



Environmental Defender's Office ACT

Newsletter

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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. 2

News from around Australia

p. 5

Current Inquiries and Opportunities to Comment

p. 6

ACT

Commonwealth

Litigation news

p. 7

Community Education and Events

p. 9

Other News

p. 11

Contact us

ACT News

Bill to Ban Plastic Bags

The ACT Government has recently introduced a bill to ban plastic shopping bags in Canberra. The Bill will make it an offence for retailers to supply a plastic bag to customer for the purpose of carrying goods bought from the retailer. The prohibition does not apply to biodegradable bags, barrier bags of the type dispensed from a roll to hold perishable items such as fruit or the heavier retail bags used in clothing stores.

If passed, the legislation will take effect from 1 July 2011 with a four month transitional period. During this time, any retailer who provides the regulated plastic bags must also supply alternatives and display signs informing customers of the new ban. No light-weight plastic bags will be able to be supplied after 1 November 2011.

The bill is available at:

http://www.legislation.act.gov.au/b/db_39968/default.asp

Public Consultation on the Future of Canberra

The ACT Government has completed a public consultation on the future development of Canberra. The Canberra 2030 - Time to Talk consultation has focused on 10 themes including water, environmental sustainability and land use and planning. The information gathered will be used in an independent report, intended to help guide and inform future policy-making.

More information is available at www.canberra2030.org.au.

ACT Introduces Greenhouse Gas Reduction Targets

The ACT has recently passed legislation setting Australia's most ambitious greenhouse gas reduction targets. The *Climate Change and Greenhouse Gas Reduction Act 2010* sets a primary target of carbon neutrality by 2060. The target of zero net emissions by 2060 requires emissions to be balanced by avoidance and mitigation activities and emissions offsets outside the ACT.

To reach this primary target the Bill proposes interim targets of a 40% reduction by 30 June 2020, based on 1990 emissions levels and 80% reduction by 2050. The Act also sets a target for per capita emissions to peak by 30 June 2013.

The emissions will be measured according to a methodology determined by the Minister for the Environment, Climate Change and Water.

The Act provides for regular reporting of emissions levels and activities taken towards meeting the targets. An independent entity will prepare an annual report on the emissions and progress to meeting the targets. In addition the Minister must prepare an annual report on the actions taken to address climate change, greenhouse gas emissions and targets. This report must be tabled in Parliament.

The Act does not include a target for the use or generation of renewable energy in the ACT but requires the Minister to set a target within 6 months.

In addition the Act establishes a Climate Council who will advise the Minister on matters relating to reducing greenhouse gas emissions and addressing and adapting to climate change.

A copy of the Act is at

<http://www.legislation.act.gov.au/a/2010-41/current/pdf/2010-41.pdf>

A copy of EDO's submission on the appropriate targets is at

<http://www.edo.org.au/edoact/submissions/Apr%2009%20submission%20to%20ACT%20inquiry%20into%20greenhouse%20gas%20reduction%20targets.pdf>

Amendments proposed to Environment Impact Assessment Processes

The ACT Government has introduced a Bill proposing changes to the environment impact assessment process under the ACT *Planning and Development Act 2007*.

Currently an environment impact statement (EIS) must be prepared for certain types of development proposals with the potential to have a significant environmental impact. Schedule 4 to the Planning and Development Act lists the types of development proposals which require an EIS.

The Bill proposes to allow a developer undertaking certain types of activities currently listed in Schedule 4 to apply to a relevant agency, either the Environment Protection Authority or the Conservator for Flora and Fauna, to declare that the proposal will not have a significant environmental impact. This would mean that these activities would not require an EIS.

Some of the recommendations made by the EDO on the exposure draft of the Bill, including recommendations to improve access to information on any advice given which takes a proposal outside the impact track, have been incorporated to some extent in the Bill tabled in Parliament.

However, where such an application is made there is still no opportunity for the public to comment on whether the proposal will have a significant environmental impact.

The Bill also proposes to amend Schedule 4 to limit the activities which require an EIS. In particular a number of activities proposed in areas of land which are designated as future urban areas will no longer fall within the list of activities which require an EIS.

EDO supports the inclusion of a cost recovery provision which enables the ACT Planning and Land Authority to recover the costs associated with the assessment of an EIS from the proponent and for the agency which provides an opinion on whether the proposal will have a significant environmental impact to recover the costs from the proponent.

A copy of the Bill is available at

http://www.legislation.act.gov.au/b/db_40187/default.asp

A copy of EDO's submission on the exposure draft of the Bill is available at:

<http://www.edo.org.au/edoact/submissions/EDO%20submission%20-%20Exposure%20Draft%20Planning%20and%20Development%20%28EIS%29%20Amendment%20Bill%202010.pdf>

Commissioner releases Interim Report on ACT's Urban Tree Management Practices

Following an investigation by the ACT Commissioner for the Environment into the ACT's tree management practices and urban tree renewal program the Commissioner has released an interim report. The investigation followed on from community concern about the lack of information and consultation about the removal of Canberra's park and street trees.

The Report highlighted the importance of ACT's urban forest for conserving the natural environment and enhancing the landscape setting for the city.

The Report makes a number of recommendations including a requirement to inform

surrounding residents of a tree's removal, introducing a right to seek reconsideration of a non-urgent decision to remove a sick or dead tree, making tree assessments available on request, the automatic replacement of trees which are removed subject to any compelling reasons to the contrary, and a city wide tree condition audit to identify gaps in the urban forest.

The Government has indicated that it supports the majority of recommendations.

A copy of the report and the Government's response is at

<http://www.envcomm.act.gov.au/>

A copy of the EDO's submission is at

<http://www.edo.org.au/edoact/submissions/Mar%2010%20Submission%20-%20Investigation%20into%20ACT%27s%20Urban%20Forest.pdf>

Draft Hazardous Material Environment Protection Policy

The Environment Protection Authority has released a draft Hazardous Environment Protection Policy for public consultation. The EPP contains information and policies relating to the management of hazardous materials. It is designed to assist people to understand the regulation of hazardous materials and to minimise the risk of adverse impacts the hazardous materials have on the environment.

The EPP covers the use of agricultural and veterinary chemicals, the management of scheduled wastes, the movement of regulated wastes within the ACT, the interstate movement of controlled wastes, the national pollutant inventory and the demolition of structures and buildings.

The draft policy is available at

http://www.environment.act.gov.au/_data/assets/pdf_file/0008/198530/Draft_Hazardous_Materials_Complete_WEB_060710.pdf

Removal of internal Tribunal review of certain planning and environmental decisions and amendments to Tribunal Fees

The ACT Civil and Administrative Tribunal has increased its fees as at 1 July 2010. From this date the new fee for lodging an application for review of a decision under the *Planning and Development Act* is \$184. The fee for an application for review of a decision made under other ACT environmental legislation is now \$264.

Amendments have also been made earlier in the year to the *ACT Civil and Administrative Tribunal Act 2008* which remove the ability to seek an internal Tribunal review of certain land, planning and environment applications. Where the Tribunal has decided an application for review of a decision under the *Planning and Development Act 2007*, the *Heritage Act 2004* or the *Tree Protection Act 2005* a party can no longer appeal the decision to the Tribunal. For other decisions a right to seek internal review of an ACAT decision remains.

Amendments have also been made to provide that a person cannot be joined as a party to an application if they are not themselves entitled to make an application under the authorising law. For example, if a person has not made a timely submission on a development proposal under the *Planning and Development Act* they could not be joined to any proceedings seeking review of a decision on this development as they would not have standing to seek review, subject to any reasonable excuse for not putting in an objection on

time.

Namadgi National Park Management Plan Released

A management plan for Namadgi National Park has now been released.

The Plan sets out ways to protect the reserve. It provides for various recreational activities in the park such as horse riding, mountain biking and orienteering and sets out restrictions on these activities, such as where the activities occur.

The Plan came into effect on September 24.

A copy of the plan is available at

http://www.tams.act.gov.au/play/pcl/parks_reserves_and_open_places/national_parks/namadgi_national_park/namadgi_national_park_plan_of_management_2010

The EDO has previously provided advice to the NPA on aspects of the draft management plan relating to the conduct of major events in the park.

News From Around Australia

Murray Darling Basin Plan

The Guide to the Murray-Darling Basin (MDB) Plan was recently released by the Murray-Darling Basin Authority. The Guide is the first step in the implementation of a Plan for the MDB which sets out the requirements of the *Water Act 2007* (Cth). The Guide recommends a sustainable diversion limit proposal in the range of between 3,000 GL/y and 4,000 GL/y, a reduction on current diversion levels whilst identifying that a cut of between 3000GL/year and 7600 GL/year is required to ensure that environmental water requirements of the MDB are met.

The draft Basin Plan is expected to be released in early 2011.

Further information on the Basin Plan is available at www.mdba.gov.au

See below under current opportunities for comment for details on how to comment on the guide.

Biodiversity Conservation Strategy 2010-2030

The Commonwealth Government has released Australia's Biodiversity Conservation Strategy for 2010-2030. The Strategy highlights the need to address Australia's continuing deterioration in its biodiversity. The Strategy identifies the key threats to Australian biodiversity to include habitat loss and degradation; climate change; invasive species; and, the unsustainable use and management of natural resources.

The Strategy outlines three priorities for action focusing on public engagement, the building of resilient ecosystems, and obtaining measurable results.

More information is available at:

<http://www.environment.gov.au/biodiversity/strategy/index.html>

Current Inquiries and Opportunities for Comment

Commonwealth

Input on waste laws sought

The Federal Government has opened for comment its proposed product stewardship legislation. The central premise of the concept is responsibility for a product throughout its life-cycle, from production through to use and post-consumer stages. This legislation will be central to implementing its national waste policy. The government intends for the legislation to focus on reducing land fill and hazards, and encouraging recycling and resource recovery. The legislation is intended to be passed in this year's December session of Parliament. Public consultation sessions are to be held at the end of November.

Submissions on the paper close on **10 December 2010**.

More information, including a public consultation paper, is available at:

<http://www.environment.gov.au/settlements/waste/productstewardship/consultation/index.html>

Impact on Murray Darling Basin Plan in Regional Australia

The House Standing Committee on Regional Australia is inquiring into and reporting on the impact of the Murray-Darling Basin Plan in Regional Australia.

The Committee invites interested persons and organisations to make submissions addressing the terms of reference.

Submissions due by **Monday 20 December 2010**

More information is available at

<http://www.aph.gov.au/house/committee/ra/murraydarling/index.htm>

Murray-Darling Basin Plan Guide

The Murray-Darling Basin Plan Guide is intended to elicit a range of views on a proposal by the Murray-Darling Basin Authority to exercise its powers under the *Water Act 2007* (Cth) to limit the amount of surface and ground water that can be extracted from the Basin. A series of public meetings have already taken place, however there is still plenty of opportunity to make a contribution to this important public debate.

The Murray-Darling Basin Authority has extended its date for input to the preparation of the proposed Basin Plan to 17 December 2010.

If feedback is received after 17 December 2010, it will still be considered in the drafting of the final Basin Plan, along with feedback received during the consultation process for the proposed Basin Plan.

Feedback can be provided via the MDBA website and also via mail, email and phone (1800 230 067).

Submissions due: 17 December

More information on providing input is available at: http://www.mdba.gov.au/basin_plan

ACT

Canberra Brickworks and Environs Planning Strategy – Community Information Session

The Land Development Agency (LDA) invites interested members of the public to a drop-in Community Information Session to view and comment on an option for the Canberra Brickworks and Environs Planning Strategy.

When: 11am-2pm Saturday 4 December 2010

Where: Canberra Brickworks, Denman St entrance, Yarralumla

For more information **click here**.

Inquiry into Financial Management (Ethical Investment) Legislation Amendment Bill 2010 (exposure draft)

The public is invited to comment on a proposed change to the ACT Government's ethical investment policy.

The draft laws, originally tabled by the Greens, intend to prevent the Treasury from investing in a wide range of "unethical" industries and to encourage investment in "ethical" industries, such as renewable energy, water conservation and public transport.

The proscribed list of "unethical industries" includes coal, crude oil, uranium, genetically modified crops, and goods made from intensive animal farming or the logging old-growth forests.

Companies must gain more than 5 per cent of their current income from these industries before Treasury's investment is restricted.

Submissions on the proposed changes close on **4 February 2011**.

More information is available at:

<http://www.legassembly.act.gov.au/committees/index1.asp?committee=116&inquiry=991>

Litigation News

Blue Mountains Conservation Society Inc's protective costs order upheld

EDO NSW has commenced civil enforcement proceedings on behalf of the Blue Mountains Conservation Society (BMCS) in the NSW Land and Environment Court against Delta Electricity under the *Protection of the Environment Operations Act 1997*, for causing water pollution. Water quality testing results from upstream and downstream of a discharge point from Wallerawang Power Station, as well as from the discharge point itself indicate that the power station is introducing salts and metals into a river which runs into Sydney's drinking water supply. The enforcement authorities have been advised of the results but have so far

not done anything about it.

On 9 September the EDO successfully obtained a 'protective costs order' (PCO) in the amount of \$20 000. The PCO caps the costs payable on a party/party basis in the proceedings. The client could not afford to continue with the proceedings unless its liability was limited.

Delta appealed the PCO in the NSW Court of Appeal and this appeal has been dismissed. Consequently, BMCS can now pursue its case in the Land and Environment Court. If they are unsuccessful, the maximum amount that may be recovered by Delta stands at \$20,000.

The decision is at

http://www.edo.org.au/edonsw/site/pdf/casesum/bmcs_v_delta_judgment_cost_orders090909.pdf

Snowy Hydro Licence challenged

EDO NSW has commenced proceedings in the Supreme Court of NSW on behalf of the Snowy River Alliance Inc ('SRA') challenging the validity of a review of the Snowy Hydro water licence and a subsequent variation to the licence.

Under NSW legislation the WAMC is required to conduct a review of the obligations under the licence relating to the "Snowy River Increased Flows" and to exhibit a copy of any state of the environment reports prepared by the Snowy Scientific Committee ("SSC").

SRA is arguing that the WAMC's review failed to meet the description of "review" as required by the Act and failed to exhibit any SSC reports prior to the review. If the review is found to be invalid, the variation to the licence may also be invalid. This could impact on the extraction of water from the Snowy River.

Farmer wins special leave to appeal decision on compensation for native vegetation clearance restrictions

In 2007 NSW farmer, Peter Spencer, commenced proceedings in the Federal Court arguing that restrictions imposed on vegetation clearance on his farm by NSW legislation constituted an acquisition of property other than on just terms so as to require compensation. The High Court has recently granted special leave to Mr Spencer to appeal against the Federal Court decision, which will allow the case to be heard.

A copy of the decision can be viewed at:

<http://www.austlii.edu.au/au/cases/cth/HCA/2010/28.html>

WA farmer jailed for contempt after clearing native vegetation

A farmer in Western Australia who cleared 42 ha of land in breach of a Court imposed injunction has been sentenced to three months imprisonment for contempt of Court.

In the judgment the Court detailed the farmer's consistent breaches and the Judge stated

' I think it needs to be made clear to the community in general that these provisions of the EPA (Environmental Protection Act (WA)) are important provisions in the public interest and that contravention of those provisions, particularly wilful and deliberate contravention of

those provisions in breach of a court order, simply will not be tolerated by the court.’

A copy of the decision can be viewed at:

<http://decisions.justice.wa.gov.au/supreme/supdcsn.nsf>

EEG obtains standing and an injunction against VicForests

The Environment East Gippsland group has successfully obtained an injunction to prevent VicForests from proceeding with logging certain coupes in Brown Mountain on the basis of a breach of species protection legislation and that the precautionary principle requires further surveys of protected species to be carried out. In reaching its decision the Court found that EEG had standing to sue based on a number of factors including the group’s history of involvement in conservation in the area, and its recognition by government through grants and an award in relation to its conservation and community education activities.

A copy of the decision can be viewed at:

<http://www.austlii.edu.au/au/cases/vic/VSC/2010/335.html>

Community Education and Events

Sustaining biodiversity: the next 50 years

When: 6-10 December 2010

Where: Manning Clark Centre, ANU campus

The annual conference of the Ecological Society of Australia will take place from the 6th to the 10th of December. Speakers will set the achievements of the past 50 years of ecology in Australia against the biodiversity challenges that still face us. Issues such as how biodiversity science can be applied on the ground and can shape biodiversity policy will be discussed.

For further details see <http://www.esa2010.org.au/>

ACT Terrestrial Biodiversity Roadshow - Adaptation challenges and research needs of local stakeholders

When: 8 December

Where: Optus Theatre, CSIRO Discovery Centre, Clunies Ross Street, Canberra, ACT.

The National Climate Change Adaptation Research Facility -Terrestrial Biodiversity Network and CSIRO Climate Adaptation Flagship are aiming to significantly increase their interaction with local stakeholder groups e.g. management agencies, policy makers and local government, in order to identify their specific research needs and major challenges to climate change adaptation for protecting the natural ecosystems within their jurisdiction.

To facilitate this process, they are running a national “roadshow” that will consist of a one day workshop in each of the network nodes across Australia. Each workshop will try to identify the most significant local research needs and challenges and help put these into a national context. These workshops will be held in all states and territories over the next 12

months.

Who should come: management agencies, policy makers, NGO's, government and any interested parties

Registration is essential to: yvette.williams@jcu.edu.au

To find out more about the network please go to:

<http://hosting2.arcs.org.au/terrestrialbiodiversity/>

SEE-Change Inner North presents Food, Inc. - the Oscar nominated documentary that will change the way you think about the food on your plate

When: 7:45pm, Thursday 9 December

Where: O'Connor Uniting Church Hall

Entry: \$10. For more information, check out the event poster [here](#)

Forest Fundraiser Spectacular

Canberra Forest alliance have organised a fundraiser in support of the beautiful Tassie Forests! All proceeds go towards the grassroots campaigns to save both NSW's South-Eastern forests and Tasmania's Southern forests.

\$20 waged, \$10 unwaged, families are negotiable!

When: 12pm-12am, Saturday December 4

Where: Corroborree Park, Ainslie

For more information, check out the [poster](#), [website](#), [facebook page](#) or contact Canberra Forest Alliance on 0402 486 647

SEE-Change - Pre Christmas Op Shop

When: Saturday 4 December, from 9am (for a 9:30 start) until 12 pm

Where: St James Church, 40 Gillies St, Curtin

Woden SEE-Change has organised a Pre-Christmas Op Swap which is open to all SEE-Change members, volunteers and interested people! If you don't have anything to swap, feel free to drop by and enjoy the entertainment and company of others as this is a SEE-Change wide end of year event!

This is a money-free event but we'd love it if you could please bring a plate of morning tea to share.

As well as the op swap, there will be live music and a yummy morning tea. There will also be lucky door prizes: home air leakage test (valued at \$400), organic wines, locally produced goodies and more.

To find out more information and see the Op Swap flyer, visit the Pre-Christmas Op Swap

[events page.](#)

International Human Rights Day - *What will human rights in the Territory look like in 2020?*

When: 10 December 2010, 12:30-2pm, Sandwich lunch provided from 12:15

Where: Reception Room, ACT Legislative Assembly

Chair: Dr Helen Watchirs, ACT Human Rights & Discrimination Commissioner, who will discuss the Territory's first Declaration of Incompatibility recently issued by the ACT Supreme Court.

Speakers:

- Carrie Graf, Coach of the Australian Opals and Canberra Capitals
- Roslyn Dundas, Director, ACTCOSS
- Professor Andrew Byrnes, Faculty of Law, UNSW

Hearing loop provided on request.

Free Event

RSVP: human.rights@act.gov.au or 6205 2222. Please include any dietary or accessibility requirements.

Peak Oil an End to Economic Growth?

When: Monday 13 December, 5:30 for 6 pm (refreshments served)

Where: Legislative Assembly, Reception room, London Circuit, Canberra

ACT Peak Oil invites you to a public meeting with Prof Kjell Aleklett, International President, Association for the Study of Peak Oil and Gas (ASPO), Professor in Physics at the [Global Energy Systems Group](#), [Uppsala University](#), Sweden

Further information: Jenny Goldie 6235 9190

Other News

Positions Vacant – EDO WA

EDO WA has 2 positions vacant, an Office Coordinator and a part-time outreach solicitor 3 days per week

Applications close: 12 December

Further details of the positions, including selection criteria are available at:

<http://www.edowa.org.au/jobs.php>

SEE-Change Volunteer Coordinator wanted

Commencing in January 2011, SEE-Change would like to appoint a Volunteer Coordinator to

assist with the implementation of their 2020 Vision project.

The 2020 Vision project will invite students from 20 ACT schools and colleges to communicate their vision for our city in the year 2020 through a series of creative art, media, drama and written competitions. This project ultimately seeks to build hope and understanding about sustainability by engaging the imagination of young people and involving them in planning for their future.

The Volunteer Coordinator would be responsible for the recruitment, support and recognition of volunteers to assist with implementing this project.

For further details about the project, a position description and the selection criteria please [click here](#).

Please send expressions of interest and your CV to Naomi Wynd (office@see-change.org.au) by start of business **Tuesday 4th January 2011**.

Contact us

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This newsletter is meant for your general information. Where possible, references are given so that readers can access original sources or find more information. Any information contained in this bulletin does not represent legal advice.

The EDO does not endorse and is not affiliated with events advertised in the Community Education and Events section.



