

## Environmentally Relevant Acts

### *Police Offences (Amendment) Act 2004 (Tas) – new ‘anti-hoon’ measures*

The *Police Offences (Amendment) Act 2004* (Tas) commenced on 23 September 2004. Its amendments to the *Police Offences Act 1935* (Tas) include insertion, in Part IVA of the Act, of a new Division 2 - Confiscation of vehicles for certain offences. The “anti-hooning” provisions in new Division 2, *inter alia*, allow police to impound vehicles for 48 hours where the driver operates the vehicle in a public place:

- in a manner that causes unnecessary and unreasonable noise;
- in an exhibition of speed, acceleration or sustained loss of traction; or
- in a race against another vehicle.

Incidentally, the Amendment Act made no amendment to paragraph 8(1)(d) of the *Police Offences Act 1935* (Tas) which provides that a person shall not “being a male person, be in any public place at any time between sunset and sunrise, dressed in female apparel”. Such conduct remains an offence in Tasmania, rendering offenders liable on conviction to a maximum penalty of imprisonment for a term not exceeding 6 months.

## Environmentally Relevant Bills

Bills relevant to environmental law recently introduced in the Lower House of the Tasmanian Parliament include the following (in chronological order).

*Petroleum (Submerged Lands) Amendment Bill* No. 22 of 2004. Introduced by the Minister for Infrastructure, Energy and Resources.

*Public Health Amendment (Extension of Smoke Free Areas) Bill* No. 24 of 2004. Introduced by Mr Morris, Tasmanian Greens.

*Freedom of Information (Release Provisions Expanded) Bill* No. 26 of 2004. Introduced by Mr McKim, Tasmanian Greens.

*Pollution of Waters by Oil and Noxious Substances Amendment Bill* No. 37 of 2004. Introduced by the Minister for Environment and Planning.

*Wellington Park Amendment Bill*, No. 44 of 2004, introduced by the Minister for Tourism, Parks and Heritage. *Public Health Amendment (Smoke Free Indoor Workplace Areas) Bill* No. 48 of 2004. Introduced by Mrs Napier, Liberal.

*Agricultural and Veterinary Chemical (Control of Use) Amendment (Ban 1080) Bill* No. 58 of 2004. Introduced by Mr Booth, Tasmanian Greens.

*Chemical Trespass Bill* No. 60 of 2004. Introduced by Mr McKim, Tasmanian Greens. *Sullivans Cove Waterfront Authority Bill* No. 67 of 2004. Introduced by the Premier.

## Public Consultation on Environmentally Relevant Legislation

### *Resource Management and Planning Appeal Tribunal Amendment Bill 2004 (Tas): Consultation Draft – re costs*

Following the Supreme Court of Tasmania decision in *Hardman v Ward* [2004] TASSC 74 concerning orders for costs in the Resource Management and Planning Appeal Tribunal, the Tasmanian Minister for Environment and Planning announced an intention to change the *Resource Management and Planning Appeal Tribunal Act 1993* (Tas) to make it clear that the normal approach in proceedings before the Tribunal is that each party bears their own costs. The Minister also considered there could be exceptions to this approach if, in the opinion of the Tribunal, it is fair and reasonable to award costs in the particular circumstances of the case.

The Department of Primary Industries, Water and Environment has now invited comments on its Consultation Draft of the *Resource Management and Planning Appeal Tribunal Amendment Bill 2004* (Tas).

The Draft Bill would substitute a new section 28 of the *Resource Management and Planning Appeal Tribunal Act 1993* (Tas) covering costs in the Tribunal.

The closing date for comments on the Consultation Draft of the Bill is Monday, 8 November 2004.

The Consultation Draft and further information, including the Department's invitation for comments, are available at:

<http://www.dpiwe.tas.gov.au/inter.nsf/Topics/LBUN-63T44C?open>

## **Review of the *State Coastal Policy 1996* (Tas)**

The Tasmanian Government is currently reviewing *State Coastal Policy 1996* (Tas) pursuant to the *State Policies and Projects Act 1993* (Tas) which requires the periodic review of State Policies.

The purpose of the *State Coastal Policy 1996* (Tas) is to implement the sustainable development objectives of the Tasmanian Resource Management and Planning System in coastal areas. The aim of the review is to work out how the Policy can be improved to ensure that planning and management of Tasmania's coast reflects contemporary sustainable development practices.

The Department of Primary Industries, Water and Environment has invited interested individuals and organisations to make submissions on any matter considered relevant to the review of the *State Coastal Policy 1996* (Tas).

The closing date for receipt of submissions is Friday, 5 November 2004.

The *State Coastal Policy 1996* (Tas) and further information, including the Department's invitation for comments, are available at: <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/JPHS-63P49C?open>

## **Water Management Law Reform Conference**

On 27 August 2004, the Environmental Defenders Office (Tas) and the Tasmanian Conservation Trust held a one day Water Management Law Reform Conference. Titled, *Protecting Our Liquid Assets*, the conference was opened by Justice Alan Blow of the Supreme Court of Tasmania and featured academic, conservation and government speakers from various States.

Recurrent themes of the conference, identified by the EDO (Tas), were:

- The need for integrated catchment management in which water management decisions are part of a broader planning framework.
- Protection of water quality and quantity should not be separated from decisions about land use.
- The importance of a consistent whole of government approach to resource management and the need for administrative structures to reflect ecological realities.
- A transparent allocation system that accounts for all activities affecting water quality and quantity. It is critical that 'intercepting' land use changes are included in the water balance sheet.
- The importance of demand management – adopting mechanisms to encourage efficient use of water.
- Public involvement in the water management system, including consultation in water planning and third party appeal rights.

At the conclusion of the conference, resolutions were adopted calling for:

1. Introduction of catchment management legislation, covering all land use change (without exemption), salinity and other landscape processes, following established best practice models.
2. Amending the *Water Management Act 1999* (Tas) to:
  - Expand membership of the *Assessment Committee for Dam Construction* (ACDC) to include a conservation member.
  - Expand scope to consider all water usage and efficiency issues e.g. recycling, interception.
3. Tasmania immediately resuming negotiations on the National Water Initiative.

Proceedings of the conference are available at the EDO (Tas) website: <http://www.edo.org.au/edotas/>

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## AUSTRALIAN CAPITAL TERRITORY

*Editor: David Jones*

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### Human Rights Legislation in Force

Despite all the fuss and threats of federal intervention to overturn the legislation, Australia's first human rights legislation has now been in force what has been a very quiet 4 months. In reality, this is likely to continue for some time. While the government has been urging lawyers to take an active interest in the Human Rights Act and to help in building a human rights culture in the ACT, the largely toothless Act provides little practical scope for them to do so.

Under the jurisdiction of the ACT Human Rights Office (previously responsible for administering the Discrimination Act), section 41 of the Human Rights Act requires the Office to: review the effect of Territory laws on human rights and report in writing to the Attorney-General (which is later tabled in the Legislative Assembly); provide human rights education; and advise the Attorney-General on anything relevant to the operation of the Act.

There are no enforcement procedures available under the Act in the event that human rights are breached. What the Act does allow for, is the Supreme Court to make a declaration that particular legislation is 'incompatible' with the various human rights protected by the Act. This requires a written response from the attorney general to be tabled in parliament, however it does not require an amendment to the law itself.

The ultimate aim of the legislation however, is long term in nature. Generally aligned with the International Covenant on Civil and Political Rights, the Act has been proposed as a means of creating a cultural shift in the Territory, both in the creation of public law and policy, and in the interpretation of the common law. Unfortunately, while there is a lack of national leadership on the statutory protection of human rights, this shift may be a long time in coming.

To download a copy of the legislation or see more on human rights development in the ACT, visit the Human Rights Office website at [www.hro.act.gov.au](http://www.hro.act.gov.au).

### Greenhouse Emissions Legislation for the Electricity Industry

Following in the footsteps of NSW with deliberately similar and compatible legislation, is the *Electricity (Greenhouse Gas Emissions) Act 2004*. The Act sets binding targets for reductions in greenhouse gas emissions (on a per capita basis) of retail suppliers, market customers and on a voluntary basis, large users in the electricity industry. Greenhouse gases are defined to include carbon dioxide, methane, nitrous oxide, sulphur hexafluoride and perfluorocarbon gases, with the ability to include others by regulation.

Known as "benchmark participants", entities bound by the legislation are required to reduce their emissions by either creating or purchasing greenhouse gas abatement certificates. Certificates can only be created by