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# Global and regional environmental issues

Dear Readers,

The 2002 World Summit on Sustainable Development closed on 4 September with United Nations Secretary General Kofi Annan stating This Summit will put us on the path that reduces poverty while protecting the environment, a path that works for all peoples, rich and poor, today and tomorrow.

These thoughts have been echoed by the Australian Government. The Minister for the Environment, Dr David Kemp has stated that Australia has made contributions to important global outcomes, namely sustainable development in developing countries. (Media Release 5 September 2002) Australia is reported to be contributing \$355 million in the 2002-2003 FY to address governance in developing countries as part of a billion dollar aid program.

Whilst acknowledging many environmental issues have now attained global prominence, the aim of the NELR 2002 Conference is to refocus attention on regional environmental issues in Australia. Entitled *Environmental Law in Australia ~ Empowering the Community* the conference will run from Thursday 31 October to Saturday 1 November in Lorne ,Victoria.

The National Executive encourages all members to attend to support the work of NELR in promoting discussion about environmental laws within Australia. Details of the conference topics are on the back cover.



Rachel Baird  
National Editor

# NELR Editors

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## *NATIONAL EDITOR:* Rachel Baird

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Sessional lecturer and PhD candidate,  
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Rachel Baird has been a member of NELA since 1996 (in Qld, the ACT and now Victoria!) and has been involved with the Victorian State Executive since late 1999. She became the National Editor in late 2000.

She holds degrees in Arts and Law from Queensland University and a Masters of Law (Environment) from QUT. She has an interest in the law of the sea, in particular the prevention of marine pollution and natural resource management.

Rachel has worked in both government and private practice. In her past life she was a military legal officer and has worked at some stage in nearly every state and territory in Australia.

Rachel is currently lecturing in environmental law at the University of Melbourne and conducting research on the management of Australia's remote fisheries.

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## *NEW SOUTH WALES EDITOR:* Dr Nicholas Brunton

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Partner, Henry Davis York

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Nicholas Brunton has been a member of NELA and state editor since 1992.

He has degrees in Law and Geography from Macquarie University and received a PhD from the University of Sydney in 1998. His thesis examined the law and policy relating to coastal water pollution in Australia.

Nicholas currently practices in the areas of planning, environment, valuation, property and commercial law. He is also kept busy providing guest lectures at both Sydney and Macquarie Universities.

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## *QUEENSLAND EDITOR:* Leanne Bowie

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Head of the Environmental Law Practice, Minter Ellison

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Leanne Bowie has been the Queensland editor for four years.

Leanne holds degrees in Arts and Law (Honours) from the University of Queensland. She has specialised in environmental and planning law, working for both the private sector (heavy industrial, mining and general commercial) and state and local government.

She is also a member of the Queensland Law Society's planning and environment committee and the Queensland Mining Council's environment committee.

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## *VICTORIAN EDITOR:* Jennie Slatter

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Environmental Protection Officer, EPA Victoria

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Jennie Slatter has recently become the Victorian state editor. Jennie holds a Bachelor of Applied Science degree in Environmental Assessment and Management from the University of Newcastle and is currently undertaking a Masters in Environmental Law at the University of Sydney (part-time).

Jennie worked in private environmental consulting for seven years period to joining EPA Victoria in 2001. She also worked for two years in the environmental department at an open-cut coal mine in the Hunter Valley.

Jennie is a member of the Victorian Planning and Environmental Law Association (VPELA).

*SOUTH AUSTRALIAN EDITOR: Tiana Nairn*

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Senior Policy Officer,  
Department for Environment and Heritage (South Australia)

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Tiana Nairn has been involved with NELA since 1996 and is the Secretary of the South Australian Division. She is currently a Senior Policy Officer in the Environment Legislation Branch of the Department for Environment and Heritage. Tiana has worked previously as an Associate with Jamie Botten & Associates, a specialist environment and planning firm in Adelaide, and as a Senior Environmental Officer at the South Australian Department for Transport, Urban Planning and the Arts.

Tiana holds degrees in Law (Hons) and Science (Jurisprudence) from the University of Adelaide. Her honours thesis examined how ecologically sustainable development is being promoted within South Australia's planning and development control system.

*TASMANIAN EDITOR: Frances Scherrer*

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PhD Candidate, The University of Tasmania

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Frances Scherrer has recently become the Tasmanian state editor. Frances holds degrees in Law and Science (Chemistry) from the University of Tasmania, and a Master of Environmental Laws from the University of Sydney.

Frances has worked in private practice in the areas of environment, planning and local government law. She has lectured in environmental law at the University of Western Sydney and undertaken lobbying work in Canberra for the Australian Conservation Foundation on trade and environment issues. Frances is currently undertaking research into trade and environment issues and participates in the public law teaching program at the University of Tasmania.

*WESTERN AUSTRALIAN EDITOR: Aidan Kelly*

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Aidan Kelly has been a member of NELA since 1994 and he has recently become the West Australian state editor. Aidan holds degrees in Science and Law, both from Murdoch University.

He has worked for both government and private practice. Previous experience includes employment as an environmental assessment and policy officer for the Northern Territory Government (Department of Planning and Environment) and a senior policy officer with the West Australian Government (Department of Resources Development) in the area of environmental policy and legislation. He currently practices in the area of resources and environmental law with Freehills Property and Environment section in Perth.

*NATIONAL, COMMONWEALTH & ACT EDITOR: John Ashe*

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Environmental Consultant

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John Ashe has been involved with NELA since 1993 and is currently the Treasurer of the ACT Division. John holds degrees in Economics and Business Administration and a Master of Environmental Law from the Australian National University.

He worked previously as an Assistant Secretary in the Environmental Assessment Branch of Environment Australia. He has been involved in environmental impact assessment and policy and legislative reviews.

# written contributions and letters to the Editor

Written contributions to the *National Environmental Law Review*, by way of case note, book review or article are welcomed by the editorial board.

Please send contributions to you state editor in the first instance. They will review contributions and forward them to the national editor. State editorial contact details are on the preceding pages.

We hope that the NELA website will be up and running later this year. Detailed information on the form and content of the submissions will then be available online. In the interim please refer to the Australian Guide to Legal Citation (Melbourne University Law Review Association Inc 1998) as an illustrative style guide. As a general guide, articles should be between 3,000-5,000 words. Articles are expected to conform to standard conventions of legal writing.

Please note that due to changes in the NELR design and production process, footnotes are required to be presented as endnotes. This will assist layout of the Review and minimise the margin of error when articles are imported into the design software.

Acceptance of written work in the NELR does not in any way indicate an adoption by NELA of the opinions expressed by authors. Authors remain responsible for their opinions, and any defamatory or litigious material and the Editor accepts no responsibility for such material.

Letters to the Editor are also welcomed. Please forward these to:

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# recent developments

## *Heritage Legislation Amendments Reintroduced*

On 27 June 2002 the Government re-introduced, in the House of Representatives, a package of three Bills which amend the current Commonwealth heritage protection regime. Originally introduced in December 2000, the Bills lapsed with the calling of the November 2001 federal election. They are the:

- , Environment and Heritage Legislation Amendment Bill (No 1) 2002
- , Australian Heritage Council Bill 2002
- , Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002.

The Bills are similar to those introduced in 2000 but amended to allow for the listing of heritage places overseas and to implement the Government's election commitments in relation to the Register of the National Estate and the adoption of best practice heritage management by Commonwealth agencies. The Bills:

- , establish the Australian Heritage Council, as the successor to the Australian Heritage Commission, to provide independent, expert advice to the Minister on the identification, conservation and protection of places on the proposed National Heritage List and Commonwealth Heritage List
- , establish a list of National Heritage Places (The National Heritage List) comprising places of national heritage significance, potentially including overseas sites such as Anzac Cove and the Kokoda Trail, but not including places of purely State or local significance
- , establish a list Commonwealth Heritage Places (the Commonwealth Heritage List) comprising sites of heritage significance on Commonwealth land
- , amend the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) to identify places on the National Heritage List as matters of national environmental significance, thereby making such places subject to the environmental assessment and approval processes under that Act
- , impose requirements on Commonwealth agencies in relation to Commonwealth Heritage Places.

The Government has argued that the Bills will provide for substantive protection for heritage places of national heritage significance and will overcome deficiencies in the existing legislation, which relies on procedural safeguards and indirect triggers such as foreign investment.

Environmental organisations have welcomed those elements of the proposals that strengthen heritage protection but have criticised other elements, especially the proposal that the Commonwealth no longer have a role in protecting places not on the National or Commonwealth Heritage Lists.

In December 2000 the Senate referred the original Bills to the Senate Environment, Communications, Information Technology and Arts Reference Committee, which reported in May 2001. The Committee's report opposed the proposal to confine the Commonwealth's heritage protection role to places on the proposed National and Commonwealth Lists. It also opposed the proposal to establish the proposed Australian Heritage Council with weaker powers than the existing Australian Heritage Commission. It recommended that the Register of the National Estate be retained and put forward a number of measures relating to Indigenous heritage.

The minority report by Labor Senators acknowledged that there are strengths in the proposed legislation, but said that overall the proposals are a significant step backwards. It was sympathetic to concerns raised in submissions to the committee about incorporating heritage protection within the framework of the EPBC Act, the future of the Register of the National Estate, separating the assessment and listing functions, and the perceived downgrading of the Australian Heritage Commission.

The minority report by Government Senators supported the Government's proposals, but considered that there may be grounds for giving the Council a more proactive role in relation to public education and promotion of heritage conservation.

### *National Environment Protection Council Act Amendments*

(See also *National Environmental Law Review* No 4/2001, 6)

The National Environment Protection Council Amendment Bill 2002, introduced in the House of Representatives on 26 June 2002, amends the *National Environment Protection Council Act 1994* (the Act) in order to:

- , simplify the process for making minor variations to national environment protection measures (NEPMs)
- , require five-yearly reviews of the Act
- , allow the NEPC Service Corporation to provide support and assistance to other ministerial councils.

The first two amendments put into effect recommendations arising from the review of the Act by Dr Don McMichael in 2000-2001. The third arises from the incorporation of the National Environment Protection Council (NEPC) into the Environment Protection and Heritage Council (see below).

Consistent with provisions in the Intergovernmental Agreement on the Environment (1992), the NEPC was established, as part of cooperative arrangements by the Commonwealth, States and Territories for the development of NEPMs. Mirror legislation in the States and Territories complements the Act.

To date the NEPC has made six NEPMs, relating to ambient air quality (July 1998); movement of controlled waste between States and Territories (July 1998); the National Pollutant inventory (July 1998); assessment of site contamination (December 1999); used packaging materials (July 1999); and diesel vehicle emissions (June 2001). An NEPM on air toxics is being developed.

In June 2001 the Council of Australian Governments (COAG) agreed, as part of a more general restructuring of ministerial councils, to incorporate the NEPC into the new Environment Protection and Heritage Council. However, the NEPC retains a separate identity, with statutory powers and functions.

### *Renewable Energy (Electricity) Act Amendments*

The Renewable Energy (Electricity) Amendment Bill 2002, introduced in the House of Representatives on 27 June 2002, amends the *Renewable Energy (Electricity) Act 2000* in relation to:

- , clarification of definitions, including those related to eligible renewable energy sources, components of a power station, relevant acquisition of electricity and penalty charges
- , extension of authorised officers to include officers appointed by the Commonwealth and by State and Territory Governments
- , the capacity of the Renewable Energy Regulator to vary certain decisions; suspend entitlements, including the accreditation of a power station in certain limited circumstances; and gather information
- , inclusion of administrative review provisions covering decisions by the Regulator to take action to vary or suspend.

The Bill also amends the *Administrative Decisions (Judicial Review) Act 1977* to clarify the avenues of appeal in relation to assessment decisions under the *Renewable Energy (Electricity) Act 2000*. Application and transitional provisions are also included in the Bill.

### *EPBC Act Developments*

#### *Bilateral Agreement Signed with Western Australia*

On 20 August 2002 the Commonwealth and Western Australian Environment Ministers announced the signing of a bilateral agreement which accredits Western Australia's environmental assessment processes for the purposes of the EPBC Act. Accreditation applies to Public Environmental Reviews and Environmental Review and Management Programmes under the *Environment Protection Act 1986* (WA).

The agreement means that proposals that are subject to both Commonwealth and WA jurisdiction will be subject to a single assessment process conducted under the WA Act. Such proposals will, however, still require approval by the Commonwealth Environment Minister.

The Federal Minister for the Environment and Heritage Dr David Kemp said that the agreement accredits the WA system for environmental assessment against national best practice benchmarks. These are prescribed in the *Environment Protection and Biodiversity Conservation Regulations 2000*.

The agreement will come into effect following passage of the Environment Protection Amendment Bill 2000 (WA).

The agreement is available at  
<[www.ea.gov.au/epbc/assessmentsapprovals/bilateral/index.html](http://www.ea.gov.au/epbc/assessmentsapprovals/bilateral/index.html)>.

A bilateral agreement is already in place with Tasmania. Dr Kemp said he expected bilateral agreements with other States and Territories to be settled shortly.

### *Audit of EPBC Act Assessment Process*

The Commonwealth Auditor-General has begun an audit of the environmental assessment processes under the EPBC Act. The audit will focus on the efficiency and effectiveness of administrative systems and compliance with the bilateral agreements and approvals sections of the Act. Inclusion of the audit in the Audit Office's work program reflects the significant regulatory impact of the Act on large numbers of development projects across Australia and criticism of delays in decision making and consequential impact on the cost or viability of projects. There is also criticism of a lack of enforcement of requirements under the Act. The Audit Office expects to table its report in the Autumn 2003 Parliamentary Sittings.

### *Exemption from Export Requirements for Fisheries*

Five Australian fisheries have been exempted from export permit requirements under the EPBC Act (Part 13A) because they have been able to demonstrate that they are being managed in an ecologically sustainable way. They are the Commonwealth Heard Island and McDonald Islands Fishery, the Queensland Spanner Crab Fishery, the Tasmanian Rock Lobster Fishery, the Tasmanian Abalone Fishery and the Western Rock Lobster Fishery. Other Commonwealth and State fisheries are to be assessed by the end of 2003.

These assessments are being conducted under the EPBC Act in accordance with the Commonwealth's *Guidelines for the Ecologically Sustainable Management of Fisheries*. The assessment process seeks to ensure that target stocks (including byproduct) are not overfished, that bycatch and protected species are not threatened and that there is no unacceptable impact on the broader marine ecosystem. This reflects a shift of focus in fishery management from protecting target species from overfishing to one that seeks to manage the total impact of fishing on the environment.

### *Senate Inquiry into Environmental Regulation of Uranium Mining*

The Senate has established an inquiry into the environment regulation of uranium mining in light of concerns about environmental incidents at uranium mines in the Northern Territory and South Australia. The Senate Environment, Communications, Information Technology and the Arts Reference Committee will conduct the inquiry, which is to report by 5 December 2002. Its terms of reference are:

The regulatory, monitoring and reporting regimes that govern environmental performance at the Ranger and Jabiluka uranium operations in the Northern Territory and the Beverley and Honeymoon in situ leach operations in South Australia, with particular reference to:

- (a) the adequacy, effectiveness and performance of existing monitoring and reporting regimes and regulations
- (b) the adequacy and effectiveness of those Commonwealth agencies responsible for the oversight and implementation of those regimes
- (c) a review of Commonwealth responsibilities and mechanisms to realise improved environmental performance and transparency of reporting.

*House of Representatives Inquiry into Employment in the Environment Sector*

The House of Representatives Standing Committee on Environment and Heritage is conducting an inquiry into employment in the environment sector. This follows a request by the Federal Minister for the Environment and Heritage, Dr David Kemp. The terms of reference are:

- , the current contribution of environmental goods and services to employment in Australia
- , the future potential growth, including barriers and opportunities for growth of environmental goods and services and impact on employment
- , current status and future requirements for an appropriately skilled workforce
- , appropriate policy measures that could encourage the further development of the environmental goods and services sector
- , information and reporting systems that would support the uptake of environmental goods and services to enhance overall business performance and development of the sector.

The OECD has defined the environmental goods and services industry as consisting of activities which produce goods and services to measure, prevent, limit, minimise or correct environmental damage to water, air and soil, as well as problems related to waste, noise and ecosystems. The Standing Committee has indicated that environmental goods and services can therefore be broadly interpreted to include such activities as production of pollution reduction equipment, environmental consultants and employees in the public sector involved in national park management, as well as related activities such as tourism and conservation and environmental management in agriculture, mining and manufacture.

The Committee has commented that the role of Indigenous land managers is likely to become increasingly important in environmental conservation and management. Also, the utilisation of Indigenous skills in land management and traditional knowledge in biodiversity, bioprospecting and biotechnology could become important sources of income and engagement for Aboriginal and Torres Strait Islander communities. The Committee has also noted that in many landscapes farmers will increasingly be seen as providing environmental management services in the way in which they husband their land.

*House of Representatives Inquiry into Future Water Supplies for Australia's Rural Industries and Communities*

The House of Representatives Standing Committee on Agriculture, Fisheries and Forestry is conducting an inquiry into future water supplies for Australia's rural industries and communities. The inquiry arose from a request by the Minister for Agriculture, Fisheries and Forestry, Warren Truss. The terms of reference are:

- , the role of the Commonwealth in ensuring adequate and sustainable supply of water in rural and regional Australia
- , Commonwealth policies and programs in rural and regional Australia that could underpin stability of storage and supply of water for domestic consumption and other purposes
- , the effect of Commonwealth policies and programs on current and future water use in rural Australia
- , Commonwealth policies and programs that could address and balance the competing demands on water resources
- , the adequacy of scientific research on the approaches required for adaptation to climate variability and better weather prediction, including the reliability of forecasting systems and capacity to provide specialist forecasts.

## *Great Barrier Reef Developments*

### *MOU on Protection of Water Quality in the Great Barrier Reef*

On 13 August 2002 the Prime Minister, John Howard, and the Queensland Premier, Peter Beattie, signed a memorandum of understanding (MOU) to protect water quality in the Great Barrier Reef from land-based pollution. Under the MOU the Commonwealth and Queensland Governments undertook to develop a Water Quality Protection Plan for the Reef by the end of 2002, including action to improve water quality in rivers and streams which flow into the Great Barrier Reef Marine Park.

Research over the last fifteen years has identified increasing pollution loads in water entering the Reef, including agricultural pesticides and heavy metals, with a consequential significant impact on the Reef.

### *Record Fines for Illegal Fishing Operations*

Record fines have been imposed on two commercial fishermen for illegal fishing operations in the Great Barrier Reef Marine Park. Darren John May and Corey James Jukes were prosecuted in the Rockhampton Magistrates Court on 13 August 2002 for illegal fishing operations in a Marine National Park B Zone, commonly referred to as a Green Zone. May was fined \$27,500 and court costs, and Jukes was fined \$6000 and court costs. The offences occurred in November 2001.

The Chair of the Great Barrier Reef Marine Park Authority (GRMPA), Virginia Chadwick, said that the prosecutions were the first under a new provision inserted in the *Great Barrier Reef Marine Park Act 1975* in July 2001. Maximum penalties under the new provision are \$220 000 for an individual and \$1.1 million for a company. The highest fine for illegal commercial fishing before this was \$5000.

### *New World Heritage Protection Committees Created*

The Commonwealth, New South Wales and Queensland Environment Ministers announced on 9 August 2002 the creation of two new committees to advise the three governments in relation to the Central Eastern Rainforest Reserves (CERRA).

CERRA is a World Heritage Area which covers 50 reserves from the Barrington Tops in New South Wales to the Scenic Rim in Queensland. The area is managed by State Government agencies in the two States.

The Community Advisory Committee will have 15 members and will advise on community issues relating to the management, planning and use of the area. Professor Richard Braithwaite will chair the Committee.

The Technical and Scientific Advisory Committee will provide advice on scientific research priorities and developments in science relevant to the area. Professor Roger Kitching will chair the Committee.

For further information see the web site <[www.ea.gov.au/heritage/whatsnew/index.html](http://www.ea.gov.au/heritage/whatsnew/index.html)>.

### *Research Program for Biodiversity Hotspots*

The Federal Minister for the Environment and Heritage, Dr David Kemp, announced on 20 August 2002 the establishment of a new research program for biodiversity hotspots. The new program, Dr Kemp said, will identify regions of Australia that should be considered priority areas for Natural Heritage Trust projects due to the richness of their biodiversity, presence of rare or threatened species or where the need for managing the conservation values of an area is particularly acute. The Threatened Species Scientific Committee will undertake the research.

## *Sustainability Developments*

### *Report Against Headline Sustainability Indicators for Australia*

Environment Australia has released *Are We Sustaining Australia? A Report Against Headline Sustainability Indicators for Australia*. The report provides data against 24 headline sustainability indicators, and is intended to set a baseline against which future reports will show trends.

The indicators in the report aim to measure national performance against the three core objectives set down in the National Strategy for Ecologically Sustainable Development (NSESD). The report's overall conclusions are that Australia is making progress in relation to some aspects of the three core objectives but progress against other aspects is not clear.

Copies of the report are available from Environment Australia's Community Information Unit (phone 1800 803 772).

### *Sustainability Assessment Framework for Local Agenda 21*

Environment Australia has prepared *Local Sustainability Framework for LA21* to assist local governments to assess their progress towards sustainability in accordance with Local Agenda 21. Local Agenda 21 is the local government expression of Agenda 21, and recognises the important role of local government in achieving sustainability.

For further information see the EA web site <[www.ea.gov.au/esd/la21/framework/index.html](http://www.ea.gov.au/esd/la21/framework/index.html)>.

### *Sustainability Data Base Under Development*

The Sustainability Reporter will be a web-based public information resource providing information on corporate sustainability and social responsibility. The project is being developed by the Melbourne-based social and environment research group Sustainable Investment Research Institute (SIRIS) with Federal Government funding. When completed, the database will provide information on the sustainability performance of the 300 largest companies listed on the Australian Stock Exchange.

For further information see <[www.sirisdata.com](http://www.sirisdata.com)>.

## *Productivity Commission Research Studies*

The Productivity Commission released in June 2002 a staff research paper, *Creating Markets for Ecosystem Services*. The paper examines how newly defined property rights have been used to create markets in Australia and the United States. It provides practical examples of how the creation of markets for ecosystem services can be successful if a number of conditions are met. Necessary conditions include a good understanding of the associated scientific processes and an ability to enforce the newly established property rights at a reasonable cost.

Schemes analysed in the paper include tradeable permits to control saline water discharges (Hunter River Salinity Trading Scheme); auctions for biodiversity conservation grants (Victorian Bush Tender pilot); and offset arrangements to limit the net loss of wetlands (US wetland banks).

Other projects in progress include:

- , an international benchmarking study on arrangements for defining, allocating and enforcing water rights
- , a research project on the implications of genetically modified organisms for Australian trade
- , a commissioned study of industries in the Great Barrier Reef catchment and measures to address declining water quality.

### *Environmental Management in the Wine Industry*

On 23 August 2002 the Federal Minister for the Environment and Heritage, Dr David Kemp, signed an Eco-Efficiency Agreement with the South Australian Wine and Brandy Industry Association (SAWB) and the Winemakers Federation of Australia (WFA). The agreement is the first of its kind for the winemaking industry and is supported with funding of \$100 000 from the Federal Government and \$290 000 from SAWB. Under the agreement, SAWB and the WFA will undertake a range of activities designed to promote improved environmental practices in the industry.

### *Valuing Fisheries: An Economic Framework*

Senator Ian Macdonald, the Federal Minister for Forestry and Conservation, launched on 19 July 2002 the book by Professor Tor Hundloe, entitled *Valuing Fisheries: An Economic Framework*. Based on a project funded by the Fisheries Research and Development Corporation, the book provides concepts and examples to apply in valuing fisheries and to consider competing claims, for example, between commercial and recreational fishers.

### *Guidelines for Protecting Indigenous Places and Values*

The Australian Heritage Commission has released *Ask First: A Guide to Respecting Indigenous Heritage Places and Values*. The publication aims to avoid unintended damage to Indigenous heritage places by providing guidelines for consultation with Indigenous communities.

Ask First is available online at  
<[www.ahc.gov.au/infores/publications/indigenousheritage/index.html](http://www.ahc.gov.au/infores/publications/indigenousheritage/index.html)>.

### *Kakadu Plan of Management*

The current plan of management for Kakadu National Park will cease to have effect in March 2004, and the Kakadu Board of Management and the Director of National Parks propose to prepare a new plan of management for the Park.

Members of the public have been invited to comment on the proposal, by 31 October 2002.

For further information see <[www.ea.gov.au/parks/publications/kakadu-pom-draft.html](http://www.ea.gov.au/parks/publications/kakadu-pom-draft.html)>.

### *Transport Ministers Approve Action to Reduce Transport Emissions and Greenhouse Gases*

On 8 August 2002 the Australian Transport Council (ATC) (made up of Commonwealth, State and Territory Ministers) approved a National Strategy for Lowering Emissions from Urban Traffic and a National Action Plan to support the Strategy. The Ministers noted that the National Strategy is the first agreed national approach driven by the transport sector to reducing greenhouse emissions.

The National Action Plan will build on a range of activities already underway in each State and Territory. ACT Minister for Urban Services, Bill Wood, said that the Strategy is expected to result in:

- , a linking together of transport services for both people and freight to improve timeliness, reliability, access and safety
- , a reduction in the number of car trips
- , a move towards a pay as you use approach to all transport so that the community understands the true cost of their travel choice
- , a reduction in emissions from vehicles
- , improvements in land use planning to help reduce transport emissions
- , better funding approaches for a greener transport system.

### *Applying Market-Based Instruments to Natural Resource Management*

The Natural Resource Management Council (comprising Commonwealth, State and Territory environment and agriculture ministers) has established a \$10 million program to examine how market mechanisms can be used to conserve and sustain Australia's natural resources. The program will provide funding to run pilot projects testing the uses of market mechanisms such as trading schemes, auctions and price signals to encourage better management of natural resource issues.

The Federal Minister for the Environment and Heritage, Dr David Kemp, said that The Council is keen to explore the potential of the market to encourage action to reduce salinity, improve water quality and conserve biodiversity.

The National Market-Based Instruments Pilots Programs is being implemented in two phases. In the first phase \$5 million will be allocated to pilot projects over about two years. If this is successful, a further \$5 million may be allocated to further pilot projects. The program is part of the National Action Plan for Salinity and Water Quality.

For further information see <[www.napswq.gov.au](http://www.napswq.gov.au)>.

### *NGO Statements on Corporate Environmental Sustainability*

A number of Australian environmental NGOs have signed a Statement of Common Purpose in relation to corporate environmental sustainability. The statement has been prepared against an increasing trend by the corporate sector to use the language of sustainability

The signatories agree that some progress has been made by corporate Australia in moving towards practices that are environmentally and socially sustainable. However, they maintain that the changes to date are inadequate to address the serious, and potentially irreversible, environmental problems confronting the planet. The statement sets out an agreed cooperative approach by the signatories aimed at improving corporate environmental performance.

The Australian Conservation Foundation (ACF) has also released a discussion paper, *Corporate Environmental & Social Responsibility: A Law Reform Approach*. The paper sets out a number of law reform initiatives that could be implemented at the international level and in Australia to entrench the link between good corporate governance and corporate environmental and social responsibility.

Copies of the statement and the discussion paper are available at the ACF website <[www.acfonline.org.au](http://www.acfonline.org.au)>.

### *ACF Discussion Paper on Rights and Responsibilities in Land and Water Management*

The ACF has released a discussion paper, *Rights & Responsibilities in Land & Water Management*, that sets out the ACF's position on water access rights and land clearing. The paper argues that, whereas private rights are already well defined, the rights of the environment remain poorly defined, and landholder responsibilities around environmental and downstream impacts are poorly articulated or acknowledged. Also, historically as private rights have been strengthened, these have invariably come at the expense of the environment. In the ACF's view there is now an urgent need to create a new balance between sustainable land and water use and environmental protection.

ACF opposes expansion of existing rights and entitlements in water and vegetation and rights to compensation per se for environmental regulation. ACF accepts that legitimate equity demands a cost sharing solution and that a transition towards ecological sustainability will require financial assistance (structural adjustment), the cost of which should be founded on (1) application of the polluter or impactor pays principle, and (2) contributions of funds from both Commonwealth and State governments. The paper argues that effective resolution of this debate also requires consideration of broader strategic directions in public environmental policy in order to achieve a shift towards sustainable use. Building on these arguments, the paper puts forward a range of proposals for achieving a better balance between land and water use and environmental protection.

The paper is available at the ACF website <[www.acfonline.org.au](http://www.acfonline.org.au)>.

### *National Packaging Covenant Under Review*

The consulting firm GHD has been commissioned to review the effect that the National Packaging Covenant is having on waste management practices. The review is analysing the action plans and annual reports of more than 530 signatories to the Covenant.

The National Packaging Covenant is a self-regulatory agreement between industries in the packaging chain and all spheres of government for the management of packaging waste in Australia. It was signed in August 1999.

Further information about the Covenant is available via the website at <[www.ea.gov.au/industry/waste/covenant.html](http://www.ea.gov.au/industry/waste/covenant.html)>.

### *Decision to Wind Up the Australian Minerals and Energy Environment Foundation*

In a statement on 5 July 2002 the Chairman of the Australian Minerals and Energy Environment Foundation (AMEEF), Jerry Ellis, said that AMEEF Board had decided to wind up the affairs of the foundation immediately. AMEEF was founded in 1991 and has pursued a range of activities in relation to environmental performance in the minerals and energy sector, including annual excellence awards. Mr Ellis said that the mining industry had advised AMEEF that the industry's preference was to work directly with the community and the NGO sector.

### *Planning and Land Bill 2002*

On 27 June 2002 the Minister for Planning, Simon Corbell, tabled legislation to establish a new Planning and Land Authority to manage the Territory's planning and land functions. The Bill implements an election promise made before the Legislative Assembly election in October 2001.

The proposed authority will have responsibility for the planning, leasing, land administration, development assessment and building control functions currently managed by the Planning and Land Management Group in the Department of Urban Services. The Authority will also be responsible for the policy aspects of land development, and will incorporate the responsibilities of the present Commissioner for Land and Planning.

Mr Corbell said that the Authority will have the power to make development decisions in its own right rather than as the Minister's delegate, and day-to-day decisions will be free from ministerial or other political involvement.

The Authority will be led by a Chief Planning Executive and staffed by public servants. It will be advised by a new expert Planning and Land Council of up to seven appointees with expert qualifications and experience covering a range of disciplines. The Council will provide advice to both the Minister and the Authority.

The Bill also provides for the return of land development in the ACT from the private to the public sector by the creation of a Land Development Agency. The Agency will be established as a corporation empowered to develop land, carry out works for the development and enhancement of land, and to undertake strategic and complex urban development projects. A Land Development Board, composed of up to seven members, will manage the Agency.

The Legislative Assembly has referred the Bill to the Standing Committee on Planning and Environment.

For further information contact the ACT Planning and Land Development Taskforce on (02) 6207 1789.

### *Draft Heritage Legislation Released*

On 29 August 2002 the ACT Chief Minister Jon Stanhope tabled an exposure draft of the Heritage Bill 2002. The Bill provides for stand-alone legislation governing heritage in the ACT, and follows a review last year, which identified areas where ACT heritage legislation could be improved.

The draft Bill:

- , strengthens the role and profile of the Heritage Council, and provides for the Council to be responsible for changes to the Heritage Register rather than the Territory Planning Authority
- , streamlines the recognition and registration process
- , proposes new controls for stronger protection and maintenance of heritage places and objects.

The consultation process runs until the end of November 2002, and will include public workshops to be held in mid-October.

The draft legislation is available at Environment ACT's website at <[www.environment.act.gov.au](http://www.environment.act.gov.au)>.

### *Towards A Sustainable ACT: A Discussion Paper*

The ACT Government has released for public comment *Towards A Sustainable ACT: A Discussion Paper*. The paper puts forward for discussion:

- , a policy framework defining sustainability
- , guiding principles and approaches to decision making
- , an assessment of where the ACT currently stands in terms of the social, economic and environmental dimensions of sustainability
- , a proposed vision and three supporting goals for a sustainable Canberra
- , a set of primary and secondary indicators for measuring progress towards sustainability.

The proposed sustainability framework is seen as an important first step towards a sustainable ACT, which will provide broad direction for the ACT Government and its agencies, as well as business and community organisations. It is also seen as influencing other important initiatives which are in development the Canberra Spatial Plan, the Social Plan and the Economic White Paper, which together comprise the Canberra Plan (see below).

Further information and copies of the paper are available from the Office of Sustainability (02) 6205 0617 or at <[www.act.gov.au/sustainability](http://www.act.gov.au/sustainability)>.

Public comments are sought by 11 October 2002.

### *The Canberra Spatial Plan*

The ACT Government is preparing a Canberra-wide planning framework the Canberra Spatial Plan to guide the use of land and the environs for the next 25-30 years. The Canberra Spatial Plan forms part of a strategic framework for Canberra called the Canberra Plan. Two other components the Canberra Social Plan and the Economic White Paper are in preparation. *Towards A Sustainable ACT: A Discussion Paper* (see above) provides an overall sustainability framework for the Canberra Plan.

The Canberra Spatial Plan seeks to respond to the economic, social and environmental needs and challenges facing the ACT and the region in the 21st century by considering:

- , the future urban form of Canberra
- , how sustainability will affect development patterns
- , how economic development will affect the physical layout of the city
- , the role of town centres. especially Civic
- , how land use planning and transport planning can be better integrated and public transport promoted
- , what aspects of the natural and built environment should be maintained and protected
- , how population growth will affect the use of space in the city.

To assist community consultation on the Canberra Spatial Plan, the Government released in July 2002 *Your Canberra Your Future Changes and Challenges*, and will be organising a series of public meetings, workshops and other consultations over the coming months.

Copies of *Your Canberra Your Future Changes and Challenges* are available at ACT Government shopfronts, ACT Government libraries, Planning and Land Management (PALM) and the PALM website <[www.palm.act.gov.au](http://www.palm.act.gov.au)> or by phone (02) 6207 5127.

### *Public Transport Futures Feasibility Study Announced*

On 27 August 2002 the Minister for Planning, Simon Corbell, announced the appointment of Halliburton KBR Pty Ltd to undertake the ACT Government's Public Transport Futures Feasibility Study. The study will be a key input into the development of the Sustainable Transport Plan being developed in parallel with the Canberra Spatial Plan (see above).

Mr Corbell said that the study will develop a comprehensive understanding of the demand for public transport in Canberra, and will enable informed decisions about improvements to the public transport system within the context of the strategic objectives of a sustainable city.

The strategy should comprise a range of elements including roads, public transport, parking, bicycles, pedestrians, travel demand management, transport regulation, land use planning, and integrated investment assessment, Mr Corbell said.

Consultations for the study will involve a series of workshops that will include key stakeholders. The final report is due by mid-2003.

### *OECD Report — Urban Renaissance Canberra: A Sustainable Future*

The Organisation for Economic Cooperation and Development (OECD) has released its evaluation of Canberra, one of six cities being studied as part of the OECD's international Urban Renaissance study series. *Urban Renaissance Canberra: A Sustainable Future* examines Canberra's potential to be a sustainable city, which takes the initiative and realises its potential. The report says we must envision a city able to:

- , maximise its competitiveness in a global economy
- , strengthen social cohesion and empower communities
- , sustain quality, diversity and the character of place while reconciling partnership and leadership
- , achieve flexibility in decision-making
- , manage urban growth both at the centre and periphery
- , adopt an integrative strategy that reconciles economic, social and environmental objectives
- , foster more sustainable practices.

The OECD report is being used as an input to the development of the Canberra Spatial Plan (see above).

For further information contact PALM on (02) 6207 2936.

### *ACT Legislative Assembly Inquiry into Renewable Energy*

The ACT Legislative Assembly's Standing Committee on Planning and Environment is conducting an inquiry into options for a renewable energy strategy for the ACT. The inquiry is to have particular reference to the feasibility of options for increasing the proportion of renewable energy consumed in the ACT using existing or emerging technologies such as solar, wind, mini-hydro, biomass and geothermal, from facilities within the ACT region.

In addition to specific technologies, the committee has been asked to report on:

- , the feasibility of renewable energy resources providing the Territory's energy needs
- , the appropriateness of setting targets for renewable energy use
- , any other strategies to reduce the consumption of fossil fuels in the ACT.

The Standing Committee has invited expressions of interest in delivering papers at a conference it intends to hold as part of its inquiry into renewable energy, which it expects will be held in October 2002.

For further information, contact the Committee Secretary on (02) 6205 0199.

### *Action Taken to Protect Yellow Box/Red Gum Grassy Woodland*

ACT Planning Minister, Simon Corbell, announced on 6 August 2002 that the sale of 28 hectares of residential land at East O'Malley will be deferred until the first half of 2003. The Government has accepted a recommendation from the Commissioner, Dr Joe Baker, to defer the sale to allow for possible changes to the development control plan. The Commissioner had recommended that the sale be delayed so that a strategy for managing the ACT's yellow box and red gum woodland could be examined as a whole under the reviewed action plan.

Mr Corbell said that the East O'Malley site will now be considered in the review of the action plan for yellow box/red gum grassy woodland (Action Plan 10). The review is expected to be completed by April 2003.

Mr Corbell commented that previous reviews of Action Plan 10 had resulted in 70 per cent of the area of East O'Malley, at present zoned residential, being incorporated into the Canberra Nature Park. The Government will be proceeding immediately to protect this 62 hectares of yellow box/red gum grassy woodland with a variation to the Territory Plan.

On 20 August 2002 Mr Corbell tabled a formal change to the Territory Plan to protect yellow box/red gum grassy woodland sites at Tuggeranong Hill, Mount Majura, and Mulligan's Flat and at the Aranda Snow Gum site. These variations were the subject of Variation 182 and were endorsed by the Legislative Assembly's Standing Committee on Planning and Environment in its report No 6 of August 2002.

### *Land and Environment Court Bill 2002*

This bill will introduce changes to the operations of the Land and Environment Court. The changes follow a review of the Court by a committee established last year by the Government. The bill makes the following changes:

- , The Court will be able to deal with minor planning matters by way of an on-site hearing by a single commissioner;
- , Court hearing matters will be heard by the Court or by a panel consisting either of two or more Commissioners or of a Judge and one or more Commissioners (a court hearing matter);
- , Commissioners of the Court can be appointed part-time as well as full-time Commissioners and their qualifications to broaden the qualifications for appointment as a Commissioner;
- , It amends the Environmental Planning and Assessment Act 1979:
  - (i) to enable an applicant for the review of a determination of a development application to make modifications to the development described in the original application;
  - (ii) to enable the Court to modify a development consent granted by it; and
  - (iii) to enable a council to modify a development consent granted by the Court.

### *Marine Legislation Amendment (Marine Pollution) Bill 2002*

This bill makes significant changes to the *Marine Pollution Act 1987*. This Act regulates the pollution of marine waters by oil and noxious substances from ships and during ship to shore transfers.

The Bill introduces the largest fines for any environmental offence in Australia. Currently, a company faces a maximum penalty of \$1.1 million. These will increase to \$10 million. Fines for individuals will increase from \$220,000 to \$500,000. In addition, the Bill introduces the following changes:

- , expands the definition of ship to include any vessel capable of floating on water (excluding pleasure vessels) and including floating docks and platforms;
- , narrows the concept of "damage" so as to reduce the ambit of a defence to a prosecution;
- , to require ships to be adequately insured and to carry evidence of insurance on board;
- , to permit an inspector to detain a ship if it does not carry adequate insurance or does not carry on board evidence of that insurance;
- , to permit a summons to be served in relation to a crew member of the agents of the ship; and
- , other minor amendments.

### *Threatened Species Conservation Amendment Bill 2002*

This Bill amends the Threatened Species Conservation Act 1995, and other legislation that has provisions relating to threatened species, for the following purposes:

- (a) to clarify listing criteria for endangered populations, endangered ecological communities, vulnerable species and species that are presumed extinct;
- (b) to make provision for the listing of vulnerable ecological communities;
- (c) to allow the Minister administering the Threatened Species Conservation Act 1995 and the Minister administering the Fisheries Management Act 1994 to jointly determine the question of whether certain semi-aquatic or semi-terrestrial species should be prima facie eligible for listing under the Threatened Species Conservation Act 1995 or under the Fisheries Management Act 1994;

- (d) to make further provision with respect to the procedure for nomination and listing of species under the Threatened Species Conservation Act 1995;
- (e) to enable the Chairperson of the Scientific Committee, with the agreement of the Chairperson of the Fisheries Scientific Committee, to refer a nomination of a key threatening process that affects both terrestrial and aquatic environments to the Fisheries Scientific Committee for consideration (and vice versa);
- (f) to allow the Scientific Committee to make minor amendments to listings without going through the public participation procedure under the Threatened Species Conservation Act 1995;
- (g) to make less onerous the requirements relating to the periodic review of listings by the Scientific Committee;
- (h) to allow the Director-General of National Parks and Wildlife to make arrangements with the Director of Fisheries for the joint preparation of a recovery plan or threat abatement plan;
- (i) to make it clear that the interests of indigenous people are to be considered in the preparation of a recovery plan or threat abatement plan;
- (j) to enable the preparation of recovery plans and threat abatement plans relating to more than one species or key threatening process;
- (k) to update the Threatened Species Conservation Act 1995 in light of changes to Commonwealth legislation;
- (l) to make further provision with respect to the licensing of activities that may harm threatened species or protected fauna or native plants;
- (m) to modify the test applied to determine whether an activity is likely to significantly affect threatened species, populations or ecological communities;
- (n) to make further provision with respect to the preparation, contents and sale of species impact statements;
- (o) to allow the Director-General of National Parks and Wildlife, and the Scientific Committee, to withhold certain information from the public, in circumstances where the public interest or concerns for the safety or welfare of an individual justify it;
- (p) to make further provision in respect of the composition and members of the Scientific Committee and the Biological Diversity Advisory Council;
- (q) to provide for the effect of a new listing of a vulnerable species on licence applications, development applications and environmental assessment;
- (r) to make further provision with respect to environmental assessment, including by providing for situations in which an environmental impact statement is not required under the Environmental Planning and Assessment Act 1979;
- (s) to make further provision in respect of certain offences relating to the harming or picking of animals and plants under the National Parks and Wildlife Act 1974; and
- (t) to clarify the situations in which land used for the maintenance of threatened species, populations or ecological communities is exempt from land tax.

### *New Chairman of EPA Victoria*

EPA Victoria's new Chairman and Chief Executive Officer, Mr. Mick Bourke commenced work with EPA on Monday 12 August 2002. Mick was formerly Managing Director of City West Water. Following Mick's appointment, former Acting Chairman Rob Joy will take on the role of Deputy Chair. Mick grew up in a farming community in northern Victoria. He worked in heavy industry early in his career; and in the irrigation and urban water industries in Mildura and central Victoria, as well as the metropolitan area.

### *Changes to Environment Protection Act 1970*

The *Environment Protection (Resource Efficiency) Act 2002* received royal assent on 18 June 2002. Various of its provisions amending the Environment Protection Act 1970 came into effect on 19 June and 1 July 2002. Further information on these changes were included in the June 2002 edition of NELR.

### *Top 30 Waste Producers*

EPA recently undertook waste assessments of the top 30 waste producing industrial facilities in Victoria. The EPA assessed a range of industries including: waste, packaging, metal, wool and tanneries. The findings of these assessments indicated that significant waste reductions are achievable with a concerted sector wide effort.

### *Melbourne Water's Eastern Treatment Plant*

EPA issued a Works Approval to Melbourne Water for the upgrade of the Eastern Treatment Plant (ETP) at Carrum (south-east of Melbourne) and the extension of the Boags Rocks outfall to at least 2 kilometres off-shore. The Works Approval requires Melbourne Water to substantially improve the quality of treated wastewater from the facility, thus enhancing the potential for wastewater reuse. The extension of the Boags Rocks outfall is required to reverse past impacts of the discharge on rock platforms in the vicinity of Boags Rocks and to ensure enhanced protection of amenity at the adjoining beach and in the surf zone.

The ETP treats almost half of Melbourne's sewage and approximately 400 million litres (160 Olympic swimming pools) of treated wastewater is discharged from the Boags Rocks outfall every day. Wastewater from the ETP is currently treated to secondary standard with disinfection. The upgrade requires Melbourne Water to further improve the quality of treated wastewater from the ETP to Class A standard. Class A standard effluent will allow unrestricted reuse of the effluent (which means that the only form of reuse excluded is reuse for potable use).

An application to review the Authority's decision is presently before VCAT.

### *New Environment Gateway Website*

The Hon. Sherryl Garbutt, Minister for Environment and Conservation, recently announced a new Environment Gateway Website. With more than 500 links already established, the website is intended to provide a one-stop-shop for anyone seeking information about Victoria's environment and sustainability. The Environment Gateway website address is: [www.environment.vic.gov.au](http://www.environment.vic.gov.au).

### *Commonwealth Games in Melbourne in 2006*

Through the Office of Commonwealth Games Co-ordination, the Government has released an Environment Framework for the 2006 Commonwealth Games. The key environmental performance areas are:

- , Public transport and air emissions
- , Sustainable energy
- , Waste avoidance and resource recovery
- , Climate change and greenhouse
- , Water quality, conservation and recycling
- , Protection of the natural environment
- , Operations
- , Infrastructure

An independent Advisory Committee was established under the *Commonwealth Games Arrangements Act 2001* to advise the Minister on how to meet the objectives of the Environment Framework. The Committee will report to the Minister by 30 August 2002.

### *Victorian Planning and Environmental Law Association (VPELA)*

VPELA's Annual Conference: *Setting the Priorities: Social, Environmental, Economic and Physical* will be held in Ballarat from the 12 to 14 September 2002. Guest speakers include: Rev. Tim Costello, Hon. Brian Howe AM, Kevin Hunt - Director Mirvac, Lyndsay Neilson - Secretary Department of Infrastructure, Hon. Justice Marilyn Warren - Supreme Court of Victoria and Michael Wright QC.

Further information about the conference can be obtained through contacting:  
Email: [secretariat@vpela.org.au](mailto:secretariat@vpela.org.au) or Ph. (03) 9813 2801.

### *Changes to the Environmental Protection Act 1994*

An Amendment Bill was recently introduced to Queensland Parliament, proposing major amendments to the *Environmental Protection Act 1994*.

The Bill proposes a complete replacement of the relevant parts of the Act dealing with amendment applications, transfers, surrenders and integrated authorities (for non-mining activities). Holders of environmental authorities will be able to nominate the anniversary date of the authority, to suit their reporting and business needs, and there will be new processes for the amendment and transfer of the whole or part of an integrated authority.

The most significant changes are probably the provisions about amendment of conditions. There will now be a public notice requirement if the "administering authority" (usually the EPA or local government) considers there is likely to be a "substantial increase in the risk of environmental harm", because of "a substantial change in" either:

- (a) the quantity or quality of contaminant to be released; or
- (b) the impact (or "results") of the release.

This amendment will give EPA officers a wide degree of subjective control over whether or not an amendment needs to be advertised.

EPA officers will also have power to refuse amendments on the ground that they consider it is more "appropriate" to require a replacement environmental authority.

Interestingly, amendments to environmental authority conditions by agreement do not contain equivalent provisions.

#### 1. Changes to the *Water Act 2000*

The same Amendment Bill also includes some amendments to the provisions of the *Water Act* about hazardous dams.

Read together with the existing uncommenced provisions of the *Water Act*, from 13 September, existing licensing under the repealed *Water Resources Act 1989* will automatically be treated as new types of approvals:

- \* If the old licensing related to works, it will be treated as a development permit under the Integrated Planning Act 1997;
- \* Conditions about the safety of the dam are treated as conditions of an environmental authority;
- \* To the extent that the licence related to interfering with water, it is treated as a water licence under the Water Act.

An interesting amendment in the Bill gives the EPA a broad power to amend conditions of these new deemed environmental authorities, if their opinion is that the conditions are not "appropriate" for the new legislation.

### *Environmental Protection Amendment Regulations 2002*

The Environmental Protection Amendment Regulations 2002 came into operation on the 1 July 2002. The Regulations amend the Environmental Protection Regulations 1987 as follows:

- ⌋ Category 64 premises (Class II and III putrescible landfill sites) now have a specified production or design capacity of 20 tonnes or more per year. Previously no production or design capacity was specified. Accordingly, putrescible landfill sites accepting less than 20 tonnes of waste per year do not need to be licensed;
- ⌋ Category 89 (putrescible landfill site) was added to the list of prescribed premises. This category is described as premises on which waste is accepted for burial with a production or design capacity of between 20 and 5000 tonnes per year; and
- ⌋ Schedule 6 (Infringement Notice Offences) was amended to include penalties for infringement notice offences under the Environment Protection (Rural Landfill) Regulations 2002.

### *Environmental Protection (Rural Landfill) Regulations 2002*

The Environmental Protection (Rural Landfill) Regulations 2002 (Landfill Regulations) came into operation on the 1 July 2002. The Landfill Regulations apply to Category 89 prescribed premises that are registered under regulation 5B of the Environmental Protection Regulations 1987 (EP Regulations).

However, if such premises are already specified on an environmental licence (i.e. as Category 64 or 89 prescribed premises), then the conditions of the licence will apply rather than the Landfill Regulations. If the site is registered under the EP Regulations, the licence conditions will no longer apply and the site must be operated in accordance with the Landfill Regulations.

### *Amendments to the Environmental Protection Act 1986*

The Environmental Protection Amendment Bill 2002 was introduced into the WA Parliament on 27 June 2002. The Bill is to provide for major amendments to the Environmental Protection Act. The amendments include:

- ⌋ A new offence of environmental harm that will broaden the scope of offences to cover any form of detriment to the environment;
- ⌋ A new offence of unauthorised clearing;
- ⌋ Increased powers to the Department of Environment Water and Catchment Protection to require environmental clean up;
- ⌋ The introduction of closure notices and performance bonds;
- ⌋ The removal of statutory limitation periods for bringing a tier one offence (eg pollution offences, breaches of ministerial conditions). These actions will be able to be taken at any time in the future; and
- ⌋ An expanded liability for directors and officers of companies where that company commits an offence.

Further details of the amendments will be provided in future editions, after such amendments come into operation.

### *State Administrative Tribunal*

The Taskforce convened to examine which tribunals and boards would be suitable for amalgamation into a State Administrative Tribunal (SAT) has released its Report. Full text of the Report is available at:

[http://167.30.48.105/content/files/sat\\_report.pdf](http://167.30.48.105/content/files/sat_report.pdf)

An important recommendation in the Report is to modify the appeals process under Part V (pollution control matters) of the Environmental Protection Act 1986. Currently, Part V appeals are determined by the Minister. The Report recommends these appeals be determined by the SAT.

### *Bellevue Hazardous Waste Fire Inquiry released*

The Legislative Council has released its inquiry into the explosion at the State's main hazardous waste disposal site at Bellevue. The inquiry report contains recommendations relevant to environmental legislation in Western Australia. The full report can be obtained at:

[http://www.parliament.wa.gov.au/parliament/home.nsf/\(FrameNames\)/Committees](http://www.parliament.wa.gov.au/parliament/home.nsf/(FrameNames)/Committees)

### *Declared Flora under the Agriculture and Related Resources Protection Act 1976*

Under sections 35 and 36 of the Agriculture and Related Resources Protection Act 1976, the Agriculture Protection Board declared all Acacia species (except *Acacia farnesiana*) not native to Australia as prohibited within the Western Australia and to be controlled by destroying, preventing and eradicating their existence within the State.

## *Wanted: State Editor for ACT*

#### COMMITMENT:

- Preparation of updates for NELR four times per year
- Provision of case notes/articles if possible

#### CONTACT:

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[rbaird@unimelb.edu.au](mailto:rbaird@unimelb.edu.au)

### *Draft Tasrail Noise Management Plan (NMP)*

Tasrail Pty Ltd has prepared a Draft Noise Management Plan (NMP) in consultation with DPIWE. The purpose of the draft NMP is to outline how Tasrail intends to meet its environmental duty, including relevant legislation and standards, with respect to noise.

The draft NMP outlines a review of existing operations, which involves detailed noise assessments of areas identified as noise sensitive. A timetable for the assessments is specified, and action plans for individual issues will be developed on the completion of assessments. The draft NMP outlines voluntary measures for the reduction of noise from Tasrail's existing operations, changes to existing operations, and, the compliance of all new and upgraded railways with the EPP (Noise) requirements. The NMP will apply to all Tasrail activities as well as third party accredited operators.

DPIWE is conducting a public consultation on the Draft NMP which can be viewed at <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/LBUN-5CL6GQ?open>

Public submissions are invited by 11 October 2002.

### *Draft Management Plans 2002 – Small South-East and North-East Islands*

The Small North-East Islands Draft Management Plan 2002 and the Small South-East Islands Draft Management Plan 2002 were released on August 12, 2002. The draft Management Plans were prepared in accordance with the National Parks and Wildlife Act 1970 and the Crown Land Act 1976, and detail information and management aims and prescriptions to ensure appropriate management for the protection of cultural and natural values of the Islands. Tasmania's small south-east Islands are important sanctuaries for seabirds, and can provide baseline information about soils, flora and fauna. Cultural values identified include Aboriginal sites of significance. Management issues identified include the impact of visitors through: the increased risk of feral plant and animal introduction, and direct disturbance to nesting birds, and the production and maintenance of geo-conservation, flora and fauna inventories.

Public comment is invited to September 20 2002. Copies can be viewed at: <http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/LBUN-5CT4JE?open> & <http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/LBUN-5CT4CS?open>

### *Draft Weed Management Plans*

Draft Weed Management Plans for 35 weeds have been prepared by the Department of Primary Industries, Water and the Environment, pursuant to the Weed Management Act 1999. These draft plans specify the requirements and prohibitions in respect of the declared weeds and apply to all of Tasmania.

Public comment is invited to 4 October 2002. Copies can be viewed at: <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/OTRG-5AZ3QS?open>

### *Tasmania Commercial Dive Fishery Issues Paper*

The Marine Resources Division of the Department of Primary Industries, Water and the Environment has released an Issues Paper on the Tasmanian Commercial Dive Fishery. The Issues paper is part of the management planning process for the fishery. The Living Marine Resources Management Act (1995) requires that fisheries resource management promote sustainable development, which may require a formal management plan.

The primary objective of the Issues paper is to propose objectives for the Commercial Dive Fishery Management Plan and outline the major issues, generate discussion and obtain feedback from Stakeholders.

The major issues identified include: future access; number and transferability of licences; access to invasive alien species; resource management strategies for developed, developing and undeveloped resources; management of the sea urchin fishery and the periwinkle and whelk fisheries; management arrangement for all other species; development of co-management arrangements; and resource monitoring and assessment.

The public comment period is open until 16 September 2002.

A copy of the Issues Paper can be viewed at:

<http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/HMUY-5DA8FP?open>

The subsequent Draft Management Plan will also be released for public comment.

## *Wanted:* State Editor for Northern Territory

### COMMITMENT:

- Preparation of updates for NELR four times per year
- Provision of case notes/articles if possible

### CONTACT:

Rachel Baird  
NELR National Editor  
[rbaird@unimelb.edu.au](mailto:rbaird@unimelb.edu.au)

### *Appointment of Environment, Resources and Development Court Judge*

Ms Susanne Cole has been appointed as a Judge of the Environment, Resources and Development Court.

Her Honour Judge Cole holds an Honours Degree of Bachelor of Laws and a Masters Degree in Law from the University of Adelaide. Judge Cole brings a broad range of experience in planning, environmental and administrative law to judicial office, having been in private practice in both large and small private law firms, having been a legal academic at Flinders University, and having worked for the South Australian Crown Solicitor's Office.

Judge Cole has also had a long association with NELA and its predecessor bodies. Her Honour was a member of the Executive of the South Australian Environmental Law Association from 1987 and continued as a member of the NELA (SA Division) Executive until 1993 following the formation of the national association.

NELA (SA) Division and the National Executive are pleased to congratulate Judge Cole on her appointment.

### *Wind Farm Controls*

On 25 July 2002, the State Government announced a package of materials relating to the regulation of wind farms. Planning SA states that *the package will provide additional information and support to local government policy makers, developers and members of the community.*

The fact sheet regarding the package, advises that it contains the following components:

- A Planning Bulletin, providing policy directions for councils when undertaking Development Plan amendments for wind farms and incorporates discussion on key issues, including a methodology to assist in visual impact assessment.
- A Ministerial Plan Amendment Report ( PARf), providing objectives encouraging the development of renewable energy sources in appropriate locations with more detailed principles of development control to assist relevant authorities in the assessment of wind farm applications.
- A Guide for Applicants that helps applicants and designers of wind farms, the community and the relevant authorities to understand the processes and information requirements when proposing a development application.
- Potential changes to Development Regulations requiring wind farm applications to be referred to the Environment Protection Authority for comment, particularly in relation to noise issues.

The Ministerial PAR was brought into operation on an interim basis from 1 August 2002.

The documents comprising the wind farm package may be found at Planning SA's website: [www.planning.sa.gov.au](http://www.planning.sa.gov.au). Submissions may be made on the PAR and other draft documents until 1 October 2002.

### *Review of Significant Tree Controls*

On 23 August 2002, the State Government announced that Commissioner Allan Hutchings of the Environment, Resources and Development Court would conduct an independent review of South Australia's significant tree controls.

The News Release by the Hon Jay Weatherill, Minister for Urban Development and Planning, stated that:

*s part of his review, Commissioner Hutchings will have the opportunity to consult with a wide range of interested parties and will consider key aspects of the existing significant tree controls, including:*

- , the appropriateness of the 2.5m trunk circumference threshold*
- , the process for listing significant trees in Development Plans*
- , the future of interim tree size controls applying to six councils*
- , councils experience in administering the significant tree controls*
- , the adequacy of existing enforcement measures.f*

Commissioner Hutchings is to complete the review and report his findings to Minister Weatherill in November 2002.

## ***Wanted:*** International Editor

### COMMITMENT:

- Preparation of updates for NELR four times per year
- Provision of case notes/articles if possible

### CONTACT:

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# *Gerry Bates Essay Prize*

closes 30 November 2002

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The NELA Student Prize has been renamed the *Gerry Bates Essay Prize* in honour of Dr Gerry Bates, a founding member of NELA. It is awarded for the best environmental law essay written during 2002 by a student enrolled in an undergraduate course at an Australian tertiary institute during 2002.

Dr Bates is a past President of NELA, and has been involved with the publication of NELR (or AELN as it was formerly named) for many years. He is the past judge of the NELA Student Prize.

## *CRITERIA:*

1. The Gerry Bates Essay Prize is open to any undergraduate student who has written an essay for an environmental law subject taught at an Australian tertiary institution.
2. The length of the essay must be between 3,000-5,000 words.
3. The essay must be annotated by the student's lecturer/course co-ordinator as one which meets criterion 1.
4. The essay must be received at the NELA Secretariat office by 30 November 2002.

## *JUDGE:*

The essay competition will be judged by Mr Greg McIntyre, a past President and current National Executive committee member of NELA.

## *THE PRIZE:*

- Airfare and registration for the 2003 NELA Conference
- Publication of winning essay in the first edition of the Review for 2003.

## *Victorian Environment Assessment Review*

*The following article was prepared by Rebecca Hoare, Acting Senior Solicitor, Environment Defenders Office (Victoria) Limited.*

As indicated in the previous edition of NELR, the Victorian Department of Infrastructure released an Issues and Options Paper on the Environmental Assessment Review for public comment in April 2002. The period for public submissions closed on 21 June 2002.

On 21 July 2002 an Advisory Committee was appointed to:

- , consider the Issues and Options Paper and public submissions;
- , provide advice on options for reform of procedures for the improved assessment of projects and strategic proposals with potentially significant environmental implications;
- , identify a preferred system for environment assessment, with any alternatives worthy of consideration; and
- , provide advice on the implementation options for a preferred system, including statutory procedures and non-statutory measures to promote best practice.

The Advisory Committee members were Mr Richard Seddon (Chair), Mr Trevor Budge, Mr Peter Davies and Ms Bronwyn Ridgeway. The public hearing commenced on Thursday, 15 August 2002 and were completed on Thursday, 29 August 2002.

Under its Terms of Reference, the Advisory Committee is required to report to the Victorian Minister for Planning, the Hon. Mary Delahunty, MP, by 2 December 2002.

# case notes

*Victorian Environment Protection Authority Prosecution Update  
June – August 2002*

## Prosecutions under the Environmental Protection Act 1970 and the Pollution of Waters by Oil and Noxious Substances Act 1986

by Henry Jackson, Solicitor, Environment Protection Authority, Victoria

### *AES Transpower Holding Pty Ltd*

**Offence** Section 30D(3) of the Environment Protection Act 1970 ( the EP Actf) - supplying PCBs without approval from the Environment Protection Authority ( EPAf) on 13 September 2000, in breach of a provision of a Notifiable Chemicals Order

**Maximum Penalty** A fine of \$240,000\*

On 11 June 2002 in Moe Magistrates' Court, AES Transpower Holding Pty Ltd ("AES") pleaded guilty to one charge under section 30D(3) of the EP Act. The offence consisted of supplying PCBs without EPA approval on 13 September 2000, in breach of a provision of the relevant Notifiable Chemicals Order.

The charge related to the education, transport and delivery of 10,000 litres of PCB-contaminated waste oil by a local prescribed waste transporter from the interceptor pit at the Jeeralang power station, Morwell, operated by AES. Prior to departure from the power station, the transporter obtained written confirmation from AES that, to the best of the company's knowledge, the oil was PCB-free. However, subsequent EPA testing revealed that the oil had in fact contained PCBs. The waste oil was subsequently taken to a waste treatment facility in Footscray, from whence, after treatment, it was sent on as fuel oil to several customers. Some of the oil was burned before the facility operators own PCB test results were communicated and a recall was attempted. AES should have been on alert for PCBs in the interceptor pit because, prior to taking over the power station, the company had received an auditor's report advising that PCBs were in the oil in a number of transformers.

Without imposing a conviction, the Court placed AES on an undertaking to be of good behaviour for 24 months with a special condition to comply with the terms of a section 67AC Order filed with the Court. AES was also ordered to pay EPA's costs of \$4,687.

The section 67AC Order required AES to undertake a project for the restoration of the environment as well as publicizing the offence and the result of the prosecution.

Specifically, the Court ordered AES to pay \$25,000 to West Gippsland Catchment Management Authority by 31 July 2002 for the removal of willows from Waterhole Creek between Hourigan Road, Morwell and a point 400 metres downstream. The court required the project to be completed by 30 December 2002 and, on completion, AES must supply a report on the completed project to EPA.

In addition, the court required publication of a notice (wording specified) about the offence and penalty in the Latrobe Valley Express by 28 June 2002, and publication of a similar notice in the company's 2001-2002 Annual Report with a copy to be supplied to EPA.

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\* Of which \$100,000 is available in th Magistrates Court

### *The Master and the Owner of the MV Humboldt Current*

Offence: Section 8(1) of the *Pollution of Oil and Noxious Substances Act 1986* ( the POWBONS Actf) ~ discharge of oil from a ship into state waters

Maximum Penalty A fine of \$200,000 (Master) and \$1,000,000 (Owner)\*

In Melbourne Magistrates' Court on 21 June 2002, the owner and the Master of the bulk carrier *MV Humboldt Current* each pleaded guilty to a charge under section 8(1) of the POWBONS Act in relation to a discharge of oil into Appleton Dock on 24 October 2000.

The discharge of oil occurred during the clean up of the ship's engine room bilges. The Chief Engineer gave the order for the bilges to be cleaned in preparation for an inspection by a shipping classification society. He intended the order to be carried out with rags, but the order was misunderstood and the Chief Engineer failed to adequately supervise the exercise which was carried out by very junior crew.

Rather than clean it with rags, the Third Engineer attempted to drain the bilge by pumping material into the bilge water tank, contrary to the ship's standard practice when the ship is in berth. In doing so, he activated the main pump, thereby pumping large volumes of seawater into the tank which was already at or close to capacity. The prosecution told the court that, although the exact amount could not be calculated, evidence could be called that as much as 3000 litres spilled into Appleton Dock.

Counsel for the defendants told the court that the amount spilled was likely to be closer to 1,250 litres of oil, with a resulting lesser environmental impact.

The Court convicted the owner, Fairmont Shipping Corporation, and fined it \$25,000. The Owner was also ordered to pay half of EPA's costs, a sum of \$2,750. The Master of the ship, Captain Dusko Maric, was fined \$15,000 without conviction with the same order as to costs.

In sentencing, the Court noted that the expert witness statement of Dr Colin Gibbs showed clearly how the area impacted by a spill of oil extends far beyond the area of immediate discharge; in this case, well downstream into the estuary of the Yarra.

### *Castlemaine Wastewater Treatment Pty Ltd*

Offence Section 41(1)(a) of the EP Act ~ pollution of the atmosphere (offensive to the senses of human beings)

Maximum Penalty A fine of \$240,000\*\*

At the Bendigo Magistrates' Court on 14 June 2002, Castlemaine Wastewater Treatment Pty Ltd ( Castlemaine<sup>f</sup>) pleaded guilty to two charges of polluting the atmosphere by making it offensive to the senses of human beings, contrary to section 41(1)(a) of the EP Act.

Castlemaine operates a sludge treatment plant alongside the Epsom Sewage Treatment Plant ( STP<sup>f</sup>) near Bendigo. The plant treats the sludge removed from the STP and converts it to useable biosolid. Between May and September of 2001, a number of odour complaints were received from residents near the plant. On four occasions those complaints were confirmed and traced to the defendant's plant. The odours resulted from 'operational irregularities' and during periods of maintenance. No proper plan was in place to deal with odours during such occurrences.

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\* Of which \$500,000 is available in the Magistrates Court in each case.

\*\* Of which \$100,000 is available in the Magistrates Court.

The Court was told that Coliban Water had underestimated the volume of sludge that would be sent to the plant for treatment, and as a consequence the plant was overloaded by up to 50%. The Court accepted that it was the responsibility of the defendant to determine what load the plant would be subjected to, and to ensure that it was capable of dealing with such a load without causing pollution.

The Court accepted that Castlemaine had undertaken steps to prevent recurrences of the odour, and that to that date there had been no formal complaints recorded by EPA since those steps were taken.

Without convicting Castlemaine, the Court ordered it, pursuant to section 67AC of the EP Act, to undertake a project for the restoration of the environment as well as publicizing the offence and the result of the prosecution.

Specifically, the Court ordered Castlemaine to pay \$40,000 to the City of Greater Bendigo to be used to carry out environmental works at Lake Tom Thumb reserve, and to publicize the details of the offence via a notice (wording specified) in local, statewide and national newspapers. Separately, Castlemaine was ordered to pay EPA's costs of \$4,023.

### *Western Recycle Pty Ltd*

Offence                      Section 41(1)(a) of the EP Act ~ pollution of the atmosphere (offensive to the sense of human beings)

Maximum                    A fine of \$240,000 for each offence\*  
Penalty

At Sunshine Magistrates Court on 27 June 2002, Western Recycle Pty Ltd (Western Recycle) pleaded guilty to causing air pollution offensive to the senses of human beings contrary to section 41(1)(a) of the EP Act between 15 September and 6 October 2001.

The charges related to odours generated by wastewater from a gypsum extraction process that had become stagnant and anaerobic. The defendant knew that this was a potential effect of leaving the wastewater un-aerated but allowed this to happen during the transfer process of wastewater from one storage pond to another. EPA received over 100 complaints over the three-week period.

The Court placed Western Recycle on a six month good behaviour bond, without conviction, and ordered it, pursuant to s67AC of the Act, to undertake a project for the restoration of the environment as well as publicizing the offence and the result of the prosecution. EPA was also awarded all of its costs of \$2,610.80

Specifically, the Court ordered Western Recycle to:

- (a) pay \$35,000 to the City of Brimbank within 30 days of the Court Order. The City of Brimbank is to use the funds to enhance the Airwatch and Waterwatch programs in the municipality. Specifically, the money will be used to purchase Airwatch and Waterwatch kits and to fund a further 6 hours per week for the Waterwatch Coordinator;
- (b) report back to the Authority confirming that the payment has been made and the projects carried out;
- (c) be prohibited from referring to the payment without reference to the court proceedings;
- (d) publish a notice (with agreed text) in the following newspapers within 30 days:
  - (i) The Age
  - (ii) The Herald Sun
  - (iii) The Western Times
  - (iv) The Financial Review.

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\* Of which \$100,000 is available in the Magistrates Court.

*Mark Dajcic*

Offence	Section 55(6) of the EP Act ~ obstruct an authorized officer
Maximum Penalty	A fine of \$24,000 or 6 months imprisonment or both

At the Bendigo Magistrates' Court on 5 July 2002, Mark David Dajcic, registered owner of a Holden Commodore utility registration no. GRUNT-0, pleaded guilty to two charges under section 55(6) of the EP Act.

The offences involved the obstruction of two EPA authorized officers on two separate occasions during a routine vehicle testing operation with Victoria Police at Bendigo in the very early hours of Saturday 17 November 2001. Mr Dajcic was intercepted by police on two occasions, at separate locations, and on each occasion refused to let an EPA officer conduct a noise test on his vehicle.

The Court convicted Mr Dajcic on both charges, fined him an aggregate of \$1,000 and ordered him to pay EPA's costs of \$900.15.