

Bendigo Gold Project EPBC Act Assessment Cooperative Approach between State and the Commonwealth

By Lara Jimenez, Lawyer, Deacons

The proposed expansion of the New Bendigo Gold Project was designated as a controlled action under the Commonwealth Environment Protection Biodiversity Conservation Act 1999 (EPBC Act) because of the potentially significant impacts to listed threatened species and listed migratory species. The Victorian environment impact assessment process under the *Environment Effects Act 1978* ("Environment Effect Statement" or "EES") for the proposed expansion was accredited by the Commonwealth and as such, only one assessment was required to inform the relevant Victorian and Commonwealth approval processes.

A Panel was appointed to assess the project proposed in the Supplementary Report to the Deborah Reef EES prepared for Bendigo Mining Limited in March 2004. The Supplementary Report provided to the Panel contained 3 options for mullock emplacements in the Carshalton area. The choice amongst these options directly related to whether or not there was significant impacts on the Swift parrot, Regent Honeyeater, Pink Tailed Worm Lizard and the McIvor Spider-Orchid. The Panel recommended to the Victorian Minister for Planning that proposal 1 in the Supplementary Report be approved, with range of detailed modifications and conditions.

Whilst there are number of submissions which disagreed with the potential impacts found in the Supplementary Report, the Victorian Minister for Planning recommended that the Commonwealth Environment Minister should find that there are no significant impacts upon the 4 species listed above. It was noted that there were incremental impacts upon the Swift Parrot resulting from short to medium term loss of habitat, but none of the tests for significant impact were met. Also after extensive searching, the Pink Tailed Worm Lizards was not found in the proposal area, but was found in nearby known sites of occupation, which are not affected by the proposal. The Regent Honeyeater no longer occupies the proposal area and is now found only as a rare vagrant in the Bendigo area and the McIvor Spider Orchid is extremely rare and cryptic, and after extensive searching was not found in the proposal area. The Victorian Minister for Planning therefore recommended that the Commonwealth Minister approve the proposed action. A decision by the Commonwealth Minister is still pending.

This case provides a practical illustration of a cooperative approach to environment impact assessment between a State and the Commonwealth in the absence of a bilateral agreement. Whilst the final decision by Environment Australia depends upon its own criteria and its own independent discretion, the outcome of the Victorian Proceedings ought, on any basis, be highly persuasive.

Recent prosecutions by EPA Victoria

The following notes are extracted from recent EPA Press releases
(see <http://www.epa.vic.gov.au/> for further details):

EPA Fines Freight Australia Over Sale Diesel Spill - 31 December 2004

EPA Victoria has fined Freight Australia Pty Ltd in relation to a leaking diesel locomotive at the Sale Rail terminal. The company was fined \$5,113 over the incident, which saw an estimated 1,500 litres of diesel fuel spill onto the ground from a T400 locomotive.

In spite of diligence from the train's driver, who noticed the leak and followed appropriate procedures, the train was left some 15 hours before any action was taken to stop the leak and secure the vehicle. The locomotive was part of a train that was en route to Bairnsdale from Melbourne.

"There are a number of concerns with this incident, namely the fact that locomotive was leaking flammable fuel in an area that was not secure and that the company made a range of assumptions in relation to the status of the leak," said EPA Victoria acting Gippsland regional Manager, Dieter Melzer. "The company did not notify EPA of the spill and did not have effective procedures in place to address such incidents." This lack of appropriate procedures saw incorrect assumptions made by Freight Australia staff which saw the leak continue unnecessarily.