



Environmental Defender's Office ACT

Newsletter

Summer 2010

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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.

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ACT News

Proposed Amendments to ACT Planning Legislation

The EDO is pleased that the ACT Greens have introduced legislation to amend the ACT Planning legislation in line with amendments recommended by the EDO. The Bill proposes to amend the appeal provisions in the legislation so as to increase standing for community members to appeal development approval decisions, and enable the Tribunal to consider a broader range of issues when reviewing approval decisions. It would also ensure that development applications which were not correctly notified could be invalidated where it has affected the community's right to participate in the decision making process.

The Bill is available at:

http://www.legislation.act.gov.au/b/db_36286/current/pdf/db_36286.pdf

The Bill is yet to be debated in Parliament.

2009 ACT Region State of Environment Report released

The ACT's Sustainability and Environment Commissioner, Dr Maxine Cooper, has released the ACT's 2009 State of Environment Report for the ACT Region.

The report covers the period of July 2004 - June 2009 and comprises individual reports for the 17 local government areas of Bega Valley, Boorowa, Bombala, Cooma-Monaro, Cootamundra, Eurobodalla, Gundagai, Goulburn-Mulwaree, Harden, Palerang, Queanbeyan City, Tumbarumba, Tumut, Snowy River, Upper Lachlan, Yass Valley and Young.

The report is designed to develop a regional overview and a base for measuring progress towards increased sustainability for the Region.

The report indicates that the ACT region is ideally suited for wind energy projects, solar and hydro renewable energy.

A copy of the report is available at:

<http://www.envcomm.act.gov.au/soe/rsoe2009/index.shtml>

Investigation commenced into the replacement of Canberra's urban forest

The ACT Environment and Sustainability Commissioner, Dr Maxine Cooper, has begun an investigation into long-term planning for tree replacement in the ACT. The Commissioner will investigate and report on a range of matters including:

- the scope and efficiency of any enhancement that may be required to the Government's existing tree management programs;
- the benefits and drawbacks of considering funding for urban tree programs separately to climate change initiatives;
- improved notification and consultation processes to support greater community involvement in urban tree planning and management, including risk mitigation, tree removal and planting;
- the priority given in tree management decisions to environmental values, solar access and the retention of communities of trees in parks;

- the sustainable reuse of timber from felled trees;
- when replanting should occur following the removal of trees, the scope for pre-planting, and principles for the number and species of trees that should be replanted;
- the need for enhanced management to maintain the survival and good health of trees;
- appropriate safeguards to ensure contractors follow best practice and adhere to Government tree policies;
- principles for the decision-making process where it is proposed that a tree is removed or is retained;
- improvements to the Tree Protection Act or other relevant Acts in light of the above matters; and
- resource implications associated with an enhanced program.

Public submissions are encouraged (see details below under opportunities for comment).

Wetlands substation gets federal go-ahead

ACTEW AGL's proposal to upgrade an electrical substation in the Jerrabomberra wetlands has been referred to the Federal Environment Minister. The Minister has decided that the development will not have a significant impact on migratory birds in the wetlands so as to require environmental assessment under the Commonwealth environmental legislation, so long as the development is undertaken in accordance with a number of conditions.

The project is still subject to ACT planning process including an Environmental Impact Statement (EIS). Comments on the draft EIS closed on 1 February.

Sustainable Transport Review

As part of the Sustainable Transport Action Plan 2010-2016, which wants walking and cycling to comprise 14% of journeys to work by 2026, an independent review is being conducted into Canberra's cycling and pedestrian networks.

An initial report has recommended protected bike lanes be investigated for Marcus Clarke Street, Parkes Way and Alinga Street. In addition Bunda Street in Civic has been recommended as a low-speed shared space between walkers, cyclists and motorists.

The report will help plan cycling and pedestrian capital works programs over the next seven years, and targets the towns and major employment centres around Canberra.

Further information is available at:

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

Government Response to Greenhouse Gas Reduction Target recommendations

The Government has released its response to the ACT's Legislative Assembly Committee Interim report on Greenhouse Gas Reduction Targets.

The EDO is pleased that the Government has accepted a number of recommendations made by the EDO in its submission to the inquiry, including a legislated greenhouse gas reduction

target and using 1990 as a base year for calculating reductions. The EDO also welcomes the Government's aim to reduce greenhouse gas emissions to achieve zero net emissions.

The EDO is disappointed however that the Government has not yet released its interim targets. The EDO looks forward to the Government's release of these targets, which it has indicated will occur in early 2010.

Further information, including the EDO's submission the Committee's interim report and the Government's response are available at:

<http://www.legassembly.act.gov.au/committees/index1.asp?committee=112&inquiry=753&category=19>

News From Around Australia

Amendment to EPBC Act to reverse listing of shark species

The Federal Government has announced it will amend the EPBC Act to reverse a new migratory species listing under the Act, to minimise the impacts on recreational fishers. Species listed internationally under the Convention on Migratory Species must be automatically listed as migratory species under the EPBC Act. The shortfin mako, longfin mako and porbeagle shark listings came into effect on 29 January 2010, however the Government has stated it will amend the Act to remove the requirement for automatic listing of species that come under the migratory species convention.

Copenhagen Accord

After a disappointing conclusion to the Copenhagen summit the climate talks failed to come up with a legally binding treaty, and no clear legally binding targets. Instead the Copenhagen Accord was negotiated and signed by more than 25 countries, including Australia.

The Copenhagen Accord is at:

http://www.edo.org.au/edonsw/site/pdf/misc/092212copenhagen_accord.pdf

ANEDO continues to analyse the development of climate law in Australia and advise on amendments needed to establish an effective legal and regulatory framework to tackle climate change. Despite the limitations on international action as illustrated by the Copenhagen summit, there are a range of measures that can be taken domestically to create robust legislation, for example, legislating to establish domestic targets, implement the polluter pays principle, and promote renewable energy and energy efficiency. Discussion of such initiatives can be found at:

http://www.edo.org.au/edonsw/site/pdf/pubs/model_climate_law_project080417.pdf

Hawke Report recommends changes to national environment law

The final report of Dr Allen Hawke on the review of the operation of the Commonwealth *Environment Protection and Act* was made public on 21 December 2009.

ANEDO has made extensive contributions to this review process. Our detailed submissions are available at: <http://www.edo.org.au/policy/policy.html>. ANEDO has consistently recommended a range of amendments to improve the Act, and therefore welcome the Hawke Report recommendations relating to an improved national approach, new matters of national environmental significance triggers (including a greenhouse trigger), improvements to transparent public participation in decision-making, and greater access to the courts for public interest litigation (for example, by expanding merits review and judicial review standing, and providing for public costs orders).

The Hawke report makes 71 primary recommendations as well as numerous conclusions and findings of an advisory nature.

In particular, the report recommended the introduction of an 'interim greenhouse trigger', which would require an development producing more than a certain tonnage of CO₂e emissions to be assessed under the Act, and a more robust approach to use of the Regional Forestry Agreements, through the use of proper independent auditing and monitoring, as well as sanctions for non-compliance. Unfortunately these two recommendations have already been rejected by the Federal Government.

The federal Environment Department has a [website](#) dedicated to the review including the full report, individual chapters of the report, and fact sheets dealing with a number of aspects of the review. The Government will respond to the recommendations made by the review by mid 2010.

Ningaloo nominated for World Heritage Listing

Western Australia's Ningaloo coast and reef has been nominated for World heritage listing.

The nomination covers a 700,000 hectare area that includes the Ningaloo reef and a coastal strip extending 260 kilometers south to Red Bluff. The reef is home to an assortment of rays sharks, corals and the world's largest fish, the whale shark.

Final listing will be decided by the World Heritage Centre, which will assess the application over the next 18 months.

Environment laws stop Traveston Dam

Last December the Federal Environment Minister refused to approve the proposed Traveston Crossing Dam in Queensland under the Federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). He determined that the impacts on nationally protected species like the Australian lungfish, Mary River Turtle and Mary River Cod were unacceptable and could not be mitigated, despite the 1200 state conditions.

EDO Qld had been advising the Save the Mary River Coordinating Group on the approval process for the dam and on legal options to challenge any approval (if necessary) since it was first proposed in early 2006.

Tarkine gets emergency heritage listing

The Federal Environment Minister has listed the Tarkine rainforest in Tasmania's north west as a national heritage site under the EPBC Act. This means that the heritage values of the area must now be assessed when the Federal Government considers the State Government's proposed road through the Tarkine wilderness under the EPBC Act.

Senate Committee Calls for Improvements to Access to Justice

The Senate Legal and Constitutional References Committee, handed down its report in December 2009 following its inquiry into access to justice.

The Committee has recommended that the federal, state and territory governments review existing funding arrangements for community legal centres (which includes EDOs) together with other legal service providers, such as legal aid commissions and Indigenous legal services to improve people's ability to access the legal system.

ANEDO's submission to this review highlighted the clear need to provide more federal funding to community legal centres and other pro bono services to ensure that public interest litigants are provided with avenues to access good quality legal representation at a reduced price.

In addition ANEDO made a number of recommendations, including amendments to costs provisions to alleviate the risk of adverse costs orders against public interest litigants, a large hurdle faced by many groups seeking to challenge environmental decisions.

A copy of the ANEDO submission to this inquiry is available at

http://www.edo.org.au/policy/090504access_justice.pdf

A copy of the report is at

http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/index.htm

Managing our coastal zone in a changing climate

Towards the end of last year the House of Representatives Climate Change, Water, Environment and the Arts Committee released its inquiry report, Managing our Coastal Zone in a Changing Climate: The Time to Act is Now. The Committee has adopted as a key recommendation the establishment of a national coordinated approach to sea level rise and coastal impacts, which is consistent with ANEDO's submission.

The full report can be accessed here:

<http://www.aph.gov.au/House/committee/ccwea/coastalzone/report.htm>

A copy of ANEDO's submission to this inquiry is at

http://www.edo.org.au/policy/climatechange_coastal080610.pdf

Current Inquiries and Opportunities for Comment

ACT

Investigation into the Government's tree management practices

The ACT Commissioner for Sustainability and the Environment is conducting an investigation into the Government's tree management practices and the renewal of Canberra's urban forest and invites members of the community to:

- register their name and email address to be informed about consultation during the investigation by 22 January 2010; or/and
- lodge a submission with respect to the [terms of reference](#) for the investigation by 26 February 2010.

Submissions due: **26 February 2010**

Further details are at:

http://www.envcomm.act.gov.au/investigations_and_consultation/canberras_urban_forest

Investigation into Canberra Nature Parks

The ACT Commissioner for Sustainability and the Environment is conducting an investigation into Canberra Nature Park (nature reserves); the Molonglo River Corridor (nature reserves) and Googong Foreshores.

Submissions due: **26 February 2010**

Further details are at:

http://www.envcomm.act.gov.au/investigations_and_consultation/nature_reserves_investigation

Sustainable Future Workshop Findings Report

The ACT Planning and Land Authority has released its sustainable future workshop findings report for public comment. The report contains key outcomes from a series of workshops, which EDO participated in, held under the Sustainable future program. These workshops gathered together some of Australia's leading thinkers, community members and government and industry representatives to draw out ideas on how to make our city and the ACT more sustainable, particularly in regard to future planning.

Submissions due: COB Friday **26 February 2010**.

Further information is available at:

http://www.actpla.act.gov.au/topics/significant_projects/change/sustainable_future

Your feedback is important as it will help the ACT Government formulate over the course of next year, planning policies that will help achieve the government's sustainability goals.

Discussion Paper on Expanded Feed In Tariff Scheme

The ACT Government has released a discussion paper titled National Capital to Solar Capital: Options for an Expanded ACT Electricity Feed-in Tariff Scheme. The Feed-In Tariff discussion paper deals with a possible expansion to include installations beyond the existing capacity limit of 30kW.

Submissions due: **28 February 2010**

Further details at: <http://www.environment.act.gov.au/energy/fit>

See below (community education and events) for details of public information sessions

Update of the Canberra Social Plan

The ACT Government is seeking community views to assist with the update of the Canberra Social Plan.

You can participate in an online forum at <http://bangthetable.com/actsocialplan>

There will be two online forums. The first will run until 18th December 2009. A follow up forum will start in mid January 2010 and conclude at the **end of February 2010**.

Further information about the update of the Social Plan is available at:
http://www.cmd.act.gov.au/policystrategic/socialplan/developing_an_update

Draft Sustainable Energy Policy 2010-2020

The ACT Government has launched the draft Sustainable Energy Policy 2010-2020. The draft energy policy sets out a proposed framework for reducing the ACT's reliance on fossil-fuel powered electricity while making Canberra's energy supply more secure and sustainable.

Submissions due: **5 March 2010**

Further details at: <http://www.environment.act.gov.au/energy/energypolicy>

See below (community education and events) for details of public information sessions.

Southern Cemetery – discussion paper

The ACT Public Cemeteries Authority has been developing a proposal for a Southern cemetery. A discussion paper providing further detail on the suitability of the proposed southern cemetery site on Mugga Lane, as well as results of planning and environmental assessments, has now been released for further community comment.

Further details are at:

Submissions due: **Tuesday 16 March 2010.**

Litigation News

Gunns case finally settled

Gunns has finally settled its long running court action, begun in 2004, against a number of environmentalists and organisations.

Gunns has announced it will pay \$155,000 towards the legal costs of the four remaining defendants to end the proceedings.

The ACT has legislation to help protect individuals against similar sorts of law suits, commonly referred to as SLAPP suits (strategic litigation against public participation) (discussed in previous EDO newsletters).

Victorian case looks at precautionary principle

In Victoria proponents applied for permission to develop four dwellings on a 72 hectare site in the Lake Eppalock catchment in the Shire of Macedon Ranges. Their application was initially granted by the Victorian Civil and Administrative Tribunal (VCAT), but that decision was overturned on appeal to the Supreme Court. The Supreme Court held that VCAT had misunderstood the precautionary principle as it applied to water quality and returned the matter to VCAT for a rehearing.

On rehearing, VCAT rejected the application. It held that, given the importance of the preservation of potable water in Australia and applying the precautionary principle, the cumulative risk that four dwellings would pose to the local water supply was too great to be allowed. It then considered whether any smaller number of dwellings should be permitted, but decided that even two dwellings would be too many, as it would fragment land that could otherwise be used for productive agricultural purposes.

A detailed discussion of the decision can be found on [Environmental Law Online](#).

Protective cost orders in public interest litigation

Recently, the EDO NSW has twice applied for protective cost orders (PCO) in the NSW Land and Environment Court. A PCO is a Court order that protects a party to a proceeding from an adverse costs outcome. PCOs may include orders that: a party will not be exposed to an order for costs if it loses at trial; the amount of costs that a party will be required to pay if it loses at trial will be capped at a certain amount; and there will be no order for costs whatever the outcome of the trial. Such orders are often critical in bringing environmental cases as environmental organisations would often not continue if there was not some limit to the possible adverse costs.

Firstly, in September the EDO successfully obtained a PCO in the amount of \$20 000 on behalf of the Blue Mountains Conservation Society in its case 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 responded.

The client could not afford to continue with the proceedings unless its liability was limited. For the judgment, please visit:

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

A similar argument was unsuccessful in another case on behalf of Caroon Coal Action Group which is challenging the validity of the exploration licence and an earlier coal authorisation issued to Coal Mines Australia to undertake exploration activities in the Caroon district. Chief Justice Preston found that a maximum costs order was not necessary to facilitate access to justice for the Caroon Coal Action Group.

These cases are likely to have implications for future climate change litigation, particularly that which is brought in the public interest.

Community Education and Events

Two Public Information Session – Renewable Energy papers

When and where: Tuesday 9 February, 7pm at Canberra Southern Cross Club, 92-96 Corinna Street, Woden

or Tuesday 16 February, 7.00pm at Belconnen Premier Inn, 110 Belconnen Way

The ACT Government has recently launched two major discussion papers in the energy sector - the proposal to expand the electricity Feed-In Tariff Scheme and the Draft Sustainable Energy Policy 2010-2020.

Two public information session on these are being held. Light refreshments will be served.

RSVP Mayumi Smith on 6207 2464 or email environment@act.gov.au

Politics in the pub: Did Copenhagen sink Tuvalu?

When: Tuesday 9 February, 5:30pm for a 6pm start

Where: The Lounge Bar at the Uni Pub, level 1, 17 London Circuit, Canberra

The Australia Institute is hosting a talk by Mr Ian Fry, the International Environmental Officer

for the Environment Department of the Government of Tuvalu, which will explore the implications for Tuvalu arising from the Copenhagen negotiations. He will discuss some of the political intrigue, the schemers and dreamers and the game playing that underpinned the negotiations. After explaining why Copenhagen was such a failure, he will consider how the process might get back on track.

For more information please contact Serena Rogers on 0421 759 262

Sustainable Population Talk

When: 10 February, 7:30pm

Where: Havelock House, 85 Northbourne Avenue

The ACT Branch of Sustainable Population Australia has been fortunate in getting Australia's most effective campaigner opposing population growth to talk to their next meeting.

Kelvin Thomson MP, the Member for Wills (Bob Hawke's old electorate in inner Melbourne) will speak about his 14-point plan for stabilising Australia's population at 26 million.

Community Forums – tree issues

When and where: 6-8.30pm, Thursday 11 February 2010 at Ainslie Football Club, 52 Wakefield Ave, Ainslie

6-8.30pm, Monday 15 February 2010 in the Bradman Room at Manuka Oval, Canberra Ave, Manuka.

The Commissioner for Sustainability and the Environment, Dr Maxine Cooper, is undertaking an investigation into the Government's tree management practices and the renewal of Canberra's urban forest.

The Commissioner has announced two evening community forums to discuss tree issues as they relate to the investigation. The forums will entail brief presentations followed by a facilitated discussion.

Everyone is welcome to attend. It would assist catering arrangements if you indicate your intention to attend by contacting the Office of the Commissioner for Sustainability and the Environment on envcomm@act.gov.au or PO Box 356, Dickson, ACT 2602 or 02 6207 2626.

Canberra Pedestrian Forum Meeting

When: Monday 22 February, 7-9pm

Where: Conservation Council conference room at 3 Childers St, ACTON.

The forum will discuss objectives and priority projects for the coming year, and the possible re-establishment of "Walking ACT."

Sustaining Water Workshop

When: Tuesday 23 February, 8:30-5:30

Where: Australian Technology Park, Sydney

To everyone concerned about what is happening with water in Australia, this special workshop could be pivotal in a growing awareness campaign.

We all get bogged down in our local issues. The injustice, the stupidity, the arrogance and the resulting depression, lives destroyed, land destroyed. What a waste we say. Why can't the powers that be see it we ask? There are great campaigns raging; and a great success last year for the Mary River, but in the main the situation seems to be getting worse.

There is a great opportunity here, provided by the organizers of Ecoforum, to bring the disparate groups together discussing the issues and determining a way forward. A way that that will unite the voices. A way that will be heard.

If you think that your organisation can win by itself then that is great. This forum might not be for you. If you think that you need help and support then this forum is definitely for you.

For further information email steve@kayak4earth.com or ph 0438 138 982

Professor Ian Lowe to provide keynote address at the ANEDO Conference

When: 28-29 May

Where: Sydney Mechanics' School of Arts in Sydney

The Australian Network of Environmental Defender's Offices (ANEDO) will be holding a national conference on 28-29 May 2010. Professor Ian Lowe will deliver the keynote address on the first day of the conference. The conference program is still being prepared. More details will be available shortly via this bulletin and the EDO website.

Environmental Law Conference

When: 20-23 October

Where: Canberra

2010 is the International Year of Biodiversity and the National Environment Law Association will be holding its National Conference in Canberra.

This will be a unique opportunity to hear challenging presentations on the politics of preserving the world's biodiversity for future generations in the context of best practice environmental and sustainable development lawmaking.

The NELA National Conference is Australia's pre-eminent environmental law conference bringing together Judges, academics, legal practitioners, planners, scientists, government officials and policy analysts.

Further information is at the NELA website

<http://www.nela.org.au/>

Other News

Positions Vacant – AYAD positions, Solomon Islands, Vietnam and Vanuatu

EDO NSW is currently advertising for three Australian Youth Ambassador positions: a Communications Officer with the Public Solicitor's Office in the Solomon Islands, a Climate Change Education Officer role at Live and Learn for Environment and Community in Hanoi, Vietnam and a climate change officer with Live & Learn in Vanuatu.

Further details are available from the EDO NSW office.

Positions Vacant: EDO NSW Scientific Officer

Tom Holden, who headed EDO NSW's Scientific Advisory Service, has recently moved interstate. This has created a new vacancy for the position of Scientific Officer in EDO's Sydney office.

The Scientific Officer will provide objective scientific and technical advice to the community on public interest environmental issues and administer the EDO 's Scientific Advisory Service.

Salary \$50,000-\$63,000 (plus super), depending on experience.

See <http://www.edo.org.au/edonsw/site/jobs.php> for a full position description.

Applications for this position should contain a CV with a covering letter that clearly addresses each of the selection criteria.

Applications should be submitted via email to tanya.wansbrough@edo.org.au (with 'Application for position of Scientific Officer' in the subject line).

Enquiries should be directed to Tanya Wansbrough, Scientific Director (Phone 02 9262 6989).

Closing date: **Wednesday, 10 February 2010, 5pm**

Positions Vacant : EDO VIC Principal Solicitor

Are you an experienced lawyer with a background in environmental law, litigation or administrative law? The environment needs you!

If you want to make a difference; if you're tired of the treadmill and billable hours; looking to break free of the constraints of your government job; or simply looking for an opportunity to use your legal skills in a position more aligned with your values, this might be the position you have been looking for.

EDO Vic is seeking a Principal Solicitor to lead their advice and litigation work.

For more information including a position description and how to apply, see the [EDO](#)

[website](#). Applications close **15 February 2010**, 5pm.

Call for Young People Ambassadors

The ACT Commissioner for Sustainability and the Environment, Dr Maxine Cooper, is inviting expressions of interest for Young People Ambassadors.

The Young People Ambassadors assist the Commissioner and staff on advocacy and awareness of sustainability and environmental issues, particularly in the youth sector (12-25 years).

You will find more information about the Young People Ambassadors on the Commissioner's website [here](#)

Expressions of interest should be lodged by close of business on **Friday, 12 February 2010**

Previous EDO Solicitor receives Australia Day award

EDO would like to congratulate Rosemary Budavari OAM on her recent receipt of an Order of Australia in the General Division, for service to the law through the advancement of human rights and through the Women's Legal Centre of the Australian Capital Territory. Prior to her work in the women's legal centre and human rights Ms Budavari was the principal solicitor of the EDO.

ACT Young Lawyer of the Year

EDO congratulates Nicholas Tebbey of Snedden Hall and Gallop on being named the 2009 ACT Law Society's Young Lawyer of the Year.

Nicholas was a guest speaker at the launch of the EDO's ACT Environmental Law Handbook last year and gave a very interesting presentation on the role of the law in protecting the environment.

Animal Law Toolkit

The Animal Law Toolkit has recently been launched. The toolkit examines key animal law issues, provides animal law course offerings, lists professional animal law associations and contains animal law case notes, resources and other valuable information for budding animal lawyers.

The toolkit is available at

https://www.voiceless.org.au/Law/Misc/The_Animal_Law_Toolkit.html

or by phoning Voiceless on (02) 9357 0723

Contact us

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