

recent developments

COMMONWEALTH

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EBC Act Developments

Flying Fox Court Decision

On 12 February 2003 the Federal Court handed down its decision in *Humane Society International Inc v Minister for the Environment and Heritage* [2003] FCA 64. The case concerned the validity of agreements between the Commonwealth and Victoria, New South Wales and Queensland concerning the killing of grey-headed flying foxes and spectacled flying foxes and administrative guidelines issued in relation to these species.

Justice Kiefel held among other things that the administrative guidelines purported to exempt permit/licence holders from their statutory obligations under the Environment Protection and Biodiversity Conservation Act 1999 and that certain statements in the guidelines were not authorised by the Act. She indicated that the Minister should withdraw the relevant statements and issue clarifying information.

The Minister for the Environment and Heritage, Dr David Kemp, has undertaken to include additional explanation in the guidelines in accordance with the Federal Court decision. See also the case note at page 26.

Strategic Assessment of the Coral Sea Fishery

The Australian Fisheries Management Authority (AFMA) has submitted a Draft Coral Sea Fishery Strategic Assessment Report to Environment Australia under s 146 of the Environment Protection and Biodiversity Conservation Act 1999 ('the Act').

Environment Australia has invited written comments on the operations of the fishery as described in the draft report for the purposes of various sections of the Act—s 146 (strategic assessment of the fishery), s 303DC (amending the list of exempt native specimens) and s 303FR (declaration of an approved wildlife trade operation). Comments are requested by 25 March 2003.

For further information and access to the draft report see the AFMA website at www.afma.gov.au.

NEPC Act Amendments Passed

(See also National Environmental Law Review No 3/2002, 7)

The National Environment Protection Council Amendment Act 2002 was passed by both houses of federal parliament in December 2002 and received Assent on 19 December 2002. The Act amends the National Environment Protection Council Act 1994 ('the Act') in order to:

- simplify the process for making minor variations to national environment protection measures (NEPMs)
- require five-yearly reviews of the Act
- allow the NEPC Service Corporation to provide support and assistance to other ministerial councils.

The first two amendments put into effect recommendations arising from the review of the Act by Dr Don McMichael in 2000–2001. The third arises from the incorporation of the National Environment Protection Council into the Environment Protection and Heritage Council.

Renewable Energy Legislation Developments

Renewable Energy Review

The Minister for the Environment and Heritage, Dr David Kemp, announced on 29 November 2002 that an independent review of the Renewable Energy (Electricity) Act 2000 ('the Act') would begin in January 2003. Under the Act, the Minister is required to establish an independent review of the Act as soon as practicable after the second anniversary of the commencement of the Act.

The Act introduced a requirement for electricity retailers and other large purchasers of electricity to source an additional 2 per cent of their electricity purchasers from renewable or specified waste-product sources by 2010. This requirement, amounting to an additional 9500GWh per year, known as the Mandatory Renewable Energy Target (MRET), is being phased in over the period 2001–2010.

The Act specifies the matters to be considered by the review, including the level of the MRET and interim targets, the mix of technologies that have resulted from implementation of the Act, and the extent to which the Act has contributed to reducing greenhouse gas emissions and encouraged additional generation from renewable energy sources.

Renewable Energy (Electricity) Act Amendments

The Renewable Energy (Electricity) Amendment Bill 2002, introduced in the House of Representatives on 27 June 2002, seeks to make a number of technical and administrative amendments to the Act to overcome deficiencies identified since the Act came into operation (see National Environmental Law Review No 3/2002, 8).

The report by the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on the provisions of the Bill was tabled on 2 December 2002. The report recommended that the Bill be passed, with consideration of the recommendations in the report. The Australian Democrats submitted a supplementary report on issues related to projected windfall gain to hydro generators from the MRET scheme.

The Bill was passed by the House of Representatives on 12 December 2002 and, with amendments, by the Senate on 13 December 2002. The Senate amendments seek to:

- increase the MRET in 2010 to 5 per cent of the total GWh in 2009
- enlarge the range of environmental impacts associated with the use of non-plantation forestry waste to be considered in the independent review of the Act.

Maritime Legislation Amendment Bill 2002

The Maritime Legislation Amendment Bill 2002 was passed in the House of Representatives on 5 February 2003 and introduced in the Senate on 6 February 2003. The Bill:

- amends the Protection of the Sea (Civil Liability) Act 1981 and the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993 in order to increase the monetary liability and compensation for pollution damage resulting from the escape or discharge of 'persistent oil' from oil tankers (implementing a decision of the International Maritime Organization)
- amends the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to prevent the disposal from a ship into the sea of incinerator ashes from plastic products which may contain toxic or heavy metal residues; to allow garbage disposal placards to be written in Spanish (rather than English or French); and to convert penalty amounts from monetary units to penalty units
- amends the *Trade Practices Act 1974* to clarify that stevedoring operators are not permitted to collude in setting charges for stevedoring services
- repeals the *Bass Strait Passenger Service Agreement Act 1984*, which no longer performs any useful function.

Great Barrier Reef Marine Park (Protecting the Great Barrier Reef from Oil Drilling and Exploration) Amendment Bill 2002

The Shadow Minister for Sustainability and the Environment, Kelvin Thompson, introduced the Great Barrier Reef Marine Park (Protecting the Great Barrier Reef from Oil Drilling and Exploration) Amendment Bill 2002 into the House of Representatives on 10 February 2003. The Bill seeks to extend the boundaries of the Great Barrier Reef Marine Park out to the boundaries of the Exclusive Economic Zone thereby preventing oil exploration and production in the extended region. The Bill is similar to one introduced by the Australian Democrats into the Senate on 21 March 2002.

Charges Laid for World Heritage Offences

Two Japanese citizens have been charged with offences under the World Heritage protection provisions of the EPBC Act (s 15A) after removing rare Stag Beetles from Lord Howe Island. They have also been charged with offences under the wildlife trade provisions of the Act. They face possible prison terms and large fines.

The two men were intercepted by Australian Customs at Sydney Airport on 29 December 2002, and found to be in possession of a large quantity of both live and dead Stag beetles, a number of Longhorn Beetles, a Butterfly and some flies.

The case was adjourned after preliminary hearings were held in the Downing Centre Local Court in Sydney on 11 and 18 February 2003.

The Minister for the Environment and Heritage, Dr David Kemp, said that this is the first time that charges have been laid in Australia for offences against World Heritage values.

Stag Beetles are rare and found only on Lord Howe Island. They are not available for legal export.

Tax Incentives for Conservation Extended to Include Covenants with Government Agencies

Tax incentives are now available to landholders who enter into conservation covenants with government agencies. Previously, tax incentives were only available to agreements with deductible gift recipients and did not extend to agreements with state or local government agencies, for example, state departments of parks and wildlife.

The changes will apply to covenants entered into after 1 July 2002. Qualifying conservation covenants must be approved by, or through a program approved by, the Commonwealth Minister for the Environment and Heritage.

A conservation covenant is registered on a property's land title, and formalises a commitment by a landholder to put in place conservation activities such as fencing off rare plants, seed collecting and tree planting.

The incentives allow landholders to claim an income tax deduction for any decrease in land value as a result of entering into a qualifying conservation agreement provided the landholder receives no payment for it. Capital gains tax provisions apply as if entering into a conservation agreement were a sale or gift of land.

For further information see the Environment Australia website at www.ea.gov.au.

Promoting Environmental Philanthropy

On 20 February 2003 the Minister for the Environment and Heritage, Dr David Kemp, launched a report, *Building a Stronger Coalition*, that includes proposals to support the philanthropic efforts of individuals and community organisations in protecting the environment.

Building a Stronger Coalition contains recommendations organised on the following themes:

- providing new tools for community organisations to encourage contributions
- recognising everyone's contributions
- recognising public good activities
- exploring new approaches to supporting social enterprises and partnerships.

The Allen Consulting Group prepared the report on behalf of the Steering Group on Incentives for Encouraging Private Conservation—a coalition of the Australian Bush Heritage Fund, Greening Australia and the Trust for Nature (Victoria).

The report is available at the website www.allenconsult.com.au.

Water Quality Threats to the Great Barrier Reef—Productivity Commission Report

On 26 February 2003 the Productivity Commission released its report, *Industries, Land Use and Water Quality in the Great Barrier Reef Catchment*. Key points from the report are:

- Water quality in rivers entering the Great Barrier Reef (GBR) lagoon has declined significantly because of diffuse pollutants, especially sediments, nutrients and chemicals from cropping and grazing lands in relatively small areas of the adjacent catchments. This diffuse pollution threatens inshore reefs and associated ecosystems.
- Because of the World Heritage values at risk, a strategy to identify, prioritise and manage risks is warranted, despite remaining scientific uncertainty about the condition of reefs and the effectiveness of remedial actions.
- Existing water quality policies largely ignore diffuse pollution and involve prescriptive end-of-pipe controls. But prescription is not the answer. Because of the complexity, heterogeneity and dispersion of the diffuse sources, and the inability to monitor them, governments cannot prescribe the land management practices that are both viable and cost-effective.
- Solutions must be built up from local knowledge and insights within a general framework set by the Commonwealth and Queensland Governments.
- Some primary producers have already demonstrated that it is possible and viable to reduce land and water degradation on their own lands. The challenge is for these practices to be more widely adopted or adapted.
- No single solution will control diffuse pollution entering the GBR lagoon. Various combinations of measures—tailored to particular land uses, locations and pollutants—will be necessary, giving land users flexibility to choose abatement actions best suited to their properties.
- Local groups have an important role in designing and delivering programs and monitoring outcomes, but serious questions remain about the structure, transparency and accountability of proposed regional groups.
- Regional groups should not create an additional layer of complexity but instead be part of a simplified approach that is integrated with the actions of other parties, especially the Commonwealth and Queensland Governments.
- Improving downstream water quality in the rivers and estuaries flowing into the GBR lagoon will generate benefits, apart from reducing the threat to the Reef. But zero discharge is unnecessary and, if possible at all, would be at prohibitive cost.

The Commission's suggestions to governments include removing perverse incentives in existing programs; modifying conditions in pastoral leases; targeted incentive payments; more information-extension; and, in specific high-hazard areas, some smart regulation. But, the report argues, parties other than governments—such as industry associations and farmer groups—could also take action to address the threats.

The report is available via the Productivity Commission website www.pc.gov.au.

Royal Exhibition Building Proposed for World Heritage Listing

Australia has nominated the Royal Exhibition Building and Carlton Gardens, Melbourne, for World Heritage listing. The nomination document indicates that the building, in its garden setting, is the best surviving example of a Great Hall from a 'Palace of Industry', a reminder of the International Exhibitions of the later nineteenth and twentieth centuries. The building and gardens survive largely unchanged and are in excellent condition. They are still used for trade and cultural exhibitions.

The Royal Exhibition Building was built in Melbourne's Carlton Gardens in 1880 for the International Exhibition in that year. It was also the venue for the Centennial International Exhibition in 1888.

The building and grounds were designed by Joseph Reed. The building, which combines Gothic and classical elements, was built by David Mitchell, father of Dame Nellie Melba.

The building hosted the opening of the first Australian Parliament in 1901 and was the seat of the Victorian Parliament from 1900 to 1927.

If the nomination is successful, the building will be the first building in Australia to receive World Heritage listing and will be the first World Heritage place in Victoria. Currently, there are fourteen places in Australia on the list.

The nomination will undergo international assessment before being considered at a World Heritage Committee meeting around mid-2004.

The nomination documentation and photographs of the building and gardens are available at www.ea.gov.au/heritage/whatsnew.

Barton Group Delivers its 'State of Play' Report

On 5 February 2003 the Barton Group delivered its first year's progress report on the Environment Industry Action Agenda to the federal environment and industry ministers. The Barton Group comprises chief executives and senior officers from the environment management industry.

The Agenda was developed as a partnership between the environment industry and the industry and environment portfolios. It seeks to promote the development of a sustainable and internationally competitive environment industry, with target annual sales of \$40 billion by 2011.

The report discusses progress on 18 recommendations, including:

- clearer financial reporting of environmental business criteria
- a user pays system for the collection of all household and industrial rubbish
- a sustainability index on the Australian Stock Exchange.

The Industry Minister, Ian Macfarlane, said that one of the major achievements of the last year has been progress towards establishing a roundtable of Australia's business leaders to encourage the take-up of sustainable development practices. It is planned to hold the first meeting early this year.

Further information on the Environment Industry Action Agenda is available at the website www.industry.gov.au/eiaa.

The Value of Water—Senate Inquiry into Australia's Urban Water Management

In December 2002 the Senate Environment, Communications, Information Technology and the Arts References Committee presented its report, *The Value of Water: Inquiry into Australia's management of urban water*. The report recommended that:

- The Commonwealth play a more prominent role in driving the changes needed to manage urban water more sustainably.
- A national approach be taken to overcome the jurisdictional barriers to better practice.
- A high priority be given to scientific research into water management coordinated at the national level.
- Efforts be made to enhance awareness of the environmental issues associated with water use and management.
- Water prices should better reflect the significant impacts of current extraction and discharge. Any extra revenue generated should be used to improve performance in this area.
- Australians generally be encouraged and assisted to use less water, recycle more effluent and significantly reduce the impact that urban development and its stormwater collection has on natural systems.

In addition, the report recommended that a National Water Policy be developed through a National Water Partnership Framework, encompassing: setting targets and standards; better monitoring, reporting and data; funding and financing better water management; and leading by example.

The Government Members' Report commented on the recommendations of the main report.