



Environmental Defender's Office ACT

Newsletter

Spring 2008

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EDO (ACT)

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The EDO (ACT) newsletter is designed to provide information on what's happening in environmental law in the ACT and throughout Australia.

Contents

ACT News

p.1

Water Use Inquiry Discontinued

New Tax Incentives for Green Cars

ACT State of the Environment Report 2007/08 Released

ACT Passes First Australian SLAPPs Legislation

A Solar Power Plant for Canberra?

Draft Resource Management Plan Released

Molonglo and North Weston Strategic Assessment

Namadgi National Park – Draft Plan of Management

News from around Australia

p.5

Federal Government Extends Gunns Deadline

Priority Assessment Lists

Environment Minister Acts to Protect False Cape and Shoalwater Bay

Treaties Committee Supports the Protection of Endangered Fauna and Flora

Current Inquiries and Opportunities to Comment

p.6

ACT

Commonwealth

Litigation news

p.7

Special Leave Application Lodged in *Walker Case*

Victorian Supreme Court Considers the Precautionary Principle

Community Education and Events

p.8

Public Lecture Series – 'Australia's Renewable Energy Future'

EDO ACT AGM – Invitation to join the EDO Board

Walk Against Warming

Upcoming EDO Environmental Law Workshops

Other News

p.9

Environmental Law Journal – IMPACT!

An Appeal From MOTH (Mindors of Tuggeranong Homestead)

Job Vacancy - Waste Project Officer – Conservation Council ACT Region

Call for ecoACTivists from Conservation Council ACT Region

Google Offers A Glimpse of the Future

Contact us

p.12

ACT News

Water Use Inquiry Discontinued

Prior to the recent ACT election, the then ACT Legislative Assembly Planning and Environment Committee postponed its inquiry into water use and management due to the Committee's workload. The inquiry was to address the best options for maintaining a sustainable water supply in the ACT and the likely impacts of climate change.

For details of the inquiry (including submissions received) see the website:

<http://www.legassembly.act.gov.au/committees/index1.asp?committee=55&inquiry=717>.

New Tax Incentives for Green Cars

The ACT has introduced legislation which means that motorists purchasing a car in the ACT will pay a stamp duty that corresponds to the environmental rating of the car. Those with the highest environmental rating will be exempt from stamp duty all together; whilst cars with higher emission levels will attract a higher tax. Cars will be rated according to the Commonwealth Government's Green Vehicles Guide (available at www.greenvehicleguide.gov.au) and a greenhouse rating (based on a car's carbon dioxide emissions and air pollution rating). The scheme aims to encourage Canberra motorists to buy low-emitting cars and acts as a disincentive against the purchase of cars with poor environmental performance.

The Australian Network of Environmental Defender's Offices (ANEDO) has previously advocated for law reforms to provide such green car incentives. Copies of the ANEDO submissions are available at: <http://www.edo.org.au/edonsw/site/policy.php>

Details of the ACT's Green Vehicles Stamp Duty Scheme is available at:

http://www.tams.act.gov.au/move/green_vehicles_stamp_duty_scheme

A copy of the relevant legislation (ie recent amendments to the *Taxation Administration Act 1999* and the *Taxation Administration (Amounts Payable – Motor Vehicle Duty) Determination 2008 (No.1)* DI2008-219) is available at: <http://www.legislation.act.gov.au/>

ACT State of Environment Report 2007/08 Released

ACT Environment Commissioner Maxine Cooper launched the 2007/08 ACT State of the Environment Report on 7 August. The report provides an update on environmental trends and pressures experienced in the ACT since 2003. Amongst other things, the report found that Canberrans create more waste than anyone else in Australia and the use of most resources has increased. The report makes recommendations to the ACT Government and calls upon individuals to make better choices in their day-to-day lives.

A full copy of the report can be found at: <http://www.envcomm.act.gov.au/soe>.

ACT Passes Australia's First SLAPPs Legislation

The ACT became the first Australian jurisdiction to introduce SLAPPs (strategic litigation against public participation) legislation when the Legislative Assembly passed the *Protection of Public Participation Act 2008*, introduced as a Private Member's bill by recently retired Greens MLA Dr Deb Foskey.

The Act is designed to restrict the use of SLAPPs, a form of vexatious litigation used to silence individuals who speak out on issues of public interest. Under the new legislation, individuals have a right to public participation, and courts may dismiss proceedings which are intended to stifle public debate. Before legal action is commenced against them, individuals may apply to the Magistrates Court for a declaration that their conduct constitutes 'public participation' under the Act. This is intended to discourage potential litigants from commencing proceedings, and could also serve to reassure other members of the public that they are likely to be protected from vexatious lawsuits, should they too speak out.

EDO ACT has in the past supported anti-SLAPP legislation and is pleased with the passage of this law. It is hoped that the legislation will help to protect the public's right to participate freely in matters of public interest. The Act commenced on 12 September, and can be viewed on the ACT online legislation register at:

<http://www.legislation.act.gov.au/a/2008-48/default.asp>

A Solar Power Plant for Canberra?

Canberra may be one step closer to becoming a solar capital. Prior to the recent ACT election the Chief Minister Jon Stanhope promised to push ahead with plans for a large scale solar power plant in the ACT if re-elected. The announcement followed the release of a study in September 2008 commissioned by the Government and ActewAGL which suggested a 22MW solar thermal trough facility could be operational by 2012 and power up to 10,000 homes. Such a facility would require a large parcel of land, and a substantial public investment in the project to make it economically feasible for interested parties in the private sector.

The feasibility study is available at:

http://www.cmd.act.gov.au/_data/assets/pdf_file/0005/2939/Solar_Power_Plant_Pre-feasibility_study.pdf

The EDO ACT and ANEDO have consistently advocated for law reforms and policies aimed at increasing the uptake of renewable energy. Copies of EDO ACT and ANEDO submissions are available at: <http://www.edo.org.au/>

Draft Natural Resource Management Plan released

The ACT Natural Resource Management Council has recently developed and released a draft ACT Natural Resource Management (NRM) plan, entitled *Bush Capital Legacy*. The Plan revises the first NRM plan published in 2004, to take into account changes in values and environmental status since that Plan was published. It is designed to assist in the management of the ACT's natural resources. The Plan proposes targets to improve the sustainability of the ACT's natural resources, and provides strategic direction for government, community and private investment in these natural resources.

The Plan warns that although some indicators of environmental health in the ACT have improved, the continued growth in consumption by the ACT's population is alarming and unsustainable. Canberra's status as the "bush capital", the Plan says, is at risk from the increasing urban footprint of the city, and the deterioration in the health of the bushlands

within and around Canberra.

Copies of the Plan are available from the NRM Council, ACT Libraries, ACT Canberra Connect Shopfronts and online at <http://www.actnrmcouncil.org.au/>.

Molonglo and North Weston Strategic Assessment

The Federal Environment Minister and the ACT Minister for Planning have agreed to undertake a strategic assessment of the proposed Molonglo and North Weston Structure Plan under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Structure Plan sets out the planning and development guidelines and principles for urban development and associated infrastructure at Molonglo and North Weston.

A strategic assessment is being undertaken as preliminary environmental investigations in the Molonglo and North Weston area have identified several matters of national environmental significance. These include the Pink-tailed Worm-lizard, listed under the EPBC Act as vulnerable, and the *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* and the *Natural Temperate Grasslands of the Southern Tablelands of NSW and the ACT* listed as critically endangered.

Draft assessment Terms of Reference have been developed, to guide the preparation of a report identifying the area's environmental values (including matters of national environmental significance), the impacts of development and strategies to reduce impacts on matters of national environmental significance.

The EDO ACT's submission on the draft variation to the Territory Plan relating to Molonglo and North Weston is available at <http://www.edo.org.au/edoact/>

Further information on the strategic assessment can be found at:

<http://www.environment.gov.au/epbc/notices/assessments/molonglo-north-weston.html>

Namadgi National Park - Draft Plan of Management

Following the Government's release of the Namadgi National Park Draft Plan of Management, the then ACT Legislative Assembly's Planning and Environment Committee held an inquiry into the draft Plan. The inquiry was completed in August 2008 and a copy of the report and details of the inquiry are available at:

<http://www.legassembly.act.gov.au/committees/index1.asp?committee=55&inquiry=171>

News From Around Australia

Federal Government Extends Gunns Deadline

The Federal Environment Minister, Peter Garrett, has extended the deadline for timber giant Gunns Ltd. to submit an Environmental Impact Management Plan for its proposed pulp mill in the Tamar Valley of northern Tasmania.

Submission of the Management Plan by October 2008 was one a number of conditions attached to the government's approval of the project in 2007, under the *Environment Protection and Biodiversity Conservation Act 1999*. The extension of the deadline has been harshly criticised by Australian Greens Senator Christine Milne.

Gunns now has until January 5, 2009 to complete the Management Plan.

Priority Assessment Lists

The Commonwealth Department of the Environment, Water, Heritage and the Arts has released the finalised priority assessment list for the threatened species, ecological communities and key threatening processes nominated for inclusion under the *Environment Protection and Biodiversity Conservation Act 1999*, that will be assessed by the Threatened Species Scientific Committee for the assessment period commencing 1 October 2008.

The most recent list includes species such as the Tasmanian Devil and the koala and includes the ecological communities of the Cumberland Plain Woodlands and the Lower Murray River and associated wetlands.

The complete list is available at

<http://www.environment.gov.au/biodiversity/threatened/publications/priority-assessment-list.html>

Environment Minister Acts Under the EPBC Act to Protect False Cape and Shoalwater Bay

Federal Minister for the Environment, Peter Garrett, has suspended approval of the Reef Cove Resort development at False Cape in Queensland. This decision was based on the Minister's concerns regarding the threat of sediment run-off into the Great Barrier Reef World Heritage Area.

The Minister has ordered that no construction take place on the site until an environmental audit has been carried out by the developer and he is satisfied that appropriate remediation work has been completed and construction is able to be completed in full compliance with the approval conditions, without impacting on the marine environment.

The Minister has also announced his decision to preserve the biodiversity values at Shoalwater Bay north of Rockhampton in Queensland, by rejecting a proposal by Waratah

Coal Inc. to establish a rail line and coal port in the Shoalwater Bay Training Area.

Mr Garrett found the proposal would have “clearly unacceptable impacts on the internationally recognised Shoalwater and Corio Bay Ramsar wetlands and the high wilderness value of Shoalwater which is acknowledged in its Commonwealth Heritage listing.”

Treaties Committee Supports the Protection of Endangered Fauna and Flora

The Federal Parliament Treaties Committee has supported amendments to the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora subject to a number of recommendations. The CITES Convention provides for international cooperation to protect and conserve certain species of fauna and flora from over-exploitation due to international trade.

The amendments will alter the level of control imposed upon trade in a number of species that are either endangered or at risk of becoming endangered, including Australia’s sawfish.

The Committee also recommended that Australia take binding treaty action in relation to the 2006 International Tropical Timber Agreement, and that any future agreement on sustainable trade in tropical timber should specifically include consultation with environmental groups.

The Committee’s report (Report 93) is available at www.aph.gov.au/house/committee/jsct/reports.htm or by contacting the Committee Secretariat on (02) 6277 4002.

Current Inquiries and Opportunities for Comment

ACT

Cotter Dam Expansion

ACTEW has prepared a draft environmental impact statement for a project designed to increase the capacity of the Cotter Reservoir from 4 gegalitres (GL) to 78GL, raising the ACT’s overall storage capacity by a third. The proposal involves the construction of a new dam wall and two saddle dams on the adjacent ridge.

Comments have been sought on the draft EIS.

Submissions due - 10 November 2008

This proposal has also been referred under the *Environment Protection and Biodiversity Conservation Act 1999* to the Federal Environment Minister. Details of the referral are available on the Department of the Environment, Water, Heritage and the Arts website at: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl

Commonwealth

Commonwealth *Water Act 2007* – proposed amendments

The Senate is currently inquiring into the Water Amendment Bill 2008. The Bill amends the *Water Act 2007* to make changes to the cooperative water planning, management and regulatory regime in the Murray Darling Basin. In particular, the Bill reflects an agreement by the relevant States and the ACT to refer constitutional powers to the Commonwealth. Further information is found here:

http://www.aph.gov.au/senate/committee/rrat_ctte/water_amendment/info.htm

Submissions due – 7 November 2008

Review of the Commonwealth EPBC Act

The Federal Environment Minister has recently announced an independent inquiry into the *Environment Protection and Biodiversity Conservation Act 1999*. This is separate from the inquiry that the Senate is holding into the operation of the EPBC Act. A copy of the submission that the Australian Network of Environmental Defender's Offices (ANEDO) provided to the Senate Inquiry are available at the Senate website at:

http://www.aph.gov.au/senate/committee/eca_ctte/epbc_act/submissions/sublist.htm

Details on how to provide a submission on the review into the EPBC Act are at:

<http://www.environment.gov.au/epbc/review/index.html>

Submissions due – 19 December 2008

Litigation News

Special Leave Application Lodged in *Walker Case*

The NSW EDO recently filed an application for special leave to appeal to the High Court of Australia in the ongoing matter of *Jill Walker v the Minister for Planning*.

The EDO successfully represented Jill Walker in her challenge to a concept plan approval granted by the Minister for Planning for a development at Sandon Point, north of Wollongong. Justice Biscoe of the Land and Environment Court found that the Minister had failed to consider matters of ecologically sustainable development (ESD) by not taking into account the potential impacts of climate change on the site. Following an appeal by the Minister, the NSW Court of Appeal overturned Biscoe J's decision, finding that whilst the Minister must make decisions in the public interest, not having regard to ESD principles does not necessarily constitute a breach of that obligation.

If special leave is granted, the EDO will again argue that the Minister should be required to

consider ESD as a mandatory relevant consideration under part 3A of the *Environmental Planning and Assessment Act 1979* (NSW).

More information on the case, including a case note of the most recent decision, can be found on the EDO NSW website, at http://www.edo.org.au/edonsw/site/casework_key.php#sandon

Victorian Supreme Court Considers the Precautionary Principle

In *Western Water v Rozen & Ors [2008]* the applicants sought permission to build on 4 separate lots, all of which fronted the Campaspe River. Each house would have a septic system. The river flows into the Campaspe Reservoir which provides drinking water for Woodend. Macedon Shire Council rejected the proposal on a range grounds including water quality. The matter went to VCAT. The State Environment Protection Policy (Waters of Victoria) requires the application of the precautionary principle. Applying the precautionary principle, VCAT found that there was no real risk of irreversible harm to the environment.

This was appealed to the Supreme Court. Justice Osborn found that VCAT had failed to correctly apply the precautionary principle. VCAT did not identify or address the concept of risk of “serious” as distinct from irreversible damage to the environment and did not assess the gravity of the risk against the relevant test but rather substituted a misconceived test requiring a risk of irreversible damage.

The decision is available at www.austlii.edu.au/au/cases/vic/VSC/2008/384.html

Community Education and Events

Public Lecture Series - 'Australia's Renewable Energy Future'

Where: Shine Dome, Australian Academy of Science

When: Wednesday 5 November, 5:30pm for 6pm - 7pm (wave energy lecture)

Tuesday 2 December, 5:30pm for 6pm - 7pm (geothermal lecture)

The Australian Academy of Science is continuing its public lecture series on Australia's renewable energy future. The following lectures are scheduled for the coming months: a lecture presented by Tom Denniss of Oceanlinx on wave energy and a lecture presented by Anthony Budd of Geoscience Australia on geothermal.

EDO ACT AGM - Invitation to Join EDO Board

Where: Jamieson House, 43 Constitution Avenue, Reid

When: Tuesday 18 November, 6pm

The EDO ACT invites all its members and interested individuals to attend our Annual General Meeting to be held on Tuesday 18 November. This will be an opportunity to hear what the EDO has been involved in and the future direction of the EDO.

The EDO's Board of Management will also be elected at the AGM. The EDO invites committed environmentalists, lawyers and community activists to nominate. If you are interested in nominating for a position on the EDO Board please contact the office on edo@edo.org.au for further details.

Nibbles and drinks will be provided at the AGM. To assist with catering could you please let the EDO office if you are able to attend.

We look forward to seeing you there.

Walk Against Warming

Where: City Walk (near the fountain)

When: 11.30am, Saturday 6 December 2008

Australia's biggest day of action on climate change, Walk Against Warming 2008, is fast approaching.

Across Australia all States and Territories will participate in a walk against warming. In the ACT the Walk Against Warming will take place on Saturday 6 December. This is a chance to join thousands of families, workplaces and communities in a walk for renewable energy and a safe climate future for our children. The Walk Against Warming is aimed at ensuring the Australian Government supports strong, urgent action and justice for developing nations affected by global warming.

For more information on how you can be involved www.WalkAgainstWarming.org

Upcoming EDO Environmental Law Workshops

Where: to be advised

When: to be advised

The EDO ACT is grateful to the ACT Law Society for funding to hold a number of community workshops on environmental law in the ACT. The EDO invites community groups and individuals to contact the EDO with suggestions for workshop topics of interest and relevance to them. Further details of the workshops will be provided in the next newsletter.

Other News

Environmental Law Journal - IMPACT

We would like to invite you to subscribe to 'IMPACT!', a national journal of environmental law produced by the Environmental Defender's Office (NSW).

Some members may remember that until 2006 the EDO produced a quarterly newsletter by the same name. This edition re-launches IMPACT! as a contemporary, bi-annual legal journal.

The first edition of IMPACT! focuses on a matter of national concern – legislative threats to public participation in environmental decision-making. Each subsequent edition of IMPACT! will have a different but equally relevant and national focus. If you have any suggestions about possible themes for future editions please feel free to contact EDO NSW.

If you would like to subscribe to the journal you can do so at www.edo.org.au/edonsw

Appeal for one-sided used Paper – we have run out

We at the EDO use paper printed on one side for most of our printing needs. If you know anyone or you are able to supply us with any non-confidential one sided paper we could use to accommodate our printing needs we would love to hear from you on: edoact@edo.org.au or 6247 9420.

An Appeal From MOTH (Mindere of Tuggeranong Homestead)

Mindere of Tuggeranong Homestead (Inc) a founding member of the Southern ACT Catchment Group, is a small but active and very committed group of volunteers in the Tuggeranong Valley. Since the group's formation in 1992 it has been dedicated to protecting, preserving and enhancing the natural and historic environment of this heritage listed property.

MOTH is very keen to widen its active membership, and invites people in the district to consider joining them in their our work. Some of the projects MOTH is involved in:

- Restoring biodiversity to the old Tuggeranong Creek line and the historic orchard by planting of native grasses and trees
- Caring for a small area of remnant yellow box grassy woodland
- Protecting remaining historic trees on the property, including the orchard, and caring for a nineteenth century garden it re-established
- Promoting sustainable water use on the property through the installation of water tanks (after MOTH's success in obtaining a Commonwealth Government Community Water Grant)
- Running a public program of cultural/educational events on the property, events which include exhibitions, talks, school tours, musical recitals and family reunions. 2009 will see MOTH collaborating with the Tuggeranong Arts Centre on a digital archive project called 'Tales of Tuggeranong'.

MOTH welcomes any interested members of the public to join the group, and especially those

who are willing to lend an active hand at the property as often as you can spare the time at weekdays or weekends.

Contact Jenny Horsfield on 6231 4535 or on robhorsfield@bigpond.com

or Rebecca Lamb on 6231 5548 or on rebflamb@hotmail.com

Job Vacancy - Waste Project Officer - Conservation Council

The Conservation Council ACT Region is seeking an enthusiastic person to deliver a project aimed at:

- reducing waste in the ACT
- raising community awareness of wasteful consumption
- encouraging local community involvement in waste minimisation activities, and
- facilitating engagement of the commercial business sector within a local urban precinct in recycling and waste reduction activities.

The position is part time (22 hours per week) for a period of 32 weeks. Salary \$25 per hour plus super.

Position description available from www.consact.org.au or phone 6229 3200.

Apply by addressing selection criteria and providing CV to director@consact.org.au

Closing date COB **Friday 7 November 2008.**

Call for ecoACTivists

The Conservation Council ACT Region is the peak community environment organisation for the Canberra region and has been successfully campaigning on issues such as biodiversity, water, public transport, climate change, pollution and waste since 1979.

The Conservation Council is a non-government independent organisation which relies on individuals support to continue being an effective voice for the environment.

The Conservation Council is urging individuals and organisations to support them by becoming an ecoACTivist. This involves providing a regular monthly donation to the Council. This will enable the Conservation Council to campaign effectively and strategically on a wide range of urgent and long-term environmental concerns. Donating monthly by credit card also reduces administration costs, leaving more funds for campaigning.

Details on how to become an ecACTivist or otherwise support the Conservation Council is available at the Conservation Council website at:

http://www.consact.org.au/index.php?option=com_content&task=view&id=214&Itemid=114

Google Offers a Glimpse of the Future

Google Earth has added a new function that shows how climate change could affect the planet over the next 100 years. An animated map shows how temperatures are forecast to change around the world and how the Antarctic ice shelves have retreated during the past 50 years. The project, Climate Change in our World, is the result of cooperation between the search engine, Britain's Environment Ministry and Meteorology Office.

For more information visit: <http://www.metoffice.gov.uk/research/hadleycentre/google/>

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