

RECENT DEVELOPMENTS

6. **Agricultural** - Strategies to aid the agricultural sector to improve productivity while addressing ecological degradation.
7. **Natural Environment** - Research on the greenhouse effect on flora and fauna and strategies to provide protection.
8. **Adaption** - Dissemination on information by the CSIRO as to climate change to improve community knowledge.
9. **Research into Climate Change and Impacts of Response Options** - Contributions by the Victorian Government of money for research.
10. **Community Information and Education** - Commencement of Victoria's Environmental Education Strategy in 1993.
11. **Community Involvement and Responsibility** - Provision of the opportunity for public comment on development of greenhouse policy.
12. **Implementation, Monitoring and Review of Strategy** - Preliminary qualitative evaluations of actions.

The Progress Report also indicated the future challenges and issues that need to be addressed by the Heads of Government. The Progress Report identified the areas of energy, transport, urban and transport planning and agriculture as the main targets of future action for addressing and arresting greenhouse gas emissions and implementing the provisions of the NGRS.

The Progress Report states that future monitoring and review of the effects of the Victorian Government in addressing the requirements of the NGRS will be more extensive as the results of the new initiatives can be assessed and reported. To this end, the Greenhouse Gas Inventory in Victoria was commissioned to develop methodologies for measuring and reporting greenhouse gas emissions.

CATCHMENT & LAND PROTECTION ACT 1994

The Catchment & Land Protection Act was passed on 1 June 1994 and will be discussed in the next issue.

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TASMANIA

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL BILL 1994

This Bill, which will replace the Environment Protection Act 1970, has now passed through the House of Assembly and awaits consideration by the Legislative Council. The Bill is the final link in Tasmania's new planning and environmental management regime, a package of seven new enactments which have been reviewed previously in the AELN.

One of the main objects of the package was to streamline approvals processes for new development. Accordingly this Bill abolishes the licensing procedures which currently apply under the Environment Protection Act 1970 in favour of one integrated approvals process conducted under the Land Use Planning and Approvals Act 1993. Under the new system there are three levels of activities; level 1 are those which may cause 'environmental harm' and which require a permit under a local planning scheme, level 2 are those listed in Schedule 2 of the Environmental Management and Pollution Control Bill, and level 3 are projects of state significance as determined under the State Policies and Projects Act 1993.

Environmental assessment takes place for each level of activity. Level 1 activities are essentially the responsibility of local government, subject to local planning schemes, sustainable development policies, and environmental guidelines issued by the Department of Environment and Land Management. The Director of Environmental

management can however 'call in' any application for assessment by the Board of Environmental Management and Pollution Control.

This Board consists of five persons, two from government, one from local government, one representing industry and one having experience in environmental management. Its basic function is to administer and enforce the provisions of the Act.

Level 2 activities have to be referred to the Board which must undertake an environmental impact assessment of the proposal unless satisfied that it will not result in serious or material environmental harm. Principles which govern the conduct of EIA are established by the Bill, and apply to all public as well as private sector developments. The results of the assessment will be fed back into the integrated approvals system where the concurrence of the Director is required before a permit can issue.

Level 3 activities are assessed under the procedures established by the State Projects and Policies Act 1993. These are essentially projects of 'state significance' which will be subject to tailor made approvals processes. Appeal rights are removed in respect of these developments.

The concept of "environmental harm" governs all obligations and offences in the Bill. There are basically four levels; 'serious', 'material', 'environmental nuisance' and 'environmental infringement'. Serious environmental harm is distinguished from material environmental harm by the level of impact or scale or by the value of property damage. Causing serious or material environmental harm intentionally or recklessly and with knowledge that such harm will or might result leaves the offender open to increased penalties, up to \$1,000,000 and four years imprisonment. Environmental nuisances are designed in particular to cover emissions of noise; while minor infringements for which on the spot fines may be issued will be detailed in regulations. All fines will be paid into an Environment Protection Fund from which monies may be allocated by the Board for environmental education, research, and protection and restoration projects.

All offences may be defended by 'due diligence'; that the offence did not result from any failure by

the defendant to take all reasonable and practicable measures. Where this defence involves establishing that proper workplace systems had been put in place, however, then proof must also be provided which shows there were adequate procedures for communication between workforce and management and active and effective promotion and enforcement of compliance with the Act.

Enforcement capability has also been much improved by the introduction of environment protection notices and civil enforcement processes. A person with a "proper interest" may initiate civil enforcement proceedings before the Resource Management and Planning Appeal Tribunal. The Tribunal has just held in the first case to be determined under this new provision *Holeywell v Clarence CC* J51/94 that because the applicant for relief was a person who would have been able to make representations to Council and appeal any unfavourable decision he was a person who had a 'proper interest' in the contravention by Council of its own planning scheme. The Tribunal said it relied on *ACF v South Australia* (1988) 53 SASR 349 in reaching this decision. If this decision becomes precedent it may mean that effectively there are no standing restrictions at all associated with the test of 'proper interest' where, as in this case, a development proposal has not been advertised for public comment. This is because anyone at all may make representations to council; and any representor may appeal.

In line with the philosophy of the legislation to provide carrots as well as sticks, the Bill also makes provision for mandatory and voluntary environmental auditing. Protection for voluntary audits from being 'discovered' in subsequent legal proceedings is guaranteed.

The Bill also includes provision for environmental agreements, which are financial incentives for good performance, encouraging companies to do better than their licensed maximum discharge limits. Such financial incentives may include tax concessions.

To ensure compliance, performance guarantees and assurances may be taken; and environmental improvement programs may be required of polluters which are not meeting acceptable standards. June 30th has seen the old style environmental exemptions come to an end to be

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replaced by the new EIPs which have a time limit of 3 years. Some 16 industries and council sewage treatment plants have converted to EIPs.

One of the underlying philosophies behind the planning and environmental management package was to involve local government more in environmental protection, assessment and enforcement. This new Bill therefore makes it quite clear that local government has responsibility for local minor environmental nuisances by granting council officers more precise powers of enforcement, and as an inducement providing that fines recovered by council officers are to be repaid to the relevant council instead of disappearing into consolidated revenue.

Ozone protection provisions are incorporated into this Bill, but contaminated sites have been excluded because the principles on which liability will be grounded are still being assessed at a national level.

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WESTERN AUSTRALIA

ENVIRONMENTAL PROTECTION ACT 1986 **Department of Environmental Protection** **New Office of Waste Management**

The Office of Waste Management announced by the Government in January is to become a division of the Department of Environmental Protection.

The new division will develop policies and regulations for waste management and co-ordinate recycling and community education schemes, working co-operatively with local government and industry.

It is hoped that bringing together the waste management related functions of the Departments of Health, Commerce and Trade and Environment

will allow better strategic planning for waste management and minimisation.

The initial key areas of focus will be implementation of new liquid waste regulations, market development for use of reprocessed materials, improved landfill management in WA and increasing government use of recycled products.

A waste management board - to report to the Minister for the Environment - is yet to be established, but will include three representatives from local government, two from private industry and a community representative.

The Minister will nominate a chairperson for the board.

Announcing the new approach to waste management in January, Mr Minson said that more than three million dollars over the next three years would be put into the plan to tackle what was becoming one of Western Australia's most important environmental issues.

ENVIRONMENTAL PROTECTION (GOLDFIELDS RESIDENTIAL AREAS) (SULPHUR DIOXIDE) POLICY 1992 **Exemption Order**

The Minister for the Environment Kevin Minson has announced a strategy to provide a permanent solution to sulphur dioxide problems at the Kalgoorlie Nickel Smelter.

In the past two months the smelter has several times breached sulphur dioxide limits which came into effect in January in the second stage of the Goldfields environmental protection policy.

Mr Minson said he would exempt the Western Mining Corporation smelter from the policy for two years, giving the company the time it needs to develop a way of controlling its sulphur dioxide emissions.

During the exemption the company would have to meet a limit of 1300 micrograms of sulphur dioxide per cubic metre, averaged over three hours as in previous years but would also be required to strive to avoid very high short term