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 the strengthen the enforcement provisions of *Environmental Protection Act.*

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

reform of offences and penalties;
provision for the implementation of National Environmental Protection Measures;
the managing of waste management facilities;
headpowers to control the sale of woodheaters and firewood; and
the collection and disbursement of the landfill levy.

Part 2 of the *Environmental Protection Amendment Act* provides for substantial reform to offences and penalties under the *Environment Protection Act* including:

an increase in maximum penalties with a ten-fold increase for some penalties (Schedule 1);
a three tier penalty system, with Tier 1 offences being the most serious (section 4);
in relation to Tier 1 offences, provision for a maximum penalty of $1 million for companies and $500 000 and a five year jail term for individuals. There are twelve Tier 1 offences listed. The amendments also provide for a defence of "due diligence" and "reasonable precautions" for Tier 1 offences;
in relation to Tier 2 offences, provision for a maximum penalty of $125 000 for companies and $62 500 for individuals. The amendments also provide for a "modified" penalty were the alleged offender has taken reasonable steps to minimise and remedy any adverse environmental effects and ensured that the offence does not re-occur (section 99A). There are thirty six Tier 2 offences listed;
in relation to Tier 3 offences, provision for a maximum penalty for three violations to $5 000 for corporations and individuals. The amendments also empower inspectors to issue fines for minor Tier 3 offences (sections 99J and 99K). There are eleven Tier 3 offences listed; and
provision for the court to issue orders in addition to or in place of fines. WA courts may now order, for example, that the convicted offender forfeit to the Crown things used or intended to be used in the commission of an offence, publicise the offence and its environmental consequences (section 99ZA(1)(a)) or complete an environmental community service order (section 99ZA(1)(c)).

The amendments also provide for the implementation of National Environmental Protection Measures (NEPMs) in Western Australia where either:

- the Minister declares such measures to be an approved Environmental Protection Policy with the force of law (section 37A); or
- regulations are made to this effect (section 72(5)).

Once NEPMs have been incorporated by either method, the Chief Executive Officer of the WA Department of Environmental Protection will be required to ensure that works approvals and licences are consistent with them, given that they are approved environment protection policies; *Environment Protection Act 1986* (WA), section 60(1). Also note that the first method of implementation adopted by WA is similar to the Victorian model, which provides that the Governor-in-Council may, by order, incorporate a NEPM into a State environmental protection policy or industrial waste management policy; *National Environment Protection (Victoria) Act 1995*, section 67.

Section 110L of the *Environmental Protection Amendment Act* establishes the "Waste Management (WA)" (which is the Chief Executive Officer of the Department of Environmental Protection) as a body corporate. Waste Management (WA) will carry on waste management operations for the collection, transport, storage, treatment or disposal of waste at Mt Walton East and Forrestdale. Under the Act Waste Management does not require a licence in order to carry out waste management operations (section 110M).

The Act also provides headpowers to regulate the sale of wood heaters and firewood. The WA Government has proposed that regulations will require that all domestic wood heaters sold in WA to comply with the relevant Australian standard. Further, under the regulations it will be an offence to sell firewood with a moisture content higher than 20 per cent. These regulations will be released for public comment shortly.

The *Environmental Protection (Landfill Levy) Act 1998* (Act No 14 of 1998), introduces a landfill levy, payable on all waste generated and disposed of in the Perth Metropolitan area. Provisions for the collection and disbursement of the levy has been incorporated into the *Environmental Protection Act.* Pursuant to section 6 of the *Environmental Protection (Landfill Levy) Act* if the levy is imposed in respect of licensed premises, the holder of the licence is liable to pay the levy. Levy monies will be paid into the Waste Management and Recycling Fund, established by section 110 of the *Environment Protection Amendment Act* and will be spent on studies, education, incentive schemes to promote and implement waste reduction and recycling.

PHASE 2

The second phase of the amendments will be implemented through the *Environmental Protection Bill 1998* (WA), which is currently being drafted and is likely to be introduced into the WA Parliament by the end of 1998. Three discussion papers on the proposed amendments were released last year and a consultation draft of the Bill will also be released before its introduction into Parliament. Some significant changes likely to be included in the Bill are:

the enunciation of environmental principles to guide the EPA and the CEO of the Department;

making environmental harm an offence with provision for a defence where the harm is authorised under a specified approval process such as a planning approval, mining licences and approvals by the Soil and Land Conservation Commissioner;

strategic assessment to provide greater long term certainty for development proposals;

- improved licences and works approvals to provide more flexible conditions;

improved progressive 'pollution abatement notices';

waste management provisions, to introduce policies and objectives to encourage waste reduction and to introduce a state waste management strategy; and

provision for the identification, notification, investigation and clean up of contaminated sites.

Acts Amendment (Marine Reserves) Act 1997

This Act, came into operation on 29 August 1997 and has created a new and separate regime for creating and managing marine reserves previously created under ss.13 & 14 the *Conservation and Land Management Act* 1984 (WA), and managed under the general provisions of that Act. The new regime is a much more sophisticated system which provides areas of greater conservation and more clearly defined multiple use access rights

In essence, the new regime includes:

(a) three types of marine reserves;
- marine nature reserves which have exclusively conservation purposes,
- marine parks which have primarily conservation purposes and a management zoning scheme, including general use areas which allow for commercial activities such as fishing and petroleum exploitation consistent with the protection of sensitive marine life,
- marine management areas which will have multi-use purposes of conservation, recreation, scientific and commercial activities.

(b) a Marine Parks and Reserves Authority in which will be vested title to the marine reserves, as well as the function of advising on the management of those reserves;

© 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.

Except for continuing rights which may be exercised, fishing or petroleum exploration or production in a marine nature reserve is prohibited. 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 must be3. given to the Minister for Conservation. Nevertheless, the grant, and exploration or drilling under the reserve, could proceed from outside the boundaries of the reserve. Moreover, 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*: that is, pursuant to parliamentary permission in the case of the grant of a mining lease, and executive government approval for the exercise of other tenement rights.

Environmental Protection Amendment Bill 1997

The Bill was passed by the Legislative Assembly on 19 November 1997, and is unlikely to be debated in the Legislative Council until well into the autumn session.

Significantly, Part 2 of the Bill 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 those offences. Part VIA of the new system, Legal Proceedings and Penalties, sets out a regime of penalties and court orders that may be imposed under the new tiered offences system. The new system is as follows:

1. Existing serious offences of causing pollution, as well as a breach of ministerial orders and ministerial EIA conditions, constitute tier one offences, which incur the highest penalties when they are committed intentionally or with criminal negligence. Only half those penalties are incurred when the offences are determined as a matter of strict liability.

2. Most of the other existing offences, in particular, administrative offences (such as operating without a licence, or breaches of licence conditions) are tier two offences which are strict liability offences, incurring lower penalties, though they substantially dwarf present levels. A person charged with such an offence who has cooperated with the Department in its investigation, 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 remaining offences are tier three offences, and include such matters as failing to maintain or interference with anti-pollution devices and various noise offences. These offences may be administered by way of infringement notices with penalties of $5,000.

The Bill also empowers a court to make orders upon conviction. They include:

- forfeiture of anything 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.

WA Regional Forest Agreement Consultation Paper

On 25 May 1998, the Federal Environment Minister and the WA Minister for the Environment released a joint WA Commonwealth paper, "Towards a Regional Forest Agreement". The Regional Forest Agreement (RFA) process began two years ago in Western Australia, and this consultation paper represents the final phase. A range of approaches are provided by which to establish a long term RFA between WA and the Commonwealth. Specifically, the paper proposes that Western Australia's RFA will endure for 20 years between the State and Commonwealth governments in relation to the future use and management of the forests of WA's south-west. Three new management options are suggested for WA's forests, with two of them decreasing the area of native forest available for logging. The agreement will be finalised following the consultation period and it is expected to be signed in 1998. A copy of the paper can be viewed at http://www.rfa.gov.au.

Establishment of Two New Environmental Councils

Several Environmental Councils have also recently been established this year in Western Australia. On 4 April 1998, the WA Environmental Minister announced the establishment of the Western Australian Greenhouse Council (WAGC). The WAGC will provide advice to various technical panels

from sectors such as transport and energy. It will also provide Government with advice and support on various matters, including:

- achievement in WA of the objectives and targets of the National Greenhouse Strategy and the United Nations Framework Convention on Climate Change;
- co-ordination of WA's contribution to the national greenhouse gas inventory;
- strategies for monitoring and reporting on the implementation of the National Greenhouse Strategy and the WA Greenhouse Strategy;
- climate change policies and programs in other jurisdictions; and
- methods of informing and raising awareness about climate change and greenhouse response in the community.

Further, on 15 May 1998, the WA Environmental Minister announced the establishment of the Youth Environment Council. It is proposed that the key role of the Council will be to inform the Minister of issues that young people feel are important and comment on environmental issues. Other roles of the Council will include the provision of information to young people on how to become involved in environmental projects and the establishment and maintenance of links with relevant organisations and groups on environmental matters. The Council will include 10 persons between 13 and 17 years old and members will be selected from applicants who have demonstrated interest and commitment to environmental issues. Queries concerning membership of this Council can be directed to the Office of the WA Minister for the Environment.

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 local planning schemes. The form and content of planning schemes are guided by the Model Text. All local schemes will have to comply and follow the Model Text. In the absence of a Model Text (after it was removed in 1986 from the Town Planning Regulations of 1967), different local governments produced their own schemes. Consequently, increased variations and inconsistencies have arisen between 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. There will be a new focus on strategic planning 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.

NEW SOUTH WALES

Contaminated Land Management Act 1997

This Act was introduced on 14 November 1997 and received the Royal Assent on 17 December 1997. It has yet to commence operation, but is expected to do so by 1 September this year. The Act introduces a comprehensive regime for identifying, assessing and managing contaminated sites in New South Wales.

Some of the key features of the Act include the following:

Significant Risk Sites

Several of the EPA's duties and powers under the Act depend whether the EPA has reasonable grounds to believe that there is a "significant" risk of harm to human health or the environment. This includes the EPA's power to make declarations and issue orders to investigate and remediate contaminated sites. Sites which are not a significant risk may still be investigated by the EPA.

Duties to Report Contamination

The Act imposes two duties to report contamination. Firstly, any person who has reason to believe that their activities may have contaminated land in such a way as to present a significant risk of harm must notify the EPA in writing. Breach of the duty attracts very substantial criminal penalties. The second duty is imposed on any owner of land who has any reason to believe that any activity on the land may have contaminated it (whether before or during the owner's ownership of the land) in such a way as to present a significant