FEDERAL

Nicola Durrant

Changes to National Greenhouse Gas Reporting Scheme

In July, the Australian, state and territory governments agreed to a standard national approach to greenhouse and energy reporting, the National Greenhouse and Energy Reporting Streamlining Protocol. This initiative is intended to reduce the red tape on business created by multiple and varying program reporting requirements. Implementation of the Protocol was agreed through the Council of Australian Governments (COAG) and will be used by governments to streamline reporting requirements for existing and future greenhouse and energy programs. The Protocol covers reporting requirements relating to energy consumption and production, greenhouse gas emissions, intensity indicators, energy audits, action plans, energy savings, greenhouse gas reductions, and projections. The approach outlined in the Protocol for the treatment of greenhouse gas emissions, energy consumption and production mirrors the National Greenhouse and Energy Reporting Act 2007 (Cth) (NGER Act).

The National Greenhouse and Energy Reporting Amendment Act 2009 was passed in the Senate on 7 September 2009. This amendment to the NGER Act requires results of audits to be included on the National Greenhouse and Energy Register while also extending secrecy requirements to cover audit information and removing the requirement for the Greenhouse and Energy Data Officer (GEDO) to publish certain energy production information online. It also requires auditors to apply to the GEDO for registration, expands the scope of the legislative instrument relating to guidelines for external auditors, and provides the Minister with power to determine registration requirements. The amendments to the NGER Act also allow for the transfer of obligations from a corporate group with operational control of a facility to the entity with financial control.

The updated National Greenhouse Accounts Factors have also been released by the Commonwealth. These correspond with the updated factors and methods detailed in the National Greenhouse and Energy Reporting (Measurement) Determination 2008 and the National Greenhouse and Energy Reporting (Measurement) Technical Guidelines June 2009.

Carbon Pollution Reduction Scheme: Bills and Regulations

On 13 August 2009, the Senate voted against the package of bills for the proposed Carbon Pollution Reduction Scheme 42 to 30. It is expected that the package will be reintroduced to the Senate in November 2009.

The Draft Carbon Pollution Reduction Scheme Regulations 2009 (Cth) were released in June 2009. These regulations contain the first eight activities that will be eligible for EITE assistance, namely, carbon black production, bulk flat glass production, glass container production, methanol production, silicon production, white titanium dioxide pigment production, zinc smelting, and newsprint manufacturing. The Government also released an explanatory paper entitled 'Establishing the eligibility of activities under the emissions-intensive trade-exposed assistance program'. The public submission process on these draft regulations closed on 14 August 2009. The second tranche of eligible activities is expected to be released in late October 2009.

National Renewable Energy Target, Coal Gas and Solar Credits

Legislation to implement the expanded National Renewable Energy Target Scheme (RET) under the Renewable Energy (Electricity) Act 2000 (Cth) and Renewable Energy (Electricity) Regulations 2001 (Cth) was passed by the Senate on 20 August 2009 after being 'de-linked' from the failed CPRS bill package. It has now received Royal Assent. The RET will bring the Mandatory Renewable Energy Target Scheme (MRET) and existing State based targets into a single national scheme.

The RET scheme requires that 20 per cent of Australia's electricity comes from renewable sources by 2020. The expanded RET increases the current RET from 9,500 gigawatt-hours to approximately 45,000 gigawatt-hours in 2020 and is intended drive investment in, and accelerate the deployment of, a range of renewable energy technologies, such as solar, wind and geothermal, through the use of a legislative obligation to

surrender tradeable Renewable Energy Certificates (RECs).

The RET has also been amended to extend to the use of waste coal mine gas in the generation of electricity as a transitional assistance measure. This will apply from 1 July 2011 to 31 December 2020. This amendment was based on concerns that the cessation of the New South Wales Greenhouse Gas Reduction Scheme and the transition to the CPRS could impose a significant cost on existing electricity generators using waste coal mine gas resulting in the forced closure of those projects. Eligibility will be limited to waste coal mine gas-fuelled power stations currently in operation. Annual limits will be placed on the ability to create Renewable Energy Certificates (RECs) based on their 2008 output levels. Annual targets under the expanded RET scheme have been increased to take into account the presence of electricity generated by waste coal mine gas. Total eligible waste coal mine gas generation will be capped at 425 gigawatt-hours in 2011 and 850 gigawatt-hours for the years 2012 to 2020; equal to the amount by which the annual targets are increased under the RET.

In addition, the government has announced that it will provide cash assistance of $130 million to landfill gas and avoided methane generators and holders of unused NSW Greenhouse Gas Abatement Certificates (NGACs) under the New South Wales Greenhouse Gas Reduction Scheme.

The expanded RET also includes the use of solar credits as a mechanism to boost support to households, businesses and community groups that install small-scale solar PV, wind and hydro electricity systems. Solar Credits are provided in the form of additional RECs for eligible small-scale solar PV, wind and hydro electricity systems installed or after 9 June 2009 and will apply to the first 1.5 kilowatts (kW) of capacity of the system installed.

Senator Penny Wong also announced that if the CPRS is not passed by 1 January 2010 then interim assistant arrangements will be implemented for those emissions-intensive trade-exposed activities that exceed an electricity intensity threshold of 3,000 megawatt-hours per $1 million of revenue (or 9,000 megawatt-hours per $1 million value added).

The list of eligible activities to receive the interim assistance is likely to include:

- aluminium smelting;
- silicon production; and
- newsprint manufacturing

Under these interim arrangements, partial exemptions would apply for 90 per cent of the liability that relates to the expanded liability above the 9,500 gigawatt-hour target, which exists under the existing Mandatory Renewable Energy Target. Details of the interim RET assistance will be set out in regulations.

Draft 2010 Australian Building Code: Energy Efficiency Measures

On 3 July COAG formally endorsed a new agreement on a package of energy efficiency measures including a 10 year work plan designed to achieve a nationally consistent approach to energy efficiency in Australia through the National Strategy on Energy Efficiency. The plan includes the following measures:

- development of a consistent outcomes-based national building energy standard setting, assessment and rating framework for driving significant improvement in the energy efficiency of Australia's building stock. To be implemented in 2011.
- significantly increase over time the stringency of energy efficiency provisions for all commercial buildings (Class three, and five to nine) in the Building Code of Australia (BCA) starting with the 2010 version of the BCA.
- phase-in, from 2010, the mandatory disclosure of the energy efficiency of commercial buildings.
- significantly increase the stringency of energy efficiency provisions for all new residential buildings in the BCA and broaden coverage of efficiency requirements.
- upgrade minimum energy efficiency standards to 6-stars, or equivalent, nationally in the 2010 update of the BCA to be implemented by May 2011.Separate energy efficiency requirements for hot water systems and lighting will be also considered.
- phase-in mandatory disclosure of residential building energy, greenhouse and water performance at the time of sale or lease,

commencing with energy efficiency by May 2011.

The Australian Building Codes Board released its draft amendments to the Building Code of Australia which addresses many of these recommendations and includes a range of new measures for energy efficiency designed to reduce greenhouse gas emissions. Some of these new measures include:

- prescribing that energy efficiency of residential buildings be subject to NatHERS ratings rather than Deemed-to-Satisfy provisions. Some Deemed-to-Satisfy provisions are retained, including insulation standards, thermal breaks and building sealing provisions;
- amending definitions which relate to energy efficiency including the definition of conditioned space which includes indirect air-conditioning, where conditioned air is sourced from another space;
- prescribing that building services for a conditioned space must obtain energy from a source that is renewable or has a low greenhouse gas intensity;
- extending hot water supply provisions to swimming pools and spas to require the reduction of greenhouse gas intensity of the energy source for heating of pools and spas; and
- prescribing new requirements for lighting in residences.

These amendments will form part of the 2010 edition of the BCA, which is expected to take effect from 1 May 2010. The Consultation Regulation Impact Statements and supporting documents for the new BCA were released in September with consultation closing at the end of October 2009.

EPBC Act: New Guidance Policy for the Wind Farm Industry

On 14 July the Environment Minister issued the EPBC Act Policy Statement 2.3 for the Wind Farm Industry. The policy statement is designed to assist operators in the wind farm industry to decide whether or not proposed actions require assessment and approval under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act). The policy statement notes that a wind farm may have a significant impact on a World Heritage property, National Heritage place or a Ramsar wetland which is some distance away from the wind farm and that the proponent should consider impacts on listed threatened and listed migratory species that may fly or move through the area, even if they do not inhabit the area. Indirect and off-site impacts from the wind farm could include:

- downstream or downwind impacts, such as impacts on wetlands or ocean reefs from sediment washed or discharged into river or creek systems, or disturbance of fauna off-site by noise or blade glint;
- upstream impacts, such as those associated with the production of energy used to undertake the action, and
- facilitated impacts which result from further actions which are made possible or facilitated by the action, such as the installation of power lines, access roads or power stations.

In terms of the extent and the intensity of the impacts, the statement notes that a wind farm may have greater impacts depending on the extent of excavation, vegetation clearance and other disturbance involved in site preparation, the intensity and geographic extent of construction-related impacts, and the number, size and configuration of turbines. Sites which are subject to conditions of poor visibility (fog, low cloud cover, glare) may exacerbate any impact on matters of national environmental significance, because, for example, birds using the site are unable to detect and avoid turbines at such times. The statement further notes that some species, for example, large soaring raptors and large waterbirds, tend to fly at turbine blade height and transmission line height and are more likely to collide with turbines. The Statement suggests that noise and visual impacts from turbines, or noise, dust and increased human presence during construction, may significantly disrupt behaviour, such as movement patterns or site usage by species, but are generally less likely to have a significant impact than the examples listed above.

New Report: Climate Change Impacts on Australia's Biodiversity

The Commonwealth announced the commission of a report titled Australia's biodiversity and climate change: a strategic assessment of the vulnerability of Australia's biodiversity to climate change. The Commonwealth has released the Summary Report

for Policy Makers 2009. According to the summary report, many of Australia's natural areas, and the rich biodiversity they support, are among the most vulnerable to climate change including the Great Barrier Reef, south-western Western Australia, the Australian Alps, the Queensland Wet Tropics and the Kakadu wetlands. The summary report notes that interaction of climate change with existing stresses, such as land clearing, fire and invasive species, and the different migration rates of species and consequent formation of novel ecosystems, add further levels of complexity. Significant changes are required in policy and management for biodiversity conservation to meet these types of challenges including:

- reform of our management of biodiversity;
- strengthening the national commitment to conserve Australia's biodiversity;
- investing in our life support system;
- building agile, innovative and flexible governance systems; and
- meeting the mitigation challenge.
- The Full report is expected to be published by CSIRO late in 2009.

Independent Review of EPBC Act: Release of Interim Report

The interim report on the independent review of the EPBC Act was released on 29 June 2009. The terms of reference for the independent review are to examine the operation of the EPBC Act generally, and the extent to which the EPBC Act's objects have been achieved; assess the appropriateness of the current Matters of National Environmental Significance; and assess the effectiveness of the biodiversity and wildlife conservation arrangements set out in the EPBC Act. The interim report contains separate chapters addressing a number of issues including: environmental impact assessment; forestry; land clearance; climate change; water; heritage; biodiversity conservation; Indigenous involvement; enforcement; and compliance. Each chapter outlines the relevant provisions of the EPBC Act, the public submissions made, and key points that will be addressed in the final report. Comments were able to be made on the interim report until 3 August 2009. The final report is due to be presented to the Commonwealth Environment Minister by 31 October 2009.

EPBC Act Outlook Report: Managing the Great Barrier Reef

The Great Barrier Reef Outlook Report 2009 (the Outlook Report) has been released. The Report is the first of its kind and is a new legislative requirement established by recent amendments to the Great Barrier Reef Marine Park Act 1975 (Cth). Under that Act, reports must be prepared by the Great Barrier Reef Marine Park Authority every five years, independently peer reviewed, and tabled in both Houses of the Australian Parliament. The report provides a comprehensive assessment of the state of the Reef and its long term outlook, based on the best available information.

The Outlook Report concludes that overall the Reef is currently in good condition but a number of important areas of concern are identified that, if not appropriately addressed, may see the health and resilience of the Reef decline significantly over the next 50 years and beyond. The Outlook Report notes that the overwhelming factor driving this outlook is climate change and strong management of the Reef is required to build and maintain its capacity to withstand and adapt to the impacts of climate change. The Outlook Report identifies key priorities for management including:

- improving the quality of water flowing into the Reef from adjacent catchments;
- protecting key coastal habitats; and
- managing the broader ecosystem impacts of extractive activities such as fishing.

The Commonwealth and Queensland governments have also released their response to the Outlook report titled Maintaining a healthy and resilient Great Barrier Reef: The Commonwealth and Queensland Governments' Interim Response to the Great Barrier Reef Outlook Report 2009.

In June 2009, the Prime Minister and Premier of Queensland signed a new Great Barrier Reef Intergovernmental Agreement. The agreement replaces the 1979 'Emerald Agreement', providing a modern framework for the governments to work together to address both local and external pressures on the Reef. The Agreement recognises that key pressures on the Reef, such as climate change impacts, catchment water quality and coastal development, cannot be effectively

addressed by either government on their own. Implementation of the agreement will be driven by the Great Barrier Reef Ministerial Council. The Council met for the first time under the new agreement on 3 July 2009. It was briefed on the findings of the Outlook Report and set in motion action on a number of key issues, including climate change and catchment water quality.

Significant rezoning of the Great Barrier Reef Marine Park took effect in July 2004, with complementary zoning also established in related Queensland marine and island national parks. Legislative changes will take effect in November 2009 which establish a more modern, robust regulatory system, including increased penalties for contravening zoning and other requirements, and the introduction of more flexible enforcement tools. The changes also provide legal recognition and protection for the Reef as a matter of 'national environmental significance' under the EPBC Act. The Commonwealth is also exploring the potential to undertake strategic assessments under the EPBC Act in relation to key coastal areas adjacent to the Reef in order to better deal with the cumulative impacts of incremental development than case-by-case assessment and approval.

EPBC Act: New Bilateral Agreements

New bilateral agreements have been entered into for the accreditation of State and Territory environmental assessment processes and, in some cases, approval decisions:

- Commonwealth and Australian Capital Territory: agreed 4 June 2009.
- Commonwealth and Victoria: agreed 20 June 2009.
- Commonwealth and Queensland: agreed 11 August 2009.

Contravention of EPBC Act: company fined for illegal clearing

On 17 July 2009 the Federal Court declared by consent that Rocky Lamattina & Sons Pty Ltd took an action likely to have a significant impact on the South-eastern Red-tailed Black Cockatoo in contravention of section 18(3) EPBC Act and imposed a pecuniary penalty of $220,000 and costs of $22,500. Rocky Lamattina & Sons cleared 170 trees at the South Australian property, Acacia Downs, in 2004 and 2005. Justice Mansfield held that this amount was the minimum penalty to be awarded having regard to the deliberate nature of the conduct, the indifference to its potential consequences, and the need for the court to fix a penalty that will operate as a deterrent to those who might otherwise be minded to clear native vegetation contrary to the EPBC Act. The Judge commented that, but for the respondent's early co-operation with the investigation, he would have reached a considerably higher penalty (Minister for Environment Heritage v Lamattina [2009] FCA 753).

Gorgon Project: Approval for Expansion of the Project

On 26 August, the Federal Environment Minister gave conditional approval to the Gorgon expansion proposal for Barrow Island. The Gorgon expansion proposal includes increased outputs through an additional LNG production train and altering the marine facilities in state waters by lengthening the causeway and marine offloading facility. Environment Minister Peter Garrett said he was 'satisfied that with the conditions placed on this project by the WA Government and the strengthened conditions I have imposed, the expansion can proceed without unacceptable impacts on the matters covered by Commonwealth jurisdiction in relation to this project, namely listed threatened and migratory species.' Those more stringent conditions will apply to the entire operation.

Chevron must now prepare for approval a range of plans relating to the protection, management and monitoring of nationally protected terrestrial fauna, such as the spectacled hare-wallaby, burrowing bettong and golden bandicoot. Chevron must also meet a number of requirements to address potential impacts on the flatback turtle. These include setting up a monitoring program to measure and detect changes to the turtle population, and to outline the measures and controls in place to manage and avoid impacts, particularly in relation to reducing light and noise emissions. Under a condition of approval, the Minister has discretion to direct Chevron to take any action if he believes the project is adversely impacting on the flatback turtle.

NELR recent developments

Gorgon Project: Transfer of Long Term Liability for Stored CO_2

In September the Commonwealth Government and Government of Western Australia announced that they had agreed to accept the long-term liability arising from the storage of carbon dioxide in geological formations under Barrow Island as part of the Gorgon LNG project. The Commonwealth has agreed to cover 80 per cent of the liability arising from a successful claim subject to the State covering 20 per cent of the liability. There is currently an exchange of letters between the Commonwealth and State Governments and a formal agreement will be developed between the two governments.

Under the current Barrow Island Act approval the State Government has not provided the Gorgon Joint Venture (GJV) with a post closure indemnity. The State Government has committed to go to Parliament with amendments to relevant legislation to enable a post closure indemnity to be provided to the GJV. This indemnity will be for common law liability arising from independent third party claims for loss or damage, suffered post site closure, as a result of the GJV's long-term storage of reservoir carbon dioxide beneath Barrow Island. The indemnity would have no time limit.

It is expected that the GJV may be injecting carbon dioxide for up to 60 years. For at least a further 15 years the GJV will be required to continue to manage and monitor the injection site. Consequently, the provision of a post closure indemnity is not expected to occur for at least 75 years and would only occur after the GJV has satisfied the Government that the site is ready to be closed. Some of the matters that the State Government will consider, as a minimum, prior to providing a site closure certificate will be whether there are significant risks that the injected carbon dioxide will have adverse impacts on the formation the CO2 was injected into; on the environment; on human health and safety and on the conservation or exploitation of nearby natural resources. Additional matters that may need to be considered by both Governments prior to the provision of a post closure indemnity are to be determined.

EPBC Act: Approval of Four Mile Uranium Mine

On 14 July 2009, the Environment Minister approved the Four Mile uranium mine in South Australia. The proposal for the Four Mile mine in South Australia, which will be located near the existing Beverley mine, was also the subject of two independent reviews which concluded the mining operation could go ahead without any significant lasting impact on the identified environmental values of the area and that the proposal represents world best practice in uranium mining. In approving the mine, Minister Garrett stated that he had imposed a number of stringent conditions including a rigorous monitoring regime which will demonstrate the agreed environmental outcomes are being met by the mine operators. These monitoring requirements will remain in place after the mine ceases its operation to ensure the long term protection of the environment. Processing waste disposal from the new mine will occur at the site of the existing Beverley mine.

EPBC Act: Reef Cove Approval Suspended

On 2 September, the Environment Minister suspended approval of the Reef Cove Resort development at Queensland's False Cape for an additional 12 month period. The project's approval was first suspended in September last year owing to the developer's failure to maintain the site and the threat posed to the Great Barrier Reef World Heritage Area. The site was left unmanaged after the developer closed it down due to financial difficulties. In extending the suspension, the Environment Minister concluded that he was not satisfied that appropriate measures have been put in place to protect the nearby world heritage area including addressing the erosion and sediment problems at the site. The Reef Cove development is the only project to have its approval suspended under the EPBC Act.

Legal Reform: Protection of Indigenous Heritage

On 3 August 2009, the Heritage Minister released a discussion paper for public comment on amendments to the Commonwealth's Aboriginal and Torres Strait Islander Heritage Protection Act 1984 to make it more effective as a way to protect traditional areas and objects significant

to Indigenous Australians. The discussion paper explains the government's proposals, which are now open for public comment. The paper contains 15 proposed reforms to the Aboriginal and Torres Strait Islander Heritage Protection Act 1984. The proposals are designed to clarify responsibilities for protecting Indigenous heritage, to set standards of best practice nation-wide, to remove duplication of state and territory decisions that meet the standards, and to improve processes for Australian Government decisions about protection when the standards are not met. The Act could be substantially amended or replaced. Written submissions on the proposed reforms close on 6 November 2009.

NEW SOUTH WALES

Nicholas Brunton

Changes to the Waste Classification Guidelines: Part 1 Classifying Waste

WASTE CLASSIFICATION GUIDELINES (JULY 2009)

In July this year, the Department of Environment, Climate Change and Water (**DECCW**) amended the Waste Classification Guidelines: Part 1 Classifying Waste (**July 2009 Guidelines**) including:

a) Streamlining the definitions with those in the Protection of the Environment Operations Act 1997 (**Act**);
b) Clarifying the need to continue classifying waste mixed with asbestos;
c) The removal of the hazardous preclassification of waste with a pH less than or equal to 2.0 or greater than or equal to 12.5; and
d) Changes to the determination of whether general solid waste is putrescible.

Background

The Waste Classification Guidelines were made in April 2008 (**April 2008 Guidelines**) to replace the Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-liquid Wastes in pursuance of changes to the Act and the Protection of the Environment Operations (Waste) Regulation 2005 (**Regulation**). The changes to the Act and the Regulation sought to simplify waste facility licensing, simplify waste classification, set clearer requirements for managing clinical and asbestos waste, and introduce a framework to support genuine recovery of waste material for land application or used as fuel.

What changes have been made to the Waste Classification Guidelines: Part 1 Classifying Waste?

Streamlining the definitions with those in the Protection of the Environment Operations Act 1997

Various wording changes have been made in the July 2009 Guidelines to streamline them with the terms used in the Act and the Regulation.

Clarifying the need to continue classifying waste mixed with asbestos

The April 2008 Guidelines did not specify that, even if classified as special waste, waste that is contaminated with asbestos must also be classified in accordance with the other categories of waste such as liquid, hazardous and general solid waste (putrescibles). The July 2009 Guidelines correct this issue.

The July 2009 Guidelines also clarify that when dealing with asbestos waste, it is necessary to meet both the requirements of managing and disposing asbestos waste *and* any other class of waste with which it is mixed.

The removal of the hazardous preclassification of waste with a pH less than or equal to 2.0 or greater than or equal to 12.5

Waste with a pH less than or equal to 2.0 or greater than or equal to 12.5 has been removed as automatically pre-classified as hazardous waste under the July 2009 Guidelines. The hazardous classification of such waste (if any) will depend upon whether it meets the other standards applicable to hazardous waste.

Changes to the determination of whether general solid waste is putrescible

The July 2009 Guidelines alter the means of determining whether general solid waste is putrescible. They do this primarily by stipulating that to be non-putrescible, general solid waste must not readily decay under standard conditions,