

RECENT DEVELOPMENTS

COMMONWEALTH

Reform of Commonwealth Environmental Legislation

In early March, the Commonwealth Government released a discussion paper on reform of the Commonwealth's environmental legislation. The paper argues that most of the important Commonwealth statutes relating to environmental matters were enacted in the mid 1970s and now require comprehensive reform. The Government proposes to introduce two new statutes, an Environment Protection Act and a Biodiversity Conservation Act.

The proposed Environment Protection Act aims to implement the principles of ecologically sustainable development through adoption of an efficient environmental impact assessment and approval process. The Environment Protection Act is proposed to replace the existing Environmental Protection (Impact of Proposals) Act 1974.

The proposed Biodiversity Conservation Act will replace the following existing Acts (and the regulations under those Acts):

National Parks and Wildlife Conservation Acts 1975;
Whale Protection Act 1980;
Wildlife Protection (Regulation of Exports and Imports) Act 1982;
Endangered Species Protection Act 1992;
World Heritage Properties Conservation Act 1983.

The Commonwealth also intends to introduce new heritage legislation at a later date. This third new Act will be developed following completion of a co-operative national heritage places strategy currently being developed by the Commonwealth and the States. This new legislation will replace the Australian Heritage Commission Act 1975.

It is unclear whether the Commonwealth intends to introduce legislation into Parliament relating to the above matters in the current term.

Environment Protection Act

The centrepiece of the new Act will be provisions which focus Commonwealth involvement in the environmental assessment and approval process on matters of national environmental significance. The discussion paper identifies the following as matters which may fall within this category:

- World Heritage Properties;
- Ramsar Wetlands;
- Places of National Heritage Significance defined under the finalised National Heritage Places strategy;
- nationally endangered or vulnerable species and communities;
- migratory species and cetaceans;
- nuclear activities including the mining, milling, storage or transport of uranium and the operation of nuclear reactors and the storage, transport and disposal of intermediate to high level radioactive waste;
- activities that have a significant impact on the environment in Commonwealth Waters;
- environmentally significant activities where the Commonwealth is the proponent or which are regulated under the Ozone Protection Act 1989, and
- proposals to import and export hazardous waste under the Hazardous Waste (Regulations of Exports and Imports) Act 1989, and
- Commonwealth actions or decisions affecting the environment outside Australia, such as foreign aid decisions.

Where a bilateral agreement exists between the Commonwealth and a State which covers an activity falling within the above categories, the assessment and approval process in the Environment Protection Act will be replaced by the process outlined in the bilateral agreement.

The triggering process under the Act will involve the Environment Minister determining whether the proposal or activity will have a significant impact on a matter of national environmental significance. The Environment Minister will also be responsible for deciding whether an activity on a Commonwealth place, or for which the Commonwealth has sole jurisdiction, triggers the Act.

If the Act is triggered, the Minister may decide to use any of the following levels of assessment:

- a public inquiry;
- an environmental impact statement;
- a public environment report;
- one-off accreditation of a State or Commonwealth process, and
- no formal assessment required based on the Notice of Referral.

Biodiversity Conservation Act

The Biodiversity Conservation Act aims to introduce an improved, integrated framework for the conservation and sustainable use of Australia's biodiversity. The most recent initiatives relate to:

identifying and monitoring Australia's biodiversity and promoting bioregional planning;

ensuring that the Commonwealth's protected area system covers the full range of IUCN categories from strict nature conservation for multiple use;

recognising that the matters of national environmental significance which trigger the assessment and approval process in the Environment Protection Act include world heritage properties, ramsar wetlands, nationally endangered and vulnerable species and endangered ecological communities, and migratory species;

providing for conservation agreements to protect biodiversity on private and public land, and

- increasing the emphasis on biodiversity considerations in the assessment of proposals for the sustainable use of wildlife.

EDITORS NOTE: These three anticipated pieces of legislation have now been released as the Environment Protection and Biodiversity Conservation Bill 1998. This Bill will be reviewed in a subsequent issue.

National Environment Protection Measures Bill 1998

The object of this Bill is to make National Environment Protection Measures agreed to by the States, Territories and Commonwealth apply to Commonwealth places, and to activities performed by, or on behalf of, the Commonwealth and Commonwealth Authorities.

WESTERN AUSTRALIA

AMENDMENTS TO THE ENVIRONMENTAL PROTECTION ACT 1986 (WA) AND THE ENVIRONMENTAL PROTECTION (LANDFILL) LEVY ACT 1998 (WA)

Significant amendments to the *Environmental Protection Act 1986 (WA)* are currently being implemented by the Western Australian Government. Amendment is occurring in two phases - phase 1 has already been assented to and phase 2 is currently being drafted.

PHASE 1

Phase 1 involved the implementation of the *Environmental Protection (Landfill) Levy Act 1998 (WA)*, assented to on 30 April 1998 and the *Environmental Protection Amendment Act 1998 (Act No 14 of 1998)* assented to on 21 May 1998. Both Acts came into effect on 1 July 1998. These amendments significantly strengthen the enforcement provisions of *Environmental Protection Act*.

The *Environment Protection Amendment Act* strengthens environmental protection measures in Western Australia through: