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principles in 3 districts in the Kadavu province". This involved the revision of natural resource management plans in those districts to include water and catchment management strategies. In a recent press release a spokesperson explained the initiative as working "towards managing and protecting our water reserves and heritage for the future benefit of all. Stretching across 5 continents in 12 river basins, WANI works with governments and local communities to use and manage water resources more sustainably. WANI aims to help reduce poverty and protect the environment by helping people to manage river flows and improving access to all communities. From the Pangani river at the foothills of Mount Kilimanjaro in Africa, to the mighty Mekong river in Asia and the towering volcanoes along the Tacaná river in Central America, the Water and Nature demonstration projects are supported by the development of tools for financing, governance, empowerment, and information" (see http://www.iucn.org/about/work/programmes/water/wp_our_work/wp_our_work_initiatives/wp_our_work_wani).

Pan African Implementation and Partnership Conference on Water

On 11 November 2009, the second Pan African Implementation and Partnership Conference on Water took place in Johannesburg, South Africa.

The conference provided an opportunity for African development partners to commit to the activities of the African Ministers Council on Water and Africa's water development agenda. Representatives from all nations attended the conference, including Australia. The Australian representative emphasised the need to focus on the previously neglected area of sanitation. Australia's development cooperation provides \$300 million to global water and sanitation programs. The conference agreed that the priorities for ANCOW were infrastructure development, hygiene, supporting regional institutions, capacity building and support for national implementation. Australia was pivotal in focusing on the importance of working with civil society organisations together with a stronger partnership with the African Development Bank and the World Bank. The message of the conference was that "while the Millennium Development Goal on providing adequate drinking water is on track, ... sanitation will require a massive and coordinated input in order to deliver by 2015. While the political will to do this was expressed in the Sharm el Shaik declaration of 2008, Africa now needs action on the ground and partnerships for implementation" (see <http://www.uneca.org/water>, <http://www.iisd.ca/africa/vol13/arc1303e.html> and http://www.gwpforum.org/gwp/library/091103_PanAfCon).

FEDERAL

Nicola Durrant

The Fate of the CPRS?

On 2 December 2009 the Senate rejected the Commonwealth Carbon Pollution Reduction Scheme bills package (CPRS) for a second time. The Senate voted 41 to 33 to reject the legislation. The government has indicated that it intends to reintroduce the legislation, with the amendments negotiated with the Liberals, when Parliament resumes on 2 February 2010. Meanwhile the opposition, under the new leadership of Tony Abbott, is currently formulating its alternate climate change policy.

Negotiated Amendments to the CPRS Bills

A brief summary of the amendments to the CPRS, agreed as part of the government's negotiations

with the Liberal party (with Malcolm Turnbull as leader), are set out below. It is this version of the bills package, consistent with these negotiated amendments, which will be reintroduced to the House of Representatives on 2 February 2010.

Accounting for Voluntary Action and Green Power

The Government undertook to ensure that the CPRS would take into account voluntary action by households. The government would develop a method for ensuring that the collective voluntary action by households - beyond that projected by the CPRS - would be taken into account in setting future caps. In addition, the CPRS would be amended to ensure that all existing and future purchases of GreenPower would be counted, and allow Australia

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to go beyond its 2020 national targets.

The Energy Efficiency Mechanism

The Government agreed to establish a new Prime Minister's Task Group on Energy Efficiency. The Task Group would report to the Government by mid-2010 on options for introducing a new Energy Efficiency Mechanism. The Task Group would consider and advise on the most economically and environmentally effective Energy Efficiency Mechanisms that could be considered by the Federal Government to complement the CPRS and the Renewable Energy Target.

Assistance for Low Income Households

On 25 November 2009 the Government announced that it would provide a household assistance package, worth \$49 billion over ten years, to ensure that all low and middle income families were assisted with the cost of acting on climate change. The government indicated that the average cost of living for households would be \$624 more in 2012-13 than it otherwise would have been, without a CPRS.

Treatment of EITES

Under the proposed amendments, the Government's 'global recession buffer' would be integrated into base assistance rates and would not be removed after 5 years. EITE assistance rates would commence in 2011-12 at 94.5 per cent for highly emission intensive activities and 66 per cent for moderately emission intensive activities and decline at an annual rate of 1.3 per cent per annum. The Independent Expert Review would then consider the appropriateness of EITE assistance in 2014. The Government would provide five years notice of any material changes for any general modifications arising out of that review.

Treatment of Agriculture

Agriculture would be excluded indefinitely from the CPRS. The Government would work with industry to monitor world's best practice in reducing agricultural emissions and consider a range of ways in which the agriculture sector could contribute to the transition to a low-pollution economy. This would be considered by a Productivity Commission review in 2015.

The government agreed that CPRS permits would be provided for abatement from the sources that

are counted towards Australia's international commitments including livestock; manure management; fertiliser use; burning of savannas; burning of agricultural residues; rice cultivation; avoided deforestation; and legacy waste-emissions from closed landfill facilities. This would be subject to the development of a policy and legislative framework that ensures any domestic offsets meet internationally accepted principles of permanence, additionality, measurability, avoidance of leakage, independent audit and registration.

An independent expert committee would be established to vet offset methodologies and recommend 'robust methodologies' to the Minister for approval. It is important to note that approval of projects and crediting of abatement would only be from commencement of the CPRS (e.g. 1 July 2011).

National Carbon Offset Standard

In the meantime, the Government will promote voluntary market offsets through the implementation of a National Carbon Offset Standard. This will provide scope for a market for abatement from the following sources that are not counted towards Australia's international commitments: agricultural soils (grazing and crop land management) including biosequestration through soil carbon and biochar; enhanced forest management; and non-forest revegetation and vegetation management. The government has stated that abatement from these sources would transition into the CPRS once abatement is internationally recognised and provided that other CPRS requirements are met.

The National Carbon Offset Standard was released by the Department of Climate Change on 24 November 2009 and will come into effect on 1 July 2010. The National Carbon Offset Standard is intended to provide guidance on what constitutes a genuine, additional, voluntary offset by setting minimum requirements for the verification and retirement of voluntary carbon credits. The final standard is based on the Draft National Carbon Offset Standard which was released for public consultation in December 2008. The Standard is largely unchanged from its draft form and contains only broad principles for eligible abatement projects. More specific details on methodologies and other operative issues will be required to assist in the development of

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eligible abatement projects under this Standard. The Department of Climate Change has noted that it will continue to consult with stakeholders in finalising administrative arrangements for the National Carbon Offset Standard.

Other Amendments

The Government would also, via further legislative amendments in 2010: –

- provide credits for *regrowth forests* on deforested land (legally cleared between 1990 and 31 December 2008) through amendments in 2010;
- provide credits for *soil carbon on deforested land* (for land legally cleared between 1990 and 31 December 2008) from 2013;
- include conditions for forests earning forest credits to have adequate *water entitlements and planning approvals*; and
- require that offset projects do not involve, or include material obtained as a result of, *clearing or harvesting of native forests*.

Treatment of the Coal Sector

The government has agreed to the provision of \$1.5 billion of assistance to the coal sector over 5 years comprising of:

- \$1.23 billion Coal Sector Adjustment Scheme would be established to provide transitional assistance to the most emissions-intensive coal mines in the form of permits; and
- a \$270 million Coal Sector Abatement Fund established within the Climate Change Action Fund (CCAF) to provide grant funding for coal sector abatement projects and capital grants with a priority for electricity generation from waste coal mine gas.

Coal Sector Adjustment Scheme

The Coal Sector Adjustment Scheme would provide free permits to the most emissions intensive mines. These are those coal mines that have a fugitive emissions intensity above 0.1 tonnes CO₂-e per tonne of saleable coal and where coal mining operations were carried out for some or all of the two years from 1 July 2007 to 30 June 2009. This model of assistance would enable the fugitive emissions carbon liability for the most gassy mines to be reduced from around \$20 per tonne of saleable coal to around \$5 per tonne of saleable

coal at a \$25 carbon price. Assistance would be linked to production and capped at base period production levels.

Coal Mining Abatement Fund

The Coal Mining Abatement Fund would be allocated an additional \$20 million to fund coal mine abatement projects and capital grants with a priority for waste coal mine gas electricity generation projects. Funding for abatement projects and capital grants would be provided on a three for one basis, with coal mine operators required to meet three quarters of the cost of the project.

Treatment of the Electricity Sector

- The Government agreed to increase the quantum of assistance available under the Electricity Sector Adjustment Scheme (ESAS) from 130.7 million permits to 228.7 million permits (75 per cent increase). The Government also agreed to extend the period over which ESAS would be provided from five years to ten, meaning that generators would be required to comply with the 'power system reliability test' over this period to continue to receive assistance.
- The Government would introduce a Low Emissions Transition Incentive by amending the power system reliability test further to allow generators to receive credit for their own investments in replacement capacity, providing incentives for ESAS recipients to invest in new low emissions replacement generation capacity while continuing to receive the remaining scheduled ESAS payments.
- The Government would delay the 'windfall gains test' that applies to ESAS assistance to apply to the last three of ten years of assistance, rather than the last two years of five, and apply the test to only half of a generator's allocation in this three year period.
- The Government would also establish a Transitional Electricity Cost Assistance Program to reduce the impact of the CPRS on electricity prices paid by medium and large enterprises.

Treatment of Liquefied Natural Gas (LNG)

Liquefied Natural Gas (LNG) is expected to be a moderately emissions-intensive EITE activity and general allocations of free permits would be made

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according to the ordinary EITE rules. An additional supplementary allocation of permits would be provided for LNG projects to ensure that all projects receive an effective assistance rate at or above 50 per cent in relation to their LNG production. In determining the supplementary allocation, the emissions associated with the entire LNG production process would be taken into account, that is, including extraction and transportation emissions associated with LNG production, but excluding emissions attributable to other saleable products, such as the production of condensate and LPG. This would require a methodology to be developed and included in regulations. This would be an ongoing measure, not a fixed-term transitional assistance program.

Treatment of Food processing

A five-year, \$150 million stream of assistance for the food processing sector would be established within the Climate Change Action Fund. This stream would be dedicated to funding emissions reduction measures within the primary food processing industry.

The Green Carbon Fund

The Government would establish a \$40 million Green Carbon Fund to build the resilience of natural ecosystems that are under threat from climate change. The first stream of the fund would provide support to monitor and plan for the impact of climate change on biodiversity and land and water resources. The second stream would support initiatives to encourage environmental stewardship and biodiversity.

Deferred Payment at Auction

The Government announced that deferred payment arrangements for auctions of Australian emissions units would provide a transitional measure to address the working capital costs of participants. Deferred payment would apply to the advanced auction of future vintages of emissions units (but not current vintages) sold between 1 January 2011 and 31 December 2013 only, and require a 10 per cent deposit at auction to secure rights to permits. Permits would only be received once the final payment is made. Deferred payments would be available to all bidders.

Operational Subsidiary Liability and Joint Venture Liability

The Government announced that it proposed to undertake public consultation with a view to making amendments before the start of the CPRS to enhance pass-through of carbon costs under existing contracts by clarifying the point of liability and removing the scope for minority shareholders in a facility to veto investments to reduce emissions for which the controlling corporation would otherwise be liable.

Clarification of Exported Fossil Fuels

The Government announced that it would introduce minor technical amendments to the CPRS bill package to remove all doubt that fuel exporters (including Australian coal exporters) would not be held liable under the CPRS for the carbon embodied in fuel they export.

Extension of Fuel Tax Credits for Forestry

The Government announced that eligibility for the CPRS fuel tax credit would be extended to forestry from 1 July 2011, in a manner similar to agriculture and fishing operations. The amount of credit would equal the impact of the carbon price on fuel, and reflect the fact that these enterprises do not pay fuel tax and therefore do not receive the benefit of the cent for cent fuel tax adjustment. Agricultural, fishing and forestry would be eligible for the CPRS fuel credit from 1 July 2011 to 30 June 2014, and the Government would review this measure after three years as part of the review of the fuel tax adjustment mechanism.

Recognition of Intergovernmental Panel on Climate Change (IPCC) in 2014

The Government announced that the CPRS would take into account developments in the consensus science. The Minister would direct the Independent Expert Advisory Committee to take into account the findings of Working Group III of the IPCC when considering appropriate caps and gateways in the first statutory review of the CPRS in 2014.

Trigger for Review of the CPRS

The Government announced that automatic statutory review of the CPRS legislation, including EITE policy, would occur when Australia signs a new multilateral agreement. The review would

examine the implications of that agreement for the CPRS. Five years notice would be given to any modifications to the EITE assistance program, unless modifications were required for compliance with Australia's international trade obligations.

COAG: Review of Renewable Energy Target

On 5 November 2009, a COAG review into the Federal Government's Renewable Energy Target was announced. This review will consider factors that may be impacting upon the Renewable Energy Certificate (REC) market in the short and long term. The review will examine the current state of the RET spot market and whether the spot market has any implications for the deployment of large-scale projects. The review will look at both short-term developments in the REC market and the factors that will determine longer-term pricing. The review is to report to COAG by the end of 2009.

The New National Water Market System

On 9 November 2009 the Minister for Climate Change and Water announced a \$56 million investment by the Rudd Government to develop a 'faster, more efficient and nationally focused water market system'. The National Water Market System will involve the development of a national portal and a new Common Registry System for implementation in NSW, South Australia, Western Australia, Tasmania, the Northern Territory and the ACT. Enhancements will also be made to existing systems in Victoria and Queensland.

The system will include a common registry system or system upgrades for all jurisdictions, and a new national portal and interstate processes to speed-up cross-border water trades and cut transaction costs. The national portal will provide water users with access to a new national market information service, and state and territory-based information on matters such as water licenses and seasonal allocations. All Premiers and Chief Ministers have endorsed the model for a National Water Market System, with states and territories maintaining their responsibility for water registers and functions. The national portal is due to be completed by April 2010.

Release of Draft National Water Initiative Pricing Principles

The draft National Water Initiative Pricing Principles have been released for public comment closing on

18 December 2009. These have been developed jointly by the Australian Government and state and territory governments to provide a set of guidelines for rural and urban pricing practices and to assist jurisdictions to implement the NWI water pricing commitments in a consistent way. It is proposed that Australian governments agree to adopt the pricing principles.

The pricing principles are comprised of four sets of principles, including:

1. Principles for the recovery of capital expenditure to provide guidance to water service providers on asset valuation and cost recovery for urban and rural capital expenditure.
2. Principles for urban water tariffs to provide guidance for price setting in situations where there are monopoly providers and the absence of competitive pressures.
3. Principles for water planning and management to provide guidance, for urban and rural water service providers, in identifying and allocating the costs of water planning and management activities between government and water users.
4. Principles for recycled water and stormwater reuse to provide broad policy guidance to stimulate efficient water use, in urban and rural settings, no matter what the water source.

All comments received during the consultation period will be taken into account during the finalisation of the regulation impact statement.

Environment Protection and Heritage Council Communique (5 November 2009)

Agreement to New National Waste Policy

Australia's environment ministers have agreed to a new National Waste Policy: Less waste, More Resources. The National Waste Policy builds on the 1992 National Strategy for ESD commitments to improve the efficiency with which resources are used, reduce the impact on the environment of waste disposal, and improve the management of hazardous wastes, avoiding their generation and addressing clean-up issues. It also seeks to enhance, build on, or complement, existing policy and actions at all levels of government.

The National Waste Policy sets the direction for Australia over the next ten years to produce less

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waste for disposal and manage waste as a resource to deliver economic, environmental and social benefits. It establishes a comprehensive work program for national coordinated action on waste across six key areas:

1. Taking responsibility—shared responsibility for reducing the environmental, health and safety footprint of products and materials across the manufacture-supply-consumption chain and at end of life.
2. Improving the market—efficient and effective Australian markets operate for waste and recovered resources, with local technology and innovation being sought after internationally.
3. Pursuing sustainability—less waste and improved use of waste to achieve broader environmental, social and economic benefits.
4. Reducing hazard and risk—reduction of potentially hazardous content of wastes with consistent, safe and accountable waste recovery, handling and disposal.
5. Tailoring solutions—increased capacity in regional, remote and Indigenous communities to manage waste and recover and re-use resources.
6. Providing the evidence—access by decision makers to meaningful, accurate and current national waste and resource recovery data and information, in order to measure progress and educate and inform the behaviour and the choices of the community.

The National Waste Policy will be implemented by individual and collective action by the Commonwealth and state, territory and local governments, and forms the long term agenda for the Environment Protection and Heritage Council for resource recovery and waste issues. According to the policy, the practical outcome of implementing the National Waste Policy will be that all wastes, including hazardous wastes, will be managed consistently with Australia's international obligations, and for the protection of human health and the environment. The policy will also seek to ensure that the risks associated with waste are understood and managed in the future to minimise intergenerational legacy issues. There will also be a significant contribution to greenhouse gas reduction, water and energy efficiency and improved resource use.

New National Product Stewardship Framework

The EPHC also announced that work will commence immediately on developing a *National Product Stewardship legislative framework*, for introduction into the Australian Parliament. The framework will provide for the accreditation of product stewardship schemes run by industry and community organisations. It will also provide for national co-regulatory schemes for specific products and materials, such as televisions and computers. The legislative framework will work to ensure non-participants in the industry-led scheme/s comply with the same standards as voluntarily participants in the scheme.

New National Packaging Covenant

Ministers supported in-principle the *strengthened Australian Packaging Covenant* to replace the *National Packaging Covenant* which is due to expire on 30 June 2010. The updated Covenant will build on the success of the model over the last decade in reducing the environmental impacts of consumer packaging. They also agreed to extend the existing arrangements by up to one year to allow a smooth transition.

The proposed Covenant will significantly streamline the requirements on signatories while providing strengthened governance and compliance procedures to ensure confidence in the delivery of outcomes. It includes a *greater focus on the sustainable design of packaging*, and will also provide more investment in workplace recycling, public place recycling and litter reduction projects.

Ratification of UNESCO Underwater Cultural Heritage Convention

The EPHC endorsed Australia pursuing ratification of the *UNESCO 2001 Convention for the Protection of the Underwater Cultural Heritage*, subject to Australia's normal treaty making processes. Council will consider a *draft Australian Underwater Cultural Heritage Intergovernmental Agreement* in early 2010. The agreement will outline agreed approaches to the identification, protection, management, conservation and interpretation of Australia's underwater cultural heritage.

World Heritage Intergovernmental Agreement

The EPHC also agreed to an *Australian World Heritage Intergovernmental Agreement* which sets

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out arrangements between the Commonwealth and the states for the management of Australia's World Heritage properties. The Intergovernmental Agreement outlines agreed approaches to management, funding, nomination, listing, monitoring and promotion of Australia's World Heritage properties.

Great Barrier Reef Marine Park: Legislative Changes

Legislative changes came into effect on 25 November 2009 to integrate the Great Barrier Reef Marine Park Act 1975 (GBRMP Act) and Great Barrier Reef Marine Park Regulations 1983 with the Environment Protection and Biodiversity Conservation Act 1999 (Cth)(EPBC Act). The changes establish the marine park as a trigger, or 'matter of national environmental significance', under the EPBC Act.

Now, in addition to the existing permit requirements under the GBRMP Act, activities inside the marine park that are likely to have a significant impact on the environment, and those outside the marine park that are likely to have a significant impact on the environment of the marine park or other nationally protected matters must be assessed and approved under the assessment processes used under the EPBC Act. The changes are intended to simplify, streamline and consolidate permission requirements, so that the approval process under the GBRMP Act and the EPBC Act is handled consistently. No changes have been made to the Great Barrier Reef Marine Park Zoning Plan 2003.

Changes to the compliance and enforcement provisions also make the more comprehensive investigation powers of the EPBC Act available for the purposes of the GBRMP Act, providing more flexible compliance and enforcement tools that can be tailored to different circumstances. Under the new rules, marine park users have a duty to take reasonable steps to prevent or minimise environmental harm. Being unaware of the marine park, of its zones, of location within the marine park, and of the restrictions on marine park uses is not an excuse under the law, unless it is an honest and reasonable mistake. Inspectors can issue fines for a broader range of minor breaches. Civil rather than criminal penalties can be sought, although seeking criminal penalties is still an option. Penalties have

been adjusted, so that small offences carry lower penalties, while serious offences carry higher maximum penalties. Where there is a risk to the marine park environment, the Great Barrier Reef Marine Park Authority will be empowered to order the activity be stopped to avoid, reduce or eliminate the risk.

\$200,000 Payment Required for Clearing Protected Grassland

The Department of Environment announced on 25 November 2009 that a construction company will pay a total of \$200,000 towards conservation initiatives after breaching national and Victorian environment laws at an industrial site in Ardeer, Melbourne. Bridge and Marine Australia agreed to sign a \$30,000 enforceable undertaking with the federal environment department as an alternative to the matter going to court. The undertaking follows a departmental investigation into the company clearing protected native grasslands and causing a significant impact on nationally threatened species at an industrial construction storage area.

The department's investigation found that 0.7 hectares of the critically endangered natural temperate grasslands of the Victorian Volcanic Plain were destroyed during works at the industrial site. The company has also previously agreed to a separate undertaking between the company and the Victorian government to pay \$170,000 as penalty for the legal breaches. Under the federal enforceable undertaking, Bridge and Marine Australia must now pay \$30,000 to the Victorian Department of Sustainability and Environment for the conservation and recovery of the affected species.

Independent Review of EPBC Act: Final Report

On 30 October 2009, Dr Allan Hawke presented his final report *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999* to the Minister for the Environment, Heritage and the Arts. Under section 522A of the EPBC Act, the Minister must table the report in Parliament within 15 sitting days of receipt. The Government has noted that this period will expire in early February 2010.

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EPBC Act: Decision Regarding Traveston Dam

On 2 December 2009 the Environment Minister released his final decision for the Traveston Dam Project in Queensland. The decision refused the

project on the basis that it would have serious and irreversible effects on nationally protected species, namely, the Australian lungfish, the Mary River turtle, and the Mary River cod.

QUEENSLAND

Scott Sellwood

Environmental laws stop Traveston Dam

On 2 December 2009 federal Environment Minister Peter Garrett used his powers under the federal *Environment Protection and Biodiversity Conservation Act 1999* to formally refuse the proposed Traveston Crossing Dam. Minister Garrett's approval was needed for the dam to be built, in addition to the state approval already granted by the Queensland government.

Minister Garrett determined that the impacts on nationally protected species like the Australian lungfish, Mary River Turtle and Mary River Cod were unacceptable and could not be mitigated, despite the 1200 conditions imposed by the Queensland government.

Planning & Environment Court refuses Brisbane industrial development

In mid November 2009 the Planning and Environment Court dismissed a proposed industrial development at the former Wacol army barracks in Brisbane.

Although the refusal ultimately turned on the unacceptability of the proposal in terms of the amount of office space being sought and impacts on the existing traffic networks, the Court considered at length evidence of the alleged impacts of the proposal on the endangered regional ecosystem, *Eucalyptus seeana*, the Bullockhead Creek (which traverses the site) and, the many hollow bearing trees on the site.

In considering the environmental impacts the Court concluded, however, that minor changes to the proposed layout, with an appropriate off-site offset requirement, would have been an acceptable response to the impacts of the new use.

Metroplex v Brisbane City Council & Ors [2009] QPEC 110 <http://archive.sclqld.org.au/qjudgment/2009/QPEC09-110.pdf>

Garrett rejects Great Keppel Island 'revitalisation'

On 30 October 2009 Federal Environment Minister Peter Garrett rejected the proposed tourist re-development of Great Keppel Island on the basis that the impacts of the project on matters of national environmental significance were "clearly unacceptable".

The proposal, declared "State Significant" under Queensland development laws, was to include: a 300 room hotel and day spa, 1700 resort villas, 300 resort apartments, a ferry terminal, retail village, golf course and sporting oval.

New planning laws commence

Queensland's new *Sustainable Planning Act 2009* commenced on 18 December 2009.

Stay tuned in 2010 for a detailed look the new planning Act and associated regulations. In the meantime, please see www.dip.qld.gov.au/spa for information.

Rail corridor realigned to protect koala habitat

A section of the proposed Southern Freight Rail Corridor, which will, ultimately, form part of a future Melbourne to Brisbane inland rail network, has been realigned in an effort to protect koala habitat and minimize impacts on landowners. A revised Assessment Report, as part of the planning and impact assessment for the project, is expected early next year.

The Department of Transport commissioned this long-term planning study to identify and preserve the corridor for future rail freight transport.

Building laws to protect designs for sustainability

The *Building Act 1975* has been amended to provide better protection for sustainable architecture and