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recommendations, which address (amongst other things) the EPA's regulatory approach to compliance, monitoring, prosecutions and enforcement matters.

In formulating these recommendations, the Review highlighted a number of deficiencies regarding the EPA's approach to discharging its statutory responsibilities, including that:

- the organisation has become more client focused, with a perception in the community of a lack of independence from business
- there are ambiguities in the standards expected for compliance with the Act, policies and EPA guidelines
- a concern that the EPA has lacked a consistent approach to compliance, and
- a widespread perception that the technical capability of the EPA had diminished.

In order to address these (and other) deficiencies, the Review made a number of recommendations, including:

- that the EPA provide guidance to licensed businesses about the type and frequency of monitoring which should occur in common industries
- a revised enforcement and compliance policy which implements a risk-based model of compliance
- significantly increase the number of prosecutions to

ensure there are fair and appropriate consequences for serious offences under the Act

- increase the number of environment protection officers to ensure the EPA effectively discharges its compliance, monitoring and assurance functions and to facilitate a more proactive role in managing environmental incidents
- that the EPA draft a policy position which outlines its preference for restorative orders under s 67AC of the Act and the criteria it will apply to the use of this section
- that the EPA adopt the prosecution guidelines of the DPP and Victoria's Model Litigant Guidelines
- that the EPA prepare an annual compliance plan regarding its priorities for compliance and monitoring
- in issuing an abatement notice, the EPA clearly states one way of achieving compliance or recommending other sources of guidance or advice to achieve compliance, and
- the EPA consider alternative modes of managing funds, including adopting an 'arms length' approach such as placing management of these funds in another government agency.

It will be interesting to see how the changes are implemented and whether they are matched by appropriate resourcing.

WESTERN AUSTRALIA

by Ainsley Reid and Joe Freeman

Conservation Legislation Amendment Bill 2010

If enacted, the Conservation Legislation Amendment Bill 2010 (Bill) will enable the joint management of public and private land and marine protected areas in WA through joint management agreements entered into by the Chief Executive Officer under the Act. The Act will apply to protected areas vested in the Conservation Commission or Marine Parks and Reserves Authority, private land, pastoral lease land and other Crown land. Agreements already committed to under the 2003 Burrup and Maitland Industrial Estates Agreement, the 2005 Ord final agreement and the 2010 Yawuru agreement for Broome will be covered by the Act.

The Act will also provide formal recognition of the importance of land and waters to the culture and heritage of Aboriginal people through a new management planning objective that will apply to all lands subject to the *Conservation and Land Management Act 1984* (WA) and the *Wildlife Conservation Act 1950* (WA).

The Bill passed the Legislative Council in 2010 and was introduced to the Legislative Assembly on 6 April 2011.

Magellan Metals – suspension of lead exports through Fremantle Port

On 7 January 2011, the Western Australian government ordered Magellan Metals to suspend lead exports through Fremantle Port, prompting the company to halt operations

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at its Wiluna lead mine. The lead concentrate has been transported by rail to the port in double-lined sealed bags inside sealed shipping containers. The export suspension was imposed after traces of lead were found inside sealed containers bound for Fremantle Port.

Subsequent testing by the Department of Environment and Conservation (DEC) did not find lead contamination at Fremantle Port. A seven week investigation by the Office of the Environmental Protection Authority (EPA) concluded that there was no lead leakage outside of the containers and no threat to public health. The export ban was lifted on 23 February 2011.

The incident has seen WA Environment Minister, the Hon Bill Marmion MLA, order a further investigation into whether Magellan Metals has breached any other conditions imposed under the *Environmental Protection Act 1986* (WA) (EP Act). Interim conditions have been imposed on Magellan Metals whilst the investigation is under way, including a responsibility on the company's managing director to personally report any environmental breaches to the EPA.

The company again suspended its operations when it was discovered in March 2011 that the company had diverted from its approved export rail route between 10 November 2010 and 4 January 2011.

The EPA is currently undertaking a review, pursuant to s 46 of the EP Act, of the environmental conditions imposed on the company and a formal investigation into potential breaches of conditions imposed on the lead export project.

Oakajee port and rail project – EPA approval to extend time to commence construction

On 14 March 2011, the EPA released its advice and recommendations on the proposed Oakajee port and rail development for public comment. The Oakajee development involves the construction of a port 22 km north of Geraldton with the capacity to export 45 M tonnes of iron ore per annum as well as a 570 km railway and associated infrastructure to deliver ore from the mid-west region of Western Australia. The consortium developing the project is backed by Japanese company Mitsubishi and Australian company Murchison Metals.

The EPA has recommended that the project be granted an extension of three years to commence construction under the current approvals. The EPA Chairman Paul Vogel said that Oakajee provided the EPA with an extensive report on how the environment would be protected during the operation and was satisfied that the impacts and the risks are acceptable in light of the measures Oakajee will put in place.

The exclusive rights of the consortium to develop the project were due to expire in March 2011; however the Western Australian Premier Colin Barnett extended Oakajee's exclusive rights to build the infrastructure project from March 2011 to the end of the year. Construction is expected to commence in 2012 with the port to commence operation in 2015.¹

Margaret River coal mine proposal to be rejected

On 21 March 2011, the EPA Board made a determination in relation to Vasse Coal Management's coal mining proposal in Western Australia's Margaret River region. The coal mine was proposed to produce approximately 1.2 M tonnes of coal per annum over a 15–20 year period.

The EPA assessed the proposal at the level 'assessment of proponent information category B', a new level of assessment in the *Environmental Impact Assessment Administrative Procedures 2010* (WA).

This is similar to the previous category of 'proposal unlikely to be environmentally acceptable' and, in effect, the EPA Board's decision is that the coal mining proposal is environmentally unacceptable.

The EPA Board Chairman Paul Vogel said that the Board considered that there is likely to be significant impacts, or risks, from the proposal and even though some of the significant impacts, or risks had a low probability of occurring, the environmental consequences of some low probability events may be so serious, widespread or irreversible that the proposal, taken as a whole, on balance, presents unacceptable risks to important environmental values.

The Board also added that it had formed the view that a more detailed and longer environmental assessment would not alter the Board's current position and the EPA was now

¹ edit.epa.wa.gov.au/EPADocLib/Rep%201387%20Oak%20pt%2014311.pdf (EPA Oakajee Port Development report)

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in the process of preparing an assessment report to the WA Minister for the Environment Bill Marmion recommending against the implementation of Vasse Coal Management's coal mining proposal.

Once released, the EPA report will be open for public appeals, but this does not extend to appeals in relation to the EPA's decision as to the level of assessment.²

Browse LNG project – appeal against clearing permit dismissed

On 15 March 2011, the Western Australian Supreme Court Court of Appeal ruled against an appeal by Joseph Roe over a clearing permit granted in relation to the Browse LNG project proposed to be constructed on the Dampier Peninsula, north of Broome.

The appeal challenged the grant of the clearing permit and the dismissal of an earlier appeal to the State Minister for Environment on the basis the proposal was a 'significant proposal', thereby prohibiting the grant of the clearing permit invalid under the EP Act.

In October 2010, native title claimant Joseph Roe began action to stop the Department of Main Roads and Woodside from clearing native vegetation in the James Price Point region north of Broome. The Woodside permit, to clear up to 25 ha of native vegetation, was granted on 30 July 2010. Mr Roe challenged the grant of the vegetation clearing permit by the DEC on the ground that the Browse

² www.epa.wa.gov.au/EPADocLib/Vasse%20Coal%20Determination%2021311.pdf

LNG precinct proposal was not a 'strategic proposal' and the grant of the clearing permit was prohibited under the EP Act. The State Minister for Environment dismissed all appeals in relation to the Woodside vegetation clearing permit on 7 December 2010.

On 13 December 2010, the Department of State Development (DSD) released for public review the Strategic Assessment Report that it prepared on the Browse LNG precinct project and a supplementary information document addressing the specific issues of marine waste discharge, oil spill modelling, marine benthic primary producer habitat and coastal processes. The DSD Strategic Assessment Report was available for public review for a period of 12 weeks from its release date and the supplementary information document for a period of 6 weeks from its release date.

EPA Chairman Paul Vogel confirmed on 15 December 2010 that the EPA will assess the environmental impacts of the proposed Browse LNG precinct as a 'strategic proposal' after the public comment period has closed and will take into account all public comments and the DSD's responses to those comments.³

³ [decisions.justice.wa.gov.au/supreme/supdcsn.nsf/PDFJudgments-WebVw/2011WASCA0057/\\$FILE/2011WASCA0057.pdf](http://decisions.justice.wa.gov.au/supreme/supdcsn.nsf/PDFJudgments-WebVw/2011WASCA0057/$FILE/2011WASCA0057.pdf) (Roe v The Director General, Department of Environment and Conservation for the State of Western Australia [2011] WASCA 57) [decisions.justice.wa.gov.au/supreme/supdcsn.nsf/PDFJudgments-WebVw/2011WASCA0058/\\$FILE/2011WASCA0058.pdf](http://decisions.justice.wa.gov.au/supreme/supdcsn.nsf/PDFJudgments-WebVw/2011WASCA0058/$FILE/2011WASCA0058.pdf) (Roe v The Director General, Department of Environment and Conservation for the State of Western Australia [2011] WASCA 58)