improved opportunities for cycling; and

* reducing the demand for fringe growth.

The new Planning Strategy uses a similar format to the former Planning Strategy and has a section detailing the State government's goals and priorities in respect of the management and use of natural resources. Other sections of the Planning Strategy consider such issues as urban renewal and growth.

ENVIRONMENT PROTECTION (VESSELS ON INLAND WATERS) POLICY

The *Environment Protection (Vessels on Inland Waters) Policy, 1998* became an authorised environment protection policy under the *Environment Protection Act, 1993 (SA)* on 8 January 1998. The Policy seeks to regulate the discharge of waste from boats, yachts, ships and other vessels. The Policy makes it an offence for vessels of particular types (for example, vessels that provide sleeping accommodation and are six metres or more in length and commercial passenger vessels that are six metres or more in length) to be used unless all waste brought onto, or produced on, the vessel is stored in a container from which it cannot escape and the vessel is fitted with a suitable toilet that is connected to a holding tank (subject to a limited exception). Portable toilets that do not provide for waste retention and garbage grinders are not to be brought onto or kept on the vessel. The Policy also makes it an offence for owners or persons in charge of other vessels to use their vessels unless they ensure that no garbage grinder is brought onto or kept on the vessel. They must also ensure that any container used to store waste on the vessel is sealed and that any portable toilet provides for waste retention and is in working order. A person who intentionally or recklessly contravenes any of the above mandatory provisions of the Policy will be guilty of an offence and liable for a fine of up to $30,000. A person who contravenes any of the above mandatory provisions of the Policy will be guilty of an offence and liable for a fine of up to $4,000.

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WESTERN AUSTRALIA

MARINE RESERVES: *ACTS AMENDMENT (MARINE RESERVES) ACT* 1997

This Act, assented to on 10 June 1997 and proclaimed into operation on 29 August 1997, has created a new and separate regime for the creation and management of marine reserves which have previously been managed under the general provisions of the *Conservation and Land Management Act* 1984 (WA) and its two special provisions (ss.13 & 14) which provided for the creation of marine reserves. In essence, the new regime includes the following features.

* There will be three types of marine reserves;
  - ◊ marine nature reserves which have exclusively conservation purposes,
  - ◊ marine parks which will have primarily conservation purposes and a management zoning scheme, including general use areas in which will be permitted commercial activities such as fishing and petroleum exploitation consistent with the protection of sensitive marine life,
  - ◊ marine management areas which will have truly multi-use purposes of conservation, recreation, scientific and commercial activities.
* There will be a Marine Parks and Reserves Authority in which will be vested title to the marine reserves and functions of advising on the management of those reserves.
* There will be a Marine Parks and Reserves Scientific Advisory Committee to provide scientific advice to the Minister and the Authority on issues relevant to the management of the reserves.
* The general planning provisions of Part V of the *Conservation and Land Management Act* will continue to apply to marine reserves.

The restrictions on access to marine reserves is not a simple and comprehensive prohibition of resource exploitation in those areas. Continuing rights may continue to be exercised. Otherwise, there is to be no fishing or petroleum exploration or production in a marine nature reserve. However, the provisions restricting access will not prevent the grant of mining and petroleum tenements

over the reserves. Notice of a petroleum tenement application over the area of a reserve will have to be given to the Minister for Conservation, but grant could proceed and exploration or drilling under the reserve proceed from outside the boundaries of the reserve. Further, mining for minerals could still take place over such areas pursuant to the same scheme that applies to mining in nature reserves under the *Mining Act* by which parliamentary permission is required for the grant of a mining lease and executive government approval is required for the exercise of other tenement rights.

In summary, the new marine reserves regime is a much more sophisticated system which provides areas of greater conservation and areas of more clearly defined multiple use access rights.

ADMINISTRATION OF CROWN LANDS: *LAND ADMINISTRATION ACT* 1997

The *Land Administration Act* was assented to on 3 October 1997 and was to be proclaimed at a later date. The accompanying *Acts Amendment (Land Administration) Act* 1997 has similar status. These Acts are a comprehensive revision of legislation relating to the administration of Crown land in Western Australia and achieve some significant reforms and some consolidation of relevant legislation. There is not the opportunity in this report to review the legislation comprehensively. Only some of the main features of the legislation will be briefly noted.

* The definition of "Crown land" is expanded, most notably to include the coastal waters of the State.
* The Act binds the Crown: s.4.
* There is created a single centralised land titles registration system by which Crown land titles are issued in respect of Crown lands and registered on the Torrens land titles register under the *Transfer of Land Act*. This permits all interests in Crown land, except minerals and petroleum titles, to be registered on the Torrens register in respect of the relevant lands. It will also permit a simpler process of granting interests in Crown land, including by way of subdivision and transfer of Crown land titles.
* Administrative responsibilities under the Act have been devolved to the Minister (Part 2) rather than the Governor, although there are rights of appeal in respect of certain matters to the Governor (Part 3).
* The Minister may create covenants in respect of Crown lands, including covenants of positive obligation. The Minister may also register notices warning of hazards in respect of the lands.
* Reserves of Crown land are to be made under the *Lands Administration Act* but care and control of reserves will be vested in management bodies to operate under their own legislation.
* The processes of amending reserves is made more flexible; with provision for minor amendments by ministerial order alone and major amendments by ministerial order which must be tabled in Parliament for disallowance (Part 4). There is also provision for the Minister to request a management body to submit a management plan for the approval of the Minister.
* There are provisions relating to the dedication of roads and public access routes for public land, including public access routes over private land. (Part 5)
* There are provisions governing the sale of Crown lands and leases, licences and profits a prendre in Crown land. (Part 6)
* The provisions in respect of pastoral leases (Part 7) are enhanced from an environmental point of view. The Pastoral Board is replaced by a Pastoral Lands Board with a membership enlarged to include a person "with expertise in the field of flora, fauna or land conservation management" and an Aboriginal person "with experience in pastoral lands". The functions of the Board under s.95 include

  "(c) to ensure that pastoral leases are managed on an ecologically sustainable basis;

  (d) to develop policies to prevent the degradation of rangelands;

  (e) to develop policies to rehabilitate degraded or eroded rangelands and to restore their pastoral potential".

  Pastoral Leases may be granted for terms not exceeding fifty years. Earlier

proposals to create pastoral leases of perpetual tenure lapsed because of advice that these may be impermissible future acts under the *Native Title Act* 1993 (Cth). Land management duties of the pastoral lessee include (s.108(2)): "The lessee must use methods of best pastoral and environmental management practice, appropriate to the area where the land is situated, for the management of stock and for the management, conservation and regeneration of pasture for grazing". Rent and review of rent will now be assessed by the Valuer-General rather than the Pastoral Board.

* Parts 9 and 10 deal with the compulsory acquisition of interests in land and with compensation for such acquisitions, incorporating provisions from the *Public Works Act* 1902.

POLLUTION CONTROL: CRIMINAL LIABILITIES

ENVIRONMENTAL PROTECTION AMENDMENT BILL 1997

The Bill was introduced into the Legislative Assembly on 21 October and passed by that House on 19 November. It was introduced into the Legislative Council in late November but, as Parliament adjourned for the summer vacation on 27 November and will not be sitting again until 10 March, the bill is unlikely to be debated in the Legislative Council until well into the autumn session.

The most interesting part of the Bill, Part 2, amends Part V of the EP Act for the purposes of establishing a system of tiered offences and strengthening the powers for investigating and apprehending persons committing offences. An important component of that new system of tiered offences is contained in a new Part VIA, Legal Proceedings and Penalties, which sets out a regime of penalties and court orders that may be imposed under the new tiered offences system. The essence of the new system is that the existing serious offences of causing pollution, as well as a breach of ministerial orders and ministerial EIA conditions, are made tier one offences with the highest penalties incurred when those offences are committed intentionally or with criminal negligence (eg. for intentionally causing pollution, maximum of $500,000 or five years imprisonment for individuals, and maximum of $1,000,000 for corporations) and half those penalties incurred when the offences are determined as a matter of strict liability.

Most of the other existing offences (especially the administrative offences such as operating without a requisite licence or breaches of licence conditions) are tier two offences which remain as strict liability offences for which there are lower penalties, though increased substantially from present levels. The remaining offences are designated tier three and include such matters as failure to maintain or interference with anti-pollution devices and various noise offences. These offences may be administered by way of infringement notices for which there are penalties of $5,000.

A person charged with a tier two offence who has co-operated with the Department in the investigation of the offence and has taken reasonable steps to remediate any environmental harm and to ensure that the circumstances of the alleged offence do not arise again may, by decision of the Chief Executive Officer, be given a modified penalty. The modified penalty will be 10% of the maximum fine for that offence if the person charged is a first time offender or 20% if that person has previously been convicted of, or given a modified penalty for, that offence. The consequences of paying a modified penalty are that the court proceedings for a prosecution are terminated and a notice of the modified penalty is given in a daily newspaper and the annual report of the Department. A register of modified penalties is to be maintained.

Another notable feature of the Bill is provision for new powers available to a court to make orders upon conviction. These powers include orders for:

* forfeiture of any thing used or intended to be used in the commission of the offence,
* restoration and prevention of harm to the environment,
* costs, expenses and compensation (including compensation to private persons who have been harmed), and
* the offender to publicise the offence and its environmental consequences and the orders made against that person.

There are two other interesting aspects to the Bill.

First, a new Part VIIB will authorise the Department of Environmental Protection to undertake waste management operations through a body corporate consisting of the Chief Executive Officer of the Department to be constituted as "Waste Management (WA)". The new body corporate will be authorised to manage three existing waste disposal facilities and any other operations which may be approved by the Minister provided that such operations will not be in competition with a like operation that is providing an adequate service.

Secondly, a new s.37A to be inserted in Part III of the Act, Environmental Protection Policies, will authorise the Minister for the Environment by notice published in the *Gazette* to declare that a national environmental protection measure (made under the *National Environmental Protection Act*) specified in the declaration is to be taken to be an approved Environmental Protection Policy with the force of law.

A fuller report on the provisions of the Bill should await its enactment.

Recent Prosecutions

When one views the results of recent prosecutions, one can see the potential impact of the above proposed changes. Three recent prosecutions by the Department of Environmental Protection are referred to.

In the prosecution of *Kalgoorlie Consolidated Gold Mines Pty Ltd* ("KCGM"), decided by Magistrate Michelides at Kalgoorlie on 4 August, KCGM pleaded guilty to a charge under s.49(1) *Environmental Protection Act* 1986 of allowing to be caused pollution. KCGM had allowed mine tailings (hyper-saline mud) to be discharged from a tailings dam at night and the escaping tailings moved over land subject to KCGM's tenement and onto railway reserve land covered with natural vegetation. Damage was sustained to an area of about .2 of an hectare of the vegetation over the period of more than one year, with at least twenty trees dying and other trees yellowing in the canopy. It was admitted that there had been no night inspection of the dam, as there was supposed to be. Such an inspection would have detected the spill much earlier. No explanation was given for the failure to conduct a night inspection. In a plea of mitigation against the sentence, counsel for KCGM portrayed the company as a model mining company that had won awards for its work of extensive mine-site re-vegetation and rehabilitation and that the company had promptly reported the incident, cleaned up and undertaken rehabilitation of the damaged area of natural bush-land at a cost of about $100,000. The Magistrate noted that the maximum penalty under the Act was $20,000 and ordered a $2,000 fine (10% of the maximum) together with $850 in costs to the Crown. By way of comparison with the proposed new liabilities regime, 10% of the maximum penalty for a corporation accidentally allowing pollution (ie. the strict liability offence) will be $50,000.

In the prosecution of *Ertech Pty Ltd and Kirkham*, decided by Magistrate Roberts on 5 September, the first and second defendants were convicted of causing and allowing pollution by burning green wood cleared on a residential development site, the burning of which created a lot of smoke over a period of about 12 hours and affected residential premises within metres. The seriousness of the effects of the smoke seems to have been the main issue considered by the Magistrate in determining the prosecution. Little consideration seems to have been given to the culpability, possibly negligence, of the defendants in lighting and maintaining the fire that caused the smoke. The Magistrate ordered that the company (first defendant) pay a fine of $1,250 (2.5% of the maximum of $50,000) and $7,000 in costs and the individual (second defendant) pay a fine of $250 (2.5% of the maximum of $10,000) and $7,000 in costs. By way of comparison with the proposed new liabilities regime, 2.5% of the maximum penalty for accidentally allowing pollution (ie. the strict liability offence) will be, for a corporation, $12,500 and, for an individual $6,250. However, there should also be the occasion for considering the culpability of the action which led to the pollution and the possibility of much higher penalties should the action be found to be intentional or criminally negligent.

In the prosecution of *Wesfarmers CSBP Ltd*, decided by Magistrate Malone on 6 May 1997, the company pleaded guilty to a charge of breaching a condition of a works approval which permitted a certain level of nitrous oxides in gaseous wastes to be emitted during the start up procedures for a new plant designed to reduce the average level of such emissions. During the commissioning of the new plant in April 1996, the permitted level

of emissions was greatly exceeded for longer than the specified period of startup, despite the presence of alarm systems with lights flashing and overseas experts in attendance. The emission of the gases from the 64 metres high chimney caused a layer of noxious fumes to spread out over residential areas but, because of favourable weather conditions, the fumes dissipated upwards into the atmosphere rather than downwards and there were no complaints of affects on the health or comfort of any person. In the plea in mitigation, counsel for the defendant explained that the failure of the emissions control equipment had occurred because of the circumstances of commissioning the new plant and that, under normal circumstances of start-up, counter-active reactions within the system would have been detected the problem. Further, changes had been made to the system so that this incident could no recur. The new plant was now operating normally and there was a significant reduction in the emission of nitrous oxides. The company had co-operated in addressing the matter with the Department of Environmental Protection, including issuing public explanations of the incident to the local community. The Magistrate noted that the company had eight prior convictions arising out of two prior complaints in 1990 and 1993 and that the maximum fine for a corporation for this offence was $20,000. He ordered a fine of $14,000 and costs to the Crown of $700. By way of comparison with the proposed new liabilities regime, a modified penalty for the same offence on a second or later occasion would be 20% of the maximum fine of $125,000; that is, $25,000.

Water Law Reform

It was noted in the previous issue of the AELN that the Water and Rivers Commission had released discussion papers about proposals for the reform of water law. Some of the proposals have generated much interest and concern, especially among the farming and irrigation communities, and criticism of insufficient time for public consultation. In response, the Commission has produced some supplementary notes about the substantive issues and has explained that public consultation will continue over three phases well into 1998. Phase one of the consultation concluded at the end of November with expiry of the date for public submissions on the discussion papers and the Commission's publication of the notes responding to public concerns. Phase two will continue during the drafting of the legislation until April 1998 and involves the Commission publishing material detailing the reform proposals for public consideration and comment. Phase three is the commencement of the preparation of local rules (an important aspect of the reform proposals), with an initial focus on the areas which local water user groups identify as most in need of change.

Town Planning and Development Act 1928 (WA): Model Scheme Text

In October, the Ministry for Planning released a draft of the new Model Scheme Text which it proposes will be used to guide the making of local planning schemes. The explanatory brochure accompanying the draft Text explains the origin and purpose of the new Model Text in the following terms.

> The form and content of planning schemes is guided by the Model Text. All local schemes will have to comply and follow the Model Text. An up-to-date Model Text is, therefore, vital to the efficient operation of the planning system throughout the State.
>
> The Town Planning Regulations of 1967 originally contained a Model Text. This was removed in 1986 to provide greater flexibility in the format of town planning schemes. Since then, with different local governments producing their own schemes, increasing variations and inconsistencies have arisen between schemes. This has created a complex system which some people find very difficult to understand. It also greatly increases the cost to State and local governments to prepare and administer schemes.
>
> The main purpose of the new Model Text is to achieve greater consistency in the basic legal and administrative provisions of schemes. Other changes are proposed to enable schemes to more effectively address strategic issues, manage growth and change, and promote desirable development.

The brochure goes on to explain that there will be a new focus on strategic planning under the new Model Text and a facility (special control zones) to deal with issues which overlap land use zones.

To ensure that the new Model Text is applied, the Town Planning Regulations will be amended to require that all future schemes (and scheme amendments) will be prepared in accordance with the Model Text.

Reform of the Town Planning Appeals System

In November the Minister for Planning tabled in the State Parliament a report proposing the reform of the town planning appeals system. In essence, the report proposes the abolition of the present bi-furcated appeals system (by which appellants may appeal either to the Minister as advised by a committee or the Town Planning Appeal Tribunal) and its replacement with a single central non-legal appeal body. It is my understanding that broader fundamental issues, like the right of third parties to appeal, have not been considered. State Cabinet has approved the preparation of a Bill to implement the terms of the report. Copies of the report may be obtained from the office of the Minister for Planning.