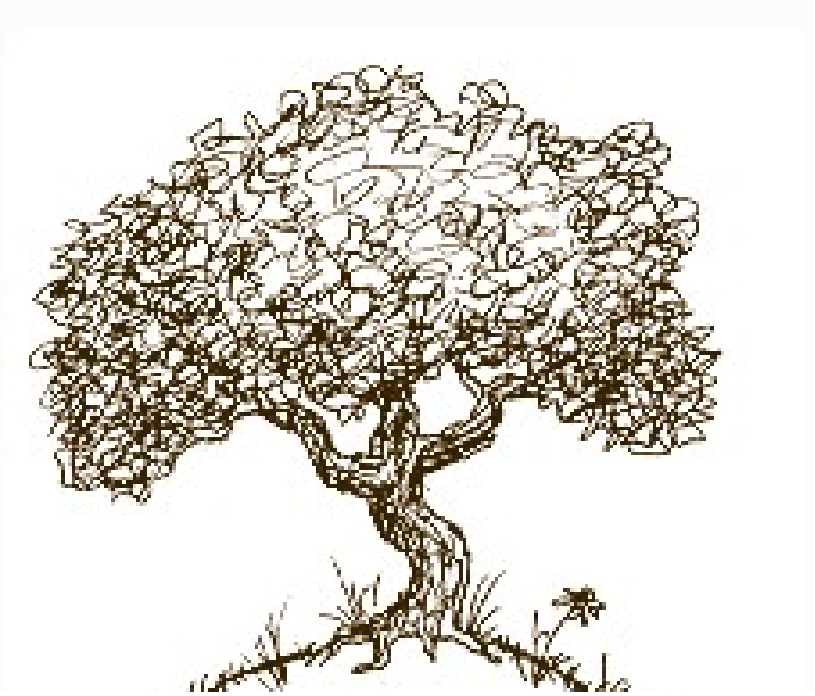

ENVIRONMENTAL LAW HANDBOOK

4th Edition

edotasmania

using the law to protect the natural and built environment

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1. Introduction

Welcome to the fourth edition of the Environmental Law Handbook!

Finding out about the law can be a difficult task. There are more and more new laws that deal with the environment, and large numbers of government departments and authorities that deal with those laws.

Various laws provide opportunities for citizens to have a say in what happens in their environment, including discussing development in your area, reporting pollution offences or nominating new areas to be protected in reserves. But all of these avenues are of limited benefit if the community is unaware of them.

This Handbook will help you to understand your obligations in relation to environmental protection, your rights and how to use the available opportunities to have your say about decisions that will affect you.

Getting through the maze

If you have never had to deal with it before, the law can seem like an impenetrable maze. This Handbook has been developed in response to queries and feedback over many years, and is designed to help people to find their way through the maze. The Handbook is intended to provide practical assistance for residents, farmers, environmental and community groups, local councils and government agencies.

The Handbook outlines the most significant laws that impact on people's lives in Tasmania, and tries to do this without legal jargon. The Handbook is not designed to answer all your questions, it is designed to point you in the right direction. Wherever possible, the Handbook also provides links to additional sources of information for those people who want to investigate further.

How to use this handbook

Most often, this guide will be a handy reference if you have an immediate problem – such as a polluted creek, noise from a nearby quarry, concerns regarding unlawful killing of native wildlife – and want to know what to do about it. There are chapters covering most issues that could arise, so you can go straight to the relevant chapter.

We highly recommend that, whatever the issue is that you're concerned about, you read Chapter 4 to get a basic understanding of the framework for Tasmania's Resource Management and Planning System (**RMPS**). This system underpins most of the laws relevant to the environment, so it is good to have a clear idea about how it works.

Chapter 13 provides some general guidance on how to take action. This could include reporting concerns to your local council or to the EPA, lodging an appeal against a decision to allow development in your neighbourhood, or going to the Tribunal to get orders to protect the environment. Throughout the Handbook, there are a few symbols that will help to guide you:

This is a flag to highlight important messages and things you need to be aware of.

This warns about time limits for taking action, so you don't miss an important opportunity!

(☛ Go to...) will direct you to other parts of the Handbook that are relevant to your issue (sometimes, these aren't immediately obvious when you start out). Just like the natural environment, law is a dynamic, interacting system. But, when you understand the connections, it's not as confusing as it first appears!

This is used to direct you to another website for more detailed information.

EDO Tasmania is here to help. If you still have more questions after reading through the Handbook, you can always contact us for more specific advice.

Disclaimer Policy

This guidebook is not a substitute for legal advice relating to your particular issue. If you need specific legal advice, please contact the Environmental Defenders Office. The EDO does not accept responsibility for any loss or damage suffered by any person acting or relying on information on this website.

Throughout this guidebook, links are provided to other relevant websites. EDO Tasmania takes no responsibility for maintaining those links, or for the content of any external website.

While every effort has been made to ensure that information in the Handbook is accurate at the time of writing, sometimes mistakes are made. If you find an error in the text, or have any other comments, please email us at edotas@edo.org.au

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Editor: *Chris Harries*

Co-authors: *Susan Gunter & Jess Feehely*

Web design: *Allan Moult*

Web advisory service: *Kerryn Meredith-Sotiris, Terry Parkes, Paul Chambers, Suezanne Anderson* (Clarence TAFE)

Administrative support: *Elisabeth Cameron, Jane Brown, John Scanlan (EDO NSW), Loren Atkins, Louise Blaik, Naomi Wakelin, Noelle Rattray*

Contributors:

Adam Beeson (Environmental Defenders Office - Tas), *Adam Burling* (Huon Valley Environment Centre), *Alasdair Wells* (DPIPWE), *Allan Garcia* (Local Government Association of Tasmania), *Andrew Ricketts* (The Environment Association),*Bob Burton* (author), *Brian Risby* (Land Use Planning Branch, Department of Justice), *Caleb Pedder* (Tasmanian Aboriginal Land & Sea Council), *Carol Bacon* (Mineral Resources Tasmania), *Chris Mitchell* (Forest Practices Authority), *Christine Grove* (Forest Practices Authority), *Christine Kershaw* (Tasmanian Farmers and Graziers Association consultant), *Dana Faletic* (DIER), *Don Defenderfer* (State Landcare Coordinator), *Dr Frances Mowling*, *Dr Hans Drielsma* (Forestry Tasmania),*Dr Julie Von Platen*, *Dr Kate Crowley*, *Dr Roscoe Taylor* (Director of Public Health), *Emma Belfield*, *Emma Riley* (President, Royal Australian Planning Institute - Tasmanian branch), *Fleur Gedamk* (NRM South), *Ian Sansom* (Dep't Justice),*Jarrod Bryan* (Registrar, Resource Management and Planning Appeal Tribunal), *Jason Allen* (UTas), *John Hayes* (Land Use Planning Branch, Department of Justice), *Kate Kent* (DPIPWE), *Kate Polglase* (Environmental Defenders Office - Tas), *Kerry Boden* (Tasmanian Planning Commission), *Mark Lobban* (Dep't of Health and Human Services), *Melissa Ballantyne* (Environmental Defenders Office - SA), *Michael Lynch* (Tasmanian Heritage Council), *Nikki Johns* (UTas), *Peter Trott*(DPIPWE), *Phill Pullinger* (Environment Tasmania), *Rena Dare* (Tasmanian Greens), *Rick Snell* (UTas), *Sally Bryant* (DPIPWE), *Steve Howett* (EPA Division), *Steve Stanton*, *Stuart Heggie* (Dep't of Health and Human Services), *Tom Baxter*(UTas), *Warren Jones* (Director of Environmental Management).

FOURTH EDITION

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Editors: *Jordan Sosnowski & Jess Feehely*

Additional contributors: *Susan Gunter and Elena Cappellino*

Reviewers: *Roland Browne, Michael Lynch, Kate Polglase and Yvette Cehtel*

Administrative support: *Kellie Jay and Neda Pouryamin*

2. About our Environmental Laws

Until the 1970s Tasmania had virtually no specific environmental controls. We had no government agencies to look after the environment, no national parks department, no environmental control department. Planning for the future was, at best, ad hoc.

A first wave of environmental awareness struck the world in the 1960s and Tasmania, like elsewhere, introduced a number of very basic environmental laws early in the 1970s. These were basically piecemeal attempts to deal with particular and obvious problems.

Many of these new laws did not fit in with each other. There was no guiding philosophy. Industries that polluted were simply given 'licences to pollute'. Ordinary citizens generally had no rights of appeal, because the public was generally regarded as an antagonist or a nuisance. The only recourse for concerned citizens was to knock on politicians' doors or create a fuss in the media.

By the 1980s, public concern about deteriorating environmental quality had grown to such an extent that politicians were increasingly unable to cope with the ever-increasing burden of issues directly confronting them. There was an obvious need for comprehensive environmental and planning laws that:

- are integrated with each other
- have common objectives (guiding philosophy)
- enable the community to be involved

To do this a lot of old notions had to be thrown out. Imaginations had to be challenged.

2.1 Environmental law today

In response to the above challenges, environmental law-making went through a dramatic shift and a rash of new laws were introduced during the 1990s.
☛ Go to Chapters 3 and 4 for an outline.

Environmental law remains a dynamic area of law, and things change regularly. Protecting the environment today relies to a great extent on community participation. This is because the environment is now rightly regarded as public property and many of the new laws governing it are designed to incorporate public involvement.

Not only do ordinary people have a right to participate, a number of our new laws make it mandatory for the public to be consulted.

So, what is environmental law?

We use the term 'environmental law' to refer to the full range of laws directed towards protecting aspects of our natural and human environments. This includes laws about everything from planning to water management, vegetation clearance to threatened species protection, coastal erosion to animal welfare and air pollution to mining controls.

These laws are explored in the following chapters. The purpose of this chapter is to provide a framework for understanding where those laws come from and how they are enforced.

Litigation – just one string to your bow

One legitimate and important aspect of community participation is the ability to take regulators and developers to court or to the Tribunal for failing to comply with their legal requirements.

However, the outcome of litigation is often uncertain and can be costly and unsatisfactory for all involved. For example, after many months of litigation, the outcome may be a fine imposed on the offender, but no orders to actually repair the damage that was done. If all parties have a better understanding of their rights and obligations as well as the options available to address environmental harm, many legal battles could be avoided. If the community is properly involved in the early planning stages, outcomes are more likely to be publicly acceptable.

Environmental law is much more than litigation – it's about understanding, and getting involved in, the processes for environmental decision making. We hope that this guidebook will help to promote community participation in environmental decision-making from the ground up – in the courts and out of the courts.

2.2 Division of powers

The first thing you need to do when you face an environmental problem is to work out which law you should be using to deal with it.

There are actually three levels of government in Australia – federal, state and local. It is important to understand their basic roles.

Although all three levels of government make laws concerning the environment in some form, most environmental powers lie with state government (though they sometimes give the job of implementing these laws to local government). However, where the issue is considered to be of national significance, federal laws may also apply.

☛ Go to Chapter 15 for information about federal environmental laws.

State powers and laws

When an environmental problem arises, you will mostly need to refer to state legislation, described throughout this Handbook.

State parliaments pass laws to regulate conduct which is likely to affect environmental quality, including regulating the use of land, use and development of natural resources and protection of special areas or species. These laws are called "legislation".

☛ Go to Chapters 3 and 4 to see how Tasmania's environmental laws are set up.

For example, State government agencies are responsible for:

- managing Crown land;
- development and maintenance of significant infrastructure, such as highways, railways and ports;
- assessing large projects (☛ Go to Chapters 4, 5 and 11);
- managing the Tasmanian Heritage Register and Tasmanian Aboriginal Sites Index (☛ Go to Chapter 7);
- developing management and recovery plans for protected areas and threatened species (☛ Go to Chapter 7);
- setting targets for greenhouse gas emissions reduction (☛ Go to Chapter 16)
- taking enforcement action where significant environmental harm has occurred.

What is the role of local government?

You will also see, throughout this Handbook, that local councils in Tasmania play a very significant role in environmental protection. Local governments (also referred to as 'councils' and 'planning authorities') are generally your first port of call if you are affected by a development activity or an environmental problem in your local area.

For example, councils are generally responsible for:

- developing planning schemes to set standards such as building heights, siting of developments near sensitive areas, setbacks from waterways etc;
- assessing development proposals for small operations (Level 1 activities – ☛ see Chapter 5);
- developing by-laws to deal with specific issues (such as keeping chickens in residential areas, activities in Council reserves or operating hours for outdoor festivals);
- imposing conditions to regulate pollution (including dust, smoke, noise and liquid emissions) (☛ Go to Chapter 6);
- taking enforcement action where permit conditions are not complied with.

Where small operations may cause environmental harm, the council may consult with relevant State government agencies, such as Mineral Resources Tasmania and the EPA, before making land use decisions.

☛ Go to Chapters 4, 5 & 6 to find out more about how this system works.

What is the role of the Commonwealth government?

When Australia's constitution was drafted, the environment was not considered to be a significant national issue, so the federal government was not given any explicit power to make laws about environmental matters. As a result, there has been some confusion about the division of responsibility for environmental protection between states and the federal government.

Many of the ad hoc national laws in relation to the environment have been introduced to give effect to Australia's obligations under over 90 international environmental agreements that the government has signed on to. These agreements cover topics such as World Heritage, climate change, marine pollution, recording of pollutants, remediation of land and biodiversity management.

In an attempt to clarify confusion between state and Federal environmental powers, and to make sure that Australia was complying with its international obligations, new federal environmental legislation was introduced in 2000. The new legislation, the *Environment Protection and Biodiversity Conservation Act 1999*, gave the Federal government responsibility for developments with the potential to impact upon "matters of national environmental significance". These include:

- World Heritage areas
- Wetlands of international significance (known as 'Ramsar wetlands')
- National heritage places
- Nationally listed threatened species and ecological communities
- Nuclear actions
- Migratory species (including birds and cetaceans, such as whales)
- Commonwealth marine areas

The Federal government is also responsible any development on land owned by the Federal government (such as defence facilities and airports), fishing and development in waters outside the State limits (☛ Go to Chapter 9), whaling, export of threatened species and climate change laws (☛ Go to Chapter 16). The Federal government also uses its powers in relation to corporations and taxation to impose requirements about environmental reporting (including greenhouse gas emissions reporting) and tax deductible status for environmental organisations.

The Federal government continues to be lobbied to extend the range of matters that it can get involved in. For example, conservation groups have requested that developments which will result in significant greenhouse gas emissions be subject to Federal approval. The Federal government also recently proposed to include coal seam gas developments and large mining projects with the potential to impact water supplies in the list of matters that require Federal government approval.

Possible reforms

The EPBC Act currently provides an opportunity for the Federal government to delegate some of its powers to State governments, provided the relevant State assessment process has been accredited by the Federal government. Many states already have assessment processes accredited, so that they effectively carry out the assessment on behalf of the Federal government, but the actual decision whether or not to approve a development remains with the Federal government.

In early 2012, the Council of Australian Governments (**COAG**) announced a proposal to allow approval powers to also be delegated to the State governments. Many environment groups are opposed to granting the State governments further powers to approve activities that may affect a matter of national environmental significance, arguing that this responsibility should remain with the Federal government. The principal reasons are that state governments often have an economic interest in the development proceeding, and give preference to State interests over what is best for Australia's national environmental interest.

Unless national interests are appropriately considered in assessing developments that will impact upon matters of national significance, the EPBC Act's capacity to protect Australia's environment could be compromised.

☛ Go to Chapter 15 for more information about the EPBC Act and the proposed changes.

National Environmental Protection Measures

The Federal government also manages a number of research organisations that produce information guides and develop national standards in relation to environmental issues. For example, the National Environment Protection Councildevelops National Environmental Protection Measures on issues such as soil contamination and remediation assessments and the Australian Pesticides and Veterinary Medicines Authority develops standards in relation to maximum exposures to chemicals and water quality guidelines. These standards are usually adopted by each state and implemented through State laws.

Funding

The Federal government can also influence environmental outcomes by providing funding for environmental projects (for example, the Caring for Our Country grants have helped to maintain natural resource management activities throughout Australia), and insisting that grant applications for large projects (such as infrastructure projects) include information about environmental impacts.

2.3 Types of law

A very basic understanding of how the legal system works will be helpful for those engaged in defending the environment.

Most environmental cases are based around either (or both):

- Acts of Parliament (known as "statute law" or "legislation"); or
- Legal precedent (known as "common law").

What is 'statute law'?

This is the main legal device used to protect the environment in Australia. A statute is a law made by parliament. It is more commonly known as an Act of Parliament or a regulation, collectively referred to as “legislation”.

Governments pass laws in order to regulate conduct which is likely to affect our various environments. The courts (or the Tribunal) have a key role in enforcing laws made by parliament.

(☛ Go to Chapter 4 for information about key Tasmanian legislation).

What are 'regulations'?

An Act of Parliament can become too bulky if all the necessary details are included within it. To cope with this problem, a number of Acts have provision for the making of 'subordinate legislation'. These are called “statutory rules” or “regulations”.

Regulations contain more specific details of how the Act is applied – such as lists of banned chemicals, lists of threatened species, or maximum hours of operation for particular activities. Regulations are more easily updated than Acts but, once enacted, hold the same force of law as any other legislation.

Beware – policies are not laws!

Many people mistakenly confuse policy with law.

Governments these days produce mountains of policies, guidelines, strategies, codes of practice... and so forth. These documents often include broad statements about what the government aims to do. However, the government is often not required to follow these policies – they are general statements of intent or guides for government officers or commercial operators.

Examples include the *Code of Practice for 1080 Poison Use*, the *Quarry Code of Practice*, *Environmental Best Practice Guidelines: Management of Riparian Vegetation* and the *Enforcement Policy for the Water Management Act 1999*.

You can use statements made in policies as to argue about what government *should* be doing. However, there is often nothing that can be done to force a government to act in accordance with a policy.

Some policy documents **DO** have statutory force, because they are tied to a specific Act of Parliament. For example, the legislation dealing with chemical use requires all operators to comply with the Code of Practice on Aerial Spraying (☛ See Chapter 10).

Policies can also be given legal force by being incorporated into licence or permit conditions. For example, a permit for a quarry operation may require the operator to comply with the Quarry Code of Practice. If the Code of Practice is not complied with, the operator will be breaching the permit conditions and could be fined or prosecuted under the *Land Use Planning and Approvals Act 1993* (☛ See Chapters 4 and 5).

What is 'common law'?

Common law (ie. 'judge made law') is based on the court's interpretation of decisions that other judges have made in similar cases. If a case sets a 'precedent', future cases dealing with the same issue / same provision of the legislation must be decided in the same way.

Please note, the Resource Management and Planning Appeal Tribunal (**RMPAT**) is not a 'precedent' setting body. This means that, although the Tribunal will generally make consistent decisions, it is not necessarily required to adopt the same interpretation of a provision of a planning scheme in a future case if it later considers that a different interpretation is more appropriate.

☛ Go to Chapter 14 for more information about the RMPAT.

Statute law can override the common law. For example, if a court makes a decision that a provision of an Act must be interpreted in a particular way, Parliament may decide to change the Act. The new, amended Act will then be applied to future cases.

As more and more statute law is made, there is less and less need to use common law. However, there are still some ways in which common law can be used to deal with activities causing environmental harm. It can be used to prevent a neighbour polluting the air, land or water or causing land degradation or otherwise interfering with your enjoyment of your land.

'Private nuisance'

Generally speaking, common law is used to protect private interests. By far the most widely used common law action for controlling cross boundary environmental harm is that of nuisance – unreasonable interference with a person's land or use and enjoyment of the land - and to recover loss or damage caused by the interference.

'Public nuisance'

Where an activity interferes with a right enjoyed by the community at large, it is called a public nuisance. Private individuals can take action to stop or prevent a public nuisance, even though that person may have no interest in the land subject to the interference. Public nuisance includes pollution of the air or water. However, common law has not been terribly effective in protecting public interests which have no connection with private rights – such as the public interest in preserving native bush – so options under statute law are often used to pursue that protection.

What is 'administrative law'?

Reviewing decisions

More often than not, environmental law cases deal with challenging particular decisions made by government authorities under various pieces of legislation. This is a branch of law known as administrative law.

Administrative law is not about the merits of a particular decision (that is, whether the decision is good or bad). It is about the decision-making process. Rather than looking at whether the "right" decision was made, the court or Tribunal simply decides if there was power to make the decision and if the correct process was followed. This process is called judicial review.

Generally, if a court finds that the decision is flawed for administrative reasons, the matter will be sent back to the original decision-maker to reconsider.

☛ Go to Chapter 13 to find out how government decisions can be challenged.

What is 'criminal law'?

'Criminal law' includes laws where a fine or prison sentence can be imposed on someone who breaks the law. Often, environmental protection legislation includes both criminal penalties and civil remedies (such as remediation orders).

Many of the Acts described in this Handbook contain criminal offences. These set out penalties and explain who is responsible for taking enforcement action. While it is rare for individuals to take criminal proceedings (these are usually commenced by the police or a government agency), individuals can initiate legal action by making a complaint to the relevant government agency or by going to the police or the Director of Public Prosecutions.

Environmental defenders can also face prosecution under criminal law. For example, if you protest in a state forest, you may be liable to fines or a prison sentence for trespass or nuisance. (☛ Go to Chapter 13 for more information about protecting yourself).

What are 'remedies'?

If you are successful in a court case (that is, the court agrees with your arguments), the court (or Tribunal) can make a range of decisions. For example, the court or Tribunal may order that:

- an invalid decision made by a public body be "quashed" (cancelled out);
- an officer must not make undertake a particular action;
- a public official must make a decision (where he or she is delaying unreasonably or neglecting to perform his or her duty);
- work be undertaken to fix environmental damage that has been caused;
- conditions be imposed on some activity (such as limiting operating hours on a service station in a residential area); or
- the person responsible for causing environmental harm pay damages to those people who are affected.

These various options are called "remedies".

Does government have to abide by the law?

In most situations, yes - many Acts of Parliament specifically say "This Act binds the Crown", which means that the government must follow the law, just like anyone else. However, there are some exceptions to this, so make sure that you check the relevant legislation to confirm that the government agency is bound by the Act.

If you suspect that a government agency or officer is breaking a law, it is generally prudent to assume that they are bound by the law and proceed to make a complaint about their behaviour.

☛ Go to Chapter 13 for more information about taking action against government agencies.

2.4 Who can initiate legal action?

In many cases, individuals are able to commence court proceedings. However, you may first have to show that you have "standing". This means that you may need to show that you have a legitimate 'interest' in the case, greater than the interest of the public at large.

In the past, it was necessary for a person to show that they would suffer damage to their property before they could take legal action. This often meant that it was necessary to find

an affected person willing to take action before any environmental case could be taken to court. It was not enough to simply care about protecting our natural resources.

Over the past few decades there has been growing recognition of the benefits of allowing citizens to initiate legal action in order to protect not just their commercial or property interests, but to protect the environment, public health, visual amenity and quality of life. It is still necessary, in most cases, to show that you will suffer some 'special damage', over and above that of the rest of the community rather than just having a concern about some aspect of the environment. However, the courts have started to adopt a broader test for standing. In some instances, legislation provides for open standing to commence legal proceedings – that is, anyone is able to take action. Some countries (India, Chile and Ecuador) have also recognised that "nature" itself should be afforded legal "standing", and that people have a right to represent "nature" in court proceedings. Legal standing varies from court to court and from issue to issue, depending on the statutes involved. ☛ Go to Chapter 14 for more information about legal standing.

Please note, for mining issues, the test for standing remains very narrow (☛ Go to Chapter 11).

2.5 Parliament vs the courts

It is prudent to be aware that parliament can decide at any time to make a new law, thus making an illegal act legal. It can even make such changes apply retrospectively.

Judges cannot overrule parliament. The courts simply interpret written laws and ensures that they are properly made and adhered to. However, courts can decide that particular legislation passed by Parliament is unlawful (for example, if it is not consistent with the Constitution).

In some notable situations such political action has prevented prosecutions from being successful in court. A prominent example in Tasmania was parliament passing a retrospective law to stop legal action against the flooding of Lake Pedder National Park in 1972. More recently, the Tasmanian government passed legislation preventing any further legal action in relation to the controversial Parliament Square development.

2.6 Where can I get copies of legislation?

Until recently, Acts of Parliament were written in convoluted legal language. They were rather difficult to get hold of and were often expensive to purchase.

These days, efforts are made to write legislation clearly and Acts are generally much easier to read and understand. Now is the time to drop your queasiness about legislation.

These laws belong to the community, after all!

Online

All current legislation is freely available on the internet at the following sites:

Tasmanian legislation:	**www.thelaw.tas.gov.au**
Commonwealth legislation :	**www.comlaw.gov.au**
Both Commonwealth and Tasmanian legislation:	**www.austlii.edu.au**

You don't have to know the precise name of an Act. Just type in key words and you should be able to find what you're looking for.

If you prefer to have a hard copy of legislation (and don't want to print it yourself), you can find most legislation at the Supreme Court library, the university library and major public

libraries around the State. You can also purchase full copies of legislation from the Printing Authority.

Legislation gets amended fairly regularly – sometimes small changes, sometimes significant ones. If you are using a hard copy, be careful to check that it includes all the most recent amendments.

Hints:

- When purchasing Acts, you should pay a little extra to have all subsequent amendments included with the Act.
- When researching an Act, you will need to find all the relevant amendments. If you are looking at legislation at www.thelaw.tas.gov.au, you can reveal the history of changes to an Act by hitting the "History On" button. This will tell you when the Act, or particular sections of the Act, came into force or were changed or deleted (called "repealed"). If you are researching in a library, the historical information should be found with each particular Act or in the annual Index to Legislation - this is usually kept near the legislation, but just ask your librarian if you are having trouble finding it!

3. The Tasmanian Framework

There are over 100 individual Tasmanian Acts of Parliament that relate to environmental control in some way. They include controls on everything from fluoridation of our water supplies, to wildlife protection, to management of marine areas.

This mountain of legislation can be very off-putting but, take heart, most environmental issues are dealt with under a handful of important Acts.

The following chapters of this handbook outline the most salient aspects of this bank of environmental legislation.

☛ Go to Chapter 4 for a listing of the most relevant laws

☛ Go to Chapter 15 to see how some federal laws also apply to Tasmania

3.1 How effective are Tasmania's environmental laws?

During the 1990s welcome reforms brought about a level of uniformity, rigour and fairness into Tasmania's ramshackle environmental laws. Although they have been slowly upgraded, there are still many gaping holes.

To give an indication of their haphazard nature, you can be prohibited by law from painting a heritage building the wrong colour, but there is still no legislative constraint placed on the volume of greenhouse gases that you emit.

You can be profligately wasteful of resources, but be fined heavily for littering.

What are we doing well?

Tasmania boasts a fairly sophisticated set of integrated planning laws, with considerable scope for public participation – the Resource Management and Planning System (**RMPS**).

☛ Go to Chapter 4, 5 & 6 for a full description

The RMPS is an integrated suite of legislation at the core of our environmental and planning system – we cannot overstate its fundamental importance, especially where land use and development issues are concerned. Key features of this system include recognising the importance of sustainable development, guaranteeing opportunities for public participation in decision-making, and independent reviews of resource and land use decisions.

Unlike other states, Tasmania's Director of Public Health can require any developer to include an assessment of potential health impacts in an Environmental Impact Assessment carried out in respect of a development. For project where the State government is the proponent, climate change impacts must also be considered.

Encouragingly, a proposed ban on all plastic bags is expected to be introduced by June 2013. The proposed ban will prohibit retailers from supplying customers with lightweight plastic bags. This initiative will hopefully decrease the estimated 3.9 billion plastic bags Australians use each year.

What could we do better?

Where does environment fit in?

Unlike some Australian jurisdictions, Tasmania still has:

- No packaging deposit legislation (although the Packaging Covenant Action Plan is underway)
- No specific soil conservation legislation
- Limited vegetation clearance protections, particularly in bushland fringe / rural residential areas
- No waste minimisation legislation (there is legislation that governs the management of waste, but as yet there is none that specifically acts to minimise it)
- Minimal marine areas set aside as reserves (although there is policy such as the Tasmanian Marine Protected Areas Strategy)
- No legislated sea level rise benchmarks (☛ See Chapter 7 for information about the new sea level rise allowances adopted by the government, but yet to be incorporated in legislation).

Tasmania's legislation in relation to the protection of Aboriginal cultural heritage is outdated, but is currently subject to a long overdue review.

There are also exemptions (separate regulation) for powerful industry sectors. For example, the logging industry, mineral exploration and aquaculture industries have been specifically exempted from local council planning schemes. In turn, citizens' rights of appeal and redress have been partially or extensively curtailed in the case of these industry sectors.

Where are we ahead of the pack?

The state can, however, boast a sophisticated set of planning laws, with considerable scope for public participation – the *Resource Management and Planning System* (**RMPS**). The RMPS is an integrated suite of legislation. It is the hub of this state's environmental and planning system – we cannot overstate its fundamental importance, especially where land use and development issues are concerned.

A key feature of this system is that it guarantees the opportunity for public participation and review by an independent body.

☛ Go to Chapters 4, 5 & 6 for a full description of how the RMPS works

Another plus - an *Environmental Impact Assessment* carried out in Tasmania must include a *Health Impact Assessment* if required by the *Director of Public Health*. Tasmania is the only state to have such a legislated requirement.

Lobbying for better laws

Since 1990 we have seen genuine moves to progressively upgrade Tasmania's bank of environmental legislation, and this process is still gradually happening. But more recently there have been some disturbing backward moves.

Public pressure is the key to developing sound environmental legislation. The onus is on concerned citizens, business and community groups to help lobby for and assist in the retention, development and implementation of progressive and fair environmental laws in our state.

3.2 Which government agencies regulate the environment?

Environmental management in Tasmania is managed via a confusing tangle of departments and sub-agencies.

This complexity makes it difficult to manage environmental regulation and to work out who is responsible for dealing with problems.

The main agencies

Department	What it does
Primary Industries, Parks, Water and Environment	This is the department with responsibility for general environmental management, such as pollution, national parks and heritage issues, natural resource management and services to primary industries.
Justice	This department oversees the independent planning and appeals system.
Infrastructure Energy & Resources	This department oversees extractive industries, including mining, forestry and energy issues as well as transport.
Health & Human Services	This department is responsible for environmental health issues, including drinking water quality.

Having no one agency with overarching statewide responsibility for environmental management can cause some confusion, overlays and duplication. For instance, some agencies (including local councils) are currently accountable for environmental laws that are handled by several departments instead of one. These inefficiencies are a problem for developers and environmental defenders alike.

☛ See below for a more comprehensive outline of the various government agencies and the environmental issues that they deal with.

Independent agencies

However, Tasmania's administrative setup is characterised by important independent agencies that have key roles. These agencies are designed to be independent of any direct political influence.

They are particularly important because they guarantee significant public input into planning & development issues and environmental dispute resolution – as you will find out throughout this handbook.

Tasmanian Planning Commission	Resource Management and Planning Appeal Tribunal	The State Ombudsman	Environment Protection Authority
Assessment agency for planning matters	Publicly accessible tribunal to hear environmental and planning disputes	Agency reviewing citizens' complaints regarding government process	Assessment agency for environmentally relevant activities

☛ See further below for an explanation of the roles of these agencies.

Importance of local councils

Local councils play a major role in environmental management in Tasmania.

They are delegated (via legislation) to carry out a wide range of duties in relation to most environmental issues that you are likely to face, including land use issues, planning & pollution controls, heritage & habitat protection and environmental health problems. They are the first point of call for citizens and businesses when most issues arise or if developmental plans are being drawn up.

☛ Contact details for all councils are available in the Local Government Directory on the DPAC website.

Councils can also pass their own by-laws, to regulate certain activities within that specific council area.

Please note: In Tasmanian legislation, councils are often referred to as *Planning Authorities*.

3.3 How the administration is set up

Local councils

For most purposes this is your first point of contact

What councils are required to do
▪ They have general responsibility for local planning ▪ They handle development applications in the first instance ▪ They manage pollution control at local level (but will refer to state departments where necessary) ▪ They assess and regulate low-impact (Level 1) developments

Major Departments

Primary Industries, Parks, Water and Environment (DPIPWE)

EPA Division
▪ Provides expert environmental advice to the EPA in relation to Level 2 activities ▪ Sets environmental standards ▪ Deals with pollution 'incidents' ▪ Monitors fresh water quality and water pollution
Parks & Wildlife Division
▪ Manages terrestrial and aquatic reserves ▪ Regulates flora and fauna protection
Aboriginal Heritage office
▪ Identifies, conserves and manages Tasmania's Aboriginal heritage assets and facilitates greater community awareness of, and interaction with, Aboriginal heritage
Heritage Tasmania
▪ Provides support for the Tasmanian Heritage Council
Water Resources Division
▪ Manages fresh water & groundwater resources and water licensing.
Food and Agriculture Division
▪ Manages rural lands, agricultural practices, chemicals and spraying ▪ Manages marine farming and wild fisheries ▪ Jointly manages marine reserves (with *Parks & Wildlife Service*)
Biodiversity Conservation Unit
▪ Issues permits for taking wildlife ▪ Assesses applications for taking threatened species
Sea Fishing & Aquaculture
▪ Manages aquaculture, fisheries, the marine environment and its fish stocks
Biosecurity & Product Integrity (Including Quarantine)
▪ Protects against the negative impacts of pests, diseases and weeds ▪ Regulates introduction of genetically modified organisms
Lands Titles Office
▪ Manages the whole-of-government, integrated *Land Information System* (LIST)

Crown Land Services
▪ Oversees management, use and development of Crown Land
Natural Resource Management Unit
▪ Provides data, support and strategies to assist with Tasmania's overall natural resource management - in parallel with Australia-wide NRM program

Justice

- Oversees the RMPAT and the Planning Commission
- Oversees the Ombudsman and the Integrity Commission
- Coordinates Right to Information laws

Health and Human Services

Public & Environmental Health Service
▪ Regulates quality of food (including shellfish)
▪ Regulates sanitation and health standards
▪ Regulates quality of drinking and recreational water sources (including fluoridation)
▪ Involved with *Health Impact Assessments*

Infrastructure, Energy & Resources (DIER)

Infrastructure division
▪ Oversees state-owned businesses (GBOs) such as Forestry Tasmania, Hydro Tasmania and Aurora Energy
Transport division
▪ State transport planning (includes protection of roadside vegetation)
Mineral Resources Tasmania
▪ Manages and regulates exploration, mining and quarrying
Office of Energy Planning & Conservation
▪ Responsible for regulation of energy sector
Forestry Division
▪ Oversees Forest Practices Authority and Private Forests Tasmania
▪ Responsible for implementation of RFA and Permanent Forest Estate Policy

Independent Agencies

These are statutory bodies that are intended to operate without any direct political or government intervention.

Tasmanian Planning Commission

- Assesses local government Planning Schemes
- Assesses public land use issues
- Assesses Major Development Projects ('Level 3' developments)
- Reviews Water Management Plans
- Reviews State Policies and Planning Directives
- Prepares State-of-the-Environment reports

☛ Go to Chapters 4 and 5 for more information

Resource Management & Planning Appeal Tribunal

- Hears appeals against various resource management decisions
- Conducts enforcement proceedings about alleged or potential breaches of environmental laws
- Can then issue 'orders' that protect environmental (or planning) rights and values

☛ Go to Chapter 14 to see how it operates

State Ombudsman

- Investigates public complaints about the administrative actions of state and local government, public authorities and agencies

☛ Go to Chapter 13 to see how it operates

Supreme Court of Tasmania

- Final court of appeal for most matters. Civil and criminal jurisdiction

☛ Go to Chapter 14 to see how it operates

Tasmanian Heritage Council

- Manages historic and cultural heritage legislation, including listing of heritage sites
- Makes recommendations to planning authorities regarding development applications affecting heritage listed buildings and sites

☛ Go to Chapter 12 to see how it operates

Forest Practices Authority

- Develops and updates Forest Practices Code
- Regulates environmental controls in crown and private forestry, including the clearing of threatened native vegetation

☛ Go to Chapter 8 for more information

Environment Protection Authority

- Assesses larger developments ('level 2' developments)
- Requires and assesses environmental improvement programs

- Carries out environmental audits
- Negotiates and enforces environmental agreements

☛ Go to Chapters 5 and 6 for more information

Director of the EPA

- Regulates 'level 2' developments
- Empowered to enforce pollution control laws with respect to any activity.

Other relevant agencies

Climate Change Office

- Developing and monitoring climate change policy.

Forestry Tasmania

- Regulates the commercial harvest of timber on crown land

Inland Fisheries Service

- Regulates commercial and recreational fishing in inland waters

TasWater

- Sourcing, treating and supplying drinking water
- Removing, treating and disposing of wastewater

Where to seek information

Service Tasmania centres

Purchase copies of reports / documents, ask for information and ask questions about who to contact about your concerns. There are street front offices in most major towns

4. Resource Management & Planning System

The Resource Management and Planning System (the RMPS) is the all-important, integrated, planning and environmental management system for Tasmania.

This chapter outlines the RMPS, whilst Chapter 5 and Chapter 6 show how major elements of it – planning and pollution laws – are put into practice.

4.1 What is the RMPS?

The RMPS is an integrated system of laws, policies and procedures. Its aim is to ensure that all decisions about the use and development of land and natural resources in Tasmania are directed towards achieving sustainable use and development of natural and physical resources.

What does the RMPS do?

It establishes a 'whole of government, industry and community' approach – by involving all these groups in many development issues.

It requires state and local government bodies to further sustainable development in their planning and in their assessments of proposed developments, and guarantees citizens participation in these matters.

It gives citizens appeal rights to an independent appeal tribunal to seek orders about a range of development applications and environmental impacts, and to enforce a range of planning and environmental laws. These appeal rights are given by different pieces of legislation (see below).

Important objectives of the RMPS

All the legislation which makes up the RMPS share a common set of Objectives, listed below.

These Objectives are aimed at promoting the sustainable development of the resources of air, water and land to ensure the future welfare of all Tasmanians.

All local and state government agencies that administer the RMPS Acts are required by law to further these Objectives when making decisions under those Acts.

- To promote sustainable development and to maintain ecological processes and genetic diversity
- To provide for the fair, orderly and sustainable use and development of air, land and water
- To encourage public involvement in resource management and planning
- To facilitate economic development in accordance with these objectives
- To promote the sharing of responsibility for resource management and planning between the different spheres of government, the community and industry in the state.

Note that 'sustainable development' is defined in the legislation as:

"…managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:

a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

c) avoiding, remedying or mitigating any adverse effects of activities on the environment."

How does the RMPS attempt to achieve these objectives?

1. Through 'Planning Schemes'

Planning Schemes provide the basic rules for proposed new uses and developments in Tasmania. All of Tasmania is covered by one or more *Planning Scheme*.

Planning schemes must be prepared in accordance with the RMPS objectives, State Policies, and having regarding to the environmental, social and economic consequences of planning decisions. Planning authorities (local councils) have a legal obligation to observe and to enforce observance of the *Planning Scheme/s* for their council area.

☛ See more about Planning Schemes below

2. Through 'Tasmanian Sustainable Development Policies' (State Policies)

State Policies (as they are known) are approved by the parliament and have force of law. State Policies provide high level statements to guide resource management decisions.

State government agencies, public authorities and planning authorities are all obliged to comply with State Policies and to have regard to those policies in their planning and decision-making.

☛ See more about State Policies below

3. Factoring sustainability into decision making

All Acts and regulations in the suite of RMPS legislation (the five key Acts are discussed below) require any person making decisions under the legislation to have regard to, and in some cases to act in a way that "furthers", the RMPS objectives.

4. Through an enforcement and appeals system

The RMPS gives ordinary citizens the power to enforce a range of planning, pollution and resource management laws. It does this through a special tribunal – the *Resource Management and Planning Appeal Tribunal*.

☛ Go to Chapters 5, 6and 14 to see how these rights can be exercised

Tasmania's planning system has been under review for a number of years, in an attempt to establish more consistent planning schemes across the State and improve the integration between the various pieces of legislation within the RMPS. This Handbook examines the RMPS as it currently operates, but also highlights some impending changes.

For more information about the current review, go to the Planning Reforms page on the Planning Commission's Website

4.2 The core of the RMPS

Land Use Planning and Approvals Act 1993 (LUPAA)

- Regulates land use and development in Tasmania through *Planning Schemes*, planning assessment processes and a permit system.
- Any person who has a 'proper interest' may apply to the *Resource Management and Planning Appeal Tribunal* for an enforcement order where a permit has been breached or where no permit was issued

Environmental Management and Pollution Control Act 1994 (EMPCA)

- Manages and regulates pollution and other environmental problems through various management tools and prescribed offences.
- Any person with a 'proper interest' may apply to the *Tribunal* for an order to ensure compliance with the Act.

State Policies and Projects Act 1993

- Deals with the creation, enforcement and review of Tasmanian *State Policies*.
- Requires a Tasmanian State of Environment Report to be prepared every 5 years.
- Defines how major projects (*Projects of State Significance*) are assessed, approved and regulated. ☛ See Chapter 5 for information

Tasmanian Planning Commission Act 1997

- Sets up the *Tasmanian Planning Commission* (TPC) – responsible for assessing planning schemes, *State Policies* and *Projects of State Significance*.

Resource Management and Planning Appeal Tribunal Act 1993

- Establishes the *Resource Management and Planning Appeal Tribunal* (RMPAT) – the principal tribunal to hear appeals against planning decisions and to ensure that planning and environmental controls are enforced.

☛ LUPAA and EMPCA are particularly important to environmental management and are described further in Chapters 5 and 6.

4.3 Laws that are linked to the RMPS

A number of other laws (listed below) are linked to the RMPS.

These laws share the same sustainable development Objectives. However, in some cases they give limited participation and appeal rights to citizens than other RMPS legislation.

Major Infrastructure Development Approvals Act 1999 (MIDA)

- Regulates the approval process for certain major developments – such as power transmission lines.
  ☛ Go to Chapter 5 for information

Historic Cultural Heritage Act 1995

- Sets up a register of places of historical cultural heritage significance.
- Any person can nominate a place to be entered on or removed from the register.
- Works which will affect listed places require approvals (or a certificate of exemption).
  ☛ Go to Chapter 12 for information

Living Marine Resources Management Act 1995

- Concerns normal fisheries operations and fisheries research.
- Establishes some marine reserves.
- Manages aquaculture licensing (in combination with the *Marine Farming Planning Act 1995*)
  ☛ Go to Chapter 9 for information

Marine Farming Planning Act 1995

- Regulates marine farming, through a system of marine farming leases and development plans.
  ☛ Go to Chapter 9 for information

(!) The *Marine Farming Planning Act 1995* has limited opportunities for public participation, and no third party appeal rights.

Threatened Species Protection Act 1995

- Aims to protect, manage and promote conservation of threatened plants and animals in Tasmania.
  ☛ Go to Chapter 7 for information

Water Management Act 1999

- Regulates the use of Tasmania's fresh water resources through development of water management plans and issuing water licences.
- Also regulates construction and use of dams.
  ☛ Go to Chapter 10 for more information

Wellington Park Act 1993

- Establishes the Wellington Park Management Trust and regulates the management of activities in the Mount Wellington Range.

Natural Resource Management Act 2002

- Sets up the *Tasmanian Natural Resource Management Council* to set priorities for NRM
- Establishes regional strategies and means for coordinated statewide natural resource management

Nature Conservation Act 2002

- Provides for declaration of national parks and reserves
- Sets up regulations for taking and trading in native wildlife
- Lists threatened native vegetation communities that are to be protected under the forest practices system

National Parks and Reserves Management Act 2002

- Establishes management plans for reserved areas
- Restricts use and development in reserved areas

Other laws

Some other laws that affect the operation of the RMPS include:	
▪ Approvals (Deadlines) Act 1993 ▪ Crown Lands Act 1976 ▪ Crown Lands (Shack Sites) Act 1997 ▪ Forest Practices Act 1985 ▪ Gas Act 2000 ▪ Gas Pipelines Act 2002 ▪ Local Government Act 1993	▪ Mineral Resources Development Act 1995 ▪ Public Land (Administration & Forests) Act 1991 ▪ Regional Forest Agreement (Land Classification) Act 1998 ▪ Resource Management and Planning Appeal Tribunal Act 1993 ▪ Strata Titles Act 1998 ▪ Tasmanian Planning Commission Act 1997 ▪ Weed Management Act 1999

Hint: When attempting to enforce any of these laws, you should refer to the RMPS objectives shown above. These objectives are supposed to be upheld!

4.4 Problems with the RMPS

The RMPS has not been fully incorporated into Tasmania's bank of environmental laws.

- Although the important sustainable development Objectives (see above) have been added to some older Acts, (like the *Crown Lands Act 1976*), these older Acts have not been built around the RMPS system and therefore do not include some important democratic features of the RMPS (such as rights of appeal).

- More importantly, some major resource management activities (in particular, forestry, mineral exploration and aquaculture) have been granted specific exemptions – so that provisions of planning laws which apply to other business sectors do not apply to those activities. These sectors are mostly regulated under their own specific legislation.

Environmental laws that lie largely outside the RMPS include:

▪ Inland Fisheries Act 1995	▪ Local Government Act 1993
▪ Forestry Act 1920	▪ Crown Lands Act 1976
▪ Forest Practices Act 1985	▪ Pulp Mill Assessment Act 2007
▪ Private Forests Act 1994	▪ Waterworks Clauses Act 1952
▪ Mineral Resources Development Act 1995	▪ Meander Dam Project Act 2003
	▪ Water and Sewerage Industry Act 2008

The net effect of this is that, although Tasmania has a modern planning system, with a purported objective of sustainable development, it has not yet achieved its full potential to the extent that has been achieved in some other states.

In addition, regional infrastructure issues (such as sewerage, water supply, roads, rail and hospitals) are not subjected to an integrated statewide planning regime.

How does the Natural Resource Management Framework relate to the planning system?

A *Natural Resource Management* (NRM) system was adopted in Tasmania in 2002. This Framework is simply an overlay, it does not replace existing policies and processes - the RMPS continues as the overarching legislative system for resource management and for planning and development controls.

However, the NRM Framework is a useful administrative tool. It works within the RMPS to coordinate and integrate the activities of a variety of bodies and processes involved in the management of natural resources in the State. *Natural Resource Management* is broadly defined as 'the management of all activities that use, develop and/or conserve our air, water, land, plants, animals and microorganisms, and the systems they form'.

For more information about the NRM Framework, go to the NRM website at www.nrmtas.org.au.

4.5 State Policies

Why State Policies are important

State Policies are approved by the parliament and have force of law. Each *State Policy* applies to a particular issue (such as water quality or the protection of agricultural land). State Policies apply to the entire state, and must be considered in a range of resource management and planning decisions.

State government agencies, public authorities and planning authorities are all obliged to comply with State Policies, and *Planning schemes* must be prepared in accordance with *State Policies*.

Contravention of a state policy by any person (including a planning authority) is an offence, and the offender may be prosecuted.

Where can I find State Policies?

You can obtain copies of *State Policies* from *Service Tasmania Centres* or download them from the Tasmanian Planning Commission's website at www.planning.tas.gov.au

The state government has, to date, prepared the following State Policies:

- ***State Coastal Policy 1996***
  This policy is under review - the 1996 policy remains current until this review is finalised.
  ☛ go to Chapter 7 for more details

- ***State Policy on Water Quality Management 1997***
  The government plans to convert this State Policy into an Environment Protection Policy (see below). However, no action has been taken and the State Policy remains in force.

- ***State Policy on Protection of Agricultural Land 2009***

In addition to these State Policies, National Environmental Protection Measures (***NEPMs***) are taken to be State Policies for the purposes of the State Policies and Projects Act.

The following NEPMs have the same force as *State Policies*:

- National Environment Protection (Used Packaging Materials) Measure;
- National Environment Protection (Ambient Air Quality) Measure;
- National Environment Protection (Movement of Controlled Waste Between States and Territories) Measure;
- National Environment Protection (National Pollutant Inventory) Measure;
- National Environment Protection (Assessment of Site Contamination) Measure;
- National Environment Protection (Diesel Vehicle Emissions) measure; and
- National Environment Protection (Air Toxics) measure.

You can download these national policies at www.scew.gov.au/nepms.

State Environment Protection Policies

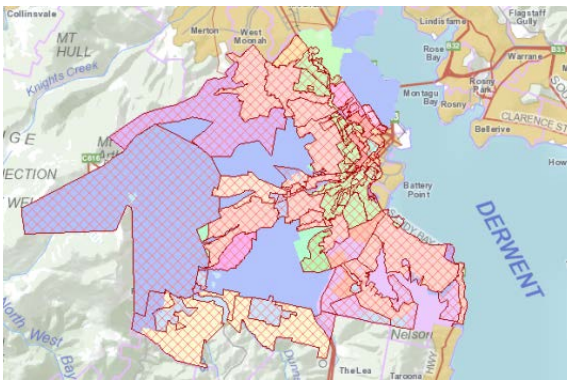
Environment Protection Policies (**EPPs**) are made under s.96 of the *Environmental Management & Pollution Control Act*. They are designed to provide guidance in relation to specific environmental issues. Unlike State Policies (discussed above), EPPs are not enforceable in their own right. Instead, the provisions of these policies are a guide to decision makers and may be included, for example, in permit conditions.

Currently, there are two Environment Protection Policies in force in Tasmania:

- the Environment Protection Policy (Air Quality) 2004; and
- the Environment Protection Policy (Noise) 2009.

For more information, go to the EPA Division website at www.epa.tas.gov.au

4.6 Planning Schemes



Why Planning Schemes are important

A *Planning Scheme* is a document prepared and managed by local councils. Planning schemes regulate the use, development, protection or conservation of land throughout Tasmania. Every council has a duty to observe and enforce its planning scheme (see sections 48, 63 and 63A of LUPAA).

The planning scheme is binding on all members of the community, State Government agencies and public authorities (unless specifically excepted).

A *Planning Scheme* for a local council or planning authority area is made up of:

- A written document that details the types of land use and development that are permitted, discretionary or prohibited; and
- Various codes / schedules that apply to specific areas (such as coastal areas, areas subject to flooding, heritage precincts); and
- A set of maps that show different land use areas or zones – referred to in the written document.

The map and written document must be read together. Each zone specifies the allowable uses, and standards such as height and dimensions of buildings, minimum lot sizes and dimensions and density of development.

The planning scheme essentially controls new development, re-development or expansion or existing development. It does not affect some existing use rights for activities that are already lawfully established.

Many council areas are covered by more than one planning scheme. Check carefully to make sure that you have seen everything, and know which planning scheme regulates the land you are concerned with!

Anyone can view a planning scheme at the relevant council office or at the Commission office. Many planning schemes are available on council websites (but check with local council to make sure that these documents include recent amendments).

What a planning scheme must do

New (or amended) planning schemes:

- must seek to further the RMPS objectives and also the specific objectives of LUPAA
- must be prepared in accordance with State Policies
- may make any provision which relates to the use, development, protection or conservation of any land in the area, and
- must have regard to the strategic plan of a council adopted by the council at the time the planning scheme is prepared.

Planning schemes must, as far as practicable, be consistent and coordinated with the planning schemes applying to adjacent areas and must have regard for the use and development of the region as an entity in environmental, economic and social terms.

More consistent planning schemes

Tasmania currently has 34 planning schemes which apply to different areas of the state, and there is no consistent or coherent approach adopted across all the schemes. Many older schemes also fail to adequately reflect the sustainable development objectives of the RMPS.

The following measures have been adopted to try to address this problem:

- The Tasmanian Planning Commission has adopted a standard scheme template to improve consistency in the structure and content of planning schemes
- Regional Land Use Strategies have been declared to promote more consistent approaches to resource use and development within Tasmania's three regional areas
- Introduction of Interim Planning Scheme provisions, intended to facilitate quicker implementation of new planning schemes

Planning Scheme Template

Planning Directive No 1: The Format and Structure of Planning Schemes (known as **"PD1"**) was formally adopted in September 2012 and includes a Planning Scheme Template that must be applied when any new scheme is being prepared. While the Template does not set out particular standards (that is for each council or region to determine), it includes common definitions, standard zone headings and objectives and a list of uses and developments that will be exempt from requiring a permit under all new schemes.

The structure of the Template is:

- **Part A** - Purpose and Objectives.
- **Part B** - Administration
- **Part C** - Special provisions
- **Part D** - Zones (the Template provides 32 different zones – councils can choose to use any or all of the zones).
- **Part E** – Codes (provides uniform standards for common issues, such as bushfire management, development on flood prone land and development of residential dwellings in a Residential Zone).
- **Part F** - Special Area Plans.

Planning Codes

The Commission has finalised Planning Directives (to be adopted as "Codes" under the template planning schemes) for Single Dwellings in Residential Areas and development in Bushfire Prone Areas. The Commission has also released Draft Planning Directives for Flood Prone Areas, Landslide areas, Potentially Contaminated Land and Road and Railway Assets.

Issues likely to be addressed through Planning Directives in future include coastal hazards (including erosion and inundation) and management of biodiversity.

You can download PD1 and other Planning Directives at www.planning.tas.gov.au.

Regional Strategies

In 2010, amendments to LUPAA took effect which aimed to ensure more strategic and consistent planning between councils within a region through the development of regional land use strategies (Part 3, Division 1A).

Municipalities in Tasmania have been grouped into three regions: Cradle Coast, Southern and Northern Tasmania. Regional land use strategies for each region have been gazetted. The Strategies identify key resource issues and management objectives in the region, identify

appropriate urban growth boundaries and key constraints and opportunities for regional development.

For information about the progress of the Regional Planning project Initiative, visit www.planning.tas.gov.au or the sites for the three regions:

- Northern Tasmania (www.northerntasmania.org.au)
- Cradle Coast (www.cradlecoast.com)
- Southern Tasmania (www.stca.tas.gov.au)

Interim Planning Schemes

In 2010, LUPAA was amended to allowed changes to planning schemes to be fast-tracked by the adoption of interim planning schemes. Interim planning schemes will then apply immediately upon declaration and until a final planning scheme is approved.

A planning authority can prepare a draft interim planning scheme on its own initiative. Alternatively, the Minister for Planning can direct a planning authority to prepare a draft interim planning scheme. If the planning authority does not prepare a draft in accordance with the direction within 21 days, the Minister can order the Planning Commission to prepare an interim planning scheme for the municipality.

Each of the three regions is developing common provisions to be included in each draft interim scheme in the region. Currently, interim schemes have been declared for all Northern and Cradle Coast council areas.

Draft schemes for each of the southern Tasmanian councils are available at the Southern Tasmanian Councils Authority website.

The Launceston Interim Planning Scheme is the first to be fully assessed. For information regarding the Launceston Interim Planning Scheme, and its assessment by the Tasmanian Planning Commission, go to www.planning.tas.gov.au.

Interim planning schemes:

- **MUST** further the objectives of any regional land use strategy applying in the area;
- **MUST** include any 'mandatory common provision';
- **MAY** include any 'optional common provision';
- **MAY** include 'local provisions' specific to the particular area (e.g. zoning), provided that the local provisions are not inconsistent with the mandatory or optional common provisions.

If the Minister is satisfied that a draft interim planning scheme is appropriate, he or she may declare that the scheme has effect as an interim planning scheme. Currently, once an interim scheme has been declared, any existing planning scheme ceases to operate and any outstanding permit applications are taken to have been made under the interim scheme.

Recent amendments to LUPAA change this – permit applications that were made, but not decided, before the interim scheme took effect, will continue to be assessed under the old planning scheme.

Any person may apply for dispensation from the operation of a local provision of an interim planning scheme. The Commission will review the application and determine whether a dispensation should be granted (ss.30P, 30Q).

Notification

The Minister must give written notice of an interim planning scheme to:

- the planning authority;
- each other planning authority in the regional area;
- the Planning Commission;
- any state agencies with an interest in the Scheme.

The interim scheme must also be available for public inspection at the Council office and the Commission for at least two months. Any person can make a representation about the interim scheme to the planning authority in that period.

Reviewing Interim Planning Schemes

After the close of the public notice period, the planning authority must:

- provide a copy of all representations to other planning authorities in the regional area;
- prepare a report to the Commission outlining all representations received, and commenting on whether any changes to the interim scheme should be made to address the issues raised in representations (s.30J).

Similar to regular planning scheme amendments, the *Tasmanian Planning Commission* will then hold hearings regarding the interim planning scheme. Any person who made a representation will be invited to attend the hearing.

Following the hearing, the Commission must:

- report to the Minister about whether the relevant planning directive should be amended (e.g. to change the mandatory common provision, or to specifically exempt the particular planning authority from having to adopt those provisions);
- if it believes that an interim planning scheme should be amended, direct the planning authority to make specific modifications to the local provisions or to delete / substitute an optional common provision (the Commission may also elect to prepare modifications itself).

The Commission may require the planning authority to re-advertise an amended interim planning scheme and invite fresh representations.

A useful flowchart showing the assessment process for *Interim Planning Schemes* is available on the Tasmanian Planning Commission's website (www.planning.tas.gov.au).

Adopting Interim Planning Schemes

If it is satisfied that an interim planning scheme is appropriate (with or without modifications), the Commission must adopt the interim scheme as a planning scheme (s.30N). The Commission is required to get approval from the Minister prior to adopting the interim scheme. The Commission will publish a notice in the *Gazette* confirming the date on which the new planning scheme will take effect.

Can I have a say in how a planning scheme is framed?

Yes, any person has the right to have a say in the preparation (or amendment) of planning schemes. A good planning scheme can avoid a lot of problems later on. For example, you may wish your local planning scheme to require permits for such things as:

- land clearance in local reserves
- building developments which may interfere with direct access to sunlight

or to include specific local provisions relevant to your area, such as height restrictions in skyline areas, or wider setbacks in semi-rural areas.

Please note: local provisions **must not** be inconsistent with the Planning scheme Template (s.14)

Importance of acting early

Before preparing (or revising) a planning scheme, local councils are required to notify the Commission and should invite public input at the early stages. It is important to have input at this informal stage, when it is easier to make major changes.

Councils should seek public input to help them scope out the issues that the planning scheme should address (see *Planning Advisory Note: Notification of a Decision to Prepare a Planning Scheme*). A council adopting best practice would normally hold a number of public meetings to gain input to a planning strategy. This is not a statutory requirement but is recommended by the Commission (see *Planning Advisory Note: Supporting Information for Planning Schemes*).

Planning advisory notes are available on the Tasmanian Planning Commission's website.

Formal hearings

Before a planning scheme or amendment can be adopted, the council must submit a copy of the draft planning scheme or amendment to the Commission. The Commission must then direct the council to publicly exhibit the draft (with or without amendment), or inform the council that it is not suitable for public exhibition and allow a specific period in which to submit a revised draft to the Commission.

Any person may make a representation during the exhibition period.

Following the end of the exhibition period, public hearings are generally held to discuss the proposed amendment. If any person who made a representation has requested a hearing, the Commission must hold a hearing.

Notice of public hearings will be published in the newspaper. You can request the opportunity to make a presentation at the hearing if you made a representation during the notice period. You have the same rights to participate whether the hearing relates to a new planning scheme or amendments to an existing planning scheme (see Part 3 of LUPAA).

Hearings are conducted by the Tasmanian Planning Commission.

The Commission will decide on the appropriate format and procedure for the hearing. The Commission is not bound by the rules of evidence that restrict a court, so hearings are generally less formal than court or Tribunal proceedings. Hearings must be held in public and written submissions are made public so that people can comment on them (unless the information is confidential and it is not in the public interest for it to be disclosed). If any major changes are proposed following the public hearings, the draft planning scheme may need to be advertised again.

You can download a useful flowchart showing the assessment *process for* planning schemes (and amendments to planning schemes) from the Tasmanian Planning Commission's website.

A few tips when having your say

- Be clear about what changes you are seeking. If the changes would affect other landowners, natural justice requires that they have their say too – the council has to balance the rights of landowners to develop their land with public rights to amenity and environmental quality.

- It is most important to examine 'permitted uses' along with development standards (eg height limits, setbacks) in the zones you are interested in. This is because the Council is obliged to allow a development to go ahead if the use is designated as 'permitted' in the planning scheme and the standards and requirements of the planning scheme are all complied with. You generally cannot appeal against a permitted development.
- Also examine the 'discretionary uses' – where a council has a discretion to 'permit or refuse' a development or to relax a requirement of the planning scheme. Check where there is a discretion and all the discretions involved. Council staff should be able to assist with this. It is important to address these because the council (and the Tribunal on appeal) must have regard to these factors when deciding whether to permit or refuse the development application.
- It is also important to be familiar with the Codes (see above), and to consider whether any other specific provisions should apply locally (remembering that local provisions must also be consistent with the Template and other Codes).

☛ Go to Chapter 5 to see how development permits are granted.

Can I request that a Planning Scheme be amended?

Any person may request a planning authority (council) to amend its Planning Scheme. If the amendment relates to land that you do not own, you must have written permission of the owner before seeking the amendment.

Often, these amendments seek to change the zone of a particular area, to allow a development that would otherwise be prohibited. These kinds of applications are often called 'rezoning applications'.

After it receives your application, the planning authority has 42 days to decide whether or not to initiate an amendment.

If the authority decides not to initiate an amendment, you cannot request a substantially similar amendment for **2 years** unless the Council agrees to consider it.

What are Special Planning Orders?

In some circumstances there may be a need to introduce a Special Planning Order where there are no controls over an area of land, or where there are contradictions and inconsistencies between sections of a planning scheme.

In these unusual circumstances, a Special Planning Order may be made to enable a development to proceed (see Section 47 of LUPAA).

This procedure bypasses the standard procedure, which means there is some risk that safeguards such as public participation in decision-making could be also be bypassed. However, the Commission can only make a Special Planning Order if it is in the 'public interest' to do so, so there is some protection against abuse of the system.

4.7 How is the planning system enforced?

What is illegal?

A person must not use land in a way, or undertake development that:

- is contrary to a *State Policy*, a *Planning Scheme*, or *Special Planning Order*, or
- impedes or obstructs the execution of any planning scheme or order, or
- constitutes a breach of a condition or restriction of a planning permit, or
- breaches an order or a determination of the Tribunal.

If a planning scheme requires you to have a permit, it is an offence to commence any use or development without the appropriate planning permit.

What is 'civil enforcement'?

If you are carrying out development contrary to the planning scheme (for example, if you do not have a planning permit in a zone where a permit is required for your activities), the Commission, the planning authority or anyone who has 'a proper interest in the subject matter' (such as a neighbour) may apply to the Tribunal for an enforcement order.

Similarly, if you are breaching a condition of your planning permit, the planning authority or any person with a 'proper interest' may take action against you in the Tribunal.

The Tribunal can order a person to cease an unlawful activity and order that the contravention be 'made good' (for example, if damage has been caused by the unlawful activity, to fix the damage).

These actions, called 'civil enforcement actions', are taken under section 64 of LUPAA.

☛ Go to Chapter 13 to find out about *Civil Enforcement*.

You may also be prosecuted under section 63 of LUPAA for these offences (instead of, or in addition to, civil enforcement).

What if a council breaches its planning scheme?

Under LUPAA, Councils are required to uphold their planning schemes or face prosecution (see sections 48, 48AA and 63A of LUPAA).

If it has been brought to a council's attention that an activity is in breach of its planning scheme, then the council must take all reasonable steps to stop the breach (please note, what is "reasonable" will depend on the circumstances). If you are concerned that a council is failing to abide by its planning scheme, then contact the council first up. If the council fails to address the issue, then it may be useful to report the case to the Commission or the Director of Public Prosecutions, who have the power to prosecute the council.

More directly, you may take action against the offender in the Tribunal, requesting an immediate stop to the offending activity, or against the Council, requesting that they take some action. You can request that the Tribunal make an urgent decision.

☛ Go to Chapter 14 for information about how to do this, and any costs that may apply.

You have only two years from the date of a breach of the planning scheme or of the Act to take action in the Tribunal.

If all else fails, you could apply to the *Supreme Court* for an order that the council abide by its planning scheme.

For advice about these options, contact the Environmental Defenders Office.

Can I claim compensation?

You can claim compensation from a planning authority (council):

- for financial loss suffered as the natural, direct and reasonable consequence of your land being set aside for a public purpose under a planning scheme; or
- if access to land is restricted by a road closure under a planning scheme or interim order; or
- if you suffer financial loss because a permit is not granted due to land being set aside for public use.

'Agreements' under LUPAA

In addition to the above procedures, councils may also enter into formal agreements with an owner of land (or someone who is expected to become the owner) (see Part V of LUPAA).

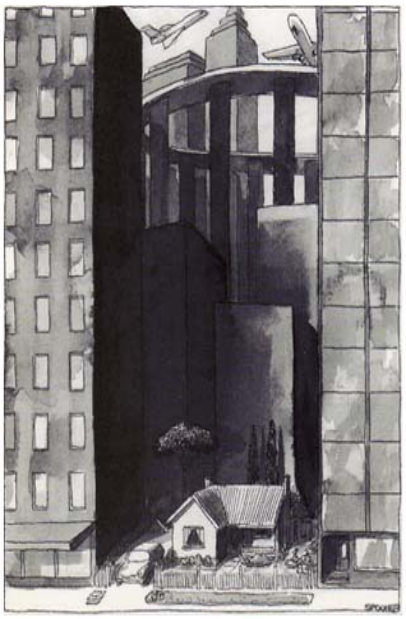
Known as “Part 5 agreements”, these agreements may include:

- conditions which prohibit, restrict or regulate use or development on the land
- conditions under which a use or development may be undertaken (for example, what colours future buildings must be painted, requirements to install rain water tanks)
- conditions requiring the owner to prepare a management plan for the land
- any other matter intended to achieve or advance the RMPS and other objectives.

Part 5 agreements are legal contracts and may require the landowner to deposit with the planning authority a sum of money or a form of guarantee to pay that money.

This money, or any part of it, may be forfeited if the agreement is not satisfied. Otherwise the money or guarantee must be returned on a date specified in the agreement. This is a way of ensuring that there is money available for rehabilitation in the event of environmental damage resulting from a breach of the agreement.

5. Development Controls



This chapter outlines how new developments are assessed and approved, and how you can appeal against a proposed development.

In Tasmania, approval for new developments has been integrated, streamlined and simplified. Only one combined approval is required for both planning approval and environmental approval. In many other states two separate permits are required.

The approval process is governed largely by two key Acts:

- **Land Use Planning & Approvals Act**
  - regulates planning controls
- **Environmental Management & Pollution Control Act**
  - regulates environmental controls.

These two Acts are very widely used and you will usually hear them referred to as **LUPAA** and **EMPCA.**

The approval process integrates provisions within both of these two Acts (plus some others) to ensure that a proposed development addresses a variety of land use and environmental considerations before it can be approved.

5.1 When do I need planning approval?

You will generally need to seek planning approval if you want to do any of the following:

- change the use of land
- undertake a new development on land
- expand an existing development

'Development of land' includes the carrying out of any building, engineering or other operations on land. It includes making any material change in the intended use of the land or buildings or works upon it. It also includes demolition, land clearing and subdivision.

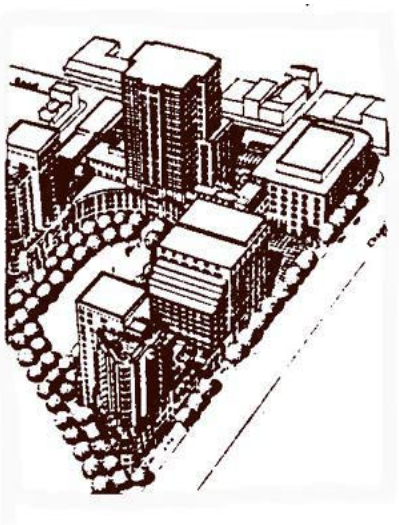
Even if you already have a planning permit, you will probably require a new approval for any proposal that involves:

- an intensification of the use of the land
- changing the use of existing buildings (eg residence becomes an office)
- new activities that are likely to adversely impact upon neighbours (e.g a new deck, or changing the operating hours of your business)
- an increase in the output of pollutants, including noise

Note 1: Some activities may not need planning approval – to be sure, it is a good idea to check with the local council before doing any work.

Note 2: Permits to build dams or weirs, forestry activities and mining operations go through different approval processes (☛ Go to Chapters 8,9 10 and 11).

5.2 How do I apply for planning approval?



Local councils are central to Tasmania's planning system - ☛ Go to Chapter 3 for information about councils.

In most cases, you are unable to proceed with a development until you receive a *planning permit* from the local planning authority. No matter whether you want to erect a garden shed, build a factory or subdivide your rural block, you should check with your local planning authority whether you require a permit and how to apply.

Your application may also need to comply with the requirements of various other government agencies (e.g traffic arrangements need to comply with DIER requirements, sewerage arrangements must meet the requirements of Tas Water and approval from Crown Lands may be required if any part of your development (including access) occurs on reserved land.

5.3 What information must a development application contain?

In addition to the application form (get these from your local Planning authority), you should lodge plans showing enough detail to allow a person viewing them to understand all the implications of your proposed development. This includes parking provisions, proximity to neighbours, impacts on the environment, traffic and so on.

The Council's *Planning Scheme* may set out particular information that is required – if information required by the Planning Scheme is not provided, the Council may not be able to make a decision about your application. The Council can request further information and can 'stop the clock' on the time it has got to decide on the application until it has received an adequate response. If you think the request is unreasonable you can appeal to the *Resource Management and Planning Appeal Tribunal* (**RMPAT**) for a ruling on whether the information is really required.

If your application is for a development that is likely to have a significant impact on the environment then it may be referred to the *Environment Protection Authority* (**EPA**) for assessment. If this happens, you will need to submit comprehensive documentation in accordance with guidelines developed by the EPA.

5.4 The Approval Process

It is a mandatory requirement (under the *Land Use Planning and Approvals Act*) for councils to follow the procedures outlined below.

Compliance with State Policies

Your proposal must not be approved if it contradicts a *Tasmanian Sustainable Development Policy*, such as the *State Coastal Policy* or *State Policy on Water Quality Management* (☛ Go to Chapter 4 for information about these).

It is an offence for a council to allow a breach of a *State Policy*. Moreover, *State Policies* override any conflicting provisions that may be in a *Planning Scheme* (see below).

State Policies are primarily directed at how Planning Schemes are developed (that is, the planning scheme is intended to provide appropriate restrictions to deliver the objectives of the relevant State Policy). However, even though the Policies are not primarily directed at individual developments, the *Supreme Court* has confirmed that Councils are obliged to apply provisions of the *State Coastal Policy* when determining applications for discretionary developments.

Compliance with Planning Schemes

Your proposal must comply with the *Planning Scheme* that applies to the area (☛ Go to Chapter 4 for information about these).

Planning authorities have no power to grant you a *Planning Permit* unless the proposed use or development can be approved under the relevant *Planning Scheme* for that area. Up-to-date copies of Planning Schemes are available for inspection at each local council office and at the Tasmanian Planning Commission. Most Councils also make a copy of their planning scheme available on their website.

A planning authority is obliged to accept an application even if it appears to be contrary to the Planning Scheme provisions. However, after considering the application, the Council can immediately decide not to grant a permit for the proposed development if it is prohibited under the *Planning Scheme*. In that case, you will be informed of this decision and there is no requirement for the proposal to be advertised.

Planning Schemes usually divide the council area into different zones – eg *General Residential*, *Light Industrial*, *Rural Resource* or *Environmental Management Zones*. The *Planning Scheme* determines:

- what types of activities (uses and developments) are allowed within each zone
- what standards a proposed development must comply with

Determining the Type of Activity

Depending on its location, your proposed development will fall into one of three categories (within the planning scheme):

PROHIBITED USE	It must be rejected.
DISCRETIONARY USE	It can be accepted or rejected (see below).
PERMITTED USE	It must be approved - so long as conditions are met.

Compliance with Development Standards.

Even if the proposed development is classified as a Permitted or Discretionary activity (use), it must also comply with development standards.

These might cover issues such as the height of a building, the number of car parking spaces, or the minimum size of a piece of land.

If the development standards are exceeded the proposal can be refused – even if it is classed as a 'permitted use'.

Planning schemes may also set out a list of "exempt development". These are generally minor works, such as boundary fences lower than 2.1m, small garden sheds, pruning

vegetation or maintaining an easement around transmission lines, and do not require any permit from the planning authority.

What happens if your proposed development is for a 'prohibited use'?

A planning authority must refuse an application for a prohibited use. If you believe that the use should not be prohibited on the land (for example, that the land should be included in a Local Business Zone, rather than an Inner Residential Zone, and therefore a shop should be allowed), you can apply to the Planning authority to amend the Planning Scheme to allow the development. If the planning authority supports your proposal to amend the planning scheme, your application will be referred to the Tasmanian Planning Commission for assessment. See Chapter 4 for more information about planning scheme amendments.

What happens if your proposed development is for a 'permitted use'?

Some *Planning Schemes* further divide the 'permitted use' category into Permitted (No Permit Required) and Permitted (Permit Required). Where no permit is required, the use is often referred to as being 'as of right'. You do not need to apply to the Council in relation to an 'as of right' development, though you must ensure that it complies with all relevant planning scheme standards. Depending on the development, you may also still need building or plumbing approval (see below).

If the use is Permitted (Permit Required), you must apply to the council for a *planning permit.* The planning authority **must** approve your application. However, where appropriate, the council can add conditions to the permit, including environmental requirements such as landscaping and pollution control. The planning authority can also refer the application to various government and other authorities for comment before making the decision about what conditions to impose.

In these cases your application is not publicly advertised and only you, as the applicant, have the right of appeal against any conditions that are attached to the permit.

What happens if the proposed development is for a 'discretionary use'?

A proposed use or development will be 'discretionary' if it is declared to be a 'discretionary' use under the *Planning Scheme* **OR** if it is a 'permitted use' but does not comply with one or more of the applicable standards (for example, if a proposed building will be higher than the permitted height, or will be located closer to the neighbouring property than the standard setback distance).

You will need to apply for a *planning permit* for any discretionary use. A planning authority has discretion to refuse or approve the application, after considering all of the potential issues associated with the proposal. Before it refuses or approves the development application, the planning authority must follow certain procedures to ensure the community has a chance to have a say.

1. Council must advertise the proposed development

The public must be notified of a proposed discretionary development by:

- Advertising in the 'business news' or 'public notices' section of a local newspaper
- Displaying the application at the local council offices
- Mailing a notice of the application to all neighbouring properties and property owners
- Placing a public notice on the site of the proposed development, as near as possible to all public boundaries of the land.

2. Council must take representations

Any person or group who has concerns about a proposed development can make a representation to the council explaining these concerns. The public must be given at least **14 days** to make a representation (excluding public holidays), but the Council may allow additional time in some circumstances.

The proposed development and all supporting documents are available at council offices for anyone to inspect. Many Councils provide this information on their websites, but they are **not** required to do this. Councils are also **not** required to provide copies or to allow people to make copies of a development application - you should always ask the Council if you can obtain a copy, but be aware that Council is entitled to refuse this request and require you to attend at the Council office to review the application material. State government agencies are also able to make comments about a proposed development during this period. For example, the *Tasmania Fire Service* can comment on whether the proposal satisfies fire safety requirements, the *Parks and Wildlife Service* can express concern about potential impacts on threatened species or the *Department of Infrastructure, Energy and Resources* can comment on access requirements. However, the Council is not specifically required to consult with relevant agencies before making its decision.

The planning authority is obliged to take into account any representations it receives during the advertised period (including from government agencies). Any person, group or agency that made a representation then has the right to appeal against the planning authority's decision in relation to the development (☛ see the discussion about appeals, later this chapter).

Recent Tribunal decisions suggest that representations can only be accepted by email if the public notice clearly provides an email address and invites representations to be made by email.

Be careful to check the notice - even if Council accepts your email, it may not be a "valid" representation giving you a right of appeal unless the notice specifically allowed for email representations.

3. Council must refer application to the Water Corporation

If the application will have an impact on water or sewerage infrastructure, the Council must refer it to the TasWater for assessment. The water authority must provide an assessment report to the Council before a *Planning Permit* can be granted (for more information about this process, see Changes to Water and Sewerage Control below).

4. Council may refer application to the *EPA*

If the application is a 'Level 2' activity (that is, any activity listed in Schedule 2 of EMPCA – see below) then the Council must refer it to the *Environment Protection Authority* for assessment.

The Council can also refer activities which are not 'Level 2' activities to the EPA, if Council believes that the proposal could have significant environmental impacts.

The EPA must provide an assessment report to the Council before a Planning Permit can be granted (☛ for more information about this process, see Environmental Controls below).

What about approvals for buildings?

Even if you obtain planning approval, separate building and plumbing plans will need to be approved by the Council. This is to ensure that safety, health and other requirements are taken into account before anyone occupies the building.

Regulations governing buildings apply throughout Tasmania and include prescribed standards for certain materials and building methods (see Building Code of Australia). No structural alterations can be carried out unless you have obtained a *building permit* for the work. Approval is also required to build car parks, retaining walls over 1 metre high and some fences and sheds.

If work is done without approval, penalties may be imposed and orders may be issued preventing any further work being carried out or requiring demolition of unauthorised works.

5.5 Changes to Water and Sewerage Controls

Traditionally, reticulated water and sewerage services have been provided by local government councils. From 1 July 2009 to 28 February 2013, reticulated water and wastewater service delivery were the responsibility of three regional water corporations, Southern Water, Ben Lomond Water and Cradle Mountain Water. From 1 March 2013, responsibilities and assets of the three regional water corporations have been transferred to one Statewide body, the Tasmanian Water and Sewerage Corporation. Each local council is a joint shareholder in the Corporation.

Fees for services are paid to the corporations and any complaints in relation to services should be directed to the corporations (see below).

The changes to the water and sewerage industry were designed to recover the full cost of these services, leading to improved investment in infrastructure, and acceptable and consistent standards of service delivery across the state. The new system is governed by the following legislation:

- Water and Sewerage Industry Act 2008 - provides the framework for the industry.
- Water and Sewerage Corporations Act 2012 - deals with management issues for the water corporations.

Development by Water Corporations

Under the *Water and Sewerage Industry (General) Regulations 2009*, many activities carried out by water corporations do not require a permit from Council. These include:

- Installation, maintenance or removal of pump stations, fluoridation or chlorination stations;
- Laying, removing and maintaining underground pipelines;
- Clearing vegetation where the work is necessary to protect water or sewerage infrastructure or water quality; and
- Subdivision for the purpose of creating lots for uses associated with water and sewerage infrastructure.

Water corporations also have wide powers to enter land to carry out works associated with water and sewerage infrastructure, or to acquire land for those purposes.

Other Developments

Subject to some exemptions, planning authorities are now required to refer all development applications to the water corporation for consideration if the use or development would:

- increase demand for water;
- increase the burden on sewerage or trade waste infrastructure;
- damage or interfere with the corporation's infrastructure; or
- adversely affect the corporation's operations (see s.56O of the *Water and Sewerage Industry Act 2008*).

For example, an application to subdivide a property for new residential lots requiring reticulated water or sewerage would be referred to the water corporation by the relevant planning authority.

For a list of developments which do not need to be referred to the water corporation, see r.12 of the Water and Sewerage Industry (General) Regulations 2009.

The water corporation may make a submission to the planning authority regarding the application within 14 days (or longer in some circumstances). The water corporation can:

- Recommend approval of the application with or without conditions; or
- Object to the proposal.

The Tribunal recently held that an objection by the water corporation must consider the specific consequences of a particular development against the criteria in s.56O, not simply implement a strategic policy for the area (see *STEPS Housing Solutions v Glamorgan Spring Bay Council* [2010] TASRMPAT 68).

If the water corporation has recommended approval of a development application, it is still open for the planning authority to refuse the application on other planning grounds. However, if the planning authority grants a permit for the use or development, it **must** include any conditions specified by the water corporation.

If the water corporation has objected to the application, the planning authority **cannot** issue a permit for the application.

Planning authorities must also refer draft planning scheme amendments to water corporations for comment.

The water corporation must also grant a 'water and sewerage compliance certificate' before a certificate of completion is issued for any certifiable building work. A developer can appeal against a decision not to grant the compliance certificate.

5.6 Environmental controls

Aside from land-use considerations, the planning approval process must also take into account environmental safeguards and controls. For the most part, these are prescribed under the *Environmental Management and Pollution Control Act* (**EMPCA**).

Scale of the development

There are three 'levels' of activities (operations or developments) used in Tasmanian environmental legislation.

Level 1 Activities

Activities that have a relatively low impact are defined as 'Level 1' under EMPCA. Local councils are responsible for assessing, regulating and monitoring Level 1 activities.

Where the *Director of Environment* thinks it is necessary (because of the potential environmental impacts), a Level 1 activity may be 'called in' and assessed as a Level 2 activity (see below). If the activity is approved, the EPA will decide whether the *EPA Division* or the local council will be responsible for ongoing regulation of the activity.

Level 2 Activities

Schedule 2 of EMPCA lists a number of developments that are likely to have a significant environmental impact (such as wastewater treatment plants, wood processing facilities and large quarries). These developments are called 'Level 2' activities.

Level 2 activities (and Level 1 activities 'called in' by the Director of Environment) are assessed by the *Environment Protection Authority*. Both the *EPA Division* and the relevant local council are responsible for ongoing regulation of Level 2 activities.

level 2 activities are subject to different levels of assessment, depending on the likely impacts of the activity. Three subcategories have been developed for assessment purposes:

- **Class 2A** - Level 2 activities that are minor in scale or consequence, only have the potential for local environmental impacts that may be easily avoided or mitigated and which are unlikely to generate significant public interest.
- **Class 2B** - Level 2 activities that involve complex or multi-jurisdictional assessment or complex environmental issues, which require approval from another State of Federal government or are likely to generate a lot of public interest
- **Class 2C** - Level 2 activities that involve any of the issues for Class 2B, but which require more stringent assessment or longer timeframes to make sure that all the issues are addressed.

Level 3 Activities

'Level 3' activities are those developments declared by parliament to be Projects of State Significance (see below). These activities are subject to a special assessment process.

Once approved, Level 3 activities are regulated like other level 1 and 2 activities.

Environmental concerns for developing business

If you or your business cause *environmental harm* you may receive stiff penalties and you may be required to finance the cost of cleaning up. (☛ Go to Chapters 6 and 10 for information).

It is clearly not in your interests, nor the public interest, for this to happen. The planning process, therefore, establishes procedures that developers must follow in order to prevent *environmental harm* occurring in the first place.

Developments that are proposed by government agencies must undergo the same procedures.

Plan in advance

Whether you are starting a new business or expanding an existing one, it is a good idea to plan your development well in advance.

You should discuss relevant issues with the local council beforehand. For example, if you operate an industrial facility, what other activities occur in the area? Are planning controls adequate to make sure that sensitive uses (such as residences or a school) will not be built nearby? Are there any threatened species in the vicinity that require special attention?

The EPA will help you identify potential environmental impacts relating to your proposal. They can also advise you about maximum permissible discharge levels and prescribe ways to minimise such impacts. This will help you to develop plans for your business to manage your impacts on the environment and on your neighbours.

Requirements

What EMPCA can require you to do

Provide adequate information

Your application for planning approval should provide enough information to allow the EPA to assess the likely impacts of the proposed development. In particular, you should identify potential impacts on the environment and neighbouring properties and provide information about annual rates of production, transport requirements and operating hours.

If you do not provide adequate information, the planning authority can issue a notice requiring you to provide additional information before it decides the application.

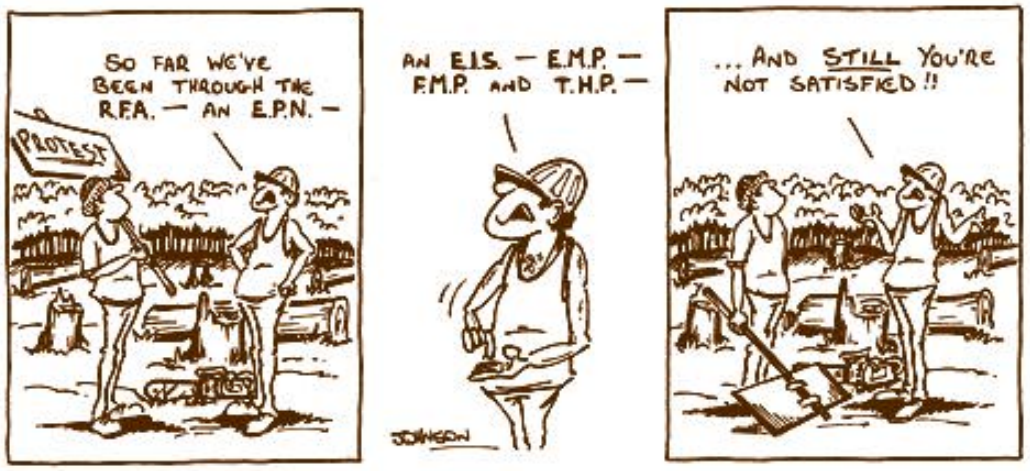
Specific production limits may be recorded on the permit and must be adhered to once a permit is granted.

Environmental Management Plan

For 'Level 2' activities, you will need to prepare environmental assessment documents, such as an *Environmental Effects Report* or an *Environmental Management Plan* (EMP). More information about what these documents must include is set out below.

Once an *Environmental Management Plan* is approved, you must comply with its conditions. EMPs will be available for public inspection, and members of the public can report any breaches to the *EPA Division*.

Note: Even if an *Environmental Management Plan* is not required, it is nevertheless a very useful tool to help your company satisfy its environmental obligations, manage its impacts and prevent prosecution for causing environmental harm.



Environmental Impact Assessments (EIA)

Environmental Impact Assessments involve a review of the development plans and environmental management documents prepared for level 2 and level 3 activities. (The EIA process is outlined below.)

Integrated Environmental Management System (IEMS)

If your company wants to show that it is committed to best practice environmental management, you can prepare a comprehensive *Integrated Environmental Management System*. This can be certified to show that it complies with international standards (ISO 14000 series). Compliance with your IEMS will help manage the risk of your activities causing environmental harm.

Environmental Agreements

The EPA can enter into *Environmental Agreements* with developers. These require you to perform at a higher level than required by the law in return for exemption from certain state taxes and charges.

An *Environmental Agreement* is a contract and, once signed, has legal status. The EPA Division can take action against you if you breach the terms of the agreement.

Public Hearings

A number of statutes also require that public hearings must be conducted for certain operations – for example, public hearings are required prior to approval of proposed changes to fish farming operations (☛ See Chapter 9).

Other permits and licences

Some business developments will need additional permits from other agencies, depending on their circumstances. Some examples of activities that require special permits include:

- operating a business in a national park (☛ Go to Chapter 7)
- taking water from a watercourse (☛ Go to Chapter 10)
- commercially harvesting timber on private land (☛ Go to Chapter 8)
- fish farming (☛ Go to Chapter 9)
- activities on Crown land.

Environmental Impact Assessments

An Environmental Impact Assessment (EIA) must do the following:

- evaluate the likely environmental impacts of a proposal and assess whether or not the activity should proceed
- identify conditions or restrictions and the management regime that is necessary to prevent environmental harm
- provide opportunity for public consultation
- include a health impact assessment, if required by the *Director of Public Health* (see section 74(5) of EMPCA)

When must an Environmental Impact Assessment be carried out?

For 'Level 1' developments

EIAs are not usually required for these developments. However, if the council is unsure about possible environmental impacts, it can refer the planning application to the Director of the EPA, who can decide that the development should be treated as if it is a 'Level 2' activity (see below).

This may occur if the proposed activity is a large or controversial one.

Some planning schemes also allow Councils to require a developer to prepare an environmental impact assessment in some circumstances. Where this is permitted, Council can require the developer to provide an EIA before Council decides whether to grant a planning permit.

For 'Level 2' developments

These developments must be referred to the *Environment Protection Authority*. The EPA decides what level of assessment is required and provides guidance about the issues to be addressed in the environmental impact assessment process (known as 'guidelines' or 'terms of reference'). If you are not happy with the EPA's decision about the level of assessment, you can apply for reasons for this decision.

For 'Level 3' developments

An Integrated Assessment must be undertaken for all *Projects of State Significance*.

☛ See 'Projects of State Significance' at the end of this chapter.

Who conducts the Environmental Impact Assessment?

For Level' 2 activities (and 'called in' Level 1 activities)

- For Class 2A activities, the developer will need to prepare an *Environmental Effects Report* (**EER**).
- For Class 2B and 2C activities, the developer must submit a *Development Proposal and Environmental Management Plan* (**DPEMP**), which is generally prepared by a consultant on behalf of the developer. The DPEMP must be prepared in accordance with the general DPEMP guidelines. The EPA will also issue specific guidelines ('terms of reference') for each proposal.
- The developer must submit a satisfactory EER or DPEMP within 12 months of receiving the terms of reference for the assessment. Once the EPA is satisfied that the documents address the relevant guidelines, the documents are released for public comment.
- After the public comment period closes, the EPA conducts the Environmental Impact Assessment by reviewing all the development documents and all public representations.
- If the EPA is satisfied that the development should go ahead, they will recommend to the Council (planning authority) that a planning permit be issued. It is still open for the planning authority to refuse the development. However, if the council approves the development, the permit **must** include any conditions that the EPA has specified must be included.
- If the EPA believes that the development should not proceed, the EPA notifies the planning authority. A planning authority cannot issue a permit for a development that the EPA has refused to endorse.

For 'Level 3' activities

☛ See 'Projects of State Significance' at the end of this chapter.

You can find more information about EIA requirements at the Department's Library at 134 Macquarie Street, Hobart, or on the EPA website at www.epa.tas.gov.au.

Environmental Management Plans

An EMP must...

- describe the existing environment (location, physical characteristics, and planning, social and economic contexts)
- describe the development (design, construction and operational stages)
- identify and evaluate potential environmental impacts
- nominate the measures to be employed to avoid or mitigate the impacts

For all level 2 activities, you will need to prepare *Environmental Assessment* documents.

For lower risk activities (class 2A):

- you must prepare an *Environmental Effects Report* (**EER**).

For higher risk activities (class 2B and 2C):

- you must prepare (or engage a consultant to prepare) a *Development Proposal and Environmental Management Plan* (**DPEMP**).

The EPA has prepared Guidelines about how to prepare these documents, which are available at www.epa.tas.gov.au/regulation/guidance-documents.

For DPEMPs, the EPA will also issue Project Specific Guidelines, which identify the key issues that you will need to address in relation to your project. These guidelines (often referred to as 'terms of reference') could include requirements to investigate the impacts on heritage sites (including Aboriginal heritage sites), threatened species habitat, alternatives to the proposed location and traffic impacts.

If it is a large scale project, the project specific guidelines may be released for public comment before they are finalised.

If a proposed development is likely to affect a heritage site or threatened species or habitat, then it is a legal requirement (under the *Aboriginal Relics Act 1975*, *Historic Cultural Heritage Act 1995* or the *Threatened Species Protection Act 1995*) to investigate these aspects thoroughly before a development can be approved.

How do I find out if an EMP exists?

Contact the *EPA* to find out if an EMP has been completed for a particular development.

You can inspect approved EMPs at the EPA office – it is a good idea to make an appointment to see the EMP.

During the public consultation phase, copies of DPEMPs are available for inspection at Council chambers and the office of the EPA. Current and past DPEMPs are also available on the EPA website.

How can I comment on an EMP or contribute to an EIA?

Once the EPA is satisfied that an EER or DPEMP satisfies the requirements of the relevant guidelines, the documents are released for public comment for the following periods:

- For 2A activities, **14 days**
- For 2B activities, **28 days**
- For 2C activities, **42 days**

Any member of the public can make a written submission during this period.

For some large projects, the EPA will also invite public comments on the specific guidelines for the DPEMP.

In the case of Projects of State Significance, representations are invited from the public and the Tasmanian Planning Commission may also hold a public hearing which you could attend.

What happens after planning approval has been given?

How long does it take for planning approval to be issued?

For a 'Level 1' activity, the council must generally make a decision within 42 days of receiving the application.

For a 'Level 2' activity, the EPA must make a decision in relation to the proposed development within the following periods after the close of the public comment period:

- For 2A activities, **35 days**
- For 2B activities, **56 days**
- For 2C activities, **91 days**

The EPA will then make its recommendations to the Council, who must make the final decision about whether to issue a permit or not.

These time limits can be extended if further information is required from the applicant or if the applicant agrees to an extension of time (see below, this chapter).

For decisions under EMPCA, public holidays are excluded from these time limits.

Who must be notified?

Once a council makes its decision you will be notified if:

- you are the applicant
- you made a representation

How can I get a copy of a planning permit?

Planning permits are available for inspection at local council offices. Depending on the council, you may be required to make a Right to Information request to obtain a copy of the permit.

If the council has amended a permit by an *Environment Protection Notice* (see below), this is also available for public inspection at the Council office. *Environment Protection Notices* issued by the *EPA Division* can be viewed at their offices.

5.7 Appealing against Planning Approvals

Can I appeal against a council's decision?

You have the right to appeal only if:

- you are the developer; or
- you are the regional water corporation;
- you made a representation to the council within the specified period.

Appeals are made to the *Resource Management and Planning Appeal Tribunal* (other than for Level 3 activities, where no appeals can be made).

An appeal must be lodged in writing within 14 days of the date of the letter notifying you about the decision.

The time for making an appeal may be extended in some circumstances.

Notice of Appeal forms are available on the Tribunal's website, or from their office. You will also need to pay a filing fee at the time you lodge your appeal – the fee is currently $68.00, but increases on 1 July each year so check with the Tribunal to see what the fee is at the time of your appeal.

You can appeal on grounds that the decision was wrong, or that the conditions imposed on the permit are too onerous, or that the conditions are not onerous enough. More detailed information about grounds of appeal is available in the Tribunal's Practice Direction and in the EDO publication *"Going It Alone: A Practical Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal"*.

If the appeal relates to a refusal or conditions resulting from a water corporation's submissions (see Water and Sewerage above), the corporation is taken to be a party to the appeal. The Tribunal has recently held that it is not constrained in the same way as planning authorities to comply with the submissions made by the water corporation (see *Michell Hodgetts & Associates Pty Ltd v Central Coast Council* [2010] TASRMPAT 10). Therefore, after considering the merits of an appeal against conditions imposed at the request of a water corporation, the Tribunal may remove or amend those permit conditions.

What if I am ineligible to make an appeal?

If someone else has appealed against a decision, you can apply to join their appeal. The *Tribunal* will only allow you to join if you can demonstrate that you have a proper interest in the decision and you have a reasonable excuse for not having made a representation (for example, you are a neighbouring property owner and were overseas at that time).

If you believe that the Council has contravened its *Planning Scheme* in granting a permit, you may be able to take *Civil Enforcement* action (see below) or make a complaint to the *Director of Public Prosecutions*.

How does the Tribunal conduct the appeal?

The *Tribunal* completely re-examines the development application, as if it was standing in the place of the planning authority (council) in the first instance. If the *Planning Scheme* has changed since the original decision, the Tribunal must conduct the appeal based on the *Planning Scheme* that was in force at the time of the original decision.

The *Tribunal* can make any decision that the planning authority could have made, including refusing the application, granting the application or imposing new or amended conditions on the development.

Once it makes its decision, the *Tribunal* must notify all parties to the appeal and will include reasons for its decision.

The *Tribunal* must generally hear and decide the appeal within 90 days (though this can be extended with the consent of all parties). The decision comes into effect 10 days after it is made.

What happens at the Tribunal hearings?

☛ Go to Chapter 14 for information about this.

If I make an appeal will I be up for other costs?

☛ Go to Chapter 14 for information about this.

Can I appeal against the Tribunal's decision?

Yes, any party to the appeal may appeal to the *Supreme Court*.

However, you can only appeal on a question of law. This means that the *Supreme Court* will not re-assess the merits of the proposal and determine if the proposal complies with the planning scheme. The *Supreme Court* can only consider whether the *Tribunal* followed the appropriate process and interpreted the planning scheme correctly.

An appeal to the Supreme Court must be lodged within 28 days of the Tribunal decision. We strongly recommend engaging a lawyer if you get to this stage

☛ Go to Chapter 14 for more information about this process.

5.8 Ongoing monitoring and regulation

Even after you have been granted a planning permit for your proposed development, the Council and the *EPA Division* have a role in making sure that you are not causing *environmental harm*. This section discusses some of the ways that planning authorities can monitor your activities.

Environment Protection Notices (EPNs)

Your *planning permit* may contain environmental conditions (as discussed above, the permit must include any conditions imposed by the *EPA* or water corporation). These conditions define what you must do to protect the environment. If you don't comply with the permit, you can be prosecuted (see section 45 of EMPCA).

If you, or the *EPA Division*, want to change those conditions, an EPN will be issued detailing the changes to your planning permit. You must comply with the changed conditions described in the EPN.

☛ See Chapter 6 for information about *Environment Protection Notices*

Ongoing inspections

Officers from the Council or the *EPA Division* can undertake ongoing inspections to satisfy themselves that your operation is complying with environmental controls. They have the powers to enter premises during normal business hours, and at other times in certain circumstances.

Environmental Audits

Your business can be required to undertake environmental audits to satisfy the *EPA* that you are meeting all your environmental obligations. If you receive a notice requiring you to carry out an audit, you can be prosecuted if you do not undertake an audit within a reasonable time.

Environmental Improvement Programs (EIPs)

The EPA may have concerns about the impact of your business, and believe that your standards need to be improved. One common example is where a permit was issued a long time ago and new technologies have since been introduced to manage emissions. Another example is where the law has changed since your permit was issued and maximum emission limits approved in your permit are no longer appropriate.

In these situations, your company can enter into an EIP with the *EPA*. The EIP sets out certain things that must be done within a certain time to reduce *environmental harm*. It is an offence not to comply with an EIP. However, provided you comply with the conditions of the EIP, you will not be prosecuted for environmental harm.

An EIP is publicly advertised and subject to public comment.

Offence Provisions

For the most part, the arrangements described above are applied cooperatively. However, if a person or business operator does not comply with environmental controls, they can be prosecuted under a wide range of offences listed in EMPCA.

5.9 How you can have a say about developments in your neighbourhood

1. Become familiar with the planning scheme for your neighbourhood

You can view this at the council's office, the Commission office or the council's website.

If you disagree with a *Planning Scheme* you have the right to request the Council to review it (☛ Go to Chapter 4).

2. Get involved in the preparation or any reviews of the planning scheme

This is the best way of ensuring that your local area develops in a way acceptable to you. This is an opportunity to tell the Council (and the Commission, who must approve amendments to a planning scheme) the types of uses that you think are appropriate and what controls development should comply with.

3. Find out what developments are planned

- Look in the newspaper under 'Public Notices' to see what development applications have been made.
- Also, look for those A4 size notices attached to property boundaries near you (they usually have a red frame).
- You can view the development application and its accompanying documents at local council offices.
- If you have a problem, develop alliances with other ratepayers, community groups and citizens who may also be affected and seek planning advice from a professional planner. Initial planning advice is available free of charge through the Planning Aid service (see Contacts below).

4. Make a representation

You cannot appeal if you did not make a representation, so it is very important to make a representation to council during the public notice period. Do this in writing. It is important to write "we object" or "we agree" in your representation.

You generally have 14 days from the time the notice appears in the paper to make a written representation to the council about a proposed development.

You may also request mediation in relation to the application at this point.

Tips for writing representations

- Look at the application (and all supporting documents) at the council offices – don't just rely on the information in the public notice.
- Find out which zone the proposal falls into under the local planning scheme (eg Low Density Residential, Business, Rural Living etc) and what matters the Council must consider (eg development standards, height restrictions, parking requirements, limits on vegetation clearance). Think about whether or not the proposal fits in with the requirements of the zone.
- In your representation, say how the proposal affects you, your property and the neighbourhood (eg the amenity of the area affected, increased traffic, noise etc). The Council may be able to apply conditions to ameliorate matters such as overlooking or overshadowing. However, they may not have discretion to reduce height or increase setbacks if the use is Permitted and complies with all the development standards.

5. Lodge an appeal

If you are unhappy with the council decision and you have made a representation, you can appeal to the *Tribunal* (see above and Chapter 14).

5.10 Civil Enforcement

Affected persons also have rights to initiate proceedings to safeguard the environment if the State's planning or pollution laws are being breached, or are likely to be breached.

These actions are called 'Civil Enforcement'.

☛ Go to Chapter 14 to find out how you can go about this.

5.11 How are significant development projects approved?

When a significant development is being proposed, the state government can sometimes step in and require a different development approval process.

There are four different classes of significant developments:

1. 'NPA Project'

This applies to a development that the state government has declared to further the State's commitments under the National Partnership Agreement, including social housing projects, school expansions and infrastructure stimulus projects.

2. 'Project of Regional Significance'

This applies to a development the Planning Minister considers will have a significant economic or social impact for a region.

3. 'Project of State Significance'

This applies to a development the state government has declared is critical to the state's interests.

4. 'Major Infrastructure Development'

This applies to 'linear' developments (such as transmission lines, railways, pipelines, highways that overlap multiple councils and would otherwise require multiple approvals.

NPA Projects

What is an NPA Project?

Under the *Nation Building and Jobs Plan Facilitation (Tasmania) Act 2009*, the Treasurer can declare a project to be an *NPA Project*. The Treasurer must be satisfied that the project furthers Tasmania's commitments under the National Partnerships Agreement signed by the Federal government and all State governments in February 2009. The NPA commitments include increased social and public housing projects, libraries, halls, science laboratories and general refurbishments at schools, black spot safety and other infrastructure projects.

The Treasurer must also be satisfied that a proposal for an NPA project is not substantially the same as a project that has previously been rejected for the site.

A declaration of an NPA project can include construction work and related infrastructure, even if the work is to be undertaken by a third party.

How are NPA projects assessed?

The *Nation Building and Jobs Plan Facilitation (Tasmania) Act 2009* sets out the assessment and approval process for NPA projects. NPA projects are assessed by the relevant *Project Authority*. Currently, the Director of Housing is the Project Authority for social housing projects and the Secretary of the Department of Education is the Project Authority for school infrastructure projects. Other Project Authorities may be nominated by the Regulations.

Following declaration of a proposed development as an NPA project, the proponent must notify the relevant council, the EPA and the general public of the proposal and invite representations.

The proponent can amend the proposed development to take into account issues raised in representations. Then, the proponent must apply to the Project Authority for certification of the project.

An NPA project is not assessed against the provisions of the relevant planning scheme. Instead, the Project Authority makes enquiries it considers necessary to address relevant matters in relation to the NPA project, such as:

- planning issues
- natural hazards
- access and parking
- water management
- interests of nearby businesses.
- Aboriginal and historic cultural heritage issues
- land contamination
- residential amenity
- energy efficiency

How are NPA Projects approved?

The Project Authority will certify an NPA project if it is satisfied that:

- the proponent has considered all representations received; and
- any concerns raised by the EPA have been adequately addressed; and
- any modifications to the proposal made by the proponent have not changed the location, increased the scale or changed the nature of the project.

The certification of an NPA project has effect as if it was a planning permit issued under LUPAA and can include any conditions in relation to the development. After certification, the project is subject to normal environmental and planning regulation (☛ Go to Chapter 6).

If an *NPA Project* is approved, the Planning Minister must amend any relevant *planning scheme* to remove any inconsistency with the project. The normal procedure for amending a *planning scheme* does not apply to this process.

The Tribunal recently held that unless the planning scheme is formally amended pursuant to section 13(4) of the NPA Act, the planning scheme will continue to apply to the NPA project (see *Gilpin v Mark Webb Building Services Pty Ltd v Door of Hope Christian Church Inc* [2010] TASRMPAT 172)

Challenging the approval

Following the decision to certify the NPA project, the proponent must notify the Council and the EPA.

Representors are **not** individually notified of a decision to certify an NPA project.

Unlike regular developments, there is no opportunity to appeal against a decision to certify an NPA project.

Projects of Regional Significance

What is a Project of Regional Significance?

Changes to LUPAA which took effect in January 2010 introduced this new option for development assessment. A project proponent or a planning authority can now apply to the Minister for Planning for a declaration that a project is a project of regional significance (**PoRS**). The application is to include a 'statement of intent' outlining key aspects of the project, including the anticipated timeline, likely environmental, social and economic impacts and details of studies to be carried out in relation to the impacts.

The Minister may also decide to declare a project to be a PoRS without an application from the proponent or planning authority.

A project will be eligible to be a project of regional significance if the project:

- is of regional planning significance (e.g. would make a significant economic or social contribution to the region, or affect the provision of regional infrastructure); or
- requires high-level assessment (where the planning authority does not have the capability or resources to adequately assess the proposal); or
- would have a significant environmental impact.

The Tasmanian Planning Commission is to publish guidelines outlining the matters which the Minister must consider when deciding whether to declare a PoRS.

An order declaring a project to be a PoRS can include in the description of the project any use or development which is necessary for the project, even if the use or development is undertaken by a third party.

How are PoRS assessed?

Where a project is declared to be a PoRS, it will be assessed by a Development Assessment Panel rather than a planning authority. The Panel will comprise 3-5 people, including:

- a member of the Tasmanian Planning Commission;
- a person nominated by the planning authorities within the region who has experience in land use planning, urban and regional development, commerce, industry or building and infrastructure; and
- a person with qualifications or experience relevant to the assessment of the PoRS.

The Panel develops assessment guidelines for the PoRS in consultation with the Commission, affected planning authorities and relevant government agencies. The guidelines must have

regard to planning schemes, regional land use strategies and planning orders in force for the development site.

The Minister will also refer a PoRS to the director of the *EPA*. The EPA must advise whether it will conduct an environmental assessment of the proposal (see Environmental Controls above) and, if so, provide guidance to the Panel regarding issues to be included in the assessment guidelines for the PoRS.

The proponent must submit a project impact statement addressing the assessment guidelines to the Panel and the EPA. The assessment guidelines and project impact statement are then made available for public comment for a period of at least 28 days. Any person may make a representation in relation to the PoRS, and will be invited to attend a hearing before the Panel.

How is a PoRS approved?

The Panel will generally make a determination in relation to the PoRS within **4 months** of receiving the project impact statement. The Panel may refuse the proposal or grant a special permit for the proposal (with or without conditions). However, the Panel may not grant a special permit for the PoRS if the EPA has recommended that the PoRS be refused.

The Panel may approve a PoRS even if the use or development would not be permitted under the relevant planning scheme. If a special permit is issued the Commission must amend any applicable planning instruments to remove any inconsistencies with the PoRS.

If a special permit is to be issued subject to conditions, the Panel must give the proponent, relevant planning authority, EPA Board and the regional water corporation an opportunity to comment on the proposed conditions before a final determination is made.

Can I challenge a decision in relation to a PoRS?

Unlike normal planning applications, decisions in relation to PoRS are not subject to appeal.

LUPAA requires an independent review of the PoRS provisions to be undertaken as soon as possible after January 2013 to assess the effectiveness of the new process. To date, no projects of regional significance have been declared and no review has been undertaken.

Projects of State Significance

What is a Project of State Significance?

Under the *State Policies and Projects Act 1993*, the Premier can declare a project to be a *Project of State Significance*, provided the development can be shown to be in the interest of Tasmania. The order making such a declaration must be approved by both Houses of Parliament.

Such projects are classified as 'Level 3' developments, and are subjected to the approval process outlined below. Examples of projects of state significance include:

- Lauderdale Quay
- Basslink
- Oceanport
- Taiwan Pulp and Paper Corporation

An order declaring a project to be a *Project of State Significance* can include in the description of the project any “use or development which is necessary or convenient for the implementation of the project”, even if the use or development is undertaken by a third party.

How are these projects assessed?

The *State Policies and Projects Act* sets out the assessment and approval process that must be undertaken.

The fundamental difference between *Projects of State Significance* and other development applications is that the assessment process is conducted by the *Tasmanian Planning*

Commission and the final decision is made by the Government, instead of the planning authority.

These projects are subject to *Integrated Assessments* and the public are given an opportunity to make submissions and appear at public hearings in relation to the proposed development.

Following the hearing, the Commission makes a recommendation to the Premier about the proposed development, including any conditions that should be imposed if the development is approved. The Premier will then make a recommendation to the Governor regarding approval or refusal of the Project. The Premier is not bound to follow the recommendations of the Commission, but any decision that is contrary to those recommendations must be approved by both Houses of Parliament.

Unlike normal planning applications, decisions in relation to *Projects of State Significance* are not subject to appeal. Therefore, it is important to get involved in the assessment process to make sure that your concerns are considered. You may also need to lobby parliamentary representatives as the decision-makers.

If a *Project of State Significance* is approved, the *Tasmanian Planning Commission* (TPC) must amend any relevant *planning scheme* to remove any inconsistency with the project. The normal procedure for amending a *planning scheme* does not apply to this process.

Guidelines for the Assessment

The Commission will develop *Scope Guidelines* ('terms of reference') for an Integrated Impact Statement, setting out the issues that must be addressed in the assessment documents. Draft Scope Guidelines are generally released for public comment (but this is not required by law). If you think that the Guidelines do not cover a particular issue that may be relevant to the development (e.g. greenhouse gas emissions), you should make a submission to the Commission requesting that the terms of reference be amended.

Who conducts the Integrated Assessment?

The developer (or its consultants) must prepare a comprehensive IIS document in accordance with the Scope Guidelines. The IIS generally includes an *Environmental Impact Statement* (EIS) and a *Social, Economic and Cultural Impact Statement* (SECIS).

These documents must be available for public comment.

The Commission then conducts the *Integrated Assessment* in accordance with any directions given to it by parliament. This generally involves a public hearing, at which the proponent and any person who made a representation are invited to present evidence.

How are Projects of State Significance approved?

In assessing a PoSS, the *Tasmanian Planning Commission*:

- seeks expert advice from the State's *EPA Division* and other agencies
- conducts an Integrated Assessment (which may include a public hearing(s))
- after assessing all the material, provides advice to the Premier about in a publicly available report

The Premier then makes a decision regarding the proposed project and can recommend to the Governor that the project be refused or allowed. However, if the decision is not in accordance with the TPC recommendations report, the decision must be ratified by **both** Houses of Parliament before the project is allowed to proceed.

The final orders made in relation to the Project will specify the agencies responsible for enforcing the conditions. Thereafter, the activity is subject to normal environmental and planning regulation (☛ Go to Chapter 6).

Major Infrastructure Developments

When a 'linear' project, such as a major gas pipeline, would require development approval from several councils, the Minister may recommend (after consultation with affected councils) that the project be declared a *Major Infrastructure Project*.

These developments are declared under the *Major Infrastructure Development Approvals Act 1999* (MIDA).

Once declared as a Major Infrastructure Project, the proposal will be assessed by a specially constituted body. In all other ways, the proposal will be subject to normal planning approvals, including appeals.

Who assesses major infrastructure developments?

The project is normally assessed by a *Combined Planning Authority* set up for the particular project. This Authority comprises people nominated by the local councils that are impacted by the project. For example, the "Waddamana to Risdon Vale Electricity Transmission Line Combined Planning Authority" comprised representatives from Central Highlands, Southern Midlands, Brighton and Clarence Councils.

Alternatively, the project can be assessed by the Tasmanian Planning Commission
☛ Go to Chapter 3.

Once the development is officially approved, the relevant local councils again become responsible and the project becomes subject to normal environmental control regulation
☛ Go to Chapter 6.

How are major infrastructure developments assessed?

Once declared as a *Major Infrastructure Development*, the project is deemed to be 'discretionary' (ie it can be permitted or refused). Section 12 of the MIDA Act requires that draft planning criteria for the project must go on public display for **at least 14 days**. Having regard to public comments, the combined planning authority will then finalise the planning criteria against which the project will be assessed.

Section 14 of the MIDA Act requires the developer to lodge a plan which defines the proposed corridor. The application for a development permit cannot be for an area wider than the notified corridor. The project can proceed anywhere within the approved corridor, including on private land (subject to compensation).

Can I appeal against a development of this type?

Yes, affected citizens have rights to appeal against these developments, or the conditions of the permit. Appeals are made to the Tribunal (☛ See this chapter and Chapter 14). Your appeal would be against the *Combined Planning Authority* (not the local council) in these cases.

Private land can be 'acquired'

On occasion, the state government may wish to 'acquire' private land to facilitate essential service projects – ie water, energy, communications, transport, education, health, emergency services and sewerage infrastructure.

The *Land Acquisition Act 1993* gives the state government powers to 'purchase, acquire or take' private land (by agreement or compulsorily). Part 1A of the Act enables the government to acquire private land even in situations where the project is being undertaken by a private corporation.

5.12 What if federal government approval is required?

In some instances, when an issue of national significance is involved, assessment of a project may also require federal government approval before the project can go ahead.

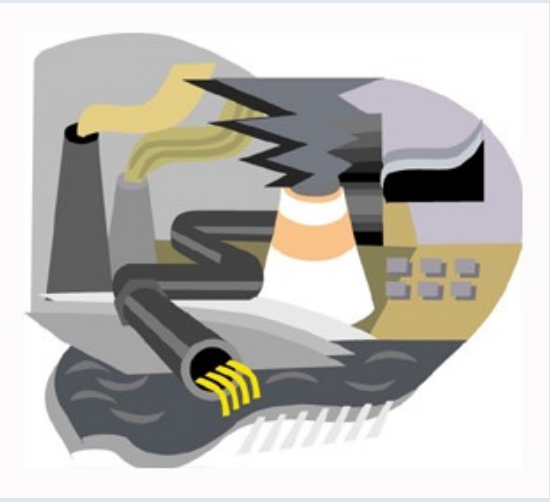
A bilateral agreement between the state and federal governments enables national impact assessments to be carried out under Tasmanian planning and pollution laws. Approval is still granted by the federal government, but is considered on the basis of an assessment carried out by the State government.

If you believe a proposed development may impact on a matter of national environmental significance, contact the *Department of Environment* and ask them to consider requesting that the development proposal be referred for assessment.

☛ Go to Chapter 15 for more information about federal laws

The Federal government is currently negotiating with State governments to implement bilateral agreements delegating responsibility for approvals under the federal legislation to State governments (often referred to as the "one stop shop" reforms). Check the Department of Environment website for updates on any approval bilateral entered into with the Tasmanian government.

6. Stopping Environmental Harm (including pollution)



The previous chapter dealt with laws aiming to prevent environmental harm from occurring in the first place, through a rigorous planning process.

But, even with 'best practice' planning in place, environmental harm will inevitably occur – either through accident, negligence or deliberate breaches of law.

This chapter deals with laws that are used to remedy pollution and other harmful activities.

About EMPCA

The *Environmental Management and Pollution Control Act 1994* (**EMPCA**) is the central piece of legislation that deals with pollution. Its aim is to prevent, reduce and undo harm to the environment.

This Act provides for a wide range of offences, including:

- causing or knowingly permitting pollution or environmental harm.
- operating in breach of licence conditions

In general, it is an offence to cause environmental harm, regardless of whether you intended to cause the harm. However, penalties are generally higher if you were aware (or should have been aware) that your actions would cause environmental harm.

There are also a range of strict offences under regulations (for example, *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004*) that do not require proof of environmental harm – all that is required is evidence that the restrictions in the regulations were not complied with. For example, if you operate loud machinery late at night, you could be committing an offence, even if your neighbours are not home to hear the noise.

Officers have wide-ranging powers under the Act to enter properties, ask questions, take samples and so forth. Anyone who breaches the Act or who breaches licence conditions may be prosecuted and fined. The EPA and local Councils are responsible for enforcing the EMPCA and its Regulations.

6.1 Environment Protection Principles

EMPCA is based around three important concepts

1. Environmental Harm	See Sections 3, 5, 50-53 of EMPCA
2. General Environmental Duty	See Sections 23A & 55A of EMPCA
3. Due Diligence	See Section 55 of EMPCA

What is 'environmental harm'?

Environmental harm is defined in the Act as 'any adverse effect on the environment' – of whatever degree or duration.

There are three categories of Environmental Harm (listed from most serious to least serious):

Serious environmental harm	maximum penalty $1,300,000 and 4 years prison
Material environmental harm	maximum penalty $325,000 and 2 years prison
Environmental nuisance	maximum penalty $39,000

What is 'Serious Environmental Harm'?

- involves an actual adverse effect on the health or safety of human beings that is of a high impact or on a wide scale; or
- involves an actual adverse effect on the environment that is of a high impact or on a wide scale; or
- results in actual "**loss**" or property damage of an amount, or amounts in aggregate, exceeding ten times the threshold amount (*presently $50,000*).

What is 'Material Environmental Harm'?

- consists of an environmental nuisance of a high impact or on a wide scale; or
- involves an actual adverse effect on the health or safety of human beings that is not negligible; or
- involves an actual adverse effect on the environment that is not negligible; or
- results in actual "**loss**" or property damage of an amount, or amounts in aggregate, exceeding the threshold amount (*presently $5,000*).

Note: "**loss**" includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent or mitigate the *environmental harm* and to make good the resulting environmental damage.

What is 'environmental nuisance'?

'Environmental nuisance' refers to the emission of a pollutant that unreasonably interferes with, or is likely to unreasonably interfere with, a person's enjoyment of the environment.

What is 'general environmental duty'?

EMPCA includes a concept of *General Environmental Duty* – whereby a person must show that they have taken reasonable steps to prevent environmental harm and have complied with permit conditions, State Policies and relevant codes-of-practice (*see sections 23A and 55A*).

What is "reasonable" will depend on the circumstances, including the financial capacity of company, the nature of the offence, the sensitivity of the receiving environment, whether the offender has been warned before and the current state of technology. In general, provided a company is complying with all relevant Codes, they will be taken to comply with their General Environmental Duty.

What is 'due diligence'?

You cannot be prosecuted for not complying with your general environmental duty. However, if you are accused of causing environmental harm, it can be a defence if you can show that you have complied with this duty by taking all reasonable and practicable measures to:- prevent the environmental harm, or prevent or remedy the circumstances that led to the causing of the environmental harm.

For criminal charges, this is also known as the 'due diligence' defence (see section 55 of EMPCA).

☛ Go to Chapter 5 for an outline of management tools that can be used by business operators to demonstrate due diligence.

6.2 Pollution

Pollution is a particular form of environmental harm. 'Pollutants' can take the form of:

- a gas, liquid or solid
- an odour
- an organism (whether dead or alive) including a virus
- energy including noise, radioactivity & electromagnetic radiation
- a combination of pollutants that may cause environmental harm.

When are you polluting?

A company, person or group of people are polluting if they:

- discharge, emit, deposit or disturb pollutants which cause environmental harm or may cause environmental harm, and / or
- fail to prevent the discharge, emission, deposit, disturbance or escape of pollutants which cause environmental harm or may cause environmental harm.

What about permissible levels?

The EPA Division uses these benchmarks when assessing what emission levels are permissible.

Permissible Noise Levels:

The *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004* set out acceptable noise limits and hours of operation for a number of common 'neighbourhood' noise sources, including lawnmowers, off-road vehicles, heat pumps and power tools.

For other noise nuisance in residential areas, the police or Council will consider whether the noise is, or is likely to be, audible in a habitable room in any other residential premises.

Permissible Smoke Emissions:

The *Environmental Management and Pollution Control (Distributed Atmospheric Emissions) Regulations 2007* set rules for emission of smoke from wood heaters, fireplaces and barbecues. Under the regulations, smoke must not be visible for more than 10 minutes and for more than 30 seconds within 10m of the point of emission.

For other smoke emissions in residential areas, the police or Council will consider whether smoke is unreasonable. The Environment Protection Authority ('EPA') has also recently implemented a Domestic Smoke Management Program. The Program aims to reduce the amount of smoke and particle matter generated from domestic wood heaters and burning activities.

Warning Systems:

When smoke levels and particle matter in the air rise to levels that could be harmful to our health, the government can issue an 'air quality notification'. This trigger acts as an early warning signal to help advise you in intense smoke events. This notification system was developed in early 2012 in order for people to be able to make informed decisions about their health. Previously, alerts were only triggered after 24 hours of increased smoke levels. However, new evidence suggests that health can be affected even after a short time of being exposed to increased smoke levels. Therefore, the new alert is triggered after one hour, when smoke levels are elevated in a particular location.

☛ See Chapter 8 for more information about domestic air quality programs.

Permits:

Although blanket pollution limits apply in some circumstances, for individual companies they are gradually being phased out and replaced with site-specific discharge limits. These are usually set in the company's permit conditions or EPN conditions. So, if you have a concern about pollution it is important to look at the operator's permit (you can ask to see this at the local council office, or contact the EPA Division).

State Policies:

A number of *State Policies* (such as the *NEPM for Ambient Air Quality*) are directly enforceable in relation to emission limits.

☛ see Chapter 4 for further information about State Policies.

Environment Protection Policies:

Environment Protection Policies (EPPs) also provide guidelines for State and Local Government regulation.

Only two EPPs have been finalised so far: the *Environment Protection Policy (Air Quality) 2004* and the *Environment Protection Policy (Noise) 2009*.

The EPP (Air Quality) provides a framework for the management and regulation of point and diffuse sources of emissions to air, while the EPP (Noise) sets objectives for measuring, monitoring and reducing noise emissions.

EPPs are **not** directly enforceable. The EPP (Air Quality), and the *Air Quality Strategy* developed under the Policy, will be implemented by State and Local governments when they develop legislation, policies and planning schemes or undertake environmental assessments relevant to air quality.

This is in contrast to the NEPM for Ambient Air Quality, which has the status of a State Policy and is directly enforceable. Similarly, the EPP (Noise) is not enforced, but its objectives are implemented through planning decisions (e.g. imposing conditions to reduce noise emissions), policy guidelines like the State Road Noise Strategy, and the Noise Measurements Manual.

You can download the EPPs at http://epa.tas.gov.au/epa/tasmanian-air-quality-strategy

Who is responsible for environmental harm?

Under EMPCA, strict liability is attributed to:-

- the occupier: or
- a person in charge: ...of a place or vehicle at or from which a pollutant occurs.

If it is clear who caused the pollution, that person can be charged, even if they are not the occupier or person in charge of the property from which the pollution was emitted.

When land is considered to be a contaminated site or that it may be a contaminated site, responsibility for the clean-up lies firstly with a polluter(s), however, if no polluter can be found, or the polluter does not have the capacity to pay, then responsibility can fall on a non-polluter. It is therefore important to know the history of the site you are purchasing.

☛ Go to Chapter 10 for more information about contaminated sites.

Are company directors liable?

Yes, directors can be personally liable for the same offences as the company – even if the director was unaware of the offence. Maximum penalties for an individual director are $325,000 plus up to four years imprisonment for promotion of or acquiescence to an offence.

Wilful blindness is no defence – if a director should have known about a pollution incident, she or he can be held liable for not having prevented, or contained, it.

What do I do if I have witnessed or caused pollution?

If you are responsible for the activity, you (or your company) are legally obliged to report any pollution incidents to the EPA (see section 32 of EMPCA). If you witness polluting by another, you should still report it to the local Council or EPA hotline.

All incidents should be reported to the EPA as soon as possible, and no later than 24 hours after the incident.

6.3 Enforcing environment protection laws

Environmental protection laws can be enforced in a number of ways.

They can be enforced by government agencies, including local councils. They can also be enforced by members of the public.

Environmental harm is mainly enforced using two key pieces of legislation:

1. Environmental Management and Pollution Control Act (EMPCA)

This law is used to prosecute breaches of environmental controls.

An *Enforcement Policy* sets out the principles, criteria and measures that the *EPA Division* uses to enforce the provisions of this Act.

You can download the *Enforcement Policy* at http://epa.tas.gov.au/epa/document?docid=587

2. Land Use Planning and Approvals Act (LUPAA)

This law is used to prosecute breaches of planning laws. Under LUPAA an operator can be prosecuted for:

- operating without a permit
- operating in breach of permit conditions

What is the role of councils?

Councils have explicit duties and powers to stop a person polluting. In fact, they have a statutory obligation to issue an abatement notice (under section 200 of the *Local Government Act*) if a nuisance exists.

In addition, Councils must use their best endeavours to prevent or control acts or omissions which cause or are capable of causing pollution (see section 20A of EMPCA).

Councils are also responsible for regulating 'Level 1' activities under EMPCA and LUPAA

☛ Go to Chapter 5 for details

Councils can satisfy this responsibility by:

- keeping a register of Level 1 activities and regularly checking that Level 1 activities have not become level 2 activities (e.g. because of increases in production)
- conducting environmental audits
- conducting, or requiring industries to conduct, background monitoring of air, land or water
- having (and enforcing) a trade waste policy
- effectively investigating and addressing complaints

☛ Go to Chapter 5 and 13 for more details

If the council is satisfied that someone is polluting, it can:

- Issue a direction requiring the polluter to take particular action
- Issue an environmental infringement notice
- Serve an *Environment Protection Notice* on the person causing (or likely to cause) the pollution. The notice must state what the pollution is, how to stop that pollution and the time limit for stopping it.

- Take 'Civil Enforcement' action in the Tribunal (↝ Go to Chapter 13 for more information about Civil Enforcement).
- Commence criminal prosecution proceedings

What is the role of the EPA Division?

The *Department of Primary Industries, Parks, Water and Environment* (**DPIPWE**) is the principal agency charged with ensuring that the state's pollution control laws are upheld. Within this Department, the *EPA Division* is specifically responsible for assisting the EPA Board with the assessment of 'Level 2' activities.

☛ Go to Chapter 5 for details about how these activities are regulated.

Like councils, the Department can:

- serve the offender with a *direction*
- serve the offender with an *Environmental Infringement Notice*
- serve the offender with an Environment Protection Notice
- bring civil enforcement proceedings (section 48 of EMPCA)
- bring *criminal* proceedings

⚠ It is an offence not to comply with any notice issued by council or the EPA Division.

How can I find information about pollution and permits?

The local Council maintains a record of all permits issued to companies in its municipal area. You can inspect these permits at the Council office.

Environment Protection Notices are compiled in a register which is kept by the EPA Division and is available for inspection by the public.

You may need to search broadly to identify the source of particular emissions. For example, if you are concerned about the health of a particular river system, you may need to check through the permits and EPNs relating to all premises that discharge into that watercourse.

6.4 How can I stop someone polluting?

You do not have to wait until someone has polluted before taking action.

You can also stop someone from **causing** environmental harm or from doing something that is **likely to cause** environmental harm. (This includes all forms of pollution including dust, noise, smells, smoke, radiation or chemicals).

1. Contact the local council

You should immediately contact the local council if you believe someone is polluting, or likely to pollute, the environment.

Apart from reporting the incident, you can also ask the council to initiate a prosecution or 'civil enforcement proceedings'

2. Contact the EPA Division

You should contact the *EPA Division* if the pollution is significant, or if the local council cannot be contacted or fails to act on your complaint.

If a council is causing the pollution (eg spillage from its sewage works or dust emissions for its quarry), then it is appropriate to contact the EPA Division directly.

When dealing with the council or the department, make sure that you provide sufficient information to support your complaint

☛ Go to Chapter 13 for tips on how to make a complaint.

You should request that the Department or Council inform you of any action taken in relation to your complaint.

3. Contact the Health Department

If you consider that pollution could have an impact on human health, you should also contact the *Director of Public Health*.

4. Take legal action yourself

It does not cost you anything if the Council or Department takes legal action.

However, in the event that no action is taken, you have power to take action yourself to stop environmental harm from occurring.

You can do so by applying for 'civil enforcement' directly to the *Resource Management and Planning Appeal Tribunal*. The Tribunal can impose a range of orders on an offender. But note that you may be exposed to costs if you take this action

☛ Go to Chapter 14 for more information.

6.5 Other pollution laws

Apart from EMPCA and LUPAA, pollution offences can also be prosecuted under a number of other pieces of legislation. Some examples include:

Litter Act 2007

This Act can be used to prosecute littering offences, including littering from motor vehicles. To report a littering offence, go to the EPA Division's Report Littering website.

Local Government Act 1993

Pollution that is a public health nuisance may be prosecuted as a statutory nuisance under Section 199 of this Act. This covers, for example, emissions of waste, noise and dust and unclean or unsafe premises. In these instances, a local authority can serve an *abatement notice* specifying what steps must be taken to remove the nuisance.

Council by-laws

Local council by-laws also cover some potential nuisances such as dog droppings, smoke from fireplaces and BBQs, abandoned car bodies and trade waste.

Pollution of Waters by Oil & Noxious Substances Act 1987

This act is used to prosecute discharges of oil, garbage, sewage, and noxious and harmful substances into coastal waters.

In most cases, where any of these pollution incidents occur, the EPA Division should be informed and enforcement left to that department.

Public Health Act 1997 and the Food Act 1998

- These Acts may also be relevant where there are significant effects on the health or safety of people.
- The *Director of Public Health* has significant powers to conduct inquiries, prosecute offenders and to "take any action to reduce, remove or destroy any threat to public health".

6.6 What about federal pollution laws?

Outside the jurisdiction of Tasmania (generally three nautical miles from the coast) the Commonwealth has responsibility for controlling pollution. Under new regulations, dumping of wastes in sea water is the responsibility of the federal government, except within bays and estuaries (from low water mark).

☛ Go to Chapter 9 for information about marine laws

How are chemicals, pesticides and contaminated land controlled?

☛ Go to Chapter 10 for information about these issues.

6.7 Preventing pollution using 'common law'

Although most pollution law today is controlled via legislation, on occasion common law actions can also be useful.

☛ Go to Chapter 2 for information about common law

These actions are available through either the *Magistrates Court or the Supreme Court*

☛ Go to Chapter 14 for information about taking action.

Common law actions are complicated and much depends upon the facts of each case. As a general guide, people suffering from pollution should first seek to establish whether or not they have any rights or remedies under EMPCA, LUPAA or the *Public Health Act* before pursuing common law remedies.

However, if pollution interferes with your personal rights, you may be able to bring proceedings to protect those rights under common law. The types of proceedings which may be available include:

Private nuisance

These proceedings can be brought for pollution interfering with your private property. You can seek damages (compensation for any loss you suffer), or an injunction (a court order stopping the unlawful pollution).

Only the owner or occupier of the property affected by the pollution can bring proceedings for private nuisance. To succeed, you must prove that the interference with your property is substantial and unreasonable.

Public nuisance

You can bring public nuisance proceedings where you suffer injury in public. Again, you can get damages or an injunction. However, to succeed you have to prove that the damage which you suffered was greater than that of the public in general. In the case of pollution, this can be hard to prove.

Negligence

Sometimes a person will owe you a duty of care to look after you. When they breach this duty and the breach causes you damage, you may have an action in negligence. If a

polluter breaches a duty of care to you, you can recover damages for any loss that you suffer, so long as that loss was foreseeable.

Examples of such events include escape of sewerage or dammed waters, or release of toxic gases as a result of a malfunction when machinery is not properly maintained.

Trespass

The law of trespass may be used where the pollution is caused directly as a result of intrusion, for example, where waste is dumped on your land.

It can be very expensive to bring these sorts of actions. It can also be hard to prove that the pollution caused your loss. If you lose, you may end up having to pay not only your own legal costs, but those of your opponent as well.

For these reasons it is advisable to obtain good advice from a lawyer before commencing any proceeding using common law.

☛ Go to Chapter 14 for information about using the courts and obtaining legal advice

Case studies

Case study 1: **Dust and noise pollution**	Bill lives in a small town. Under the planning scheme the area is in the Residential and Environment Protection Zone. A neighbour applied to Council to build a house and large shed (workshop) to restore old machinery. Bill made a written objection to Council. Council granted a permit allowing the workshop. Bill appealed to the Tribunal which disallowed the workshop as an industrial use, incompatible with the Environment Protection Zone. The neighbour appealed to the Supreme Court which upheld the Tribunal decision (see *Kempster v Manning* [2006] TASSC 31).
Case study 2: **Domestic noise pollution**	Fred and Flo's neighbour installed a heat pump, which could be clearly heard in their bedroom and living room. The noise disrupted their sleep. They spoke to the neighbour who did not respond. They spoke to the Council's *Environmental Health Officer* who advised them that the noise was a breach of section 53 of EMPCA and of the *Noise Regulations*. She issued an EPN on the neighbour, who then moved the heat pump and enclosed it in a baffle to minimize the noise - which was now only faintly apparent in Fred and Flo's house. If the neighbour had ignored the EPN, they could ask council to prosecute the neighbour, or the EPA Division, if the council was unwilling to do so. If there was argument as to the noise levels that were in breach of the *Noise Regulations*, the Council or Fred and Flo would have needed to obtain expert measurements of the noise levels in their house. Had Council failed to act, Fred and Flo could apply to the *Resource Management and Planning Appeal Tribunal* under section 48 of EMPCA for orders stopping the neighbour operating the heat pump.

6.8 Environment Protection Notices

What is an Environment Protection Notice?

An *Environment Protection Notice* (**EPN**) is issued by the *Director of the EPA* or a local council officer. It orders an offender to take measures to prevent, control, reduce or remedy environmental harm (see Section 44 of EMPCA).

It is, in effect, a warning system which enables a polluter to remedy a damaging activity or face being prosecuted.

An EPN may require an offender to:

- discontinue, or not commence, a specified activity
- limit the times or conditions under which the activity is carried on, or
- take specified action (such as installing new biofilters at a plant, or relocating a discharge pipe).

When can an EPN be issued?

An EPN can be issued when:

- serious or material environmental harm or environmental nuisance has occurred, is being or is likely to be caused.
- action is necessary to give effect to a state policy, or an Environment Protection Policy. (ie where a previously accepted practice needs to be stopped because it is now contrary to a State Policy)
- it is desirable to vary the conditions of a permit (ie where the permit conditions need to be updated to assist in the ongoing environmental management of the activity. This could be due to a threat of environmental harm.)
- it is necessary to get a person or operator to comply with the 'General Environmental Duty' (see sections 23A & 55A of EMPCA).

Can I appeal against an EPN?

Yes, if you are served with an EPN and you believe it to be unreasonable, you can appeal to the *Tribunal*.

A person who made a representation to the EPA in relation to the activity, or a person with a proper interest in the activity and a good reason for not making a representation, can apply to join the appeal.

You must lodge your appeal within 14 days.

What happens if an EPN is not complied with?

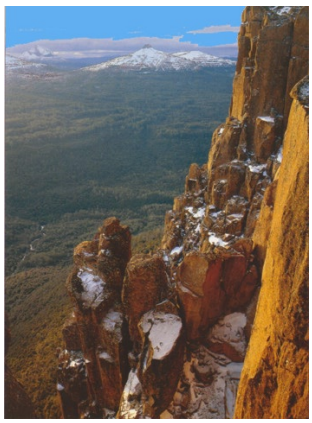
If a person does not comply with the conditions of an EPN, the Department may:

- seek orders from the Tribunal to enforce the EPN
- prosecute the polluter, or
- do the work itself and bill the polluter for the cost of the work.

What happens if an EPN is complied with?

If all the actions required by the EPN are completed, the company is supplied with a certificate of compliance and a copy of this certificate is placed on the EPN Register.

7. Protecting Landscapes, Species and Habitats



Tasmania has extraordinary natural assets – in terms of its stunning scenery, its wilderness and its unique biodiversity.

In the past, areas were set aside in conservation reserves principally to protect landscapes and to provide recreation opportunities. However, in recent years there is far more focus on protection of Tasmania's unique biodiversity – much of which exists outside of our national parks and reserves system.

Chapters 7 to 11 deal with nature conservation issues in a variety of environments – from world heritage areas to offshore marine habitats.

7.1 Managing our parks and wildlife

Reserved lands and wildlife in Tasmania are managed under two pieces of legislation:

Nature Conservation Act 2002

This Act regulates the conservation and protection of flora, fauna and geological diversity within Tasmania; classifies reserved lands in Tasmania and establishes values & objectives for each reserve class and provides for conservation covenants and reservation of private lands.

This legislation is administered by DPIPWE.

National Parks and Reserves Management Act 2002

This Act ensures that reserves are managed in accordance with the management objectives for each reserve class and provides for the development and implementation of management plans for reserved land. Draft management plans are reviewed by the *Tasmanian Planning Commission*.

The *National Parks & Reserves Management Act 2002* is administered by the Parks & Wildlife Service. The Service is headed by a Director who has explicit statutory functions.

The Act also establishes the National Parks & Wildlife Advisory Council (**NPWAC**). This provides a forum for consultation over significant policy issues relating to national parks or wildlife management.

In early 2012, the NPWAC assumed the responsibilities and functions of the former Tasmanian Wilderness World Heritage Area Consultative Committee (**TWWHACC**), whose role it was to report to and advise the Commonwealth Government in relation to management of the Tasmanian Wilderness World Heritage Area.

Parks and Wildlife Regulations

The key pieces of legislation are supported by the following regulations:

National Parks and Reserved Land Regulations 2009

These regulate what land uses and activities are permitted within national parks and reserves.

Wildlife (General) Regulations 2010

These control the general management and conservation of flora and fauna throughout Tasmania.

Both sets of Regulations include wide-ranging rules and offences – such as carrying of firearms, harming flora and fauna etc – with corresponding enforcement provisions and penalties for infringements. The Regulations also make provision for permits and licences to enable certain controlled activities to take place.

National parks rangers (as well as police officers) have powers to confiscate materials and apprehend and arrest people who commit offences under these provisions.

How are national parks and reserves managed?

The Director of Parks and Wildlife is an important position, which carries responsibility for implementation of the *National Parks & Reserves Management Act 2002* and for managing all public reserved land (unless another managing body is appointed by the Governor). There have only been a handful of times when a different managing authority has been appointed by the Governor. For example, in 2009 Clarence City Council became the Managing Authority for Rosny Hill Nature Recreation Area.

Day to day, on-ground management of parks and reserves is carried out by the Parks & Wildlife Service.

The Director is not the managing authority for freehold reserves such as Private Sanctuaries and Private Nature Reserves, unless specifically appointed and with the landowners' consent.

The Parks and Wildlife Service also co-manages marine parks with the Marine Resources Branch of DPIPWE (☛ go to Chapter 9 for information).

7.2 What activities are allowed within national parks and reserves?

Activities and developments within the parks system are controlled through the following mechanisms:

1. Legislation

The *Nature Conservation Act 2002* and the *National Parks & Reserves Management Act 2002* and the accompanying Regulations prohibit a range of general activities and impose controls on a range of other activities (see above).

2. The Reserve classification system

National parks and reserves are set aside for many different purposes, including species protection, recreation and landscape protection.

The categories of Tasmania's various conservation reserves have now been streamlined, largely based on the international IUCN model.

Under this system, Tasmania has the following different types of reserves on public land.

Reserve Type	Enabling Legislation	Responsible Agency
▪ National Park ▪ State Reserve ▪ Nature Reserve ▪ Game Reserve	Nature Conservation Act	Parks and Wildlife Service

Reserve Type	Enabling Legislation	Responsible Agency
▪ Conservation Area ▪ Nature Recreation Area ▪ Regional Reserve ▪ Historic Site	Nature Conservation Act	Parks and Wildlife Service
▪ Public Reserve	Crown Lands Act	DPIPWE
▪ Forest Reserve (*)	Forestry Act	Forestry Tasmania

(*) It is not clear how current government plans regarding the *Tasmanian Forests Agreement Act 2013* will impact on the role and management responsibilities for forest reserves.

In addition, there are two types of reserve categories for private land under the *Nature Conservation Act 2002*:

- Private Nature Reserves
- Private Sanctuaries

Tasmania has over 600 established reserves, including 19 national parks, that are managed by the *Parks and Wildlife Service*. Each of the different categories of reserves offers a different level of protection and specifies management objectives and particular activities that are allowed (or not allowed) to take place within that class of reserve.

One area of specific contention in relation to activities in reserve areas is mining (☛ go to Chapter 11). Mineral exploration is explicitly included in the management objectives for reserves classed as Regional Reserves, Conservation Areas, Nature Recreation Areas, Public Reserves and Forest Reserves. Though mining is not explicitly prohibited within National Parks, it can only occur if it is consistent with the management objectives (which focus on natural heritage and landscape values) or any management plan for the area (see below). Although several management plans recognise the limited continuation of mining leases existing at the time of the park's creation (e.g. Douglas Apsley National Park), no management plans for national parks in Tasmania currently allow for mineral exploration to occur. The approval of both houses of parliament would be required to alter this position (see below).

3. Management Plans

Under the *National Parks & Reserves Management Act 2002* the Director of Parks & Wildlife may draw up a Management Plan for any reserve, in consultation with the Secretary of the Department administering the *Nature Conservation Act 2002* (currently DPIPWE).

The *Regional Forest Agreement 1997* required that all public reserves have a Management Plan by December 2003. While this has been mostly met, management plans remain outstanding for a number of reserves.

Management Plans are important to the public, because they set out the specific activities and developments that may or may not take place within each particular reserve, the responsible authority, management objectives and any licensing issues. The management plan also applies to activities undertaken by the Parks and Wildlife Service itself.

Management Plans are the main opportunity for the public to have input into how their parks and reserves will be managed.

Draft Management Plans for public reserves must be released for public exhibition for at least 30 days, and any person can make a representation about the proposed plan. All representations are forwarded to the Commission which will consider all the issues raised (and may hold public hearings). The Commission then must present a report to the Minister making recommendations about the management plan. The Minister will present the Management Plan (with or without amendments) to the Governor for approval.

Once a Management Plan is approved it will be reviewed in the timeframe set out in the plan – normally every 10 years.

You can inspect reserve management plans (both draft and approved ones) at National Parks offices, download them from the Parks and Wildlife website, or buy them from Service Tasmania centres.

4. Business licences

You must not operate a commercial business of any kind within parks and reserves without first obtaining a business licence from the Minister. This includes businesses which hire equipment, provide guided tours, sell food or undertake commercial filming or photography.

↝ Go to the Parks and Wildlife website for more information about the requirements for business licences.

7.3 Developments inside national parks

How are development proposals assessed?

Controversial past development proposals at Recherche Bay and Pumphouse Point, as well as the Three Capes Track, have highlighted the confusion regarding the interaction of national parks and reserve management systems with the standard development process.

The approval process for development works on reserved lands (including National Parks) remains contentious and no statewide approach has been adopted. A Draft Planning Directive was prepared in 2003 to help guide assessment of development proposals in reserve areas, but the Directive was never finalised.

In practice, any proposed development (other than small licensed business activities) in a national park or reserve will be subject to the standard planning process (☛ see Chapter 5). Planning decisions must not conflict with the management plan for the protected area, or the relevant planning scheme.

For developments in the World Heritage Wilderness Area, proposed developments will be subject to the impact assessment procedures in the TWWHA Management Plan (see below).

How can I have a say in national park developments?

Development inside national parks and reserves such as infrastructure, roading and tourist accommodation tends to be controversial because of the potential to detract from the natural character of the park and threaten its ecological integrity.

If you are concerned about how a park or reserve is managed or about proposed developments, it is advisable to have a say as early as you can:

- Go to the relevant local council office and see what the Planning Scheme provides for in the area. You have the right to request amendment of a Planning Scheme if you have a legitimate concern over its content (subject to the review provisions outlined in Chapter 4).
- If a Management Plan is in the process of being developed for the reserve, the public must be invited to comment. Take this opportunity to have a say as there are few opportunities for public input once the plan is approved.
- If a Management Plan has already been approved for the reserve, become familiar with it and help to ensure that it is complied with.

↝ Go to the Parks and Wildlife website to see current management plans.

Management Plans for reserves may allow use or development of the land other than in accordance with the provisions of the *National Parks & Reserves Management Act 2002* - provided this departure is agreed to by both Houses of Parliament.

- The Minister can issue a licence or lease which allows buildings to be built on reserved lands for tourist accommodation and related facilities, provided such a development would be consistent with the management objectives for that land and "any applicable management plan". If you believe that a building is not consistent with these documents, contact the Minister.
- Note that in the event a Management Plan would have to be altered in order to enable a development to take place, this can only be done through the statutory review process. It is important to keep an eye out for public notices inviting public input.
- If an application for a proposed development is made to the local council, the public will be given an opportunity to make representations and can appeal to the Tribunal against the Council's decision (☛ see Chapter 5).

How are wilderness features protected?

Unlike some other jurisdictions, Tasmania has no specific 'Wilderness Act', nor any particular wilderness class of reserve. However, wilderness protection is a stated objective for the management of national parks and wilderness features are generally protected under the management plan for a particular park.

How can I help enforce the law?

If you suspect any infringement of parks or wildlife regulations (such as lighting of illegal fires, taking wildlife or carrying firearms within a reserve area) you should immediately contact the nearest National Park station or a police officer in the area.

7.4 World Heritage Areas

How are Tasmania's World Heritage Areas managed and protected?

Because Australia is a signatory to international treaties in relation to world heritage, the Constitution gives the Commonwealth government control over World Heritage Areas. These powers are generally exercised through the *Environment Protection and Biodiversity Conservation Act 1999*, known as the EPBC Act (☛ go to Chapter 15 for information about this important national law).

Under the EPBC Act, approval is required for any development or activity that could have a significant impact on the values of a world heritage area. The federal Environment Minister can require comprehensive impact assessments to be carried out before issuing an approval under the Act.

For developments in the Tasmanian Wilderness World Heritage Area, the impact assessment process for Major Projects set out in the Management Plan will need to be followed. An impact assessment must be carried out subject to advice from the National Parks and Wildlife Advisory Committee. The assessment report will then be released for public comment for at least one month before the Minister decides whether to approve the proposed development.

Developments outside the World Heritage area which may impact on the values of the area may still need to be assessed under the EPBC Act. Depending on the nature of the development, the Minister can follow the impact assessment procedures under EMPCA (☛ see Chapter 6), the *State Policies and Projects Act 1993* (☛ see Chapter 5), or the EPBC Act (☛ see Chapter 15).

The Federal Minister also has broad powers under the EPBC Act to revoke a development permit if the conditions are not met, or to seek an injunction if an unauthorised activity or proposed activity threatens the integrity of a World Heritage Area.

In practice, Tasmania's two World Heritage Areas (Western Tasmania and Macquarie Island) are protected and managed on a day-to-day basis through reservation of those areas under Tasmania's National Parks and Reserves Management Act 2002 and by Management Plans and other arrangements agreed to jointly by both federal and state ministers.

In June 2013, the World Heritage Committee approved the extension of the Tasmanian Wilderness World Heritage Area to include an additional 170,000ha of native forest. The Commonwealth government has applied to remove 74,000ha of this area – the World Heritage committee will consider this application in June 2014.

More information about this is available at the Department of Environment website.

What can I do if I disagree with something happening in the World Heritage Area?

It is very important for the public to report any threatening activities or developments to both the Federal and State agencies (the federal Department of Environment and the Tasmanian Parks and Wildlife Service). When you report an issue, make sure that you request that the matter be investigated and action taken to address the impacts.

Under the EPBC Act, any 'interested person' may be able to take legal action to prevent people, companies, a State or the Commonwealth from carrying out unlawful activities within the World Heritage Area (☛ go to Chapter 15 for more information).

Case Study	
Protection of World Heritage values	In December 2000, Dr Carol Booth, a North Queensland conservationist, assisted by EDO Queensland, sought an injunction under the EPBC Act, to restrain a fruit farmer from killing large numbers of Spectacled Flying Foxes through the use of electrical grids. Expert evidence suggested that the flying foxes roost in the adjacent Wet Tropics World Heritage Area. The farmer did not have approval under the EPBC Act for the action of killing flying foxes. In October 2001, Justice Branson in the Federal Court granted Dr Booth an injunction, having found that the killing of large numbers of Spectacled Flying Foxes on the farm was likely to have a significant impact on the World Heritage values of the Wet Tropics World Heritage area. The court explained that 'significant impact' in the EPBC Act meant an "impact that is important, notable or of consequence having regard to its context or intensity". This definition allowed the Court to consider the use of electrical grids, not just in isolation, but as a cumulative impact added to other reasons for the overall mortality of the species. While the Court did give consideration to the financial detriment to the fruit farmer due to the injunction, it was noted that this factor was something that would rarely prevail over the protection of World Heritage values. You can read the decision in *Booth v Bosworth* [2001] FCA 1453 on the Austlii website.

7.5 How are Tasmanian wetlands protected?

Tasmania currently has numerous wetlands in various states of protection. Ten of them have been listed on the international Ramsar listing. Ramsar wetlands are recognised as a matter of national environmental significance under the EPBC Act's assessment and approval provisions.

Long Point wetland, East Coast Tasmania

A person must not take an action that has, will have, or is likely to have, a significant impact on the ecological character of a Ramsar wetland, without approval from the Commonwealth Environment Minister. To obtain approval, the action must undergo a rigorous environmental assessment and approval process.

〰 Go to the DPIPWE website for information about Tasmania's wetlands.

☛ Go to Chapter 10 for information about Tasmania's water laws.

☛ Go to Chapter 15 for information about the federal EPBC Act.

7.6 Protecting Marine Areas

Over the past decade, there has been a growing recognition of the need to provide for marine reserves, as well as reserves on land. Marine reserves can protect biodiversity (particularly threatened marine species) against the impacts of pollution, overfishing and other disturbances and can help make marine environments more resilient to the impacts of climate change, Marine reserves can increase fish populations both within the reserve and in adjacent areas, having flow-on benefits for the fishing industry. Marine reserves can also have tourism benefits (for example, protecting shipwrecks can create popular dive sites) and provide good areas for scientific research and education.

In Tasmania, the Marine Protected Areas Strategy sets out the state's objective to achieve a comprehensive, adequate and representative network of marine national parks. Despite this, only seven marine reserves have been declared to date, including Tinderbox, Ninepin Point, the Kent Group and Port Davey reserves and the water surrounding Macquarie Island.

☛ Go to Chapter 9 for information about protecting Marine Areas.

7.7 Protecting heritage values

Heritage values in Tasmania are primarily protected under State heritage laws, through development restrictions in Planning Schemes and, for those places of national significance, through Commonwealth laws (☛ Go to Chapter 12 for more information).

After an amendment to the EPBC Act in 2004, the Australian Heritage Council was established to replace the Australian Heritage Commission. The Heritage Council is an independent expert advisory board, providing advice to the Federal government (including the Environment Minister) on heritage matters, such as appropriate management plans for listed places. The Australian Heritage Council also assesses places nominated for inclusion on the National Heritage List (see Tarkine case study below).

The National Heritage List

Anyone can nominate a place to be included on the National Heritage List. The place must have outstanding natural, Indigenous or historic heritage value and will be assessed against particular criteria, such as its importance to Australia's cultural history or its uncommon or endangered natural characteristics.

Nominations are initially reviewed by the Department of Environment to remove any considered to be vexatious (e.g nominations of areas that have already been assessed and rejected). All other nominations that comply with the requirements set out in the nominations forms are forwarded to the Australian Heritage Council for assessment.

If you think a place should be included on the National Heritage List, a nomination kit is available from the Australian Heritage Council.

Case Study	
National Heritage Listing - the Tarkine	The Tarkine, in Tasmania's north-west, is famous for its rainforests and beaches, as well as its important flora and Indigenous historical links. It houses Australia's largest Gondwanan rainforest and the only known disease-free population of Tasmanian Devils. The Tarkine was first nominated to be included on the National Heritage List in 2004. In 2009, then Environment Minister Peter Garrett 'emergency listed' the Tarkine as a National Heritage site. The emergency listing was made as a result of a proposal that sought to build a 134km road through the Tarkine's old growth rainforest. In 2010, the Tarkine's emergency listing lapsed and new Environment Minister, Tony Burke, had to decide whether it should be listed permanently. However, the Minister asked the Australian Heritage Council to engage in a more thorough assessment of the area. This assessment concluded amongst other things, that the Tarkine has outstanding heritage value to the nation as the single largest tract of cool temperate rainforest in Australia. The Heritage Council eventually recommended that the entire Tarkine rainforest be permanently placed on the National Heritage list. Despite this recommendation, the Minister announced in February 2013 that only a coastal section containing significant Aboriginal cultural heritage would be included on the National Heritage List. This area, which comprises less than 5% of the area recommended for inclusion, is known as the Western Tasmania Aboriginal Cultural Landscape. Controversially, the Tarkine area is currently subject to a number of proposals for mining and forestry operations.

7.8 How can private land be protected?

There are four mechanisms to protect natural values on private land.

1. Vegetation Clearance Controls

Property owners generally need to obtain approval before large scale clearing of native vegetation. (☛ Go to Chapter 8).

2. Environmental agreements / Part V Agreements

When developments are being approved, property owners can be required to enter into binding agreements restricting their use of the land (☛ Go to Chapter 5)

3. Private reserves

Landowners can choose to have their land declared as a reserve under the state's reserve system (see above).

4. Land covenants

Landowners may enter into conservation covenants to protect their land.

Conservation covenants are attached to land titles, and place legal restrictions on the holder of the title. Covenants are a good way to ensure that biodiversity on private land is protected. They provide binding protection for natural values on that land now and in the future.

Under the *Nature Conservation Act 2002* conservation covenants can include any provisions, including restrictive covenants (that prevent particular activities) and positive covenants (that require particular actions to be taken). The conditions of a covenant (including an associated Management Plan) are worked out jointly by the landowner and DPIPWE.

The Private Land Conservation Program offers three covenanting programs:

Conservation Covenants

Landowners can voluntarily enter a Conservation Covenant to manage defined areas specifically for nature conservation. Under the *Nature Conservation Act 2002*, Conservation Covenants are legally binding and generally continue indefinitely (unless revoked or if the conservation covenant itself specifies a time limit). Conservation Covenants are registered on the land title and will bind any future owner of the land. In general, covenanted land is not subject to land tax and landowners may be eligible for certain compensation payments if they enter into one.

Land for Wildlife Scheme

This Scheme is voluntary, free and non-binding. It helps to protect the habitats of threatened species on private land and recognises land owners who are taking positive steps in conservation and land management. Over 800 properties are currently registered as part of this Scheme. Typically, you must be willing to management land over 2 hectares in size in order to be eligible for this Scheme.

Gardens for Wildlife

The Gardens for Wildlife Scheme is also voluntary and non-binding. However, membership in the program comes at a small fee. The Scheme was instigated as a 'sister program' to the Land for Wildlife Scheme, and is for people who want to make their gardens friendly to local plants and wildlife. This program places no restriction on land size and any garden can contribute to the Scheme, of which there are currently 470 members.

Can anyone covenant their land?

Yes. Any landowners can volunteer to enter into conservation covenants, provided the land has conservation values that can be viable in the long term.

Compulsory covenants

In some situations, covenants can be imposed on landowners to protect threatened species and vegetation communities.

Most importantly, if you apply for a Private Timber Reserve and your application is refused because of the natural values of your land, the Minister can order you to enter into a conservation covenant to protect those values. You will be paid compensation for any losses associated with the covenant (e.g. because you cannot carry out logging activities on the property - see Section 33 of the *Nature Conservation Act*).

How can covenants be enforced?

Once a covenant is in place, a landholder can be prosecuted for not complying with the terms of the covenant (maximum fine $13,000). However DPIPWE prefers to avoid prosecutions by maintaining positive ongoing relationships with landowners.

7.9 Protecting flora and fauna

Thanks to continental drift, receding ice caps and the protection that Bass Strait gives, Tasmania is home to a wonderful array of unique species of plants and animals.

Since European arrival, the state has suffered a high rate of species and habitat loss from a variety of causes, including urban expansion, forestry, fishing, agriculture and hunting.

To date, known extinctions include one mammal, three bird species, eight invertebrates and 32 plant species. Over 650 known Tasmanian plants and animal species are endangered, vulnerable or rare. Similarly, a significant proportion of habitats – wetlands, forest, lakes, heathlands – have been either totally obliterated or severely altered since European settlement.

The rapid decline in viable populations of the Tasmanian Devil highlights the vulnerability of species, and the urgent need to implement more effective protections.

Special laws to protect threatened species

This rather dire situation has prompted the passage of 'species protection' laws in recent years. Consequently, three important processes now govern biodiversity issues in Tasmania.

	Act of Parliament	What it enables
(1)	**Nature Conservation Act 2002** **National Parks and Reserves Management Act 2002**	▪ Declaration of protected areas ▪ Entering into voluntary conservation covenants ▪ Rules for taking protected species or introducing restricted species ▪ Management plans for protected areas and species that have been declared under the *Nature Conservation Act* 2002.
(2)	**Threatened Species Protection Act 1995**	▪ Listing of threatened flora and fauna ▪ Permits to 'take' threatened species ▪ A range of measures to manage species and habitats
(3)	**Environment Protection and Biodiversity Conservation Act 1999**(Commonwealth)	▪ An assessment mechanism when a development is likely to impact on nationally listed flora or fauna, threatened vegetation communities, migratory species and significant wetlands.

The Parks and Wildlife Acts

How do the Nature Conservation Act and the National Parks and Reserves Management Act operate?

The Parks & Wildlife Service has general jurisdiction over flora and fauna management throughout the state (under the *Wildlife (General) Regulations 2010*). With some exceptions, this includes flora and fauna on public land, marine areas, private land and logging areas as well as national parks and reserves.

The Parks & Wildlife Service have responsibility for looking after dolphins, whales and seals, other sea creatures (fish and other non-mammals) are managed under different Acts and by other agencies (☛ go to Chapter 9).

What general protection exists?

The legislation classifies fauna and flora species according to their survival needs – specially protected, protected and partly protected. There are a wide range of offences for taking, trading, exhibiting (such as in a wildlife park) or harming protected species without a permit.

The *National Parks and Reserves Management Act 2002* protects fauna and flora within National Parks and State Reserves. The management plan for a reserved area can make it an offence to disturb or interfere with any wildlife or plant in the reserve.

Harvesting and hunting flora and fauna

The Parks & Wildlife Service manages the harvesting of non-threatened native fauna (such as wallabies) through the issuing of licences and declaration of open and closed hunting seasons (for species such as ducks and shearwaters).

The Wildlife Regulations set out the rules for taking partly protected fauna, including licensing requirements. For instance, duck hunters are required to produce a duck ID certificate, showing knowledge of different duck species, before they can obtain a licence.

Who controls exports of native flora and fauna?

Where native species are harvested for overseas export (such as possum skins, sphagnum moss, shearwaters and tree ferns), the Commonwealth government exercises additional legal controls (☛ see Chapter 4).

Aboriginal rights to take wildlife

Special provision has been made in the *Nature Conservation Act 2002* for people of Aboriginal descent. Aboriginal people are able to undertake cultural activities (including hunting and fishing for personal use), provided the Minister is satisfied that the activities do not have a detrimental effect on species protection (☛ see section 73).

Offences

Tasmania's wildlife protection laws make it an offence to harm any protected native flora or fauna unless:

- you have a permit from the Parks & Wildlife Service (and comply with the permit conditions!)
- an 'open season' has been declared on the species
- you are operating under a certified forest practices plan
- the species was harmed as an unavoidable consequence of performing an activity authorised by an Act of Parliament (roading, commercial logging)
- you harmed a threatened species by accident or by reason of an honest and reasonable mistake
- in cases where an interim protection order has been declared, you have the written authority of the Minister

Threatened Species Protection Act

How does it operate?

This Act sets out special protection measures for native animals and plants that are considered to be 'threatened'. Breaches of the Act can result in much higher penalties than a breach of the *Wildlife Regulations* described above.

Species declared as threatened (including marine mammals and fish as well as terrestrial flora and flora) are listed in the schedules of the Act according to the nature of their threatened status.

- **Endangered:** extinct or in danger of extinction (Schedule 3)
- **Vulnerable:** likely to become endangered (Schedule 4)
- **Rare:** a small population that is not immediately vulnerable but is still at risk (Schedule 5)

By way of example, the forty spotted pardalote is listed as 'endangered', whilst the giant freshwater crayfish is listed as 'vulnerable'.

Species may be upgraded, or downgraded, if conditions affecting their survival change. For example, in May 2008 the status of the Tasmanian Devil was upgraded from "vulnerable" to "endangered", in recognition of the significant threat posed by the Devil Facial Tumour Disease.

Who administers the Threatened Species Act?

The Secretary of the Department of Primary Industries, Parks, Water and Environment is responsible for ensuring that the Act is implemented, though a number of key decisions are ultimately at the discretion of the Minister.

How is a threatened species listed?

A species is listed by the Minister, after receiving a recommendation from the Scientific Advisory Committee (**SAC**). The SAC is an advisory body established under the Act and is made up of 7 members with special knowledge and experience in flora and fauna ecology.

The advisory committee has a key role in recommending to the Minister:

- whether a species should be listed (or not listed), and under what category
- the status of habitats and their protection needs
- threatening processes, and action that is needed to minimise their impacts on species and habitats (including development of threat abatement plans and recovery plans)

Who can nominate a species as being threatened?

There are two avenues for listing or delisting species under the Act:

1. Under Section 13:

The Scientific Advisory Committee may of its own motion, or in response to a regular review process, make a recommendation to the Minister that a species be included in, or removed from, the threatened species list. The Minister can then make an order including the species, removing the species or amending the listing for the species.

Notice is given to the public of the Minister's order and any person can appeal to the Tribunal to challenge the decision (☛ go to Chapters 4 and 14 for information about the appeal process).

2. Under section 16:

Any person may nominate flora or fauna which they consider should be added to (or removed from) the threatened species lists.

The SAC has a duty to advertise the nomination and consider all public comment made within specified time limits. If a nominated species is rejected, the SAC must notify the Minister and give reasons for the rejection.

The Minister may then decide about the listing and must publish his/her decision. There is no appeal to the Tribunal from this decision, but you may be able to challenge the decision under the *Judicial Review Act 2000*.

↝ For more detailed information on the process for listing or delisting species, visit the DPIPWE website.

- A Case Study -

The Forest Snail Case

In 1999 the *Tasmanian Conservation Trust* initiated the first ever appeal under the Threatened Species Act. The appeal involved a decision by the Minister to remove the north-east forest snail (*Anoglypta launcestonensis*) from the threatened species list (it had been listed as vulnerable).

The Tribunal took scientific evidence from people representing both sides of the argument and eventually handed down a decision to uphold the Minister's decision. The snail was de-listed.

This case illustrates how the appeal system is open to any person – whether it be to try to get greater or lesser protection for any particular species.

Where can I find out if a particular species is listed as threatened?

You can obtain the listings from:

- DPIPWE
- Parks & Wildlife offices
- Threatened Species Protection Act 1995
- Department of Environment

How does the Act protect species?

In five principal ways:

- **Preparing a statewide strategy** for the conservation of threatened species in Tasmania, the Threatened Species Strategy
- **Preparing listing statements** and implementing species recovery plans and threat abatement plans for particular species
- **Implementing land management plans** (including special agreements with landowners and public bodies such as Forestry Tasmania)

  Please note, these plans are rarely entered into.
- **Declaring interim protection orders**
- **Declaring critical habitats** (listed habitats are protected in much the same ways that individual species)

Various procedures and time limits are set out in the Act for these actions. There are opportunities for public comment in relation to decisions to list species, developing recovery and management plans and declaring critical habitats. Landowners and others who are financially affected by decisions may be able to apply to the Minister for financial compensation.

The Threatened Species Protection Act 1995 provides a range of tools to protect the State's species and habitats. Despite this, the Act suffers from a few key deficiencies:

- Offences are limited to taking particular species, rather than affecting their habitat (other than critical habitat)
- Offences are only established if a person "knowingly" takes a species, so it is necessary to prove that a landowner knew, or ought to have known, that a particular species was present on the land, and was threatened
- Land agreements are entirely voluntary, even where critical habitat has been identified
- Poor implementation and under-resourcing has meant that, at the time of writing, many listing statements remain outstanding, no prosecutions have been commenced, no interim protection orders or critical habitats have been declared and no land agreements have been entered into.

In March 2009, the Tasmanian Auditor-General completed a report on the Management of Threatened Species, which highlighted these, and other, deficiencies and recommended actions to improve the protections offered by the legislation. For example, the audit found that, while threatened species recovery plans were implemented, the effectiveness of the recovery plans was rarely assessed. It was recommended that an assessment of the high-priority recovery plans be undertaken.

DPIPWE has been working to address these issues and a follow up report in June 2012 indicated that approximately half of the recommendations had been implemented.

↝ You can find the original assessment and progress report on the Auditor-General's website.

How does the Act affect what people can do?

If a species is listed as threatened then it is prohibited to 'take' it without a special permit (see section 51 of the *Threatened Species Protection Act 1995*).

To 'take' is defined in the Act as to: "kill, injure, catch, damage, destroy or collect" and may also include the destruction of habitat.

A person or corporation can apply to the Secretary of DPIPWE for a permit under the Act to take a threatened species or to take an action that is likely to result in harm.

It is also an offence to take or harm a species or habitat if an interim protection order has been declared for that particular species or habitat. The maximum penalty is $13,000. However, a permit may be issued to a landholder to undertake an activity on land that is subject to a protection order.

A person who takes a species without a permit or who contravenes an interim protection order is liable to prosecution under sections 36 and 51.

7.10 The EPBC Act

The *Environment Protection and Biodiversity Conservation Act 1999*, Australia's primary national law in relation to environmental issues, is described in more detail in Chapter 15.

How does it operate?

The Federal government has international obligations to protect Australia's threatened biodiversity. The EPBC Act provides some legal avenues to protect species and ecological communities that are nationally (or internationally) threatened. These provisions operate in parallel with Tasmanian state laws, described above, and have many similar features.

How are threatened species protected under the EPBC Act?

Similar to the Tasmanian threatened species legislation, the EPBC Act lists species under various categories – 'extinct', 'extinct in the wild', 'critically endangered', 'endangered', 'vulnerable' and 'conservation dependent'.

An entire ecological community can be listed, as can a 'critical habitat' or a 'key threatening process'. Any person can nominate a threatened species, ecological community or a 'key threatening process' for listing.

The federal Environment Minister makes the final decisions on listings after considering advice from a Federal Scientific Committee.

What protection does EPBC listing offer?

Once a species or ecological community is listed, the EPBC Act offers the following protections:

- requiring the assessment and approval of proposals that are likely have a significant impact upon a threatened species, an ecological community or a migratory species
- requiring permits for actions in a Commonwealth area that involve the killing, injuring or taking of a listed threatened species, or ecological community
- recovery plans, threat abatement plans and wildlife conservation plans can be developed and implemented for the species. Activities that are inconsistent with these plans should not be approved.

Heavy penalties (up to $660,000 for an individual or $6.6 million for a company) may be imposed on a person who takes an action anywhere in Australia which is likely to have a significant impact on a nationally listed species or ecological community without an exemption or approval.

CASE STUDY: Lamattina

In 2004, a South Australian farmer, Mr Lamattina, cleared 170 Eucalyptus trees which contained nesting hollows for the endangered South-Eastern Red-Tailed Black Cockatoo. The Federal Environment Minister considered the clearing to have had a significant impact on the threatened species, making it an offence to clear the trees without a permit under the EPBC Act.

The farmer admitted to clearing the trees and agreed with the Minister to pay a financial penalty of $110,000. However, when this agreement was put forward to the Federal Court in 2009, the Court imposed a heavier fine.

The Court stated that:

"… in my view the penalty proposed by the joint submissions is not within the permissible range. The contravention was not within the least serious category of contraventions. The deliberate nature of the conduct, the indifference to its potential consequences, and its significance in relation to the endangered species, and the need for the Court to fix a penalty which will operate as a deterrent to

those who might otherwise be minded to clear native vegetation contrary to s 18(3) of the EPBC Act all point to a penalty significantly greater than that suggested, even taking into account all the matters which weigh in the first respondent's favour to fix a low pecuniary penalty. In my judgment, the appropriate pecuniary penalty is $220,000. …"

This decision demonstrates the seriousness with which contraventions of the EPBC Act are taken. Significant fines can be imposed on any person or company who fails to comply and causes harm to threatened species or vegetation communities.

For more details about this case, go to EnvLaw.

Environmental Impact Assessments

Any activity (such as new developments or an expansion of an existing development) which is likely to have a 'significant' impact on a nationally threatened species or ecological community must be referred to the federal Environment Minister.

If you are concerned about any development, you should make sure that the developer has made a referral under the EPBC Act. If not, you can bring the development to the attention of the Environment Minister and request that it be 'called in'.

Once a development or activity has been referred to the Minister, s/he must then decide whether it is likely to have a significant impact and, if so, what level of environmental impact assessment is required. The public are given an opportunity to comment on these matters before the Minister makes a decision.

☛ Go to Chapter 15 for more information about this process

Export of protected wildlife

- Part 13A of the EPBC Act sets out rules for the export and import of listed species. Significant penalties can be imposed for exporting or importing regulated species without a permit, or in breach of the permit conditions.
- It is also an offence to kill, injure, take or trade a cetacean (whale, dolphin or porpoise) in the Australian Whale Sanctuary. The Australian Whale Sanctuary extends to the boundary of Australia's exclusive economic zone, which is up to 200 nautical miles from the coast of Australia. It does not generally include coastal waters up to the three nautical mile limit.

What action should I take under national laws?

- The first thing to do is to contact the Department of Environment to find out whether the EPBC Act applies to the activity that you are concerned with.
- If the EPBC Act applies, report your concerns promptly by writing to the Compliance and Enforcement Unit and request that they investigate the issue.
- Make submissions to the Environment Minister in relation to any development which may have a significant impact on threatened species.
- In some circumstances, you may be able to challenge an approval in the Federal Court or seek an injunction to stop an unauthorised activity that will have a significant impact on threatened species.

☛ Go to Chapter 15 for more information about federal laws and how to take action.

7.11 Animal Welfare

Any person who keeps animals, owns animals or looks after animals (whether pets, livestock or animals used for entertainment) has an obligation to protect their welfare. Public concern regarding animal welfare, particularly in relation to battery hens and livestock transport, has increased in recent years.

The principal piece legislation dealing with this issue in Tasmania is the Animal Welfare Act 1993 (the **AWA**). The Act makes it an offence to do anything reasonably likely to result in unreasonable or unjustifiable pain or suffering to an animal in your care.

The Act is administered by the Department of Primary Industries, Parks, Water and Environment (**DPIPWE**).

The *Animal Welfare Act 1993* is currently under review.

Who is responsible for an animal's welfare?

Under the AWA, a person is taken to have the "care or charge" of an animal if the person:

- is the owner of the animal;
- has control, possession or custody of the animal;
- operates or manages premises where the animal is held for commercial purposes (for example, a kennel or pet shop); or
- is the owner, operator or manager of the land where the animal is being agisted (unless a different agreement has been reached in writing); or
- is a share farmer; or
- is a responsible officer of a company that owns the animal.

In some circumstances, an employer will be held responsible for an employee's cruelty if it is shown that the employee was acting on the employer's instructions (see s.48A).

Where this section refers to the 'owner' of an animal, it includes any person who has care or charge of the animal.

What constitutes animal cruelty?

It is an offence under s.8(1) of the AWA to "do any act, or omit to do any duty, which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal." Harsher penalties apply for "aggravated cruelty", where the cruelty results in the death or serious disablement of the animal (see s.9).

The AWA also outlines a number of general care requirements, including:

- not wounding, mutilating, torturing, overworking, abusing, tormenting or terrifying an animal (s.8(2)(a))
- not overloading or overcrowding animals (s.8(2)(b)). Please note, the Animal Welfare Regulations 2008 set out minimum space requirements for keeping caged chickens.
- not transporting an animal in a way that causes unreasonable and unjustifiable pain or suffering (s.8(2)©)
- ensuring a work animal is fit for the work (including farm work or providing rides to children (s.8(2)(d))
- providing "appropriate and sufficient" food, drink, shelter and exercise to any animal unable to provide for itself (s.8(2)(e)). This means owners must provide sufficient food and drink to maintain the animal in reasonable body condition, allow the animal to grow and reproduce and to remain hydrated. Shelter provided for an animal must be sufficient to protect the animal from bad weather

- not abandoning an animal usually kept as a domestic pet (s.8(2)(f)). You are taken to abandon an animal if you leave it without ensuring that another person will immediately take over care of the animal.
- ensuring a sick or injured animal is provided with appropriate treatment (s.8(2)(g))
- not using electric shocks, spurs or similar sharpened appliances on an animal (s.8(2)(i) and (j))
- not administering animal toxic substances except for medical or research purposes, putting an animal down humanely, controlling a List A disease (for example, foot and mouth disease – see the Animal Health Act 1995) or controlling a pest animal with an approved poison (such as controlling wallabies with 1080 – see Chapter 10).

The Minister maintains a 'Pest Register' that identifies pest species and the substances which can be used to control them.

↝ You can download a copy of the Pest Register from the DPIPWE website.

DPIPWE also maintains a number of Animal Welfare Standards and Guidelines regarding actions (or inactions) likely to constitute 'cruelty'. Standards outline minimum acceptable practices that **must** be complied with, while guidelines outline industry practices that **should** be complied with. The *Animal Welfare Regulations 2008* adopt the National Consultative Committee of Animal Welfare Standards for the Care and Treatment of Rodeo Livestock.

Guidelines currently exist in relation to the treatment of sheep, cattle, deer, goats, pigs, poultry, horses, emus, mutton birds and animals in saleyards, as well as management guidelines in relation to the following activities:

- Land Transport of Livestock
- Transport of Livestock across Bass Strait
- Trade and Transport of Calves
- Field shooting of Brush-tail Possums
- Capture, Handling and Transport of Brush-tail Possums
- Wallaby Hunting
- Duck Hunting
- Hunting of Wild Fallow Deer
- Intensive Husbandry of Rabbits

The guidelines are not currently mandatory. You can download a copy of these guidelines from the DPIPWE website.

The Dairy Animal Health and Welfare Action Group has also produced a Guide to Tasmanian Dairy Cattle Welfare to assist dairy farmers.

Exemptions

The anti-cruelty provisions under the AWA do not generally apply to hunting activities, recreational or commercial fishing and angling, provided these activities are done in "a usual and reasonable manner" and without causing excess suffering (see s.4).

When mandatory codes of practice are adopted, exemptions may apply for activities carried out in accordance with those codes.

Animals in Agriculture

Animals used for food production are often treated the most cruelly. Following public pressure, in 2012 the State Government allocated $2.5 million towards improving animal welfare. This plan included phasing out battery (caged) hen farming and the use of sow stalls in piggeries, which would make Tasmania the first state in Australia to introduce such regulations.

A cap has been placed on the number of battery hen farms in Tasmania, and the industry is being encouraged to move away from battery operations. No timeframe has been confirmed for a complete ban.

The Government's initial commitment to ban sow stalls by 2017 was brought forward and they recently announced plans to phase out stalls by mid-2013. However, the proposed regulations to implement the ban define "sow stall-free" to allow use of cages for 10 days rather than banning them outright. Animal welfare groups have criticised the regulations for being impossible to enforce.

Baiting, fighting and trapping

The AWA contains a number of offence provisions in relation to using animals as bait or breeding animals for fighting or hunting purposes (for example, using a live rabbit to induce greyhounds to race). Offences include:

- Using an animal to fight, bait, worry, kill or injure another animal;
- Releasing an animal from captivity for the purpose of being killed, worried or injured;
- Promoting activities in which captive animals are released for the purpose of being killed, worried or injured;
- Managing premises where animals fight, bait or injure other animals;
- Supplying animals for the purposes of training another animal (if the animal is likely to suffer) (s.10).

The Act also makes it an offence to trap animals using a leghold trap, glueboard trap or snare (unless you have an exemption from the Minister or a permit to use a mist net or a gillnet). This offence provision does not apply to box traps, cage traps and mousetraps (s.12).

Rodeos, circuses and zoos

Any person organising a rodeo in Tasmania must ensure the event is conducted in accordance with the national Rodeo Standards. Significantly, a veterinary surgeon must be present at any rodeo event and it is an offence to ride sheep, calves or goats (ss.11A-11C).

Killing animals

Any slaughtering of animals must be done in accordance with the Meat Hygiene Act 1985 and relevant Australian Standards for the slaughter of animals (AS 4696-2002) and poultry (AS 2265-2001). Those documents include requirements for the humane treatment of animals prior to slaughter.

It is an offence to kill protected native wildlife, unless subject to a licence issued under the Wildlife (General) Regulations 2010 (☛ see Chapter 7 above).

Scientific research

Animal research may only be carried out at licensed facilities and in accordance with the NHMRC Code of Practice on the Care and Use of Animals for Scientific Purposes.

Reporting animal cruelty

The AWA is enforced by officers appointed under the Act, including RSPCA inspectors, police officers and authorised officers within the Department.

In practice, if you have a concern about animal welfare issues, you should first contact the RSPCA. However, if the RSPCA inspector is not available, you can contact the police. Police officers are often not aware that they have powers in relation to animal cruelty, so you may need to refer them to the definition of 'officer' under the *Animal Welfare Act 1993*. If the matter relates to farm animals, you should also contact the Animal Health and Welfare Branch within DPIPWE.

Officers have powers to enter premises to investigate a complaint, take photographs or video footage, confiscate animals or order medical treatment for an animal or examination by a vet. Officers can issue infringement notices (on-the-spot fines) if they are satisfied that a breach of the Act is being committed.

Offenders can also be prosecuted for offences. Penalties for cruelty offences include fines of up to $65,000 for a company and $13,000 or 12 months in prison for individuals. For aggravated cruelty offences, the penalties are up to $130,000 for a company and $26,000 or 18 months in prison for an individual.

What if no action is taken?

There are currently no civil enforcement proceedings allowing third parties to take action against offenders themselves. If you are not satisfied with the response by the RSPCA, DPIPWE or the police to your complaint, you can:

- Write to the head office of the RSPCA;
- Make a complaint to the Ombudsman regarding the RSPCA's or DPIPWE's failure to investigate your complaint (see Using the Ombudsman).
- Make a complaint under the *Police Service Act 2003*.

The animal protection group, Against Animal Cruelty Tasmania, is also interested to hear about failures by the authorities to act on complaints of animal cruelty.

Cat Management

The Cat Management Act 2009 was introduced in 2009 to try and manage cat populations more effectively. The legislation (and the supporting *Cat Management Regulations 2012*) applies to anyone that owns, breeds or controls cats in Tasmania.

The *Cat Management Act 2009* aims to control domestic cat populations and encourage more responsible pet ownership. The Act also seeks to control the feral cat population (estimated to be as high as 150,000).

The Act provides:

- You cannot breed cats unless you are a registered breeder (s.29);
- Cats cannot be sold unless they are over 8 weeks old, desexed and microchipped (s.12 and s.14)Farmers with livestock may "trap, seize or humanely destroy" feral cats that stray onto their land, provided there are no residences within 1km of the land (s.17)
- A Council may declare certain areas to be 'cat management areas', and prescribe measures to be carried out in order to control domestic and feral cat populations (s.20).

Find out more about cat management in Tasmania on the DPIPWE website.

7.12 Vegetation clearance controls

Land clearance for farming, forestry and bushland urban and fringe developments continues to be a key driver for loss of species, including animals, birds, insects and plants.

☛ see Tasmanian State of the Environment Report 2009.

In 2001, land clearance was recognised as a threatening process under the EPBC Act (☛ see Chapter 15).

Given the impacts of vegetation clearance, it is important to understand the rules controlling land clearing activities.

- The Planning Scheme for your area may regulate land clearing – check whether a permit is required. Many Schemes do not prohibit or regulate land clearing in rural residential or residential zones, even if some blocks adjoin native bush land. (☛ Go to Chapter 8 for more information about the regulation of vegetation clearance).
- You should also check to see whether the Planning Scheme includes a 'protected trees' register.
- If you wish to clear more than 1,000 tonne or one hectare of trees, or any area of threatened native vegetation, you must generally apply to the Forest Practices Authority for certification of a Forest Practices Plan under the Forest Practices Act.

  Changes to the Forest Practices Regulations in 2009 exempted clearing associated with buildings or associated development from the requirement to obtain a Forest Practices Plan. Therefore, Councils are now responsible for regulating vegetation clearing associated with these activities in future, even for threatened vegetation or on vulnerable land.
- A Forest Practices Plan cannot be issued for the 'clearance and conversion' of a threatened native vegetation community (listed under Schedule 3A of the Nature Conservation Act 2002) unless
  - there are exceptional circumstances; and
  - the clearing and conversion will have an "overall environmental benefit" or will not detract from conservation of the vegetation community or conservation values in the vicinity of the vegetation community.
- If land contains critical habitat for threatened species (listed under the *Threatened Species Protection Act 1995*), any activities on the land (including clearing) must be consistent with a land management plan for the area.
- Under the *Nature Conservation Act 2002* you may enter into a conservation covenant to protect a habitat or threatened vegetation community under a management plan (sections 33-47). There may be financial and technical assistance offered to support your covenant. Some councils also offer a rebate on rates if you enter into a conservation covenant.

7.13 How are species protected when new developments are proposed?

Unlike other jurisdictions, in Tasmania there are no provisions for special Species Impact Statements to be carried out.

However, developers must not knowingly affect a listed threatened species without a permit. Before a planning permit is issued under the Land Use Planning and Approvals Act 1993, the developer and planning authority must take into account activities that may threaten critical habitats or significantly affect a threatened species, population or ecological community. It is important to note that where there is a conflict between an *interim protection* order and a

planning scheme, the interim protection order overrides the planning scheme (see section 39 of the *Land Use Planning and Approvals Act 1993*).

Even if a planning authority approves a development, a permit is still required under the *Threatened Species Protection Act 1995* if the development will result in the 'taking' of listed threatened species. However, a person carrying out authorised forestry activities or dam works can 'take' listed threatened species without a permit under the *Threatened Species Protection Act 1995*.

Some planning schemes also require an assessment of the impact of a development on flora and fauna, even if the species is not listed as threatened. Where Environmental Impact Assessments are required to be undertaken, these generally need to include impacts on threatened species and mitigation measures to manage the impacts (☛ go to Chapter 5 for more information).

If you have made a representation in relation a proposed development, you can challenge a decision to approve the development (including the permit conditions) by appealing to the Resource Management and Planning Appeal Tribunal (☛ go to Chapters 5 and 14 for information about the appeal process).

7.14 How are threatened species protected in logging areas?

Threatened native vegetation communities (including forests, grasslands and wetlands) that are listed under Schedule 3A of the *Nature Conservation Act 2002* are now subject to protections against "clearance and conversion" under the *Forest Practices Act 1985*.

As mentioned above, a person carrying out forestry activities under a forest practices plan can 'take' listed threatened species (flora or fauna) without a separate permit under the *Threatened Species Protection Act 1995*.

☛ Go to Chapter 8 for a summary of how threatened species are protected under forestry legislation.

7.15 How can I take action to protect native wildlife?

- If you find any injured native wildlife, you should contact Bonorong Wildlife Sanctuary. Bonorong have a network of volunteer wildlife carers who have been trained to assist in these situations.
- It is worth reviewing information about the species and any relevant Recovery Plans to understand the threats and to see what measures are being taken to protect the species
  ⇝ All State and Federal Recovery Plans are available on the DPIPWE website. You can also ask to inspect the plans at the main offices of Parks and Wildlife.
- You can recommend to the Scientific Advisory Committee that a particular species be listed as threatened (to do this, complete the required form). The SAC is required to assess requests on an urgent basis if necessary.
- Under the *Threatened Species Protection Act 1995* the general public does not have standing to enforce the Act's provisions. If you think someone is committing an offence against the *Threatened Species Protection Act 1995*, *Nature Conservation Act 2002* or the *National Parks and Reserves Management Act 2002*, you should inform the Parks and Wildlife Service and ask them to investigate.

  It may also be important to find out if the offending person has a permit or approval to undertake their activity, and the conditions that apply to their permit.

  ☛ Go to Chapter 13 for advice about how to take action to ensure that provisions of these Acts are properly enforced by the relevant authorities.

- If a species is threatened by a proposed development, you have the opportunity to make submissions to the local council opposing the development, or arguing for stricter management controls over the proposal (☛ go to Chapter 5 for information).
- Take photos or videos of any activity (without trespassing) so that you have evidence of what is happening (☛ go to Chapter 13 for advice about taking action).

The law alone cannot protect threatened species – it is important that the community is educated more broadly about the need to protect species and actions they can take to assist with this. You can become active in education and protection campaigns conducted by groups such as the Threatened Species Network or Landcare.

Strict time limits apply to prosecutions, so it is important to act quickly in reporting any activity that you believe may be an offence. You can get some legal advice from the Environmental Defenders Office to help understand the appropriate action to take.

7.16 Protecting coastal areas

Coasts are tremendously important to most Australians. They provide a range of opportunities for recreation, they have immense cultural significance, they are very important to our quality of life, they are central to much economic activity and they contain very diverse and important habitats for both marine and land-based species.

Despite their importance, Tasmania's coastal areas continue to be managed haphazardly and remain under great pressure from residential, tourism and other developments.

This has resulted in ribbon developments, subdivision occurring in sensitive coastal areas and a loss of character in coastal towns. Insensitive coastal development also continues to contribute to fragmentation and damage to ecological communities and numerous other environmental and social problems.

How are our coastal areas managed and protected?

A wide variety of activities occurs within the coastal zone - everything from agriculture, fishing and recreation to sewage treatment and outfalls. The coastal zone is also affected by activities inland, such as farming, forestry and industry.

Adding to this complexity, a large number of authorities are responsible for managing coastal areas - local councils, national park managers, environmental authorities and fisheries agencies (the level of integration and co-operation between the various bodies varies, depending on location and management needs).

The *State Coastal Policy 1996* was developed in recognition of the need for a more integrated coastal management system to protect our coastal resources.

Where do I find out about coastal zoning?

Land use zoning in coastal areas is contained in local council Planning Schemes. Different zones apply in the coastal zone, including coastal reserve, coastal protection zone or public open space.

To find out the zoning for any area of coast, contact the relevant Council or the Tasmanian Planning Commission. They have copies of the relevant Planning Schemes and will be able to assist you. Councils usually also have planning schemes available to download from their websites.

Also, you can check the Land Information System of Tasmania (**LIST**) to see the land use zone layers on various maps.

Zoning may also apply to some marine areas, for example when an area is set aside as a marine reserve or for marine farming.

The Coastal Policy

In 1996, the State Coastal Policy was developed in an attempt to address concerns about lack of consistent management approaches in coastal areas. The policy is part of Tasmania's Resource Management and Planning System - built around principles of sustainable development

☛ Go to Chapter 4 for details about this system.

The Coastal Policy contains provisions that must be implemented through coastal management plans and local government *Planning Schemes*. However, the Coastal Policy has been contentious since its introduction, and has been the subject of much litigation in relation to development applications in coastal areas.

The Coastal Policy is now extremely outdated and urgently needs to be replaced by a policy that takes into account national and international environmental law best practice and principles. Given that Tasmania has 4,800km of coastline, an updated, more comprehensive and contemporary Policy needs to be implemented in order to protect coastal values.

A few years ago, the government proposed a draft *State Coastal Policy 2008* to replace the existing Policy. However, after careful review, in May 2011, the Tasmanian Planning Commission rejected the draft The Planning Commission found that the draft Policy was largely ineffective, especially in dealing with current problems such as climate change. The draft Policy also failed to take into account established environmental principles such as the Precautionary Principle (☛ see Chapter 15 for more information about the Precautionary Principle).

The Premier accepted the Commission's recommendations and did not adopt the proposed Policy. As a result, the *State Coastal Policy 1996* remains in force.

The Tasmanian Government has established an Interdepartmental Committee to oversee the development of a new "Coastal Protection and Planning Framework". The first phase of that project, a draft Coastal Policy Statement, was released for public comment in July 2013. The second phase, an Implementation Plan outlining how the policy statement will be given effect, has yet to be released.

What is the 'Coastal Zone'?

Defining the Coastal Zone is vital to good management, since it needs to extend not only to coastal habitats, but also far enough inland to embrace all those human activities that have significant impacts on the amenity and environment of the coast.

Following lengthy legal proceedings, the *State Coastal Policy Validation Act 2003* settled on this definition of the coastal zone:

> ***State waters and all land to a distance of one kilometre inland from the high-water mark.***

"State waters" are defined in the *Living Marine Resources Management Act 1995* as:

> ***Waters adjacent to the State out to the outer limit of our territorial sea and inward to include any marine or tidal waters and any land which is swept by those waters to the highest landward extent.***

The definition of "State Waters" specifically excludes inland waters under the *Inland Fisheries Act*, such as Rushy Lagoon and Pittwater.

The definition based on distance provides greater certainty for planners and landowners. However, the arbitrary exclusion of anything outside the 1km zone can potentially exclude areas which influence coastal values, such as extensive inland dune fields and activities higher in the catchment that ultimately impact on water quality in coastal areas.

Management of Coastal Hazards

As result of varying factors such as time, extreme weather and climate change, Tasmania's coast line is continually changing. These influences can cause sea levels to rise, triggering tides, waves and floods, which all contribute to coastal inundation and erosion.

In August 2012, the Tasmanian Climate Change Office released a range of tools to assist the community and decision-makers to better understand, plan for and manage coastal hazards. These include:

- A technical report outlining the importance of understanding climate change in order to better manage the future of Tasmania's coast line;
- Sea Level Rise Planning Allowances; and
- Coastal Inundation mapping

Sea level rise and climate change

Impacts of climate change on the coasts will range from gradual impacts to major events such as flooding, storm surges, erosion and submersion.

According to the Tasmanian State of Environment Report 2009,

> '*... Coastal landforms, and particularly sandy coasts, are one of the most mobile and dynamically changing geomorphic landforms in Tasmania. Coasts can, and do, change their physical form significantly over relatively short periods...More recent sea-level rise (estimated at 10–20 cm during the last century) and climate change are likely to increase or accelerate past coastal hazards where these existed previously, and initiate new phases of flooding and erosion on some shores that were previously in equilibrium.'*

The Tasmanian Climate Change Office has also released a range of guidance documents and case studies to assist councils to plan for sea level rise and related climate impacts.

Local councils have an increasing responsibility for dealing with foreseeable events such as sea level rise, flooding, extreme weather events (leading to erosion or land slips), or increased bushfire. When Councils assess development applications, or revise their *Planning Schemes*, or provide services they should consider and respond to these hazards.

However, while Council and public authority responsibility is limited by the *Civil Liability Act 2002*, there is increasing concern that, given the wealth of information currently available regarding climate risks, planning authorities may be held responsible for future damages if the authority has failed to take those matters into account in its planning and assessment activities.

Sea Level Rise Planning Allowances

The Tasmanian Climate Change Office Technical Report analyses predicted future greenhouse emissions to inform the way coastal resources are managed. The information is useful for projecting the impacts of coastal variables and developing strategies to deal with impending coastal hazards.

On the basis of the detailed, statewide analysis, it is recommended that all coastal management policies (including planning schemes) should allow for a sea level rise of 0.2 metres by 2050 and 0.8 metres by 2100.

To date, there are no formal legislative mechanisms which implement these allowances. The Tasmanian Planning Commission and the Department of Emergency Management are in the process of finalising a Coastal Hazards Code to apply to planning schemes throughout the

state. It is likely that the Code will require developments in identified coastal hazard areas to demonstrate that appropriate allowance has been made for sea level rise.

Coastal Inundation and Erosion Maps

Based on the sea level rise planning allowances, the State government has recently released coastal inundation maps to illustrate the likely impacts of inundation over time. This information will inform the *Coastal Hazards Code*, zoning in individual planning schemes and the development of the Coastal Management and Planning Framework.

These maps can also help you to predict how weather will affect your property or the coastline in your area in the future. The inundation maps are available at www.thelist.tas.gov.au. To view the maps, use the LISTmap function and select the 'Coastal Vulnerability' category from the available layers.

You will need to zoom in to a scale of at least 1:20,000 to see the relevant lines on the map which indicate potential inundation.

Coastal erosion maps are also being developed and should be released soon.

How is the State government involved?

The coastal zone is administered by state agencies and local councils under a wide range of statutes (see below).

Government agencies responsible for coastal areas on land are:

- ***Local government*** - generally responsible for handling planning and development approvals
- ***Parks and Wildlife Service*** – responsible for management of national parks and reserves
- ***DPIPWE*** - responsible for giving advice on coastal matters

  DPIPWE no longer has a dedicated Coastal and Marine section, so coastal enquiries are generally directed to the Resource and Conservation Branch.
- ***Crown Land Services*** (also within DPIPWE) - responsible for the management, leasing and sale of Crown land areas, many of which are in coastal areas.

The main government agencies responsible for management of marine based activities are:

- ***Water Management Branch*** (DPIPWE) - administers marine farming and wild fisheries; jointly manages marine reserves
- ***Parks and Wildlife Service*** – jointly manages marine reserves
- The ***Conservation Branch*** also assists with the coordination of scientific and information services.

How is the Federal government involved?

The Federal government has a supportive role too, and has some limited statutory powers in coastal management.

Where coastal developments may have a significant impact on matters of national environmental significance, the Department of Environment will be involved in the assessment and approval of the development (☛ see Chapter 15).

The government's supportive role includes implementation of the *Caring for our Coasts* policy, which comprises the National Coastal Risk Assessment, Community Coast Care Program and the Great Barrier Reef Rescue Plan.

A Coasts and Climate Change Council was founded in 2009 to report to the Minister on coastal issues. The Council delivered its first report in December 2011, advising that a coordinated effort needed to be led by the Federal government in order to effectively manage climate risks.

What laws are used to protect coastal areas?

The following Acts are relevant:

- State Policies and Projects Act 1993
- Land Use Planning and Approvals Act 1993
- Environmental Management and Pollution Control Act 1994
- Living Marine Resources Management Act 1995
- Marine Farming Planning Act 1995
- Nature Conservation Act 2002
- National Parks & Reserves Management Act 2002

The aim of the whole coastal management system is to deliver sustainable development through the different arms of government across the state. The controversy over the *State Coastal Policy* continues to hamper coordinated and effective efforts at coastal management.

How is the community involved?

Community involvement is vital to sound management of coastal areas. You can be involved in a number of ways:

Contribute to coastal planning schemes

Members of the public can formally comment on new or revised local government Planning Schemes, and can have input into or request amendments to planning schemes

☛ Go to Chapter 5 for more information about this.

New planning schemes or proposed amendments to existing ones are advertised in local newspapers. You can view draft *Planning Schemes* (or amendments) in local council offices during a period of public display and make comments.

Similar rules apply to *Marine Farm Development Plans* and *Fisheries Management Plans*

☛ Go to Chapter 9 for more information about fisheries and marine areas.

Have a say about proposed developments

You can make representations to Council about proposed developments in coastal areas that are advertised in local newspapers.

You can view the applications in the Council offices during the public comment period and then make representations to Council and the Tasmanian Planning Commission (if necessary)

☛ Go to Chapters 5 and 14 for more information.

You should refer to the *Planning Scheme* to find out the criteria that the Council must consider in making a decision.

Lodge an appeal against approval of a coastal development

Members of the public who have made a representation about a development proposal have a right to appeal if they are unhappy with a council decision. These appeals are heard by the Resource Management and Planning Appeal Tribunal

☛ go to Chapter 5 for information about these options.

The Tribunal also handles appeals regarding other resource management issues, such as fisheries

☛ go to Chapter 9 for more information.

Help enforce laws designed to protect coastal environments

Planning and pollution laws:
If you notice illegal development, pollution or other environmental harm taking place, you can contact the authorities and ask them to take action, or you can initiate legal action yourself under the relevant civil enforcement provisions.

Protected species and coastal vegetation:
If threatened vegetation species are being cleared without a permit, you should report this to the Biodiversity Conservation Branch within DPIPWE.

Other laws:
It is an offence to clear vegetation on Crown land without a permit obtained from the relevant State agency. You should report all unauthorised activities, such as clearing, in coastal reserves to *Crown Lands Services*.

It is also an offence to clear more than one hectare of coastal vegetation on private land without a Forest Practices Plan. A Forest Practices Plan should not be issued in respect of threatened native vegetation communities such as wetland vegetation (see Schedule 3A of the Nature Conservation Act 2002).

Also, check to see if landowners are complying with the conditions of any conservation covenant, land management plan or Forest Practices Plan.

If you are concerned about something that is happening in a coastal area:

- Write down as many details as possible of the incident you observed and take photographs if you can.
- Contact the landholder (private, state or local government), if known, and discuss your concerns.
- If you do not know who the landowner is, contact the local council, or call DPIPWE on 6233 6518.

☛ Go to Chapter 13 for more information about taking action.

Contribute to Management Plans

A few Management Plans have been prepared for coastal areas - some are prepared by local councils, some by the *Water and Marine Resources Branch of DPIPWE* and some by the *Parks and Wildlife Service*.

Remember that Management Plans exist for both **terrestrial** as well as **marine** coastal areas. Where a management plan is developed under legislation, there may be a legal requirement for public input so look out for a public notice in local newspapers.

There is no central register for Management Plans. In the first instance, you could contact DPIPWE to see what management plans have been approved in your area (see contacts,

below). You can also ask your Council and your local State member of parliament for information about coastal Management Plans.

Get involved directly in coastal protection

At a government level:

The Natural Resource Management (NRM) process attempts to link all government and non-government people who have an interest in resource management issues. Regional coastal facilitators can be contacted through NRM.

At a community level:

Coastcare community associations - such as the Southern Coastcare Association of Tasmania (SCAT)- help to monitor and manage the coastal zone.

8. Forestry Operations

Tasmania has a rich forest estate covering extensive areas of both public and private land. The forests are highly valued as important wildlife habitats, as a source of clean water, as tourism and recreational assets and for the various forest products which they offer.

Forestry is an important and dominant industry in the state and can have major environmental implications, including loss of biodiversity, habitat fragmentation and water interception. For this reason, protection and sustainable management of forests continues to be a contentious public issue in Tasmania.

8.1 Forestry Definitions

In order to interpret forestry laws it is important to understand a few key definitions:

What are 'Forest Practices'?

Forest practices include:

- establishing forests (including regeneration of native forests);
- growing or harvesting timber (including plantations);
- clearing trees (for any purpose);
- clearing and converting threatened native vegetation communities;
- harvesting tree ferns; and
- works associated with growing, harvesting or clearing trees, such as constructing roads and operating quarries.

What are 'Trees'?

Trees are defined as woody plants with a height or potential height of 5 metres or more that are native to Tasmania or introduced and used for harvesting (such as plantation species). The definition also includes tree ferns.

What are 'Threatened Native Vegetation Communities'?

Vegetation communities listed in Schedule 3A of the *Nature Conservation Act 2002* (including things like E. ovata forest and woodland, riparian scrub and wetlands). This list protects particular forest types, rather than individual species.

What is 'Clearing'?

This includes clearing, cutting, pushing, removing or destroying trees.

What is 'Clearing and conversion'?

Clearing and conversion means deliberately removing all or most of a threatened native vegetation community from an area of land and:

- leaving the area of land cleared; or

- replacing the threatened native vegetation with another species, agricultural works (such as farm sheds, dams, fencing and access roads), residential, commercial or other development.

Management practices such as applying fertilizers, burning off, slashing, removing weeds and grazing livestock do not constitute 'clearing and conversion' unless they are carried out with the intention of removing the vegetation community.

What legislation applies?

Two principal Acts regulate the commercial use of forests in Tasmania:

1. Forestry Act 1920

This Act sets up the public forestry corporation, *Forestry Tasmania*, to have 'exclusive management and control of all areas of forest reserves, state forest and the products thereof.' In practice, *Forestry Tasmania* has responsibility for managing 1.5 million hectares of State forest and controls forest practices, including harvesting, tourism activities, research and management practices such as planned burns.

After a recent government commissioned review of Forestry Tasmania, the Resources Minister Bryan Green announced a plan to split the functions of the organisations into commercial operations (to be managed by Forestry Tasmania) and non-commercial operations (to be transferred to Parks and Wildlife Service).

2. Forest Practices Act 1985

All forest practices, including activities in State forests and on private land, are subject to the *Forest Practices Act 1985*.

This Act deals with the regulation of forest practices, both on public land and private land. The Act:

- establishes a *Forest Practices Authority* (and delegated *Forest Practices Officers*) to oversee forest practices
- provides for *Private Timber Reserves* to be established
- establishes a *Forest Practices Tribunal* to hear some disputes in relation to forestry matters
- requires forest practices to be carried out in accordance with the *Forest Practices Code* and specific *Forest Practices Plans*

8.2 The Forest Practices System

Generally, the forest practices system operates outside the Resource Management and Planning System which regulates most other land uses in Tasmania. The forest practices system is not subject to the same objectives and, significantly, public participation in the forest practices system is generally limited to those who are directly affected (such as adjoining property owners).

Important elements of the Forest Practices System are explained below:

Forest Practices Plans (formerly known as Timber Harvesting Plans)

Forest Practices Plans (**FPPs**) are site-specific operational plans that describe how forestry activities must be carried out for specific areas (known as 'coupes'). FPPs describe the proposed location of roads, how the land will be restocked with trees, measures for the protection of soils, water and natural and cultural

values, the estimated time for completion of the activities and the name of the intended timber processor.

Subject to a few exemptions, forest practices cannot take place until a Forest Practices Plan has been certified for the land (☛ see below). FPPs must be prepared in accordance with the *Forest Practices Code 2000*.

Forest Practices Code

The Forest Practices Code is a comprehensive set of guidelines for measures to provide 'reasonable protection' for areas subject to forest practices. For example, the Code sets out minimum buffer distances for watercourses and guidance on designing access routes.

All forest practices must be conducted in accordance with the Forest Practices Code (☛ see below).

The Forest Practices Code has been under review for a number of years. In April 2009, an expert scientific panel reviewing the biodiversity provisions of the Forest Practices Code reported to the Forest Practices Authority. The report identified a lack of guidance regarding implementation of the provisions of the Code. The Review recommended a number of changes, including providing better protection to high biodiversity forests.

A number of the recommendations are being progressed through Forest Practices Authority guidelines, however the Code has yet to be formally updated.

For more information, including the full Report, go to the Forest Practices Authority website.

Forest Management Plans

Under the *Forestry Act 1920*, *Forestry Tasmania* can prepare a *Forest Management Plan* for any state forest or forestry district. Forest management plans are prepared after consultation with statutory authorities (such as the *EPA Division*, the *Conservation Branch* and the Department of Infrastructure, Energy and Resources), industry stakeholders and others who have registered an interest in making submissions (see Section 22D). You can generally only register your interest during specific periods, so look out for public notices in the newspaper calling for interest.

*A statewide Forest Management Plan, **"the Sustainability Charter"**, was released in August 2008. A new **draft Forest Management Plan** was released for comment in March 2014, and will be reviewed later in 2014.*

Permanent Native Forest Estate Policy

As part of its commitments under the Regional Forest Agreement, the Tasmanian government has developed a Permanent Native Forest Estate Policy, outlining its agreed approach to phasing out broad scale clearing and conversion of Tasmania's native forest.

The Policy initially provided for broad scale clearing and conversion of native forest on private land to be phased out by 2015. To achieve this, clearing on private land was limited to 40 hectares per property, per year. However, an amended Policy released in September 2011 allows the Forests Minister to authorise a higher clearing limit, where he is satisfied that there is a 'substantial public benefit'.

Assessment of applications for clearing in excess of the policy limit were previously managed by the independent Forest Practices Authority. Under the revised Policy, decisions in relation to clearing assessments are made by the Forests Minister.

Forest Practices Authority

The Forest Practices Authority (**FPA**) is an independent statutory body that is responsible for overseeing and enforcing compliance with the forest practices system. The FPA develops the *Forest Practices Code*, trains Forest Practices Officers and oversees the administration of Private Timber Reserves (with support from Private Forests Tasmania).

The FPA also investigates alleged breaches of the *Forest Practices Code* or of any Forest Practices Plan, and can impose fines or suspend forestry operations where appropriate.

Each year, the FPA conducts audits of FPPs and reports on the results of these audits in its annual report. The FPA also produces an annual State of the Forests report.

Forest Practices Officers

Forest Practices Officers are authorised by the FPA to investigate breaches of forest practices. Some officers are also authorised to prepare and certify Forest Practices Plans.

Forest Practices Tribunal

The Forest Practices Tribunal hears objections in relation to a limited range of forest practices disputes, primarily where forest operators are unhappy with decisions in relation to their forest practices plans, three year plans or applications for private timber reserves.

Adjoining neighbours of a proposed Private Timber Reserve can also object on limited grounds of "direct and material disadvantage" (☛ see below). There are no formal opportunities for third parties to object to provisions in a Forest Practices Plan, though the Forest Practices Tribunal has the power to join any party to proceedings once they are instituted. The Tribunal is not required to accept any applications to join.

The Forest Practices Tribunal has been incorporated into the Registry of the Resource Management and Planning Appeal Tribunal.

The Tribunal is generally made up of three members, including a lawyer and two members with experience in harvesting, road construction and forest management. Where an appeal is likely to raise questions about threatened species or the protection of threatened native vegetation communities from clearance and conversion, the Tribunal must include a person with experience in agriculture and forestry (approved by the *Tasmanian Farmers and Graziers Association*) and a person with a conservation science background (nominated by the Minister).

General requirement to prevent environmental harm

Forest practices must comply with the provisions of the *Environmental Management and Pollution Control Act 1994* (☛ go to Chapter 6 for more information about this legislation).

8.3 What is the Tasmanian Forests Agreement?

On 7 August 2011, the state and Federal governments signed the Tasmanian Forests Intergovernmental Agreement (**IGA**). The IGA was intended to give effect to a Statement of Principles developed by key stakeholders from the forest industry and environmental groups, seeking a more sustainable balance between commercial and conservation interests in Tasmania's forests. The IGA aimed to facilitate this objective by increasing protection for identified high conservation value forests, while providing continued certainty for the forest industry (having regard to global economic downturn) and compensation and re-training for affected workers.

Legislation to give effect to the IGA, the Tasmanian Forests Agreement Act 2013, commenced on 3 June 2013. The TFA Act provides for:

- A reduction in the current minimum wood supply requirements, from 300,000m3 to 137,000m3;
- Establishment of a Special Council, comprised of signatories to the Tasmanian Forests Agreement and government representatives, to advise the Minister on implementation of the agreement;
- Immediate suspension of forestry activities on approximately 490,000 ha of State forest; and
- A staged process for the creation of reserves in areas of State forest currently available for harvesting. A flowchart explaining this complex process is available on the EDO Tasmania website.

Any orders in relation to proposed reserves are required to pass through both houses of parliament a second time. If proposed reserve orders are rejected by either house of parliament, the legislation will be revoked (though any reserves created prior to the revocation will remain in force).

The TFA Act had a tumultuous history, and remains subject to controversy. Some of the contentious amendments to the Act made by the Upper House prior to its commencement include:

- Allowing access to reserves for small scale harvesting of specialty timber;
- Preventing the creation of reserves over many of the identified areas until Forestry Tasmania has achieved Forest Stewardship Council certification;
- Requiring the 'durability report' submitted with each proposed reserves order to address any significant protest action or market campaign activity, if requested by either House of Parliament. The durability report, prepared by the Special Council, will assess the ongoing implementation of the TFA.

Following its election in March 2014, the Tasmanian Liberal government advised that it would introduce legislation to 'tear up' the TFA Act. Details of this legislation have yet to be released.

For more information about the agreement, go to the Tasmanian Forests Agreement website.

Special Council

The responsibilities of the Special Council are to:

- Promote the Tasmanian Forest Agreement (TFA) vision
- Advise the Minister on the implementation of the TFA;
- Advise the Minister on the administration of the TFA Act
- Advise the Minister on the need to harvest special species from certain areas set out in the TFA Act.
- Prepare "durability reports".

Durability report

These reports must cover all aspects of the TFA and whether it is being effectively implemented. The durability reports will also address whether there "has been substantial active protests or substantial market disruption".

The first durability report was released in July 2013.

8.4 What is the Regional Forest Agreement?

Regional Forest Agreements (**RFAs**) are 20-year agreements between the Commonwealth Government and various State governments to address the goals of the National Forest Policy Statement. The objectives of RFAs are to establish a Comprehensive Adequate and Representative (CAR) Reserve System (based on agreed criteria – the JANIS criteria), to assess forest values and protect biodiversity and to provide secure access to wood resources.

In 1997, the Tasmanian and Commonwealth Governments signed the *Tasmanian Regional Forest Agreement* (which is formally recognised under the *Regional Forest Agreement Act 2002* (Cth)). The agreement covers the whole of Tasmania – identifying reserve areas and areas which are available for harvesting, conversion and other uses.

The Tasmanian RFA has been amended on a number of occasions, and was supplemented by the Tasmanian Community Forests Agreement in 2005. You can find the RFA, the Community Forests Agreement and all supporting documents on the Department of Agriculture, Fisheries and Forestry website.

Logging operations in Tasmania are required to be undertaken in accordance with the terms of the RFA. Tasmania's forest practices system is recognised in the RFA as the mechanism to implement appropriate protections for forest practices on public and private land.

Forestry operations that are undertaken in accordance with an RFA are exempt from some export controls and from additional assessment and approval requirements under the *Environment Protection and Biodiversity Conservation Act 1999.*

The RFA versus the EPBC Act

In Brown v Forestry Tasmania, Senator Bob Brown challenged whether proposed logging in the Wielangta State Forest would be carried out "in accordance with the RFA", particularly clause 68 which provides: *"The State agrees to protect Priority Species [listed threatened species]...through the CAR reserve system or by applying relevant management prescriptions."*

Specifically, the case challenged whether the Forest Practices Plans issued in respect of particular forestry coupes were sufficient to protect the threatened wedged-tail eagle, swift parrot and Weilangta stag beetle (all listed as 'Priority Species' under the RFA).

Justice Marshall examined the management prescriptions included in the Forest Practices Plans and the system of monitoring, adaptation and enforcement in place for forestry operations in State forests. Justice Marshall was not satisfied on the evidence that the management prescriptions were adequate to actually protect the three threatened species. As a consequence, the forestry operations were not *"in accordance with the RFA"* and were not exempt from the operation of the *EPBC Act*.

The Court granted an injunction to halt the logging until the necessary approvals were obtained. Forestry Tasmania appealed against this decision.

The court summary for this case is available at the Austlii website.

In February 2007, the Tasmanian and Commonwealth Governments amended the Tasmanian RFA to state that the parties were satisfied that the CAR Reserve System and management strategies adopted under the Tasmanian Forest Practices System were adequate to protect rare and threatened species.

In November 2007, the Full Court held that the RFA required only that regard be given to the assessment of environmental, social, cultural and economic values, that a CAR reserve system be established and management practices be put in place for the ecologically sustainable management and use of forests. The RFA embodied a compromise between environmental and economic considerations—the compromise would necessarily limit forestry operations, but given the nature of forestry activities the RFA could not guarantee

that the environment, including threatened species, would be protected. Therefore, the Federal Court held that clause 68 could not represent a guarantee that the State would protect threatened species, only that the State would provide for the protection of threatened species.

In the view of the Court, the 2007 RFA amendment merely "clarified" the true intention of the RFA, that forestry operations be exempt from Commonwealth approval provided a management system was implemented which had regard to environmental, social and economic values. Their Honours were satisfied that the CAR reserve system and forest practices system provide a framework for the protection of threatened species, consistent with clause 68 of the RFA.

↝ The court summary of this decision is also available at the Austlii website.

This decision narrows the potential to challenge the validity of a Regional Forest Agreement on the grounds that it does not satisfy either the definition of an RFA or the conditions of the RFA Act. Any forestry operations will be considered RFA forestry operations where they are carried out in any area covered by an RFA with the Commonwealth. Following this decision, RFA forestry operations will be exempt from the EPBC Act because the objectives of the EPBC Act are taken to be satisfied by the provisions of the RFA. The decision also highlights the level of responsibility placed on governments who are party to RFAs to ensure that forests are managed sustainably.

Senator Brown's application to the High Court for leave to appeal against this decision was refused.

☛ See Chapter 15 for more information about the operation of the EPBC Act.

The RFA is subject to five yearly reviews. The next scheduled review, the final before the current RFA expires, was due in 2012, but has yet to commence.

↝ The first two reviews of the Tasmanian RFA are available on the DAFF website.

8.5 How is forestry regulated on private land?

Unless private land is declared as a Private Timber Reserve, forest practices proposed for any particular area of private forest must comply with the relevant planning scheme and must obtain any necessary permits (☛ go to Chapter 5).

In many rural areas, forestry is a 'permitted use' and Council must therefore issue a permit for forest practices (but can do so subject to conditions). If forest practices are listed as a 'discretionary use', a permit will be required and the public will be given an opportunity to comment on the proposed forest practices before Council decides whether or not to issue the permit. If you make a representation in relation to proposed forest practices, you can appeal to the Resource Management and Planning Appeal Tribunal to challenge a decision to grant a permit.

If a permit is required, it will be required in addition to a Forest Practices Plan for the land. Forest practices cannot take place on the land until both a permit and a certified FPP have been issued.

If private land is declared as a *Private Timber Reserve*, forest practices on that land (including access roads) are exempt from the *Planning Scheme* and do not require a development permit.

↝ The Forest Practices Authority has also published a very useful "Guide to Planning Approvals for Forestry in Tasmania".

8.6 How is forestry regulated on public land?

Forest practices in State Forests are exempt from the *Land Use Planning and Approvals Act 1993* and do not require any development permits. Forest practices must be carried out in accordance with the relevant Forest Management Plan and a Forest Practices Plan for the forest coupe.

Forest practices on other public reserves and Crown land are subject to the *Land Use Planning and Approvals Act 1993* and the *Forest Practices Act 1985*.

8.7 Private Timber Reserves

Any landholder may apply to the Forest Practices Authority to have their land or part of their land declared a Private Timber Reserve (**PTR**). A PTR must be used only for establishing forests, harvesting timber and compatible activities.

In practice, the assessment of Private Timber Reserve applications is delegated to Private Forests Tasmania. An application must include a description of the relevant land (preferably with a map), and a list of all persons holding a legal or equitable interest in that land, or in the timber on that land.

Notice that an application for a PTR has been made must be given to the relevant local council and also advertised in the local newspaper. You can inspect applications for PTR status at the Private Forests Tasmania office – you may be charged a fee for this.

If land is declared as a PTR, a notice must be published in the Government Gazette and the PTR status is recorded on the title deed. You can search for declared PTRs on the LIST maps.

What are the criteria for Private Timber Reserves?

When assessing an application for a PTR, Private Forests Tasmania and the FPA will consider a number of criteria.

Before approving the application, the FPA must be satisfied that:

- the land is suitable for forestry activities (this is generally limited to an assessment of land capability);
- no-one with an interest in the land (such as tenants) will be disadvantaged;
- adjoining landowners, and those within 100 metres, will not be "directly and materially disadvantaged";
- the local Planning Scheme does not prohibit forestry activity on the land.

  Forest practices are not "prohibited" just because you need a permit for the activities;
- the application is not contrary to the public interest.

Who can object to an area being declared a Private Timber Reserve?

Only the following people can make an objection to an application for a PTR:

- any person with a legal interest in the land (e.g. a lessee, mortgagee, co-owner)
- any owner of property that adjoins, or is within 100 metres of, the proposed PTR
- the local Council or a State authority.

Neighbouring owners are restricted to objecting on the grounds that the declaration of a PTR will "directly and materially disadvantage" them (see Section 8(2)(f) of the Act). The Forest Practices Tribunal has held that direct and material disadvantage can include issues such as reduced property values and residential amenity, traffic impacts, impacts on water supply (both quality and quantity) and increased bushfire hazards resulting from forest practices.

The local Council is able to make an objection and an appeal on "public interest" grounds. If you do not have a direct interest in the property, you should lobby your local council to make an objection.

Objections must be made within 28 days of notice of the application appearing in a newspaper. Objections must be sent to the Forest Practices Authority and to the applicant.

The applicant and any person who made an objection can appeal to the *Forest Practices Tribunal* against the FPA's decision in relation to the PTR application.

This appeal must be made within 14 days of the decision.

If you have made an application for PTR status and it is refused on the basis of the impact on natural and cultural values, the FPA may require you to enter into a conservation covenant to protect those values (☛ see chapter 7) and may provide compensation for any loss of value of your property.

8.8 Forest Practices Plans

Subject to a few exceptions discussed below, a Forest Practices Plan (**FPP**) must be approved before any forest practices can be carried out. This includes establishing forests, harvesting timber, clearing trees, clearing and conversion of threatened native vegetation communities, harvesting tree ferns and any associated quarrying or roading.

A harvester who operates without a certified FPP may be fined up to $130,000. It is also unlawful for a timber processor to purchase timber that has been harvested from land without a certified FPP.

When can you operate without a Forest Practices Plan?

The Forest Practices Regulations set out a number of exemptions for small scale operations that do not require a forest practices plan. These include:

- Clearing less than 100 tonnes or 1 hectare of timber in one year, provided the land is not 'vulnerable land' (see below);
- Clearing native vegetation regrowth from an area that has previously been cleared and converted to a non-native forest use;
- Clearing reasonable buffers for existing infrastructure (to protect the infrastructure from damage or for public safety);
- Clearing associated with approved dam works;
- Clearing necessary for creating and maintaining easements for electricity infrastructure and associated tracks

  the clearing must be carried out in accordance with an approved environmental management plan;
- Clearing associated with construction and maintenance of gas pipelines, railway corridors and public roads;
- Clearing associated with buildings and related development approved under a planning permit;
- Clearing carried out in accordance with an approved conservation covenant, vegetation management plan or a fire management program;
- Harvesting up to 6 tree ferns annually in an area (with the consent of the owner);
- Establishing trees in areas less than 10 hectares which have not had trees on them for at least 5 years (provided you do not need to build any roads or quarries).

'Vulnerable land' includes:

- Land within a streamside reserve or machinery exclusion zone (check the Forest Practices Code. These reserves are 10-40m on either side of a watercourse, depending on the catchment area)
- Steep land (exceeding the landslide threshold slope in the Forest Practices Code)
- Land which is highly erodible
- Land which contains threatened native vegetation community
- Land inhabited by threatened flora or fauna (☛ Go to Chapter 7)
- Land which contains vulnerable karst soil (as defined in the Forest Practices Code)

Who can submit a Forest Practices Plan?

Any person may prepare a Forest Practices Plan for an area of forest and submit it to a certifying Forest Practices Officer. A copy must also be sent to the local council with the development application (unless the land is a PTR).

A Forest Practices Plan must contain the following information:

- location of any watercourses within, or in the vicinity of, the coupe
- details of the forest practices to be carried out on the land
- measures to protect natural and cultural values
- in the case of a PTR, or where the FPP includes provision to revegetate an area, specifications of how the land is to be restocked with trees
- an estimated time period for the completion of the operations
- the name of the intended timber processor

How are Forest Practices Plans approved?

The Forest Practices Authority must determine an application for a Forest Practices Plan within 28 days of receiving the application. The FPA (generally, by a delegated Forest Practices Officer) can approve, amend or reject the proposed FPP.

A Forest Practices Plan must be in accordance with the Forest Practices Code and be subject to appropriate management prescriptions to protect threatened species (☛ see below and Chapter 7). If you have applied for a FPP, you can appeal to the Forest Practices Tribunal against a decision to refuse or to amend your FPP. In contrast, there is no opportunity for the public, including adjoining neighbours, to appeal against the approval of a FPP.

8.9 Threatened species and the Forest Practices System

Under the Forest Practices System, there are agreed procedures for the management of threatened species. The FPA and the DPIPWE have joint roles and responsibilities in relation to managing threatened species within Tasmanian forests. In particular, before it can certify a Forest Practices Plan for activities which will impact on a threatened species, the FPA must include management prescriptions to protect the species (usually, these are developed in consultation with DPIPWE officers).

Activities carried out under a certified FPP do not require a permit under the *Threatened Species Protection Act 1995* in relation to any harm that may be caused to affected species.

In addition, the DPIPWE must coordinate and monitor research into the impacts of land use on threatened species' habitat and populations. The FPA also have the responsibility to train Forest Practices Officers who supervise and plan forest operations, about threatened species.

You can download the *Agreed Procedures for the Management of Threatened Species under the Forest Practices System* from the DPIPWE website.

What happens if a Forest Practices Plan is breached?

The following activities are offences under the *Forest Practices Act 1985*:

- carrying out forest practices which require a Forest Practices Plan without a FPP
- breaching a condition of a Forest Practices Plan
- a timber processor purchasing timber which has not been harvested in accordance with a Forest Practices Plan

The maximum fine for these offences is $130,000. For continuing offences, you can also be fined $6,500 for each day that you operate illegally. Details regarding recent enforcement activities are available in the FPA Annual Report.

Unlike the Resource Management and Planning System, there are no civil enforcement provisions to allow the public to take action for breaches of the *Forest Practices Act 1985*.

If you believe that someone is operating without a Forest Practices Plan, or not complying with the conditions of their plan, contact the Forest Practices Authority and ask them to investigate.

For any forest practices which involve the harvesting of more than 100,000 tonnes of timber per year, the responsible person must lodge a compliance report with the FPA at the expiry of the FPP (☛ see section 25A of the Act). If the FPA suspects that the operator is not complying with the FPP, they can also ask the responsible person to submit a progress report. The responsible person can appeal against this request (☛ sections 25B and 25C).

The Forest Practices Authority can vary or revoke an approved FPP for any reason it considers sufficient. If you consider that a FPP should be varied or revoked (for example, if there is new evidence that the area is habitat for a threatened species), contact the FPA.

How can I view a Forest Practices Plan?

Draft FPPs

Applicants for an FPP are required to notify affected landowners at least 30 days prior to the commencement of operations. There is no statutory provision for consultation, but you can make your views regarding the proposed FPP known to the responsible Forest Practices Officer. A Forest Practices Officer is not to approve a proposed Forest Practices Plan unless the notification requirements have been met.

FPA policy also encourages Forest Practices Officers to consult with local government prior to certifying a FPP. In some instances, for example, if an area is zoned for landscape protection under a planning scheme, formal consultation is required.

Certified FPPs

If you are concerned about forest practices in your area, it is a good idea to try to get a copy of any relevant FPP. You can find out what FPPs have been issued for your area by checking the FPP Location Map on the Forest Practices Authority website. If you have any enquiries or complaints about particular forest practices, you should direct these initially to the responsible person listed on the front page of the relevant FPP.

There is no specific legal requirement to provide copies of Forest Practices Plans. However, the Forest Practices Code states that *'relevant information within a Forest Practices Plan should be made available to interested parties in an effective and efficient manner.'*

The Forest Practices Authority has also released a policy on public access to FPPs, recommending that people who are directly affected (such as landholders within 100 metres of a proposed FPP) should be provided with copies of plans free of charge. Parties who are not directly affected can apply to the FPA for a copy of the FPP. These requests will be referred to the applicant for response initially. If you do not receive a response from the

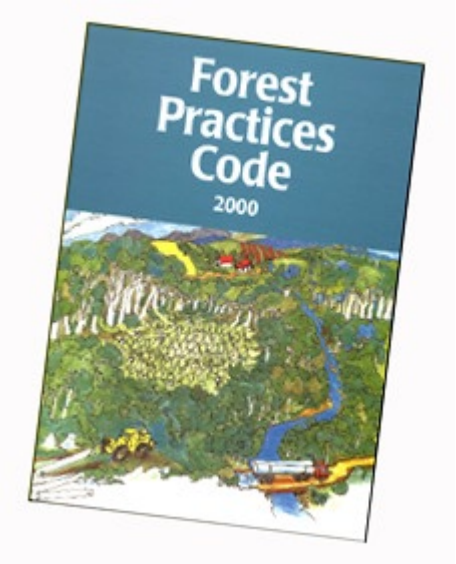
application, the Forest Practices Authority will respond and can provide you with a copy of the relevant FPP.

Personal information, such as the name and contact details of the applicant, and commercial-in-confidence information, such as wood supply volumes, are not generally released with the FPP.

8.10 Forest Practices Code

The Forest Practices Code aims to provide 'reasonable protection' for the environment and is in the form of a comprehensive booklet which is available to the general public.

(☛ You can purchase the Code from *Service Tasmania* outlets or you can download it from the Forest Practices Authority website.



The Forest Practices Code 2000 is currently under review.

The Code sets out detailed standards, procedures and requirements for all forestry and incidental operations, including:

- standards for the planning of forest practices, harvesting and regeneration
- minimum buffer zones to protect watercourses, unstable areas, karst systems and threatened species
- guidelines for the design of access roads
- measures to protect natural and cultural values, such as karst systems
- provisions for chemical use, management of nuisances (such as dust and smoke)

Forest practices are still subject to the *Environmental Management and Pollution Control Act 1994* and legislation governing chemical use, such as the *Code of Practice for Aerial Spraying*

☛ go to Chapter 10 for more information.

What should I do if the Forest Practices Code is being breached?

Failure to observe provisions of the Forest Practices Code for areas covered by FPPs is a breach of the *Forest Practices Act 1985*. The Forest Practices Authority is responsible for enforcing the Code and investigates complaints made by the public. You can check out the results of past investigations in the FPA's annual report (available on their website).

Unlike the Resource Management and Planning System, there are no civil enforcement provisions to allow the public to take action if you believe that the Code is being breached. Instead, your best option is to make a complaint to the FPA. You can also lobby your local council to contact the Forest Practices Authority about breaches of the Code.

To help ensure that forest practices comply with the Forest Practices Act...

- Obtain a copy of the *Forest Practices Code* and request a copy of any relevant Forest Practices Plans. Try to understand what activities are allowed and what activities are prohibited - this will help you to work out the best approach to address your concerns. For advice about the forest practices system, contact the Environmental Defenders Office.
- Check whether the land is a Private Timber Reserve. If not, check your local Planning Scheme to see if a permit is required for forestry operations in the area.

- Try to gather as much information as you can about the forest practices. Observe anything you think may be a breach - check the FPP and the Forest Practices Code to see what activities are authorised.
- Report **all** breaches to the Forest Practices Authority. It is always best to put your complaints in writing and provide as much detail as you can. Send a copy of your complaint to the relevant Forest Practices Officer and the Chief Forest Practices Officer Download suggested form for public complaint
- Ask the FPA to let you know what they have done to investigate your report – follow them up if you do not hear back from them.
- If you think the Code needs to be upgraded in any way to provide better protection for natural and cultural values, lobby the FPA for a review of the document.
- Keep an eye on the public notice section of the paper for notices about reviews of Forest Management Plans. When a review is announced, register your interest.

8.11 What legal remedies are available?

If you are concerned about the impact of forestry operations on your property or the natural environment, a number of legal options are available.

Under the Forest Practices Act

If you are an adjoining landowner, you can object to any Private Timber Reserve if you can demonstrate that the proposal will directly and materially disadvantage you.

Report all offences to the Forest Practices Authority.

Under LUPAA

If forest practices are a 'discretionary land use' under the Planning Scheme, they will require a development permit (in addition to an FPP). You will be able to make a representation to the council about the impacts of the forestry operations.

☛ Go to Chapter 5 for more information about this.

If the council grants the permit, you can appeal to the Resource Management and Planning Appeal Tribunal

☛ Go to Chapter 14 for more information about appeals.

If forestry is a 'prohibited use' under the Planning Scheme, or is being carried out without a permit, you should report this to the local council. Ask the Council to investigate and take action to stop any unauthorised forestry activities. If the council does not take action, you may be able to take Civil Enforcement action yourself in the Tribunal.

Under EMPCA

Forest practices must comply with provisions of the *Environmental Management and Pollution Control Act 1994*. If your property or water supply is polluted as a result of forest practices, you may be able to take action under EMPCA to stop the Environmental Harm.

☛ Go to Chapters 6 and 10 for details.

- There is a Memorandum of Understanding between the EPA and the Forest Practices Authority that complaints regarding environmental harm caused by forestry activities will be investigated by the FPA. The EPA will forward any complaints it receives to the FPA for action.

Under the EPBC Act

If you believe that forest practices are not being carried out "in accordance with the RFA", you may be able to apply for an injunction under the *EPBC Act* on the basis that the forest practices are not exempt and need approval under that Act.

Please note, as demonstrated in the Wielangta decision, it is extremely difficult to establish that forest practices are not consistent with the RFA if the works comply with Tasmanian legislation.

☛ Go to Chapter 15

Under common law

Proprietary and other rights in land can be generally protected by common law by an action in 'nuisance' or 'trespass'. These are usually relatively time consuming and expensive but can be useful as a last resort.

☛ Go to Chapter 6

For more information about these options, contact the Environmental Defenders Office.

8.12 How are threatened species protected in logging areas?

A significant problem in Tasmania is that most threatened vegetation communities are not in national parks and reserves – they often occur in areas of public and private land that are subject to forest practices. Therefore, it is necessary to ensure that protection of these species is considered when developing and enforcing forest practices plans.

Threatened species processes

- The Director of Parks & Wildlife has power to enter into agreements and make land management plans with both private landowners and public authorities such as Forestry Tasmania to protect natural values.
- Where forest practices are proposed, special values in the forest (including threatened native vegetation communities and threatened species) are identified during the preparation of the Forest Practices Plan. These values may be protected in reserves within the coupe or by management prescriptions (such as not operating within line of sight of an eagle nest during the breeding season).
- The Forest Practices Authority and the Biodiversity Conservation Branch (formerly the Threatened Species Unit) have developed standard management prescriptions for a range of threatened species. These prescriptions will generally be included in forest practices plans where threatened species are likely to be impacted. The prescriptions are currently subject to review.
- Where a Forest Practices Plan has been approved, the forest operator will not be required to obtain any additional permits under the *Threatened Species Protection Act 1995* ☛ see Chapter 7.

Successful protection of threatened species relies in part on comprehensive information about the location of these species. The Biodiversity Conservation Branch has a range of databases and predictive models to identify areas of known and potential habitat for threatened species. However, the system is not fool-proof. If you believe that forest practices may impact on a threatened species that has not been considered in the Forest Practices Plan, contact the Biodiversity Conservation Branch and the Forest Practices Authority.

You can also lobby these bodies to take appropriate action if you believe that the standard management prescriptions are not adequate to protect particular species.

Vegetation clearance controls

The management of vegetation clearance that fall outside the definition of 'forestry operations' is a significant issue in Tasmania.

One million hectares of native vegetation has been removed in Tasmania, predominantly in the lowlands of the north-west, midlands and the south-east. Flinders Island and King Island have also been significantly affected. Eucalypt open forests, eucalypt woodlands and eucalypt tall open forests are most affected by the clearing.

The *Forest Practices Act 1985* covers most activities that will involve clearing more than one hectare of trees or clearing on vulnerable land. However, clearing associated with approved building developments (including subdivisions) no longer need to obtain a Forest Practices Plan. Assessment and approval of such clearing is the responsibility of planning authorities, subject to the *Land Use Planning and Approvals Act 1993* (☛ see Chapter 5).

In April 2007, the *Forest Practices Act 1985* was amended to also cover 'clearing and conversion' of threatened native vegetation communities (including non-forest communities such as wetlands, scrub and grasslands), even where less than 1 ha of the threatened community would be affected. Under the revised legislation, harvesting of threatened vegetation communities will be permitted (subject to a certified Forest Practices Plan), if the same vegetation type will be regenerated on the land. Clearing of a threatened vegetation communities and conversion to other uses (e.g. farmland, pine plantations) is generally prohibited.

However, the Forest Practices Authority can approve a Forest Practices Plan for 'clearing and conversion' if one or more of the following applies:

- the clearance and conversion is justified by exceptional circumstances (including physical safety, reducing bushfire risk, responding to a biosecurity risk or where the clearing is required by a court order);
- the activities authorised by the Forest Practices Plan are likely to have an overall environmental benefit;
- the 'clearance and conversion' is unlikely to detract substantially from the conservation of the threatened native vegetation community or conservation values in the vicinity of the threatened native vegetation community.

A Forest Practices Plan is not required to clear native vegetation regrowth on previously cleared and converted land, provided:

- the cleared land has not contained trees or threatened native vegetation communities for a period of at least 5 years; and
- the regrowth does not contain more than 20 eucalypts over 2 metres in height in any 0.5 ha area.

Exemptions also exist for clearing related to maintenance of existing infrastructure, construction of public roads, dams and power lines or clearing that is covered by an approved management agreement or bush fire plan.

The Forest Practices Authority "Guide to planning approvals for forestry in Tasmania" provides information on planning requirements for management of forested areas.

Regulating small scale clearing on private land is also a problem in Tasmania. Some local planning schemes include vegetation clearance controls, and most development applications require you to identify vegetation that will be removed as part of the development.

However, there are few restrictions on clearing native bush on private property if the cleared area is less than one hectare, and is not 'vulnerable land'. As outlined above, changes to the Forest Practices Regulations 2007 exempted clearing associated with buildings or associated development from the requirement to obtain a Forest Practices Plan. Therefore,

Councils will be responsible for regulating vegetation clearing associated with these activities in future, even if the clearing involves threatened vegetation or is carried out on vulnerable land.

Some local councils, generally in urban areas, maintain a Significant Tree register and approval is required to remove or damage these trees. Check with your local council about any protected trees in your area.

If private land contains important habitat for threatened species, DPIPWE may issue an Interim Protection Order or enter into a land management agreement with the landowner to regulate land clearing on the property (☛ see Chapter 7).

8.13 Bushfire damage and smoke pollution

Many rural property owners, including farmers, forestry operators and government authorities (such as Parks and Wildlife and Forestry Tasmania) periodically undertake low-intensity burn offs to reduce fuel (dead wood, leaf litter, bark and understorey plants) to reduce bushfire risks and for forest regeneration.

Smoke and fire damage resulting from these planned burns raises a number of environmental and public health concerns.

How are planned burns regulated?

The Tasmanian Fire Service (**TFS**) can declare any day or period to be a 'fire permit period' – look out for notices in your local newspaper announcing that a fire permit period has commenced.

During a fire permit period, you need a permit to light any fire:

- within a State forest, Crown land or other reserve (other than in designated campfire areas); or
- that is likely to cause clearance of vegetation.

You can apply for a fire permit for a planned burn by submitting an application and a "Burning Plan" to the Tasmanian Fire Service for approval. Checklists and Burning Plan templates are available on the TFS website.

Fire permits should not be issued where a fire officer believes that there is a significant risk that the fire may spread to other land or get beyond the control of the local fire brigade.

If a fire permit is issued, you must comply with the permit conditions and follow the approved burning plan (including not carrying out the burning in bad weather conditions). Provided you carry out the planned burn in accordance with the permit conditions, you will not be held responsible for any nuisance or damage caused by the fire.

Outside a fire permit period, permits for planned burns are not required. However, you may be liable for any damage caused by a fire you are responsible for. Therefore, it is advisable to contact the TFS to discuss your plans.

Forestry fires must also comply with the Forest Practices Code and any specific conditions in the relevant Forest Practices Plan. The FPA has smoke management guidelines that apply for each planned burn season.

How do I find out about planned burns in my area?

- Fire permit holders must generally contact all adjoining landowners and occupiers within 1.5 kilometres to give notice of the planned burn. This gives the property owner an opportunity to make plans to avoid the impacts of the fire (such as smoke and particulates).
- Public authorities (such as DIER) must give at least 7 days public notice of a planned burn by putting a notice in the Saturday newspaper and posting notices on the property where the burn will take place.
- The Tasmanian forest industry website is updated daily on the status of planned burning operations.

Forestry Tasmania also upload details of their annual regeneration burning programme on their website.

Can I object to a planned burn?

There is no formal way to object to a planned burn.

The best thing to do is to contact the property owner (including government authorities) and explain your concerns. You can also contact the TFS and ask for conditions to be included in the permit to address your concerns.

What can I do if I am affected by fire?

- If planned burning activities take place on neighbouring property and you did not receive notice, you can make a complaint to the EPA. Fire permit holders who do not give notice, can be fined up to $3,380.
- You can also make a complaint to the Forest Practices Authority if you believe that planned burns in forestry coupes have not been carried out in accordance with the conditions of a Forest Practices Plan.

  You can download the FPA complaint form from their website.
- If you are affected by fire damage, you may be able to take action against the person responsible for the fire. However, if the planned burn was carried out in accordance with a fire permit, the person will not be liable for damage as long as the conditions of the permit were complied with and they were not negligent.

Taking legal action against wildfire damage is legally complex, so it is a good idea to talk to a lawyer before commencing any action.

What can I do if I am affected by smoke?

Smoke emissions can cause health and environmental problems. It is important to check the public notices to make sure, at least, that you know when to expect smoke in your area.

- The Environment Protection Policy (Air Quality) 2004 requires people conducting planned burning, or granting approvals for fire permits, to take account of the health and amenity impacts of smoke pollution.
- Smoke nuisance caused by planned burns carried out in accordance with a fire permit is exempt from the provisions of general pollution law, such as the *Environmental Management and Pollution Control Act 1994*. If no permit has been issued for the fire, you may be able to claim that environmental nuisance has been caused. If the appropriate guidelines have been followed, the person responsible for the fire may be able to rely on the due diligence defence

  ☛ go to Chapter 6 for information on pollution laws.

- For ongoing problems with smoke and particulates, you can also lobby the *Director of Public Health* to conduct an inquiry into the public health impacts of planned burns.

Domestic Smoke Management

Smoke caused from domestic wood heaters can also cause a problem for people living in population hubs in urban and regional areas. The particulate matter produced from domestic wood heaters can adversely affect health, depending on an individual's level of exposure, age and personal health.

The Domestic Smoke Management Program is currently being implemented by the EPA, in accordance with the Tasmanian Air Quality Strategy. This Program assesses air quality issues at strategic periods and looks at how to reduce the use of smoke from old or ineffective heaters.

Research so far has indicated that educative programs and regulations are the most effective way of improving air quality.

↝ More information on the *Tasmanian Air Quality Strategy* is available on the EPA website.

8.14 Trespass in state forests

Trespass is a civil wrong, and you can be sued for doing it. The most common example of trespassing is when you go onto someone's land without their permission. If you deliberately or carelessly do something that directly causes interference with someone else's land, you may also be committing a trespass.

Protesters in Farmhouse Creek forests

It is an offence to enter into any place or to remain in any place after being warned to leave by the owner, occupier or person in charge of the place (☛ See section 14B of the *Police Offences Act 1935*).

As managers of State forests, if Forestry Tasmania declares that an area of State Forest is off-limits to the public, they can rely on trespass offences under the *Police Offences Act 1935* to enforce an exclusion zone. The maximum penalty is currently $650 or six months imprisonment.

Forestry Exclusion zones

In addition to general trespass laws, the *Forestry Act 1920* allows Forestry Tasmania to restrict or prohibit people from entering a forestry area.

In particular, Forestry Tasmania may:

- Prohibit public access where it is "incompatible with the management of State forest" (☛ see section 20B(1)).
- Prohibit a person from entering or remaining in any of the following areas (☛ see section 20B(2)(a)):
    - an area declared to be an area of extreme fire hazard; or
    - a restricted area declared in the relevant *Forest Management Plan*.
- Erect signs restricting or prohibiting access in respect of forest roads, forest reserves or other land within a State forest (☛ see section 25).
- Close a forest road or any section of a forest road (☛ see section 26).

Prohibiting access

Forestry Tasmania may restrict access to the public where the access is "incompatible with the management of State forest." More specifically, Forestry Tasmania can prohibit any person from entering an area of State Forest contrary to a restriction in a Forest Management Plan.

Forest Management Plans can specify that all or any part of the land to which it applies is a restricted area. The plan may restrict public access completely, or at particular times or for particular purposes (☛ see section 22C).

A management plan for other kinds of state reserves can also declare that all or part of the reserve is a restricted access area (☛ see section 37 of the *National Parks and Reserves Management Act 2002*).

Erecting signs

The *Forestry Act 1920* also allows the use of signs to control public access to State forests.

Forestry Tasmania can erect signs controlling access in respect of forest roads, forest reserves or other land:

- for the purposes of discharging its responsibilities; or
- in the interests of safety (☛ see section 25).

For the purposes of the Act, the responsibilities of Forestry Tasmania include delivery of sustainable forest management, exclusive control of state forest, forestry operations within Tasmania and granting permits, licences and other rights of occupation for State forests. Forestry Tasmania also has responsibility for the safety of its workers and visitors to State forests.

It is an offence to do anything on a forest road, reserve or other land contrary to the directions specified in the sign. It is also an offence to do anything contrary to the directions of a police officer in respect of the activity. You could be fined up to $2,600 for these offences.

If a police officer is reasonably satisfied that you are disobeying a forestry sign, the officer can direct you to leave the State forest. It is an offence not to comply with this direction, again punishable with a fine of up to $2,600.

Therefore, if you were to enter an area signed as an "exclusion zone", you could be liable to criminal charges and a penalty of up to $2,600. If you do not comply with the direction of a police officer to leave the area, you can also be charged with a separate offence and fined a further $2,600.

Closing forest roads

Forestry Tasmania also has the power to close roads, temporarily or permanently, where it is necessary for "discharging its responsibilities" or "in the interests of safety" (☛ see section 26 of the *Forestry Act 1920*). To close the road, Forestry Tasmania can simply erect a sign or other physical barriers (such as gates and fences).

Where a road has been closed, it is an offence to drive or use a vehicle on the closed forest road. Following amendment in 2009, it is also an offence to walk on closed roads. The offence is punishable by up to $650.

Work Health and Safety

Forestry operators may also claim that you are committing an offence under the Work Health and Safety Act 2012. Offences include intentionally or recklessly placing the health or safety of any person in the workplace (such as a forest site) at risk and interfering with equipment at a workplace.

Please note, forestry operators have an obligation to take all reasonable measures to minimise the risks to any person in the workplace and cannot do anything to deliberately put a protester at risk.

For more information about any of these trespass offences, contact the Legal Aid Commission of Tasmania.

9. Fisheries and Marine Protection

Recent years have seen rapid changes to marine protection laws after a long history of neglect.

Marine areas are used for many purposes and, because it is often difficult to clearly identify marine boundaries, protection laws are complex and administered by a wide variety of bodies and statutes.

The following table gives a guide to the principal legislation you may need to refer to.

Legislation	What it does
Living Marine Resources Management Act 1995	Generally regulates and protects the living marine environment.
Environmental Management & Pollution Control Act 1994	Regulates pollution and emission controls in the marine environment.
Marine Farming Planning Act 1995	Regulates planning and management for marine farming.
National Parks & Reserves Management Act 2002	For declaration and management of Marine Protected Areas (marine reserves).
Nature Conservation Act 2002	Manages and protects some marine species.
Threatened Species Protection Act 1995	Protects threatened marine species.
State Coastal Policy 1996	Has important implications for developments within the coastal zone.
State Policy on Water Quality Management 1997	Has important implications for monitoring of water bodies and regulation of point source and diffuse emissions.
Inland Fisheries Act 1995	Regulates recreational and commercial fishing in inland waters.

9.1 Managing coastal fisheries (wild fisheries)

Making the industry sustainable

The commercial fishing industry makes a valuable contribution to the Tasmanian economy and to regional employment. However, in the past a lack of regulation resulted in over-exploitation of certain fish stocks.

There has been community concern that natural marine ecosystems are being irretrievably damaged through over-exploitation. As a result, new legislation has been enacted and updated to keep abreast with research and community expectations.

The fishing industry has necessarily had to face a reduction in the fishing of some over-exploited species, in order to protect its long term future.

How are coastal fisheries managed for sustainability?

Protection of the marine environment is generally regulated under the Living Marine Resources Management Act 1995. This Act is part of the state's Resource Management and Planning System which provides opportunities for public participation (☛ go to Chapter 4).

This Act has overriding implications for both commercial and recreational fisheries, as well as for aquaculture, marine reserves, marine pollution, release and importation of fish, disease and pests and other marine habitat protection issues. Under the Act, a fish is defined to include aquatic reptiles, all invertebrates, fish and sharks, marine plants and even protozoa and bacteria (☛ see section 4).

The marine environment is extremely complex, and fisheries management has to straddle commercial issues with many competing recreational, social and environmental concerns. Effective management of the industry requires both legislation and management strategies, including community education.

What does the Act do?

The Act and its regulations set minimum sizes of fish that can be taken, gear that is allowable, total allowable catches, and bag limits for fisheries at risk of over fishing. The commercial fishing industry must comply with strict quotas and licensing regulations.

The Act also provides for various licences which must be obtained before anyone can catch, process or handle fish commercially. The court may make an order suspending or cancelling a licence if the licence holder does not comply with the conditions of the licence (☛ see section 90).

Sections 174 to 201 of the Act give wide power to fisheries officers to enter and search premises, vessels and fish processing plants, detain vessels, make arrests and seize fish catches. Persons who breach the Act risk the forfeit of not only their fish catch, but their equipment and fishing vessel as well (☛ see section 225).

Section 125 of the Act makes it an offence to allow any introduced fish to escape into state waters (unless you have a special permit). Offenders risk a maximum fine of $130,000.

What are Fisheries Management Plans?

Under the Act, DPIPWE prepares draft Fisheries Management Plans which set out the rules for each fishery. Management plans for a specified fishery can address a wide variety of matters, such as prohibitions on the taking of particular fish, fishing seasons, where fishing vessels can be unloaded, and measures to limit 'accidental catches' (also called 'bycatch').

Once a Draft Management Plan has been prepared, public notice is given and any person can make a written representation within the time period set out in the notice (no less than 60 days). The Secretary must consider all representations and may make changes to the draft plan to address the concerns raised by the public before submitting the plan to the Minister. Before approving the plan, the Minister must be satisfied that the plan *promotes and develops commercial or recreational fishing without detriment to the fish habitat and environment*.

From time to time, Fisheries Management Plans can be reviewed. The public will be notified of a proposed review and can make representations. Where urgent action is required to protect fish stocks, the Minister can make a ministerial order amending a Fisheries Management Plan without going through a formal review process. The order must be published in the Gazette (see section 49).

When do federal laws apply?

Generally speaking, Tasmanian laws apply to all waters within 3 nautical miles of Tasmanian coastline and Commonwealth laws apply outside that limit.

However, the *Offshore Constitutional Settlement* (**OCS**), agreed in the early 1980s, allows the Commonwealth and States to enter into more practical arrangements for managing some major fisheries. In general, States retain responsibility for day-to-day management of all recreational fishing. Some Commonwealth marine areas are also subject to state control under OCS arrangements.

The Commonwealth is responsible for the migratory tuna fisheries (including southern blue-fin tuna, yellow-fin and big-eye), the central zone of the *Bass Strait Scallop Fishery*, the *Small Pelagic Fishery* and the *Southern Shark Fishery*. Commonwealth legislation also provides protection for nationally listed threatened and migratory species

In addition, a range of Commonwealth laws attempt to give effect to various international treaties – eg to protect and manage fish resources, to protect the Antarctic environment, to regulate sea dumping, to protect endangered species of fish and marine life and to control pollution by ships.

☛ Go to Chapter 15 for more information about federal species protection laws and the application of Commonwealth laws to marine conservation.

Review of the Fisheries Management Act 1991

In September 2012, the Fisheries Minister Joe Ludwig announced that there would be a review undertaken of the Commonwealth Fisheries Management legislation, including both the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991*.

The main objective of the review is to recommend changes that reflect environmental, economic and social considerations, improve integration with EPBC Act and better align the legislation with the precautionary principle.

David Borthwick AO PSM was assigned to conduct the review, with the objective of modernising the fisheries management system.

The Borthwick Report was released in March 2013. The Government has given in-principle support to the main recommendations, but has yet to enact legislation to give effect to the recommendations.

Role of the Australian Fisheries Management Authority (AFMA)

AFMA was established under the *Fisheries Management Act 1991* to manage Commonwealth fisheries by developing fisheries management plans, sustainable policies and harvest strategies.

AFMA's role also involves ensuring that Australia fulfils its international obligations in relation to sustainable fishing management.

It also has a data collection program in order to complete research and assessment of fishery impacts on fish stocks, as well as guide decision makers with information. Of late, this final duty of AFMA's has come under fire in relation to the information that was provided to the Minister concerning the possible effects of the super trawler.

Strategic Assessments

Under Part 10 of the EPBC Act, strategic assessments can be made in relation to Australia's Commonwealth fisheries. Strategic assessments take into consideration large scale effects of a course of action or development, rather than managing on a project-by-project basis. In this way, strategic assessments can be helpful in gauging the cumulative impacts of a particular project on matters of national environmental significance.

AFMA undertakes strategic assessments of individual fisheries in order to determine how they are managed. This means that rather than continually having to asses a fishery's individual operations, once a strategic assessment has been made, it gives approval for all operations to be carried out – as long as they are in accordance with that fishery's approval management plan.

CASE STUDY: The 'Super Trawler'

In 2012, one of the most significant public debates in relation to marine fishing centred around the operation of the *FV Margiris*, the world's second largest 'super trawler', in Australia's Small Pelagic Fishery. The 143m long vessel, later renamed the *Abel Tasman*, was granted a quota to harvest 18,000 tonnes of mackerel and redbait in Australia's southern waters.

Supertrawlers have a bad international reputation for depleting fish stocks and poorly monitored fishing practices. The main public concern with allowing the *Abel Tasman* to fish in Australian waters was the amount of 'by-catch' that is killed in the large nets, including turtles, dolphins, seals and migratory sea birds.

Concerns were also raised regarding the potential for the amount of fish able to be taken by the supertrawler at any one time to cause significant localised depletion of fish stocks. Recreational and small commercial fishermen were concerned about the impacts of this depletion on other species.

Advocates of the supertrawler, including a number of marine scientists, argued that fish stocks are managed by the quotas for the fishery, therefore, provided the quotas were complied with, the size of the vessel taking the fish was irrelevant. They also argued for the economic and transport efficiency of taking the quota with one ship, rather than a series of small vessels. As a response to significant public outcry, in September 2012, Environment Minister, Tony Burke, amended the EPBC Act to introduce a power to prevent "declared commercial fishing operations" such as the supertrawler if both the Environment Minister and the Minister for Fisheries agreed. An interim ban was imposed preventing the supertrawler from operating in the Small Pelagic Fishery, while the Ministers considered the issue. In November 2012, the Minister formally declared the supertrawler to be a Declared Commercial Fishing Operation under the EPBC Act.

This declaration effectively prohibits the supertrawler from operating in the Small Pelagic Fishery for two years, until a full scientific assessment can be carried out as to its effects.

An Expert Panel was appointed and given terms of reference in early 2013, in order to assess the adverse environmental impacts of large fishing vessels that can capture and store more than 2,000 tonnes of fish. The prohibition will remain in place until it is revoked, the Expert Panel reports its findings, or it expires (on 22 October 2014), whichever event happens first.

⇝ A range of articles considering both sides of the supertrawler debate is available on the Conversation website.

9.2 Marine farms (aquaculture)

A growing industry

In the past ten years fish farming (or marine aquaculture) has become a major growth industry in Tasmania and a highly profitable one. Over 140 marine farms have sprung up around our coastline, and fish farming now comprises over 2,000 hectares.

Species being farmed are principally Pacific Oysters, Atlantic Salmon and Ocean Trout (all introduced species)

as well as scallops, mussels and abalone. Farming of other marine species has also been mooted.

Growing concern

A marine farming lease conveys a right of exclusive occupation of a marine area, which may previously have been accessible to the general public, to the leaseholder. In this way, marine farming can change the use and amenity of coastal and estuarine waters.

Given the extent of potential changes in Tasmanian coastal and estuarine waters, many communities have raised concerns about the impacts of marine farming. Marine farming development plans have been approved for the areas in which marine farming occurs within Tasmania. These include the Huon River and D'Entrecasteaux Channel, Pitt Water, Pipe Clay Lagoon, Tasman Peninsula and Norfolk Bay, Great Oyster Bay and Mercury Passage, Georges Bay, the Tamar River, Port Sorell and the Far North West (Duck Bay, Big Bay and Montagu) Trumpeter Bay and Macquarie Harbour.

Community concerns include visual disturbances, ecological consequences on the marine environment, including the increased nutrient loads, spread of exotic 'feral' species, potential disease outbreaks in the marine environment, damaging effects on adjacent national parks, and alienating other users of the sea (swimming, boating etc).

Which agency administers marine farming?

The Marine Farming Branch of the Department of Primary Industries, Parks, Water and Environment is responsible for assessing and regulating marine farming activities.

How is marine farming managed?

The rapid growth of marine farming in Tasmania in the 1990s resulted in specific legislation being established to manage this activity. Unlike other industries, marine farming is not subject to general planning controls; it is assessed, approved and regulated under a different process.

The *Marine Farming Planning Act 1995* shares the objectives of the Resource Management and Planning System, including encouraging public participation. However, concerned citizens have more limited appeal rights in relation to marine farming than some other land-based developments.

The MFPA provides for the development of Marine Farming Development Plans. These plans identify zones in which marine farming is a permitted activity. Outside of these zones, marine farming is prohibited.

Under the Act, the public are given an opportunity to comment on Draft Marine Farming Development Plans (see below). The process for developing (or amending) a plan is similar to the process in place for land-based planning schemes under the *Land Use Planning and Approvals Act 1993.*

If the Marine Farming Planning Review Panel believes that current or future land-based activities in the area may have a negative impact upon marine farming, the Panel can request the Tasmanian Planning Commission to prepare an amendment to the local government Planning Scheme to address these concerns.

What are Marine Farming Development Plans?

The *Marine Farming Planning Act 1995* purports to protect the marine environment and give stakeholders a say in marine farming development, largely through the development and implementation of Marine Farming Development Plans (**MFDPs**).

There are currently fourteen MFDPs in force for Tasmania's coastal marine and estuarine waters.

Each MFDP identifies areas suitable for marine farming and incorporates these areas into marine farming zones. Within a marine farming zone there may be a number of farms, existing or potential, that may grow a range of species.

The MFDP must include:

- a description of all marine farming zones in the plan area;
- a description of the maximum area of the zone that can be leased;
- an environmental impact statement (**EIS**). The level of information in the EIS will vary depending on the scale of the proposed plan and the public interest in the proposal. At a minimum, the EIS must address the potential environmental impacts of the proposal and make sure that the draft plan is consistent with the objectives of the RMPS.
- draft management controls.

The MFDP can also include rules about:

- species that may be grown in each zone;
- limits on stocking density for each area;
- other activities that may take place in the area;
- environmental testing that must be carried out;
- protecting or conserving the marine area (including water quality limits and restrictions on noise, light and disturbance); and
- matters that must be considered before issuing a marine farm lease and conditions that must be attached to a lease.

Draft Marine Farming Development Plans (and draft amendments to MFDPs) are submitted to the Marine Farming Planning Review Panel for certification. Following certification, the draft plans are released for public comment for at least 2 months.

After considering the draft plans, the EIS and any representations received, the Panel makes a recommendation to the Minister regarding the proposed plan / amendment.

Can I have a say about Marine Farm Plans?

There are a number of opportunities for the public to get involved in the development of marine farming development plans.

1. Public meeting

In the event that a new plan is to be developed, DPIPWE will hold a public meeting to gather information about the current uses and values of the area. Notice of public meetings is given in regional newspapers.

It is really important to attend such meetings because it is an important opportunity to identify other water users and stakeholders in the area.

At these meetings, the Department will outline its proposed draft plan and the public will be invited to respond, either orally or to follow up in writing, describing the ways they may use the area (eg for recreational or commercial fishing, sailing or water skiing etc).

After initial consultation, the Department or a planning authority may prepare a Draft Marine Farming Development Plan for public exhibition.

2. Public Exhibition of a Marine Farming Development Plan

Once a draft plan (or an amendment) is developed, it is released for public exhibition for at least two months. There will be a public notice informing the community where the draft MFDP is available and how to make representations in relation to the plan.

Generally, the draft plans are available on the internet. If you do not have access to the internet, you will be able to inspect the draft plan at a DPIPWE office or to purchase a copy.

It is a good idea for your representation to draw attention to any requirements in Part 3 of the Marine Farming Planning Act 1995 (especially, Sections 21 – 24), that have not been addressed in the draft plan. For example, you may believe that an identified Marine Farming Zone will not be sustainable because of the impacts on seagrass species, that mitigation measures proposed for environmental impacts are inadequate, that additional monitoring should be required or that alternative locations for the proposed marine zones should be discussed.

3. Public hearings

The Department reviews all written representations and prepares a report to the Marine Farming Planning Review Panel. This report must contain a copy of the written representations received and the Department's response to these representations.

The Panel must consider all representations and must hold public hearings if at least one of the representors has requested this. If you made representation, you may be invited to attend the hearing and speak to the Panel. The hearings are generally fairly informal, and usually there will be an opportunity to ask questions from the floor.

The Panel will consider all submissions from the public, the provisions of the legislation and the State Coastal Policy before making a recommendation to the Minister about whether to approve the Draft Marine Farming Development Plan or not.

4. Minister's decision

The Minister considers the Panel's advice, along with all representations, and decides whether to:

- approve the MFDP as applied for;
- approve the MFDP with amendments or;
- refuse to approve the MFDP

The Minister is not required to follow the recommendation of the Panel. However, s/he is required to consider their recommendations and to table reasons in Parliament for any decision that does not follow the Panel's advice.

5. Appeals

There is no right of appeal if you do not agree with the Minister's decision to approve a Marine Farming Development Plan. In some limited circumstances, you may be able to seek judicial review of the decision or the Panel's recommendations if you can establish that the correct procedure was not following or that relevant considerations were ignored.

Land based facilities associated with marine farming, such as on-shore sheds, are controlled by local councils and are subject to normal planning and pollution controls as prescribed under LUPAA and EMPCA.

☛ Go to Chapters 5 and 6 for information.

6. Review

MFDPs are required to be reviewed at least once every ten years. Keep an eye out for notices inviting public comments on these reviews.

What other provisions apply to marine farms?

Marine farm leases give leaseholders exclusive right of access to the lease area for up to 30 years. The lessee can also apply for renewal of the lease.

Once a lease has been issued, you may still need a licence to carry out marine farming activities. Licensing of these activities is regulated by the *Living Marine Resources Management Act 1995*.

What do I do if I am concerned about marine farm developments?

If you are concerned about the possibility of the release of pests, such as feral Pacific Oysters, from an approved marine farm, contact DPIPWE. Under the *Living Marine Resources Management Act 1995*, DPIPWE must act to minimise the outbreak of disease and control pests. To achieve this, DPIPWE can issue control orders in relation to marine farms.

You can also lobby outside the statutory planning processes prescribed by the *Marine Farming Planning Act 1995* by talking to government officers, Ministers, politicians, industry representatives, media and the general public. Many concerned citizens choose to lobby in order to get their message heard. To be most effective, you will need to start lobbying as soon as possible after you hear about a proposed Marine Farming Development Plan.

Tips for lobbying

- Write letters to the Minister and Shadow Minister for Primary Industries and to the Marine Farming Branch of DPIPWE. You can also write to your local politicians, councils and newspapers.
- Get together with other concerned people in your area to lobby jointly.
- Try to set up a meeting with industry representatives, including the companies who will be operating in the marine farming plan area.
- Contact other groups around the state who have had experience in lobbying to identify what worked for them.
- Inform the local and extended community about what is being proposed, so as to gain public support for conservation of your waterway.
- The Panel's focus is on environmental and other impacts of the proposed development. You should collect reliable scientific information as to the environmental impacts of the proposal – including expert evidence on such issues as noise, water currents, invasive species and suggested placement of nets.

9.3 Marine Reserves

Marine Protected Areas (sometimes called "marine reserves") have essentially the same purpose as land-based national parks and reserves: setting aside habitats to protect natural ecosystems and plant and animal species.

Marine reserves are also very important to the long term survival of the fishing industry, as an aid to protecting fish stocks and breeding grounds.

Although Tasmania has extensive areas of land within its reserve system, a much smaller percent of its coastal waters have been protected to date – despite having a very high biological diversity.

There has been strong commercial antagonism to setting aside marine reserves. At present Tasmania lags behind the rest of Australia, having by far the smallest area of marine reserves, and also the lowest proportion of its waters protected.

For a long time, only a handful of Marine Protected Areas were established around the Tasmanian coastline – located at Governor Island, Tinderbox and Ninepin Point, Maria Island, Port Davey - Bathurst Harbour (17 000 ha) and the Kent Group of Islands. The last three are marine extensions of terrestrial national parks.

In 2009, the government declared 14 new marine reserves following some of the Commission's recommendations in relation to its review of the Bruny Bioregion. All current marine reserves are listed on the DPIPWE website.

A larger reserve has also been declared around Macquarie Island in the far Southern Ocean.

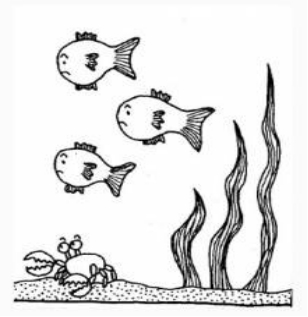
Commonwealth Marine Reserves

The Commonwealth government declares its own system of *Marine Reserves* in nationally controlled waters and, in 2012, expanded the system of Commonwealth marine reserves by 2.3 million km^2. The Commonwealth government also continues to work with State governments to encourage them to develop representative marine reserve networks in each State.

Of particular relevance to Tasmania is the South-East Commonwealth Marine Reserves Network, which stretches from the far south coast of New South Wales, around Tasmania and Victoria and west to Kangaroo Island off South Australia.

↝ Find out more about management of reserves in South East Australia on the Department of Environment website.

Expanding the marine reserve system



Recognising the failure to adequately reserve marine habitats, all states and the Commonwealth are now gradually working towards a *National Representative System of Marine Protected Areas*, to ensure that sea habitats are adequately protected.

In Tasmania, moves towards greater protection of marine areas are very slow. The Marine and Marine Industries Council (comprising stakeholders and experts) finalised a Marine Protected Areas Strategy a number of years ago, but limited action has been taken to implement the Strategy.

Under the Strategy, the Tasmanian Planning Commission is responsible for undertaking public inquiries to identify and select new marine protected areas (under the process set out in Part 2 of the *Public Land (Administration and Forests) Act 1991*). These inquiries are initiated by the Minister for Planning and involve extensive public consultation.

For more information on the process for developing a marine reserve, visit this DPIPWE website. For information about the Public Inquiry process, visit the Planning Commission website.

How are marine reserves managed and protected?

Tasmania

Tasmanian marine reserves can be created under Part 5 of the Living Marine Resources Management Act 1995 or the Nature Conservation Act 2002. You will need to look at both Acts to find out what provisions apply

☛ see Chapter 7 for information about species protection under these Acts.

There are several different types of reserve areas with different rules and management strategies, depending on the purpose of the reserve and the values being protected. Management rules generally provide for habitat and species protection whilst allowing certain activities to take place (such as diving).

Marine reserve rules are enforced by the Marine Police, and by Parks and Wildlife officers.

☛ Go to Chapter 7 to see how Tasmania's coastal zone is managed.

Commonwealth

The national Director of National Parks is responsible for ensuring that the South East Commonwealth Marine Reserve is effectively managed. The plan outlines zones within the reserves and categories of activities that can and cannot occur, and when approval from the Director is required. Activities regulated under the management plan include commercial fishing and tourism, mining, recreational activities, scientific research and vessel transit shipping.

The South-east Commonwealth Marine Reserves Network Management Plan 2013-23 took effect on 1 July 2013.

What activities are prohibited in marine reserves?

Some reserves are 'no-take' reserves, whilst others allow certain types of fishing in certain areas. Generally, within a dedicated marine reserve, you must not:

- collect any living or dead materials
- harm or remove plants or animals
- fish or set nets or pots within the reserve.

For the larger Kent Group and Port Davey / Bathurst Harbour marine reserves, there are 'no take' zones and restricted fishing zones where you can collect abalone and rock lobster and carry out line fishing.

Fishing in marine reserves is controlled by the *Fisheries Rules 1999* under which zones are identified allowing fishing or restricted fishing within the marine components of the Kent Group, Maria Island and Southwest National Parks.

To see what activities are permitted and prohibited in each of the Tasmanian marine protected areas, visit this DPIPWE Website.

DPIPWE also issues permits for people who are undertaking research in Marine Protected Areas. Fishing is also restricted in a number of Research Reserves around Tasmania, so that research and monitoring can take place in those areas. For example, in the Bay of Fires, there is research being undertaken in relation to abalone. Fishing in the research area is completely banned for the duration of the study.

Marine Reserve Management plans

Affected communities are consulted in the early stages of a plan being developed. Following this targeted consultation, a draft management plan is released for broader public comment. Any person may submit a written representation in relation to the draft plan within the period set out in the notice.

If the marine reserve has been declared under the *Nature Conservation Act 2002*

- All representations will be forwarded to the Commission to consider.
- The Commission may hold a public hearing before making a recommendation report to the Minister in relation to the draft Management Plan.

If the reserve has been declared under the *Living Marine Resources Management Act 1995*

- All representations will be forwarded to the Secretary to consider before making a recommendation report to the Minister.
- Once a management plan has been signed off by the Governor and published in the Gazette, there are no legislative avenues for appeal. The plans are generally reviewed after 10 years.

How do I find out about Marine Reserve Management Plans?

You can find out about more about draft and final Marine Reserve Management Plans by contacting the Marine Resources Branch or the Parks and Wildlife Service.

↝ To see the list of current Management Plans, go to the Parks and Wildlife website.

9.4 Marine pollution

Pollution of the sea is mostly regulated by general pollution laws, including pollution from land-based sources, such as sewage outfalls.

The *Pollution of Waters by Oil and Noxious Substance Act 1987* deals specifically with discharges of oil from ships and other matters. This Act gives effect to the international MARPOL convention on marine pollution.

There have been very few prosecutions in Tasmania for marine pollution, however recent changes to the *Pollution of Waters by Oil and Noxious Substance Act 1987* and the *Environmental Management and Pollution Control Act 1994* will make it easier for enforcement action to be taken in respect of marine pollution incidents.

☛ Go to Chapter 6 for information about pollution laws and what to do if you are concerned about pollution, such as contacting the state pollution hotline on 1800 005 171.

Pollution outside of the 3-mile zone is controlled by the federal government under the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Environment Protection (Sea Dumping Act) 1981*.

Under new regulations, dumping of wastes in sea water is the responsibility of the federal government, except within bays and estuaries (from low water mark).

↝ For more information about management of marine pollution in State waters, visit the EPA website.

9.5 What do I do if I am concerned about something that is happening in marine areas?

Legislation sets out heavy penalties for offences in marine protected areas. However, policing of the sea is very difficult so public assistance in reporting possible illegal activities is vital to fisheries and wildlife inspectors.

If you observe activities that may be illegal:

- For fisheries offences you can contact the Marine Police on **6230 2475**.
- If the area is a marine reserve, you should contact a Parks & Wildlife ranger at their nearest station.
- If waterway pollution is involved you should contact the EPA Division on **1800 005 172**.

  ☛ Go to Chapter 6 for information regarding taking action in respect of pollution.
- Try to find out as much as you can about the activities that are occurring, without putting yourself at risk.
- Take photos and videos for evidence.
- Record vehicle and boat registration numbers if possible.
- Make a log of how often you see the activity occurring.

  ☛ Go to Chapter 13 for more information about taking action.

10. Rural Lands, Soil and Water Laws

Farming covers much of Tasmania's land area and can have profound impacts on environmental quality. Rural industries use large quantities of chemicals and fertilisers and these are released directly into the open environment.

Farming activities can have major impacts on water quality, soils and erosion and can pose a significant threat to remnant patches of native vegetation.

Despite all these impacts, the farming sector is one of the least regulated. Tasmania now has some vegetation clearance controls, but it is the only state with no specific soil protection legislation.

Farmers often do not need land-use planning approval when undertaking agricultural activities as most of these activities are defined as a 'permitted use' in rural zones in Planning Schemes.

The *Primary Industry Activities Protection Act 1995* also prevents some common law 'nuisance' actions being taken against farmers for noise and other pollution caused by their activities.

Many of the environmental problems in rural areas have resulted from regressive historic attitudes and poor agricultural practices. However, the farming sector has itself been seriously affected by rapidly spreading soil salinity, rural tree decline and climate-induced drought. These factors have reduced the economic viability of many farms and continue to cause great distress in farming communities. Therefore, most farming communities today recognise the need to change to sustainable farming practices.

How are rural lands protected?

The *State Policy on the Protection of Agricultural Land* (often referred to as the 'PAL policy') relates mainly to overall land use and does not contain specific provisions that can be used to prevent environmentally harmful farming practices.

A new version of the PAL policy was released by the Tasmanian Planning Commission in 2009. Controversially, the new policy includes plantation forestry as a protected agricultural use. The TPC also issued a Guideline for non-agricultural use of prime agricultural land.

Along with all other State Policies, the PAL Policy is given effect through council Planning Schemes (☛ Go to Chapters 4 and 5 for more information).

The day-to-day use of rural lands is mostly regulated by a variety of pieces of legislation dealing with specific aspects of land and water use. The most important of these is the *Environmental Management and Pollution Control Act* (☛ Go to Chapter 6 for information about this).

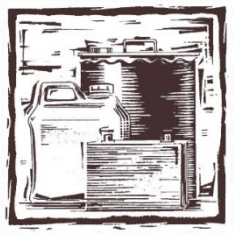
Vegetation Clearance Controls

☛ Go to Chapter 7 and 8 for information about the laws regulating small and large scale clearing of vegetation.

10.1 Farm Chemicals

The farming sector has become reliant on the use of chemicals, for both agricultural and veterinary purposes.

The use and abuse of these chemicals can have grave environmental consequences, so regulation of them is a very important component of environmental law.



Farm chemicals are regulated throughout their life cycle – from their manufacture to transport, sale, storage, use and disposal – by a variety of mechanisms.

Who regulates what chemicals can be used?

The Australian Pesticides & Veterinary Medicines Authority (**APVMA**) is responsible for assessing and registering chemical products for use in Australia. It is an offence under the*Tasmanian Agricultural and Veterinary Chemicals (Control of Use) Act 1995* to sell or use a chemical product that has not been approved by the APVMA.

The regulation and control of registered chemical products is administered throughout Australia under four Commonwealth Acts – known as the *'AgVet Acts'*.

An amendment to one of these Commonwealth Acts, the *Agricultural and Veterinary Chemicals Code Act 1994*, is currently before Parliament. If passed, the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012 will give APVMA the power to periodically review active constituents in already approved chemicals. The new legislation would also require APVMA to implement the Code by issuing guidelines and taking enforcement action in relation to unauthorised chemical use.

In Tasmania, these national acts have been adopted by the *Agricultural and Veterinary Chemicals (Tasmania) Act 1994*, which enables state government officers, agencies and courts to administer the provisions of the federal Acts.

The APVMA has a variety of powers that it can use to protect the public. For example, if the Authority was convinced that there was an undue risk to the safety of people exposed to a chemical product or its residues, or if the product was discovered to have an unintended harmful impact on exposed animals, plants or ecosystems, the Authority could require any person who has stocks of the chemical products to stop supplying the products and/or to take other directed actions.

The Australian Competition and Consumer Commission (**ACCC**) also has powers to issue product recall notices, under the Commonwealth *Competition and Consumer Act 2010*. For example, if you were able to show that a product was mislabelled, or contained a chemical that was not registered for use in Australia, you could request that the APVMA and the ACCC investigate whether the product should be removed from the market.

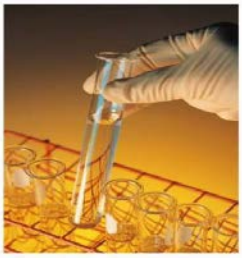
Where can I find information about farm chemicals?

The Australian Pesticides & Veterinary Medicines Authority keeps a register of all agricultural and veterinary chemical products and approved active constituents. The website also contains a lot of useful information about specific chemical agents and controls. It also tells you what chemicals are prohibited or restricted, and how they are restricted. You can request further specific information from the APVMA.

In Tasmania, the Spray Referral and Information Unit (the 'Spray Unit') within the Department of Primary Industries, Parks, Water and Environment (**DPIPWE**) functions as a point of contact for information and complaints. The Spray Unit can inform you about 'maximum prescribed levels' of chemicals in foods, soils or water and can also assist you with tests of water, soil or produce in order to detect levels of contamination.

- If you still have concerns about a specific chemical or chemical pollution, you may be able to make a Right to Information (**RTI**) request to relevant federal or state government authorities to find out more (☛ go to Chapter 13 for information about RTI requests).

How are chemicals regulated within Tasmania?



The use, storage and disposal of agricultural and veterinary chemicals is regulated in Tasmania by the Department of Primary Industries, Parks, Water and Environment. The main legislation dealing with farm chemicals is the Agricultural and Veterinary Chemicals (Control of Use) Act 1995, and the Regulations and Orders made under the Act. The most important of these regulations is the Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012.

Under these laws, anyone using, transporting or disposing of chemicals must do so strictly in accordance with the label. If you do not follow the directions on the label, you could face a fine of up to $26,000 (see section 18).

The Minister for Primary Industries can also issue orders:

- regulating the handling of a chemical product (section 20); or
- prohibiting the use of a particular chemical product for any purpose.

In particular, it is an offence to handle or dispose of a chemical product that is or is likely to be an "injurious presence" in a body of water, unless you have a permit (clause 5, Agricultural and Veterinary Chemicals (Control of Use) (Handling of Chemical Products) Order 1996). Anyone who does not comply with an order, can be prosecuted and could face a fine of up to $26,000.

The Act also sets up a system of permits and licences that commercial operators (including aircraft operators who conduct aerial spraying) must obtain in order to be able to lawfully use chemicals. For example, if you intend to use an agricultural or veterinary chemical for commercial purposes, you must have a commercial chemical operator licence (see sections 8 and 21 of the Regulations).

The Registrar of Chemical Products (see contact list) controls permits and licences and has extensive responsibilities under the Act.

Chemicals in drinking water and food

The acceptable limits for agricultural chemicals in drinking water are listed in Chapter 6 (section 6.3.3) of the Australian Drinking Water Guidelines 2011 published by the National Health and Medical Research Council (**NHMRC**).

To download the *Tasmanian Drinking Water Quality Guidelines,* go to the Department of Health and Human Services website. These guidelines are linked to Tasmania's Public Health Act 1997.

If chemical levels in water used for domestic purposes or stock watering are higher than the levels set out in the Guidelines, there may be a breach of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*. If Guideline levels have been, or are likely to be, exceeded, inspectors can order a person using agricultural chemicals to stop using them or change the way that they are used.

The *Public Health Act 1997* also contains provisions requiring the Director of Public Health to be informed about contamination of water supplies causing a threat to public health (see section 128).

Under s150 of the *Public Health Act 1997*, the Director can order that any substance which is, or is likely to be, a threat to public health not be manufactured, sold, used or transported. Part 5 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995* also provides powers for an inspector to require contaminated stock or produce to be destroyed.

The Food Act 2003 adopts the Australia and New Zealand Food Standards Code, which sets maximum allowable limits for pesticide contamination of water and human and stock food. It is an offence to sell any food that does not comply with these Standards.

What do I do if I want laws to be changed?

If you believe that chemical control regulations are deficient and need upgrading, then you should:

- Lobby the Minister for Primary Industries or the Tasmanian Agricultural and Veterinary Chemicals Advisory Committee, a statutory body which gives advice to the Minister on such issues.
- Lobby the Ministers responsible for the *Public Health Act 1997* and the *Environmental Management & Pollution Control Act 1994*.
- For changes to Federal laws, lobby the Minister administering the AgVet code, the APVMA, or the Minister for the Environment.
- Look out for notices about opportunities to make submissions into reviews of the Drinking Water Guidelines or Food Standards Code.

10.2 How is chemical spraying regulated?

Drift or seepage of chemicals from one property to another (or into waterways and catchments) may cause immense anxiety and frustration to those who are affected. Therefore, a number of controls exist to manage the impact of chemical spraying on nearby properties.

Under the Agricultural and Veterinary Chemicals (Control of Use) Act 1995, commercial ground and aircraft spraying operators must have a permit, and the aircraft be licensed to conduct spraying. It is illegal to attach aerial spraying equipment to any aircraft unless the aircraft is approved by the Civil Aviation Safety Authority for agricultural operations.

Agricultural spraying is regulated under:

- Code of Practice for Aerial Spraying
- Code of Practice for Ground Spraying
- Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012

These codes and regulations spell out comprehensive rules that operators and contractors must comply with when carrying out spraying operations. These include requirements to inform neighbours likely to be affected, weather conditions in which operations may need to be abandoned or changed and setting out areas which must not be sprayed, eg over water bodies or within buffer zones of sensitive sites such as schools. In general, chemicals must not be allowed to move "off target to the extent that it may adversely affect any persons, their land, water, plants or animals."

If you are affected by spray drift, you should lodge a complaint as early as possible with the operator, the owner of the land being sprayed and the Spray Unit and demand that action be taken. If possible, identify any specific breaches of the relevant Spraying Code or Regulations– for example, are the operator and the aircraft properly licensed? Was spraying carried out too close to sensitive sites? Does your neighbour have a permit authorising them to apply the chemical via irrigation?

The forestry industry also uses significant quantities of pesticides and herbicides. Forestry operators are required to comply with the Forest Practices Code when applying chemicals. The exclusion zones around waterways in the *Forest Practices Code* are currently stricter than

those in the Code of Practice for Aerial Spraying – in future the spraying codes could be amended to adopt the stricter exclusion zones set out in the *Forest Practices Code*.

☛ Go to Chapter 8 for more information about forestry controls.

Can spraying be prohibited?

Yes. Under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*, the Minister can issue orders controlling or prohibiting agricultural spraying, in order to protect susceptible plants, stock, public health, the environment or trade. A person must comply with such an order, or face a fine of up to $26,000 ($52,000 for a corporation).

What legal remedies are available?

A variety of remedies is available if you can show that the harm you have suffered (such as poor health, stock deaths or increased pollution levels in your water supply) was caused by a particular spraying event:

Under *common law*

☛ Go to Chapter 6, for information about common law actions for chemical trespass and nuisance. The court could issue an injunction to prevent the neighbouring landowner from future spraying. The court could also award damages for any harm suffered due to the spraying.

Under the *Environmental Management and Pollution Control Act* (EMPCA)

If the spraying has caused environmental harm (including environmental nuisance), and was not carried out in accordance with a permit, it may be an offence under EMPCA.

☛ Go to Chapter 6, for information about how your local council, the EPA Director or yourself can take action for offences under EMPCA – including issuing infringement notices, prosecuting the offender or taking civil action in the Tribunal. If you take action in the Tribunal, the Tribunal may make orders such as the prohibition of future spraying and/or the payment of compensation for any injury, loss and damage that you have suffered as a consequence of unlawful spraying activities.

You have 3 years from the date of being sprayed to take 'nuisance' actions under EMPCA.

Under the *Agricultural and Veterinary Chemicals (Control of Use) Act*

This Act makes it an offence for a person to carry out (or cause to be carried out) agricultural spraying which 'adversely affects' any person, plants, stock, agricultural produce, water bodies, groundwater or soil on another person's premises unless that person has obtained permission of the owner of those premises (Section 30(1)).

'Adversely affects' is defined to mean a residue of an agricultural chemical product 'in excess of the prescribed level' – Regulation 44 of the *Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012* prescribes specific limits for various situations, including limits set out in the Drinking Water Guidelines, groundwater residue limits set by the Registrar for a particular region or maximum residue levels set out in the *Food Act 2003*. The penalty for contravention is a fine of up to $26,000. The Registrar or an inspector can also issue infringement notices on the spot.

Regulation 5 of the Agricultural and Veterinary Chemicals (Control of Use) (Handling of Chemical Products) Order 1996, prohibits the handling or disposal of a chemical product that causes the chemical product to be an "injurious presence" in any body of water. You should report any breaches of this Order to the Spray Unit.

When making a complaint to the Spray Unit, you should remind them that they are obliged to act in a way that furthers the objectives of the Act, including to "avoid the presence of chemical products in food for human consumption, feed for animal consumption and drinking water supplies".

Farmers and forestry operators ***must*** notify all occupiers of properties within 100 metres of the target area of aerial spraying activities and ***should*** advise neighbours of ground spraying activities. Under section 31 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*, you can also apply to DPIPWE for a direction to be notified of chemical spraying in the vicinity of your home.

You can only apply if:

- you have been living at your premises for at least 12 months; and
- your home is within 1 kilometre of an area that is likely to be sprayed using aerial spraying, or within 100 metres of an area likely to be sprayed using ground spraying techniques; and
- you pay an application fee.

The Secretary of DPIPWE can issue a direction to the landowner that you must be given adequate notice of spraying activities, including the types of chemicals that will be used. If the landowner does not comply, he/she is guilty of an offence and could face a fine of up to $26,000.

Under the *Police Offences Act 1935*

Section 19 of the Act prohibits placing anything mixed with poison on public or private land if it may be "destructive to life".

Under the *Inland Fisheries Act 1995*

Under this Act, it is an offence for any person (including a corporation) to:

- put, or allow to flow, into any inland waters containing fish any liquid, gaseous or solid matter which is likely to be poisonous or injurious to fish, the spawning grounds of fish or the food of fish (section 126 (1)); or
- put into any inland waters any fertiliser or any other chemical substance, unless they have consent from the Director (section 126(3)).

Maximum penalties for offences are $6,500.

If farm chemicals have been released into a river system, you should approach the Inland Fisheries Service and ask them to investigate.

Under the *Public Health Act 1997*

Section 128 provides that an agency, public authority or person responsible for managing a water supply (such as a local council) must manage the water in a manner that does not pose a threat to public health. On becoming aware that the quality of the water is or is likely to become, a threat to public health, they must notify the Director. The maximum penalty for failing to notify the Director is $3,250.

The section also requires councils to take appropriate action if water contamination is, or is likely to be, a threat to public health. This can range from issuing 'Boil Water' notices, to providing alternative water supplies for the community until the contamination is addressed. Under section 129, the Director may also issue orders restricting the use or supply of water – any person who fails to comply with an order can be prosecuted and face a maximum penalty of $13,000.

What can I do if my property or water supply is affected by spray drift?

Notify authorities:

- Immediately contact the Spray Unit within DPIPWE on **1800 005 244**. The Spray Unit will investigate complaints and can initiate prosecutions if there is sufficient evidence of a breach.
- If the problem is likely to persist, it is a good idea to also lodge a complaint with the state pollution hotline (1800 005 171) and request that action be taken to restrict the operator's activities. The Director of the EPA can serve an Environment Protection Notice (**EPN**) on someone who is breaching a Code of Practice and, if the breach continues, commence legal proceedings (☛ Go to Chapter 6).
- If you are concerned about water quality, contact the Director of Public Health for advice. The Director has powers to make orders against individuals and public authorities to ensure that water quality does not present a public health risk.
- Contact the Environmental Health Officer (**EHO**) at your local council and ask them to take a water sample. EHOs are experienced in proper sampling techniques and can arrange for the sample to be analysed. If the sample is contaminated, ask the EHO to take action against the polluter.

The EPA and the Registrar have signed an Memorandum of Understanding outlining their respective responsibilities for investigating and addressing chemical spraying and spill incidents.

Record information:

- For ongoing issues, it is important to maintain baseline information so that you can investigate suspected contamination and show that chemical levels are higher than normal. Contact your local Landcare or Water Watch group from information about basic chemical monitoring in your area.
- If your property has been sprayed or affected by chemical run-off, you will need evidence of this, and be able to link the event to a particular operator or landowner. It is advisable to take photos of spraying (if possible), make diary notes, take samples and have them tested for chemical residues as soon as possible.
- Take reliable samples of water, soil or produce and have them tested by an accredited laboratory.
- Tests would need to show that the levels of the chemicals in your soil, water or produce exceed the maximum levels allowed under the Regulations (e.g the Drinking Water Guidelines). It may be necessary to conduct several tests over a number of months.
- If you are concerned about health impacts, go for a medical check up. Keep medical records showing any abnormally high chemical residues in your body or other symptoms that may be related to exposure to chemicals.

☛ Go to Chapter 13 for general information about taking action.

10.3 1080 poison

1080 (sodium monofluoroacetate) is a poison frequently used to control pest species in rural areas. Since January 2006, 1080 poison has not been used in State forests. However, private forestry operators and farmers continue to use 1080 to target browsing animals such as possums and wallabies.

Use of 1080 is regulated by DPIPWE under the *Poisons Act 1971* and the Code of Practice for the Use of 1080 for Native Browsing Animal Management (**1080 Code**). All use of 1080 poison is supervised by a DPIPWE Wildlife Management Officer.

In May 2011, a Report was released as part of the Tasmanian Community Forest Agreement that focussed upon finding alternatives strategies for 1080 use. The Report recommended a number of alternatives to 1080 use be adopted, such as wallaby grids, wildlife-proof fencing and a potentially more humane poison called 'Feratox'.

Required permits

Before 1080 baits can be laid, the operator must obtain several permits:

- Permits for use of a controlled poison under the *Agricultural And Veterinary Chemicals (Control of Use) Act 1995*
- A permit to 'take' (that is, to kill) specified wildlife under the *Nature Conservation Act 2002*
- If any threatened species may be affected, a permit under the *Threatened Species Protection Act 1995*.

A permit to lay 1080 must not be issued unless an authorised officer is satisfied that a damage assessment has been carried out which shows that:

- Wildlife poses an unacceptable risk to existing crops or pasture (determined by a formal damage assessment); and
- The poison will not pose an unacceptable risk to non-target species (a risk assessment must be completed); and
- Alternative control measures (e.g. shooting and fencing) have been tried and are not effective.

In general, only one permit will be issued for the same site within three years.

Restrictions on the use of 1080 poison

The 1080 Code provides that poison baits must not be laid within:

- 200 metres of an occupied house or a public picnic facility
- 20 metres of a permanent stream
- 5 metres of a property boundary or public road.

The permits can also impose additional restrictions, for instance in areas occupied by large numbers of non-target species. If you are aware of some affected areas that may be highly sensitive to 1080 poison (wet areas, feeding grounds), you should notify DPIPWE and ask them to make sure that the conditions do not allow 1080 to be laid in these areas.

The permit holder is required to:

- give written notice to all landholders within 500 metres of the poison line (DPIPWE can also require notification to be given to landowners within a larger radius). Notice must be given at least 4 working days prior to the poison being laid.
- dispose of all uneaten bait and all animal carcasses, including those on neighbouring properties.
- display '1080 poison' notices on gates and fence lines, for at least 28 days after laying the poison.

10.4 Chemicals affecting organic farms

In the case of organic farming, contamination by any chemical at all could have an adverse effect on your business and possibly cause you to lose your accreditation. Therefore, it is important to be aware of the activities around you and how they may affect your organic status.

The very first step is to notify the relevant landowner (or business / forestry operator) that you operate an organic farming enterprise. Inform them of your position with regard to soil and water quality and seek assurances from them that their operations will not affect the viability of your business.

If you are concerned about nearby logging operations, ask for a copy of the Forest Practices Plan for the land – check for buffer zones and conditions regarding chemical use, including herbicides and fertilisers. If you have questions about how the forestry operations will be carried out, ask the operators.

You can also contact the Minister for Primary Industries and Water and ask her or him to issue a specific order controlling or prohibiting agricultural spraying on the property. You will need to justify the order on the grounds of protecting "susceptible plants and stock, public health, the environment and trade". The Minister will consult with the Minister for the Environment before making a decision about whether to issue an order.

For information about certification or government assistance for organic farming, contact the Tasmanian Food Opportunities Unit within DPIPWE. You can also visit the Organic Coalition Tasmania website for details of current projects.

10.5 Genetically Modified Crops

GMO crops are causing considerable concern throughout the world because they have been developed at a faster rate than governments have been able to regulate them and assess their effects.

All three levels of government in Australia have been trying to grapple with this issue.

At the federal level:

The federal Gene Technology Act 2000 came into force in June 2001. This Act institutes a set of regulations that are applied nationally, administered by the Gene Technology Regulator.

At the state government level:

There is currently a moratorium on the commercial release of genetically modified plant crops in Tasmania under the Plant Quarantine Act 1997. Though similar moratoriums have recently been lifted in NSW and Victoria, the Tasmanian government's Policy Statement on Gene Technology and Tasmanian Primary Industries 2009 - 2014 confirms that the moratorium will remain in place until at least November 2014.

Provisions have been made for limited exemptions to the moratorium under section 99 of that Act – principally for existing poppy crops and open-air trials for non-food crops, and enclosed food and animal trials.

In January 2014, the government announced the moratorium would continue indefinitely.

- Since November 2005, the whole state has also been declared a GMO-free area under the *Genetically Modified Organisms Control Act 2004*. This Act also provides for a strict licensing regime for research into GMOs within Tasmania. Under the Act, any person producing, selling or otherwise dealing with a GMO in a designated GMO-free area, without both a permit and a GMO licence will face a fine of up to $260,000 (s.7).
- GMOs are also regulated under the Gene Technology (Tasmania) Act 2012. This Act was introduced to align state laws with the Commonwealth *Gene Technology Act 2000*, which uses the Precautionary Principle as a basis for its regulatory framework and includes a range of strict liability offences.
- The Biosecurity Policy and Strategy was developed by the state government in 2006. It sets out a number of policy objectives for maintaining the low level of pests, diseases and weeds in Tasmania. The Policy provides that before a potential disease/pest is imported to Tasmania, it must be assessed against particular criteria, including whether it poses a suitably 'very low risk'.

  ⇝ Download the *Biosecurity Strategy 2013-2017*, which seeks to implement the Policy, from the DPIPWE website.

Opportunities for Public Participation:

- **Under the *GMO Control Act*,** a "person aggrieved" may appeal against permit conditions (☛ see Section 30).
- **Under the *Gene Technology Act 2000*,** where significant risks are posed to the health and safety of people and the environment, the public may make written submissions about applications for licences and risk management plans. The Regulator may hold public hearings (section 47) and, after considering submissions, may issue a licence only if satisfied that satisfactory risk management measures are in place.
- an aggrieved person or the Regulator may apply to the Federal Court for an injunction where a person is about to contravene or is contravening the Act or regulations (☛ see Section 147).
- The Regulator must keep a register of low risk 'product dealings' (see section 74 and 75) and a record of all GMO and GM 'product dealings' (see section 77 and 78).

  ⇝ Contact DPIPWE or look on its website for information about policies and rules on GMO crops and organisms.

10.6 Contaminated Land

As residential areas expand, there has been increasing redevelopment of land that was previously used for industrial activities, such as petrol stations and landfills.

This has made land contamination a major urban issue, and has increased awareness of the health and environmental risks associated with such sites.

Part 5A of the *Environmental Management and Pollution Control Act* provides a comprehensive system for the management of land contamination in Tasmania.

What are contaminated sites?

An area of land (including water in or under the land) will be a "contaminated site" if:

- The land contains a pollutant in a concentration above naturally occurring levels, which is (or is likely to be) causing environmental harm (including serious or material environmental harm and environmental nuisance); or
- The land contains a pollutant in a concentration above naturally occurring levels, which is likely to cause environmental harm if not managed appropriately; or
- A site management notice is registered on the title for the land (see section 74A(2)).

However, land is not a 'contaminated site' if the relevant pollutant is a 'prescribed pollutant' or is present on the land because of 'prescribed circumstances' (see section 74A(3)). To date, no pollutants or circumstances have been prescribed under the Act.

Who is responsible for managing contaminated sites?

The management of contaminated sites is shared by the Contaminated Sites Unit (within the EPA Division), and local councils.

Generally, the Contaminated Sites Unit is responsible for managing known contaminated sites, investigating potentially contaminating activities and dealing with specific pollution incidents.

Local councils are responsible for regulating development through their Planning Schemes to ensure that sensitive uses are not located on or near contaminated sites.

The Tasmanian Planning Commission has prepared a 'Planning Advisory Note – Contaminated Land' to assist councils to assess applications to amend planning schemes where land is, or may be, contaminated. The Commission is currently developing a statewide Planning Directive to ensure that all planning schemes in Tasmania contain the same provisions in relation to the assessment and management of development on contaminated land.

How is contaminated land regulated?

If a person causes land to become contaminated, they could be prosecuted for causing environmental harm under EMPCA (☛ see Chapter 6). It is also an offence not to report any pollution incident.

If you believe that land has been or is being contaminated, contact the Contaminated Sites Unit and ask them to investigate (see below).

Under the *Building Act 2000* you must not carry out any building work on land that is

> *"…contaminated, unhealthy and not suitable for the purpose until the land is cleaned or remedied…".*

If a council suspects that a development site may not be suitable for its proposed use, the council may require a developer to demonstrate that the land is not contaminated. For example, if the council is aware that a potentially contaminating activity was carried out on the site a decade ago, the council may ask the developer to investigate whether any residual contamination exists and carry out work to rehabilitate the land before any further development can take place.

Reporting contaminated land

Any owner or occupier who knows or should reasonably know that land is likely to be contaminated:

- Must not commence or continue any activity that is likely to cause or continue to cause the release or escape of pollutants; and

- Must notify the Director of details of the pollutant present on the property and any actions they have taken to manage or mitigate the impacts of the pollution (section 74B).

Landowners and occupiers are required to notify the Director even if it means that they will incriminate themselves for having caused environmental harm (section 74B(3)).

For new contamination, notice must be given within 24 hours of discovering that the land is contaminated (such as when you receive test results showing contamination). If the contamination already exists, the owner or occupier must notify the Director within 6 months of the date that the new provisions commence (section 74B(1)(b)).

Strict penalties will apply for failing to notify the Director that land may be contaminated - maximum fines will be up to $65,000 for an individual and $130,000 for a company.

There are no specific provisions allowing third parties to report that land is, or may be, contaminated. If you are concerned about land in your area, you should contact the Contaminated Sites Unit and ask them to issue an investigation notice (see below).

Investigation, remediation and management of contaminated sites

Under Part 5A, three different types of notices may be issued in relation to contaminated sites:

- **Investigation notice** - can require work to determine whether land is contaminated, the types of pollutants that are present and the extent of the contamination, the extent of environmental harm that has already been caused and what site management measures are required. (section 74E)

  For example, an investigation notice can require one or more people to take samples from the land, carry out tests and analyse data, install groundwater bores and submit progress reports to the Director.

- **Remediation Notice** - can require one or more people to take action to ensure that people, animals and the environment are protected from harm, or further harm, as a result of the contamination. (section 74F)

  For example, a remediation notice can require one or more people to carry out testing, to erect fences, wall or bunds to contain the pollutant, to remove the pollutant and remove or treat any contaminated soil, water or rock. The notice can also require the site to be wholly or partly vacated or entry to the site to be restricted.

- **Site Management Notice** - can be issued to ensure the safe management of a contaminated site. (section 74G)

  Site management notices can require ongoing monitoring for the site, restricted access to the site and any other action to minimise the risk of the pollutant escaping or causing harm to any person or the environment.

For each kind of notice, the Director can also require the responsible person to hold public meetings to inform the public about the progress or the investigation or remediation and the ongoing management of the site.

How are investigations carried out?

The National Environment Protection (Assessment of Site Contamination) Measure 1999 adopts national best practice standards for technical assessment of land contamination. This *Measure* (the 'NEPM') has the force of a State Policy in Tasmania (☛ see Chapter 4).

The NEPM (Assessment of Site Contamination) was updated in May 2013. Make sure that you are referring to the most current version of the NEPM when dealing with site contamination.

If a potential contaminated site has been reported to the Contaminated Sites Unit, an investigation is carried out in a staged approach. The contaminated site investigation process has five stages:

1. Environmental Site Assessment - the first stage sees the site being subject to an Environmental Site Assessment or 'ESA'. This is done in order to find out the status of the contamination and the potential risks it may pose to human health and the environment. This evaluation is done in accordance with both the NEPM and the EPA reporting standards.

2. Detailed ESA - the second stage involves taking a number of samples from the contaminated site that measure the extent of the contamination in the air, soil and water sources.

3. Remediation - the third stage focusses on cleaning up the affected area by either treating the site or excavating the contaminated soil.

4. Validation - the fourth stage of the process makes sure that remediation has been successful and that there is no risk to the land based on either the current or proposed land use.

5. Monitoring - this final stage ensures that the site is monitored to ensure that contamination levels are decreasing and that remediation is working.

For more details about the investigation process, go to the EPA website.

Who is responsible for dealing with contaminated sites?

'Investigation' and 'Remediation' notices can be served on any person that the Director reasonably believes is likely to be wholly or partly responsible for the contamination. This could include the current and former owners or tenants and any other person whose activities may have caused the contamination.

The current or former owner, occupier or person in charge is taken to be responsible for the contamination if the person knew, suspected or should reasonably have suspected that the land was contaminated AND allowed or possibly allowed the pollutant to continue to be discharged (sections 74E(3) & 74F(3)).

'Site Management' notices can be served on any person that the Director reasonably believes is likely to be responsible for the contamination, or the current owner or occupier (even if they were not responsible for the contamination) (section 74G(2)).

Each notice must specify what actions must be taken and who is responsible for taking them. If notices are issued to more than one person, the notice must set out what proportion each person is responsible for, having regard to their contribution to the contamination (section 74D).

Notices bind the person that they are served on, even if they sell the land (section 74I(6)(b)). The notice may also state that the obligations under the notice can be passed on to future owners of the land (sections 74D(3) & 74I(6)©).

Copies of all notices must be served on the current owner and occupier, the local council and anyone with a registered interest in the land. If the person who is required to carry out work under a notice is not the current owner of the land, the current owner or occupier must

let them on to the land to carry out the work (as long as they are given at least 3 days notice). They must carry out the work with as little interference to the current owner as possible, and must make good any damage to the land (section 74R).

Sign off process

The 'sign off' process is essentially written confirmation that certain guidelines have been met in relation to the investigation of a site. The process also involves an assessment as to whether the site is fit for its intended use.

When dealing with some issues such as sensitive land use re-zoning or development approval for works that could impact human health and the environment, planning authorities such as local councils can write to the Director of the EPA and the sign-off process is triggered.

However, as planning authorities are ultimately responsible for ensuring whether a particular site is appropriate for its intended use, they can also independently make a decision about whether the site is suitable and if conditions need to be imposed on the applicant.

For an information bulletin about the Site Contamination Sign-Off process, read Information Bulletin 112 on the EPA website.

What if the person responsible for the contamination cannot be found?

- Investigation and remediation notices can only be served on a current owner who was not responsible for the contamination if:
- they became the owner after the new provisions commence and knew or should have known that the land was contaminated; and
- the Director has taken all reasonable steps but cannot successfully identify the person who is responsible for the contamination or the person who was responsible for the contamination is bankrupt (sections 74E(4) & 74F(4)).

Site management notices can be served on the current owner or occupier, even if they did not cause the contamination or know about it when they purchased the land (section 74G(2)(b)).

If a company that was responsible for the contamination has, within the past two years, been wound up or transferred its assets to another company, a notice can be served on any related company (section 74Y).

If no owner or responsible person can be identified, the Director can carry out investigation and remediation work and try to recover the costs later (s.74T).

Appeal rights

Anyone who is served with an Investigation, Remediation or Site Management notice can appeal to the Resource Management and Planning Appeal Tribunal within 14 days (section 74O).

Appeals must be lodged within 14 days.

Lodging an appeal does not automatically suspend the notice. Unless the Director consents to the notice being suspended, the person served with the notice must still comply with the obligations under the notice (including action to prevent the escape of the pollutant). If their appeal is successful, they can recover the costs of any actions they took under the notice from the government (section 74O(3)).

Enforcement

Any person who is served with a notice must comply with it, or face a fine of up to $65,000 for an individual and $130,000 for a company (section 74P).

If the person does not take the action required by the notice, the Director can take action and recover the costs from the responsible person. The Director can also require any person served with a notice to pay the costs of investigation and monitoring compliance (such as reviewing progress reports) (section 74N).

The Director, a council officer or any person with a 'proper interest' (such as an affected neighbour) can take civil enforcement proceedings in the Tribunal against a person who is not complying with a notice under Part 5A (☛ See Civil Enforcement).

If all the actions specified in the notice are complied with, the Director can issue a Completion Certificate. The Director can also revoke a notice at any time. If a notice is revoked or a certificate is issued, the Registrar of Titles will remove the notation on the title for the property (section 74K).

Where can I find out more about contaminated sites?

Once a notice is served, a notation will be recorded on the Title for the contaminated site (section 74I). Anyone who does a title search for the property will see that it is contaminated, or being investigated to see if it is contaminated.

Owners must notify the Director if they plan to sell any property that is subject to an investigation, remediation or site management notice (section 74Q).

The Contaminated Sites Unit will conduct searches for information relating to land and groundwater pollution on a property. There is a charge for this service, and it will take 10 business days to complete.

↝ Further information about contaminated site searches is available from the EPA website.

10.7 Water & Water Catchment Laws

Water is a contentious area of policy, both locally and nationally. It is a critical natural resource, having many competing uses. Maintaining water quality and sustainable water development is essential for environmental reasons as well as for human uses.

Throughout the 1900s, lack of water management resulted in extensive pollution and degradation of Tasmania's inland waterways and estuaries, and numerous related problems. There was previously little integration of water management in the state, no guiding policy, too many water managers, little accountability and virtually no opportunity for public input.

However, in 1999 the *Water Management Act* was passed in order to bring water management into the Resource Management and Planning System and to comply with the nationwide COAG agreements on water policy.

The Act encourages sustainable use of water, and provides mechanisms to protect the health of Tasmania's valuable freshwater resources, including all dispersed surface water, all water in watercourses, lakes, wetlands and groundwater resources. The Act also allows the Minister to control the taking and use of water from declared tidal areas.

What does the Water Management Act do?

- Establishes a consistent system of water licensing and allocations. All water users must comply with the licensing regime, including major water users such as councils and *Hydro Tasmania* (who have a special licence for hydro-generation).
- Separates water entitlements from land titles. This allows water licences and allocations to be transferred.
- Provides for the development of Water Management Plans (see below).
- Establishes mechanisms to ensure enough water is available for the natural environment (*Environmental Flows*).
- Sets out the procedures for dealing with applications for dam permits.
- Creates *Water Districts*.
- Provides opportunities for the community to have a say in water management issues.

Which state agency administers water laws?

The overseeing of water management in Tasmania is generally handled by the *Water Resources Division* of *DPIPWE*. All other agencies that are involved with water management are accountable to this department. Other agencies include:

- the *EPA Division* plays a major role because it is generally responsible for environmental protection, including water pollution. It administers and enforces the *Environmental Management and Pollution Control Act* and the *State Policy on Water Quality Management*. (☛ Go to Chapter 4 & 5 for details).
- The *Department of Health and Human Services* is responsible for regulating the quality of drinking water under the *Public Health Act 1997*.
- *Tasmanian Irrigation* is a government business entity (***GBE***) that manages government-owned water irrigation schemes and major projects such as the *Meander Dam*.
- The independent *Tasmanian Planning Commission* has the role of investigating and approving *Water Management Plans* for Tasmania's water resources.

Can I be involved?

Yes. Water management is of vital importance to the health of our rivers and to the whole community, including landowners, farmers, fishing enthusiasts... anyone who drinks water, for that matter! As you will see below, the *Water Management Act* provides opportunities for public involvement in the development of water policies, appeals against dam permits and civil enforcement to make sure that the Act is complied with.

If you have an interest in water management, it is a good idea to get involved early and have your say while water management policies and practices are progressively implemented. Look out for public notices inviting public input.

↝ You can see policies available for public comment on the DPIPWE website.

↝ To check the status of Water Management Plans under review, go to the Planning Commission website.

Who owns water resources?

All rights to the use of water are vested in the Crown.

How are Tasmania's water resources managed?

State Water Policy

Tasmanian State Policies have an important role in environmental protection. The *State Policy on Water Quality Management* identifies activities which may impact on various water resources and provides guidance about managing these activities, such as setting emission limits for pollution discharged to watercourses.

Agencies using and managing water resources must make sure that their activities do not compromise the water quality objectives and protected environmental values set out under the *State Policy on Water Quality Management*.

You can download the Policy from the EPA website.

The State Policy has been subject to a 10 year review. The EPA Division recently released its Response to Public Submissions and Preferred Options Paper.

Water Management Plans

The *Water Management Act* provides for *Water Management Plans* to be developed for each of Tasmania's 48 catchment areas.

To date, Water Management Plans have been finalised for the following catchments:

- Greater Forester
- River Clyde
- Little Swanport
- Ansons
- Boobyalla
- South Esk
- Mersey
- Lakes Sorell and Crescent
- Clyde
- Sassafras Wesley Vale
- Tomahawk

At the date of writing, draft water management plans have also been released in relation to the Macquarie and Ringarooma Catchments.

About Water Management Plans

Water Management Plans determine how a water resource or group of water resources will be used and looked after.

These plans should include:

- a clear statement of the community's environmental, social and economic objectives for the particular water resources;
- a description of the water management regime that best gives effect to these objectives. This may include limits to water allocation in order to guarantee the volume and timing of water that is needed to sustain natural ecosystems. The plan should also for ongoing monitoring and review to see if the management regime IS achieving its objectives; and
- an assessment of the potential detrimental impacts on water quality.

Plans may also provide for water allocations and licensing (including conditions for transferring allocations) and specify issues to be considered when assessing applications for dam permits. A water management plan should also set out measures to mitigate possible impacts resulting from the taking of water.

The development of these plans is obviously very important to the general public, especially for water users. They are also very important for environmental protection, because they set out the *Minimum Environmental Flows* which are guaranteed under the Act.

Once approved, the *Water Management Plan* for each particular area becomes 'statutory' (has force of law under the Act) and is binding on water managers.

How is a Water Management Plan developed?

The process for preparing and implementing *Water Management Plans* is detailed in Part 4 of the Water Management Act.

↝ You can find out more about this process on the DPIPWE website.

The WMPs are required to be developed in consultation with catchment communities. Local stakeholders are involved in their development – including commercial water users, council officers and local community members.

The Plans must be consistent with the Objectives of the Water Management Act - which include the primary Objectives of the Resource Management and Planning System. They must also be consistent with the State Policy on Water Quality Management 1997.

To assist with the development of *Water Management Plans*, DPIPWE has also developed Generic Principles for Water Management Planning and Standard Operating Procedures for the Development of Statutory Water Management Plans. These documents provide guidance on a number of matters that are common to most catchments, including how community consultation is carried out, what water resources are included in the plan, water quality issues that must be considered when assessing applications, licensing provisions for stock and domestic use and useful measures to monitor the implementation of the Plan.

Once a draft *Water Management Plan* has been developed, the public will be invited to make submissions about the draft plan. This is an excellent opportunity to have a say in how water resources in your area are managed, so keep an eye out for public notices advertising the draft management plan.

Draft *Water Management Plans*, including any submissions made by the public, are then reviewed by the *Tasmanian Planning Commission*. The Commission may hold a public hearing before deciding whether to approve the plan.

↝ You can see current Draft Water Management Plans on the DPIPWE website.

How are 'minimum water flows' guaranteed?

It is necessary to ensure adequate river flows in order to maintain or improve the ecological health of our rivers. *Minimum Flows* are therefore legally protected by the Act.

Minimum flow levels for each river/stream are determined by the *Water Management Plan* being established for that system. Once established, water managers will then be responsible and accountable for ensuring that these flows are maintained.

The Tasmanian Environmental Flows Framework (***TEFF***) provides guidance on how minimum environmental flows are assessed for a range of different scenarios in stressed and unstressed aquatic ecosystems. It is used for the purposes of water planning and for day-to-day management decisions in catchments that do not have water management plans.

↝ More information about the TEFF is available on the DPIPWE website.

An issue of public concern is whether or not the declared minimum flow for any particular river or stream will be high enough to sustain or improve river health. Concerned citizens should therefore make sure they have their say in the early stages, to ensure that the required minimum flows for their local river system are adequate.

How are our wetlands managed?

Wetlands are dealt with in the same way as other water resources in Tasmania. The Minister can require a draft water management plan to be developed for any water course, including a wetland area. All management and planning decisions affecting wetlands should also have regard to the Tasmanian Wetland Strategy.

For management purposes, Tasmania's wetlands are classified into eight bioregions. The Wetlands & Waterways Works Manual also provides guidelines for work undertaken in wetlands.

More information about the management of wetlands is available on the DPIPWE website.

Integrated Catchment Management

A number of years ago, the Tasmanian government began work on a *State Policy on Integrated Catchment Management*. However, the policy was never finalised and management issues were subsumed by the water management planning process.

As a result, catchment management remains ad hoc in Tasmania. Relevant issues are dealt with through *Water Management Plans*, the *Natural Resource Management Strategy*, soil and salinity risk assessment programmes, the State Coastal Policy and Planning Schemes.

Tasmania would benefit from a more consistent approach to integrated catchment management. The current review of the coastal planning and management framework and the development of Statewide planning codes provides an opportunity to develop such an approach.

Who can 'take water' from a watercourse?

Under previous legislation, *Water Rights* were legally annexed to the land and could only be transferred with the land title (that is, if you bought the land). This made it difficult to obtain water rights unless you were lucky enough to be buying a property with a pre-existing water right attached.

Under the *Water Management Act*, water rights are no longer attached to land titles, but are 'owned' by a person. DPIPWE has the power to grant water licences to any person to take water from rivers and lakes and this water right can be traded (for example, sold or leased to another landowner). However, if you want to sell your water right, you will need to get approval from DPIPWE.

Can landowners still take water from adjoining rivers and lakes?

Under common law, landowners have long enjoyed what is called riparian rights – the right of free access to water in rivers and lakes flowing within their property or along its boundary.

Under Part 5 of the *Water Management Act*, certain people still have a right to take water without a licence (known as "Part 5 rights"). Owners of land adjoining watercourses or lakes ("riparian" or "quasi-riparian" landowners), as well as casual users of land, may take water for human consumption, domestic purposes, stock watering and fire fighting (these are known as "riparian rights"). In addition, you can take water for private electricity generation as long as taking the water does not adversely affect other users or the environment.

A landowner can take groundwater or dispersed surface water from their land for any purpose.

Recently, the Water Management Regulations 2009 introduced restrictions on some riparian rights. For example, domestic use is now limited to 440L per day for each dwelling and a maximum of 90L per head of cattle is available to water. DPIPWE may also introduce other restrictions to regulate water usage where it is necessary to ensure water is used equitably and sustainably.

Water licences

Subject to some exemptions, anyone who takes water for agricultural or commercial purposes must have a *Water Licence*. A water licence enables the holder to take an allocated quantity of water from a named water course.

Councils and government-owned agencies such as *Hydro Tasmania* are also subject to the Act and must apply for water licences.

Water licences must only be granted when DPIPWE has been determined that the volume to be taken, and the method of taking the water, is not likely to cause environmental harm or adversely impact other people who use the watercourse or downstream commercial operations (such as oyster farms). Water licences are normally issued for ten years, but can be periodically renewed.

Section 56 of the Act empowers the Minister to specify the conditions under which water can be taken. Conditions can be imposed to manage environmental impacts; including impacts on water dependent ecosystems, deterioration of water quality, soil waterlogging, increased salinity and erosion, delivery constraints, destabilisation of bed and banks of a river or impacts on other water users.

Any person who takes water from a watercourse or a declared tidal area without a licence, in greater quantity than the licence permits, or in breach of the licence conditions or the *Water Management Plan* commits an offence.

Whether you have a water licence or not, it is an offence to take water if doing so leads to material or serious environmental harm.

When can you not take water?

Sometimes there will not be sufficient water available for everyone with a licence to take water from the watercourse (for example, during a drought). In these situations, the Minister can impose restrictions on water use, according to a hierarchy of priority uses set out in the *Water Management Act*.

Essential purposes, such as town water supplies and watering livestock, have first priority. Preserving environmental values has second priority. All other uses, such as irrigation and commercial uses, can be subjected to restrictions of water supply in order to guarantee adequate supplies for the two priority purposes.

Conveying water via a watercourse

Under Part 6A of the *Water Management Act*, a person cannot transfer water taken from another source, or stored (for example, in a dam) via a natural watercourse without authority from the Minister. The Minister will grant an authority to transport water from another source via a watercourse if she or he is satisfied that the water will not cause environmental harm, significantly impact on other users or adjoining landowners, and will not affect public safety.

Entities specified in the *Water Management (Watercourse Authority Exemption) Order 2009* do not require an authority to convey water in a watercourse. These entities include councils, Hydro Tasmania and water corporations.

Interfering with a watercourse

A permit is also generally required if you undertake any activity that may affect the natural flow of water in a watercourse or lake or of surface water, or adversely affects the water resource (including a groundwater resource) or ecosystems associated with that water resource.

How can water offences be prosecuted or remedied?

1. 'Water Infringement Notice'

An authorised officer can serve a *Water Infringement Notice* on a person who has committed an offence under the Act (see Part 13 and Schedule 5 of the *Water Management Regulations 1999*). *Water Infringement Notices* generally impose a fine and demerit points.

It is an offence to ignore an infringement notice, and you may be prosecuted if the fine is not paid.

2. Ministerial direction

Any person taking water is required to take reasonable steps to prevent damage to the watercourse or broader ecosystems. The Minister may direct a person to rectify any damage that is caused. It is an offence not to comply with these directions.

3. Suspension or cancellation of water licence

If a licensee accrues a prescribed number of demerit points (currently 12), their water licence can be suspended or cancelled.

The Minister can also suspend or cancel a water licence if the licensee is convicted of an offence under EMPCA (see below) or fails to pay licence fees.

4. Prosecution under the Water Management Act

The Minister or a local council can initiate a prosecution against any person who does not comply with a provision of the Act, or the conditions of a permit.

If the prosecution is successful, the court can impose a fine (the maximum penalty is currently $65,000), or order that the offender's water licence be varied, suspended or cancelled.

5. Taking action in the Tribunal

Where a person engages in an activity that breaches the *Water Management Act 1999* or has refused to take any action required by the Act, the Minister, the local council or any other person with permission from the Tribunal (known as "leave") may apply to the *Resource Management and Planning Appeal Tribunal* for an order.

☛ Go to Chapter 14 for information about taking action in the Tribunal.

After a hearing of the matter, the Tribunal may issue an order to:

- require the person cease the activity temporarily or permanently; or
- prevent the person from carrying out any use or development in relation to relevant land; or
- require the person to make good any relevant injury, loss or damage resulting from the contravention.

The Tribunal may also issue a temporary order to restrict an activity during a hearing on an application for an order.

Contravention of an order issued by the Tribunal may result in a fine of up to $65,000. In addition, the government can do any work required by the order to fix damage caused by the breach and recover the cost of the work from the person who contravened the order.

6. Actions under pollution laws

For information about water pollution offences and remedies, see the sections on:

- Chemical spraying

- Enforcing environment protection laws
- Inland fisheries

If a person is causing 'environmental harm', civil enforcement proceedings could be taken under section 48 of the *Environmental Management and Pollution Control Act* to prevent the harm.

☛ For more information about civil enforcement options go to Chapter 13.

7. Actions under the Public Health Act

An infringement notice may be issued under the *Public Health Act 1997* for failure to register as a user or supplier of private water. A person may also be prosecuted for failure to comply with an order of the *Director of Public Health* relating to water quality. These offences carry a penalty of up to $6,500.

☛ Go to Chapter 6 for further information.

8. Reviewing a decision

A person with sufficient interest in a decision that has been made under the *Water Management Act* (known as an "interested person") has a number of options to challenge the decision.

"Interested person" generally means a person who is directly affected by a decision. You should consider Section 270 of the *Water Management Act* to see if you fall within the definition.

If you are an interested person, you can:

- **Apply to the Minister for a review of the decision**
  To do this, write to the Minister requesting a review and explaining why you think that the original decision was incorrect.

  Applications must be made within 14 days of the decision.
- **Appeal to the Resource Management and Planning Appeal Tribunal**
  ☛ Go to Chapter 14 to see how to do this)

  *Appeals must be lodged within **14 days** of the decision that you would like to challenge.*
- **Apply to the Supreme Court for judicial review of the decision**

  *Applications for judicial review must be made within **28 days** of the date of the relevant decision.*

What do I do if someone has breached water laws?

- Immediately notify the *Water Management Branch* of DPIPWE (Ph: 1300 368 550), giving details of the breach.
- If pollution is an issue, also phone 1800 005 171 (pollution hotline).
  ☛ Go to Chapter 6 for information about what to do if there is a problem with water pollution.
- If public health is an issue, also phone 1800 671 738 (health hotline).
- If necessary, consider initiating legal action yourself.
  ☛ Go to Chapters 13 and 14 for general information about taking action.

10.8 Irrigation and farm dams

Irrigation can have significant impacts on the natural environment – including pollution of water courses, soil degradation, salinity and water-logging. The need to manage these issues effectively, and consistently, increases as the demand for irrigation grows.

There are around 8,700 registered dams in Tasmania and over 9,000 bores and wells.

Less than 20% of irrigation water is currently sourced from publicly owned infrastructure. The vast majority of irrigation water is sourced from unregulated streams or on-farm storages, using private infrastructure. Work currently being done by *Irrigation Tasmania* (see below) aims to change this.

How is irrigation regulated?

The *Water Management Act* provides for the establishment of 'irrigation districts'. These are administered by a 'responsible water entity' – such as a *Government Business Enterprise*, a council, a company or a co-operative.

The *Irrigation Clauses Act 1973* provides a legal basis for the construction, operation and funding of irrigation schemes by a *responsible water entity* and also the supply and trading of irrigation water.

In May 2013, the *Water Legislation Amendment Bill 2013* was introduced to parliament. The Bill proposes a range of changes to the legislation, and the repeal of the *Irrigation Clauses Act 1973*. To check the progress of this Bill, go to the Parliament website.

Tasmanian Irrigation

Irrigation Tasmania Pty Ltd (Tasmanian Irrigation) was formed in July 2011 to develop and operate publicly subsidised irrigation schemes. Irrigation Tasmania replaced the former Rivers and Water Supply Commission, and subsumed the Tasmanian Irrigation Development Board.

Tasmanian Irrigation has been involved in the establishment of a number of irrigation schemes in Tasmania. Schemes operate under a system of water 'entitlements' that define the quantity of water that the holder is entitled to. You can buy a water entitlement in two ways:

1. Pay a binding deposit – this will cost 10% of the total water entitlements that you are seeking; OR

2. Pay a non-binding deposit – this will cost 25% of the total water entitlements that you are seeking.

Upon buying water entitlements in one of the above ways, you enter a contract with Irrigation Tasmania Pty Ltd. Your water entitlement contains both an Irrigation Right and a Zoned Flow Delivery Right.

An *Irrigation Right* gives you an allocation of water during the irrigation season. A *Zoned Flow Delivery Right* is the right to deliver water to a specified zone. Both Irrigation and Zoned Flow Delivery Rights are granted in megalitres and recorded in a searchable registry. These rights can be traded either jointly or separately.

To find out more information about current irrigation schemes go to the Tasmanian Irrigation website.

Irrigation rights

As discussed above, water rights are now 'personal' property and are not attached to land titles. Therefore, you may need to get a water licence to carry out irrigation activities on your property – either by applying for a licence, or buying a water allocation from someone else.

Temporary water rights are also available for occasions when rivers and streams contain excess water. However, these rights are limited and are not suitable for long term irrigation practices.

Any irrigation scheme using recycled water (such as greywater) must comply with environmental and health legislation, including the State Policy on Water Quality Management. You should make sure that your irrigation scheme complies with the Environmental Guidelines for the Use of Recycled Water in Tasmania.

Approval under the EPBC Act

Irrigation schemes may also need to be approved under s.146B of the Environment Protection and Biodiversity Conservation Act 1999 if they are likely to have a significant impact on matters of national environmental significance (such as threatened species, vegetation communities or Ramsar wetlands). For example, the recently approved Lower South Esk River Irrigation Scheme was assessed under the EPBC Act as a result of potential impacts upon important wetlands, national and international heritage places and threatened migratory species. The Irrigation Scheme was approved in May 2012, subject to a range of conditions to address impacts on those matters.

Illegal irrigation

To avoid the risk of prosecution, if you have any doubt about whether or not you can take water and if so, how much, contact the *Water Resources Division* of DPIPWE.

How are farm dams regulated?

The construction of dams and weirs in Tasmania are not generally subject to the normal planning approval processes that apply to most other developments (☛ described in Chapter 5).

Instead, Part 8 of the Water Management Act contains special provisions for assessing an application for a dam structure, as outlined below.

Do I need approval to put in a farm dam?

With a few exceptions, it is an offence to build a dam or weir without approval. You could also be prosecuted for environmental harm resulting from your unlawful construction or use of a dam or weir. So it is essential to gain any necessary approvals and advice beforehand. You can contact a regional water manager for advice.

1. Approval from your local council

Generally, a dam or weir will be considered to be a 'permitted development' on land that is zoned rural, so you may not be required to get normal planning approval. However, in the first instance, you should contact your local council to see if you require a permit under the council's planning scheme. (☛ Go to Chapter 5 for details).

If the dam requires a permit under Pt 8 of the *Water Management Act 1999*, no additional planning permit is required (s.60A of the *Land Use Planning and Approvals Act 1993*).

2. Approval from Dam Committee

A statutory committee, *the Assessment Committee for Dam Construction*, is specifically responsible for assessing applications for the construction of dams. Before making an application, contact your Regional Water Manager to discuss your proposal.

A dam permit is required for all dams, except in the following circumstances:

- The dam is on a watercourse that will hold less than 1 megalitre of water; or
- The dam is constructed for the primary purpose of storing waste, in which case an approval from the *Environment Protection Authority* will be required; or
- To construct an emergency temporary levee or bank during flood.

If you build a dam without a permit, or fail to comply with the conditions of a dam permit, you could be prosecuted and fined up to $26,000.

The *Water Resources Division* provides technical resources and support to the Committee. The Committee can delegate the assessment of some dam permit applications to the *Water Resources Division*, provided the proposed dam will not have a significant adverse impact on another person, cause material or serious environmental harm or be located within a pipeline planning corridor.

Depending on the scale and potential environmental impact of the proposed dam, one of the following assessment procedures will be followed:

- **The *standard approvals process*** (for the majority of applications).
- **The *enhanced approvals process*** (for dam proposals that are expected to have significant potential environmental impacts and/or significant issues raised in representations).

If the Committee believes that a proposed dam is not likely to have a significant adverse impact on another person or cause material or serious environmental harm, the standard approval process will apply. The dam permit application is not publicly advertised and the Committee can delegate its assessment and approval powers to the Water Resources Division.

Where the proposed dam or weir is likely to have significant local environmental effects, including on threatened species or Aboriginal Heritage, the enhanced approval process will be followed. Notice of the dam permit application is publicly advertised and any concerned members of the public can make a representation.

Representations must be made within 14 days of the public advertisement.

If the proposed dam has the potential to create a significant environmental impact then an Environmental Impact Assessment may be required before the Committee makes its decision.

In making its decision, the Assessment Committee must have regard to the objectives of the Act (including the RMPS objectives), any water management plan, matters raised in representations, the effect of the dam on water flows and dam safety. Issues that you could raise in a representation include the impact of the dam on fish passage in the watercourse, future use of water for agriculture and forestry, effects on land drainage and potential damage to cultivated pastures, forests, fisheries, riparian vegetation and local scenery.

If you made a representation, you can appeal against the Committee's decision in the Tribunal (☛ see Chapter 14). However, appeals are restricted - you can only appeal on the grounds that the approval process did not follow the correct procedure or was unfair. You cannot appeal on the grounds any technical information taken into account or technical finding of the Committee was incorrect.

Appeals must be lodged within 14 days of being notified of the Committee's decision.

3. Approval from Inland Fisheries

In some situations, the *Inland Fisheries Service* may require the owner of a dam placed across a river to make a 'fish-pass' if the dam does not allow the free passage of fish. If the owner fails to create a 'fish-pass' the *Inland Fisheries Service* has the authority either to do the work or have the work done.

11. Mining and Quarrying

Tasmania is highly mineralised and has a rich mining history. But that history has come at a high price - the industry has left in its wake a legacy of serious pollution and degraded landscapes, most notoriously evidenced by the Queenstown hills and the heavily polluted Queen and King Rivers. Much has changed in the last 30 years in what we expect from miners and how their activities are regulated.

Investment and demand from China and India have more recently caused significant growth in the mining industry. In 2012, mining accounted for approximately half of Tasmania's exports and there is considerable pressure for expansion in this State. Tasmania's Economic Development Plan supports this expansion, and outlines measures to aid the mining industry.

There are currently over 65 mining leases for various minerals throughout Tasmania, and a number of significant new mining proposals under consideration. Existing operations range in size from 3ha gemfields to the large leases in Roseberry and Port Latta, each of which is more than 4,500ha in size. Tasmania's mines produce a wide range of minerals, with the largest exports being iron and iron ore, coal, tin, limestone (for cement) and silver.

Mining leases have also been granted for over 400 quarries in Tasmania, ranging in size and production limits. For example, nearly 200 quarries produce stone and gravel, ranging from 1ha quarry operations to the large 700ha quarry lease in Leslie Vale.

↝ More information about Tasmania's mining industry is available from the Mineral Resources Tasmania website.

There is potential for significant tension between mining activities (including exploration) and environmental protection in Tasmania. A good example of this tension is the recent controversy surrounding the proposed national heritage listing of the Tarkine area in North West Tasmania. While the entire Tarkine area was nominated for inclusion on the National Heritage List, only a small portion of land was eventually listed. The Federal Environment Minister acknowledged that the area had important natural values, but clearly stated that his decision to exclude the larger area from the National Heritage listing was based on the negative economic impact that a more expansive listing may have on mining in the region (which is currently subject to a number of significant mining proposals).

☛ Go to Chapter 7 for more details regarding the National Heritage List.

While mining is generally regarded as good for the Tasmanian economy, it has the potential to impact negatively upon our natural resources and must therefore be subject to rigorous assessment.

This chapter discusses the laws that regulate:

- mineral exploration
- mining
- quarrying

These three activities can have major impacts on the natural environment, on private landowners and on local residents.

Who administers minerals and mining?

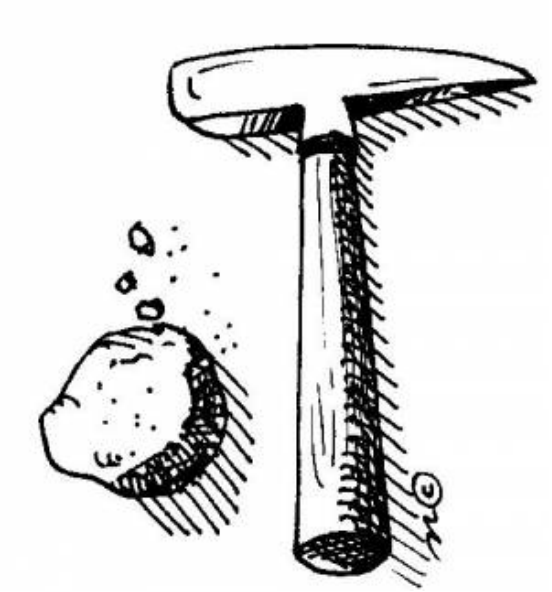
The Mineral Resources Development Act creates various leases and licences allowing people to prospect for and mine minerals. The Act is administered by Mineral Resources Tasmania (part of DIER).

Mineral Resources Tasmania also administers the Petroleum (Submerged Lands) Act. Titles granted by the Minister under this Act include exploration permits, retention leases, production licences and pipeline licences.

Local councils generally assess and regulate smaller ('Level 1') mining operations, such as council quarries. However, if the operation produces a significant volume of material (more than 5,000 m3 per year), or is otherwise likely to cause environmental harm, the *EPA Division* will undertake the environmental assessment and regulate the operation.

11.1 Mineral Exploration

Who owns minerals in the ground?



The Crown owns oil, gold and silver on all public and private land. Ownership of other minerals depends on the date and type of land title that attaches to the property.

Rock, stone, sand , gravel and clay used for construction and bricks are owned by the landowner of the property where they are found.

Who can search for minerals?

A person who wishes to 'fossick' (ie use hand tools) needs only a prospectors' licence. This licence does not allow the holder to prospect on private land, unless the landowner gives permission.

A person or company that wishes to use more comprehensive methods of exploration must obtain an exploration licence. This enables the holder to search for up to five years within a defined area specified by the licence. The licence area can include private land and Crown land.

Mineral exploration activities are not regulated by planning schemes (☛ go to Chapters 4 and 5, see section 20(7) of LUPAA). This often means that it is difficult for a landowner to prevent an exploration licence being issued over his or her land. However, s/he may be able to influence the conditions that apply to the licence.

Any person who owns, or has an interest in, any land that is subject to an application for an exploration licence is able to lodge an objection with *Mineral Resources Tasmania*. Objections are then heard by the *Mining Tribunal*.

Objections must be lodged within 28 days of the licence application being advertised in a local newspaper.

What environmental controls are there over mineral exploration?

The holder of an exploration licence is generally not required to obtain a planning or environment permit. This does not mean that mineral exploration is unregulated. The environment can be protected via the following mechanisms:

- Exploration activities are required to be approved under the *Mineral Resources Development Act 1995*.

- The explorer must obtain written permission from Mineral Resources Tasmania prior to undertaking any on ground exploration. Mineral Resources Tasmania liaises extensively with land managers such as Forestry Tasmania and the Parks and Wildlife Service. Prior to approving a works program for exploration, any potential for the work to affect threatened species, conservation and heritage values is considered - where necessary the program is modified or conditions are imposed to avoid or minimise negative impacts on these values.
- All exploration work must be carried out in accordance with the Mineral Exploration Code of Practice. The Code comprehensively describes what a licence holder can and cannot do.

  Adherence to the Code is a licence condition - breaching this requirement may result in suspension or revocation of the licence.

  If it appears that the Code has been breached, complaints may be made to Mineral Resources Tasmania or the EPA Division. If the Code has been breached, or if environmental harm occurs or is likely, an Environment Protection Notice may be served on the operation (☛ Go to Chapter 6 for details).
- A 'rehabilitation bond' must be lodged before a licence is granted. The bond can be compulsorily used to rehabilitate exploration works if the company responsible for those works fails to do the required rehabilitation.

11.2 Mining

What is a mining lease?

- A mining lease authorises the leaseholder to carry out work to extract and, in some cases, to process specified minerals. The Minister for Resources is responsible for granting a mining lease.
- A mining lease gives the holder the right to carry out mining operations (access, excavation and treatment) within the confines of the mining lease, subject to conditions set out in the lease.
- A mining lease is rarely granted for more than 21 years. Most leases are issued for a 5-10 year term.
- The lease area should be limited to the minimum land area required for the efficient operation of the proposed mining operation, including supporting infrastructure such as tailings dams. The area is likely to include both ‘measured’ and ‘inferred’ mineral resources.
- A mining lease may be granted only if the proponent demonstrates the existence of an economic mineral resource, intends to mine, has sufficient financial and technical resources for the operation, has assessed the potential environmental impact, has a compensation agreement with the landowner and has provided a rehabilitation bond.

What approvals are needed for a mine?

- For small operations (annually less than 1,000 tonnes of mineral or 5,000 m3 for sand or stone) the operation is classified as a 'Level 1' operation and environmental approval is managed by the local council. You will need to check the relevant Planning Scheme to see whether a planning permit is required for the mining operation

  ☛ Go to Chapters 4 and 5.

- Larger scale ('Level 2') operations are approved and regulated by the Environment Protection Authority (***EPA***) (☛ Go to Chapter 5 for information about development controls). The developer must prepare an Environmental Effects Report (***EER***) or a Development Proposal and Environmental Management Plan (***DPEMP***) outlining the manner in which the operator will meet environmental standards.
- Mining is allowed within most reserve classifications under the *Nature Conservation Act 2002*, subject to any restrictions outlined in the management plan for the reserve. Management plans for national parks generally prohibit mining activities.

  ☛ Go to Chapter 7 for more information regarding management of reserves.
- If a proposed mine is likely to impact on a matter of national environmental significance (such as a World Heritage Area, or habitat for a nationally listed threatened species), approval may also be required under the *Environment Protection and Biodiversity Conservation Act 1999*.

  ☛ Go to Chapter 15 for more information about the EPBC Act.

Mining on private land

Mining is the only industry where a private company can develop someone else's land without their consent.

However, a mining lease can only be granted when the applicant has entered into a compensation agreement with the landholder. This takes the form of a common law contract. Landowners have recourse to the Mining Tribunal to settle any dispute relating to the compensation agreement.

The holder of an exploration licence or mining lease cannot conduct any work within 100 metres of any substantial building or water body without the consent of the landowner. The owner must also be consulted prior to roading and construction activities taking place. Landowners have recourse to the Mining Tribunal if these restrictions are not complied with. Prior to any hearing, the Director of Mines must attempt to resolve the dispute.

Landholders cannot revoke their consent once it has been given in writing.

Rehabilitation of mine sites

In past decades, many mine sites in Tasmania have been abandoned without adequate rehabilitation of the area taking place. Mineral Resources Tasmania currently manages the Rehabilitation of Mining Lands Trust Fund, which provides funds to rehabilitate Crown lands affected by former mining and exploration activities.

Funds from the Rehabilitation Trust are used to address safety hazards (for example, covering abandoned mine shafts), remediate contamination, conduct revegetation works and weed control.

To reduce the rehabilitation burden on the government, mining operators must now provide a rehabilitation bond before any work can commence in a mining lease area. This is a back-stop measure, which ensures that some funds are available to cover the costs of rehabilitation in the event that an operator fails to comply with environmental and rehabilitation requirements set out in their lease conditions.

Can I object to a mining lease being granted?

Mining lease applications are not publicly advertised, though landowners will be notified.

Only those who can claim a right to, or interest in, all or part of the land comprised in any application for a lease are able to object to the granting of a mining lease. For example, land owners are recognised as having an interest.

In the case of Stow v Mineral Holdings, a conservation group was not able to object to mining activities because they did not have an "estate or interest in the land" (ie they had no private interest or right in the land). The court found that, even though the group was interested in the protection of the area, their interest was a public one, rather than a private interest.

Therefore, in order to object to a mining lease, you must demonstrate that you have a greater claim to the land than other members of the public (such as owning affected land or holding a lease or licence over the land). This is a considerable hurdle to overcome.

Objections to leases must be sent to the Registrar of Mines and will be heard by the Mining Tribunal.

Objections must be made within 28 days of the mining lease being "marked out".

A mining operation generally requires a mining lease, environmental approvals under the *Environmental Management and Pollution Control Act 1994* and a planning permit (depending on the provisions of the relevant planning scheme). Where a planning permit and environmental approval is required, the application will be advertised, and public comments invited (☛ Go to Chapters 4 and 5 for more information about this process).

11.3 Quarrying

Quarrying involves the extraction of construction materials - such as rock, sand, and gravel, providing materials for road construction, concrete etc. for community use. There are many dozens of small quarrying operations around the state. Quarries that are close to settlements can create significant 'nuisance' problems in local neighbourhoods such as noise and dust.

Soil is not a mineral under the *Mineral Resources Development Act 1995* and falls outside this legislation. However, Planning Schemes frequently provide for soil extraction as a 'use or development' that requires a permit.

What approvals are needed to conduct quarrying activities?

- Most quarries are 'Level 1' activities that require only local government approval (annually less than 1,000 tonnes of mineral or 5,000 m^3 for sand or stone). This is to ensure that the operation complies with the planning scheme for the locality. The land may need to be rezoned to accommodate a new quarry (☛ see Chapter 5).
- 'Level 2' operations require environmental approval under the *Environmental Management & Pollution Control Act* (☛ see Mining approvals and Chapter 5).
- As with mines, operators of quarries must hold a mining lease to extract stone or other materials from either Crown land or private land. However, a mining lease is not required for quarries on private land where the sand, gravel or stone extracted is only used by the landowner or sold at a rate of less than 100 tonnes each year.
- The Quarry Code of Practice comprehensively describes how an operator should conduct operations – it defines good quarrying practice and provides the assessment standard for quarrying operations and applications. The operator's permit conditions often include a requirement to comply with the Code.

Local councils operate many quarries for public purposes, and councils themselves are required to comply with mining, planning and environmental legislation. Because councils are also the managing authorities for their own quarries it can sometimes be more difficult to ensure that they comply with proper processes.

11.4 Enforcing proper operations of a mine or quarry

If you have a concern, it will be useful to obtain a copy of:

- the Mineral Exploration Code of Practice
- the Quarry Code of Practice
- the exploration licence or mining lease for the particular operation
- any environmental permits issued by the council and/or the *EPA Division*

↝ You can do a search to find out the details of the relevant mining lease / exploration licence (such as lease number and expiry date) using the TIGER database on the MRT website.

If you believe conditions attached to a permit or lease are being breached or a code of practice is being breached or if you believe the environment is being harmed, you should:

- immediately contact the mine or quarry operator and request that they take action to fix the situation
- report it to the local council and/or the state pollution hotline (Ph: 1800 005 171)
- contact the Minister for Mines (by phone or email) to complain.

☛ Go to Chapter 13 for general information about taking action.

If you are suffering from nuisance or environmental harm from the mining activity:

- you may be able to take action in the court or the Tribunal to prevent breaches of a lease or permit.
  ☛ Go to Chapter 6

Your right to information

- If you have any concerns about what is happening at a mining / exploration site, you should request a copy of the lease, licence or environmental authority. If you are not given a copy of the documents (including maps etc) in the first instance, you can make an application for 'assessed disclosure' under the Right to Information Act 2009.

  You should clearly outline what information you are after, and argue that it is in the public interest to make the information available.

Where can I find more technical information?

- Hard copies of the Mineral Exploration Code of Practice and Quarry Code of Practice can be obtained from *Mineral Resources Tasmania* or through *Service Tasmania*. See Mineral Resources Tasmania for more information resources.
- TIGER (*Tasmanian Information on Geoscience and Exploration Resources*) is an information base for Tasmania's geological and mineral exploration. It includes maps and information on geology, groundwater, tenements and deposits.
- The *EPA Division* produces a range of brochures that describe Tasmania's environmental control system – available from *Service Tasmania* centres or at www.environment.tas.gov.au.

12. Protecting Cultural Heritage

This chapter looks at laws that aim to protect human generated heritage – buildings, artefacts, structures and places of historic and cultural interest, including Aboriginal sites.

What is cultural heritage?

"Cultural Heritage" refers to any places or artifacts that have cultural, scientific, aesthetic, architectural, community or historic interest to our community or to future generations. It includes not only buildings and other physical structures, but localities where significant events have occurred. These laws protect not only individual sites, but can include entire areas, such as historic Battery Point and West Point (NW Coast). These laws help to protect the essential integrity of our cities, towns and rural landscapes for the interest and enjoyment of present and future generations.

This can be a delicate area of law, because structures and places having cultural interest exist mostly on privately owned land. It is often difficult for governments to restrict private landowners' rights.

"Aboriginal Cultural Heritage" in Tasmania is addressed as a completely separate issue from "Historic Cultural Heritage".

CASE STUDY: Historic Cultural Heritage vs Aboriginal Cultural Heritage

Reynolds v Tasmanian Heritage Council

As part of the campaign opposing the Brighton Bypass (see below), an application was made to the Tasmanian Heritage Council on 26 May 2010 to have the Lower Jordan River Levee listed on the Tasmanian Heritage Register on the basis of the cultural significance of the site.

The applicants submitted to the Heritage Council:

'We are not Aboriginal but that does not mean that we cannot appreciate the value of the place for the knowledge it has already given and the information it is yet to yield – if the site is preserved. We believe too much of Tasmania's Aboriginal history has been lost or destroyed. We want to preserve for all people this unique place that offers so much for all of us.'

The Heritage Council rejected the application because s.98 of the *Historic Cultural Heritage Act 1995* prevents properties being included in the Tasmanian Heritage Register if the significance of the place is because of its "association with Aboriginal history, tradition or traditional use."

The applicants challenged the decision in the Supreme Court, arguing that s.98 was invalid because it offended against the *Racial Discrimination Act 1975*. They argued that the *Aboriginal Relics Act 1975* did not provide the same level of protection as the Historic Cultural Heritage Act 1995, so it was discriminatory to deny places of Aboriginal cultural significance the higher degree of protection offered under the Tasmanian Heritage Register.

The Supreme Court dismissed the appeal, saying that the exclusion of Aboriginal cultural places from the operation of the *Historic Cultural Heritage Act 1995* was not discriminatory. Justice Tennent stated:

'The section also does not prevent Aboriginal persons from protecting places which are archaeologically, culturally, historically or socially significant for Aboriginal people. It only restricts any person nominating a place where its only significance is its association with Aboriginal history, tradition or traditional use.'

As a result, the *Aboriginal Relics Act 1975* remains the only law available explicitly for the protection of Aboriginal cultural heritage in Tasmania.

12.1 Protecting Aboriginal Cultural Heritage

People have lived in Tasmania for over 40,000 years, a perspective that should never be lost when evaluating heritage values. For Tasmanian Aborigines, these values go well beyond saving a few artefacts for historic interest – they have an extremely high significance to their identity and living culture.

At the time of writing, laws to protect Aboriginal cultural heritage in Tasmania are badly outdated and fail to adequately protect cultural history that is important to the Aboriginal community. Some of the criticisms of the current laws include:

- lack of Aboriginal community involvement in decision making;
- restrictive definitions of Aboriginal heritage;
- availability of an 'ignorance' defence for damage to Aboriginal heritage (that is, a person who did not know that a place or item had significance to Aboriginal people will not be guilty for any damage caused;
- lack of integration with the broader planning system; and
- lack of enforcement or regulation of the quality of Aboriginal heritage assessments.

BRIGHTON BYPASS – CASE STUDY

Recent debate over the construction of the Brighton Bypass highlights the need for improved laws to protect Aboriginal heritage. Despite significant archaeological discoveries during planning indicating that the site of the Jordan Levee was a cultural heritage site estimated to date back nearly 42,000 years, the State Government continued with their plans to build the large road infrastructure project over the top of this important historical and cultural site. Efforts by the Tasmanian Aboriginal community to stop the work were unsuccessful, as the outdated *Aboriginal Relics Act 1975* offered very limited protection.

In response to significant public outcry at the plans to build the Bypass, on 23 December 2010, the Federal Environment Minister used his emergency powers under the *Environment Protection and Biodiversity Conservation Act 1999* to have the Jordan River Levee placed on the National Heritage List. The Australian Heritage Council subsequently confirmed the heritage values of the site, and listed the site permanently in the National Heritage List. Unfortunately, the listing could not prevent construction of the Bypass that had been approved before the site was entered into the Heritage List.

For more information about the Brighton Bypass situation, see www.tacinc.com.au

Proposed reforms

The Tasmanian government has recently released draft legislation which seeks to modernise the protection of Aboriginal cultural heritage in Tasmania. The public comment period in relation to the Bill closed in December 2012. The comments will help to inform the content of the final legislation. Hopefully, the new laws will provide more involvement for the Aboriginal community in the decision making process and better protection of Aboriginal heritage.

A Regulatory Impact Statement for draft regulations was also released in June 2013.

To see a copy of the draft *Aboriginal Heritage Protection Bill 2012* and the proposed regulations, go to the DPIPWE website.

Aboriginal Heritage Council (Interim)

As part of these reforms, the State government has also established an *Interim Aboriginal Heritage Council* to provide policy advice and recommendations to the Minister for

Environment, Parks and Heritage in relation to the protection and management of Aboriginal heritage.

The Council consists of seven people who reside in Tasmania. Members must represent Aboriginal interests, but are not explicitly required to be Aboriginal. Members are nominated by the Minister and appointed by the Governor on the basis of knowledge, experience and expertise.

How is Aboriginal cultural heritage protected?

Presently there are six main avenues:

- **Through land ownership** - see below
- **The Aboriginal Relics Act** (presently under review) provides for the management of protected sites and objects, which are proclaimed by order. All Aboriginal relics, whatever the land status, are protected under Section 14 of the Act unless a permit from the Minister is issued.

    1. It is an offence for any person (including government agencies) to damage, destroy, conceal, deface or otherwise interfere with a relic or a protected site. All alleged offences of this nature are investigated. However, it is a defence if the person can show that they did not know that the relevant relic or site was protected.
    2. If a developer discovers a relic during construction work, all work must stop until the site has been assessed to see what mitigation measures are necessary.

- **State and Historic Reserves** (declared under the *Nature Conservation Act 2002*) - Aboriginal sites are protected and cultural activities are permitted, including traditional hunting and gathering, provided the activities are not likely to have a detrimental effect on fauna and flora and are consistent with the Act.
- **Traditional Aboriginal hunting** and gathering is permitted on Aboriginal land under the *Aboriginal Lands Act 1995* and under the *Living Marine Resources Management Act 1995*.
- **Land Use and Planning Approvals Act 1993** - planning decisions can protect Aboriginal cultural heritage. For example, Aboriginal heritage issues can be addressed through Planning Schemes provisions which require *Environmental Impact Assessments* or heritage surveys to be carried out in areas of known or potential significance to Aboriginal people (☛ Go to Chapter 5).
- **Tasmanian State Coastal Policy** - this Policy, which must be considered when assessing development or changes to planning schemes in the coastal zone, includes objectives relating to Aboriginal heritage protection (☛ Go to Chapter 7).

What about Aboriginal-owned land?

In the past two decades, several Crown Land sites have been transferred (i.e. returned) to Aboriginal ownership and control under the *Aboriginal Lands Act 1995*. These areas are under the control of the Aboriginal Land Council of Tasmania (**ALCT**), a statutory body.

Mining and exploration are prohibited in these areas without the permission of the Aboriginal Land Council.

Some of these areas are also classified as Indigenous Protected Areas (part of the National Reserve System and the international IUCN reserve system). This special land classification allows for protection and maintenance of both natural and cultural resources in tandem, producing social and cultural outcomes from natural resource conservation activities on land and sea. Indigenous Protected Areas in Tasmania include Preminghana, Oyster Cove, Risdon Cove and Badger and Chappell Islands

☛ for information on reserve classifications see Chapters 7 and 15.

In the absence of more comprehensive laws, the Tasmanian Aboriginal Land and Sea Council and the Tasmanian Aboriginal Centre (non-government organisations created by the Aboriginal community) provide Aboriginal community views on matters affecting Aboriginal heritage.

Commonwealth powers

An important piece of legislation is the Aboriginal and Torres Strait Islander Heritage Protection Act 1984. It aims to protect sites of cultural significance to Aboriginal people themselves and it enables the Federal minister to make a declaration that a place or object is to be protected from 'desecration or injury'. Such a declaration can only be made after consultation with the relevant State government, and only if the Minister is satisfied that State legislation will not provide adequate protection.

Unfortunately, application of the ATSIHP Act relies on demonstrating native title, or continuous connection to country. As a result of historic dispossession, Tasmanian Aborigines cannot meet this criterion for protection under the Federal legislation.

The Environment Protection and Biodiversity Conservation Act also contains important requirements:

- The role, knowledge and interests of Aboriginal people must be recognised when determining or promoting conservation and ecologically sustainable use of Australian natural systems (section 3);
- The role and interest of Aboriginal people in the conservation of biodiversity must be considered when Plans for Recovery, Threat Abatement and Wildlife Conservation are being drawn up (sections 270, 271(3), 287);
- On *Commonwealth Reserves*, ceremonial practices, hunting and gathering may continue (section 359A);
- Some highly significant Aboriginal sites in Australia (such as Uluru and Kata Tjuta) are legally protected under the EPBC Act. The protection is only offered to places that are specifically listed under *National Heritage*, *Commonwealth Heritage* or *World Heritage* classifications.

  ⇝ You can see the list of recognised heritage places on the Department of Environment website.
- Affected Aboriginal communities must also be consulted by the *Australian Heritage Council* when assessing sites and when making Conservation Agreements.

A review of federal environmental legislation in 2009 (the ***Hawke Review***) recommended that the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* be incorporated into the EPBC Act.

The Hawke Review states that this incorporation would remove overlap and duplication in the assessment and authorisation process. The government has 'agreed to consider' incorporating the provisions of the two Acts.

Any attempt to incorporate the two Acts will need to ensure that Federal protections are not confined to Aborigines able to demonstrate native title rights.

☛ Go to Chapter 15 for more information on national environmental laws.

12.2 Protecting Historic Cultural Heritage

Tasmanian places that have *historic cultural heritage* values are protected through two principal mechanisms.

1. Historic Cultural Heritage Act 1995

The *Historic Cultural Heritage Act 1995* is the primary law relating to listing and protecting places that have historic cultural heritage values.

Under the Act, significant places are identified and listed on the *Tasmanian Heritage Register*, which is administered by the *Tasmanian Heritage Council*.

Recent changes have integrated the heritage legislation with existing development controls (described in more detail in **Chapter 5**). This has meant that when development is proposed that may impact on heritage values, the local council will refer the development to the Heritage Council for assessment as part of the approval process.

2. Land Use Planning and Approvals Act 1993

Some local councils (particularly Hobart and Launceston) also keep comprehensive inventories of heritage buildings and sites within their municipal areas (this may include places that are also included in the Tasmanian Heritage Register, as well as places that have only local heritage significance). *Planning schemes* in many council areas provide extra criteria for developments which may affect heritage places listed in the Scheme.

For example, where a development is proposed on, or adjacent to, a listed heritage place, the Planning Scheme may require the developer to obtain a heritage assessment, or may prevent the Council from approving the development unless it is satisfied that the heritage values of the listed place will not be adversely affected.

If a place is listed on the Tasmanian Heritage Register, any application for works or development on the property will be referred to the *Heritage Council* for consideration as part of the planning approval process (unless a certificate of exemption is issued – see below).

For more information about how you can make submissions, or challenge local council decisions, in relation to developments at heritage places, ☛ Go to **Chapter 5**.

What does the Heritage Act do?

The *Heritage Act* is an integral part of Tasmania's comprehensive planning system (the Resource Management and Planning System - ***RMPS***), which gives owners and other citizens formal rights of appeal when decisions are made.

☛ Go to **Chapter 4** to see how the RMPS works.

What is the Tasmanian Heritage Council?

The Tasmanian Heritage Council is the statutory body responsible for administering the Heritage Act and maintaining the *Tasmanian Heritage Register*. Any development on places listed on the Tasmanian Heritage Register must be approved, or specifically exempted, by the Heritage Council before works can commence.

You can download a variety of online Application Forms from the Heritage Tasmania website - including an application to nominate a place to be included in the Heritage Register and an application for a certificate of exemption in relation to proposed works.

How are properties listed?

Any person is able make an application to the Tasmanian Heritage Council to have a place included in (or removed from) the Register.

"Places" include areas, land, buildings and associated items, and also shipwrecks.

In order to be entered in the Register, a place must have "cultural heritage significance" and meet at least one of the significance criteria set out in section 16 of the Heritage Act.

Please note: Aboriginal cultural heritage is **not** managed under the Historic Cultural Heritage Act and is dealt with under other legislation – see above.

Where can I see the Heritage List?

There are several thousand places entered on the Tasmanian Heritage Register. You can download a copy of the Register from the Heritage Tasmania website.

To purchase a hard copy of information about a particular listed place, you will need to complete a Heritage Register Search form (please note, fees of approximately $35 apply for the search.

A list of all heritage sites in Australia (on both state and national listings) is also available at the Australian Heritage Places Inventory.

Section 337 of the *Local Government Act* requires local councils to provide information about places on the Heritage Register if you request a Council Land Information Certificate (this is generally done before purchasing property).

How are heritage values protected?

The principal mechanism for protecting listed places or heritage areas is requiring any person who wants to undertake works at the place or area to obtain a planning permit. This also applies to state and local government officers undertaking work on public buildings. The process for obtaining a permit has recently changed, and is discussed in more detail below.

"Works" is defined broadly, and includes any development, excavation or other intervention that may change the appearance of the place, changes to the topography and removal of topsoil or vegetation (unless otherwise approved under a Forest Practices Plan - ☛ Go to **Chapter** 8).

Previously, landowners who wanted to undertake works on a heritage place (referred to as 'heritage works') required both a planning permit from the local council and a works approval from the Heritage Council. Under recent changes to the Heritage Act, heritage works require a planning permit only (unless a certificate of exemption has been granted for the works – see below).

It is an offence to undertake heritage works without a permit (or, if a certificate of exemption has been granted, without complying with the conditions of the certificate). Unlawful works can attract a fine of up to **$650,000** for an individual.

- If a certificate of exemption has been issued for the heritage works, but the works also require a planning permit for reasons other than heritage (for example, if the works are to change the use of the premises from residential to a shop), a planning permit will still be required. However, the permit application will not be assessed by the Heritage Council.
- Until recently, the Heritage Act prevented the Heritage Council from approving demolition of a heritage place unless the Heritage Council was satisfied that there was

"no prudent and feasible alternative" to the demolition. Under the revised Heritage Act, this explicit restriction has been removed, but applications for heritage works involving demolition will continue to be assessed against the objectives of the Heritage Act.

The Tasmanian Heritage Council has various powers to prevent or restrict heritage works. This includes powers to issue orders to stop works that may harm the historic cultural heritage significance of a registered heritage place OR a place which the Heritage Council believes *should be* a registered place.

What if I am a property owner or developer?

Owners of heritage listed properties, or properties in heritage areas, who wish to undertake works on their property must:

- Apply for a certificate of exemption; or
- If no exemption certificate is issued, apply for a heritage works approval.

Certificates of exemption

Applications for a certificate of exemption are made in writing to the Heritage Council. Applications must provide sufficient detail regarding the proposed work and the likely impact on the heritage values of the property.

If Heritage Council is satisfied that the proposed works:

- fall within the types of work identified in the work guidelines as having no / negligible impact on heritage values; and
- will be carried out in accordance with the work guidelines

the Council must issue a certificate of exemption and provide a copy to the relevant planning authority (local council).

In all other circumstances, the Heritage Council has discretion to approve or refuse an application for a certificate of exemption.

A certificate of exemption must clearly describe the works that are exempted, and the location in which the works are authorised to occur. If the works do not comply with the description in the certificate, the landowner cannot rely on the certificate to exemption to avoid the need for a planning permit.

Planning Permits

If no certificate of exemption has been issued for proposed heritage works, a landowner must apply to their planning authority (local council) for a planning permit for the works.

The application will be treated as a discretionary application (☛ Go to Chapter 5). The planning authority must refer the application to the Heritage Council and ask whether the Heritage Council wishes to be involved in the assessment of the application (that is, does the Heritage Council have concerns regarding the impact of the works on heritage values?).

If the Heritage Council advises that it does **not** wish to be involved in the assessment of the application, or fails to notify the planning authority within 7 days that it wishes to be involved, the application is taken to be withdrawn. In this situation, no further permit is required in respect of the heritage works.

- Please note, if the application is withdrawn for the heritage works, but the works also require a planning permit for other reasons (for example, if the works are to change the use of the premises from residential to a shop), a planning permit may still be required (☛ go to Chapter 5). However, the permit application will not be assessed by the Heritage Council.

If the Heritage Council advises the planning authority that it **does** wish to be involved in assessing the application for heritage works, the Heritage Council may request further

information from the applicant. The application will also be advertised and comments from the public will be invited (☛ go to Chapter 5).

The Heritage Council will consider the application, including any additional information, and forward its recommendation to the planning authority.

If the Heritage Council recommends that the application be refused, the planning authority **must** refuse to grant a permit for the heritage works.

If the Heritage Council recommends that the application be approved, with or without conditions, the planning authority still has discretion to refuse the application. However, if the planning authority does approve the application, the permit must be subject to the conditions recommended by the Heritage Council.

In this way, the powers of the Heritage Council in relation to development applications are similar to those of other referral agencies, such as the Environment Protection Authority and TasWater (☛ go to Chapter 5).

Go to the Heritage Tasmania website for a flowchart of the assessment process.

- If your property is listed in the Heritage Register and you intend to take an action that you think could affect heritage values in any way, contact the Heritage Council to discuss your plans. Heritage officers can give you a good idea about whether a permit will be required, and may assist with suggestions about amendments to your design that would make your proposal more consistent with the heritage values of your property.

  Early conversations with Heritage Tasmania can save you a lot of time and money! Heritage Tasmania officers are happy to discuss proposals with landowners – check out their website for contact details and helpful guidelines.

What conditions can apply?

Permits for heritage works may be subject to a range of conditions, such as limiting the area of disturbance, requiring particular heritage trees to be retained or requiring work to be undertaken under the supervision of a suitably qualified person.

You must comply with the conditions in the planning permit. Failing to carry out the heritage works in accordance with permit conditions could result in a stop work order or a fine of up to **$130,000** for an individual.

What if I am unhappy with the Heritage Council's decision?

If you are unhappy with the decision to refuse your application, or think that the conditions are too restrictive, you can appeal against the decision to the *Resource Management and Planning Appeal Tribunal* (see below).

Where the Heritage Council has been involved in assessing your application, both the planning authority and the Heritage Council will be parties to your appeal and can appear at the Tribunal to give evidence in support of their decision.

Can I have a say about heritage decisions?

Any concerned person may make a submission to the *Heritage Council* about decisions to include a property in the Register, or remove a listed property from the Register.

Any concerned person may also make a representation to the relevant planning authority about an application to conduct works on a heritage listed property. All submissions are forwarded to the *Heritage Council* for consideration before they make their recommendation about whether to approve the works (see above).

A person who made a submission / representation is entitled to appeal against the relevant decision. Appeals are made to the *Resource Management and Planning Appeal Tribunal*.

☛ Go to Chapters 5, 6 and 14 for information about the appeal process.

Download application forms from the Tribunal website.

Appeals to the *Tribunal* in relation to works approvals need to be made within 14 days of a notice of the decision. Appeals in relation to decisions to list (or de-list) properties must be made within **30 days**.

What if I am a potential buyer?

If you are thinking of buying a property that you think has heritage values (or may be subject to a heritage agreement – see below), you should talk to the Heritage Council and local council to see what conditions may apply to that property.

You can search the Heritage Register online to see if the property you are looking at is on the Register, and can apply to the Heritage Council for a more detailed extract if the property is listed.

It is particularly important to check for heritage restrictions if you are thinking about making any alterations after you purchase the property – it is always best to know what hurdles you may face in advance!

In what other ways can cultural heritage be protected?

- *Heritage Agreements*
- Reservation of heritage areas under the *Nature Conservation Act 2002*
- Assessment of specific developments potentially affecting heritage (such as forestry or mining activities)
- National heritage listing under the EPBC Act

What are Heritage Agreements?

The Tasmanian Heritage Act also enables property owners to enter into Heritage Agreements. A Heritage Agreement can impose certain restrictions on how a property may be used or modified and it may provide for assistance and resources to help the owner protect the place.

These agreements attach to the property title and are binding on the owner and occupier (and any future owners or occupiers).

The Appeals Tribunal can make orders forcing owners or occupiers to comply with Heritage Agreements. If an order has been made against you, you can challenge the decision in the Supreme Court (see s.54 (1) of the *Heritage Act*).

What are 'Historic Reserves'?

Historic Reserve is a classification under Tasmania's system of protected reserves, declared under the *Nature Conservation Act 2002* (☛ go to Chapter 7 for information regarding Tasmania's reserve system).

The Historic Heritage section of the Parks & Wildlife Service manages historic reserves. In most cases, a management plan will set out the rules for managing activities in the Historic Reserve.

Other Tasmanian laws

Tasmanian authorities may also have responsibility for protection or conservation of historic cultural heritage under other laws. For examples, see:

- **Major Infrastructure Developments Approvals Regulations 2000** (regulation 4)

  Project proponents may be required to address heritage values as part of their impact assessment for large infrastructure projects

- **Mining (Strategic Prospectivity Zones) Act 1993** (see section 7(6)

  Generally, Crown Land that has been included in a Strategic Prospectivity Zone (that is, an area identified as having mining potential) cannot be sold or protected from mining without the approval of both Houses of Parliament. However, if a mining lease or licence has been granted and then items of cultural heritage value are discovered, the land can be reserved without parliamentary approval.

- **Private Forests Act 1994** (see section 6)

  Private Forests Tasmania will examine issues relating to cultural heritage when assessing applications for forestry operations on private land.

- **Water Management Act 1999** (see sections 155, 162)

  Heritage issues must be considered when assessing applications for dam permits.

Some historic sites, including the Theatre Royal and Royal Tasmanian Botanic Gardens, are also protected under their specific management Acts.

What national laws apply?

Most heritage places are protected under State laws. The protection of heritage under national laws is limited to those places which are considered to be of national (or international) significance or which are owned by the Commonwealth government.

The following heritage lists are relevant at a national level, and managed under the *Environment Protection and Biodiversity Conservation Act 1999*:

1. The National Heritage List

- This is a limited listing of heritage places that have outstanding national significance. Tasmanian places entered in the list include Port Arthur, the Hobart Female Factory and the Richmond Bridge.
- If you would like to look up whether a place is listed on the National Heritage List, check the register on the Department of Environment website.

2. The Commonwealth Heritage List

- This is a listing of places that are owned or controlled by the Commonwealth.
- There are 18 Tasmanian entries, mainly historic buildings such as post offices and lighthouses.

Any person may apply to have a place listed or for an emergency listing.

The EPBC Act also seeks to implement the *World Heritage Convention*, which obliges the Australian Government to protect any *World Heritage* sites (☛ Go to Chapter 7), including those that are listed for their cultural heritage significance.

Heritage sites that are included in the National Heritage List, the Commonwealth Heritage List or the World Heritage List can be protected under provisions of the national *EPBC Act*. Their heritage values are a *'matter of national environmental significance'* under the Act and developers are therefore required to seek approval from the Federal Minister for any *actions* that are likely to have a significant impact on these heritage values.

- A heritage place can be listed on both the Tasmanian Heritage Register, and on the National or Commonwealth Heritage List.
- A *World Heritage* or a *National Heritage* place may not require approval under the EPBC Act if a bilateral agreement between the Commonwealth and a State enables *actions* (i.e. developments) to be carried out in accordance with an accredited *management plan*.

Commonwealth agencies are required to develop and implement management plans for heritage places under their control.

☛ Go to Chapter 15 to see how the EPBC Act works.

- Formerly, many thousands of heritage places were listed on the *Register of the National Estate*. This list is no longer maintained, and no specific protection is afforded to place that were included on the Register.

  Many of those places have been listed under local, state or Federal heritage lists.

12.3 Moveable Cultural Heritage

Australia is a signatory to the UNESCO *Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property*. The protections under that Convention are implemented in Australia by the *Protection of Moveable Cultural Heritage Act 1986*. This Act prohibits imports or exports of protected classes of items into and from Australia.

Moveable Cultural Heritage includes *"objects that are of importance to Australia, or to a particular part of Australia, for ethnological, archaeological, historical.....scientific or technological reasons..."* For example, books, artifacts, records and documents can be classed as moveable heritage.

There is no Tasmanian equivalent of the Moveable Cultural Heritage legislation, so you would need to check the Federal legislation when considering importing or exporting any item that may be of heritage significance.

For more information about Moveable Cultural Heritage, see arts.gov.au/movable

12.4 Protection of historic shipwrecks

There are currently 950 shipwrecks around Tasmania's coastline. Those in Tasmanian waters are protected under the *Historic Cultural Heritage Act 1995.*

Approval from the Tasmanian Heritage Council is required before you can undertake any activity which is likely to disturb the shipwreck. The Heritage Council may also declare a "protected zone" around a shipwreck, and require any person who wants to enter the protected zone to get approval.

- If you discover a shipwreck that is not currently registered with the Tasmanian Heritage Council, you must report it to the Tasmanian Heritage Council within 30 days.

Shipwrecks and maritime history sites may also be in 'historic reserves' under the *Nature Conservation Act 2002*.

Shipwrecks that are located in Commonwealth waters are protected by the Commonwealth *Historic Shipwrecks Act 1976*. In practice, this Act is managed by the Tasmanian Department of Primary Industries, Parks, Water and the Environment.

13. Taking Action

Decision-makers and members of the community can sometimes fail to act in the environment's best interests. Sometimes, an environmental defender has to step up...

It is always better to be proactive and take action to avoid environmental impacts before they occur.

Community participation early in decision-making processes is crucial to successfully defending the environment.

This chapter and Chapter 14 focus on different ways in which you can participate in decisions being made about the environment – from contributing to the development of a planning scheme in your area, or a management plan for your favourite national park, to challenging a particular development.

Participation can range from lobbying and letter writing to taking your case to the Resource Management and Planning Appeal Tribunal.

13.1 Handy hints for an environmental defender

Act promptly

Don't put action off until tomorrow. Legal and planning processes usually have very strict time limits within which you are able to take action. Once a decision has been made there are strict deadlines for making appeals. Very often missing a deadline can mean losing your case, even if what you're arguing is correct.

Get involved before problems occur

Tasmania's Resource Management and Planning System (**RMPS**) provides opportunities to get involved in the planning process in the early stages, before problems crop up. Being proactive can stop a lot of problems from occurring, and is often easier (and less expensive) than fighting something after a decision has been made

☛ Go to Chapters 4 and 5 for an outline of opportunities for public involvement.

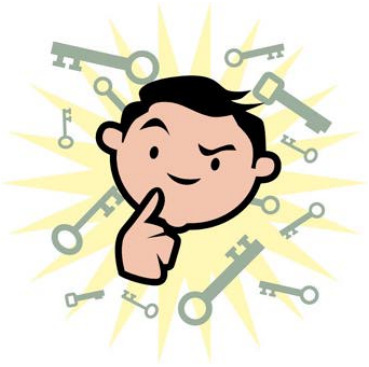
Keep good records

It is extremely important to keep a file recording your observations and all communication that you have had with various parties – including the person or company involved, relevant government agencies, the Tribunal and local members. This means keeping copies of letters and submissions you have sent and received and recording the details of all phone conversations relating to the matter, noting the date, time, the person you spoke to and the details of what was said.

Gather vital information

It is important to gather as much information as possible about the issues as early as you can. This will be particularly useful if you need to get advice from a lawyer. It is surprising how many people lodge complaints before obtaining basic information about the issue - some of this information will be publicly available, some you will need to request from other parties, such as the company involved, the local council or government agencies.

What sort of information do I need?



Information that may be useful includes:

- The time of day an event (such as a spillage) occurred
- The precise location (by description or using map coordinates)
- A map of the area indicating any environmental features of concern
- Evidence showing environmental harm such as photographs, videos and statements of witnesses
- Planning information, including what zone a proposed development will be located in, which planning scheme applies to the site and any relevant development control plan or development guidelines adopted by council in relation to the site, or to the particular type of development.
- The development application and the final decision in relation to a development activity (e.g. the permit issued by the planning authority, or notice issued by the EPA).

  In pollution cases, get a copy of any permits or Environment Protection Notices issued by the *EPA* or the local council. This will help you to understand whether the level of emissions from a site is allowed or not, and what actions you can take. For example, if the emissions are not allowed, you could ask the Council to prosecute the company. If the permit does allow the emissions, you could lobby the Council for changes to the permit to reduce the permitted emissions.
- Any reports or minutes of meetings held by local council and its relevant committees.

  Council meetings are generally open to the public and most councils publish their agenda papers, supporting reports and meeting minutes on their website. These often include important reports from council officers, giving the history of the matter and the particular officer's opinion of the issue - these reports can help you to understand how the decision you wish to object to was made.
- Expert opinion, or at least well-informed opinion, on the actual or potential harm you are concerned about
- Documents used to support the development application such as Environmental Impact Statements flora and fauna reports or other studies
- Reports or letters of any agencies who may have been consulted such as the EPA Division, Heritage Tasmania, Parks and Wildlife Service
- Find out which legislation applies (it could be more than one Act). Don't be frightened by the complexity – knowledge is power! If you are confused about which laws apply, contact EDO Tasmania for advice.

Accessing government information

Access to information that is on the public record is pivotal to the workings of a modern democracy. No matter what issue you are confronting, information is a vital ingredient.

Under the *Right to Information Act 2009*, citizens have the legally protected right to obtain information from councils and government departments (☛ see below, this chapter).

Alert relevant authorities

Once you understand the problem, and the agency that is responsible for regulating it, contact the state pollution hotline, police, Parks and Wildlife officers, fisheries inspectors, Forest Practices Authority or your local council as soon as you can and let them

know what you have observed. Ask them to investigate your complaint promptly and to let you know the outcome of their investigation.

Got a problem?	Who to call?	Call this number
Planning or building infringements	Local council	**Check phone directory**
Pollution infringements	Local council and/or EPA Division	**1800 005 171 (Free call)**
Pollution that causes health problems	Health Officer at Local Council Health Dept	**1800 671 738 (health - freecall)**
Pesticide spraying	Spray Information and Referral Unit	**1800 005 244 (Free call) or 03 6336 5252**
Destruction/interference with Heritage Properties	Local Council or Tasmanian Heritage Council	**1300 850 332 or 03 6233 2037**
Wildlife infringements	Local ranger station or Parks and Wildlife HQ	**Regional Contacts** **HQ – 1300 135 513 or** **South: 03 6233 6556 (after hours)** **North: 03 6336 5312**
Forest Practices infringements	Forest Practices Authority	**03 6233 7966**
Breaches of water laws or water catchment laws	Water Management Branch	**03 6165 3222**
Fisheries infringements (sea)	Marine police	**03 6230 2475 (Free call)**
Fisheries infringements (inland)	Inland Fisheries Service	**0438 338 530 (after hours) or 03 6261 8050**
Genetically modified crops	DPIPWE	**1300 368 550**
Biosecurity issues	DPIPWE	**03 6165 3085**
Littering	Litter Hotline	**1300 135 513**

If an officer appears unresponsive to your call, you may need to persuade them to carry out their responsibilities. For pollution offences, it is often useful to remind Council officers that they have an obligation under the *Environmental Management and Pollution Control Act 1994* to "use their best endeavours to minimise pollution".

For some reports, such as those relating to littering, you may need to agree to sign an affidavit about what you have seen before the EPA will investigate.

Ask to be called back once the issue has been resolved or to find out what action has been taken. Follow up your call with a letter, if appropriate. This should ensure that you receive an answer.

Take samples

If the issue that concerns you is pollution and you cannot get the responsible authority to take samples quickly enough, it may be useful to take a good sample for chemical analysis, particularly at the time the pollution is actually taking place.

Use glass containers, well washed and rinsed in distilled water. Find out how to store the sample appropriately and label it with time, date, location and circumstances.

It is often useful to contact your local Waterwatch or Landcare group. They may have sampling records for the area, and can provide advice about sampling techniques.

Act locally

You can have a say in developments in your neighbourhood, including such things as heights of buildings, tree removal, traffic hazards and waste disposal.

- If you have a concern about a local issue, don't be afraid to front up to your council and ask questions. Most local government officers will happily inform you about their planning schemes and local by-laws and where to inspect them. Some councils employ a legal officer who can help you to understand the local by-laws.
- You can get involved in setting the controls and zones in your local planning scheme

  ☛ Go to Chapter 4, to find out how
- You can exercise your right to lodge an objection to a new development

  ☛ Go to Chapter 5 for information on how to find out about and appeal against a local development if you are unhappy with it
- You can also take civil enforcement action to enforce planning and pollution controls in relation to existing premises (see below).

Get legal advice

It's best to get professional advice as soon as an issue arises. This will give you an overview of the legal options that are available and help you to decide on the best course of action. You may need to act quickly to give your case the best chance of success.

If you can, it's best to get advice from someone (eg a lawyer or planner) who has special knowledge of environmental law and experience in bringing cases before the Resource Management and Planning Appeal Tribunal. A solicitor or community worker who knows the ropes may be able to identify quickly whether a potential appeal has a good chance of success or not.

- Free advice about planning issues is also available through the Planning Aid service at Hobart Community Legal Service.

☛ Go to Chapter 14 for more information about getting legal advice

Prompt the relevant authority to take legal action

If you are concerned that another person's activities are damaging the environment and that they may be in breach of legislation, you may not have "standing/" to take legal action yourself (☛ see Chapter 14 for information about "standing"). However, you may be able to prompt the relevant authority (such as your local council) to take legal action.

If the breach of legislation is in relation to the *Environmental Management and Pollution Control Act 1994*, you should alert the EPA. The EPA have an Enforcement Policy which sets out the measures that DPIPWE will use where laws are being breached. There are a number

of actions which the EPA can undertake, including education and creating awareness, assisting industry, partnerships and monitoring to non-formal and formal enforcement through investigations, statutory warnings, infringement notices through to prosecution.

Not all investigations will necessarily result in prosecutions. You should be aware that, if a prosecution is going to succeed, the EPA may need you to give evidence about your observations (e.g. that you saw a pollution plume on a particular day). Think about whether you are prepared to do this.

Take legal action yourself

In some situations, a member of the public who can demonstrate that they have legal "standing" (that is, a sufficient interest in the matter ☛ see Chapter 14) can take civil enforcement action (see below).

13.2 How you can challenge a decision made by a government agency

You can make a complaint to the Ombudsman

If a government agency refuses to take action when it should, you may take the matter to the state (or federal) Ombudsman, who has the power to investigate the issue and pressure the agency to take appropriate action.

☛ See below for more information about the Ombudsman

You can use lodge an appeal against certain decisions

In Tasmania, a number of statutes enable a decision of a local council or government agency to be challenged in the Resource Management and Planning Appeal Tribunal. The Tribunal's decision can be appealed to the Supreme Court.

Where the government agency is a Commonwealth one, its decision may be challenged in the Administrative Appeals Tribunal, if the relevant legislation provides for this (☛ see Chapters 5 and 14).

Appeals generally need to be lodged within 14 days of the decision being made.

You can seek a judicial review

You can apply to the Supreme Court for review of a decision of made by a government agency. The court does not consider the merits of the decision, only whether the decision-making process was appropriate. The Court will consider, for example, whether

- the parties were given a fair opportunity to present their case;
- the decision-maker was unbiased and made a 'reasonable decision';
- the relevant statutory provisions were correctly applied;
- the decision-maker took into account any irrelevant considerations, or failed to take account of relevant considerations.

Applications for judicial review generally need to be lodged within 28 days after you receive notice of the decision, or reasons for the decision (if you have asked for a statement of reasons).

You can apply for an injunction or a prerogative writ

If a government agency is not doing what it should under a particular statute, you may be able to apply for a 'prerogative writ' in the Supreme Court. The court can order the agency to do what it should do, or stop doing what it should not be doing.

This is a very complex procedure, so make sure you seek legal advice before considering this option.

13.3 Alternatives to taking legal action

If you are concerned that environmental damage is being caused in your area, there is a range of things you can do to prevent it.

Before you consider taking legal action against the person you think is responsible for the damage, think about what other options there may be to solve the problem more quickly, more amicably, and with less expense.

Contact the person causing harm

Often the easiest way to resolve a situation is simply to approach the person causing the problem and discuss it with them. It is surprising how many people avoid doing this.

It could be that the person did not know that their activity was causing harm, and on becoming aware of your concerns, may agree to modify their activities.

Similarly, it is well worth contacting community bodies operating in the local community, such as Coastcare groups, Waterwatch and progress associations. Because of their established links within the community, they may help to resolve the problem amicably, avoiding expense and conflict.

Generally, you should not consider legal action until you are sure that the problem cannot be resolved at this level.

Contact the relevant enforcement agency

In most situations, a government agency is responsible for regulating the activity you are concerned about. If the relevant authority has the power to rectify the problem, it usually has a range of steps it can take. It can exert pressure on the person, it can issue an infringement notice, a direction or other notice. If those more cooperative approaches fail, the agency can usually commence proceedings to prosecute the offender.

Alternative dispute resolution

Going to court to resolve a problem means there is usually a winner and a loser. In some cases the loser is required to pay the winner's costs (although this is not usually the case with the Resource Management and Planning Appeal Tribunal ☛ See Chapter 14).

Usually it also means the involvement of lawyers, and the feeling of loss of control as legal processes and concepts take over the dispute. In recent years this has resulted in an increasing demand for less adversarial ways of resolving conflicts.

What is mediation?

This is a process in which the parties, together with a neutral, trained third person (the 'mediator'), identify and isolate the issues that are in dispute, develop options to address these issues,

consider alternatives and reach a mutual agreement that will meet all, or some, the needs of both parties.

Mediators act as facilitators to help you find solutions yourselves but, unlike a magistrate or the Tribunal, they don't decide who is right or wrong, nor make decisions for you.

The process of mediation/negotiation forces the parties to clearly define their issues, evidence, arguments and 'bottom line' stance. The process will not work if parties are reliant on broad statements, emotive arguments and anecdotal evidence.

Negotiation / mediation can take place at any time, but it is best where it happens soon after the conflict arises.

By addressing the conflict early, mediation may prevent you resorting to litigation. Mediated settlements are generally more effective as all parties have had input into the final agreement.

The primary reason for using these methods is that parties have more control over the process of settlement rather than being confined by the rules of a court proceeding.

Know what you want!

When entering into negotiations you / your group must first decide if you are actually prepared to negotiate on the issue and will abide by the decision reached. You should then agree on the options you will work from:

- the best possible outcome from your perspective
- outcomes you would be happy with, even if they are not ideal
- the 'bottom line', below which you will call off the negotiations.

If you are negotiating on behalf of a group, make sure the group reaches agreement on what it wants before negotiations begin. It is important to keep everyone aware and up to date with information as the process develops.

You should also look at the other side's interests and opinions. Try to understand their position and be prepared for the arguments they will put forward. This will also enable you to propose more effective solutions, which both sides can agree to.

At the end of the mediation process (if you are successful in brokering a solution) a written agreement is usually drawn up. This is not necessarily legally binding. However, if the parties agree, you can get a lawyer to make the agreement binding.

Should I go to court or try mediation?

Keep in mind that the Resource Management and Planning Appeal Tribunal encourages mediation in the first instance and provides a trained mediator for matters before the Tribunal

☛ Go to Chapter 14 to see how the Tribunal works.

In some cases using legal avenues is the most appropriate way to sort out a problem. However, most people find mediation a very helpful way to solve a problem. Even if it doesn't resolve everything, mediation can help to reduce the number of issues in dispute. If mediation doesn't work, you can still consider court options in future.

If you decide to try mediation, be careful not to miss time limits for commencing legal action.

Mediation is your most appropriate option if:

- you want to sort out the problem as peacefully and effectively as possible. This can be particularly important in a neighbourhood situation, as you will all have to live together in future.

- your problem is not really 'legal', but based on policy issues or different views about what level of pollution (such as noise / smoke) you should have to put up with.
- you don't want the problem to escalate so much that it has to go to court
- you can't (or don't want to) pay the costs associated with court proceedings.

Who offers mediation in Tasmania?

Positive Solutions is a useful mediation service with experience in planning matters and neighbourhood disputes. You can contact them for an appointment on 03 6223 5612.

You can find out how to contact other mediation services from the Yellow Pages. You can also contact the Hobart Community Legal Service, Launceston Community Legal Centre or EDO Tasmania for a referral.

13.4 Importance of lobbying

Turn every stone!

Don't rely on legal processes alone to win your case. You will need to use a mix of strategies in order to be successful in most environmental cases.

In conjunction with using legal processes, it can be important to lobby certain influential people.

These can include:

- your local councillors and members of parliament
- ministers and shadow ministers
- departmental heads
- parliamentary committees
- your local community

Sometimes it may also be necessary to draw public attention to your issue by using the media. This can alert other people in the community to the problem.

How to run effective publicity campaigns differs depending on the issues and is beyond the scope of this Handbook. However, there are a number of useful resources available to help plan your campaign.

Protect yourself

When defending the environment, it is easy to become a victim yourself!

Increasingly, environmental advocates are being subjected to intimidation and harassment, including being sued in court on minimal grounds (known as "SLAPP suits"). The aim of such litigation is to disable campaigning efforts and discourage further action. Even if such charges ultimately fail, they can impose considerable stress and costs on the victim.

A full discussion of these issues is beyond the scope of this Handbook. However, there are now some good books available which describe organised anti-environmental harassment techniques and how to avoid them (☛ see Chapter 17 for a list of publications and contacts).

Be aware of legal risks

Everyone has the right to protest, but this right is subject to legal limits. Before you protest, you should check what your rights are and be aware of potential risks to yourself and other participants.

This is particularly important if you are planning to protest on private property or, for instance, a designated public forest.

13.5 Defamation versus free speech

As in all discussion of public issues, individuals can protect themselves from defamatory statements. Environmental issues are no different, so it is very important to avoid saying or writing anything defamatory which could trigger a legal action against you.

When is a statement defamatory?

Laws of defamation are rather complex. However, anything you say or write may be defamatory if it conveys a meaning, whether explicit or implied, which tends to:

- lower a person's reputation in the eyes of ordinary reasonable members of the community
- lead people to ridicule, avoid or despise the person
- injure the person's reputation in their trade or their profession

Who can be defamed?

Previously, any person, statutory corporation, trade union or incorporated association could claim the right to protect their reputation using the defamation laws.

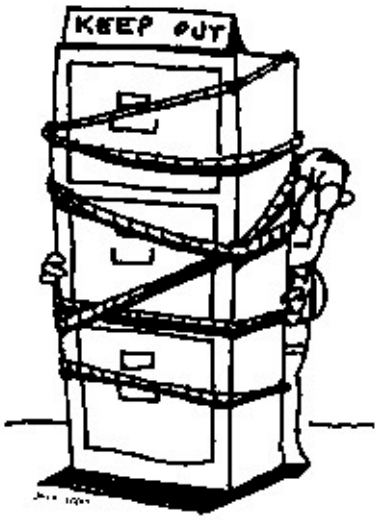
In Tasmania, recent changes now mean that most corporations cannot take action for defamation. However, not-for-profit corporations and corporations which employ less than 10 people may still have an action in defamation in relation to published statements about the organisation.

Three tips to remember:

1. In Tasmania, in order to claim the defence of justification, you need to prove that the statement is “substantially true”. Statements of opinion must be based on 'proper material' and be in the public interest.
2. Play the issue, not the person. Avoid risk of defamation by always referring to issues, not a person's personal involvement.
3. In legal terms, you have 'published' a statement when you say it, write it on Facebook or a letter to the editor or distribute a leaflet.

Further information about defamation is available in the Tasmanian Law Handbook.

13.6 Accessing Government Information



On 1 July 2010, the *Right to Information Act 2009* replaced the *Freedom of Information Act 1991* in Tasmania. This section explains the procedure for accessing information from government departments and agencies under the new legislation. The Ombudsman has released Guidelines and a Manual regarding the application and operation of the *Right to Information Act 2009*.

The *Guidelines* and the *Manual* are available on the Ombudsman's website.

There is also a Commonwealth *Freedom of Information Act*, which is relevant to applications for information held by federal government agencies.

Your legal 'right' to information

Government agencies, Ministers and local councils hold an enormous amount of information in many forms. You may wish to obtain copies of information held by the government – such as reports, policies, submissions, manuals or rules – or information about the operations of the government for a variety of purposes. Freedom of information laws, such as the *Right to Information Act*, are designed to give citizens a legal basis and framework for demanding access to that information. Making this information available improves governance by making the government more accountable and increasing citizens' ability to participate in decision making.

The *Right to Information Act 2009* (**RTI Act**) aims to achieve more open government by emphasising the idea of a right to information and encouraging pro-active disclosure by government agencies. Under s.7 of the RTI Act, a person has a "legally enforceable right" to be provided with information in the possession of a public authority or Minister unless that information falls under one of the exemptions provided in the Act.

You can request information from any state government department, minister or statutory body, including local councils. The RTI Act does not apply to the private sector, however it does apply to state or council owned businesses (including regional water authorities), government business enterprises (such as Forestry Tasmania) and corporate bodies established under legislation for a public purpose. Some information can also be obtained in relation to private organisations that receive funding from the government or perform a public function.

Accessing information

The RTI Act provides that the government may disclose information in one of four ways:

- **Required disclosure** refers to information that a public authority or Minister must disclose according to the RTI Act or any other law (such as annual reports).
- **Routine disclosure** refers to information that the public authority or Minister discloses voluntarily but not in relation to any particular enquiry (for example, information about draft policies on a Council website).
- **Active disclosure** refers to information disclosed in response to a particular request, but without any formal application under the RTI Act (for example, information provided after an informal request is made).
- **Assessed disclosure** refers to information disclosed in response to a formal application under the RTI Act.

Unlike the situation under the *Freedom of Information Act*, an application for information is now a last resort. Agencies are encouraged to release information more freely, without insisting on the formal process being followed.

As a first step, you should contact the RTI officer in the government agency that you think holds the information you need and make a request. These requests for "active disclosure" do not need to take any particular form – you might ask in person, by telephone, or email – but it is always a good idea to confirm a request in writing.

The agency may provide the information you have requested, provide some of the information you have requested or can claim that the information is exempt.

If you are not satisfied with the response from the agency, you can lodge a formal application for an "assessed disclosure". These applications must be made in writing - agencies will generally have an RTI application form on their website.

Public authorities are required to assist you to make a valid application, so if you have any questions about the application form, contact the relevant RTI officer.

What information is available?

You have a broad right of access to records held by government agencies (including documents, emails, disks, maps, plans, tapes, images or messages). However, you do not have the right to access **all** information.

Sections 25 – 32 of the RTI Act set out some categories of information that are exempt from disclosure. These relate to certain types of internal government deliberations (such as briefing papers to Ministers and Cabinet documents), information affecting state or national security and information that would prejudice investigations or the administration of justice.

Sections 34 – 42 provide additional categories of information that may be exempt, but only if disclosure would be "contrary to the public interest." These include some internal government deliberations, personal information and information likely to affect the state economy or natural, cultural or heritage resources. Schedule 1 to the RTI Act sets out some matters that will be relevant to an assessment of whether disclosure is in the 'public interest'. Schedule 2 also contains a list of matters that will **not** be relevant to this assessment.

If a document contains information about someone's personal affairs, the relevant agency must consult that person before deciding if the information should be released.

Most exemptions exist to facilitate the proper working of government. However, in some situations a government or government agency may use these exemptions to conceal information – by taking the issue to Cabinet, for instance. If you are dissatisfied with the reasons for non-disclosure, then you may appeal (see below).

Agencies may also refuse an application on the basis that it is a repeat or vexatious application. The Ombudsman has released Guidelines and a Manual outlining when an application will be considered 'vexatious'.

Time limits

Applications must be responded to as soon as practicable after an assessment has been made, but generally no later than 20 working days. If an application needs to be refined or directed to another agency, the applicant should be consulted about this within 10 working days.

Sometimes it will be necessary for the public authority or Minister to consult with a third party about the release of information (for example when it involves personal information). The time limit for responding to an application can be extended by up to 20 working days to allow this to happen.

Requesting information under the RTI Act may be too slow in some situations where information is needed in a hurry, such as when an appeal must be lodged.

How is information provided?

Information may be provided in the following ways:

- you may be able to inspect the record or listen to tapes etc
- you may receive photocopies or a transcript of the record

Where a document contains both exempt and non-exempt information, a copy of the document can be supplied with the exempt information blanked out (this is sometimes called “redacted”).

You will need to discuss the format in which you wish to receive information with the public authority.

How much does an RTI application cost?

There are no charges for “active disclosures”, so in most cases obtaining information should not cost you anything.

If you do need to apply for an “assessed disclosure”, there is an application fee (currently $34.50). However, unlike the *FOI Act*, there are no additional fees for copying documents.

The application fee may be waived if you:

- have financial difficulties;
- are a Member of Parliament acting in connection with your official duty;
- intend to use the information for a purpose that is in the general public interest.

Internal and External Reviews

If you are unhappy with the RTI officer's decision, the first step is to request an internal review. You will need to make this request in writing to the 'principal officer' of the agency. The “principal officer” may be the CEO of a government business enterprise, the General Manager of Council or the Head of Agency for the relevant government department.

Applications for review must be made within 20 working days of receiving notice of the decision.

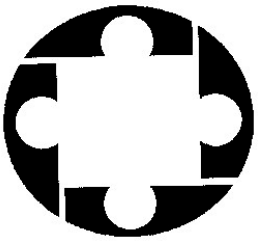
The principal officer must arrange for a new assessment to be conducted by a different employee of the public authority as soon as practicable. You will be advised of the decision made by the internal review officer.

If you are unhappy with the outcome of this internal review, or have not received an answer within 15 working days, you may apply to the Ombudsman for an external review (s.44). The request must be in writing and should include your original application, any decisions made and all relevant correspondence between you and the agency or Minister. You should read the Ombudsman's Review Guidelines before applying for a review.

You can generally get better results in an RTI review application if you are familiar with the Right to Information Act 2009 (including the exemptions) and the Ombudsman’s Guidelines.

Keep a file recording all your communications with government officers about your RTI request. These records will be invaluable should you need to prove that a department has treated you unfairly or not complied with the Act.

13.7 Using the Ombudsman



If you have concerns about the administrative actions of a government authority (that is, you believe the agency has acted incorrectly or not taken action it should have) you can lodge a complaint with the Ombudsman.

The Ombudsman will investigate your complaint and, if it is justified, recommend an equitable solution to the problem.

The Ombudsman does **not** act as an advocate for you. The role of the office is to carry out investigations independently and impartially.

Tasmanians have 'one-stop-shopping'

The Tasmanian Ombudsman is also a delegate for the Commonwealth Ombudsman. This means that if you have a complaint against any government department or authority – whether Commonwealth, State or local – you need only contact one office.

Who can complain?

Anyone – individuals, organisations or incorporated bodies – can make a complaint to the Ombudsman.

How to make a complaint

You should first try to resolve your problem by talking or writing to the agency concerned. If you have not already done so, the Ombudsman will usually refer you back to the agency.

The Ombudsman aims to make it as simple and as easy as possible for a person to air a grievance. You are advised to keep good records and put your concerns in writing. The Ombudsman's staff will provide assistance where necessary.

13.8 The Integrity Commission

The Tasmanian Integrity Commission was established in 2010 to improve the integrity of government and public authorities in Tasmania. While the main focus of the Commission is on educating public officials and preventing misconduct, the Commission also handles complaints from members of the public regarding misconduct by a public officer (such as a government officer, police officer, general manager of a local council or a Minister).

Misconduct may occur if a public officer acts dishonestly (for example, making false statements or hiding evidence that may undermine their decision) or improperly (for example, accepting a bribe).

The Integrity Commission does **not** deal with any actions of:

- a Magistrate or Supreme Court Judge;
- the Resource Management and Planning Appeal Tribunal;
- employees of private companies and businesses;
- a Member of Parliament during proceedings in Parliament;
- lawyers in private practice.

Making a complaint

You can make a complaint by writing to the Integrity Commission outlining your concerns. The complaint does not have to be on the suggested form, but **must** be in writing.

You can download a complaint form from the Integrity Commission website.

You can make an anonymous complaint to the Integrity Commission. However, people are encouraged to provide their details, so that the Commission can contact you again in the course of their investigation.

How will the Commission deal with my complaint?

After receiving a complaint, the Integrity Commission will:

1. Decide whether the complaint relates to a matter that the Commission has power to investigate. If not, the complaint may be referred on to a more appropriate government department.
2. Decide whether to investigate the complaint. Even if the issue is technically within its powers, the Commission may decide that it would not be productive to deal with the matter because the misconduct in question is not serious enough, happened too long ago or has been adequately dealt with by other agencies.
3. The Commission may refer the complaint to another agency for further investigation and monitor how the investigation goes. Alternatively, the Commission may investigate the matter itself.
4. The Commission will update you on the progress of your complaint.

14. Tribunals, Courts and Lawyers

In recent years it has become somewhat easier for ordinary citizens to legally challenge government decisions and to challenge activities that harm the environment.

Taking legal action can be an intimidating experience, but need not be so. This chapter outlines how the legal system works, plus important information about:

- court procedures
- costs that may be incurred
- when and how to get legal assistance

What follows is a guide only and should not be relied on as a substitute for professional advice.

14.1 The court system

Environmental disputes in Tasmania are heard in a number of tribunals and courts, depending on the issues and laws involved.

The Resource Management and Planning Appeal Tribunal

By far the most significant institution for environmental matters is the Resource Management and Planning Appeal Tribunal (**the Tribunal**). This is a one-stop-shop for appeals and civil enforcement actions in planning and environmental disputes.

There is considerable scope for ordinary citizens to initiate legal action in the Tribunal – almost all land use disputes, with the exception of forestry and mining, are heard by the Tribunal, at least in the first instance.

☛ see below for detailed information about the Tribunal's functions and processes.

The Magistrates Court

The Magistrates Court comprises a number of divisions in which prosecutions take place. If you commit an offence under environmental laws you may be prosecuted in this court or in the Supreme Court, generally depending on the nature of the offence and the penalty that can be imposed.

Environmental prosecutions are normally initiated by government agencies, including local councils. Prosecutions relating to trespass or property damage arising from protest actions are generally initiated by the Tasmania Police.

The Supreme Court

The Supreme Court of Tasmania hears appeals from the Tribunal and other courts.

If you take legal action based on common law, this may be started in the Supreme Court (although, if all parties consent, some actions may be started in the Magistrates Court.)

Cases before the Supreme Court are heard at first instance by a single judge. His/her decision may be appealed on questions of law to the Full Court of the Supreme Court, which

comprises a panel of three judges (not including the judge who made the decision you are appealing against.

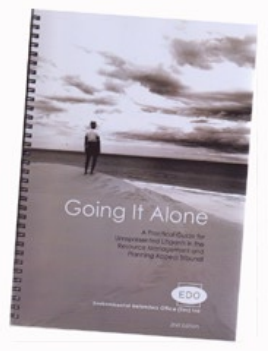
↝ Information about the Magistrates Court and the Supreme Court is available at www.courts.tas.gov.au.

Other tribunals and review bodies		
Mining Tribunal	Hears certain matters relating to mining and quarrying activities.	☛ Go to Chapter 11
Forest Practices Tribunal	Hears matters relating to forestry activities. Appeals can only be commenced by certain prescribed parties.	☛ Go to Chapter 8
Tasmanian Planning Commission	Reviews decisions in relation to amendments to Planning Schemes, Water Management Plans, State Policies and Projects of State Significance	☛ Go to Chapters 4 and 5
Ombudsman	Can review administrative decisions of government agencies, including decisions about *Right to Information* applications.	☛ Go to Chapter 13

The national court system

- The Federal Court of Australia hears cases involving Commonwealth laws. It also hears appeals from Commonwealth tribunals such as the Administrative Appeals Tribunal (**AAT**).
- The High Court of Australia sits at the top of the Australian court hierarchy. Appeals from the Supreme Court and from the Federal Court may be taken to the High Court. You need permission (known as "leave") from the High Court to appeal - it can refuse to hear appeals not considered significant enough to justify its involvement.

14.2 About the Tribunal



Please note, this chapter only provides general information about the conduct of appeals before the **Resource Management and Planning Appeal Tribunal**. More detailed guidance on Tribunal processes is available in:

- the Tribunal's Practice Directions; or
- the EDO Tasmania publication *"GOING IT ALONE: A Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal"* (Ph: 03 6223 2770 to order)

What is the role of the Tribunal?

The Tribunal is a critical component of Tasmania's Resource Management and Planning System described in Chapters 3, 4, 5 & 6.

The Tribunal's role is not to prosecute and punish offenders with fines and gaol sentences as is done in the courts. The Tribunal's primary functions are to:

- assess appeals from citizens (and affected companies / developers) and uphold, overturn or amend decisions made by planning authorities and other agencies;
- conduct mediation between disputing parties to attempt to reach an acceptable resolution;

- assess civil enforcement applications and determine whether Tasmania's planning and pollution laws are being complied with and, if not, what orders should be made to address any harm that has been caused.

The Tribunal does not initiate investigations or cases of its own, it relies on others to bring issues before it for assessment.

Appeals to the Tribunal can be initiated under a range of Acts (☛ Go to Chapter 4). These Acts prescribe what decisions can be appealed in the Tribunal, who may appeal and what orders the Tribunal can make.

How the Tribunal works

The Tribunal operates in accordance with the *Resource Management Planning and Appeal Tribunal Act 1993*. In general:

- The Tribunal is more 'user friendly' and less formal than a court.
- Hearings are intended to be conducted with as little formality and technicality and as simply as a "proper consideration of the matters before the Tribunal permits".
- The Tribunal is not bound by the rules of evidence and may inform itself on any matter and in any way it considers appropriate.
- It must, however, observe the rules of natural justice. This does not mean that you have to agree that the outcome is "just", it means that the Tribunal must ensure that every party to an appeal is given a reasonable opportunity to present their case, to inspect any documents on which the Tribunal proposes to rely and to make submissions in relation to those documents (Section 19).
- It conducts its hearings in public (unless particular evidence needs to be given in private to protect confidentiality).

Who can make an appeal?

Because one objective of Tasmania's *Resource Management and Planning System* (☛ see Chapter 4) is to encourage public involvement in resource management decision, a citizen's right to make appeals in the Tribunal is fairly open. However, there are some specific limitations as to who can institute appeals to the Tribunal.

"Standing" refers to your right to be heard in legal proceedings. Who has standing in relation to an appeal depends on the nature of the appeal, the relevant legislation and the circumstances of the particular case.

In the case of planning appeals, you only have standing to lodge an appeal if you made a representation to the local council. (or you are the developer who is unhappy with the decision made by Council). (☛ Go to Chapter 5 for information about this process).

If someone else has lodged an appeal, and your interests are affected by a decision, you may apply to the Tribunal to be made a party to that appeal. The Tribunal's power to make a person a party to an appeal depends on the nature of the appeal. For planning appeals, the Tribunal will not allow you to join the appeal unless:

- you made a representation, or
- you have a "proper interest" (see below) **and** a good reason for not making a representation.

Parties who join an appeal may be restricted to arguing only those points raised by the person who originally appealed. For these reasons, you are in a better position if you institute your own appeal than if you rely on trying to join someone else's appeal.

What is a 'Proper Interest'?

Traditionally, to initiate action in environmental law cases based on common law, courts required you to demonstrate that you had an interest in the subject matter of the action which is greater than that of an ordinary member of the public – a "proper interest".

In recent years, the general trend in environmental law around Australia has been to relax restrictions on standing. This has allowed wider scope for members of the public to take legal action for the benefit of the environment.

Though "proper interest" is not defined in LUPAA or EMPCA, some recent cases suggest:

- You may 'have a proper interest if you have an 'interest in or connection with' the land or the issue at stake and that 'interest or connection' is greater than that of the bulk of the population. For example, if you live nearby or take water downstream from the development, you would have a specific interest and be affected by the development more than the general public
- A conservation group that is active in the subject area and has been involved with the specific issue appealed against may have a 'proper interest'.
- Merely wanting to uphold the planning scheme or make sure that environmental laws are complied with is not enough to demonstrate a 'proper interest' on its own – you need to show some personal connection to the development / activity / site in question.

In practical terms, you may be able to show a 'proper interest' in an appeal if, for example:

- you live or own property in the vicinity of the subject land;
- you have obtained an 'interest in or connection with the land' through regular visits to or use of the land (for example, if you walk on the beach each day, you may have a proper interest in a development that will restrict access to the beach);
- your community group runs a playgroup in a hall that will be demolished as part of the proposed development;
- a proposed development will significantly increase traffic in your area.

Standing can be a complicated issue. If you have concerns, you should contact the Environmental Defenders Office for advice about whether you can demonstrate a sufficient interest in the appeal.

For appeals against decisions to grant a mining lease or exploration licence, only those people who have a proprietary or financial interest in the land can object (☛ See Chapter 11 for more information about objections under the *Mineral Resources Development Act 1995*).

When can I make an appeal?

For most resource management appeals, including appeals against a planning decision (☛ see Chapter 5), you must lodge a Notice of Appeal within 14 days from the date of the letter notifying you of the decision (regardless of when you actually receive the letter).

You can request an extension in some circumstances, however it is better to lodge your appeal as promptly as possible.

If you are seeking urgent enforcement orders against a pollution incident or similar (under EMPCA) or a breach of a planning permit or planning scheme (under LUPAA), then you should apply to the Tribunal immediately and can ask for an early hearing.

If urgent orders are made, stopping an activity until the hearing, you may be required to provide an undertaking to pay any loss or damage suffered by the respondent in the event that the case is eventually decided in their favour.

For Civil Enforcement actions, you will need to commence proceedings within 2 years of a breach under LUPAA or within 3 years of a breach under EMPCA.

Costs

Before lodging your appeal, you need to consider whether you have good grounds for an appeal. If the Tribunal finds your appeal to be frivolous or vexatious, it must dismiss the appeal and direct you to pay the costs of the appeal (including costs incurred by other parties).

The Tribunal would be less likely to find your appeal to be frivolous or vexatious if you have appealed for legitimate reasons and if you avoid raising unreasonable arguments that are without substance or are totally lacking in merit.

For more guidance on what are reasonable grounds of appeal, see the Tribunal's Practice Directions.

Planning Aid can provide free advice about the planning merits of your case. The Environmental Defenders Office can also provide advice about the legal strength of your proposed grounds of appeal.

14.4 How do I lodge an appeal?

You will need to complete a Notice of Appeal form and lodge it with the filing fee before the appeal period expires (this period may be extended in some circumstances).

Your Notice of Appeal should clearly state the decision that you are appealing against (the relevant details will be set out in the letter you receive from the Council) and the reasons that you think the decision was wrong (your "grounds of appeal").

What happens then?

After you lodge a Notice of Appeal, a notice will be published in the public notices section of your local newspaper (generally on the following Saturday). The notice will give a date for a directions hearing that you will need to attend to discuss your appeal.

Who are the 'parties to an appeal'?

In normal circumstances, the parties to an appeal will be:

- the person who has instituted the appeal
- the person who made the decision that is being appealed against (often a local council)
- the person whose initial action gave rise to the decision appealed against (eg. a developer)

If the appeal relates to a refusal or conditions resulting from a water corporation's submissions (☛ see Chapter 5), the corporation is also taken to be a party to the appeal. Water corporations also have a right of appeal in relation to any planning applications which have been referred to the corporation for comment. If the appeal relates to a refusal or conditions required by the EPA, the EPA is not automatically made a party to the appeal but may apply to join the appeal.

Any other person whose interests are affected by the decision can also apply to join the appeal. For planning appeals, the Tribunal will not allow a party to join the appeal unless the person made a representation, or has a proper interest **and** a good reason for not making a representation.

If you start Civil Enforcement proceedings under LUPAA, the local council will automatically be made a party. The Tasmanian Planning Commission may also apply to be made a party.

14.5 Do I need a lawyer?

The Tribunal was designed to enable untrained citizens to represent themselves in planning and environment matters.

You are not required to have a lawyer. You can represent yourself, or someone can present your case for you. However, if you have no experience, it is advisable to at least obtain initial professional advice prior to becoming involved in Tribunal proceedings.

You can be assisted or represented by any person, including a lawyer, a planner, an engineer or a friend who has experience with Tribunal matters. In some circumstances, it can be very advantageous to have a professional represent you. The Tribunal places considerable emphasis on the evidence of expert witnesses. Therefore, if a developer has engaged experienced professionals to present his case, you may be disadvantaged if you do not have expert assistance to present your side of the argument.

When deciding whether you need a representative, consider whether you are able to prepare and present your case from beginning to end. If there are any areas where you are unsure or need clarification, it is sensible to seek advice and assistance.

Even if you do represent yourself in the Tribunal, it is wise to seek advice at the outset to draw up your grounds of appeal, gather evidence from expert witnesses and generally prepare for the hearing.

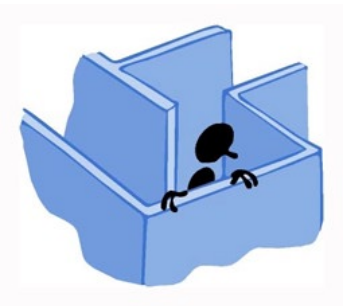
The Tribunal has a register of professionals (including planners and lawyers) who are prepared to provide free initial advice. This is generally a 15 minute phone call. After that you will need to discuss engaging the professional on a fee-for-service basis. Contact the Tribunal for information about this service.

You can also contact the Environmental Defenders Office for advice.

Planning Aid also offers a free planning advice service through the Hobart Community Legal Service.

Professionals have different skills and responsibilities. They will provide a professional opinion, and this may not coincide with your own view. It may also be difficult for them to provide an opinion without properly considering the material. For this reason, you may need to pay for an initial assessment simply to find out if your case is worth pursuing.

If you engage a professional to help your appeal, you should ask them to give you a full explanation at the outset of all the likely costs that may arise from the Tribunal proceedings.



Getting legal advice

Need to get advice quickly

It's best to get legal advice as soon as an issue arises because delay can adversely affect court cases. Once a decision has been made, there are strict deadlines for making appeals. Sometimes a delay can mean losing your case — even if your legal claim is correct. Delays can also be expensive.

If you choose to represent yourself in any proceedings, lawyers can still be helpful in giving advice. You can usually get free preliminary legal advice from legal centres, such as the Environmental Defenders Office, Community Legal Centres, the Aboriginal Legal Service and the Legal Aid Commission of Tasmania:

- The Environmental Defenders Office is a specialist legal advisory service dealing with environmental issues. It offers free advice and, in some instances, can assist in court proceedings.

- Community Legal Centres provide general legal advice to the community and have a range of publications to assist those who need to represent themselves.
- The Aboriginal Legal Service provides legal assistance to Tasmanian Aborigines in relation to all legal issues.
- Legal Aid cannot usually assist you with civil environmental cases in court, but it will usually provide initial legal advice. Legal Aid can provide advice in relation to criminal charges arising from protest action.

Each of these agencies is aware of the services offered by the others, and can readily refer people to the right place when contacted. The Law Society of Tasmania has also recently established a Pro Bono Clearing House, where people can apply for free legal advice and representation. Details regarding this service are available from the Law Society.

Choosing a lawyer

If you can, it's best to get advice from a lawyer with special knowledge of environmental law and experience in bringing cases before the Tribunal and other courts. He or she may be able to identify quickly whether a potential development appeal has good prospects of success. Lawyers inexperienced in environmental law may have to refer the matter to other lawyers.

To find specialist lawyers in the environmental field, it may also be worthwhile to contact groups who have been involved in litigation and get their recommendations.

Can I apply for Legal Aid?

The Legal Aid Commission has limited resources and can no longer provide legal assistance for civil cases, which includes most environmental law matters. The Environmental Defenders Office is therefore the best first point of contact for such matters.

However, Legal Aid may provide legal assistance to people who have been charged with criminal offences.

14.6 What happens in the Tribunal?

The Tribunal generally conducts an appeal in five steps:

1. Directions Hearing
2. Compulsory mediation conference
3. Full Hearing (if necessary)
4. Final decision, including any orders
5. Orders in relation to costs (in some cases)

1. The Directions Hearing

The Directions Hearing is a preliminary meeting of the parties, generally before the Registrar of the Tribunal. It is usually held within two weeks of the appeal being lodged – the date of the directions hearing will appear in the public notice in the newspaper regarding the appeal.

In the directions hearing, the Registrar will consider applications from any other parties who want to join the appeal.

Parties to the appeal may also request documents from each other to assist in structuring their arguments. The Tribunal can make orders for parties to provide relevant documents to all the other parties.

Another purpose of this directions hearing is to clarify the issues in the appeal and to see if some or all of the issues can be resolved by mediation or whether it will go to a full hearing. The Tribunal now generally requires that parties attend mediation before setting a hearing date.

Finally, at the directions hearing the Tribunal will set out a timetable for the appeal, including dates for mediation, exchanging evidence and a full hearing (if necessary).

All parties must comply with the directions of the Tribunal made at this hearing.

2. The Mediation Conference

This is a conference with the Registrar. It is Tribunal practice to have a mandatory initial mediation - a person who does not attend the mediation may be excluded from the appeal, or their application will be dismissed. If you want to be represented by a lawyer at the mediation conference, you must give the other parties at least 48 hours' notice.

The purpose of a mediation is to allow all the parties to try to find a mutually acceptable solution to an appeal. If all parties reach agreement at the mediation, the Tribunal may, without holding a hearing, make the orders agreed to by the parties.

The terms of the agreement are put in writing and signed by all parties and then given to the Tribunal.

If the Tribunal is satisfied that a decision in those terms would be within its powers and appropriate, it can consent to the agreement and give orders that it be carried out.

Even if the parties do not resolve all the issues, mediation can be a useful way to reduce the number of issues that will be considered at a full hearing.

Mediations are confidential and evidence of anything that happens at a conference is inadmissible at the full hearing.

If you are acting on behalf of an organisation or a group of people in an appeal, you should obtain a signed authority to settle on behalf of your organisation or group at the mediation.

A mediation often includes a visit to the site.

3. The Full Hearing

If mediation is unsuccessful, a full hearing will be required. The parties will generally appear before the Tribunal panel to present their evidence. The panel is normally comprised of the chairperson (who must be a lawyer) and two other members (specialists in a relevant field, such as engineering, town planning or heritage issues).

See below for more details

4. The Tribunal's decision

- The Tribunal must hear and determine an appeal within 90 days of it being lodged (unless the parties agree to extend this period).
- The Tribunal usually reserves its decision at the end of the hearing (that is, they do not make a decision immediately).
- The Tribunal must notify each party to the appeal of its decision as soon as practicable after making its decision (normally within two weeks). The Tribunal provides written reasons for its decision (including its findings on questions of fact and the evidence or other material on which the findings are based).

- Once the Tribunal has handed down its decision, it has no further jurisdiction and generally cannot enter into any correspondence with the parties in relation to the decision
- The decision comes into effect 10 days after it is made (unless the Tribunal has specified another date).

5. Awarding costs

☛ See below for information about costs.

What happens in the Full Hearing?

All witnesses must be present at the hearing so that their evidence can be tested by questions from opposing parties. Without the witness being present, written evidence may be disregarded.

How to prepare for your appeal

To prepare for your appeal, you should list all of your grounds of appeal, and work out what evidence you will need to support your arguments for each ground. For example, if you are arguing that a development will have an adverse impact on a threatened bird species, you may need evidence about the number of birds that use the site, breeding habits or migratory patterns of the bird, or expert advice on how fragmentation of habitat will reduce breeding success.

Other evidence in support of your case may include photographs, video/audio tapes, plans or maps, and documents.

You need to put all the evidence you wish to present in support of your case in writing (this is called a "statement of evidence" or "proof of evidence") and provide it to the other parties before the appeal. As a general rule, evidence which has not been given to all other parties beforehand cannot be presented to the full hearing.

Each witness you are calling to give evidence must prepare a separate statement of evidence and must attend the hearing to be cross-examined on their evidence. Each expert witness should give details of their relevant qualifications in their statement of evidence.

Statements of evidence are generally exchanged **14 days** before the hearing date (the Tribunal will make directions about when statements must be exchanged). You must give three copies of all the statements to the Tribunal and one copy to each other party.

The parties are then given 7 days to prepare response statements or supplementary statements. These documents are an opportunity to point out problems / inconsistencies in the other expert reports, or provide more information in response to questions raised by other experts.

It is a good idea to organise your documents and the documents you receive from the other parties in a folder with an index, so that you can find them easily during the hearing.

Sequence of presentation by parties

The Tribunal can make orders about how evidence is presented at a hearing. However, the usual sequence is:

- First, the developer presents their case
- Second, the planning authority (council) or decision making authority responds
- Finally, the person who lodged the appeal and any other parties to the appeal present their arguments

What to do if you are called as a witness

- You should firstly confirm (and if necessary correct) your statement of evidence. There is no need for the whole statement to be read aloud.
- If you would like to clarify or further explain your evidence (such as providing original colour photographs to the Tribunal), this is the time to do it.
- You cannot normally expand or add to your written evidence at this stage.
- Only present facts and professional opinions in your evidence. Leave your arguments about the merits of the case (that is, whether the Council made the right decision) until later (see "Final submissions", below).

What to do when you are cross-examining

Following the evidence of each witness, the Chairperson invites the representative of each other party and then Tribunal members to ask questions of that witness.

You should prepare for the cross-examination of each witness before the hearing by carefully going through his/her statement(s) and preparing questions you wish to ask. Take careful note of any relevant comments the witness makes at the hearing before (and after) your cross-examination.

When cross-examining you should only ask questions. You should not make comments or statements – there will be an opportunity to make these comments when summing up your case in the final submissions.

Tips when asking questions

- Keep the questions short, relevant and concise.
- Give the witness ample time for a response.
- If you have photographs, a statement or any other evidence that directly contradicts what the witness has stated or was in his/her proof of evidence, you should present these to the witness. Ask questions about that evidence.

You should not:

- ask more than one question at a time
- question a witness on matters which are outside his/her scope of knowledge
- question a witness on matters which are not relevant to the issues before the Tribunal
- feel that you have to cross-examine (eg. if other parties have asked the questions that you were going to ask the witness, you can simply tell the Chairperson that you don't have any further questions to ask)
- continue with a particular line of questioning if the Tribunal tells you not to ask any more questions about the issue.

Re-examination

Following cross-examination, the party who called the witness is invited by the Chairperson to re-examine the witness.

Re-examination of the witness enables clarification of issues raised during cross-examination - it is not an opportunity to raise new matters. For example, if the other party's lawyer mentioned that your witness had only conducted studies in Victorian forests, not Tasmanian forests, you could ask your witness to briefly explain why the findings of her studies are applicable in Tasmania.

Final submissions

Final submissions provide an opportunity for the parties to summarise their case to the Tribunal. This is where you can argue that the evidence supports your case, or that the planning scheme should be interpreted a certain way.

The Chairperson will direct the order of final submissions. If there is insufficient time, the Chairperson may request that the final submissions be given in writing.

Inspection of the site

In most cases the Chairperson and Tribunal members inspect the site, generally without the parties.

14.7 Can I appeal against a Tribunal decision?

A party may appeal against any decision of the Tribunal to the Supreme Court on a question of law only (not the merits of the case).

Appeals must be lodged within 28 days of the Tribunal decision and must comply with the Rules of the Supreme Court.

During a Tribunal hearing, the Tribunal may, of its own initiative, or upon the request of a party to the appeal, refer a question of law to the Supreme Court for consideration (for example, about the correct interpretation of a provision of the legislation). The hearing is then suspended until the Supreme Court determines the issue.

Important notes:

If you are considering a Supreme Court appeal (or if one of the other parties makes such an appeal), you are strongly advised to obtain legal advice at the earliest possible opportunity and, if appropriate, engage a lawyer to represent you.

The Tribunal's decision takes effect, even if an appeal has been lodged in the Supreme Court. You will need to request a 'stay order' from the Supreme Court to prevent action on the Tribunal orders until the Supreme Court decision.

14.8 Civil Enforcement

In some circumstances, you can initiate legal proceedings (called 'civil enforcement') to safeguard your environment.

The most common actions are carried out under:

- Planning law - the *Land Use Planning and Approvals Act 1993*
- Pollution laws - the *Environmental Management and Pollution Control Act 1994*
- Water laws - the *Water Management Act 1999*

Under these pieces of legislation, you can commence proceedings seeking an enforcement order against someone who is breaching (or likely to breach) a planning permit or planning scheme, building an unauthorised dam, taking too much water from a river system or causing environmental harm.

Any person who has a 'proper interest' in the relevant action (such as a neighbour who is affected by pollution) is able to take *Civil Enforcement* proceedings by making an application to the Resource Management and Planning Appeal Tribunal - commonly referred to as *the Tribunal*.

How can I enforce planning laws?

Under Section 64 of LUPAA, you can initiate proceedings against a person who:

- uses land, undertakes development or does any other act that is contrary to any State Policy, Planning Scheme, Special Planning Order or a permit - or is likely to do any of these things;
- has breached, or is likely to breach, a condition of a development permit or a decision of the Tribunal;
- undertakes a prohibited development - that is, carries out a development or activity or changes the use of land without the necessary planning permits

Actions under LUPAA must be commenced within 2 years of the date of the breach you are concerned about.

The Tasmanian Planning Commission also has power to bring Civil Enforcement proceedings for actual or potential breaches that have been brought to their attention. In practice, the Commission rarely takes such proceedings.

Municipal councils have an obligation to uphold their Planning Schemes. In addition to civil enforcement, councils can also be prosecuted for failing to enforce their planning schemes. Hobart City Council has already been taken to court under these provisions.

How can I enforce pollution laws?

Under Section 48 of EMPCA, you can initiate proceedings against a person who:

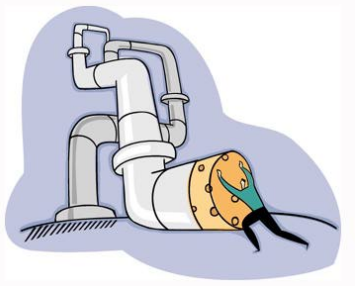
- has engaged, is engaging, or is proposing to engage in conduct in contravention of EMPCA; or
- has refused or failed or is refusing or failing to take any action required by EMPCA; or
- has caused environmental harm.

For example, you could take action where a person:

- does something that causes an actual adverse effect on the environment or threatens human health
- emits a pollutant that unreasonably interferes with your enjoyment of your property (such as consistently releasing dust or operating late at night and interrupting your sleep)
- breaches the conditions of an Environment Protection Notice, an Environmental Improvement Plan or environmental conditions of any relevant planning permit.

You must bring proceedings within 3 years of the date of the action that causes environmental harm.

The *Director of the EPA* and the council that issued the permit may also bring Civil Enforcement proceedings against a person who is not complying with the permit requirements.



Who may bring Civil Enforcement actions?

- A local council
- The *Director of Environmental Management* (in EMPCA proceedings only)
- The *Tasmanian Planning Commission* (in LUPAA proceedings only)
- Any person who can show that they have a *proper interest* in the issue they are taking action against.

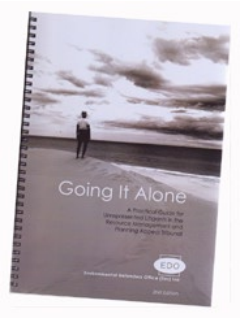
The Tribunal will decide if you have a proper interest or not. It usually means that you are affected by the pollution or breach more than other members of the public.

For example, you may live near the development, teach at a school affected by the pollution or be part of a Coastcare group responsible for looking after the area of beach being polluted.

How do I initiate legal proceedings?

You can download an Application Form from the Tribunal website.

You will need to make sure that you have enough evidence to show that a breach has been, or will be, carried out.



If you are thinking about taking such action, you should read through the Practice Directions on the Tribunal website. EDO Tasmania also produces "*GOING IT ALONE - A Practical Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal*", which provides useful tips on how to take action.

What happens in the Tribunal?

A Civil Enforcement action generally involves the following basic procedures:

- You can apply "ex parte" by completing the relevant application form. This means that you do not need to involve the alleged offender at the beginning (though, it is always a good idea to have tried to resolve the matter with the offender before you commence proceedings).
- You should prepare a statutory declaration(s) to lodge with your application to the Tribunal. The statutory declaration(s) should provide details about what has happened, what actions you have taken (such as contacting DPIPWE or reporting the incident to the Council) and any evidence of the extent of harm (such as photos). You should also provide evidence about the ownership of the land in question, such as a title deed or print out from the LIST.
- After reading your application and any supporting documents, if the Tribunal is satisfied that there are sufficient grounds to proceed, it must issue a summons requiring the alleged offender. The summons will require the offender to appear before the Tribunal at a preliminary hearing to "show cause" (explain) why an order should not be made against them. The date for this hearing is usually within **14 days** of the date on which you lodged your application, but can be sooner if the matter is urgent.

In some circumstances, the Tribunal may also make temporary orders preventing particular actions until a final hearing has taken place (see below). If you think that temporary orders are necessary, you should request this in your application.

At the Preliminary Hearing

The alleged offender will be asked if s/he wishes to show cause why the Tribunal should not issue an order.

If s/he does not wish to show cause, the Tribunal can make an order relying on evidence already before it (that is, the evidence that you provided in your application).

If s/he does wish to show cause, the matter will be set down for hearing at a later date.

A date may also be set for a mediation conference to try to resolve the issue (for example, you may be able to reach agreement about reasonable operating hours for the neighbouring business, or getting the business to contribute to the costs of constructing a noise barrier).

What can the Tribunal decide?

If the Tribunal is satisfied, on the balance of probabilities, that there has been a breach of the law (or if the alleged offender fails to respond to the summons or does not give evidence), the Tribunal may require him/her to comply with a wide range of orders:

Under Planning Law (LUPAA)

The Tribunal may make orders, including that the person:

- stops contravening the Act or the permit
- is prevented from carrying out any use or development on the relevant land
- is prevented from carrying out particular uses on the land, either until the breach is fixed or for a set period of time
- "makes good" (that is, repairs or remediates) the breach. Remediation must happen in a manner, and within a specified period, set by the Tribunal

The Tribunal may also make a temporary order to stop any activity while the matter is being decided. Generally, a temporary order will not be made unless you are willing to give an undertaking to pay any damages the alleged offender may suffer due to the temporary order.

For example, if you are seeking temporary orders to stop mining activities until your application is resolved, you may be required to give a commitment to pay compensation for any loss of revenue, payments to contractors or other penalties resulting from the shut-down if the mining company is ultimately found not to be in breach.

An alleged offender who contravenes, or fails to comply with, an order or a temporary order is guilty of an offence.

Under Pollution Law (EMPCA)

The Tribunal can make a wide range of orders to stop pollution, including urgent orders if appropriate. For example, the Tribunal may require the offender to:

- stop the harmful activity, or refrain from a course of action
- repair damage that has been done
- pay for repairs to be carried out by the government agency / council / affected person
- comply with an Environment Protection Notice or enter into an Environmental Agreement or an Environmental Improvement Program (Go to Chapter 5 for more information about these options).
- cease (or not commence) any use or development on the land in question
- pay costs incurred to prevent or mitigate environmental harm, or to make good the resulting environmental damage

The Tribunal may also order the polluter to pay compensation to any person who has suffered loss or property damage. It may also order the polluter to pay your costs and expenses of taking action.

Can I appeal against the Tribunal decision?

You can appeal to the Supreme Court against an order made by the Tribunal (or a decision not to make an order).

You cannot appeal against the merits of the decision, only upon a point of law.

This means that you cannot challenge a Tribunal decision about, for example, who was to blame for the pollution event or what measures are appropriate to address the pollution, unless you can show that the Tribunal made a mistake in the way that it made its decision (such as failing to consider a relevant document).

You must appeal within 30 days of the Tribunal's decision.

14.9 Awarding costs

In the Supreme Court and Magistrates Court, the party that loses the case is generally required to pay all or part of the winner's costs. This is not necessarily the case with the Tribunal.

How does the Tribunal award costs?

Following the appeal, the Tribunal must make an order in relation to costs.

Normally, at the end of its written decisions, the Tribunal will allow each party a specified period (generally, **14 days**) to apply for an order for costs. If you wish to apply for costs you should do so in writing, providing detailed arguments as to what the Tribunal should take into account.

As a general rule, parties to an appeal will bear their own costs. However, if the Tribunal is satisfied that it is fair and reasonable to do so, it may order that one party pay some or all of the costs of another party.

Factors that the Tribunal may take into consideration in deciding whether it is 'fair and reasonable' to award costs include:

- the result of the appeal;
- whether a party has raised frivolous or vexatious issues;
- whether a party has unreasonably prolonged the appeal or increased the costs of it;
- the relative merits of the claims made by each of the parties;
- whether a party has failed to comply with a direction or order of the Tribunal, a planning scheme or any other law;
- the nature, complexity and outcome of the appeal;
- the capacity of the parties to meet an order for costs.

Unlike other planning matters, the general rule for civil enforcement action under LUPAA is that the losing party will pay the costs of the winning party.

What about your lawyer's fees?

Legal fees can be a trap for the unwary, so be on top of it from the outset.

If you engage a lawyer (for advice or to represent you in court) then it is important to establish how you will be charged, and, if possible, how much.

There are three main ways in which a lawyer may charge a client for legal work:

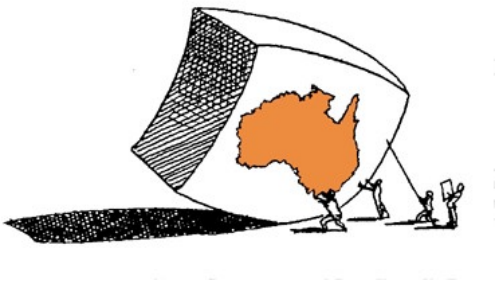
1. **Set fee**: The lawyer and the client may agree in advance on the amount of professional fees which the lawyer will charge for acting on the client's behalf for certain agreed work.
2. **Item-by-item**: charges are based on set values for each item of work done by the lawyer in the handling of your case. For example, a lawyer can charge you for telephone calls, the writing of letters, the reading of letters, and for various items of work relating to the preparation of and appearing in court proceedings.
3. **Hourly rate**: The fees will be determined by the amount of time spent working on your matter.

Make sure that the method of charging to be adopted is explained to you before legal costs are incurred. This should be done by the lawyer in writing.

If you are uncertain about fees being charged or are unhappy about a legal bill, indicate your concerns to your lawyer and discuss the matter with him/her. If you are still concerned, then seek advice from the Law Society or a Community Legal Service (☛ see contacts at end of chapter). To protect clients, there are rules for legal charging and your legal bill can be challenged in some circumstances.

15. National Environmental Laws

When dealing with environmental problems that have national significance, you will sometimes need to refer to Commonwealth laws.



State and local governments are responsible for managing most activities that impact on the environment. However, in some cases a person planning an activity or development may need to obtain federal government approval - in addition to any approvals needed under State law (see Division of Powers).

By far the most important federal law is the *Environment Protection and Biodiversity Conservation Act 1999* – commonly referred to as the *'EPBC Act'*

This Chapter provides a brief summary of the *EPBC Act* to assist you if you are dealing with an issue of national environmental significance.

15.1 About the EPBC Act

What does the EPBC Act do?

Most significantly, the EPBC Act identifies a number of *'matters of national environmental significance'* (***MNES***) and requires approval from the Federal Environment Minister for 'controlled actions' which may have a significant impact on these matters.

In addition to the assessment and approval of actions affecting MNES, the EPBC Act:

- Establishes a permit system for taking, trading, importing and exporting threatened species
- Prohibits killing and injuring cetaceans (such as whales and dolphins) in Australian waters
- Establishes a list of National heritage places and Commonwealth heritage places
- Deals with the management of World Heritage properties and heritage places
- Provides for banning of "declared commercial fishing activities"

How are actions assessed under the EPBC Act?

Unless they have been exempted (see below), any actions that are likely to have a significant impact on matters of national environmental significance must be assessed and approved by the *Commonwealth Environment Minister*.

If the *EPBC Act* applies to a particular *action*, and it is carried out without an approval from the Minister, the *action* will be unlawful and the person or organisation carrying out the *action* may be prosecuted or have an injunction issued against them.

15.2 EPBC Definitions

It is important to understand a few key concepts under this Act:

What is a 'controlled action'?

'Actions' are defined to include such things as a project, a development, an undertaking, an activity, or an alteration to one of these things.

A decision by government to grant approval for an action, or to grant funding for an action is not an *action* in itself.

'Controlled actions' include:

- actions likely to have a significant impact on a 'matter of national environmental significance';
- actions likely to have a significant impact on the environment of Commonwealth land; and
- actions by the Commonwealth Government or a Commonwealth agency likely to have a significant impact on the environment (this could include actions taken by the Commonwealth Government outside of Australia).

What is a 'matter of national environmental significance'?

There are currently eight *'matters of national environmental significance'* listed under the EPBC Act:

- World Heritage values of World Heritage properties;
- Wetlands of international importance (Ramsar wetlands);
- Listed threatened species and ecological communities;
- Listed migratory species;
- Commonwealth marine areas;
- Nuclear actions (including uranium mines); and
- Listed *National Heritage* and *Commonwealth Heritage* places;
- The Great Barrier Reef Marine Park.

In June 2013, legislation was passed to introduce an additional MNES for coal seam gas and large coal mining development that has, or is likely to have, a significant impact on water resources.

Lists of Ramsar wetlands, threatened species and ecological communities, migratory species and heritage places can be found on the Department of Environment website.

What are 'triggers'?

Matters of national environmental significance are often referred to as "triggers", as they trigger the application of the EPBC Act.

Over time, numerous additional triggers have been proposed, including projects with significant greenhouse gas emissions and developments in national parks. With the exception of a trigger for the impact of coal seam gas extraction and coal mining on water resources, such proposals have not been adopted.

What is a 'significant impact'?

"Significant" is not defined in the EPBC Act. However, based on a range of court decisions, the general test for whether an impact is significant is whether the impact is *"important, notable, or of consequence, having regard to its context or intensity"*.

The Commonwealth has published Significant Impact Guidelines to assist you to determine whether a proposed action is likely to have a *significant impact*.

In considering the significance of the potential impacts of an action, the Minister must consider all direct impacts as well as indirect impacts which are:

- facilitated, to a major extent, by the action; and
- within the contemplation of the person taking the action; and
- reasonably foreseeable

What is the Precautionary Principle?

Section 391 of the Act requires the Minister to take account of the *Precautionary Principle* when making a wide range of decisions.

The Precautionary Principle is explained in the EPBC Act as follows:

> *"Lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage".*

What are 'Bilateral Agreements'?

The EPBC Act also allows the Commonwealth to enter into agreement with the States and Territories. There are two types of bilateral agreements:

- **"Approval Bilateral Agreements"** - these agreements allow a State or Territory approval process to be recognised for the purposes of the EPBC Act. That is, the State approval process simply replaces the Commonwealth process and becomes a decision under the EPBC Act.
- **"Assessment Bilateral Agreements"** - these agreements allow certain environmental impact assessment processes undertaken by the State to be accredited and used by the Federal Minister when s/he makes a determination under the EPBC Act. The final decision rests with the Federal Minister, however no further assessment is required.

Approval bilaterals

To date, bilateral agreements have been made in Queensland and NSW enabling project approval via State processes. All State governments agreed at Council of Australian Governments (**COAG**) meetings in 2013 to work towards implementing approval bilaterals to "reduce duplication" and speed up the approval process for developers. Standards were recently released outlining the standards that States would be required to meet as part of this 'one-stop-shop' approach.

Many groups have opposed the proposed changes (for example, see the Places You Love campaign), arguing that delegating approval powers to the States would compromise the protection of matters of national environmental significance. The main concerns raised by opponents are that:

- State legislation does not provide sufficient safeguards; and
- State governments may not be far enough removed from the 'action' to recognise possible national consequences. The COAG proposal has the potential to distort the approval process, so that matters of national environmental significance take a back seat to State economic interests.

  - In March 2013, the Senate Standing Committee on Environment and Communications released its report into proposed legislation to remove the power to enter into Approval Bilaterals. The Committee noted concerns regarding the need for rigorous accreditation criteria, but did not support completely removing the power to enter Approval Bilaterals.
  - The Tasmanian government has signed a Memorandum of Understanding with the Federal government committing to working on an approval bilateral. To date, no draft has been released.

Assessment Bilaterals

There are a number of 'Assessment Bilateral Agreements' in force throughout Australia.

The Commonwealth and Tasmanian governments re-signed an assessment bilateral agreement in 2011. Under the agreement, the following impact assessment procedures under Tasmanian laws are accredited for the purposes of the EPBC Act:

- Projects of State Significance under the State Policies and Projects Act 1993
- Impact assessment under the Environmental Management and Pollution Control Act 1994
- Projects of regional significance under the Land Use Planning and Approvals Act 1993

☛ See Chapter 5 for more details about these assessment processes.

If the Federal Minister decides that a controlled action will be assessed by the "accredited process", assessment reports prepared under the Tasmanian laws will be submitted to the Federal Minister for consideration before she or he makes a decision. No further impact assessment is required.

What are Ministerial Declarations?

The Minister can also make declarations under the EPBC Act that certain actions do not need approval under the Act. A declaration can exclude specific classes of action (for example, mineral extraction below a certain volume), or can provide that actions are exempt if they are carried out in accordance with an accredited management plan.

15.3 Who administers and enforces the EPBC Act?

The Federal Environment minister is pivotal in the Act and has the following roles:

- Administering the EPBC Act through the Department of Environment.
- Responsibility for assessing and approving controlled actions, making decisions about civil enforcement of the EPBC Act, such as obtaining injunctions or revoking permits.
- If a developer has breached the conditions of an approval, the Minister has broad powers to immediately suspend, revoke, vary or amend the approval or its conditions.
- Recommending to the Director of Public Prosecutions that criminal prosecution be commenced for offences under the Act (such as carrying out development without an approval or providing misleading information).

1. The Referral Process

Proposed activities or developments can be referred to the Minister in four ways:

1. The person or organisation proposing to take the *action* (the 'proponent') has a duty to refer it to the Minister for a decision as to whether the proposed *action* is a *'controlled action'*.
2. A State or Territory government or agency (such as DPIPWE) can refer the proposal to the Minister. There is some dispute as to whether local councils can make referrals, but local councils can certainly lobby the State or Federal Minister if they believe a project should be referred.
3. The *Federal Environment Minister* may request the proponent to make a *referral*. If no *referral* is made within the set time period, the Minister can deem the *action* to be *referred*.
4. A Commonwealth agency or responsible Minister can refer a proposed *action* to the Minister.

A proponent can include a number of alternatives for an *action* in the *referral* (for example, the proponent may propose two different locations for a factory). The Minister can approve one or more of the options proposed.

Can members of the public refer an 'action' to the Federal Environment Minister?

No, citizens and community groups cannot formally refer actions proposed by other people.

If you want a proposal to be referred to the Minister for a decision (about whether an approval is required), you should write to either the proponent or to relevant government agencies and ask them to refer the proposal to the Minister.

You could also write to the Minister and ask him or her to request that the proponent refer the action. If the action is not referred, you can also report the proposal to the Compliance and Enforcement section of *Department of Environment.*

Who decides whether a proposed activity or development is covered by the EPBC Act?

If a proposal is *referred*, the Federal *Environment Minister* must decide whether a proposed activity is likely to have a significant impact on a matter of national environmental significance or on Commonwealth land.

If the Minister decides that a proposed development or activity is covered by the *EPBC Act*, it will be declared to be a *controlled action* and will need to be assessed and approved by the Minister before it can go ahead.

There are significant penalties for taking a *controlled action* without approval. The maximum penalty for an individual is $660,000 and the maximum penalty for a body corporate is $6.6 million. Some offences are also punishable with up to seven years imprisonment.

How does the Minister decide whether a proposed activity or development is a 'controlled action'?

When a proposal is referred to the Minister, s/he must publish the *Referral* on the Department's website and invite the public to comment on whether the *action* is a *controlled action*. The Minister can request further information about the proposed *action* from the proponent.

If no further information is requested, the Minister must decide whether the proposal is a controlled action within **20 business days** of receiving the *referral*.

When deciding whether a referred proposal is a *controlled action*, the Minister must take into account The Precautionary Principle.

If the proponent acknowledges in the referral document that the proposed activity or development is a *controlled action*, the referral is not released for public comment at this stage.

The Minister can decide that an 'action' is:

- a *Controlled Action*,
- not a *Controlled Action*, or
- not a *Controlled Action*, provided it is carried out in a certain manner.

The Minister must give notice of the decision, which is published on the Department's website. Any *'interested person'* can request reasons for the decision.

How do I comment on 'referral' documents?

There are no formal requirements about how comments are made. However, all submissions should include your name, address and contact details.

Comments in relation to referral decisions must be made within 10 business days of the date of the public notice.

When making your comments you should:

- read the referral documents carefully. Point out any missing or wrong information in your comments, e.g. listed species not mentioned, incorrect hydrological impact information;
- attach any existing evidence or reports which support your comments, e.g. lists of birds spotted in the area;
- make reference to the Significant Impact Guidelines, or any other relevant material, to show significant impact; and
- comment on the assessment approach that should be used (for example, environmental impact statement).

It is important to comment at this stage. If the action is determined not to be a *controlled action*, the Federal Minister does not need to assess the development any further and you will not get another opportunity to comment.

If the Minister decides that the development is not a controlled action, the proponent cannot later be prosecuted under the *EPBC Act* even if it turns out that the proposal does significantly impact on a matter of national environmental significance.

2. The Assessment Process

If the Federal Environment Minister decides that a proposed activity or development is a *controlled action*, the next step is for the Minister to assess the environmental impacts of the proposal.

The EPBC Act provides a range of ways for a *controlled action* to be assessed:

- **Assessment on referral information only** – for actions for which the likely impacts are 'straight forward'
- **Assessment on preliminary documentation** – for actions with few or confined impacts that are reasonably well understood
- **Accredited assessment process** – the Minister can refer to assessment documents prepared under other laws. If a bilateral assessment agreement has been signed, the assessment process accredited in that agreement will be followed. Φ See information above in this Chapter about assessment bilaterals.
- **Public Environment Report** (**PER**) - where a number of issues are raised and further information is required to assess the impacts of the proposed action.
- **Environmental Impact Statement** (**EIS**) - where a large number of issues are raised and further information and analysis is required to assess the impacts of the proposed action.
- **Public inquiry** - for actions where the impacts are expected to be large, wide-ranging and there is a need for extensive public involvement. A public inquiry can be used in conjunction with other assessment approaches such as a PER or EIS.

The Minister must decide on which assessment approach will be used, based on the information provided by the proponent, comments from the public and relevant State government agencies, and factors set out in the EPBC Act.

What is assessed?

The Federal Minister can only assess impacts on matters of national environmental significance, Commonwealth land, or an action taken by the Commonwealth. A proposed action may have environmental impacts going beyond those covered by the EPBC Act, but these do not have to be assessed or considered by the Commonwealth. However, they are likely to be assessed under State or Territory laws

☛ see Chapter 5 for information about the Tasmanian approval process.

What are the opportunities for public participation in the assessment process?

Each of the different types of assessment requires advertising, which provides an opportunity for the public to review all the documents submitted by the proponent and to provide comments about the potential impacts of the proposal. All public comments are provided to the Minister.

If the assessment is carried out by another Commonwealth department or a State or Territory government under an assessment bilateral, there may also be additional opportunities for public comment and access to information about the proposed action.

3. The Approval

How does the Minister decide whether or not to approve the action?

The Minister must decide whether to grant an approval for the action (and, if so, on what conditions) within 20 – 40 days of receiving the environmental assessment documents. The time limit will depend on the type of assessment approach that has been undertaken.

In making the decision, the Minister must take into account:

- the impacts on each relevant matter of national environmental significance, or the Commonwealth environment;
- economic and social matters;
- the principles of ecologically sustainable development;
- the precautionary principle;
- any assessment report, PER or EIS or report of a public inquiry (including a summary of public comments);
- any comments given to the Minister by another Commonwealth Minister; and
- the proponent's history in relation to environmental matters.

If the Minister believes that he or she does not have enough information to make an informed decision, s/he can ask the proponent for extra specified information. The time taken to provide the information is added on to the time limit for making a decision.

In granting an approval or imposing conditions on an approval relating to *World Heritage* sites, *Ramsar* wetlands, threatened species or ecological communities or migratory species, the Minister's decisions **must** be consistent with Australia's obligations under any relevant international conventions.

The Minister must not grant an approval that is inconsistent with a Recovery Plan or a Threat Abatement Plan for a threatened species in place under the EPBC Act.

What kinds of conditions can the Minister impose?

The Minister has a wide discretion to impose conditions on an approval to protect the matter of national environmental significance or Commonwealth environment, or to mitigate or repair any damage that might be caused by the action.

For example, the Minister can impose conditions that require the proponent to:

- provide a bond to cover any mitigation or repair work;
- carry out periodic, independent environmental audits;
- prepare and implement management plans;
- establish a reserve area to offset any habitat loss caused by the *controlled action*.

Can an approval or conditions be varied or revoked?

The Minister may suspend or revoke an approval if the Minister believes that:

- a significant impact on a *matter of national environmental significance* has occurred because of a breach of an approval or a condition; or
- the impacts identified were inaccurate because of negligence or a deliberate attempt to leave out information.

Conditions to approvals can be revoked or varied if:

- any condition of the approval has been breached;
- there has been an impact on a *matter of national environmental significance* that was not identified when originally assessing the *controlled action*; or
- the person taking the *controlled action* agrees to the change.

Biodiversity Offsets

Biodiversity offsets are increasingly considered when assessing developments that involve the conversion or removal of native vegetation. When a proposed development will impact upon natural values, and there are no other alternatives that can be used, biodiversity offsets may be imposed as a mitigation tool. For example, a condition may provide for actions at one site, such as planting trees, to compensate for the loss of trees at another site.

The EPBC Act Environmental Offset Policy, which guides how offset conditions are applied, is available on the Department of Environment website.

4. Appeal rights

Can I appeal against the Minister's decision?

There are no provisions for appeal against the Minister's decision in relation to a controlled action. However, you may be able to pursue an action under the *Administrative Decisions (Judicial Review) Act* if you believe that the Minister did not follow the proper legal process (for example, by failing to take a relevant consideration into account).

Judicial review actions are taken in the Federal Court and can be very complex and expensive. It is strongly advisable to seek legal advice before you decide whether to take such action (☛ Go to Chapter 14 for information).

Are there other options for legal action under the EPBC?

Though appeal rights are limited, the EPBC Act does allow an interested person to apply for an injunction to stop any activity that breaches (or threatens to breach) the Act. For example, an interested person could seek an injunction to stop a development which threatens World Heritage values if the development had not been approved under the Act.

'Interested person' includes:

- an individual citizen or resident who has been involved in a series of activities to protect the environment for the past two years or more; or
- an organisation that has been involved in a series of activities to protect the environment for the past two years or more, **and** has protection or conservation of the environment, or research into the environment, among the objects or purpose of the organisation.

Any application for an injunction needs to take place in the Federal Court and should only be considered after you seek legal advice.

When it first commenced, the *EPBC Act* included a provision protecting interested persons from being required to provide security for costs when seeking an interim injunction. That provision was later removed. The Federal Court still has discretion to waive the requirement to

deposit security for costs, but you should seek advice about the cost risks before commencing any injunction proceedings.

15.4 How effective is the EPBC Act?

Weaknesses of the EPBC Act

Inadequate triggers

The main weakness of the Act is that the list of 'triggers' is limited. For example, the Act does not give the Minister power to regulate developments that would result in significant greenhouse gas emissions or that would use significant volumes of water (surface or ground water).

Exemptions

The EPBC Act specifically exempts actions carried out under Regional Forest Agreements from the assessment and approval provisions of the Act. The Minister can also declare 'exemptions' for some activities that could have a significant environmental impact.

Limited public appeals

As discussed above, there are limited opportunities for the public to seek a merits review of decisions made by the Minister under the EPBC Act. However, the broad standing provisions allowing "interested persons" to apply for an injunction under the Act are commendable.

Hawke Review

In 2008, an independent review of the EPBC Act was undertaken by Dr Allan Hawke. This was done in order to assess the Act's operation and the extent to which the Act was achieving its objectives. This independent review has become known as the Hawke Review.

While the Hawke Review is generally positive about the overall operation of the EPBC Act, it also outlines a number of different areas where there are opportunities for reform, including:

- greater use of strategic assessments (Recommendation 4). Strategic assessments may characterise entire regions as suitable for particular classes of development, rather than assess each development proposal individually.
- a new trigger for 'ecosystems of national significance' (Recommendation 8).
- introduction of an interim greenhouse trigger for developments that will produce over 500,000 tonnes of carbon dioxide equivalent emissions in any 12 month period (Recommendation 10).

Government Response

The government agreed to improve the implementation of strategic assessment options, meaning it is likely that there will be greater reliance on strategic assessments in the future. While this would streamline the assessment and approval process, it would also allow expansive developments to take place without specific scrutiny. It will be important to ensure that strategic assessments are subject to rigorous criteria.

The government agreed to implement the ecosystems of national significance recommendation in part, by introducing a trigger for the ecosystem itself, rather than the character of the ecosystem (which it claimed would be too subjective). To date, no such trigger has been introduced.

The government refused to implement the recommendation in relation to the greenhouse gas emissions trigger, relying instead on its Clean Energy Act to effectively manage high emission activities.

15.5 Other federal laws

Aside from the *EPBC Act* the Commonwealth has a range of legislation and programs dealing directly with specific issues such as:

- genetically engineered crops (☛ see Chapter 10)
- heritage protection (☛ see Chapter 12)
- fisheries and marine protection (☛ see Chapter 9)
- forestry (☛ see Chapter 8)
- agricultural chemicals (☛ See Chapter 10) and
- the Antarctic environment.

To find more about Commonwealth laws, responsibilities and programmes go to the Department of Environment website.

Product Stewardship

The Federal government has recently enacted the *Product Stewardship Act 2011*, which aims to better manage the lifecycle of products, particularly their disposal. The legislation contains voluntary, co-regulatory and mandatory product stewardship.

This legislation has helped to create recycling schemes involving tyres, mercury-containing lamps, as well as televisions and computers.

As part of the National Waste Policy, the Council of Australian Governments (**COAG**) have also endorsed a national Packaging Covenant. The Covenant involves stakeholders at a national, state and local level. The covenant aims to encourage recycling of packaging materials, as well as minimise the impact caused to the environment from the disposal of used packaging.

15.6 When do Commonwealth laws apply?

This can be a confusing area of law and it may be difficult to work out which legislation applies in certain circumstances. The following guidelines may be helpful.

National laws apply in these situations:

- to all Commonwealth agencies and their activities;
- on Commonwealth land or water;
- in areas where the Commonwealth has joint jurisdiction (such as world heritage areas, and marine fisheries);
- where the Commonwealth already has *'reserve powers'*, such as the ability to control export permits;
- where federal legislation gives the commonwealth explicit power to act (eg. matters listed in the *EPBC Act*);
- where the federal government has signed an international agreement obliging it to comply with that agreement (e.g. Antarctica, biodiversity, wetlands, whaling, marine protection, ozone, world heritage, migratory species and greenhouse gas emissions);

Just because the Commonwealth has the power to act does not mean that it automatically will. The public has an important role in pressuring it to do so.

Complying with its own laws

The federal government is required to comply with its own laws. So if the case you are dealing with involves the Commonwealth or one of its agencies, or even federal funding, you may be able to apply national legislation.

Is the federal government bound by state laws?

Sometimes Commonwealth laws and state laws say different things about the same topic. If the laws are inconsistent, then the Commonwealth law overrides the state law to the extent of the inconsistency.

Federal–state cooperation

To avoid dogfights with the states over environmental matters, the federal government has generally adopted a policy of *cooperative federalism* – getting all states and territories to come to agreement on important issues. It does this through meetings of the *Council of Australian Governments* (COAG).

Such national agreements are often of limited use to those who are trying to protect the environment – except where they result in agreed mandates that have been built into law (i.e. given 'statutory force').

Tasmania has signed up to a number of important nationwide agreements which have significant implications for future environmental laws, including:

1. National Environment Protection Measures

In recent years, a number of nationwide 'policies', known as National Environment Protection Measures (**NEPMs**) have been agreed to by all Australian States. These deal with wide-ranging issues including diesel emissions, marine and fresh water quality, noise, site contamination, and hazardous wastes.

Tasmania has effectively incorporated these NEPMS into Tasmanian law by declaring them to be State Polices.

Details regarding each of the NEPMs are available on the Standing Committee on Environment and Water's website.

2. Inter-governmental Agreement on the Environment

The IGAE (signed in 1992) is a broad in-principle agreement about the division of responsibilities between the three levels of government. An important aspect of this agreement is that it includes the importance of The Precautionary Principlebeing implemented in environmental legislation.

A copy of the IGAE appears as a Schedule to several national Acts including the *Environment Protection Council Act 1994*

3. Competition Principles Agreement

This national agreement (signed in 1995) requires each State to review and reform all legislation that is seen to restrict competition. (ie. legislation should not restrict competition unless its benefit to the community as a whole outweighs the costs, or unless the legislation cannot avoid restricting competition.)

To pursue this agenda the Tasmanian *Subordinate Legislation Act 1992* outlines a timetable for staged automatic repeal of certain government regulations and compels State government agencies to review the legislation they administer.

This agreement can have some positive, as well as negative, impacts on the environment.

4. National Water Initiative

The National Water Initiative (signed in 2005) sets out objectives and actions for national water reform issues, such as water trading, best practice pricing and integrated management of water resources. Tasmania's *Water Management Act 1999*was passed (and subsequently amended) to achieve compliance with this national initiative (☛ go to Chapter 10 for more information).

5. Carbon emissions trading

On 1 July 2012, Australia introduced a price on carbon. This initiative aims to make polluters pay for contributing to climate change, in order to encourage businesses to reduce their energy consumption and opt for renewable energy sources.

The Clean Energy Legislation includes the *Clean Energy Act 2011* and the *Clean Energy Regulator Act 2011*. This legislation sets up and regulates the carbon pricing mechanism (**CPM**), with a view to moving to an emissions trading scheme by 2015.

The *Climate Change Authority Act 2011* provides for a periodic review of the CPM, and sets out the implementation of carbon pollution caps.

The current Federal government has committed to dismantling the carbon tax and clean energy legislation. To date, this has not occurred, but is likely to be put to the Senate in the second half of 2014.

6. Caring for Our Country program

The Federal Government has committed $2 billion from 2013-2017 to implement natural resource management plans and foster biodiversity conservation in Australia.

The Caring for Our Country program, administered by the National NRM body, provides funding for a range of nationwide environmental initiatives such as:

- Landcare program
- National Reserve System Program
- Reef Rescue Marine Monitoring Program
- Working on Country Program

Caring for Our Country projects also provide support to Indigenous landowners to manage their lands for the protection of natural and cultural features in accordance with internationally recognised standards and guidelines.

Closer to home, the program provides funding for research into Tasmanian devil facial tumour disease and helps landowners sustainably manage internationally recognised wetlands such as Little Waterhouse Lake and Lower Ringarooma River.

16. Climate Laws

There is a wealth of information available about changes to our climate, the impacts of climate change on biodiversity, landscapes, business and communities, and actions that can be taken to try to reduce and adapt to these impacts.

This chapter does not try to replicate all that information – it aims to give a general overview of some of the laws dealing with aspects of climate change, and provide links to relevant websites where you can obtain more detailed information.

16.1 What is climate change?

Information about climate change is often full of jargon and complex terms. The following sites provide a comprehensive glossary of some of the most common terms:

- Land Learn
- PWC - Climate Change facts
- Emission Statement - Glossary of Terms

"Climate change" refers to changes in long term weather patterns observed over many decades. On average, global temperatures have been increasing (a phenomenon known as "global warming"), however some places have also experienced reduced temperatures or more extreme highs and lows in temperatures and changing rainfall patterns.

The international convention, the *United Nations Framework Convention on Climate Change*, defines "climate change" more specifically as changes that are directly or indirectly attributable to human activity, additional to natural climate variability. The vast majority of scientific evidence supports the conclusion that the rate of climate change is being exacerbated by human activities, particularly the ongoing release of greenhouse gases.

Some of the challenges presented by a changing climate include:

- Drought periods and water shortages, leading to food security issues;
- More frequent, and more intense, storms and bushfires;
- Changing fish populations and habitats, necessitating changes in fisheries planning;
- Rising sea levels and storm surges, increasing erosion in coastal communities;
- Extinction of some plant and animal species;
- Bleaching of coral and related impacts on reef systems.

Excellent resources in relation to the science of climate change are available from:

- The Climate Commission
  Please note, the Climate Commission ceased operation in September 2013. The website is no longer updated, however a range of resources remain available on the site.
- The Climate Council
  Following the demise of the Climate Commission, the Climate Council was established to continue to provide climate change information to the public.
- Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education
- Australian Academy of Science

- CSIRO. In particular, a recent publication, Climate Change: Science and Solutions for Australia provides a wide range of data designed to underpin decisions made in business and in government.
- Intergovernmental Panel on Climate Change (IPCC)
- Tasmanian Climate Change Office

16.2 What is the government doing?

The government can play a significant role in assisting the community to address issues relating to climate change. For example, government laws and policies can:

- Facilitate improvements in energy efficiency, including adopting minimum efficiency standards for appliances and ensuring government offices are housed in high-efficiency buildings;
- Put a "price" on carbon dioxide emissions, to more accurately account for impacts resulting from such emissions;
- Promote the use and development of renewable energy options;
- Restrict vegetation clearance to secure "carbon sinks";
- Prevent development in areas at risk from sea level rise;
- Assist vulnerable communities, including in the Pacific, to adapt to unavoidable impacts of climate change;
- Facilitate research into adaptation options in relation to food and water security, improving resilience of biodiversity and fisheries planning.

Mitigation vs adaptation

Actions to address climate change generally fall into two categories: mitigation and adaptation.

Mitigation refers to actions designed to reduce the concentration of greenhouses gases in the atmosphere, including reducing emissions and increasing vegetation plantings to absorb carbon dioxide. The aim of mitigation is to reverse the upwards emissions trend and restrict increases in global emissions to 2 degrees above pre-industrial levels (this was the goal agreed to at the international meeting in Copenhagen in 2009).

Adaptation refers to actions taken to manage the local, regional and national consequences of climate change which are no longer able to be avoided. Adaptation actions include more stringent planning in coastal areas to avoid development in high risk areas and efforts to relocate habitat likely to be inundated by rising sea levels.

In order to make appropriate progress towards securing safer climate outcomes, it is essential that government actions focus on both mitigation and adaptation.

16.3 Action by the Commonwealth Government

International agreement

The United Nations Framework Convention on Climate Change (**UNFCC**) created a framework for reaching agreement on international climate change co-operation. The most significant agreement under the UNFCC was the Kyoto Protocol, which sets out binding targets for reducing emissions and the rules for how emissions are reported.

Australia was part of the initial negotiations for the Kyoto Protocol in 1997, but did not ratify (that is, agree to implement) the Protocol until 2007. Along with approximately 90 other countries, Australia has agreed to join the second commitment period (2013 – 2020) and continues to be involved in negotiations to set targets and other commitments.

Australia is also a signatory to the United Nations Convention on Biological Diversity. The principal mechanism for implementing Australia's obligations under the Convention is through the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**– see Chapter 15). As the impacts of climate change on biodiversity are better understood, further action may be taken under the EPBC Act to address (and avoid) those impacts.

National action

In March 2013, the federal Department of Climate Change and Energy Efficiency (**DCCEE**) was disbanded, and its functions transferred to the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education. The DCCEE had been integral to the development and implementation of Australia's carbon price.

> ***More content will be added to this section once the Federal government's policy position is made clear.***

16.4 Action by the Tasmanian Government

Statutory requirements

Parched Tasmanian midlands, south of Kempton

Under the *Climate Change (State Action) Act 2008*, the Tasmanian government committed to a target of reducing greenhouse gas emissions to at least 60% below 1990 levels by the end of 2050.

The Act also allows for regulations to be made about a range of matters, including:

- Methods for measuring greenhouse gas emissions (for the purpose of establishing the baseline and measuring reductions);
- Setting interim emission reduction targets;
- Prescribing sector specific reduction targets; and
- Establishing and promoting emissions offset programmes

There have been recommendations that interim targets be adopted, though not necessarily by way of legislation. Though the current Minister for Climate Change supports legislated interim targets, the government has indicated that it is not in favour of setting such targets at this stage but will review its position through the development of the *2020 Climate Change Strategy*.

A recent review of the Act by Sinclair Knight Merz made the following recommendations:

- The 2050 target should be retained
- The Act could be amended to strengthen the objectives, clarify roles and responsibilities and include the 2050 emission reduction target baseline measurement
- No regulations need to be introduced at this time
- Consideration be given to setting interim policy targets to assist in understanding how Tasmania is tracking in terms of meeting the 2050 legislated target
- The State government has a facilitation role and should monitor and be ready to act if market failures are identified or changes occur at the national level that will affect emission reduction policies.

This report, and the Government's response to it, is available on the Climate Change Office website.

Climate Change Office

The Tasmanian Climate Change Office (**TCCO**), situated within the Department of Premier and Cabinet, was established to provide support to the government in achieving the statutory reduction target. The TCCO has primary responsibility for coordinating government action on climate change, developing policies and providing information to the Tasmanian community.

The TCCO manages the following community grant programmes:

- Earn Your Stars grants - projects designed to help communities reduce their carbon footprint
- ClimateConnect grants - projects designed to help communities adapt to climate change

Climate Action Council

The Tasmanian Climate Action Council was established to provide advice to the Climate Change Minister about how the government is tracking towards its targets, the effectiveness of government initiatives and policies, and suggest alternative mechanisms to achieve the target. The Council is comprised of community representatives with expertise in science, policy, economics, law, planning, health and education.

The inaugural Council released a number of reports and advice to government, including recommended responses to the Tasmanian Wedges Report (see below) and adoption of interim targets.

Building on this work, the second Climate Action Council released a Blueprint for Action in May 2013. The Blueprint sets out key priority actions designed to minimise emissions while maximising the economic benefits to the Tasmanian community, focussing on:

- Renewable Energy
- Energy Savings for Economic Benefit
- Climate Ready Agriculture

The Blueprint and other Council reports are available on the TCCO website.

Establishing the information base

The Tasmanian government has undertaken a number a projects designed to inform its decision making in relation to climate change action.

The Tasmanian Wedges Project modelled Tasmania's greenhouse gas emissions under a business-as-usual scenario to 2050, identified potential emission reduction options for each sector of the economy and discussed opportunities to take advantage of Tasmania's natural advantages in terms of renewable energy.

The Climate Futures for Tasmania project has provided a large amount of data about how climate change is likely to affect Tasmanian communities. The project has released technical papers on the following issues:

- General Climate Impacts
- Climate Modelling
- Impacts on Agriculture
- Water and Catchments
- Extreme Events
- Extreme Tide and Sea Level Events
- Severe Wind Hazard and Risk

The reports are available to download on the TCCO website. A recent Climate Commission report also discusses the climate change impacts and opportunities for Tasmania.

In September 2012, the government released a Forest Carbon Study, calculating the carbon stocks in Tasmania's forests and identifying potential economic values in forest retention.

17. Further information & useful contacts

Federal Government

- **Department of Environment:**
  GPO Box 787
  Parkes ACT 2600
  Ph: 02 6274 1111

State Government

- **Aboriginal Heritage Tasmania**
  Department of Primary Industries, Parks, Water and Environment
  G.P.O Box 771, Hobart Tas 7001
  ANZ Centre, 22 Elizabeth Street
  Ph 6216 4471 or 1300 135 513 Fax: (03) 6233 5555
- **Chemical Management Branch** (DPIPWE)
  Stuart Bowman: Registrar of Chemical Products and Chemicals Coordinator
  165 Westbury Road, Prospect 7250
  Ph: 03 6336 5462 Fax: 03 6336 5374
  Email: Stuart.Bowman@dpipwe.tas.gov.au
- **Director of Public Health**
  GPO Box 125, Hobart 7001
  Ph: 03 6233 3762 Freecall: 1300 135 513
- **EPA Division**, DPIPWE:
  134 Macquarie Street, Hobart GPO Box 44A Hobart 7001 Ph: 6233 6518
  1 Civic Square Launceston 7250 Ph: 6336 2236
  Ph: 1300 135 513 (statewide) Fax: 03 6233 3800
- **Forest Practices Authority**:
  30 Patrick Street, Hobart 7000
  Ph: 03 6233 7966 Fax: 03 6233 7954
  Email: info@fpa.tas.gov.au
- **Forestry Tasmania:**
  79 Melville Street, Hobart 7000
  Ph: 03 6233 8203 Fax: 03 6233 8156
  Email: Forestry.Tasmania@forestrytas.com.au
- **Heritage Tasmania**:
  103 Macquarie Street, Hobart TAS 7000
  GPO Box 618, Hobart TAS 7001
  Ph: 1300 850 332 or 03 6233 2037
  Email: enquiries@heritage.tas.gov.au
- **The Integrity Commission**
  Surrey House, Level 2, 199 Macquarie Street, Hobart TAS 7000
  GPO Box 822, Hobart TAS 7001
  Ph: 1300 720 289 Fax: (03) 6233 7215
  Email: integritycommission@integrity.tas.gov.au
- **Justice Department**
  110 Collins Street, Hobart
  Ph: 1300 135 513 (statewide) Fax : 6233 2332
  Email: records@justice.tas.gov.au

- **Land Titles Office**
  134 Macquarie Street, Hobart 7000
  Ph: 03 6233 6467
- **Marine Farming Branch:**
  Water and Marine Resources Division
  PO Box 44, Hobart 7001
  Ph: 03 6233 3370 Fax: 03 6233 3065
  Email: MarineFarming.Enquiries@dpipwe.tas.gov.au
- **Mineral Resources Tasmania:**
  30 Gordons Hill Road, Rosny Park
  PO Box 56, Rosny Park 7018
  Ph: 03 6233 8377 Fax: 03 6233 8338
  Email: info@mrt.tas.gov.au
- **Parks and Wildlife Service:**
  134 Macquarie Street, Hobart 7000
  GPO Box 44A, Hobart 7001
  Hobart Ph: 03 6233 8011 Fax: 6233 3477
  Launceston Ph: 03 6336 5312
  For regional contacts, click HERE
- **Primary Industries & Water Division**
  1 Franklin Wharf, Hobart
  GPO Box 44, Hobart 7001
  Ph: 1300 368 550 (statewide)
- **Private Forests Tasmania:**
  78 Patrick Street, Hobart 7000
  Ph: 03 6233 7445
- **Protected Areas on Private Land Program:**
  Ph: 03 6233 2808 Fax: 03 6223 8603
  Email: PrivateLandConservation.Enquiries@dpipwe.tas.gov.au
- **Regional Water Authorities**
  Ph: 13 69 92
- **Resource Management and Planning Appeal Tribunal**
  144-148 Macquarie Street, Hobart 7000
  Ph: 03 6233 6464
- **Spray Information and Referral Unit**
  Peter Lee-Archer: Coordinator, Spray Information & Referral Unit
  165 Westbury Road, Prospect 7250
  Ph: 1800 005 244 or 03 6336 5252
  Email: Peter.Lee-Archer@dpipwe.tas.gov.au
- **Tasmanian Climate Change Office**
  Ph: (03) 6232 7173
  Email: climatechange@dpac.tas.gov.au
- **Tasmanian Heritage Council**:
  GPO Box 618, Hobart TAS 7001
  Ph: 03 6233 2037 Fax: 03 6233 3186
- **Tasmanian Ombudsman:**
  99 Bathurst Street, Hobart 7000
  Ph: 6233 9200 Fax: 6233 8966
  Statewide phone 1300 766 725
  Email: ombudsman@ombudsman.tas.gov.au

- **Tasmanian Planning Commission**
  144-148 Macquarie Street, Hobart 7000
  Ph: 03 6233 2795
- **Wild Fisheries Management Branch**
  1 Franklin Wharf, GPO Box 44, Hobart 7001
  Ph: 03 6233 2147 or 1300 368 550
  Email: Fishing.Enquiries@dpipwe.tas.gov.au

Non-Government

Legal services

- **Environmental Defenders Office**
  131 Macquarie Street, Hobart 7000
  Ph: 03 6223 2770 Fax: 03 6223 2074
  Email: edotas@edo.org.au
- **Hobart Community Legal Service**
  166 Macquarie Street, Hobart 7000
  Ph: 03 6223 2500 Fax: 03 6223 2510
- **Launceston Community Legal Centre**
  68 York Street, Launceston 7250
  Ph: 03 6334 1577 Fax: 03 6331 5237
- **North West Community Legal Centre**
  62 Stewart Street, Devonport 7310
  Ph: 03 6424 8720 Fax: 03 6424 4604
- **Law Society of Tasmania**
  28 Murray Street, Hobart 7000
  Ph: 03 6234 4133 or Freecall: 1800 001 180 | Fax: 03 6223 8240
  Email: info@taslawsociety.asn.au
- **Tasmanian Aboriginal Legal Service:**
  198 Elizabeth Street, Hobart 7000 Ph: 6234 0740 Fax: 6234 0799
  182 Charles Street, Launceston Ph 6332 3823
  53 Alexander Street, Burnie 7320 Ph: 6431 3289 Fax: 6431 8363

Environmental organisations

- **Against Animal Cruelty Tasmania**:
  Ph: 0408 970 359
  Email: info@aact.org.au
- **Bio-Dynamics Tasmania**
  PO Box 71, South Hobart 7004
  Email: info@biodynamicstas.com
- **Bonorong Wildlife Sanctuary**:
  593 Briggs Road, Brighton
  Ph: 03 6268 1184 Fax: 03 6268 1811
- **Bushcare**:
  South: 330 Macquarie Street, Hobart 7000
  Ph: 03 6223 6377
  North: PO Box 180, Kings Meadows 7249
  Ph: 03 6336 5419
  North West: PO Box 274, Ulverstone 7315
  Ph: 03 6234 2770

- **Climate Action Hobart**
  Email: climateactionhobart@gmail.com
- **Environment Tasmania**
  PO BOX 1073 Hobart, Tas 7001
  Ph: (03) 6224 6319
  Email: office@et.org.au
- **Greening Australia:**
  Ph: 03 6223 6377
  Email: general@tas.greeningaustralia.org.au
- **Institute of Marine and Antarctic Studies**
- **Landcare Tasmania:**
  South: PO Box 21, South Hobart 7004 Ph: 6234 7117
  North: 30 King Edward St, Penguin 7316 Ph: 0488 404 061
- **National Trust of Tasmania**:
  PO Box 711, Launceston TAS 7250
  Ph: 03 6344 6233
  Email: admin@nationaltrusttas.org.au
- **Native Forest Network:**
  PO Box 301, Deloraine, 7304
  Ph: 03 6439 5102
- **Ocean Planet**
- **Planning Aid Service**
  c/- Hobart Community Legal Service
  166 Macquarie Street, Hobart 7000
  Ph: 03 6223 2500
- **Planning Institute of Australia**
  19A Hunter Street, Hobart
  GPO Box 977, Hobart 7001
  Ph: 03 6231 1842
  Email: tas@planning.org.au
- **RSPCA Inspectorate**: Ph: 1300 139 947
- **Southern Coastcare Association of Tasmania**
- **Southern Wildlife Rescue & Care**:
  Wildlife Hotline: 0439 190 052
- **Sustainable Living Tasmania**
  71 Murray Street, Hobart 7000
  Ph: (03) 6234 5566
- **Tarkine National Coalition:**
  PO Box 218, Burnie 7320
  Ph: 03 6431 2373
- **Tasmanian Aboriginal Centre:**
  198 Elizabeth Street, Hobart 7000
  Ph: 6234 0740 Fax: 6234 0799
  182 Charles Street, Launceston
  Ph 6332 3823
- **Tasmanian Aboriginal Land and Sea Council:**
  GPO Box 1452, Hobart 7001
  Ph: 6231 0288

- **Tasmanian Conservation Trust**:
  2nd Floor, 191-193 Liverpool St, Hobart 7000
  Ph: 03 6234 3552 Fax: 03 6231 2491
  Email: tct6@bigpond.com
- **Tasmanian Farmers and Graziers Association**:
  Cnr Charles & Cimitiere Streets
  PO Box 193, Launceston 7250
  Ph: 1800 154 111 (Freecall) Fax (03) 6331 4344
- **Tasmanian Land Conservancy**:
  PO Box 2112, Lower Sandy Bay 7005
  Ph: 03 6225 1399 Fax 03 6225 1394
  Email: info@tasland.org.au
- **Tasmanian National Parks Association**:
  GPO Box 2188, Hobart 7001
  Ph: 0427 854 684
- **Tasmanian Organic-Dynamic Producers** (TOP)
  PO Box 13 Campbell Town TAS 7210
  Ph: 03 6381 2004 or Fax: 03 6381 2008
- **The Wilderness Society**:
  HOBART: 130 Davey Street, Hobart 7000
  Ph 03 6224 1550 Email: hobart@wilderness.org.au

  LAUNCESTON: 180 Charles Street, Launceston 7250
  Ph: 03 6331 7488 Email: launceston@wilderness.org.au
- **Threatened Plants Tasmania**:
  Email: president@tpt.org.au
- **Timber Communities Australia**:
  PO Box 172, Campania 7026
  Ph: 03 6260 4442
- **Timber Workers for Forests**:
  PO Box 101, Kingston, 7051
  Ph: 03 6394 4395
  Email: info@twff.org.au

Useful Resources

Libraries

- **Parliamentary Library**
  Parliament House
  Hobart TAS 7000
  Ph: 6212 2244
- **University Law Library**
  Cnr Grosvenor Crescent & Alexander St
  Sandy Bay TAS 7005
  Ph: 6220 2063
- **Morris Miller Library**
  University of Tasmania
  Sandy Bay TAS 7005
  Ph: 6220 2101
- **DPIPWE Library**
  13 St. Johns Avenue
  New Town TAS 7008.
  Ph: 03 6233 6854.

There are also smaller branches in Hobart (03 6233 6418) and Prospect (03 6336 5241).

Publications

- Tasmanian Law Handbook
- *Going It Alone: A Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal* (2nd edition). 2007. EDO Tasmania.
- *Environmental Law in Australia*: Bates, G, 7th Ed, 2010, Butterworths, Sydney.
- *Australian Environmental Law: Norms, Principles and Rules*: Fisher, D, 2nd Ed, 2010, Lawbook Co, Sydney.
- *Global Spin* by Sharon Beder
- *Secrets and Lies: The Anatomy of an Anti-Environmental PR Campaign* by Nicky Hager and Bob Burton
- *Defamation Law and Free Speech* by the Whistleblower Network
- *Strip the Experts* by Brian Martin
- *Gagged: The Gunns 20 and other Lawsuits* by Greg Ogle

Legislation

- Aboriginal and Torres Strait Islander Heritage Protection Act 1984
- Aboriginal Lands Act 1995
- Aboriginal Relics Act 1975
- Agricultural and Veterinary Chemicals (Control of Use) Act 1995
- Agricultural and Veterinary Chemicals (Tasmania) Act 1994
- Antarctic Marine Living Resources Conservation Act 1981
- Antarctic Treaty (Environment Protection) Act 1980
- Australian Heritage Council Act 2003
- Civil Liability Act 2002
- Crown Lands Act 1976
- Drinking Water Quality Guidelines
- Environment Protection (Sea Dumping) Act 1981
- Environment Protection and Biodiversity Conservation Act 1999
- Environment Protection and Biodiversity Conservation Regulations 2000
- Environmental Management and Pollution Control Act 1994
- Fisheries Management Act 1991
- Food Act 2003
- Forest Practices Act 1985
- Forest Practices Regulations 2007
- Forestry Act 1920
- Forestry Regulations 1999
- Forestry Rights Registration Act 1990
- Gene Technology Act 2000
- Historic Cultural Heritage Act 1995
- Historic Shipwrecks Act 1976
- Inland Fisheries Act 1995
- Land Acquisition Act 1993
- Land Use Planning and Approvals Act 1993

- Living Marine Resources Management Act 1995
- Local Government Act 1993
- Major Infrastructure Development Approvals Act 1999
- Marine Farming Planning Act 1995
- Mineral Resources Development Act 1995
- Mineral Resources Regulations 1996
- National Parks and Reserves Management Act 2002
- National Parks and Reserved Land Regulations 2009
- Nature Conservation Act 2002
- Petroleum (Submerged Lands) (Management of Environment) Regulations 2002
- Petroleum (Submerged Lands) (Pipelines) Regulations 2002
- Petroleum (Submerged Lands) Act 1992
- Poisons Act 1971
- Police Offences Act 1935
- Pollution of Waters by Oil and Noxious Substance 1987
- Protection of Movable Cultural Heritage Act 1986
- Public Land (Administration and Forest) Act 1991
- Regional Forest Agreement (Land Classification) Act 1998
- Regional Forest Agreement Act 2002 (C'wealth)
- Resource Management and Planning Appeal Tribunal Act 1993
- State Coastal Policy 1996
- State Policy for the Protection of Agricultural Land
- State Policy on Water Quality Management 1997
- Tasmanian Planning Commission Act 1997
- Threatened Species Protection Act 1995
- Whales Protection Act 1988
- Wildlife (General) Regulations 2010
- Wildlife Regulations 1999

You can download all Tasmanian Acts of Parliament at www.thelaw.tas.gov.au

Purchasing hard copies of legislation

You can buy State and Federal Acts, Regulations or local government by-laws from the government printer:

Mercury Walch
5-7 Bowen Road, Moonah 7010
Ph: 6232 2100
Email: info@mercurywalch.com.au

Or you can order them at:

State Government Offices:

1 Civic Square Launceston
Ph: 03 6336 2101

68 Rooke Street, Devonport
Ph: 03 6421 7890

Parliamentary Offices:
80B Wilson St Burnie
Ph: 03 6434 6252

For other locations, try Service Tasmania Centres
Ph: 1300 13 55 13