electricity usage (carbon dioxide and nitrous oxide). This is the EPA preferred option for introducing mandatory reporting and disclosure of greenhouse gas and other regulated business emissions.

Option 2) New legislation to enable mandatory reporting of greenhouse gas emissions

This option involves the development of new Commonwealth legislation to enable mandatory reporting of greenhouse gas emissions. Other regulated emissions would continue to be reported through the NPI. The development of unitary Commonwealth legislation is anticipated to occur between November 2007 and March 2008. By the report's estimates, if a bill were passed and accompanying policy and regulations finalised by April 2009, businesses could start reporting their emissions for the 2009-2010 financial year. This option would require the establishment of an Administering Agency to manage the reporting system, a Reporting Advisory Group to develop draft reporting guidelines, and an Inter-jurisdictional Governing body to oversee, assess and report on the implementation and effectiveness of the national greenhouse and energy reporting system.

The Administering Agency will be responsible for ensuring compliance and enforcement with the reporting system. Businesses will be required to report within three months following the end of the reporting period. Non-compliant businesses will receive reminder notices. The Administering Agency will work with businesses to assist them to comply.

New Aboriginal Heritage legislation for Victoria

The *Aboriginal Heritage Act* 2006 (Vic) (the Act) and the Aboriginal Heritage Regulations 2007 came into force on 28 May 2007. The *Archaeological and Aboriginal Relics Preservation Act* 1972 (Vic) has been repealed.

The key features of the new legislation are:

- the establishment of a Victorian Aboriginal Heritage Council to provide a state-wide voice for Aboriginal people and to advise the Minister for Aboriginal Affairs on issues relating to the management of cultural heritage;
- the introduction of a system of registered Aboriginal parties (to be known as RAPs) that allows for Aboriginal groups with connection to country and others - such as Aboriginal groups with contemporary or historical interests - to be involved in decision making processes around cultural heritage;
- the introduction of cultural heritage management plans (to be known as CHMPs) and the continuation of permit processes to manage activities that may harm Aboriginal cultural heritage;
- a system of cultural heritage agreements to support the development of partnerships around the protection and management of Aboriginal cultural heritage;
- strengthened provisions relating to enforcement - including protection declarations and stop orders, more effective and accountable inspectorship arrangements, and an updated structure of penalties.

QUEENSLAND

Larissa Waters

Climate change and energy law update

(i) New climate change five year plan for Queensland

In early June 2007 the Premier released the *ClimateSmart Adaptation Plan 2007-12*. The Adaptation Plan is a staged strategy with a range of short, medium and long-term policies to enable Queensland to prepare for and lessen the impacts of climate change. The Adaptation Plan contains 62 actions, with associated deadlines, including:

- Explore ways of incorporating climate change in the terms of reference for environmental impact statements and other relevant assessment processes;
- Integrate climate change considerations and new projections into decisions about water infrastructure, water-quality management of dams and reservoirs, water planning and water-quality improvement programs;
- Contribute to the development of a Queensland Local Government Climate Change Management Strategy;

- Review the effectiveness of existing planning tools in addressing the increased risks from climate change, including the *State Planning Policy 1/03: Mitigating the Adverse Impacts of Flood, Bushfire and Landslide*, *State Coastal Management Plan*, local government planning schemes; and
- Work with the Great Barrier Reef Marine Park Authority to implement joint initiatives that address climate change in the Reef region.

In the view of this author, while the Adaptation Plan is a step in the right direction, the plan is far short of what is required to effectively manage and adapt to climate change, and lacks crucial regulatory underpinning. The Adaptation Plan is available from www.nrw.qld.gov.au/climatechange/pdf/climatesmart_plan.pdf.

(ii) New climate change 2050 Strategy for Queensland

In early June 2007 the Queensland government also released the *ClimateSmart 2050 Queensland climate strategy*. The Strategy proposes measures for energy conservation in homes, energy efficiency, the transport sector, renewable energy targets, carbon trading, greenhouse gas reduction targets, and the coal mining sector.

The view of this author is that while the Strategy contains several positive initiatives, these are under-funded and will have minor impacts on greenhouse gas emissions compared with the continued huge financial support for the coal industry, the failure to properly invest in the renewable energy sector, and the failure to ensure all transport, mining and infrastructure projects are assessed for their climate change impacts. The Strategy's carbon reduction targets are also too low and lacking regulatory force, and the renewable energy target misleadingly includes non-renewable but low-emission technologies. The Strategy is available from www.thepremier.qld.gov.au/news/initiatives/climate/index.shtm.

(iii) Clean Coal Bill passed in Queensland

The *Clean Coal Technology Special Agreement Bill 2007* was introduced into Queensland Parliament on 5 June and passed on 8 June 2007. The Act establishes the Clean Coal Council which will advise the Premier on funding priorities to accelerate the demonstration, development and use of clean coal technologies. The Act is supported by the $910 million of public and private funding for clean coal in Queensland. Environment groups have been critical of the amount of funding going to this unproven technology while renewable energies, which are known to work, are not being adequately funded.

(iv) Carbon capture and storage discussion paper

The Queensland government has released a discussion paper on geo-sequestration – the capture and underground storage of carbon dioxide (CO2) produced from burning coal and other fossil fuels for electricity generation. The discussion paper invites comment on a proposed legislative model to regulate geo-sequestration under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act). The discussion paper is available from: www.nrw.qld.gov.au/mines/legislation/pdf/carbon_dioxide_discussion_paper.pdf.

The continuing flood of water law reforms in Queensland

(i) Water targets and tanks compulsory for new homes outside SEQ from 1 July

From 1 July 2007, local governments throughout Queensland must require new homes to have rainwater tanks and meet water saving targets of 70 kilolitres a year for detached houses and 42 kilolitres per year for terrace and townhouses. Amendments to the building laws passed in December 2006 have been in effect in SEQ since 1 January 2007 and came into effect for the rest of the state on 1 July 2007.

(ii) Water supply emergency actions can ignore planning laws

In an effort to ensure Queensland's new water infrastructure projects are completed on time, the *State Development and Public Works Organisation Regulation* was amended in mid June 2007 to allow the Coordinator General to take sand, stone and gravel from the now dry Wivenhoe Dam and

use it as material for the water supply emergency project works, without needing to comply with the normal planning laws. This is yet another by-pass of environmental and planning laws to deliver the water projects on time, which also lock out the community from having a say on those works.

(iii) Water Resource Planning – Cubbie Station and Border Rivers

The Border Rivers Water Resource Plan was amended in June 2007 to facilitate inter- and intra-state trading of water allocations. The amendments reduce the amount of environmental flows necessary for end-of-system flow (from 61% to 60.8%), and prevent decisions which would case a reduction in the security of water entitlements of a water allocation group.

The draft Condamine-Balonne ROP was open for public comment until 22 June, covering a large slice of southern Qld from Toowoomba to Roma down through St George to the NSW border. These rivers supply a significant inflow to the Darling but, according to recent reports, flows have been cut by more than 50%, leaving Darling wetlands in drought. EDO was alarmed that the draft ROP gives almost 10,000 ML of water per day to the infamous private water storage and irrigation scheme, Cubbie Station, an amount which dwarfs all other allocations under the draft ROP. This seems incongruous to the ban on water harvesting by irrigators implemented from early June 2007 onwards in the Condamine catchment, in an attempt to replenish Darling Downs town water supply and ensure the 'wetting up' of the river.

(iv) State to take over Council water powers

The state government is pushing ahead with a new water management structure whereby the State will operate the larger water assets that hold, manufacture (desalination and recycled) and distribute bulk water in South East Queensland, instead of local Councils, who will be compensated for the loss of their assets.

Councils will manage the retail and distribution of water, through a jointly owned single distribution entity responsible for the domestic pipe network, pumping stations and three retail companies. A new statutory authority will be created to manager the SEQ Grid, which will be responsible for the equitable distribution of water from the State-owned assets to the council-owned companies. This will include the ability to transfer water to where it is needed most in times of drought. The Grid Manager will be obliged to ensure that all regions have appropriate access to water and that proper maintenance is undertaken.

A report from the Qld Water Commission in late May 2007 identified that SEQ currently has 22 bulk water assets, owned by 12 different bodies, and 17 water retailers - made up of 25 different water entities with different approaches to managing water. The proposed reforms bring Queensland into line with other Australian mainland States, where delivery of water is responsibility of State Governments.

No legislation has yet been tabled in Parliament, and Councils have until November 2007 to put their views to the Queensland Water Commission on the structure of their proposed businesses. State government envisages that some of the new businesses will be up and running by 1 October 2008, and the entire reform process will be in place by 1 July 2009. Recently, the state reached agreement with Brisbane City Council to transfer BCC assets (including its 45% share of SEQ Water, water treatment plants and wastewater plants) to the state starting from 1 July 2008. This will give the State majority ownership of Wivenhoe, Somerset and North Pine dams systems.

(v) North Stradbroke Island water extraction EIS required

Water extraction from borefields on North Stradbroke Island and the eastern pipeline to feed that water into the water grid has been declared a state significant project for which an environmental impact statement (EIS) is required. Under the state development laws which apply to state significant projects, the only opportunities for the community to have their say on a project are comments on the EIS terms of reference and EIS itself. There are no appeal or review rights.

Mining law update

(i) Extractive Industries State Planning Policy finalised after three years

A new State Planning Policy (SPP) on the Protection of Extractive Resources and a supporting Guideline was adopted on 8 June 2007, and will come into effect on 3 September 2007. The Extractives SPP identifies extractive resources of State or regional significance where extractive industry development is appropriate in principle, and protects those resources from developments that might prevent or constrain current or future extraction. The Extractives SPP has been proposed since 2004, and a draft was first put out for public comment in December 2004. Conservation groups were widely critical of the draft SPP for overriding protection for important koala habitat. The SPP is available at www.nrw.qld.gov.au/mines/land_tenure/pdf/dme_stateplan_policy.pdf.

(ii) Mining laws under review

The *Mineral Resources Act 1989*, Queensland's main mining legislation, is under review. A discussion paper has been released for public comment, and is available from www.nrw.qld.gov.au/mines/legislation/pdf/mra_discussion_paper.pdf. Comments will inform amendments to the Act, and a draft Bill will also be subject to consultation prior to tabling in Parliament.

This author's examination of the discussion paper has revealed no mention of greenhouse gases and only two references to climate change in the entire document. There is no consideration of explicitly making mining companies responsible for the greenhouse gas emissions generated from coal mined in Queensland, and encouraged to avoid, reduce or offset those emissions, the subject of the *QCC v Xstrata* case coming before the Queensland Court of Appeal in August 2007 (see Caselaw update below).

Planning and development law update

State government call-in protects coastal Kin Kin from tourism development

The Queensland government has used its planning powers to call-in a proposed tourism development on the Sunshine Coast and reject it because it breached the South East Queensland Regional Plan.

Noosa Shire Council refused approval for the $400 million hotel, villa, golf course and conference centre development in Kin Kin, known as The Edge, because it contravened Noosa's planning scheme and was rural land outside the urban footprint set by the Regional Plan. The developer, Titanium Enterprises, challenged Council's decision in the Planning and Environment Court but the Deputy Premier, Treasurer and Minister for Infrastructure Anna Bligh used powers under the *Integrated Planning Act 1997* (Qld) to call-in the development and refuse it, because the SEQ Plan allows for only smaller scale tourism facilities in the Noosa hinterland. The state government's call-in and decision cannot be challenged and will end the developer's Court appeal.

Caselaw update

For updates on recent Planning and Environment Court and relevant Court of Appeal cases, see Deacons Lawyers' website www.deacons.com.au and follow links to updates by the Environment and Planning section, or Corrs Chambers Westgarth's website www.corrs.com.au and follow links to the Planning Environment and Local Government Practice Area.

SOUTH AUSTRALIA

Rebecca McAulay

Development (Division of Land) Variation Regulations 2007

By David Billington (Associate) - Norman Waterhouse Lawyers

On 16 August 2007 the *Development (Division of Land) Variation Regulations 2007* came into effect. The Variation Regulations provided for three changes to the *Development Regulations 1993*. Firstly, the Regulations were amended throughout so as delete the word "provisional" wherever