

These include:

- the conduct of regular professional assessments of its compliance with legislation
- the implementation of appropriate recommendations of such assessment
- the existence of an appropriate system in place for managing the effects of the organisations activities
- that directors, employees and agents have a reasonable knowledge and understanding of the requirements to comply with the Act

With reference back to the case of the *Environment Protection Authority v Waste Recycling and Processing Corporation*, there was no evidence that the defendant took reasonable precautions. Whilst the Waste Recycling and Processing Corporation did commission the assessment of environmental compliance and the risks of environmental pollution incidents, it did not act to implement the recommendations of the assessment.¹⁶

Conclusion

This review of the Environment and Heritage Legislation Amendment Bill is by no means comprehensive and with over 800 amendments it would be unhelpful to address them individually. As with most legislative drafting, particular issues will emerge with the implementation of the amended Act. In the interim, landholders and corporations can revisit their due diligence measures. Appropriate environmental management systems and audits can assist in identifying likely impacts of proposals so that the risk of significantly greater impacts than assessed and approved is minimised. Further, the implementation of appropriate environmental management plans will assist corporations in establishing they did take reasonable steps or precautions as the case may be.

Western Australian Water Reform

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Introduction

Western Australian water reform is rapidly developing particularly over the last couple of months with the release of some key documents on the proposed water framework, legislation and policies. The purpose of the reform program is to improve sustainable management and planning of the state's water resources and to increase security, certainty, productivity and efficiency of water for users and the environment.

On 27 February 2007, Water Resources Minister John Kobelke released the Water Reform Implementation Committee's A Blueprint for Water Reform in Western Australia, Final Advice to the Western Australian Government (the *Blueprint*), the Government Response to A Blueprint for Water Reform in Western Australia, February 2007 (the *Government Response*) and Western Australia's Implementation Plan for the National Water Initiative, Final Draft February 2007 (the *draft Implementation Plan*). (All three documents are available at the Department of Water's website.)

These three documents, together with the State Water Plan (which was released in draft form late last year), form the basis of the state's water reform program from now on, which will be guided by the National Water Initiative (*NWI*).

The Blueprint and the Government Response

The Blueprint sets out the Water Reform Implementation Committee's 72 recommendations to the State Government about how to develop and deliver water reform in Western Australia. The State Government has accepted the recommendations.

The key proposals are the introduction of a new water entitlement system and statutory water management plans. The new water entitlement system will comprise:

- 16 In 2002 the defendant retained a contractor to assess risks in operations and one risk identified was human failure to turn off a manual pump which pumped leachate to storage tanks. The consequences included tanks overflow and bund failure. Recommendations included consideration of installing a cut off switch on the pump. *Ibid*, paragraphs 75-82
- 17 This article was first published (in a slightly different form) as an Allens Arthur Robinson client newsletter

- water access entitlements, which are unit shares of a water resource for consumptive use. To take water pursuant to a water entitlement, a works approval will be required and a site approval will be needed to use the water. Water entitlements and land interests will be further separated so access to land will not be a prerequisite to holding a water access entitlement;
- water licences, which will permit a specific volume of water to be taken for a period not exceeding 40 years and for a specific purpose (eg for a mining operation); and
- basic landholder rights relating to taking water for livestock and riparian purposes.

Water access entitlements (and related works and site approvals) reflect the basic requirements of the NWI and therefore must be introduced in Western Australia in accordance with the NWI. The current water licensing system will remain in place until a statutory water management plan is operative for a particular region, but may continue in force under a statutory plan where the resource system characteristics may preclude the establishment of a consumptive pool (and access entitlements), such as areas where water occurs in fractured aquifers. This is particularly relevant in remote areas of the state where many mining operations are located.

The statutory water management plans will set out the water entitlements for an area. These plans will also include information on an area's water resources, environmental water allocations, how risk is to be allocated if the consumptive pool changes, the applicable local water trading rules, how over-allocated systems are to be dealt with and issues specific to that area. These plans will be legally binding and cannot be appealed once they are completed. They will be reviewed at least once every 10 years. Given the importance of the statutory water management plans, it is crucial that stakeholders are actively involved in the consultation process during preparation of these plans.

The statutory water management plans will be prepared on a priority basis starting with those areas which are near, or at, full allocation. The current top four priority areas are Gngangara groundwater mound, the South-West groundwater areas, the Collie surface water and groundwater areas, and the Pilbara region surface water and groundwater areas.

Other recommended reforms include increasing the metering of water to improve water-use efficiency and obtaining information to facilitate allocations and trading. For existing water licence holders, allocations equal to, or more than, 50 megalitres (*ML*) a year will be metered compared to the existing threshold of 500ML/year. Current allocations less than 50ML a year may be metered in situations where the statutory water management plan requires it, including where:

- it is necessary to manage impacts on other users and water for the environment;
- there are water use disputes;
- water trading is taking place;
- there is a local demand for metering; or
- metering is required in the existing management plan or licence.

All new licences will be metered despite the volume and location.

A licence administration fee for all Section 5C licences and new licence applications under the current *Rights in Water and Irrigation Act 1914* (WA) to take water is intended to be imposed from July 2007 in accordance with the following schedule of fees:

Licence class	Entitlement class - kilolitres per year	Suggested fee	Frequency
	Application fee	\$200	On application
1	0 - 5000	\$200	Annual
2	5001 - 50,000	\$325	Annual
3	50,001 - 100,000	\$600	Annual
4	100,001 - 500,000	\$1200	Annual
5	500,001 - 1,000,000	\$1800	Annual
6	1,000,001 - 5,000,000	\$2400	Annual
7	> 5,000,000	\$3000	Annual

An initial and non-refundable fee of \$200 will also be imposed on applicants for new licences to take water or to construct or alter a well and new applications for permits to obstruct or interfere with river beds and banks.

Water resource management fees are likely to be introduced following the establishment of a national approach to recovering these costs, the completion of statutory water management plans and the creation of longer term secure water access entitlements.

Draft NWI Implementation Plan

As with the other states and territories, Western Australia is required to prepare an Implementation Plan outlining how and when it intends to deliver its obligations under the NWI. The recently released draft Implementation Plan has drawn on the consultation undertaken for the Blueprint and the State Water Plan.

The majority of the systems and mechanisms required to deliver the water reforms will be developed over the next two years. These will include building a register for water access entitlements, creating a water trading register and implementing metering systems (starting in the areas where statutory water management plans are a priority).

New legislation is anticipated by the end of 2008 to consolidate existing water legislation and underpin the proposed water reforms, such as the statutory water management plans. This legislation will repeal and replace the Rights in Water and Irrigation Act and a range of other water-related legislation.

The final Implementation Plan is due in April 2007 with the final State Water Plan.

Department of Water publications

To coincide with the release of these major policy documents, the WA Department of Water has also prepared a wide range of fact sheets and explanatory documents to help stakeholders and the general public understand the proposed reforms. The fact sheets are focussed at particular industries or stakeholders, such as the horticulture and mining industries, or specific issues, such as integrated land and water planning, water metering and water trading. A range of discussion papers provide more detailed analysis of some of the key areas of reform (such as water use efficiency and water planning).

All publications are available on the Department of Water's website – www.water.wa.gov.au.