appeal process are a matter for the Appeals Committee, and will be determined by the Appeals Committee on a case-by-case basis.

#### **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 Committee provides a report with recommendations to the Minister for Environment.

Once the Minister has determined the appeal, the Appeals Committee'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 EPA, and where applicable, the proponent.

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

For appeals in respect to decisions of the Minister, the Minister is bound to determine the appeal in accordance with the recommendation of the Appeals Committee.

If the Minister determines to allow an appeal in full or part, the instrument the subject of the appeal is amended accordingly.

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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