

with contributions as noted

Conservation and Land Management Regulations 2002

The *Conservation and Land Management Regulations 2002* (WA) (the "Regulations") commenced on 3 May 2002. They repeal the *National Parks Authority Regulations 1977* (WA) and Part 6 of the *Wildlife Conservation Regulations 1970* (WA).

The Regulations govern the public use of land protected by the *Conservation and Land Management Act 1984* (WA), including state forests, national parks, timber reserves, conservation reserves and marine parks ("Protected Land"). The new provisions regulate the protection of flora and fauna, non-indigenous animals, pollution and litter, activities causing disturbance to the landscape (for example abseiling and sand-boarding), access to Protected Land, the use of vehicles, vessels and aircraft and camping on Protected Land.

Licences may be obtained for the taking of marine flora and fauna from marine parks for scientific purposes and for the supply of goods and services or carrying on activities for commercial purposes on Protected Land.*

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Radiation Safety (Transport of Radioactive Substances) Regulations 2002

The *Radiation Safety (Transport of Radioactive Substances) Regulations 2002* came into effect on 26 March 2002 (Regulations). The Regulations repeal and replace the *Radiation Safety (Transport of Radioactive Substances) Regulations 1991* (WA) and apply to the transport of radioactive materials, and the storing, packing and stowing of radioactive materials for transport in Western Australia.

In doing so, the Regulations adopt for *Western Australia the Code of Practice for the Safe Transport of Radioactive Material (2001)* (Code), published by the Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Agency, and the *International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Materials 1996* (International Regulations), which is set out in Schedule A to the Code.

The Regulations require each carrier to prepare a radiation protection programme in accordance with the International Regulations within three months of 26 March 2002. The Regulations also create offences relating to the transport, storage and packing for transport, and labelling of radioactive materials where these things have not been done in accordance with the Code or the International Regulations.*

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Proposed new environmental legislation

The West Australian Government is presently in the final stages of preparing a number of significant pieces of environmental legislation. These include the:

- , Carbon Rights Bill
- , Conservation and Land Management Amendment Bill
- , Contaminated Sites Bill
- , Environmental Protection Amendment Bill
- , Waste Management Bill.

All of these except the Waste Management Bill are likely to become law before the end of the year. An overview of the Contaminated Sites Bill is provided in this edition of NELR. Further details of the Environmental Protection Amendment Bill and the Waste Management Bill will be provided after they have been introduced. The following notes are provided in relation to the Conservation and Land Management Amendment Bill and the Carbon Rights Bill.

Conservation and Land Management Amendment Bill 2002

The *Conservation and Land Management Amendment Bill 2002* (WA) ("the Bill") proposes to amend the management planning provisions in Division 1 of the *Conservation and Land Management Act 1984* (WA) ("the Act"). It was introduced to the Legislative Assembly by the Minister for the Environment and read for a second time on 27 March 2002.

The Bill proposes to strengthen the powers of the Conservation Commission in the preparation of forest management plans and the Minister for the Environment's power to approve those management plans.

If the Bill is passed, the Conservation Commission of Western Australia will have responsibility for the preparation of management plans for state forests, timber reserves and land in public water catchment areas in consultation with the Forests Products Commission, the Waters and Rivers Commission and other relevant water utilities. Currently, management plans are prepared by these authorities jointly.

The Bill also proposes to remove the roles of the Minister for Forest Products and the Minister for Water Resources in the approval process for proposed management plans. Instead, the Minister for the Environment will have sole jurisdiction to approve these management plans and there will be no requirement that management plans give effect to submissions made by the other authorities.*

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Carbon Rights Bill and related Bills

The *Carbon Rights Bill 2002* (WA) (the "Carbon Rights Bill"), the *Tree Plantation Agreements Bill 2002* (WA) (the "Plantation Agreements Bill") and the *Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002* (WA) (the "Amendment Bill") were all introduced to the Legislative Assembly and read a second time on 22 May 2002.

Together, these bills aim to facilitate the establishment of tree plantations and other environmental plantations through a regime of carbon rights and by reducing some of the commercial and legal risks associated with plantations. The regime will apply to all land and to any form of carbon sequestration and is intended to encourage better land management practices and benefit the State's environment.

The *Carbon Rights Bill* is a legislative framework for recognising property rights in tree plantations and carbon sequestration separately from the land itself. It introduces new property rights, a "carbon right" and "carbon covenant," which may be registered on the title at the Department of Land Administration (DOLA). These rights will be separate proprietary rights from the land itself.

A "carbon right" relates solely to the proprietorship of the benefits of any carbon sequestration occurring on a piece of land. Registration of a carbon right will clarify and secure the ownership of the benefits of carbon sequestration, but will not guarantee how much is there, whether it will remain there or what value it has. The market is left to determine the value of the carbon right and issues such as measuring the carbon that has been sequestered, managing the land so that carbon is sequestered and whether a particular type of sequestered carbon can be traded.

A "carbon covenant" is an agreement between the landowner, the owner of the carbon right and anyone else who is required to give effect to the agreement (eg a lessee). It details how much carbon is to be sequestered on the property, over what time, in what form, how it is to be measured and any other commercial terms imposed by the parties. Like any other agreement, the parties to a carbon covenant will rely on civil remedies to enforce their rights. The carbon covenant will benefit the owner of a carbon right because it provides the terms under which the carbon will be sequestered (and hence determines the market value of the carbon right), but burdens the land owner because it will restrict their use of the land. The benefit of carbon rights and carbon covenants will run with the land and may be inherited, traded, mortgaged or otherwise dealt with like any other interest in land.

The *Plantation Agreements Bill* provides for the making of tree plantation agreements and will enable the registration of a plantation interest on the title of land. Tree plantation agreements involve the owner or lessee of land (with the consent of the owner) agreeing to allow another person establish, maintain and harvest a plantation on the land.

Once the plantation agreement is registered, property in the trees will become a plantation interest in the land, a property interest which may be dealt with like any other interest in land, separately from the underlying interest in land. The obligations that bind the owner or lessee of the underlying land run with the land and bind successors in title.

A tree plantation agreement is a separate proprietary interest from a carbon right or carbon covenant, but all three may exist in the one document. However, each right must be separately registered to ensure security of title.

This legislation has been introduced to overcome the difficulty with separating the interest in trees from the interest in land, as the trees are generally considered to be fixtures. It is intended to provide security of title to planted trees and to encourage investment in tree plantations.

The *Plantation Agreements Bill* is designed to facilitate private plantation agreements and will not apply to the management, harvest or sale of forest products on public land.

A *Consequential Amendment Bill* is also being prepared to amend other legislation to facilitate the regime contemplated by the *Carbon Rights Bill* and the *Plantation Agreements Bill*. The *Transfer of Land Act 1893* (WA) will be amended to facilitate the registration and dealing of carbon rights, carbon covenants and tree plantation agreements. The *Land Administration Act 1997* (WA) will be amended so that the Minister for Planning and Infrastructure, on behalf of the State, can register a carbon right and enter a carbon covenant. Amendments to the *Soil and Land Conservation Act 1945* (WA) will ensure harvesting of commercial plantations does not breach that Act when undertaken in accordance with an approved code of practice. The initial creation (but not subsequent transactions) of timber sharefarming agreements (under the *Conservation and Land Management Act 1984*) and tree plantation agreements will be exempt from stamp duty.*

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Statement of planning policies

Statement of Planning Policy No. 11 - Agricultural and Rural Land Use Planning (ARLUP Policy) was proclaimed on 12 March 2002 by the WA Planning Commission (WAPC). Under section 5AA of the *Town Planning and Development Act 1928*, local governments must have due regard to Statement of Planning Policies in the preparation or amendment of town planning schemes, strategies and policies.

The objectives of the ARLUP Policy are to:

- , Protect agricultural land resources wherever possible;
- , Plan and provide for rural settlement;
- , Minimise potential for land use conflict; and
- , Appropriately manage natural resources.

Local governments are required to make local planning policies and town planning schemes that are consistent with these objectives. Further, the following draft Statements of Planning Policy relevant to natural resource management in WA have been released for comment:

- , draft Statement of Planning Policy: Environment and Natural Resource;
- , draft Statement of Planning Policy: State Coastal Planning; and
- , draft Statement of Planning Policy: Public Drinking Water Source.

The intent of these policies is to enable the WAPC and other local government planning authorities to consider environmental and natural resource management issues when making planning decisions.*

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