

The Great Sandy Region – Legal Management and Protection

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Thursday, 12 August 2004

Overview

- Discussion of importance of understanding rights and obligations under environmental law
- Overview of environmental law applying to GSR
- Brief discussion of *Marine Parks Act 1982*
- Brief discussion of *Nature Conservation Act 1992*
- Detailed discussion of the *Environment Protection and Biodiversity Act 1999*

Introduction

- Industry and community should have understanding of rights and obligations under environmental law – avoid confusion, mistrust, breakdown of relationships, prolonged delays and increased costs
- GSR governed by local, State, National and International law

Management of marine parks

- *Marine Parks Act 1982*
- Zoning plans divide parks into zones and regulate activity
- Act also regulates (or prohibits) certain activities, such as discharge of wastes
- Public participation – draft zoning plans – permission applications – judicial review

Regulation of national parks

- *Nature Conservation Act 1992*
- Provides for 'protected areas' such as national parks
- Establishes management principles and provides for management plans
- Public participation – during preparation and finalisation of management plans

Introduction to the EPBC Act

- Came into force on 16 July 2000
- Replaces several pieces of legislation, including the *Environment Protection (Impact of Proposals) Act 1974* and the *Endangered Species Protection Act 1992*
- Intended to provide more certainty, a more timely and efficient Commonwealth development assessment process and minimise the duplication between State and Commonwealth assessment processes

When is the EPBC Act triggered?

- A person must not take an action that has, will have or is likely to have a significant impact on a matter of national environmental significance without approval from the Federal Minister for the Environment
- Such actions are referred to as 'controlled actions'
- The following are matters of national environmental significance:
- World heritage properties
- National Heritage Places

When is the EPBC Act triggered?

- A Commonwealth Heritage Place outside Australia
- Ramsar Wetland
- Listed threatened species or endangered communities
- Listed migratory species
- Nuclear actions
- Commonwealth marine areas
- Actions taken on Commonwealth land
- Any other matter prescribed as a matter of national environmental significance

When is the EPBC Act triggered?

- The term 'significant impact' has been held to be an impact that is important, notable or of consequence having regard to its context or intensity
- A controlled action does not require approval if it is:
- covered by a bilateral agreement
- covered by a Ministerial declaration
- taken in accordance with a RFA
- authorised under the *Great Barrier Reef Marine Park Act 1975*

Referral and Assessment Process

- A person proposing to take an action, or a government body aware of the proposal may refer the proposal to the Minister.
- The Minister must then decide whether approval is needed (whether the action is a controlled action).
- The Minister must take into account all adverse impacts of the proposed action – can include any relevant impacts of third parties and natural events and cumulative impacts (Nathan Dams case).
- If the action is a controlled action, the Minister must decide what level of assessment is required.

Levels of Assessment

- Preliminary documentation
- Public environment report
- Environmental Impact Statement

- Public enquiry
- A process laid down under a bilateral agreement
- A process specified in a declaration by the Minister
- A process accredited by the Minister

Minister's Decision

- After the assessment has taken place, the Department of Environment and Heritage (or the State government) considers the outcome of the assessment and provides an assessment report to the Minister.
- In deciding whether to approve an action, the Minister must consider:
- matters relevant to the reason for which the activity has been decided to require assessment; and.
- economic and social matters

Minister's Decision con't

- In considering these matters, the Minister must also consider:
- The principles of ecological sustainable development;
- The assessment report;
- Any report produced as a result of the assessment, e.g. Public Environment Report, Environmental Impact Statement;
- Any other relevant information e.g. policies
- Any relevant input from another Minister
- Whether the person is a suitable person to be granted an approval, having regard to the person's history in relation to environmental matters

The Minister's decision

- The Minister can impose conditions on an approval.
- In deciding whether to impose conditions, the Minister must consider:
- any relevant conditions already imposed by the relevant State government
- information provided by the proponent
- the cost-effectiveness of the condition in achieving the object for which it was imposed

Bilateral Agreements

- An action will not have to go through the assessment process, if a bilateral agreement is in force between the relevant State and the Commonwealth
- Two types of bilateral agreements – one relating to the assessment process and one relating to the approvals process
- Tasmania, Western Australia and the Northern Territory have entered into assessment bilateral agreements
- Queensland is well advanced in its negotiations

Offences

- Offence to take an action that is likely to have a significant impact on a matter of

national environmental significance without approval (\$550,000/\$5.5 million – 7 years imprisonment)

- Other offences include providing false and misleading information (\$13,200 and/or 2 years imprisonment)

Compliance and Enforcement

- Compliance and Enforcement Policy – use a range of ‘flexible and targeted measures’ such as:
 - Education and verbal cautions
 - Infringement notices
 - Varying, revoking or imposing further conditions on permits, licences
 - Suspending or cancelling permits, licences
 - Directed environmental audits
 - Civil action
 - Criminal action
 - Remediation of environmental damage
 - Injunctions – brought by ‘interested persons’

Administrative Review

- Test for standing under ADJR Act has been widened so that decisions made or conduct undertaken under the act can be challenged by an individual or organisation that, at any time before the relevant decision or conduct, was engaged in the protection or conservation of, or research into, the environment.