

Update of internet sources for queensland planning decisions and casenotes

The Supreme Court of Queensland website provides ready access to decisions of the Queensland Planning and Environment Court from 2000 onwards at <http://www.courts.qld.gov.au/>, as well as Court of Appeal decisions from 1992 onwards.

There are a number of regular, useful and free casenote updates produced by Queensland law firms that are available on request. These include:

- Monthly updates and regular short articles on topical issues from the Environment & Planning group at Deacons. To subscribe email paula.wirth@deacons.com.au or see the website at <http://www.deacons.com.au/epqld>.
- Monthly updates of planning issues and case notes from the Queensland Planning Environment and Local Government Group at Corrs Chambers Westgarth. To subscribe email Fiona.Farrell@corrs.com.au or see Corrs' website at <http://www.corrs.com.au/corrs/website/web.nsf/Content/PlanningEnvironmentLocalGovernment>.

WESTERN AUSTRALIA

Editor: Rob Campbell-Watt and Merinda Logie

Enforcement and Prosecution Policy

The Department of Environment's Enforcement and Prosecution Policy (the Policy) came into effect on 23 November 2004. The Policy provides general guidance on how enforcement and prosecution is approached by the Department. The Policy applies to industry, environmental consultants, lawyers, departmental officers, local governments and other authorities. The Department invites comments on the Policy, which is intended to be reviewed in 12 months from the date of commencement.

The Policy, which is administered by the Environmental Enforcement Unit within the Department, covers all legislation administered by the Department, including water legislation.

The Policy sets out the Department's position and other information on the following:

- Principles of enforcement.
- Choosing the appropriate defendant.
- Possible enforcement actions, including options such as prosecution, infringement notices, modified penalty notices, statutory notices and directions, environmental field notices, written warnings, amendments to licence conditions / permits and physical intervention.
- Rights of appeal.
- Factors influencing a decision to prosecute including the prima facie case, the public interest, fair process and reasonable prospects of success.
- Fundamental objectives of a criminal prosecution, being to bring justice to those who commit offences, to punish those who deserve punishment for their offences, to provide expeditious compensation and restitution to victims of crime and to protect the community.
- Essential conditions to be met before commencing a prosecution, being the need for sufficient evidence to establish a prima facie case and that it be in the public interest.
- Factors which address the public interest including a fair process, reasonable prospects of conviction, the need to maintain the rule of law and so on.
- Factors relevant to plea negotiation.

The address to provide comments or obtain further information is:

Environmental Enforcement Unit
Department of Environment
Hyatt Centre, PERTH WA 6000

State Administrative Tribunal

The new State Administrative Tribunal came into operation on 1 January 2005 by proclamation of the State Administrative Tribunal Act 2004 and State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 on 31 December 2004.

The State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act amended 137 existing Acts of Parliament to enable the State Administrative Tribunal to deal with and determine matters brought before it under those Acts. The State Administrative Tribunal has original and review jurisdiction, subject to the provisions of the relevant enabling Act.

Some examples of legislation amended by the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act include the Aboriginal Heritage Act 1972, the Animal Welfare Act 2002, the Biological Control Act 1986, Country Areas Water Supply Act 1947, Health Act 1911 and the Town Planning and Development Act 1928.

The functions of nearly 50 industry and public sector boards and tribunals are absorbed by or affected by the new State Administrative Tribunal. The State Administrative Tribunal Act amends the existing procedures of these boards and tribunals and introduces new procedures for bringing matters before the State Administrative Tribunal. Some examples of affected boards and tribunals in the environmental and planning field include:

- Compensation Tribunal (under the Land Administration Act 1997)
- Fisheries Objections Tribunal
- Land Valuers Licensing Board
- Marine Appeals Authority
- Town Planning Appeals Tribunal
- Water Resources Appeals Tribunal

The Ministerial appeals system under the Environmental Protection Act 1986 is not amended by the introduction of the State Administrative Tribunal. Further information on the State Administrative Tribunal is available at <http://www.sat.justice.wa.gov.au>

Planning and Development Bill 2004

On 19 October 2004, the Planning and Development Bill 2004 (the PD Bill) received its Second Reading before the Legislative Council. It has already been passed by the Legislative Assembly. It is likely that the Act will come into force early in 2005. The PD Bill consolidates and reflects the provisions of the existing planning legislation, which it will replace, if enacted. It will also introduce amendments to the present system. The Government's stated purposes of the PD Bill are to:

- Consolidate into one Act the existing planning legislation in Western Australia, namely the Western Australian Planning Commission Act 1985, Metropolitan Region Town Planning Scheme Act 1959 and the Town Planning and Development Act 1928.
- Streamline planning processes and provide an efficient planning system.
- Promote the sustainable use and development of land.

Some of the changes proposed by the PD Bill include:

- Introduction of 'sustainable use and development of land', being a purpose of the PD Bill.
- The extension of the subdivision approval period to 4 years for subdivisions of more than 5 lots.
- New powers of the Western Australian Planning Commission (the WAPC) to impose conditions on a subdivision requiring that development be integrated with the subdivision, or approved prior to endorsement of a deposited plan.
- Clarification of the WAPC's powers on reconsideration of a subdivision approval.
- A new right of appeal against the WAPC for failure to endorse a deposited plan within 30 days.
- Clarified right of appeal against a determination of use classification under a scheme.
- New public consultation provisions for State Planning Policies.

The Act would become operational at a date set by proclamation. Some parts of the Act will not become operational until regulations have been prepared.

Further information on the progress of the PD Bill can be obtained from the Parliamentary website at <http://www.parliament.wa.gov.au>

Extended Producer Responsibility Discussion Paper

On Friday 31 December, the Hon. Minister for the Environment released the "Extended Producer Responsibility Discussion Paper", for public comment. Extended producer responsibility (EPR) is proposed to be one of the tools that would be included in new waste legislation. This waste legislation would assist to, amongst other things, prevent the generation of waste, ensure resources are recovered from waste and dispose of waste in an environmentally acceptable manner.

The Paper covers the following points:

- definitions of EPR.
- why EPR is needed.
- where it has worked elsewhere.
- existing EPR initiatives in Australia.
- how an EPR scheme would operate.
- what actions could be undertaken first.
- products that receive first consideration for application of EPR schemes in Western Australia.

The Department of Environment seeks comments on the Paper as the next step towards development of further waste legislation and implementation of EPR.

Further information on the Paper can be obtained from the Waste Management Board website at <http://www.wastewa.com>.

Comments (by 25 February) should be addressed to:

Manager, Waste Management Branch
EPR Discussion Paper
Department of Environment
PO Box 6740 EAST PERTH WA 6892
Or email to: info@wastewa.com