SOUTH AUSTRALIA

CONSTRUCTION INDUSTRY TRAINING FUND ACT 1993

This Act establishes, *inter alia*, a fund to be used to improve the quality of training in the building and construction industry. *Section 24* prohibits a local council from granting building approval until it is satisfied that the levy prescribed in the Act has been paid or that no levy is payable.

DEVELOPMENT ACT 1993

This Act was reported on in the last edition of the AELN. Since then a further draft copy of the *Development Control Regulations 1993* has been distributed and it is likely that the Regulations will be finalised in the next few weeks. The latest information obtained from the *Office of Planning & Urban Development* indicates that the new system will not be operational until early or mid December of this year.

ECONOMIC DEVELOPMENT ACT 1993

The primary object of this Act is to promote economic development in South Australia. The Act establishes the *Economic Development Board* which is given numerous functions under the Act.

The Board has the power, if authorised by the Governor, in relation to *"a specified proposal for expansion or development of industry"* to grant any approval, consent, licence or exemption. In doing so, the Board must follow the same procedures as the original authority would have been required to.

ENVIRONMENT RESOURCES AND DEVELOPMENT COURT ACT 1993

This Act was reported on in the last edition of the AELN. Since that time judicial appointments have been made to the ERD Court. Former National President, *Christine Trenorden*, has been appointed as a Judge of the Court. *Judge Michael Bowering* has been appointed as Presiding Member of the Court.

The Judges of the Court are in the process of preparing Rules. It is likely that the Court will be sitting in early or mid December of this year.

ENVIRONMENT PROTECTION ACT 1993

The *Environment Protection Bill 1993* was reported on in the last edition of the AELN. The *Bill* was finally passed by Parliament in the second week of October. At the date of preparing this update all of the amendments made to the *Bill* were not available. A more thorough report will be provided for the next update. The Act will come into operation next year.

THE HERITAGE ACT 1993

This Act was reported on in the last edition of the AELN. Latest information suggests that the Act will also come into operation in early or mid December of this year.

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QUEENSLAND

ENVIRONMENT PROTECTION BILL 1993

Environment Minister Molly Robson released the draft Environment Protection Bill for public discussion on 1 November, 1993. A detailed discussion of this Bill will be included in the December issue.

TASMANIA

PLANNING AND ENVIRONMENTAL LAW REFORM

The first stage in the reform of Tasmania's planning and environment laws is now almost complete with the passage of new planning legislation through the State Parliament, subject to some amendments requested by the Upper House which are still to be dealt with.

The reforms, which are designed to replace the outdated provisions of the Local Government Act 1962, introduce a package of five pieces of legislation

- The Land Use Planning and Approvals Bill
- The State Policies and Projects Bill
- The Resource Management and Planning Appeal Tribunal Bill
- The Approvals (Deadlines) Bill
- The Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Bill.

The package also provides a new administrative structure for land use planning throughout the State.

LAND USE PLANNING REVIEW PANEL AND SUSTAINABLE DEVELOPMENT ADVISORY COUNCIL

The legislation replaces the existing Town and Country Planning Commissioner by transferring his responsibilities to a new Land Use Planning Review Panel and a Sustainable Development Advisory Council which are both subject to Ministerial direction.

The basic function of the Land Use Planning Review Panel is to review planning schemes and conduct hearings.

The purpose of the Sustainable Development Advisory Council is to review draft Tasmanian Sustainable Development policies; report to the Minister on projects of State significance; and prepare State of the Environment reports.

Both the Review Panel and the Advisory Council are appointed from a range of bureaucratic and private and community interests. As such, it is envisaged that the engine room behind the new structure, which will provide the raw energy for the preparation of State Policies and provide advice, information and research on land use planning issues in general, will continue to be the former office of the Town and Country Planning Commissioner, which is located in the Department of Environment and Land Management.

TASMANIAN SUSTAINABLE DEVELOPMENT POLICIES

The package introduces the concept of Tasmanian Sustainable Development Policies. These policies are to further the objectives of the Resource Management and Planning system of Tasmania, which are basically to promote "sustainable development", which is defined in the legislation as encompassing the needs of future generations, safeguarding the life supporting capacity of the environment and avoiding, remedying or mitigating any adverse effects.

Significantly these objectives are linked to various sections of the legislative package which oblige the fundamental processes of land use planning to be conducted in accordance with the objectives of sustainable development, thereby suggesting that the objectives set out in the legislation may indeed be legally enforceable.

The objective of Sustainable Development Policies is to deal with land use issues of State significance, and to ensure that a consistent and co-ordinated approach is maintained throughout the State with respect to the matters contained in the Policy. This is seen to be necessary because of the traditional powers of the many local councils throughout Tasmania to deal in an ad hoc manner with land use planning issues which necessarily affect more than one municipal area; for example, coastal planning.

State Policies will have the force of law and will apply in each local authority area to the exclusion, if necessary, of any inconsistent provisions in local authority planning schemes.

FASTER APPROVALS PROCESSES

Another major stated purpose of the Legislation is to speed up approvals processes. This is to be done, by providing an integrated assessment process for projects of State significance which are defined as projects which possess at least two of the following attributes

- Significant capital investment.
- Significant contribution to the State's economic development.
- Significant consequential economic impacts.
- Significant potential contribution to Australia's balance of payments.
- Significant impact on the environment.
- Complex technical processes and engineering designs.
- Significant infrastructure requirements.
- High public profile.

Once a project has been declared to be of State significance, an integrated assessment of the project will be undertaken by the Sustainable Development Advisory Council and public representations will be sought.

The Advisory Council will then submit a report to the Minister, who can recommend to the Governor the making of an Order enabling the project to proceed. Normal planning procedures and appeal rights will then cease to apply.

The second way in which the planning process is to be speeded-up is by the introduction of deadlines for decisions on planning applications and a wide range of bureaucratic processes under a large

number of other acts such as the **Environment Protection Act**, the **Fisheries Act**, the **Mining Act** and the **Crown Lands Act**.

One of the more controversial provisions declares that the failure of a planning authority to determine an application for a permit in respect of a use or development which is specified in a planning scheme as discretionary, within the period stated is thereby deemed to constitute a decision to grant the permit on conditions which may be determined by the Appeal Tribunal.

Many commentators have remarked that an inability by a local planning authority to determine a planning application within the specified time limit should in fact lead to a deemed refusal of the application and not a deemed approval.

THE RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL

A new tribunal, The Resource Management and Planning Appeal Tribunal, will be constituted to hear planning appeals and appeals originating under the **Environment Protection Act** 1973, which is also in the process of being reviewed and reformed. The new tribunal will replace the current Planning Appeals Board and the Environment Protection Appeal Board and ultimately extend to the hearing of appeals under fisheries and mining legislation.

(a) Objector Standing

After an initial attempt by the Government to limit the ability of third parties to appeal against planning decisions by limiting appeal rights to persons who not only had lodged an objection but also had a "material interest" in the application, the legislation now provides that, as well as the applicant for a permit any person who made a representation in respect of that application may appeal to the Appeal Tribunal. The "material interest" provisions have been dropped.

Third party representations may be made about applications for discretionary permits, that is applications in respect of the use or development of land which in a planning scheme is stated to be a use or development which a planning authority has a discretion to refuse or permit.

(b) Civil Enforcement

The new legislation also remedies a deficiency in the old Local Government Act and introduces the possibility of civil enforcement proceedings against persons who contravene or fail to comply with the new planning laws. These proceedings will be initiated in the Appeal Tribunal.

OTHER CHANGES

A number of other deficiencies which existed under the old legislation have also been remedied.

- The possibility of subdivision by severance title has now been severely constrained. This was a method by which separate title to blocks of land could be issued without the need to go through the subdivision approval process.
- Subdivision itself now comes within the definition of development. Previously it did not and many local authorities therefore considered that they had no obligation to advertise subdivision proposals for public comment.
- The requirement that as part of the subdivision process stream side or coastal reserves should be retained by the Crown has now been removed due to difficulties regarding maintenance of such reserves.
- The definition of development now includes the carrying out of works and works is defined to include "any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil". This is significant in view of the fact that Tasmania is the only State in Australia which still does not have any land degradation legislation or any other form of legislation which can control how private land owners conduct operations on their own land.
- Local planning authorities may now enter into agreements with owners of land to give effect to the sustainable development objectives of the legislation and to State policies and the objectives of planning schemes. Upon registration of such an agreement, the agreement will attach to the land and thus become enforceable against any future owners of the land.
- The need to produce state of the environment reports has been introduced and becomes the responsibility of the Sustainable Development Advisory Council. Reports must be produced every five years.