

The Environment Protection Act

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INTRODUCTION

The *Environment Protection Act 1973* is one small part of the mosaic of regulatory controls affecting mineral exploration and the mining industry in Tasmania. Perhaps the most important thing about the Act is the way in which it relates to all the other pieces of the mosaic, and consequently this paper will range a little further than the limited title may suggest.

Nonetheless, I propose to start with the *Environment Protection Act 1973*, and to consider in particular the way in which it operates at present, and its relationship with both existing and proposed mining legislation. I will also outline some of the major deficiencies and benefits of the existing legislative scheme.

The Tasmanian Government is presently undertaking a review of all its environment and planning legislation, and in the second part of this paper I will focus on what might be, rather than what is. Central to this discussion is the role of environment protection legislation in the greater scheme of things, and the extent to which good environmental outcomes can be achieved by means other than "command and control".

CURRENT LEGISLATION

THE ENVIRONMENT PROTECTION ACT 1973

Tasmania's current environment protection legislation dates from the early 1970s, and it bears the hallmarks of the approach to environmental protection issues at that time. It needs to be said first off that Tasmania achieved in 1973 a consolidated and integrated piece of environment protection legislation. A number of other Australian States have only recently achieved, or are still intending to achieve, the same degree of consolidation. The Tasmanian legislation, and the administrative structures which it establishes, amount to a consolidated environmental protection authority, with extensive licensing and regulatory powers.

The Act spans air, water and noise pollution, and waste management, and establishes two principal methods of regulatory control. These are features that are well suited, from a pollution control perspective, to managing existing operations¹. The first control system is a series of offences, supported by a regime of penalties. The Act makes it an offence to cause or permit the emission of a pollutant from fixed or moving sources, unless it complies with standards prescribed for these purposes. The regulations then provide permissible levels of point source standards for various pollutants being emitted to air, water and noise.

The Act also provides a system of Ministerial exemptions for operations which do not meet the prescribed standards. These

are coupled with a fee system — introduced in the 1990/91 Budget — which is designed to encourage the preparation of performance improvement plans².

The second method of control is a system of licensing particular types of operations, known as scheduled premises. The Act contains a prohibition on operating unlicensed scheduled premises, and defines those premises by reference to a listing of activities set out in a schedule to the Act. Again, there is a system of licence fees, and a means of appeal in relation to the imposition of licence conditions, exercisable both by an applicant, and by a limited range of third party objectors.

From a mining and mineral exploration perspective, the list of scheduled premises includes:

- primary metallurgical works;
- ferrous and nonferrous metal works;
- electroplating works;
- crushing and grinding works;
- premix bitumen plants;
- mines producing or processing more than 100 t of raw material per year;
- quarries used for the extraction of more than 100 t of raw material per year;
- lime, gravel, sand, loam, soil or clay pits producing or processing more than 100 tonnes of raw material per year;
- oil refineries³.

The Act is essentially a pollution control Act which deals with point source emission standards, and which is silent about objectives such as the minimisation of waste. Also, it is silent about diffuse sources of pollution, and there is little consideration of the assimilative capacity of the environment under the required standards. When coupled with a lack of baseline data against which improvements or decreases in ambient environmental quality can be measured, these features demonstrate the major deficiency of the legislation. Other weaknesses include a lack of any statutory basis for environmental impact assessment, a reliance upon criminal sanctions for enforcement, and the lack of a mechanism to develop and implement statements of environmental policy which can respond to new or emerging environmental issues⁴.

OTHER LEGISLATION

As noted above, no single Tasmanian Act provides comprehensive and coherent planning and environmental protection requirements for exploration and development of mineral resources. The *Environment Protection Act 1973* is

BINGHAM, R. 1992. The Environment Protection Act. *Bull. geol. Surv. Tasm.* 70:20-23.

* Views expressed in this paper are personal ones.

supported by planning controls under the *Local Government Act 1962*, and by the *Mining Act 1929*. Other land management legislation (such as the *Forestry Act 1922*, the *Crown Lands Act 1976* and the *National Parks and Wildlife Act 1970*) also deal with the protection of the environment. In some cases these can restrict or exclude exploration or mining in reserved or other areas.

THE CONTEXT OF ENVIRONMENT PROTECTION LEGISLATION

The world has changed significantly since 1973, and attitudes to environment protection have changed accordingly. Most significantly, there is now a genuine awareness within industry that it has a major environmental responsibility, and it is thinking constructively about its role in this respect. Similarly, Governments have realised that there is more to life than regulation, and environmental outcomes can be achieved more effectively in ways other than legislatively requiring them.

INDUSTRY ENVIRONMENTAL RESPONSIBILITY

In my view, there are three significant factors at work. Firstly, a new environment protection regime in Tasmania must recognise the level of industry awareness of environmental issues. Two recent examples demonstrate the extent to which the game has changed.

In supporting the approach of "best-practice environmental management", the Australian Manufacturing Council has proposed a new paradigm to achieve environmental results. This focuses on sensitive environmental regulation which encourages resource efficiency, and optimisation of pollution management. In turn this requires the application of environmental technologies, and the use of market demands for environmental products as a force for change. These new directions are coupled with openness and co-operation from regulators, unions and the community.

In the words of the Council:

"The growing complexity of the regulations required, the high costs of enforcement for Government with constrained budgets, and the increasing competitive pressures on firms forced both Governments and firms to search for new ways to resolve these competing pressures"⁵.

Similarly, the Business Council of Australia has recently flagged a similar approach⁶. The Council seeks to incorporate the goal of sustainable development within all industry operations, and nominates a number of principles whereby this might be achieved. These include:

- recognising environmental management as among the highest corporate priorities;
- assessing environmental performance against appropriate standards and seeking continuous performance improvement;
- communicating with Government, employees, shareholders, the general public, local communities, the media and environmental groups in regard to environmental policies, programs, practices and performance;

- developing employee commitment to the protection of the environment;
- integrating environmental impact considerations into all aspects of products and processes;
- developing, reviewing and practising appropriate emergency contingency plans;
- encouraging sound environmental management by contractors and suppliers;
- enhancing technology and skills co-operation with contractors and suppliers;
- the assessment and management of environmental risk.

Again, similar perspectives of sensitive regulation, openness and public accountability are inherent in this approach.

I believe it is significant that two peak industry bodies have recently published documents along these lines. They are by no means alone, and recent documents provided by the Australia Mining Industry Council have reflected a similar concern to improve environmental performance. Plainly, new environmental regulation must recognise this shift.

A further relevant factor is the recognition by Government, industry and the community generally of the need for consistency of objectives. There is also increasing agreement about what those objectives should entail. Foremost amongst these is sustainable development.

The World Commission on Environment and Development (the Brundtland Commission) in 1987 defined a concept of sustainable development as "development which meets the needs of the present without comprising the ability of future generations to meet their own needs".

The Business Council of Australia interprets sustainable development as providing a means of integrating environmental and economic goals to produce outcomes that are both environmentally acceptable and cost effective in an economic sense. Business and industry, being the chief sources of wealth creation in the community, have a major role to play in achieving these integrated goals.

SMALLER GOVERNMENT

Coupled with increased industry awareness has been a realisation by Government that regulation is a small part of the picture. In many ways market-based measures can more effectively and cheaply achieve environmental outcomes. In today's climate of declining public sector resources, cheaper and better ways of achieving improved environmental performance are being demanded. There is a need to recognise that regulatory "command and control" models are but one means by which environmental results can be achieved.

The 1992/93 Federal Budget, for example, included new taxation incentives for spending on the environment. New rebates have been provided for the costs of preventing, combating or rectifying pollution of the environment, and for the costs of treating, cleaning up, removing or storing waste. These supplement existing Commonwealth tax deductions for expenditure on environmental impact studies, environmental audits, environmental management plans, and costs associated with environmental monitoring. Whilst the opportunities at a State level are more limited because of

the more limited revenue base, and the nature of State revenue sources, they nonetheless need to be fully explored.

INTER-GOVERNMENT RELATIONS

The third factor which has led to a change in the context of environmental regulation is changes in inter-Government relations. Two developments in particular are significant. The first is the establishment by the Commonwealth Government of a Commonwealth Environment Protection Agency, to operate within the sphere of Commonwealth jurisdiction. The second is the signing by Commonwealth, State and Territory Governments, with the endorsement of Local Government, of the Inter-Government Agreement on the Environment⁷, and the commitment to the establishment of a National Environment Protection Authority.

Under the terms of the Agreement, Governments have agreed to establish a new Ministerial Council to be known as the National Environment Protection Authority, with responsibility for the preparation of new national standards in a range of areas. These are:

- ambient air quality;
- ambient marine, estuarine, and freshwater quality;
- noise related to protecting amenity where variations in measures would have an adverse effect on national markets for goods and services;
- general guidelines for the assessment of site contamination;
- the environmental impacts associated with hazardous wastes;
- motor vehicle emissions;
- the reuse and recycling of used materials.

The Agreement includes a recognition by Governments of the need for a national approach in relation to these issues. However, the process of preparing these national standards is an open and public one, and the Authority is required to have regard to regional differences in the preparation of those standards⁸.

The Agreement also deals with a range of environment protection and land use issues impacting on the mining and mineral exploration industry. These include:

- a more streamlined approach to the conduct of environmental impact assessment processes throughout Australia, including joint assessments and the accreditation of each others procedures;
- development of a national approach to the collection and exchange of environmental data;
- agreement by the Commonwealth and States and Territories to rationalise and streamline resource assessment, land-use decisions and approvals processes in order to overcome duplication of processes and ensure that responsibilities of all levels of Government are met through a single "accredited" process;
- co-operative regional assessment of heritage values with the Australian Heritage Commission; and

- co-operative arrangements for the identification and nomination of World Heritage Areas, which should see an end to disputed nominations.

From a State Government perspective, it seems that there are two principal benefits of the Agreement. The first of these is — recognising the almost unlimited extent of Commonwealth constitutional power, and existing and potential Commonwealth legislation in this area — that the Agreement represents a means of preserving State influence in relation to land use and environment issues. By means of the process of "accreditation", the possibility of State information gathering processes being utilised for the purposes of Commonwealth decision making — with consequent benefits of removal of duplication and decision making on comparable information — has been established.

The second benefit of the Agreement, from a State Government perspective, is the opportunity which it provides for rationalisation of approval processes for major projects. A common approach to environmental impact assessment, coupled with the potential for the accreditation of a single Government process, and hence an integrated assessment of project proposals, has benefits for proponents both in terms of consistency in decision making, and for Governments in terms of effective utilisation of resources.

PROPOSALS FOR REFORM

As noted at the beginning of this paper, the Tasmanian Government is committed to reviewing environment and planning legislation. The Government has signalled an intention to adopt the objective of sustainable development and economic growth⁹. It has also recognised the benefits of an integrated approach to resource management, both in terms of achieving environmental outcomes and in terms of efficiency of Government processes. In its application to the development approval process, this integration potentially delivers significant benefits.

The Government has indicated an intention to release, at the end of September 1992, detailed proposals for land-use planning and approvals reforms. The package of Bills will be the subject of public comment, prior to introduction to Parliament later this year.

Those Bills will be supported by new environment protection legislation, intended for public release early in 1993. The major thrust of that legislation will entail:

- an emphasis on clean production technology and ambient standards, in support of point source pollution control;
- a recognition of the need to be consistent with national approaches, but in a way which recognises the particular concerns of the Tasmanian community;
- an emphasis on integration of resource management tools, and a minimisation of unnecessary regulation;
- a range of enforcement measures, which do not rely simply on "command and control".

Having flagged the intention to move towards new environment standards, the Government recognises the need for industry to be able to plan for these changes. In a speech to the Parliament during the Address in Reply debate, on 28 April 1992, the Minister for Environment and Planning, the Hon. John Cleary MHA, outlined the Government's approach to this question.

“On the issue of Ministerial exemptions the Government remains committed to the elimination of Ministerial exemptions by 30 June 1994. Only in very exceptional circumstances will any consideration be given to extending the deadline for particular cases. Even then such extensions would be very limited and would apply only if it can be unequivocally shown that they would result in a more appropriate environmental outcome taking into account the requirements of the law and community expectations. It is also important to note that legislation setting out the new environmental standards in Tasmania will be introduced before 1994. Industry and Local Government have sought guidance as to the likely standards under this legislation to enable long-term planning to continue. In order to provide certainty on the future direction for regulations and standards to all those likely to be affected, the transitional arrangements contained in a discussion paper issued in December 1991 will apply.

The new objectives will closely reflect the intended thrust of new legislation. It will be based on the principles of clean production, best available technology, and waste minimisation. Measurement of the achievements of the objectives will be by standards which may combine point source and ambient requirements. The arrangements require the Director of Environmental Management to nominate interim environmental quality objectives for each operation if requested by the holder of an exemption. This will enable current exemption holders to plan for the new legislation, and provide the opportunity to focus on environmental outcomes, not only emissions.

High environmental standards have become important to the future of Tasmania, especially in the marketing of tourism and the State's high quality food products. This reputation cannot be jeopardised, and neither I nor this Government will condone lax environmental standards. However, I hope that industry and Local Government will not see strict environmental standards as a burden forced on them but as an opportunity to meet market demands, to generate economic activity, and to create jobs”¹⁰.

CONCLUSIONS

The principal message to emerge is that the times are changing. The Tasmanian Government has recognised the extent of industry commitment to environmental improvement, and will be designing its legislation accordingly. In the current climate, the environment is everyone's responsibility. As that responsibility is recognised, the regulatory strategies which are employed to achieve our goals should be modified.

REFERENCES

1. Department of Environment and Planning, Policy Division, *Review of the Environment Protection Act: Issues for Public Discussion*, June 1991, page 16.
2. *Environment Protection Act 1973*, Part 3, see especially Sections 15, 17 and 22.
3. *Environment Protection Act 1973*, Schedule 1.
4. See Department of Environment and Planning, Policy Division, *ibid* pages 13 to 15.
5. Australian Manufacturing Council, *The Environmental Challenge: Best Practice Environmental Management*, March 1992, Summary Guide.
6. Business Council of Australia, *Principles of Environmental Management*, August 1992.
7. Inter-Government Agreement on the Environment, 1 May 1992, Schedule 4.
8. Inter-Government Agreement on the Environment, Schedule 4: Item 10(iv).
9. Hon. Ray Groom MHA, Premier of Tasmania, “State of the State Address: Tasmania”, April 1992.
10. Hon. John Cleary MHA, “Address in Reply Debate”, *House of Assembly Hansard*, 28 April 1992, page 409.