

## Draft Clearing Regulations Released

The draft *Environmental Protection (Clearing of Native Vegetation) Regulations 2003* were released for public comment earlier this year. These regulations are significant because they support the new clearing regime which was passed by Parliament late last year in the *Environmental Protection Amendment Act 2003*. The new clearing regime will not commence until the regulations are finalised.

In short, the new clearing regime inserts a new offence of causing or allowing clearing of native vegetation into the *Environmental Protection Act 1986*. The exceptions to the offence are clearing in accordance with a clearing permit, clearing which is authorised under law (as listed in schedule 6 of the Act) and clearing which is prescribed under the regulations and which is not done in an “environmentally sensitive area”.

The draft regulations will prescribe:

- (a) the kinds of intentionally planted indigenous aquatic or terrestrial vegetation which will fall within the definition of “native vegetation” and which is likely to require a clearing permit to clear;
- (b) in regulation 6, clearing which will be exempt from the offence under the Act and which will not require a clearing permit provided it is not done in an “environmentally sensitive area”. The clearing will only be exempt if it is done with the specified person’s authority, if the clearing is reasonably necessary to achieve the purpose of the clearing and if the clearing is done in such a way as to avoid or limit damage to neighbouring native vegetation. The categories of clearing which will be exempt under the draft regulations are limited, but include, for example, clearing to construct a building, clearing to reduce danger to people, clearing for cultural purposes of Aboriginal persons, clearing along a fence line, clearing for walking, vehicular and fire access tracks and clearing in accordance with permits granted under other legislation. Each exemption will only apply in specified circumstances;
- (c) fees which will apply for clearing permit applications and other applications under the new clearing regime;
- (d) the records which the CEO of the Department will keep; and
- (e) areas which will be “environmentally sensitive areas” (clearing of which is likely to require a clearing permit). These include, for example, declared World Heritage properties, areas registered on the Register of the National Estate, Ramsar Wetlands, areas within 50m of rare flora and Bush Forever Sites.

NELA made a submission to the Department on the draft regulations which was circulated to WA members. The Department is currently considering the submissions it received and has formed a working group of key interest groups to work through some issues that have arisen.

## Interim Guide to Community Involvement

The Department of Environment has released the Interim Guide to Community Involvement which provides advice on how to undertake effective community consultation. The guide is open for comment for 12 months, until December 2004, to enable companies to test the guide and provide feedback. The guide can be downloaded from the Department’s website at [www.environ.wa.gov.au](http://www.environ.wa.gov.au).

## Carbon Rights Legislation

*The Carbon Rights Act 2003*, *Tree Plantation Agreements Act 2003* and *Acts Amendment (Carbon Rights and Tree Plantation Agreements) Act 2003* were proclaimed on 23 March 2004 and commenced on 24 March 2004.

The *Tree Plantation Agreements Act* will provide for the making and effect of tree plantation agreements and the creation and registration of plantation interests in land. The *Carbon Rights Act* will provide for the creation and registration of carbon rights and related carbon covenants as interests in land. The *Acts Amendment (Carbon Rights and Tree Plantation Agreements) Act* provides for amendment to other

legislation that will support the creation and registration of these interests in land. Please refer to previous editions of the NELR for more detailed summaries of the legislation.

## **Environmental Protection (Unauthorised Discharges) Regulations 2004**

The Environmental Protection (Unauthorised Discharges) Regulations 2004 commenced on 12 March 2004. The new regulations amend the Environmental Protection Regulations 1987 and repeal the Clean Air Regulations 1967.

The regulations introduce a new offence of discharging into the environment, in connection with a business or commercial activity:

- (a) materials listed in schedule 1 of the regulations, including detergent, dust produced by a mechanical process, paint and sewerage;
- (b) visible smoke caused by burning materials listed in schedule 2; and
- (c) dark smoke caused by burning any material.

## **Meeting with the Minister for Environment**

In March, Members of the Western Australian NELA executive committee met with the Dr Judy Edwards (Minister for Environment), Denise True (Department of Environment), Sam Wilkinson (Advisor to the Minister) and David Mell (CALM). The meetings are held quarterly and are a useful forum for the Minister to provide NELA with updates on legislation and government policy and for NELA to provide feedback to the Minister.

At the March meeting we discussed the draft Clearing Regulations, the Contaminated Sites Regulations, the Biodiversity Bill, the Swan River Trust Bill, the enforcement review and the licensing review. The Minister informed us that the draft Contaminated Sites Regulations will soon be released for public comment. The Minister has also arranged for the Department to give NELA a more comprehensive briefing on the Swan River Trust Bill and the Department's amended enforcement policy. NELA is seeking to assist the Department to improve their response to due diligence enquiries.

As a result of the positive outcome of these meetings, NELA is also hoping to arrange a regular meeting with representatives of the Department of Environment.

## **WA State Conference**

The National Environmental Law Association (WA Division) is holding its annual conference at the Old Swan Brewery, Mounts Bay Road, Perth on Thursday 30 September 2004. The topic of the conference is "River Systems: Managing a complex natural resource". The conference will focus on water quality, water quantity and land use issues associated with this complex natural resource. The conference will also feature a discussion on the steps being taken at the legislative and policy levels to attain a balance between competing interests with respect to the Swan River.

We are currently seeking presenters to give papers on issues relating to these matters. If you are interested in presenting a paper for the conference or participating in any other way, please contact Sarah Hohnholt on (08) 9429 7687 or email [sarah.hohnholt@minterrellison.com](mailto:sarah.hohnholt@minterrellison.com).