

# RECENT DEVELOPMENTS

## Commonwealth

### Heritage Legislation Amendments

On 7 December 2000, the Government introduced three Bills into the Senate amending the existing heritage protection legislation:

Environment and Heritage Amendment Bill (No 2) 2000;  
 Australian Heritage Council Bill 2000; and  
 Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000.

The Bills seek to:

establish the Australian Heritage Council, as the successor to the Australian Heritage Commission, to provide independent, expert advice to the Minister on the identification, conservation and protection of places on the proposed National Heritage List and Commonwealth Heritage List;

establish a list of National Heritage Places (the National Heritage List) comprising places of national heritage significance, potentially including overseas sites such as Anzac Cove and the Kokoda Trail, but not including places of purely State or local significance;

establish a list of Commonwealth Heritage Places (the Commonwealth Heritage List) comprising sites of heritage significance on Commonwealth land;

amend the *Environment Protection and Biodiversity Conservation Act 1999* to identify places on the National Heritage List as matters of national environmental significance, thereby making such places subject to the environmental assessment and approval processes under that Act.

When introducing the Bills, Senator Ian Campbell stated they will provide substantive protection for heritage places of national significance and will overcome deficiencies in the exiting legislation, which relies on procedural safeguards and indirect triggers such as foreign investment.

Environmental organisations have welcomed those elements of the proposals that strengthen heritage protection but are critical of other elements, particularly the proposal that the Commonwealth no longer have a role in protecting places not on the National or Commonwealth Heritage Lists.

The Senate has referred the Bills to the Senate Environment, Communications, Information and Technology and the Arts References Committee for inquiry and report by 28 March 2001. Submissions are requested by 2 February 2001. For further information contact the Secretariat on (02) 6277 3526.

## Senate Report on Gene Technology Legislation / Passage of Act

In November 2000, the Senate Community Affairs Reference Committee its report on the Gene Technology Bill 2000: *A Cautionary Tale: Fish Don't Lay Tomatoes*. The report includes a Minority Report by Government Senators, Additional Comments by the Australian Democrats and a Supplementary Report by Australian Greens Senator Bob Brown. The majority report recommended:

strengthening the risk assessment provisions of the Bill to give greater weight to consideration of the impact of the release of genetically modified organisms (GMOs) into the environment;

that an independent organisation conduct a national public education campaign to provide information on the benefits and risks of gene technology;

that the Gene Technology Regulator be established as a statutory authority of three people;

that the objects of the Bill contain the same words as in the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the precautionary principle;

that, in preparing risk assessment and risk management plans for the intentional release of GMOs into the environment, the Regulator be required to follow a process no weaker than the environmental impact assessment process set out in the *Environment Protection and Biodiversity Conservation Act 1999*;

inclusion of provisions for the mandatory review of all licences granted by the Regulator, at intervals of not more than three years;

that as a condition of a licence a licence holder be required to submit to an independent audit by the Regulator to ensure compliance with licence conditions;

strengthening of the penalties for breaches of licence conditions;

strengthening of the requirement for the Regulator to accept State or Territory viewpoints to prevent the release of GMOs within their jurisdictions;

that the Interim Office of the Gene Technology Regulator audit all field trials currently being conducted in Australia as soon as possible, and that the results of the audit be made publicly available.

The Government Senators Minority Report recommended adoption of the Bill without amendment. The Australian Democrats provided additional comments on the issues discussed in the report and made additional recommendations. Although supporting the majority recommendations, Senator Brown recommended, *inter alia*,

that Australia implement a 5 year freeze on the import of all genetically modified products and the release of all GMOs;

that Australia sign and implement the Biosafety Protocol; and

that the Bill be amended to give State, Territory and Local governments explicit power to prohibit dealings with any GMOs or GM products within their respective jurisdictions

One month after the Senate Report was published, the Gene Technology Bill 2000 was passed, with amendments, in the Senate on 8 December 2000. The Gene Technology (Consequential Amendments) Bill 2000 and Gene Technology (Licence Charges) Bill 2000 were also passed. The Bill's amendments, (agreed to by the House of Representatives also on 8 December), include provisions:

- enabling the States to declare 'GM-free' zones;
- enabling the Gene Technology Regulator to require insurance as a condition of licence;
- strengthening the restrictions on appointment as Regulator;
- requiring the Regulator to report quarterly to the Minister and the Parliament;
- requiring an independent review of the Act as soon as possible four years after the commencement of the Act;
- extending the judicial review standing provisions to enable the States to challenge decisions of the Regulator in the Federal Court;
- requiring that GM field trial sites be disclosed publicly, subject to certain safeguards; and
- imposing penalties for interference in dealings with GMOs, such as damage or interference with premises at which GMO activities are being undertaken.

(See *Australian Environmental Law News* No 3/200 for a summary of the Gene Technology Bill 2000.)

The CSIRO is to undertake a three-year study of the effects on the environment of genetically modified plants, animals and other organisms (GMOs). The project's aim is to improve understanding of the wider ecological impacts of GMOs.

The project will include trials of genetically modified cotton, clover and canola. It will also examine possible ecological impacts of GMOs still at the research stage, such as insect-resistant eucalypts, livestock gut micro-organisms, oysters and a virus that induces mouse stability.

For further information contact Dr Mark Lonsdale on (02) 6246 4360.

### **Update on *Environment Protection and Biodiversity Conservation Act 1999* [EPBC Act]**

#### 1. Greenhouse Trigger

In November 2000, the Environment and Heritage Minister, Senator Robert Hill released draft regulations and a discussion paper concerning a possible greenhouse trigger under the *EPBC Act*.

The draft regulations provide that the Act would be triggered by any major development likely to result in greenhouse gas emissions of more than 0.5 million tonnes of carbon dioxide equivalent in any 12 month period. Senator Hill said that this threshold 'is equivalent to approximately 10 per cent of the average annual increase in Australia's total greenhouse emissions from 1990-1997. It would therefore apply only to projects that can properly be regarded as being of national environmental significance, such as the building of a new coal-fired power plant'.

Senator Hill said that the assessment would normally be carried out by the relevant State government under an accredited State regime. Assessments would consider greenhouse issues such as the extent of likely emissions and whether the project design represents 'best practice'

from a greenhouse perspective. Environmental, economic and social factors would also be taken into account and effects on international competitiveness and regional development would be factored into the assessment and approvals process.

The Senator has written to State and Territory government seeking their views on the draft regulations. In response to a question in the Senate on 27 November 2000 from Senator Bolkus, Senator Hill commented that the ultimate decision on a greenhouse trigger is to be 'determined by Cabinet in due course'.

The draft regulations and the discussion paper are available via Environment Australia's web site at: [www.environment.gov.au](http://www.environment.gov.au).

## 2. Environment Protection and Biodiversity Conservation Regulations 2000

Government and Australian Democrat Senators joined forces on 27 November 2000 to defeat motions by the Australian Labor Party and Australian Green Senator Bob Brown to disallow regulations under the *Environment Protection and Biodiversity Conservation Act 1999*. The motions sought to overturn regulations relating to assessment bilateral agreements between the Commonwealth and the States and Territories; matters to be addressed in draft public environmental reports and environmental impact statements; impacts on world heritage; nuclear actions; and provision of preliminary information.

## 3. Bilateral Agreement Signed - Commonwealth and Tasmania

On 15 December 2000 the Commonwealth and Tasmania signed the first bilateral agreement under the *EPBC Act*. Under the agreement the Commonwealth has accredited two Tasmanian assessment processes—the Environmental Impact Statement process under the *State Policies and Projects Act 1993* and the Development Proposal and Environmental Management Plan process under the *Environmental Management and Pollution Control Act 1994*.

Signing of the agreement means that Tasmania will be able to undertake environmental assessments to meet Commonwealth requirements for projects that trigger the *EPBC Act*. Such projects will, however, still require approval by the Commonwealth Environment Minister. Bilateral agreements require States to meet national 'best practice' benchmarks for environmental assessment prescribed in the *Environment Protection and Biodiversity Conservation Regulations 2000*.

## 4. Monitoring and Compliance Unit

Environment Australia has established a Monitoring and Compliance Section within its Approvals and Legislation Division to perform functions in relation to *EPBC Act*. The Section will seek to ensure that all actions, or proposed actions, that have, or are likely to have, a significant impact on a matter of national environmental significance are referred to Environment Australia for assessment.

For further information, or to report possible breaches of the legislation, contact the Section on (02) 6274 1474.

## 5. Appointments to Advisory Committees

On 12 October 2000, Senator Hill, and the Parliamentary Secretary to the Minister, Dr Sharman

Stone, announced the launch of two Advisory Committees established under the *EPBC Act*.

The Indigenous Advisory Committee (chaired by Mr Gatjil Djerrka) will advise the Minister on the operation of the Act, taking into account the significance of Indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity. The Biological Diversity Advisory Committee (chaired by Professor Hugh Possingham) will provide advice on the performance of Government legislation in promoting biodiversity conservation and the implementation of best practice business strategies to promote biodiversity.

### Climate Change Reports

The report of the Senate Environment, Communications, Information Technology and the Arts reference Committee into Australia's response to global warming: *The Heat is On: Australia's Greenhouse Future* was tabled in the Senate in November 2000. It may be viewed via the web site: [www.aph.gov.au/senate/committee/ecita\\_ctte/index.htm](http://www.aph.gov.au/senate/committee/ecita_ctte/index.htm).

Senator Robert Hill, released in November 2000 the public consultation paper *Encouraging Early Greenhouse Abatement Action*. The paper represents an invitation to Australian industry to join with the Commonwealth Government in developing greenhouse crediting arrangements, the Minister said.

Senator Hill said that the Government has given its in-principle support to the development of arrangements that would allow industry to earn credit for actions that help to reduce Australia's greenhouse gas emissions profile. Credits would be exchangeable for emissions allowances that would be assigned to Australia if the Kyoto Protocol enters into force. Participation by industry would be voluntary.

Responses to the consultation paper are requested by 15 March 2001. Copies of the paper are available at the Australian Greenhouse Office web site: [www.greenhouse.gov.au](http://www.greenhouse.gov.au).

The *National Greenhouse Strategy 2000 Progress Report* was tabled in the Senate on 6 December 2000. It is available at the web site: [www.greenhouse.gov.au/pubs](http://www.greenhouse.gov.au/pubs).

### **Review of the National Environment Protection Act 1994**

The National Environment Protection Council has initiated a review of the *National Environment Protection Act 1994* (Cth) (the NEPC Act) and the counterpart legislation in each State and Territory. Dr Don McMichael CBE is conducting the review.

The review is examining:

the operation of the Act of each participating jurisdiction and the extent to which the objects of the Act have been achieved;

whether existing national environment protection measures (NEPMs) are achieving environmental outcomes and providing equivalent environmental protection for all Australians; and

the efficiency and effectiveness of the NEPM development process.

Further information is available from the NEPC web site: [www.nepc.gov.au](http://www.nepc.gov.au).

### **Review of the Commonwealth's Ozone Protection Legislation**

The task force of officials reviewing the Commonwealth's ozone protection legislation issued two papers for public comment in September 2000 and conducted public consultations in October. The two papers are: *Draft Report—A Review of the Legislative Framework* and *Discussion Paper—Alternatives and Reform of the Legislation*.

The two papers and associated documents are available at: [www.environment.gov.au/ozone](http://www.environment.gov.au/ozone) or by phone: (02) 6274 1457.

### **Inquiry into Corporate Code of Conduct Bill**

The Corporate Code of Conduct Bill 2000 was been referred to the Joint Committee on Corporations and Securities on 5 October 2000, with a reporting date of 31 March 2001. The Bill, introduced by the Australian Democrats, seeks to impose standards relating to environmental performance, employment, health and safety and human rights on Australian corporations operating overseas.

Public submissions were invited by 15 December 2000. An information package is available at the Committee's web site: [www.aph.gov.au/corps\\_securities](http://www.aph.gov.au/corps_securities) or by phone: (02) 6277 3581.

### **Lake Eyre Basin Agreement**

In October 2000 the Commonwealth, Queensland and South Australian Governments signed the Lake Eyre Basin Agreement, aimed at achieving sustainable management of the natural resources of the Basin. It establishes a cooperative framework for addressing cross-border issues in the Basin associated with the management of water and the related natural resources of the Coopers Creek and the Georgina/Diamantina River systems.

The Agreement provides for:

- periodic state of the rivers reporting;
- preparation of policies and strategies;
- community and scientific advice; and
- involvement by the broader community in biennial conferences.

The Lake Eyre Basin covers 1.14 million square kilometres (some 15 per cent of the Australian continent) and is the world's largest internal drainage system. Although located in some of Australia's most arid country, the Basin also contains important wetlands and is an important habitat for birds.

For further information contact Bernice Cohen on (08) 8204 9270 or see the South Australian Department for Water Resources web site: [www.dwr.sa.gov.au](http://www.dwr.sa.gov.au).

### **World Heritage Update**

#### 1. Blue Mountains

On 29 November 2000, the World Heritage Committee, (at its meeting in Cairns) voted to add

1 million hectares of the Blue Mountains area to the World Heritage list. The area includes seven NSW national parks and the Jenolan Caves Karst Conservation Reserves.

The Blue Mountains area is the fourteenth property in Australia to receive World Heritage recognition. The Committee's decision follows two previous decisions to reject the nomination.

## 2. Kakadu

The Committee also concluded that the proposed Jabiluka uranium mine should not threaten the natural world heritage values of Kakadu National Park. The Committee's resolution reflects advice from an Independent Science Panel (ISP) formed by the International Council of Science (ICSU) on the scientific assessment for the proposed Jabiluka uranium mine. The report concluded that the Office of the Supervising Scientist (OSS) has identified and quantified all the principal risks to the natural values of the Kakadu World Heritage site that can presently be perceived to result from the Jabiluka mining proposal, and has shown these to be very small or negligible. The Committee, however, has some remaining concerns about impacts on cultural values and will re-examine the issue in 2001

Senator Hill has acknowledged a need for greater transparency in environmental monitoring and to consider ways of incorporating further independent scientific and engineering advice in review processes. The OSS has also been strengthened.

## 3. Funding for World Heritage

Senator Hill announced on 29 November 2000 \$10.8 million in Commonwealth funding for 36 projects in Australia's World Heritage areas.

### **Snowy Mountains Hydro-Electric Authority Corporatisation**

In November 2000, Environment Australia released its environmental assessment report in relation to the proposed corporatisation of the Snowy Mountains Hydro-Electric Authority. Senator Hill in adopting the report's recommendations, has said there was no environmental reason why corporatisation *per se* could not proceed, however, two associated issues required further consideration.

The first relates to the incidental consequences on the long term health of the Murray River of the diversion of up to 295 ggalitres of water for environmental flows to the Snowy River. The issue of environmental flows to the Murray is currently being examined by the Murray–Darling Basin Commission, which is expected to report by March 2001.

The second issue was whether the proposed water licence designed to maximise the energy output of the Snowy Hydro was sufficiently flexible to allow the best water management decision in relation to both the economic and ecological sustainability of the Murray. 'This is a decision,' the Minister said, 'to grant a licence for 75 years to a background where future national interests in relation to water are unclear'.

The assessment report is available through the Environment Australia's web site at: [www.environment.gov.au](http://www.environment.gov.au).

## **Murray-Darling Basin Integrated Catchment Policy and Salinity Management Strategy**

The Murray-Darling Basin Ministerial Council has released for public comment a draft *Integrated Management Policy Statement* and a draft *Basin Salinity Management Strategy*.

The *Integrated Management Policy Statement* is described as 'a call to communities and governments to protect the health and productivity of the Murray-Darling Basin'. It puts forward proposed targets for integrated catchment to be implemented over ten years. It also identifies the need for targets for other aspects of catchment health targets and discusses processes and time frames for targets for water quality, water sharing, river ecosystem health, terrestrial biodiversity and catchment health.

The draft *Basin Salinity Management Strategy* is the Council's response to the 1999 Basin Salinity Audit, and outlines how the six governments responsible for managing the Murray-Darling Basin's natural resources propose to address the threat of salinity.

The documents are available from the Murray-Darling Basin Commission on (02) 6279 0100 or via the website: [www.mdbc.gov.au](http://www.mdbc.gov.au).

In December 2000 the Victorian and NSW Governments signed an agreement which commits them to a long-term target of restoring 28 per cent of original flows to the Snowy River. The agreement also includes increases in environmental flows to the Upper Murrumbidgee River and key alpine rivers in the Kosciuszko National Park.

The agreement includes a target flow rate of 21 per cent to be restored over ten years, with funding of \$300 million to be provided by NSW and Victoria. The remaining 7 per cent would be to be achieved through the development of new infrastructure projects involving the private sector.

The agreement envisages the formation of a joint NSW/Victorian/Commonwealth government enterprise to invest in capital projects to save water. The enterprise would acquire water at the lowest cost to meet the target flow, principally by the development of water saving infrastructure such as pipelines, engineering works, better water accounting and improved maintenance of the irrigation distribution system. The Commonwealth has so far not announced its agreement to participate in the proposed scheme.

## **Environment and Heritage Legislation Amendment (Application of Criminal Code) Bill 2000**

The Government introduced into the Senate on 6 December 2000 the Environment and Heritage Legislation Amendment (Application of Criminal Code) Bill 2000, which proposes amendments to offence provisions in legislation administered within the Environment and Heritage portfolio. It seeks to ensure that when Chapter Two of the *Criminal Code Act 1995* (the Criminal Code) is applied to pre-existing portfolio offence provisions, from 15 December 2001, those provisions will continue to apply in the same manner as they operated previously.

## **Renewable Energy Legislation**

The renewable energy legislation package completed passage through the Senate and the House of Representatives on 8 December 2000. The package comprises the Renewable Energy (Electricity) Bill 2000, the Renewable Energy (Electricity) (Charge) Bill 2000 and the Renewable



Energy (Electricity) (Charge) Amendment Bill 2000. The legislation establishes a legal requirement for large buyers of electricity to source an additional 2 per cent of their supplies from renewable sources by 2010. Users will have to meet incremental requirements for renewable energy purchases from 1 April 2000. Currently some 10.7 per cent of electricity produced in Australia comes from renewable sources.

Environment and Heritage Minister, Senator Robert Hill, said that the legislation has the potential to reduce Australia's greenhouse emissions by up to seven million tonnes by 2010. He predicted that the legislation will generate billions of dollars in new investment in the renewable energy industry. The Commonwealth has already made almost \$400 million available for supporting the introduction of renewable energy technology through the Australian Greenhouse Office, Senator Hill said.

Comments on the discussion paper are requested by 31 March 2001.

### **Great Barrier Reef Marine Park To Be Extended**

In December 2000, Senator Hill announced moves to include six new areas (totalling almost 1300 square kilometres) within the Great Barrier Reef Marine Park, as part of the Federal Government's efforts to enhance the protection of biodiversity within the world's largest World Heritage area.

The areas are sited between the far north of Queensland and Gladstone and will be officially proclaimed by the end of January 2001. They comprise the Weymouth Section, the Bathurst Head Section, the Cooktown Section, the Clump Point Section and the Curtis Island Section.

### **Fuel Quality Legislation Passed by Parliament**

Both houses of the Commonwealth Parliament passed the Fuel Quality Standards Bill 2000 in November 2000. The Bill will enable the Commonwealth Government, for the first time, to declare mandatory fuel standards for fuel supplied in Australia, and to control harmful additives.