

NELR recent developments

European law to phase out non-efficient lightbulbs

In March 2009 the European Commission adopted two eco-design regulations that set energy efficiency, functionality and product information requirements for domestic and office, street and industrial lighting products. The regulation will progressively remove inefficient conventional bulbs from the market and enable progressive adaptation of production processes for efficient alternatives. The light bulb regulations are to save roughly 80TWh by 2020, the equivalent of the annual output of about 20 power stations of 500 megawatts, and lead to a reduction of around 32 million tonnes of carbon dioxide emissions per year. The Commission intends to implement further eco-design measures over the next few months covering products such as whitegoods and heating products.

UN REDD Programme - \$18 million approved

The UN Reducing Emissions from Deforestation and Forest Degradation (REDD) Programme has approved \$18 million support for five pilot programmes in Africa, Asia and Latin America. The UN REDD Programme is a collaboration between the Food and Agriculture Organisation, the UN Development Programme and the UN Environment Programme with the goal of ensuring REDD becomes a feature of the future multilateral agreement on climate change, set to be agreed in December 2009 at UN climate change negotiations in Denmark. Greenhouse gas emissions from deforestation, including felling and slash and burn agriculture, account for roughly 17% of emissions and are the second largest source of emissions after the energy sector. For more information see: <http://www.unep.org>.

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Wayne Gumley

Carbon Pollution Reduction Scheme

- **Release of exposure draft legislation** - On 10 March the Minister for Climate Change and Water released exposure draft legislation and explanatory materials for the Carbon Pollution Reduction Scheme. Building on the Green Paper and White Paper released last year, the exposure draft legislation sets out in legislation what is required of participants in the Scheme and the mechanics of the Scheme. The Government is seeking feedback from stakeholders on the terms of the draft legislation and its effectiveness in delivering the White Paper's policy positions by 14 April 2009. Copies of the draft legislation can be found on the Department of Climate Change website.
- **Release of guidance paper for emissions-intensive trade-exposed activities** - On 18 February 2009, the Department of Climate Change released a guidance paper for the assessment of activities for the purposes of the emissions-intensive trade-exposed (EITE) assistance program under the Government's Carbon Pollution Reduction Scheme. The government will provide \$9 billion to assist a range of businesses and industries under

the Scheme out to 2012. The guidance paper outlines the assessment process and provides guidance to industry on the requirements for this assessment. The assessment process will inform the Government's decision on which activities in the economy are eligible to receive EITE assistance, the rates of assistance that will apply to eligible activities and the basis for allocations to these eligible activities. The Government will make final decisions taking into consideration the policy framework outlined in the White Paper and the information provided through this assessment process. Their final decisions will be reflected in the Scheme regulations. The guidance paper is available on the Department of Climate Change website.

National Rainwater and Greywater Initiative - rebates for rainwater tanks and greywater systems

As at 30 January 2009, Australian households will be eligible for a rebate of up to \$500 each for the purchase of a rainwater tank or a greywater system under the \$250 million National Rainwater and

Greywater Initiative. Rebates are available for the purchase and installation of a new rainwater tank which is connected for internal re-use of the water for toilet and/or laundry use or the purchase and installation of a permanent greywater treatment system. A \$400 rebate is available for a 2,000-3,999 litre tank and a \$500 rebate is available for a tank greater than 4,000 litres. For information see www.environment.gov.au/water.

Senate Committee releases first report on the operation of the EPBC Act

The Senate referred this matter to the Senate Environment, Communications and the Arts Committee on 18 June 2008, due to concerns about continuing decline and extinction of a significant proportion of Australia's unique plants and animals, and the likelihood that accelerating climate change will exacerbate challenges faced by Australian species.

In March 2009 the first report of the Senate Committee was released covering most of the terms of reference (including the scope of the Act, assessment and approvals processes, threatened species and stakeholder engagement). A second report will be released soon on the interaction between the EPBC Act and Regional Forests Agreements. The recommendations made in this report are (broadly):

1. Removal of the words 'to provide for' from s 3(1)(a) and 3(1)(ca).
2. Careful consideration be given to inclusion of a greenhouse trigger.
3. A land clearing trigger should be included.
4. Resources should be increased for administration and enforcement of the Act.
5. Long term environmental outcomes of decisions made under the Act should be evaluated regularly.
6. The independent review should consider the effectiveness of bilateral agreements.
7. The interaction between the EPBC Act and the Fisheries Management Act should be reviewed.
8. The processes for nomination and listing of threatened species and ecological communities

should be improved.

9. The current policy re: the use of offsets for habitat conservation should be clarified.
10. The scope for merits review under the Act should be expanded.

This report and related materials for the Senate Review can be found at: http://www.aph.gov.au/Senate/committee/eca_ctte/epbc_act/index.htm

NELR highlight - one pleasing aspect of this report was the Committee's acceptance of a submission by our NELR Tasmanian Sub-editor, Tom Baxter which recommended removal of the words 'to provide for' from s 3(1)(a) and 3(1)(ca) of the EPC Act (See Senate Committee Report at pp 9-11).

Independent Review of the EPBC Act

A separate 'independent review' of the Act was also requested by the Minister for the Environment, Heritage and the Arts on 31 October 2008 pursuant to the requirement for a review every 10 years under s 522A. The Independent Review is being conducted by Dr Allan Hawke. An interim report highlighting the key issues that have been raised through public consultation processes will be released in mid-2009. The website for this review is at: <http://www.environment.gov.au/epbc/review/index.html>.

National Biodiversity Strategy draft released

The Natural Resource Management Ministerial Council, on behalf of the Commonwealth and all state and territory governments, is inviting public comments on the draft Australia's Biodiversity Conservation Strategy 2010-2020. The draft strategy is intended to be a national policy document that will guide how governments, the community, industry and scientists manage and protect Australia's plants, animals and ecosystems over the next ten years. The draft strategy sets out six priorities for change:

- building ecosystem resilience,
- mainstreaming biodiversity,
- knowledge for all,

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- getting results,
- involving Indigenous peoples and
- measuring success.

Public information and comment sessions will be held in all state and territory capital cities and some regional centres during March and April 2009. For further information see www.environment.gov.au/biodiversity/index.html.

McArthur River mine expansion approved with conditions

On 20 February, Environment Minister Peter Garrett made a fresh decision on the McArthur River mine expansion, approving the project but putting in place new stringent monitoring requirements to protect the environment.

Mr Garrett was required to make a new decision on the proposal after the Federal Court ruled late last year that former environment Minister Ian Campbell's decision was invalid as he had failed to follow correct process (see NELR 0803 for a casenote on *Lansen v Minister for Env't and Heritage* [2008] FCAFC 189 (17 Dec 2008)). The Minister has approved the mine expansion and also encouraged the developer (MRM) to pursue a more active engagement with local stakeholders including traditional owners, and to communicate the outcomes of environmental monitoring and other reports with the local community. Media release available at: <http://www.environment.gov.au/minister/garrett/2009/mr20090220.html>.

Rose Group development approved with strict conditions

On the 27 February 2009, the Environment Minister determined a proposed development at Catherine Hill Bay could proceed under the *EPBC Act 1999*. The proposal by Rose Group to build around 750 dwellings over two sites was first approved by the NSW Government. In this case the particular concerns were the Black-eyed Susan shrub and the leafless tongue orchid which are both listed as vulnerable at the Commonwealth level. The approval comes with strict conditions and extensive

offsets ensuring the impacts on the two plant species are acceptable, including:

- A requirement that 294 ha of land be dedicated to the NSW Government to be conserved in perpetuity. This land includes approximately three times as many Black-eyed Susan as would be removed from the development site and four times as many leafless tongue orchids. This approval condition is consistent with NSW approval conditions;
- The donation of \$15,000 to a research project on the leafless tongue orchid and the provision of any orchids removed from the development to that same project;
- The development and implementation of management plans to protect the conservation areas and threatened species habitat adjacent to the development site, including the nearby marine environment.

Victorian desalination plant approval

On the 20 March 2009, the Federal Environment Minister gave conditional approval to the Victorian Government's proposed desalination plant near Wonthaggi. The Minister was required to assess the potential impacts of the project on the Western Port Ramsar wetland and listed threatened species and ecological communities protected under the *Environment Protection and Biodiversity Conservation Act 1999*.

The desalination plant to be located in the Wonthaggi region will supply up to 150 billion litres of water a year to Melbourne and the surrounding region. Information on this approval and its conditions can be found at <http://www.environment.gov.au/epbc/notices/index.html>.

The EPA Victoria issued a works approval on 5 March to the Department of Sustainability and Environment. Prior to construction the occupier must verify that the detailed design complies with the Works Approval. It also requires the occupier to undertake detailed environmental monitoring prior to the commissioning of the plant. The Works Approval can be viewed online at www.epa.vic.gov.au.

Gunns pulp mill approval delayed until detailed environmental studies completed

On 5 January 2009, it was announced that Federal environmental approval for the Gunns Ltd Bell Bay pulp mill would not be granted until detailed studies on the potential marine impacts were completed. This decision was informed by the precautionary approach - specifically uncertainty about the outcomes of the yet to be completed hydrodynamic modelling on effluent discharge for the mill and inconsistencies in the original approval conditions.

In addition a new condition would be imposed on the mill subjecting Gunns to criminal and civil sanctions under the *Environment Protection and Biodiversity Conservation Act 1999* if the mill achieves Federal approval and defined environmental limits for the mill's operations are exceeded. Under this new condition, civil penalties of up to \$1.1 million per offence can be imposed on Gunns and it also provides the basis for future variation, suspension or revocation of the mills environmental approval.

A minor variation to the route of the pipeline servicing the mill on advice from the Independent Expert Group was also approved under Federal environment law – Gunns will still need to obtain relevant local and state government approvals and landowner consent. The Environment Minister had given his approval to nine further modules of the environmental management plan which relate to the construction of the mill and its associated infrastructure. This brings to 13 the number of

modules approved. Gunns Ltd will now be required to proceed with its modeling program before resubmitting modules L, M and N by 3 March 2011, reflecting advice about the likely timeframe for modelling contained in the draft environmental management plan and confirmed by the IEG.

Recent Australian Network of Environmental Defender's Offices (ANEDO) submissions

- National Carbon Offset Standard - The release of the Federal Government's draft national carbon offset standard triggered a lot of confusion and comment in the press and online about the role of voluntary offsets once the Federal emissions trading scheme starts. The EDO's issues paper explains how individual action to reduce emissions will change under the emissions trading scheme and provides assistance to those making a submission on the carbon offset standard.
- *EBPC Act* - The 10-year review of the *EPBC Act* covers all aspects of the *Act*. The 105-page submission focused on the need for decisions under the *Act* to more closely align with the principles of ecologically sustainable development, the need for climate change to be better recognised under the *Act* including through a greenhouse trigger and the need for stronger third party rights.
- Commonwealth Renewable Energy Target

See <http://www.edo.org.au/policy/policy.html> for full submissions.