

The Amending Act also removes the defence that a director or person concerned in the management of a corporation had no knowledge of a contravention of the Act by a relevant corporation. Other defences remain unchanged.

Finally, voluntary enforceable undertakings have been introduced as an alternative to EPA initiating prosecutions. The undertaking is a negotiated agreement between EPA and an offender in relation to a breach of the Act or regulations. EPA can seek a court order for compliance with the undertaking. This mechanism will enable companies who have breached the Act to negotiate with EPA with a view to avoiding a criminal prosecution.

Environment Effects Act 1978

New ministerial guidelines and amendments have been made to the *Environment Effects Act 1978* to improve the workability and effectiveness of Victoria's environmental assessment system.

The new ministerial guidelines provide for greater flexibility to adapt the requirements for an Environmental Effects Statement (EES) to the circumstances of each proposal. The improved flexibility relates to the requirements regarding forms of consultation, scope of studies, exhibition timeframes and public hearing options.

The amendments to the Act include enabling proponents to formally refer a project for a decision as to whether an EES is required, enabling the Minister to impose conditions on a decision not to require an EES and enabling the Minister to require a decision maker to refer the decision as to whether an EES is required to the Minister.

BushBroker - A native vegetation credit registration and trading scheme

The Victorian Government has established BushBroker, a registration and trading scheme for native vegetation. The scheme provides permit applicants wishing to clear native vegetation with an option for meeting the requirement that cleared vegetation be set off by a gain elsewhere.

A credit in the BushBroker system is achieved by a gain in the quality or quantity of native vegetation and is subject to an ongoing agreement. Credits will be listed on the BushBroker register which will be available to permit applicants seeking native vegetation offsets.

The Department of Sustainability and Environment is currently conducting a trial with VicRoads to secure native vegetation credits for use as offsets by VicRoads.

More information on the trading scheme is available on the DSE website www.dse.vic.gov.au

QUEENSLAND

Larissa Waters

Wild Rivers update – delays and reduced protection

Since the last Queensland update there have been delays and stakeholder negotiations with government about wild river protection resulting in reduced wild river protection.

In June 2006 the Minister for Natural Resources, Mines and Water wavered on finalising the draft wild river declarations for six rivers, and stated that he was prepared to defer for up to one year a decision on whether to protect the four Gulf of Carpentaria proposed wild rivers – the Gregory and Staaten Rivers, Settlement Creek and the streams of Morning Inlet. The Wilderness Society ran a campaign to encourage the Minister to deliver on the six wild river declarations, but supported a delay on further nominations of rivers in Cape York due to concerns about inadequate indigenous community consultation.

During July The Wilderness Society, advised by the Environmental Defenders Office (Qld) Inc, participated in stakeholder negotiations with the Queensland Government on proposals to water down the protection for wild rivers at the behest of powerful interest groups in the mining, agricultural and local government sectors. Despite conservation group advocacy, the government ultimately wound back limitations on mining, agriculture and local government activities in wild river areas.

- extraction of quarry material for local government roads will now be permitted from the actual wild river where there is no other viable source;
- mining under a wild river will now be allowed subject to an EIS, and mining projects of state significance can occur in watercourses in a wild river area subject to an EIS;
- some urban Environmentally Relevant Activities (ERAs) such as motor vehicle workshops and most Level 2 ERAs will now be allowed in the high preservation area;
- new broader mapping scales for wild river catchments will mean smaller watercourses receive lesser protection, because in-stream activities otherwise prohibited (such as in-stream quarrying and mining) will be permitted in those numerous smaller watercourses not shown on the broad scale wild river map;
- regrowth vegetation clearing will now be allowed in high preservation areas; and
- fodder crops can now be established without assessment in a preservation area.

This wind-back on earlier proposed wild river protection reduces the positive impact of the Government's agreement to declare six wild rivers: the four Gulf rivers and those of Fraser and Hinchinbrook Islands. Once formally declared as wild rivers, these six will be protected from various activities including new dams and weirs, have water extraction capped at less than 1% of the mean annual flow of the catchment, and benefit from a set back of 100m from river banks for high-impact mining activities.

Conservation groups support wild river declarations but are extremely disappointed that the Government is only partly protecting these wild rivers. Moreover, they doubt the declarations will be effective without an accompanying management plan, funding of \$2 million dollars each river and properly addressing concerns with indigenous community consultation on the wild river declarations.

Once made, the final declarations for the six wild rivers will be available from www.nrm.qld.gov.au/wildrivers/index.html. The draft Wild River Code for assessing activities can be found at www.nrm.qld.gov.au/wildrivers/pdf/wild_river_code.pdf.

A flood of water law reforms for Queensland

Persistent drought and increasing population in the South East continues to flood the political agenda and drive Queensland's water law reform.

(i) Water Infrastructure

The first amendments to the *State Development and Public Works Organisation Regulation* to facilitate **works for potential dam sites** commenced on 5 May 2006. A new Part 4 was inserted into the Regulations to enable the Coordinator-General to undertake works in the Albert, Logan and Mary Rivers and the Teviot Brook to investigate the engineering feasibility of constructing a dam and to conduct cultural heritage, plant and animal surveys.

The *Water Amendment Act 2006* (Qld) commenced on 17 May 2006 and amended the *Water Act 2000* (Qld) to create the **Queensland Water Commission**, which is charged with decision-making and implementation of water supply and demand management throughout Queensland. The Commission's four main roles are to:

- (i) undertake regional assessments of water supply and demand and develop 'water security options' which the Minister will consider when making a regional water security program;
- (ii) facilitate and implement regional water security programs approved by the Minister;
- (iii) ensure compliance with regional water security programs; and
- (iv) set restrictions on water usage where necessary to ensure water supply.

A second round of amendments to the *State Development and Public Works Organisation Regulation* which commenced on 28 July 2006 established the **Water Infrastructure Project Board**, which is responsible for developing and implementing four drought contingency projects: the Southern Regional Water Pipeline, Western Corridor Recycled Water Scheme, Tugun Desalination Plant and Regional Water Inter-Connectors.

Most recently, the Premier legislated various water saving and generation plans mooted in the media for several months by gazettal on 8 August 2006 of the *Water Amendment Regulation (No. 6) of 2006*. The Amendment Regulation committed the State and local governments to a **Water Plan** with timeframes for delivery of a host of projects to deliver water to the South East corner from September 2006 until 2011, including:

- the Western Corridor Recycled Water Scheme, and use generally of recycled water by industrial and commercial consumers (the Premier has said a referendum on potable consumption of recycled water will be held before 2007);
- retrofitting 150,000 residential homes with water-saving devices under the 'SEQ Home WaterWise Service' retrofit program;
- accessing groundwater and aquifers in Bribie Island and in and around Brisbane;
- the Tugun Desalination Plant, to be constructed by November 2008;
- the Southern Regional Water Pipeline and the Northern and Eastern Pipeline Inter-connector (the 'Water Grid');
- raising Mt Crosby Weir and Hinze Dam and new dams on the Logan River (Wyaralong) and Mary River (Traveston Crossing). The Mary River contains the only remaining major spawning ground of the 180 million year old Queensland lungfish, a species of international importance. The Burnett River was the only other major spawning ground for the lungfish however its major lungfish spawning areas were destroyed by Walla Weir and the controversial Paradise Dam;
- a study into power station water use efficiency, and new business and industry consumer water use efficiency requirements; and
- the SEQ Regional Water Leakage and Pressure Management Project.

(ii) Water Conservation

The Queensland *Water Efficiency Labelling and Standards Act 2005* commenced on 10 April 2006 and established a new **water efficiency labelling scheme** for designated products in residential, commercial and industrial buildings. The Act requires all manufacturers to label washing machines, dishwashers, toilets, showers and some types of taps and urinals with a star rating according to their water efficiency, with 6 stars being the most water efficient. The Act complements federal legislation which established a national water efficiency labelling scheme in March 2005.

From 13 June 2006 **Level 3 water restrictions** applied in the 12 SEQ Council areas of Beaudesert, Brisbane, Caboolture, Esk, Gatton, Gold Coast, Ipswich, Kilcoy, Laidley, Logan, PineRivers and Redcliffe. Different restrictions for residential and non-residential users apply, with fines for non-compliance.

From 1 July 2006, the SEQ Home Water Saver Strategy under the SEQ Water Plan provided **rebates** for homeowners, businesses and governments to increase their **water efficiency**. Rebates are available to homeowners who install rainwater tanks, convert to dual flush toilets, buy water-efficient washing machines, taps and showerheads, and install grey water recycling systems. Encouraging *existing* homes to retro-fit water saving devices complements legislative amendments that mandate water saving devices in *new* homes which commenced on 1 March 2006 (discussed in the Autumn NELR Queensland Update).

(iii) Water Charges

On 30 June 2006 the *Water Regulation* was amended for a fifth time that year, to implement **water metering charges** in the Boyne River Basin, to approve self-assessable development codes for bores, to declare the Mulgildie subartesian area and make other minor amendments.

In a confusing backflip on water charges, amendments to the *Water Regulation 2002* (Qld) commenced on 1 July 2006 that **suspend previous new water charges** which had commenced on 1 January 2006 (discussed in the Autumn NELR Qld Update). The 1 July amendments reinstate (with some modification) the water charges that applied prior to the 1 January amendments, after industry successfully lobbied the Queensland Government for an independent costs analysis, a situation compounded by confusion about the intention of the National Water Initiative in relation to water charges.

(iv) Water Planning

The **Mary River Water Resource Plan** (WRP) commenced on 28 July 2006, covering the Mary and its tributaries plus the Burrum, Maroochy, Mooloolah and Noosa Rivers. WRPs under the *Water Act* are meant to provide a framework to allocate and manage surface and subartesian water to meet future water requirements, including the protection of natural ecosystems and security of supply to water users. However the Mary River WRP had to be amended at the last minute to cater for the proposed Traveston Crossing Dam! It is questionable whether the WRP can perform its role of protecting natural ecosystems if the proposed dam proceeds.

The Mary Basin WRP is available from www.nrm.qld.gov.au/wrp/mary.html.

(v) Water Quality

Amendments to the *Environmental Protection (Water) Policy 1997* (Qld) commenced on 1 May 2006 which better **protect riverine, estuarine and coastal water quality** in three project areas – Moreton Bay/SEQ, the Mary River Basin/Great Sandy Region and the Douglas Shire. These are powerful amendments, as the ‘environmental values’ and ‘water quality objectives’ stated for those three areas become matters for consideration in assessing development applications and setting conditions on Environmentally Relevant Activities. Amendments to existing development approvals can also be ordered to achieve the environmental values and water quality objectives.

The *Maritime and Other Legislation Amendment Act 2006* (Qld), which mostly commenced on 17 May 2006, amends several Acts to better deal with **marine pollution** (including narrowing the scope of defences, clarifying roles for pollution response in ports, allowing cost recovery for pollution cleanup, and providing whistleblower protection for reporting illegal pollutant discharges) and provide rules for dealing with abandoned and wrecked ships.

Protected Area regulation and management changes

(i) Amendments allow dogs and horses in national parks

Amendments to the *Nature Conservation Regulation 1994* (Qld) commenced on 16 June 2006 and alarmingly allow dogs to be taken into national parks and other protected areas as long as the dog is leashed and any droppings are immediately collected and disposed of (new regulation 86A). Off-leash walking will be permitted in signed conservation parks and resource reserves (new regulation 91AA).

The amendments also allow horse riding on identified horse trails in prescribed national park (recovery) areas, which are mostly former forest reserve areas specified in the Act.

Conservation officers have new powers to order that an animal be removed from the area if it is a danger to persons or wildlife or has been causing a nuisance or disturbance in the area (new regulation 86B). However, conservation officers are not omnipresent and our native wildlife will surely sense dogs and horses in their habitat, with detrimental effects.

(ii) Native title recognised over Grey Peaks National Park

On 24 April 2006 the Federal Court made a consent determination recognising the Mandingalbay Yidinji People’s native title rights over more than 3100 hectares of land south-east of Cairns in the Thompson State Forest and Grey Peaks National Park. This is only the second time in Queensland that native title rights have been recognised over a national park.

The determination allows the Mandingalbay Yidinji People to camp, hunt, fish, gather, use the natural resources, protect significant places and perform ceremonial activities according to their traditions and customs. They are not able to own, occupy or control the area and agreements have been made with a number of organisations to allow continued access to manage the area and maintain essential community infrastructure. The general public’s right to access the area also remains unaffected.

The determination also recognises the group’s exclusive native title rights over two areas in Trinity Inlet and one area on Red Bank Creek. This means they can possess, occupy, use and enjoy these areas according to their traditional laws, except in relation to water.

Thankyou to Hayley Blackman, Solicitor at the Environmental Defenders Office of Northern Queensland, for providing this article.

(iii) Increased Indigenous management of the Wet Tropics World Heritage Area

The *Wet Tropics World Heritage Protection & Management Act 1993* was recently amended to increase Aboriginal participation in the **management of the Wet Tropics World Heritage Area** by requiring two of the seven board of directors to be Aboriginal persons who have a connection with the land in the Wet Tropics Area. The Wet Tropics Board of Directors makes decisions and recommendations on all matters relating to the management of the World Heritage Area.

(iv) New Great Sandy Marine Park zoning

The Queensland Government released maps for a final zoning plan of the new Great Sandy Marine Park on 18 April 2006, following public and stakeholder consultation in 2005. The new park will absorb existing Woongarra and Hervey Bay Marine Parks and covers over 6000km² of tidal waters and tidal lands from Baffle Creek, north of Bundaberg, to Double Island Point including Fraser Island.

The Government was unwilling to go as far as the Great Barrier Reef Marine Park Authority did in 2004 when it set aside 33.4% of the Reef as Marine National Park zones closed to all harvest of wild marine life. The Great Sandy Plan did not follow the biosystematic approach taken on the Reef, and less than 5% of area will be protected in Marine National Parks closed to all fishing and harvesting. However, a campaign by a broad coalition of conservation groups, whale watch operators and the Butchulla elders of Hervey Bay did result in improvements over the original draft Plan, particularly in regard to increasing national park in critical spots, prohibition of sea cages, and elimination of trawling in the Strait and in some estuaries. The plan also identifies special management areas to improve protection for particular species: dugongs, turtles, grey nurse sharks, humpback whales, and migratory wading birds. There are also a number of “go slow” zones to reduce boat strikes of dugongs, one of the major mortality sources.

The big disappointment is the Great Sandy Strait “Designated Area” including the Strait and certain estuaries. There was considerable pressure to end all commercial fishing in this zone. Trawling will end, except in the Mary River estuary, but recreational and commercial line and net fishing will continue. Commercial crabbing and bait netting and some limited recreational fishing will be allowed in yellow “conservation park” zones. Oyster racks and “ranching” of sea cucumbers and scallops (seeding areas with larvae and bottom trawling to harvest) will be permitted, even in the whale special management area in Platypus Bay.

The new Marine Park and the zoning plan were expected to be enacted by regulation on 31 August 2006 and will be reviewed after five years. The final zoning maps are available at www.epa.qld.gov.au/parks_and_forests/marine_parks/great_sandy_marine_park/.

Thankyou to Dr Martin Taylor of the Australian Rainforest Conservation Society for providing this article.

Planning law changes

On 30 March 2006 the *Integrated Planning and Other Legislation Amendment Act* (IPOLAA) was passed by Queensland Parliament. The Act amends a host of laws regulating planning and development assessment, including the main *Integrated Planning Act 1997* (“IPA”). Mostly positive changes to IPA include:

- reforming the lapsing and currency periods for development approvals;
- removing referral coordination (a system whereby all government information requests were coordinated and funnelled through one source) but, after advocacy by the Environmental Defenders Office (Qld), retaining the longer public comment periods for applications which were previously subject to this process;
- clarification of infrastructure charging regimes;
- improved accountability for local Council decisions, including new requirements to publish reasons on Council websites for a decision that departs from the planning scheme;
- restricting Council’s ability to depart from their planning schemes except when in the public interest. A proposed definition of ‘public interest’ which emphasised need and economic benefit above the natural environment and the planning scheme, was removed after advocacy by the Environmental Defenders Office (Qld); and
- increasing Council’s powers to deal with sediment and erosion problems and environmental nuisance on development sites, with the abolition of show cause notices for these offences – meaning Councils can take immediate enforcement action instead of having to wait for a show cause notice to expire.

New environmental law website

Readers interested in key cases in environmental law can find that information on a new website authored by well known public interest environmental Brisbane barrister and previous NELR Queensland editor Chris McGrath. The website provides simple explanations and case studies of environmental litigation in Queensland and Australia, and also includes a link to the very useful publication by Chris McGrath *Synopsis of the Queensland Environmental Legal System* – see www.envlaw.com.au/index.html