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

risk of harm. Similar offences and penalties apply.

Hierarchy of Liability

The Act establishes a hierarchy of liability for contamination by creating a category of "appropriate persons" upon which the EPA can serve investigation or remediation orders. The "appropriate person" includes not only a person who had principal responsibility for the contamination, but also the owner of the land, whether or not the owner caused the pollution, as well as the "notional owner" of the land, which includes a person who has vested rights (not merely a contingent interest) in the land, though exceptions to this apply. Those who incur costs (including the EPA or a public authority) may, under the Act, recover their costs from other parties who were responsible for the contamination.

Protection of the Environment Operations Act 1997

This Act received Royal Assent on 19 December 1997, but is not expected to commence operation until September or October 1998. The Act consolidates the legislation relating to air, soil, noise and environmental offences. Importantly, the Act also contains a comprehensive set of enforcement powers for the EPA, local councils and members of the public.

The Act is extensive and complex. Some of the key features of the Act include:

Protection of the Environment Policies

The Act provides for making the Protection of the Environment Policies ("PEPs"), which include a wide variety of measures aimed at ensuring protection of various features of the environment. The EPA, local councils, public authorities and even the relevant Ministers are required to take into account the provisions of relevant PEPs when exercising their functions.

Single Licence

The Act establishes a single licensing mechanism which covers staged approvals for construction, as well as a conditional licence. Thus a single streamlined licence will cover the construction and operating stages of an activity. The EPA will licence activities which are likely to have significant environmental impacts.

Auditing

Mandatory environmental audits may be required as a condition of a licence where the appropriate authority reasonably suspects that the holder of the licence has, on one or more occasions, contravened the Act, the regulations or a licence condition, and the contravention has caused, is causing or is likely to cause, harm to the environment.

Reporting

The Act imposes a general duty to notify relevant authorities (either the EPA or the local council) as soon as practicable in relation to a pollution incident which causes or threatens material environmental harm. The duty is imposed on all occupiers of premises whether or not they hold a licence. A failure to report a pollution incident is a serious offence with a maximum penalty for companies of $250,000 (with a further $120,000 for each day the offence continues), and a maximum penalty of $120,000 for individuals (with a further $60,000 for each day the offence continues).

Increased Tier 2 Fines

Tier 2 offences will now have a maximum penalty for companies of $250,000 (with a further $120,000 for each day the offence continues), and a maximum penalty of $120,000 for individuals (with a further $60,000 for each day the offence continues). Courts have been given new, wider powers to order the offender to prevent and restore any harm to the environment, to allow recovery of cost, to confiscate profits and to force publication of the offence and its consequences.

Environmental Planning and Assessment Amendment Act 1997

This Act received the Royal Assent on 19 December 1997 and is expected to commence operation on 1 July 1998. This Act proposes some of the most significant reforms to NSW planning legislation since the introduction of the *Environmental Planning and Assessment Act 1979*.

The Act introduces new categories of development and revises the approval process so as to achieve a more organised and simplified development assessment process. The Act also amends the *Local Government Act 1993* and integrates building approvals and subdivision controls into the development assessment process. A single application for a "development consent" under the EPA Act will incorporate consent for building and subdivision works. An applicant will still be able to stage the approvals if it so desires.

Separate approvals for water supply, sewerage and drainage works, waste management, community land, and other activities, will not be required under the *Local Government Act 1993*, if a development consent is granted under the EPA Act and the consent indicates that the matters required to be considered under the *Local Government Act 1993* have been taken into account. However, pollution control licences and other natural resource licences will continue to be required separately.

The Act proposes different assessment procedures for different types of development: local development; complying development (which will not require consent provided that it is certified as complying with certain predetermined criteria), and state significant development. There are five generic heads of consideration in determining a development application, as well as comprehensive best practice guidelines to assist in this determination. The assessment processes marks a further shift away from judging developments against a prescriptive check list to an approach requiring a more professional and qualitative assessment of environmental factors.

Pollution Control Amendment (Load-based Licensing) Act 1997

This Act was introduced on 13 November 1997 and received the Royal Assent on 17 December 1997. It has not yet commenced operation. The Act amends the *Pollution Control Act 1970* to enable the implementation of a load-based licensing scheme.

It was originally intended that the load-based licensing scheme would be implemented under the *Protection of the Environment Operations Act*. However, the Government preferred to introduce the scheme under the existing framework. Thus when the *Protection of the Environment Operations Act* commences operation the scheme will be transferred to that Act. The load-based licensing scheme may result in increases in fees for pollution control licences. This Act is expected to commence operation once the load-based licensing protocols for each industry sector have been finalised and the appropriate fees determined.

Fisheries Management Amendment Act 1997

This Act was assented to on 19 December 1997, however, as of 1 May 1998, only Schedule 5 had commenced operation. The Act amends the *Fisheries Management Act 1994* with respect to threatened species conservation, commercial fisheries management, recreational freshwater fishing, special fisheries trust funds, charter fishing boats and amends consequentially certain other Acts.

Road and Rail Transport (Dangerous Goods) Act 1997

This Act received Royal Assent on 9 December 1997 and commenced operation on 20 April 1998 (excluding Schedule 1.3 which has not yet commenced). The Act regulates the safe transport of dangerous goods by road, as part of the system of nationally consistent road transport laws.

The Act has major implications for those who transport, or who use contractors to transport, dangerous goods by road or rail.

Native Vegetation Conservation Act 1997

The Native Vegetation Conservation Act (NVC) was assented to on 16 November 1997 and commenced operation on 1 January 1998. The Act consolidates existing legislative controls over clearing native vegetation and protected land, including those found in the:

- State Environmental Planning Policy No.46 ("SEPP 46");
- Soil Conservation Act 1938;
- Western Lands Act 1901;
- Forestry Act 1916.

These other Acts will continue to operate, with the exception of the SEPP 46 which is repealed, but will no longer incorporate controls on land clearing.

The Act will apply to landholders (ie those who either own land, are in lawful occupation or possession of land, or have lawful management or control of land) who undertake or intend to undertake the clearing of native vegetation or protected land.

The Act applies the development consent process under Part 4 of the *Environmental Planning and Assessment Act 1979*. The Act also provides for preparation of regional vegetation management plans, which prevail over any other environmental planning instrument. Native vegetation clearing on land not subject to a native vegetation management plan (which does not have the status of State protected land) must be undertaken in accordance with development consent. The exception is where a relevant native vegetation code of practice, or regulation, has been made pursuant to the Act, in which case clearing must be undertaken in accordance with the code or regulation. Clearing of State protected land must be undertaken in accordance with development consent or a

relevant regulation made pursuant to the NVC Act (there are currently no regulations). No further consent need be obtained where the landholder has an authority to clear protected land under the Soil Conservation Act 1938. However, such an authority is subject to the NVC Act's provisions.

The Act also provides for property agreements between landholders and the Government. Property agreements, unless expressly stated, do not operate to exclude development consent requirements for clearing native vegetation protected land. These agreements are enforceable and, once registered, become binding on successors in title to the relevant land.

Under the Act, the Director General of the Department of Land and Water Conservation can cause stop-work and remedial orders to be issued to prevent and remedy contravention of the NVC Act. Failure to comply with an order is an offence under the Act and incurs a maximum penalty of $110,000 and an $11,000 daily penalty (the maximum penalties provided for offences under the Act).

The Act makes specific provision for corporate offences and establishes that directors and managers of corporations are potentially liable for the same offences unless they can establish certain statutory defences. The most practical defence is exercising due diligence to avoid the contravention. Appeal is available to the Land and Environment Court.

NSW Coastal Policy 1997

The 1997 NSW Coastal Policy focusses on the need to reconcile the rapid population growth currently being experienced in coastal areas with the need to conserve what remains of valuable ecosystems. The policy's central focus is the ecologically sustainable development of the NSW coastline.

This focus is reflected in a large number of strategic actions relating to coastal planning and management, including identification and facilitation of potential opportunities across all industry sectors for the sustainable use and development of coastal resources and future residential development. It also requires development proposals to conform with specified design and planning standards to control height, setback and scale to ensure public access and that beaches and foreshore open spaces are not overshadowed.

The definition of the coastal zone adopted for the 1997 policy has been expanded from the 1990 Coastal Policy, to include coastal estuaries, lakes, lagoons, islands and rivers. The policy applies to both urban and non-urban areas along the NSW coast outside the Greater Metropolitan Region. In urban areas, the policy applies to all new developments and publicly owned lands. The policy, however, has no impact on the existing use rights of residential (or other) developments, nor does it apply in the urban areas of the Sydney, Newcastle, Illawarra and Central Coast regions.

The 1997 Coastal Policy is Government policy and all New South Wales State Government agencies and local councils are obliged to take account of it when preparing their own policies and programs. The Coastal Council will monitor and review implementation of the Coastal Policy. A range of mechanisms exist to remedy non-compliance with the policy, including the ability to "call-in" development proposals under s.101 of the *Environmental Planning and Assessment Act 1979* for determination by the Minister for Urban Affairs and Planning, and the use of stop work and conservation powers by the Minister for the Environment under the *National Parks and Wildlife Act* and *Threatened Species Conservation Act*. The EPA may also issue and enforce licences and, if necessary, prosecute under the *Environmental Offences and Penalties Act*.

SOUTH AUSTRALIA

Water Resources

Following a lengthy review by the South Australian Department of Environment and Natural Resources (now the Department for Environment, Heritage and Aboriginal Affairs), the new *Water Resources Act 1997* came into operation on 2 July 1997.

This Act is a significant reform of the supply and management of South Australian water resources. The Act repeals the Water Resources Act 1991 and the Catchment Water Management Act 1995 and implements a comprehensive regime for managing of water resources and catchments.