

The Acts also require under s 6(2) that:

a person or body involved in the administration of an Act must, in exercising powers and functions in relation to the district, have regard to and seek to further the objects of this Act.

Those objects include seeking to protect and enhance the 'special character' of the district areas within the protected regions. The term 'special character' is loosely defined as including a number of character values, such as the:

- rural and natural landscape and visual amenity of the district
- heritage attributes of the district
- built form of the townships as they relate to the district
- viticultural, agricultural and associated industries of the district
- scenic and tourism attributes of the district (s 7(1)).

This measure is intended to ensure that all statutory decision makers make decisions in accordance with the objects of the Act, and exposes decision-makers to judicial review if this obligation is not adhered to.

Since these Acts came into operation, there has been speculation that new, similar Acts could be introduced in the future to protect other significant areas within South Australia, such as Kangaroo Island and the Eyre Peninsula. Given that these areas are outside of the Greater Adelaide Metropolitan Area, it remains to be seen whether further legislative reform in this regard will follow.

Tasmania

by Jessica Feehely

Tarkine national heritage listing rejected

On 8 February 2013, Federal Environment Minister, the Hon Tony Burke MP, rejected the recommendation of the Australian Heritage Council to include 439,000ha of the Tarkine area in north west Tasmania in the National Heritage List. Instead, the Minister announced that a narrow coastal strip along the west coast, comprising approximately 21,000ha and dubbed the 'Western Tasmania Aboriginal Cultural Landscape', would be included in the National Heritage List in recognition of its indigenous heritage values.

The Australian Heritage Council's report to the Minister had recommended inclusion of the whole Tarkine Area in the National Heritage List on the basis of outstanding natural heritage values associated with its magnesite karst systems,

high wilderness values and its demonstrated links with Gondwanan flora. The Council also considered the area, the largest single tract of cool temperate rainforest in Australia, to be one of the most important Tertiary fossil flora sites in Australia.

Minister Burke emphasised the need to balance those values against the constraints National Heritage listing may place on economic development in the region, noting:

This part of Tasmania has the highest unemployment in Tasmania. At a time when I've been right in the heart of dealing with how the Commonwealth helps this state with the downturn that has occurred in forestry, I'm very mindful of anything that can have an impact on jobs.

The Minister stated that he had been unable to find a compromise boundary that could provide appropriate recognition of the heritage values identified by the Heritage Council while still allowing mineral development in the area. Ultimately, the Minister considered that any listing beyond the proposed Aboriginal Cultural Landscape would have 'unacceptable' social and economic consequences, and refused to include the wider area in the National Heritage List.

Conservation groups, and the Chair of the Australian Heritage Council, have condemned the decision.

Details regarding the decision, and the listing of the Western Tasmania Aboriginal Cultural Landscape, are available at www.environment.gov.au/heritage/places/national/western-tasmania/index.html

Tasmanian forests included in World Heritage nomination

The Federal Environment Minister has submitted a nomination to UNESCO proposing to extend the boundaries of the Tasmanian Wilderness World Heritage Area to include nearly 170,000ha of additional forest.

The nominated area includes 120,000ha of forests identified by signatories to the Tasmanian Forest Agreement, including the Styx, Weld and Upper Florentine forests, and additional areas designed to improve the integrity of the World Heritage Area boundary.

The nominated area explicitly excludes the Tarkine, and any areas that would impact on mining in the north-west of Tasmania. The nomination is expected to be considered by UNESCO in June 2013. Details of the World Heritage nomination are available at www.environment.gov.au/heritage/places/world/tasmanian-wilderness/index.html

Legislative Council continues to consider forestry agreement

The Tasmanian Legislative Council is continuing its deliberations in relation to the Tasmanian Forests Agreement Bill 2012. If passed, the legislation would allow the Tasmanian Forests Agreement, negotiated between industry and conservation stakeholders, to progress.

Following a series of public hearings regarding the controversial legislation, the Legislative Council Select Committee released a Final Report outlining a significant number of issues arising from the Bill. Several members of the Legislative Council have proposed amendments aimed at addressing these issues, which have been criticised for moving away from the terms of the Tasmanian Forests Agreement.

After several days of heated discussion, the Government suspended debate on the legislation for several weeks, before resuming in mid-April 2013. The signatories to the forests agreement are considering their position in respect of the proposed amendments, and may abandon their support for the process. The Tasmanian Forests Agreement Bill, the Final Report, submissions received by the Select Committee, and transcripts of committee hearings are available at www.parliament.tas.gov.au/CTEE/Council/Forests.htm.

Sea level rise planning allowances

In October 2012, the Tasmanian Government released a Sea Level Rise Planning Allowances Technical paper, recommending that all planning for coastal areas allow for sea level rise of 0.2 metres by 2050 and 0.8 metres by 2100. Supporting coastal inundation maps for the whole state were also released on the public Land Information Service Tasmania (www.list.tas.gov.au).

The sea level rise allowances currently have no legal force. It is expected that the allowances will be given effect through planning schemes, building legislation and the proposed *Coastal Hazards Code*, however there is currently no mechanism to require the allowances to be incorporated in these documents.

The Technical Paper and other mapping and information regarding the allowances are available at www.climatechange.tas.gov.au.

Single statewide water corporation announced

The *Water and Sewerage Corporation Act 2012* took effect on 1 March 2013. The new legislation provides for the establishment of a single water and sewerage corporation to manage services throughout Tasmania to replace the three regional water authorities, Southern Water, Cradle Mountain Water and Ben Lomond Water. The new corporation is expected to commence operation on 1 July 2013.

Responsibility for water and sewerage services was transferred in 2009 from individual councils to regional water authorities. More recently, local governments have advocated strongly for the further amalgamation of responsibility for service provision, and were supportive of a state-wide corporation in which each local government had an equal share. In its second reading speech in relation to the legislation, the government explicitly ruled out privatisation of water and sewerage services, preferring that the industry remain managed by local government.

The *Water and Sewerage Corporation Act 2012* sets out governance arrangements for the new corporation, but makes few changes to the operational matters, planning considerations and customer protections outlined in the *Water and Sewerage Industry Act 2008*.

Enforcement improved under environmental legislation

On 6 December 2012, amendments to Tasmania's principal environmental legislation, the *Environmental Management and Pollution Control Act 1994 (Tas)* ('EMPCA'), took effect which aim to improve the enforcement tools available to regulators. The amendments include:

- expanding the definition of 'environmental nuisance' to include nuisance resulting from the discharge, disturbance or deposition of a pollutant ('environmental nuisance' was previously restricted to nuisance arising from the 'emission' of a pollutant).
- allowing EMPCA to apply to minor discharges of oil and hazardous substances at sea from small vessels. Previously, discharges from small vessels were not captured by the provisions of the *Pollution of Waters by Oil and Noxious Substances Act 1987* or EMPCA, and went largely unregulated.
- increasing the EPA Board's powers to require additional information during the EIA process, and making it an offence to provide false information.

- confirming that an environment protection notice can be issued to a former owner where it becomes clear that environmental harm is being caused as a result of past activities. The proposed amendments also clarify the extent to which responsibilities under an environment protection notice can be transferred to a new owner or another party.
- confirming that the EPA has power to compel a person to answer questions or provide documents, even where the information may incriminate them. Any information gathered in that manner will not be admissible in any proceedings against a natural person.

New Aboriginal Heritage legislation proposed

In October 2012, the Tasmanian Government released the draft Aboriginal Heritage Protection Bill 2012 for public comment. The Bill, which would repeal the *Aboriginal Relics Act 1975*, represents a comprehensive revision of the way that Aboriginal heritage is assessed and protected in Tasmania. Key aspects of the Bill include:

- establishment of an Aboriginal Heritage Council
- Aboriginal heritage permits are required for activities likely to damage Aboriginal heritage (other than exempt activities, such as single dwellings in residential zones or approved dam works). The Bill proposes time limits and criteria for applications for Aboriginal heritage permits, and allows for appeals to Resource Management and Planning Appeal Tribunal ('RMPAT') or the Magistrates Court.
- provision for endorsement of Aboriginal heritage management plans by the Aboriginal Heritage Council. Where the Council refuses to endorse a management plan, the Minister must take that into account when assessing the plan.
- land use activities likely to impact on Aboriginal heritage must be treated as discretionary developments under the *Land Use Planning and Approvals Act 1993* (Tas) and referred to the Minister
- the Minister must be consulted in relation to any planning instruments affecting an area declared to be of Aboriginal heritage interest
- high penalties for offences involving unauthorised damage to Aboriginal heritage.

While there has been near universal recognition of the need for improved protection of Aboriginal heritage, many submissions in response to the draft Bill have been critical. In particular, the Tasmanian Aboriginal Centre has criticised the lack of Aboriginal involvement in decision

making, noting that most applications will be determined by the Minister rather than the proposed Aboriginal Heritage Council. Planning authorities have criticised the draft legislation for its lack of integration with the existing planning process, creating duplication and confusion.

Submissions in relation to the draft Bill are available at www.dpipwe.tas.gov.au. The government intends to amend the Bill, having regard to comments made in the submissions, and present a final Bill to Parliament by mid-2013.

Special legislation authorises controversial Parliament Square development

In February 2010, planning and heritage works approvals were granted for demolition of a large government building at Sullivans Cove and redevelopment into a government, commercial and residential precinct (known as the 'Parliament Square development'). Members of community group, Save 10 Murray, lodged appeals against both approvals, and the proposal was subsequently subject to a series of determinations by the RMPAT and the Supreme Court. The matter was remitted to the Tribunal in September 2012, and the parties were invited to make submissions regarding the constitution of the Tribunal for the rehearing.

A revised proposal by the developer, Citta Pty Ltd, was also appealed against in late 2010, but adjourned pending the resolution of the earlier appeal. In October 2012, Citta Pty Ltd requested that the second appeal be listed for hearing and hearing dates were set for early 2013.

In response to these appeals, the Tasmanian Government passed the *Parliament Square Planning Permit Act 2012*. The Act provides for the initial planning permit issued for the Parliament Square development to take effect, and authorises the Planning Minister the Hon Bryan Green MHA, to give any approval or consent required under the permit. The Act also provides for any place affected by the proposed development to be removed from the Tasmanian Heritage Register.

Significantly, the Act extinguishes all rights of appeal or review in respect of the planning permit, including future amendments to the permit or consents granted under the permit. The State Government is required to reimburse the legal costs incurred by any person currently involved in unresolved litigation relating to the planning permit.

The *Parliament Square Planning Permit Act 2012* is available at www.thelaw.tas.gov.au. A fact sheet and timeline relating to the Parliament Square development is also available at www.planning.tas.gov.au.