

recent developments

WESTERN AUSTRALIA

James Sippe and Clara Bowman

Review of native vegetation clearing legislation

The WA Minister for the Environment, David Templeman, has announced a review of Western Australia's native vegetation clearing legislation. An independent review committee will be established to examine the relevant provisions of the *Environmental Protection Act 1986* and the supporting *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*, which together make it an offence to clear native vegetation without a permit or unless an exemption applies.

The Minister commented that the review is particularly directed to maintaining a balance between minimising damage to and loss of native vegetation and encouraging sustainable development. In doing so, it will respond to the recommendations in a 2007 Auditor-General's report, reflecting industry and local government concerns about delays.

Commonwealth-State strategic assessments

In announcing a review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), the Commonwealth Minister for the Environment, Peter Garrett, also flagged an increased focus on joint federal and state government strategic environment assessments, such as the joint assessment of the Kimberly Region of Western Australia announced in February this year.

The Minister stated that he sees the role of the Commonwealth as providing policy direction on matters of national environmental significance, but that he also accepted that the specific natural resource management and planning programs were for the states and local governments.

The Minister's proposed increased use of the joint assessment provisions in the EPBC Act has been seen as a move to concentrate more on sustainable management of national resources and less on approvals for individual projects.

New DEC enforcement policy

The Department of Environment and Conservation (DEC) has released its enforcement and prosecution policy (EPP). The EPP is designed to help the DEC to protect and conserve the environment and also to provide an understanding of how the DEC approaches enforcement of environmental legislation. It combines the former Department of Conservation and Land Management and Department of Environment policies.

Director-General Kieran McNamara stated that the 'DEC recognises that prosecution is an enforcement tool to be employed where it is the most appropriate response, after considering all the circumstances.'

The stated purposes of the new policy are:

- to provide a guide to the DEC in its task of enforcement and prosecution;
- to provide a broad understanding of how DEC approaches enforcement and related legal requirements, including prosecutorial discretion;
- to explain how DEC determines the appropriate offender to pursue, and the appropriate enforcement action to take in a particular case;
- to provide guidance on the range of enforcement actions available to DEC;
- to reinforce a community and corporate culture of positive action, accountability, consultation and cooperation with DEC; and
- foster consistent, integrated and coordinated enforcement action across all sections of DEC.

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WA Legislation update

Electricity (Feed-In Scheme—Solar Systems) Amendment Act 2008 No 1 of 2008 By Thomas Ivey – Norman Waterhouse

This Act amends the *Electricity Act 1996* by insertion of “Part 3 Division 3AB”. The amendment allows a “qualifying customer” who operates a “qualifying generator” to feed electricity back into the grid with the effect that their contribution will be credited against their bill by their electricity provider. The amending act envisages that such qualifying generators will most likely be “small photovoltaic generators”. An obligation is created on the electricity provider by the amending act to allow qualifying customers to feed into the relevant supply network, to credit the qualifying customer at the rate of \$0.44 per kWh for any electricity fed into the network, and to provide the qualifying customer with information regarding the electricity they have fed into the network and the amount they have been credited. An expiry date of 30 June 2028 is set for the scheme.

Marine Parks Act 2007

By Thomas Ivey – Norman Waterhouse

The amended version of the *Marine Parks Act 2007* (“the Act”) became operative on 22 May 2008. The principal object of the Act is:

“to protect and conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks”.

Further, the Act aims to assist in the maintenance of the marine environment, the protection of features of environmental and cultural significance, the facilitation of ecologically sustainable development, adaptation to climate change impacts, and the provision of education, understanding, public access, and enjoyment of the marine environment.

Parts 3 and 4 of the Act provide for the establishment and management of marine parks, as well as the regulation of activities conducted within marine parks. Part 4 Division 2 provides for the establishment of a “Marine Parks Council” to implement the Act by providing advice to the Minister regarding the nomination, establishment and management of marine parks. Parts 6-8 outline the enforcement options open to “Authorised Officers” as defined under the Act in Part 4 Division 3.

The Act also amends 12 other Acts, including, but not limited to, the *Aquaculture Act 2001*, the *Coast Protection Act 1972*, the *Development Act 1993*, and the *Fisheries Management Act 2007*.

Development (Significant Trees) Variation Regulations 2008 No 42 of 2008

By Thomas Ivey – Norman Waterhouse

These regulations were made and came into effect on 1 May 2008. They vary Regulation 6A of the *Development Regulations 1993*, which concerns significant trees, by inserting a new sub-section. The definition of a tree as “significant” in South Australia is contingent on the tree being situated in the “Designated Area”. The effect of the insertion is to extend the designated area.

The land brought under the scope of the significant trees legislation by the variation is in the Adelaide Hills, largely near the town of Mount Barker. Mount Barker is one of the fastest growing suburbs in South Australia.

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Natural Resources Management (Baroota Prescribed Water Resources Area) Regulations 2008

By Thomas Ivey – Norman Waterhouse

This amending regulation came into operation on 19 June 2008. It is pursuant to the *Natural Resources Management Act 2004* ("the Act"). Section 125 of the Act, allows the Minister to declare a water source as a "Prescribed Watercourse", "Prescribed Lake or Well" or a "Prescribed Water Resource". An area may also be declared a "Prescribed Surface Water Area". A prescribed water resource includes artesian water.

The declaration of a water course or resource has implications under various sections of the Act. For example, Section 127 of the Act provides that a person must not take water from a prescribed watercourse unless the person is authorised to do so under other provisions of the Act.

Baroota is an area to the North East of Port Pirie at the western base of the southern Flinders Ranges. It has traditionally been used for market gardening and orchards, and more recently for vine yards. There is a Baroota Reservoir that supplies water to satisfy some of this demand with the remaining water being drawn from wells. The effect of the new regulation is to declare all the watercourses and wells in the Baroota area to be "prescribed". Further, the Baroota Prescribed Water Resources Area is declared a surface water prescribed area.

Recent DEC enforcement action

Environmental field notice issued

The DEC has issued an Environmental Field Notice to a company, ordering it to immediately stop carrying out dewatering operations on its earthworks in Huntingdale. The notice followed the DEC's discovery of a major sediment discharge into the Southern and Canning rivers, which is an offence under the *Environmental Protection (Unauthorised Discharge) Regulations 2004*.

Unauthorised native vegetation clearing conviction

The DEC has warned people that they could be subject to substantial fines if found guilty of clearing native vegetation. A Kununurra resident was fined \$1,000, plus \$400 in costs, after pleading guilty to clearing approximately 3,200 square metres of native vegetation without authorisation. The Magistrate also ordered that a conviction be recorded.

The DEC has indicated that it is increasing investigations into illegal clearing offences. It is also using satellite imagery to detect where illegal clearing is being carried out and to identify offenders.