

the establishment of a Tasmanian Cultural Heritage Places Register

- planning and building approvals for listed places, and excavation permits
- Heritage Agreements and provision for a wide range of assistance and incentives
- enforcement mechanisms, including stop work orders.

The proposed legislation will include maritime and moveable heritage, cultural landscapes and area conservation. Aboriginal heritage will be dealt with by separate legislation.

Copies of the discussion paper are available from the Department of Environment and Land Management.

AUDITOR GENERAL'S SPECIAL REPORT - MUNICIPAL SOLID WASTE MANAGEMENT

The Auditor General's Office decided to carry out this "value for money" study "because of its current public interest and significance in terms of present and future impact upon our population, the environment and resource sustainability." The audit concluded that on a state wide basis there was a deficit of revenue against expenditure of around \$225 000 (total expenditure approximately \$13.7 million); but this did not include the cost of replacing sites in the future.

Only eight municipalities charged for entry to waste disposal sites; and many sites disclosed breaches of licensing requirements and other deficiencies. Some municipalities had in fact ignored Environment Department directives over a long period of time, yet no prosecutions had been successfully undertaken. It was also found that some 44% of hazardous waste contractors have failed to submit returns according to licence conditions despite repeated reminders.

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Parliament of Tasmania

SOUTH AUSTRALIA

AN ENVIRONMENT PROTECTION AUTHORITY FOR SOUTH AUSTRALIA - AT LAST!

The long-awaited Environment Protection Bill was introduced in the State Parliament on 4

August 1993, one year after a draft Bill had been released for public discussion. In the intervening period, the Government clearly had responded to industry pressure by altering some aspects of the draft Bill. In response to these changes, a group of representatives from the Conservation Council and the Australian Conservation Foundation's Adelaide office, with assistance from the Australian Centre for Environmental Law (ACEL) at the University of Adelaide, prepared three detailed submissions and held meetings with the Minister (Kym Mayes), Government officers, and representatives of the Liberals and Democrats. The end result was the adoption in late October of a much-improved Act, though one which still falls short of conservationist expectations on several scores.

The EPA and Advisory Forum

The Act establishes a six-member Environment Protection Authority which is to administer and enforce the Act's provisions. The Government responded to conservation submissions by providing for one member to be a person with practical knowledge of, and experience in, environmental conservation and advocacy on environmental matters on behalf of the community. It also adopted submissions to expand conservation representation on the Advisory Forum. This 20 member body will include:- 3 persons from conservation organisations, one of whom must be nominated by the Conservation Council;- 1 person representing a local community environment group;- 1 person with experience in community health; and- 1 person with experience in, and membership of, an organisation whose charter included environmental law.

It remains to be seen whether adequate resources will be provided to the EPA to ensure it can perform its functions effectively. At the end of November 1993, only 60 of the projected staff of 90 had been appointed. Funding for staff and other purposes may need to be generated by the EPA itself, yet there is strong industry resistance to increased charges for wastes which would provide the necessary funds, whilst also implementing the polluter pays principle.

RECENT DEVELOPMENTS

Environment Protection Policies (EPP's)

EPP's are an important feature of the new Act, and will have three broad functions:

- to set out matters to be taken into account by the EPA when considering applications of various kinds made under the Act or under the Development Act;
to set out enforceable controls or requirements (eg, clean air or water standards); and
- to set out policies which will be given effect by the issue of environment protection orders.

A detailed procedure for the adoption of EPP's, closely modelled on the process for adopting development plans under the Development Act, will enable public comment to be provided and for public hearings to be conducted (at the discretion of the EPA and the Minister). Like development plans, EPP's may be given interim operation for up to 12 months.

Environmental Authorisations

The First Schedule of the Act contains a long list of 'prescribed activities of environmental significance' which cannot be undertaken without an environmental authorisation in the form of a licence under the Act. This introduces a system of 'integrated' licensing of all types of discharge from a particular plant or site, in place of the current system of separate licences in relation to air, water, noise and wastes.

Works which lead to the construction of a building for use for a prescribed activity are subject to a separate works approval requirement under the Act. However, this requirement will not apply to works for which development authorisation is required under the Development Act. As a result of extensive submissions, provision has been made in the Development Control Regulations which were adopted in early November 1993 for the referral of all applications for development authorisation which involve a 'prescribed activity of environmental significance' to the EPA. Under the Regulations, the EPA has a power of veto over such proposals, or may direct conditions to be attached to any development authorisation granted by the relevant planning authority. The Government had omitted to address this significant matter when it introduced the Bill and the submissions made to it led to significant improvements. Regrettably, these did

not extend to the related subject of third party appeal rights.

Third Party Appeals

The Government insisted on two matters in relation to third-party appeals (ie appeals by parties other than the applicant for an environmental authorisation):

- first, that no such appeals be allowed in relation to licences;
- second, that third party appeals in relation to works approvals be provided under the Development Act, not the EP Act.

The second matter led to a very complicated and unsatisfactory debate. Under the Development Act, third-party appeals are available only for those types of development which are labelled 'Category 3 development' by the regulations under that Act. Minister Kym Mayes stated in Parliament when debating the EP Bill that 'most if not all of the schedule of the [EP] Bill will refer to Category 3 developments'. In fact, many of the 'prescribed activities of environmental significance' listed in the First Schedule of the EP Act will be classified as Category 1 or 2 development, eg general industry or light industry in corresponding general or light industry zones. Such proposals are exempt from full public notification under the Development Act, and consequently, also from third party appeals.

Although this oversight was subsequently acknowledged by the Government, it opposed an amendment moved by the Democrats to rectify the problem. As a result, the Government's own undertaking to 'ensure that third party appeal rights exist for all new development proposals involving prescribed activities of environmental significance' (given in its publicity material accompanying the Bill) was not honoured. This is perhaps the most serious deficiency in the Act.

Enforcement of the Act

The EPA has power to issue environment protection orders to secure compliance with the Act or give effect to an EPP. It can also issue clean-up orders where a person has caused environmental harm by a contravention of the Act. Regrettably, these provisions are not sufficient to treat comprehensively the subject of land contamination. The Government has delayed its proposals for specific legislation on land contamination for almost two years and passed up

the opportunity to address this matter in the EP Act.

A most important aspect of the Act is the provision for civil remedies to be awarded by the new Environment, Resources and Development Court (section 105). These may include orders in the nature of an injunction, or for the payment of damages in relation to personal injury or property damage. The Government steadfastly opposed submissions to give any person the right to bring civil enforcement proceedings, but eventually accepted an amendment moved by the Liberals which allows applications to be made by any person with the leave of the Court. The Court may grant leave if satisfied the proceedings are not an abuse of process, are likely to succeed and are in the 'public interest'. A Democrat amendment to allow standing for any person was not supported by either the Government or the Liberals.

Exemptions

The Act provides for overriding effect to be given to existing indenture legislation which governs the Kimberley-Clark paper mills in the South East and Western Mining's Roxby Downs project. It also provides complete exemptions for certain mining and petroleum activities. These provisions were not in the 1992 draft Bill and clearly reflect the lobbying efforts of industry in the intervening period.

In addition to these specific measures, s38 provides for the EPA to grant exemptions from the application of any specified provision of the Act in respect of a specified activity. Attempts to limit the scope of this broad-ranging provision were made by the Democrats, but ultimately failed when an amendment moved by the Democrats and initially supported by the Liberals was subsequently lost through an agreement reached by the Government with the Liberals.

Conclusions

Numerous other amendments were adopted in response to conservation submissions, including some changes to the Development Act which are designed to emphasise the role of the EPA where major developments which are subject to an EIS are involved. Overall, whilst some important concessions were made by the Government in response to conservation submissions, it rejected some of the most important ones concerning

exemptions, third-party appeals and civil enforcement proceedings.

Most of the significant amendments were moved by the Democrat's Mile Elliott MLC in the Legislative Council. Those that succeeded did so because the Liberals were prepared to support them. Whilst the Democrat's amendment on standing to bring civil proceedings was defeated, the Liberals showed encouraging fortitude in persevering with their own amendment on this matter. The end result is an Act which contains many positive features, but also some significant shortcomings. It remains to be seen whether the new EPA will be given the resource support which is essential to its effective functioning.

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NEW SOUTH WALES

HOME BUSH BAY REGIONAL ENVIRONMENTAL PLAN

The Sydney Regional Plan No. 24 (SREP No 24) relating to the development of Homebush Bay for the 2000 Olympics was discussed in the AELN 3/1993. The final plan was gazetted on 24 September 1993 and took effect from that date.

STATE ENVIRONMENTAL PLANNING POLICY NO. 38 - OLYMPIC GAMES PROJECT

This SEPP was gazetted on 5 November 1993 and took effect from that date. The aims of the SEPP No. 38 are expressed in clause 2 and include facilitating development of Olympic Games projects, assessing the impacts thereof, consultative and advertisement procedures, and development of projects in accordance with ecologically sustainable development.

SEPP No. 38 applies to the Sydney region and all development for the purposes of an Olympic Games project (Cll 4 & 5). The consent authority is designated as the Minister for Planning. However, any such consent may only be granted if the development has been endorsed by the Sydney Organising Committee for the Olympic Games.