

activity outside World Heritage, National Park, National Estate and other conservation initiatives. Native title and the Government's *Ten Point Wik* plan are the most notable. If property rights are to be extinguished or sterilised then just compensation may be payable to those adversely affected. To the extent that *Regional Forest Agreements* derogate or extinguish private property rights then just compensation may be payable to those affected. Although restoring investor confidence the court decision is likely to cause the Government to undertake soul-searching in a number of areas. An issue unresolved is the point at which property is "compulsorily acquired". In the Newcrest decision Justice Gummow said the Commonwealth acquired an "identifiable and measurable advantage" from the sterilisation of Newcrest's mining rights. In the USA although private property rights are protected under the 5th Amendment to the Constitution one Presidential Order provides:

"...regulations imposed on private property that substantially affect its value or use, may constitute a taking (compulsory acquisition)" and that "...undue delays in decision-making during which private property use is interfered with carry the risk of being held to be takings".

Both the High Court and the Federal Government are yet to explore such protection measures but the Newcrest decision suggests Australia is moving in that direction.

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AUSTRALIAN CAPITAL TERRITORY

Inquiry into the Environmental Protection Bill 1997

As part of its inquiry into the *Environment Protection Bill 1997*, on the 11 August, 1997, the Legislative Assembly for the ACT Standing Committee on Planning and Environment hosted a public meeting to maximise the opportunity for public comment on the Bill and to encourage the public to submit written comments.

In mid-September the committee expects to report to the Legislative Assembly.

Major Richard Sharp

Environmental Planner

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Canberra

NEW SOUTH WALES

Environmental Planning and Assessment (Amendment) Act 1997

This Act received the Royal Assent on 10 June 1997 but has yet to commence operation. The Act makes a number of amendments to the *Environmental Planning and Assessment Act 1979* (EPA Act) and the *Land and Environment Court Act 1979* (LEC Act).

This Act inserts sections 104B-104D into the *EPA Act*. These sections seek to remove the possibility that a development consent granted by the Minister will be declared invalid by the Court on the ground that any steps preliminary to the granting of the consent should have been taken by the Minister or any other body.

Section 104B provides that in relation to a development consent granted by the Minister for Urban Affairs and Planning either before or after the commencement of this section, the only two procedural requirements which are mandatory are:

- * A requirement that a development application to carry out designated development and its accompanying documents be publicly exhibited for the minimum period of time.
- * A requirement that a development application to carry out advertised development and its accompanying documents be publicly exhibited for the minimum period of time.

Even where these two steps have not been complied with, the Land and Environment Court may, instead of declaring the consent invalid, make an order suspending the operation of the consent in whole or in part and specify the terms compliance with which will validate the consent.

The terms may include the carrying out of steps again or in a different manner. The Act makes it a duty of the Court to consider making an order of suspension instead of declaring that the development consent is invalid.

In this situation, section 104C provides that the Minister may revoke the development consent whether or not the steps set down by the Court have been complied with. The Minister can then carry out those steps and regrant the development consent with such changes as the Minister thinks appropriate.

The Minister may then apply to the Court for an order that the terms set down by the Court have substantially been complied with and the Court may then make such an order and revoke the order of suspension.

Marine Parks Act 1997

This Act commenced operation on 1 August 1997. It provides for the establishment and management of marine parks in New South Wales coastal waters.

The Objects

The objects of this Act are as follows: