

EDO ACT Newsletter

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ACT NEWS

Canberra Indian Myna Action Group wins the Keep Australia Beautiful ACT Sustainable Cities Award for 2013

As well as winning the overall award, the Canberra Indian Myna Action Group also took home the Community Action, Partnerships and Culture category award, and the Environmental Stewardship category award. Over the last 7 years, because of the trapping program, mynas have been reduced from the 3rd most abundant bird to the 20th.

The difference in Canberra and other places where trapping programs are underway has been profound. This reduces the nuisance of mynas, as they take over nesting hollows from native birds, possums and gliders after harassing and evicting them. They kill the chicks of other birds or destroy their eggs, and build their nests on top, and also prey on endangered insects and small skinks.

Click [here](#) to read the full report with pictures.

Moving Ahead with Capital Metro

Project Update 4 for Capital Metro was released in June. This most recent Update lists the roles and responsibilities of the Capital Metro Agency, paving the way for develop procurement and financing options for the delivery of the light rail. It also outlines current funding arrangements and a timeline.

Click [here](#) to view the Project Update 4.

ACT Air Quality Results: Excellent

In June the Environment and Sustainable Development Directorate released the ACT Air Quality Report 2012. It was reported that, in comparison to other major cities, air quality in the ACT is excellent.

The ACT monitors four pollutants; carbon monoxide, nitrogen dioxide, photochemical oxidants and particulate matter. The report showed that, with the exception of particulate matter, all measured parameters were fully compliant with the Ambient Air Quality National Environment Protection Measures (NEPM) standards.

The exception of particulate matter was a result of the accumulation of combustion particles from wood heaters in winter.

Click [here](#) for more information.

SolarShare exceeds initial target

SolarShare's initial target of \$500,000 in registrations was exceeded with over a month to go before the deadline. They have now increased their target to \$1,000,000 in registrations before the end of August.

Click [here](#) for more information on Canberra's community solar project.

Solar Petition

ActewAGL, the ACT's primary energy retailer, has abolished the one-for-one solar buy back scheme to new solar customers.

In 2012, the ACT Government committed to a 20 year guaranteed payment for households and businesses installing solar PV systems at a price that is equivalent to the large scale auction price.

A year later, and in light of ActewAGL's changes, there's still no word from the ACT Government on the guaranteed payment. A petition is currently being circulated by Solar Citizens ACT demanding the ACT Government institute a fair price for solar in the ACT. Click [here](#) for more information on the campaign.

Two new solar farms – selected in the second round of the ACT's solar auction

In August, the Minister for the Environment and Sustainable Development announced that Zhenfa Canberra Solar Farm One Pty Ltd and OneSun Capital 10MW Operating Pty Ltd would be awarded grants under Stage 2 of the ACT Government's Solar Auction.

Zhenfa will build its 13 megawatt Mugga Lane Solar Park on the corner of Mugga Lane and the Monaro Hwy. OneSun will build its 7 megawatt OneSun Capital Solar Farm in Coree, near Uriarra.

Click [here](#) for more information.

EDO (ACT) Questionnaire

The EDO recently conducted an online survey for members, volunteers, interns, associate organisations and submission recipients. There was a modest response of 20 people/organisations, of which 78 per cent were satisfied or extremely satisfied with the EDO's services in general. Respondents ranked the top five issues they were interested in the EDO pursuing as:

1. strategic and environmental impact assessments;
2. biodiversity conservation;
3. (tied between) water management; and climate change law and policy
4. (tied between) public land management; and community legal education; and

5. development approvals

Seventy-four per cent of the respondents considered the most important work conducted by the EDO ACT as 'public submissions' and 'advocacy', followed by 'litigation' and 'information and awareness' on 63 per cent respectively.

Thank you to those who completed the questionnaire. Your responses will guide our future direction, while ensuring that we continue to be a truly *community*-focused environmental legal centre.

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ENVIRONMENTAL LAW NEWS - ACT

New Natural Resource Management Council

The Environment and Sustainable Development Directorate has appointed a new Natural Resource Management Council to provide independent strategic advice on funding for natural resource management investments. The newly appointed Council's tenure will end in June 2016.

Click [here](#) for more information.

Nature Conservation Strategy 2013-23

The Nature Conservation Strategy 2013-23 was tabled in the ACT Legislative Assembly 8 August 2013. The Minister for the Environment and Sustainable Development, Simon Corbell, said that the new Strategy will guide and manage nature conservation in the Territory over the next 10 years.

"Central to the strategy is the notion that natural landscapes are much more resilient to threats, such as climate change and pest animals, when large areas of high quality habitat are conserved and connected to each other."

The strategy was prepared by the Environment and Sustainable Development Directorate following consultation with land managers, community groups and the general public. Click [here](#) to read the EDO's March submission on the review of the Nature Conservation Strategy.

Report into the provision of amenities within Parliamentary Triangle

In June, the Joint Standing Committee on the National Capital and External Territories (JSCNCET) tabled its report on the Inquiry into the provision of amenities within the Parliamentary Triangle.

The JSCNCET recommended the development of a strategy for the provision of amenity within the Central National Area, including the Parliamentary Zone. The committee suggested incorporating the provision of retail services, parking, access to public transport and childcare services. They also suggested the development of timelines and the allocation of responsibilities for the provision of the proposed services. The Government is yet to respond to the report.

Click [here](#) to read the JSCNCET Report.

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ENVIRONMENTAL NEWS - COMMONWEALTH

ANEDO and TAI Report on coal mining and coal seam gas

New research undertaken by the Australian Network of Environmental Defender's Officers, and commissioned by The Australia Institute, has found the Commonwealth government has the power to protect Australia from the negative impacts of coal mining and coal seam gas and should not pass responsibility to the states.

Click [here](#) to read the report.

No More Free Range Eggs in Queensland

The Queensland government has quietly brought about changes to state regulations that will now ensure the end of true free range egg production in Queensland. The Brisbane Times [reported](#) that the laws were changed in June to allow free range egg farms to keep up to 10,000 hens per hectare, up from a previous limit of 1500.

Consumer lobby group Choice said the term "free-range egg" had become meaningless in Queensland, and that "this latest move by the Queensland government has jeopardised consumers' ability to make informed purchasing decisions."

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LAW REFORM AND POLICY

EDO ACT Submissions

Heritage Amendment Bill 2013

In June, the EDO (ACT) made a submission regarding the *Heritage Amendment Bill 2013*. While we were supportive of some of the changes proposed in the Bill, we questioned others which have the potential to undermine the overarching objects of the *Heritage Act 2004*.

Our submission focused on:

- The removal of appeal provisions
- Ministerial call-in provisions
- Land development applications
- Administrative and technical amendments
- Planning and development
- Aboriginal heritage
- Public authorities.

Click [here](#) to read the submission.

Draft ACT Water Strategy 2013

The *Draft ACT Water Strategy* was open for public comment between early July and late August. The Draft Strategy took a long-term view (30–50 years) of water resource planning in the ACT, considering all water sources and the needs of urban areas, the environment, industry and commercial development. The *Strategy* builds on the ACT water initiative released in 2004; *Think Water, Act Water*. The Minister for Environment and Sustainable Development, Simon Corbell, says that the *Draft Strategy* differs from the earlier strategy by being an “outcomes-based strategy with responsibility clearly allocated to deliver against these outcomes in the most cost-efficient and effective way”.

Click [here](#) to read the submission.

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Invitation for public comment: EPBC Referrals

The only recent ACT referral under the EPBC Act is:

- Health Directorate/Commercial development/Block 1, Section 3 in the District of Belconnen/ACT/University of Canberra Public Hospital
Click [here](#) for more information.

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Opportunities to Comment – ACT

Community transport services in the ACT

As part of a review of community transport services, the ACT Government is conducting a survey and seeking comments on community transport.

The ACT Government invites community groups and individuals to comment on community transport and the way in which community cars and buses are used. In particular, the Government welcomes ideas about:

- eligibility for services;
- operational hours;
- the types of services provided; and
- the role of community cars and buses in the wider passenger transport system

Public comment closes **4 October 2013**. Click [here](#) for more information.

Water Sensitive Urban Design Review

The ACT Government is reviewing the Water Sensitive Urban Design Code (WSUD) which was introduced in 2009 under the Territory Plan. The code is designed to encourage reduced use of mains water, in order to improve water quality and to manage stormwater flows in urban areas.

The review is considering whether to significantly expand available WSUD options and provide maximum flexibility to developers.

Public comment closes **20 September 2013**. Click [here](#) for more information.

'Have Your Say' website

[Have Your Say](#) is the National Capital Authority's consultation website. It allows Australians to talk about the way Canberra is developed and managed as the National Capital. The website makes Consultation Reports and Consultation Reports in Progress available for the public.

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EDO - Volunteer Comment

Improving public participation in the ACT EIS process to better reflect the public interest

Claire Reynolds – ANU law student, EDO (ACT) volunteer

Public participation in the ACT environmental impact statement (EIS) process can be improved to better reflect the public interest. The ACT EIS process allows the environmental impact of a proposed development to be identified before approval for the development is given.¹ Improving opportunities for public participation is in the public interest because of the increased environmental protection that public participation can bring, and because of the benefits that flow directly from public participation. Improvements can be made to ensure that adequate opportunities for participation are provided and that environmental information is accessible and of an acceptable quality.

PUBLIC PARTICIPATION PROMOTES THE PUBLIC INTEREST

Public participation is in the public interest to the extent that it improves the quality of environmental decisions. The ability of the public to gather and present information through public participation is an 'under-utilised resource'.² It is reasonable to assume that making use of this resource will result in better decision making.³ Too much participation can be costly and inefficient,⁴ or non-representative.⁵ However this can be minimised by selecting the appropriate level of participation,⁶ and by ensuring that interested individuals have the resources to make use of opportunities to participate.⁷

It is likely that the environmental protection achieved through public participation is in the public interest,⁸ notwithstanding the difficulties in determining what is in the 'public interest'.⁹ The importance of the protection of the environment for the public interest is reflected in the legislation which sets out

¹ International Association for Impact Assessment and Institute of Environmental Assessment UK, *Principles of Environmental Impact Assessment Best Practice* (1999) <http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf> 2.1.

² Elliot and Thomas, above n 1, 76.

³ Ibid 76-77.

⁴ Robinson, above n 35, 323.

⁵ Robinson, above n 35, 324.

⁶ Robinson, above n 35, 323.

⁷ Robinson, above n 35, 323; International Association for Impact Assessment, *Public Participation: International Best Practice Principles* (2006) <<http://www.iaia.org/publicdocuments/special-publications/SP4%20web.pdf>> 2.

⁸ *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133 [123-124].

⁹ Holder and Lee, above n3, 85.

the ACT EIS process.¹⁰ This Act includes in its objects the requirement that development be consistent with the environmental 'aspirations of the people of the ACT'.¹¹ Further, protecting the environment prevents adverse impacts on quality of life, the economy, and health.¹²

Public participation also has direct public interest benefits.¹³ Public participation can increase trust in the decision making process,¹⁴ play a role in educating the public about environmental issues and the environmental decision making process,¹⁵ increases certainty, and is a useful tool to determine the effect of a development on the community.¹⁶

IMPROVING PUBLIC PARTICIPATION IN THE ACT EIS PROCESS

The ACT EIS process consists of several stages: the screening, scoping, and EIS report stages.¹⁷ At the screening stage, the ACT Planning and Land Authority (ACTPLA) determines the level at which a development proposal will be assessed. This level indicates whether an EIS will be required. At the scoping stage, ACTPLA identifies the matters that the proponent is required to address in the EIS.¹⁸ At the EIS report stage the proponent prepares a draft EIS.¹⁹ The public is given the opportunity to comment on the draft EIS.²⁰ Then the proponent revises the EIS, taking public comments into account.²¹ ACTPLA then decides whether to accept the EIS.²²

For public participation in the ACT EIS process to be effective the public must be given an opportunity participate meaningfully in the decision making process,²³ and must have access to useful information in order to be able to make constructive submissions.²⁴

Opportunity

The opportunity to participate should come earlier in the ACT EIS process. Currently the only opportunity to participate in the ACT EIS process is at the EIS report stage. Opportunities to participate should be available earlier, at the screening and scoping stages. There should be an opportunity for some level of participation at the screening stage because decisions made at this stage will determine the level of assessment a development proposal will be subject to, which has implications for

¹⁰ *Planning and Development Act 2007* (ACT).

¹¹ *Ibid* s 6(a).

¹² Gerry Bates, *Environmental Law in Australia* (LexisNexis Butterworths, 7th ed, 2010), 1.2.

¹³ Elliot and Thomas, above n 1, 76; Robinson, above n 35, 329.

¹⁴ Environment Defenders Office (Victoria), Submission No 27 to Environment and Natural Resources Committee, *Inquiry into the Environmental Effects Statement Process in Victoria*, 8 April 2010; David Robinson, 'Public Participation in Environmental Decision-Making' (1993) 10 *Environmental and Planning Law Journal* 320, 329.

¹⁵ International Association for Impact Assessment, *Public Participation: International Best Practice Principles* (2006) <<http://www.iaia.org/publicdocuments/special-publications/SP4%20web.pdf>> 2; David Robinson, 'Public Participation in Environmental Decision-Making' (1993) 10 *Environmental and Planning Law Journal* 320, 325-326.

¹⁶ *Planning and Development Act 2007* (ACT) s 261(2)(a).

¹⁷ *Planning and Development Act 2007* (ACT).

¹⁸ *Planning and Development Act 2007* (ACT) s 212(2)(a).

¹⁹ *Planning and Development Act 2007* (ACT) s 216.

²⁰ *Planning and Development Act 2007* (ACT) s 219(1).

²¹ *Planning and Development Act 2007* (ACT) s 221(3)(b)(ii).

²² *Ibid* s 222.

²³ Holder and Lee, above n3, 86; Lambropoulos, above n 69, 272; Aarhus Convention art 6, International Association for Impact Assessment, Public Participation, above n 82, 2.

²⁴ Aarhus Convention arts 4, 5; International Association for Impact Assessment, Public Participation, above n 82; IAIA and IEAUK, above n4.

participation at a later stage. There should be participation at the scoping stage so that there is public input into the breadth of issues that the proponent is required to address.

Opportunities to participate should be accessible to all those affected. Currently, ACTPLA *may* require that the proponent consults with ‘affected groups with particular communication needs’ to ensure that they have ‘adequate opportunity to comment on the EIS’.²⁵ It should be a requirement, not an option, for ACTPLA or the proponent to investigate whether these groups exist in relation to the development proposal, and if so to consult with these groups.

Participation through written submissions is not accessible to every member of the public. However, this is how participation is facilitated in the ACT process. ACTPLA should ensure that resources are available to assist individuals and organisations to make submissions.

Information

The information presented by the proponent in the draft EIS must be reasonably easy to understand, so it is accessible to the general public. Commendably, the ACT EIS process requires that a non-technical summary be included with the EIS report.²⁶ To address another aspect of information accessibility ACTPLA should make more information such as EIS reports available online.²⁷ In the current ACT EIS process, ACTPLA is only required to make copy of the draft EIS available online if it is ‘practicable’.²⁸

Information must also be of an acceptable quality. Conflict of interest issues may arise from the fact that in the ACT EIS process the consultant preparing the information is employed by the consultant. This could be avoided by placing an independent body in charge of gathering information for the EIS rather than the proponent.²⁹

Providing adequate opportunity for public participation in the ACT EIS process is in the public interest. The process could be altered to improve public participation by ensuring that opportunities to participate occur early, that opportunities to participate is accessible to interested people, and that information is accessible.

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²⁵ *Planning and Development Regulation 2008* (ACT) s 54(2).

²⁶ *Planning and Development Regulation 2008* (ACT) s 208(2)(a).

²⁷ Aarhus Convention art 5(3).

²⁸ *Planning and Development Regulation 2008* (ACT), s 217(c).

²⁹ Environment Defenders Office (Victoria), Submission, above n 90, 14-15.

Events and Community News

EVENTS

ACT Stakeholder Forum - IUCN World Parks Congress 2014

The IUCN World Parks Congress is a landmark global forum on protected areas held every ten years. As the world's most influential gathering of people involved in protected area management, it sets the global agenda for the following decade.

The next IUCN World Parks Congress will take place **12 — 19 November 2014** in Sydney.

You are warmly invited to attend a forum hosted by [NELA](#) and [ANEDO](#) to learn about the IUCN, the World Parks Congress 2014, and the opportunities both present for ACT stakeholders and protected areas in Australia and around the world.

When: 9am-1pm, Wednesday, September 25, 2013

Click [here](#) for more information.

EDO NSW Workshop in Gundaroo - Mining and the Law: What you need to know

EDO NSW will hold a free community workshop explaining how mining is regulated in NSW, with a focus on landholder rights. The workshop will also discuss how the community can effectively engage in environmental decision-making processes under the law in NSW.

When: 6-8pm, Wednesday 18 September 2013

Where: Gundaroo Hall

Click [here](#) for more information.

ACT Divestment Forum

350.org is holding a public forum featuring Dr Richard Denniss (The Australia Institute), Professor Peter Tait (National Centre for Epidemiology and Population Health, ANU), Dr Matthew Rimmer (ANU College of Law), Adam Verwey (Australian Ethical Investment) and Tom Swann (Fossil Free ANU) and Shane Rattenbury (Greens MLA).

The forum will ask should public institutions divest from the fossil industry? Is divestment really the climate game changer it's being made out to be? What can divestment really offer our climate,

communities and economy? Can it play an important role in keeping 80% of fossil fuel reserves in the ground and avoiding 2 degrees of warming?

When: 26 September 2013.

Where: ACT Legislative Assembly, London Circuit, Canberra City.

Click [here](#) for more information.

Invasive Species Council Public Talk: Who's tackling invasive species in Australia?

The Invasive Species council has carried out a survey of more than a thousand organisations across Australia about their work tackling weeds, feral animals and other invasive species problems, and the challenges they face. The survey was carried out over eight weeks and asked respondents to rank threats 'putting at risk the conservation of Australia's native plants and animals'. They are holding a **free** public discussion on the findings of the survey and what more can be done to tackle invasive species in Australia.

When: 7pm, Monday 7 October.

Where: Offices of Ecology Australia, 88b (Level 2) Station St, Fairfield, Melbourne.

Click [here](#) for more information.

Fenner Conference On Environment

Population, Resources and Climate Change – Implications for Australia's Near Future

Keynote address by Professor Paul Ehrlich with other speakers who include:

Suzanne Cory, Hugh Possingham, David Lindenmayer, Chris Dickman, Bob Birrell, Mark O'Connor, Michael Lardelli, Ian Dunlop, Sharyn Munro, Rhondda Dickson, Michael Jeffrey, Gary Jones, Ian Lowe, Michael Raupach, Tony McMichael, Paul Collins, Haydn Washington, Kelvin Thomson, Julian Cribb, Jane O'Sullivan and Roger Short. Richard Denniss is after-dinner speaker.

When: Thursday 10 and Friday 11 October 2013, 9-5pm

Where: Shine Dome, Acton, Canberra

Click [here](#) for more details.

ACT Centenary Bioblitz

Atlas of Living Australia, ACT Government, Inspiring Australia and Molonglo Catchment Group have come together to organise the ACT Centenary Bioblitz. The Bioblitz will be Canberra's first ever collaborative race to identify as many kinds of plants, animals, algae and fungi at Black Mountain between **Friday 25th October morning and late Sunday 27th October afternoon**.

A bioblitz comprises scientists, naturalists, citizen scientists and members of the public working together to record a snapshot of the region's biodiversity. Headquartered at the CSIRO Discovery Centre, all information collected will help assist the national 'Atlas of Living Australia' online portal to ensure that future generations will be able to enjoy and benefit from Australia's remarkable biodiversity. Click [here](#) for more information.

The Marine and Maritime Research Festival

The Sydney Environment Institute (The University of Sydney) is holding six events over four days, exploring human interactions with marine and coastal environments.

When: 6-9 November 2013

Click [here](#) for more information.

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Environmental Defender's Office

The Environmental Defender's Office is a non-profit community legal centre based in Canberra.

We advise on environment and planning law and aim to increase public awareness of environmental law and available remedies.

We advise on questions of Commonwealth and Australian Capital Territory law.

We offer a free telephone advice service on environmental law questions.

Appointments with our solicitor are also available.

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