Vegetation Clearing Amendments

The most significant change in Queensland environmental law during the last quarter has been the implementation of an election commitment, through major amendments to the *Vegetation Management Act 1999*. The *Vegetation and Other Legislation Amendment Act 2004 (Qld)* commenced 21 May 2004.

A moratorium on vegetation clearing (other than exempt clearing), which had been in place from May 2003, has now been lifted. This re-activates the original framework under the *Integrated Planning Act 1997*, requiring development approval for operational work to clear native vegetation on freehold land (subject to exemptions), while extending the scheme to include non-freehold land. The definition of "native vegetation" has been slightly amended, to exempt "non-woody herbage", although it is not clear exactly what species this term is intended to cover.

The list of exceptions has expanded overall, although the comparisons are not immediately apparent because the order has changed. For example, the definition for the exception of "essential management" has been expanded. It still includes fire breaks, safety protection, infrastructure maintenance, gardens and orchards, but it will now also include various other fire safety measures (eg, to reduce hazardous fuel load), further specific items of infrastructure and sourcing of construction timber. There is also a major new category of exceptions for "specified activities", which covers various fire safety measures, electricity lines, State-controlled roads, rail corridors and forestry activities, as well as clearing under a development approval for material change of use or reconfiguration of a lot, where the approval was given after the commencement of the amendments and concurrence has been given under the vegetation management jurisdiction.

Conversely, the exception for "routine management" has been restricted in that fences and roads are now limited to 10m, while other infrastructure is restricted to 2 ha, rather than 5 ha. Another major restriction is that the exception for urban areas now excludes rural residential development.

If none of the exceptions are relevant, a development application for operational work can be lodged, which is restricted to various purposes. The most frequently used item will probably be where the clearing is a natural and ordinary consequence of other assessable development for which a development application was made before 16 May 2003.

There is also a new regime for broadscale applications, ballots and compensation, essentially intended for farmers.

The amending legislation has many oddities and apparently unnecessary drafting complexities. One example is the burying of the most straightforward route to approval, by way of a material change of use or reconfiguration approval subject to concurrence, within the definition of "specified activities", falling under one of the exemptions to the requirement for operational work approval. Another example is the duplication of the exemption for mining and petroleum activities (particularly in the context that mining and petroleum activities were originally supposed to have been able to rely on a separate overall exemption from the development approval system), contrasted with the express provision for extractive industry to obtain operational work approval (subject to normal exemptions).

Aboriginal Cultural Heritage Act 2003 (Qld) and Torres Strait Islander Cultural Heritage Act 2003 (Qld)

In summary:

- This legislation repeals and replaces the *Cultural Record (Landscapes Queensland and Queensland Estates Act) 1987 (Qld)*.
- The Acts recognise Aboriginal/Torres Strait Islander ownership of human remains and burial items, secret and sacred material currently held in State collections, and cultural heritage previously removed from the country.
- The legislation abolishes the need for permits, provided that mining tenement holders comply with a general duty of care.

- This general duty of care is to take reasonable and practical measures to avoid damaging or destroying cultural heritage.
- A cultural heritage register will be established, with controlled access; and
- Cultural heritage plans will be mandatory in certain circumstances.
- The Department of Natural Resources and Mines to administer the new legislation, and the Land and Resources Tribunal will deal with appeals.

Biodiscovery Bill 2004 (Qld)

This bill, which received its second reading speech 18 May 2004, proposes to give effect to the Convention on Biological Diversity, signed on 5 June 1992 at the Rio de Janeiro Earth Summit, which has previously been ratified by the Commonwealth.

The main objective is to establish the authority for the Queensland Government to regulate the collection of native biological material on all State land and in Queensland waters for the purposes of analysing the molecular, biochemical or genetic information about native biological material for the purpose of commercialising the material (biodiscovery research). This will involve a system for authorising collection of native biological resources for biodiscovery research. The Bill would ensure access by biodiscovery entities to "minimal quantities" (as defined) of native biological resources on State land or in Queensland waters.

According to the Explanatory Memorandum, the Bill does not propose to alter any access rights of landholders.

Geothermal Exploration Act 2004 (Qld)

This new legislation received assent on 31 May 2004. All geothermal energy on or below the surface of any land in the State is declared as the property of the State.

The purposes of the legislation are described as follows:

(a) manage access to the State's geothermal resources for the benefit of all Queenslanders;

(b) encourage and facilitate the efficient and responsible exploration for the State's geothermal resources;

(c) provide an effective and efficient regulatory system for geothermal exploration;

(d) enhance knowledge of the State's geothermal resources;

(e) ensure geothermal exploration is carried out in a way that minimises land use conflict;

(f) facilitate constructive consultation with, and appropriate compensation for, persons adversely affected by geothermal exploration;

(g) encourage an appropriate level of competition in geothermal exploration;

(h) encourage responsible land care management in the carrying out of geothermal exploration;

(i) promote the safety of persons involved in geothermal exploration.

The legislation does not affect the power under the *Mineral Resources Act 1989* to grant or renew a mining tenement over land in the area of a geothermal exploration permit. However, if the mining tenement is a prospecting permit, mineral development licence or exploration permit, an activity can not be carried out under the tenement if—

> *"(a) carrying out the activity adversely affects the carrying out of geothermal exploration under this Act; and (b) the geothermal exploration has already started."*

In a media release on 13 April 2004, the Minister for Natural Resources, Mines and Energy, Stephen Robertson commented that the bill *"will provide a timely, effective and efficient regime to allow for the commencement of geothermal exploration in Queensland. It will give industry the certainty to invest in exploration as well as provide a form of tenure and regulatory structure to allow geothermal exploration to commence as soon as possible. The geothermal exploration regime will be part of Queensland's Cleaner Energy Policy to reduce greenhouse gases by diversifying Queensland's energy mix towards the greater use of gas and renewable sources."*

In the same media release, the Premier described the legislation as potentially making Queensland the "hot rock capital of Australia".

Amendments to the Nature Conservation Act 1992 (Qld)

The Nature Conservation Amendment Act 2004 (Qld) received assent 24 June 2004, but had not yet proclaimed at the time of this update.

The Explanatory Memorandum says that the policy objective of the Bill is to make the hierarchy of categories of protected wildlife in the *Nature Conservation Act 1992* (NCA) more consistent with those used by the International Union for the Conservation of Nature (IUCN).

The amending legislation actually derives from an election commitment in 1998 (rather than the most recent election) to implement the IUCN system. The reason for the delay is unexplained, although it appears that extensive consultation was involved.

In summary:

- a new category of protected wildlife, to be known as "Near Threatened" wildlife will be established – this category will replace the existing Rare category over time;
- the names of two NCA wildlife categories will be replaced with names that are consistent with the IUCN terminology i.e. Common" to "Least Concern"; and Presumed Extinct" to "Extinct in the Wild"; and
- the criteria for the categories will be revised so that they are consistent with the IUCN criteria – based on three factors: population size, area of distribution and rate of decline.

No species will change status directly through these amendments. Following commencement of the amending legislation, consequential amendments to the *Nature Conservation Regulation 1994*, the *Nature Conservation (Wildlife) Regulation 1994* and the *Nature Conservation (Protected Plants) Conservation Plan 2000* are being made to ensure consistency with the amendments to the NCA, and species may then be re-classified.

Natural Resources and Other Legislation Amendment Act 2004 (QLD)

This legislation amends a long list of legislation, and received assent on 6 May 2004. The context for this amendment package is that there was already a formal structure for freehold landholders to enter agreements (in the form of *profits a prendre*) relating to "natural resource products" in trees, including carbon sequestration. This Act will enable those provisions to extend to Crown leasehold land, where the land is able to be used for agricultural or timber plantation purposes.

In addition, a minor amendment in the Schedule at last updates the *Mineral Resources Act 1989* so that it refers to the *Integrated Planning Act 1997*, instead of the legislation it repealed - a sign of just how long it takes for mining legislation to catch up with the replacement of planning legislation in Queensland.

Water Policy Principles

The Minister for Natural Resources, Mines and Energy, Stephen Robertson, issued a media release on 11 April, announcing new policy principles for unallocated water. The principles cover:

(a) How much of the unallocated water should be released

(b) When a release should occur

(c) The form in which the water should be released

(d) How that water should be released.

Guidelines for the Safe Use of Recycled Water

The Queensland EPA has issued draft Guidelines for the Safe Use of Recycled Water on 5 April 2004. The EPA describes the purposes of the draft Guidelines as being to encourage and support water recycling that is safe, environmentally sustainable, cost-effective and has the support of local communities. In addition the Guidelines are designed to provide guidance on water recycling that is appropriate to Queensland conditions and to provide a way that other resources can support water recycling. The draft is available on the EPA's website at www.epa.qld.gov.au/register/p01212aa.doc.

VICTORIA

Editor: Jennifer Slatter

Sustainability Fund

The Sustainability Fund (the Fund) has been established to provide a resource to support projects and initiatives that will foster the environmentally sustainable use of our resources and best practices in waste management. The Fund is designed to provide a resource that can be used to help build the capacity of Victorian business, local government, non-government organisations and the broader community to harness opportunities engendered by Victoria's sustainability agenda.

The Fund is jointly administered by the Minister for Environment and the Treasurer and can be accessed for a range of sustainability projects and initiatives. Potential applicants are encouraged to read the Sustainability Fund Guidelines prior to making a grant application. Expenditure of Fund monies may take the form of grants to a wide range of recipients, including community groups, councils, non-government organisations and businesses. In addition, the Minister and Treasurer may provide funding for strategic projects in line with the purposes of the Fund.

The strategic purposes of the Fund will be defined from time to time by the Minister and Treasurer through a Priority Statement. This statement will provide a targeted focus for fund allocations for the life of the statement and all potential applicants for funding should ensure that their application sits within the boundaries defined by the relevant priority statement.

In addition, an independent advisory panel is being established to make recommendations to the Minister and Treasurer in relation to the application of Fund monies. The Panel will provide advice to the Ministers, ensuring that they have access to appropriate information and independent advice that will enable them to make allocations that will maximise the benefit of the Fund for all Victorians.

If you would like to receive a copy of the Sustainability Fund Guidelines or draft Priority Statement, please contact EPA Victoria on (03) 9695 2813.

For more information about the Sustainability Fund, please contact the Secretariat at:
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