

## Water Reforms Update

The issue of Water Reform in Western Australia has been on the agenda since 6 April 2006 when the WA Government adopted the Council of Australian Governments (**COAG**) agreed framework for water reform, the National Water Initiative (**NWI**). Progress in the reform process has however been painfully slow and despite the preparation of several bills on the issue (the Water Services Bill and the Water Resources Management Bill), no new legislation has yet been forthcoming.

That position may be subject to change in 2010, in light of COAG's agreement in December 2009 to redouble its efforts to accelerate the pace of reform under the NWI, and the Senate referral of the issue of the ability of the Commonwealth, across state borders, to sustainably manage water resources in the national interest to the Senate Standing Committee on Environment, Communications and the Arts for inquiry and report on 20 August 2009 (reporting due on 6 May 2010).

### Status of water reforms in Western Australia

The Water Services Bill which is intended to consolidate the morass of legislation that currently governs the licensing of water services providers, is expected to be introduced into Parliament in 2010.

In addition, the Department of Water issued a discussion paper in November 2009 regarding water resources management and options, with a view to its conclusions forming the basis of the Water Resources Management Bill (**WRM Bill**). It is not known at this stage when the WRM Bill will be introduced into Parliament (most likely 2011).

### Water Resource Management Bill discussion paper

The management and options discussed in the paper are in essence those contained in the draft *Blueprint for Water Reform in Western Australia* (2006) and are based on the commitments the Western Australian government made when it adopted the NWI in April 2006.

Although the discussion paper does not raise any new concepts, it does indicate that legislative water reform is back on the government's agenda and for that reason it is important to understand the direction in which the reforms are currently heading.

Note in particular the following initiatives:

#### 1. Water Management Plans

The discussion paper reiterates that water management plans (**WMPs**) are the principal instrument to achieve both sustainable management of water resources and improve access entitlements. It is proposed that WMPs would determine the available water, or 'consumptive pool', on a periodic basis of a certain area and that the WMP regime would provide for perpetual water access entitlements (**WAE**) as shares of the consumptive pool and set the rules for the operation of the particular consumptive pool.

WMPs would initially be required for areas where there was high demand or near full allocation. For remaining areas the existing licence regime would continue until the consumptive pool was determined.

The discussion paper indicates that WMPs need to be customised to take into account the conditions of a particular area and that the legislation should include a consultation process to enable the relevant stakeholders to be involved in the preparation of the WMP.

Key benefits of these reforms will include:

- WMPs would set caps on WAE to prevent the attrition of existing water rights and environmental degradation. This existing legislation does not prevent the further allocation of water once an area has been fully allocated;
- WMPs create a perpetual WAE which provides greater certainty and security for title for all water uses, and in turn allows for a WAE trading system;

- the amount of water available in areas which are the subject of a WMP would be continually monitored. Where there are variations to the water availability, the WAE may be periodically adjusted. This flexibility protects the security of the entitlement and ensures the water resource is sustained; and
- the existing legislation does not regulate water intercepting activities, such as plantation forests. Under the new regime, WMPs may require operators of water intercepting activities to obtain a WAE.

## 2. Water trading

The discussion paper proposes a new regime which would create a system of fully tradeable WAE that may be either leased or traded. The discussion paper recommends a largely unregulated system whereby the WAE holder could determine the price and the volume of the entitlement, and proposes that ownership or occupation of land is not required to hold a WAE, meaning that land and water could be traded separately.

### Summary

Legislative water reform has been slow to progress in Western Australia, however recent developments, including the release of the discussion paper in November 2009, puts water resource management squarely back on the government's agenda and we are likely to see some progress being made on NWI commitments during the course of this year.

For further information or advice on water reforms process or the existing licensing requirements under the *Rights in Water and Irrigation Act 1914*, please contact Paul McQueen on (08) 9288 6943 or paul.mcqueen@lavanlegal.com.au or Rebecca Somerford on (08) 9288 6820 or rebecca.somerford@lavanlegal.com.au.

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