



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.

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ACT News

Proposed Development of The Australian Heritage Village

A draft variation to the Territory Plan to enable the development of the Australian Heritage Village and surrounding site for residential purposes is currently being considered by the ACT Legislative Assembly Standing Committee on Planning and the Environment.

Following public consultation on the proposed development, ACTPLA recommended a development to enable sites containing the Australian Heritage Village near the foot of Mount Majura in Watson to be rezoned from entertainment, accommodation and leisure land use to residential use. A large residential development is proposed for the site.

During the consultation process the community raised a number of concerns with the proposal including concern about the potential impact on endangered Yellow Box Red Gum Grassy Woodland and the loss of heritage value.

The EDO, on behalf of the Weston Community Association called on the Minister for Planning to initiate a preliminary assessment of the environmental impacts of the proposal to ensure that any impacts were identified at an early stage. However the Minister considered that any environmental impacts need not be assessed until the development application stage.

A copy of the draft variation is available at the ACTPLA website:
http://www.actpla.act.gov.au/__data/assets/pdf_file/0019/9271/DV261.pdf

Details of the Planning Committee's inquiry into the development including submissions received are available at the ACT Legislative Assembly website:
<http://www.legassembly.act.gov.au/committees/index1.asp?committee=55&inquiry=747>.

Bilateral Agreement for the ACT

The ACT is currently negotiating a bilateral agreement with the Commonwealth which will allow the Commonwealth Minister for the Environment, Heritage and the Arts to rely on specified environmental impact assessment processes of the ACT in assessing actions under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

At present, any actions which have a significant impact on a matter of national environmental significance must be assessed by the

Commonwealth Minister. The Commonwealth Minister decides the appropriate level of environmental impact assessment to be undertaken before making a decision on whether to approve the action or not.

The proposed bilateral assessment agreement in effect accredits the ACT environmental impact assessment process for the purposes of the Commonwealth legislation. It applies where a development is impact assessable under the new ACT Planning laws (essentially larger scale development with a significant impact on the environment). It means that assessment will only need to occur in accordance with the ACT requirements and does not need to be assessed under the Commonwealth legislation. However, final approval remains with the Commonwealth Minister.

The ACT bilateral agreement is similar to agreements already in place between the Commonwealth and NSW, the Northern Territory, Queensland, Tasmania and Western Australia.

The bilateral assessment agreements are designed to minimise duplication whilst retaining the rigour of Commonwealth assessment requirements. The EDO (ACT) supports the broad aim of the agreements. However the EDO (ACT) is concerned by experience in other States that suggests bilateral agreements do not result in appropriate environmental assessment of major projects in all instances.

The EDO (ACT) has made a submission on the draft agreement recommending amendments to ensure rigorous assessment and appropriate community consultation occurs.

A copy of the EDO (ACT)'s submissions on the draft bilateral agreement will be available at our website www.edo.org.au/act shortly or by contacting EDO ACT.

A copy of the draft bilateral agreement is available on the Commonwealth Department of the Environment, Water, Heritage and the Arts website at <http://www.environment.gov.au/epbc/assessments/bilateral/act.html>

Amended Power Station Plans

Following significant community concern about a proposed gas fired power station at Macarthur, ACTEW AGL lodged an amended development application for the proposal. It significantly reduces the size of the proposed power station (from a 210MW power station to a 28MW station).

However community concern remains over the building of the power station and an associated business park consisting of data centres and offices so close to residential homes.

A Health Impact Assessment steering committee has been formed to consider the possible health impacts of the proposal.

The ACT Auditor-General is considering a request from the ACT Legislative Assembly's Public Accounts Committee to examine how the proposed site for the power station and data centre was selected.

A copy of the plans and documents for the amended proposal are available at the ACT Planning and Land Authority's (ACTPLA) website:

http://apps.actpla.act.gov.au/pubnote/pubnoteDetail_new.asp?DA_no=200704152

Some concerned residents have formed a group (Canberrans for Power Station Relocation), aiming to get the proposed power station relocated as far away from residential areas as practically possible. Their website is at <http://canberrapowerstation.info/modules/AMS/>

ACT Feed in Laws Passed

On 2 July 2008 the ACT Legislative Assembly passed the *Electricity Feed-in (Renewable Energy Premium) Bill 2008*, which introduces feed-in laws for the ACT. The EDO welcomes the successful passage of the Bill which was introduced as a Private Member's Bill by MLA Mick Gentleman.

As outlined in the previous newsletter, the ACT feed in laws establish an incentive structure to boost the adoption of renewable energy. Electricity companies are required to buy renewable electricity (from people who generate electricity from renewable sources such as solar photovoltaics) at a premium rate.

However while the Bill passed through the Assembly in July 2008 the scheme will not commence until July 2009, unless an earlier date is determined by the Minister. The EDO welcomes assurances made by MLA Mick Gentleman during Parliamentary debate that the Government intends to determine a date for commencement as soon as possible.

A copy of the EDO (ACT)'s submissions on the ACT Government's Feed-In-Tariff Discussion Paper and the EDO's submissions on the Exposure Draft of the Solar Premium Bill is available on our website www.edo.org.au/act.

A copy of the Act is available at: <http://www.legislation.act.gov.au/a/2008-21/default.asp>.

In addition, in the Federal Parliament, Greens Senator Christine Milne has introduced a Private Member's Bill, the *Renewable Energy (Electricity) Amendment (Feed in Tariff) Bill 2008*, to introduce national feed in laws. The Senate is currently conducting an inquiry into the proposed legislation and has called for submissions. Further details on making a submission are provided later in the newsletter under 'News from around Australia - Current Inquiries and Opportunities for Comment'.

Update on Molonglo Development

Following consultation of a draft variation to the Territory Plan to guide the future development of Molonglo and North Weston, the ACTPLA submitted

a revised draft variation to the Minister for Planning.

The draft variation was referred to the ACT Legislative Assembly Standing Committee on Planning and the Environment who is inquiring into the variation.

In its submission to the Committee, the Conservation Council expressed the following grave concerns about the public consultation process.

“The Conservation Council is particularly concerned that, despite receiving over 150 public submissions on the original DV released in 2007, many of which raised serious matters about the environmental impacts of the proposal, the revised DV released in April 2008 is basically unchanged. This makes the public consultation process a sham and raises the questionability of ACTPLA’s commitment to truly incorporating the concerns of the community into its planning processes.

The Public Consultation Key Issues document released by ACTPLA in April 2008 describes the main issues raised in submissions and the ACT Government responses to these issues. In many cases the document notes that ACTPLA agrees with these issues but, despite this, the DV has not been altered accordingly. In other cases, ACTPLA has disagreed with issues (often issues raised by experts in their field) with minimal justification for its position. Even when the issues are noted and agreed with, the document then overrides many of the concerns by stating that “the Environment Minister, decided that the Preliminary Assessment adequately addressed the environmental issues surrounding Draft Variation No 281 and that no further (environmental) assessment of the plan variation is required.”

The Conservation Council is alarmed by this dismissive attitude. The DV for Molonglo and North Weston is a very significant matter that will have considerable long term impact on the social and environmental future of Canberra. Informed and expert members of the ACT community have much to contribute to a proper public consultation and planning process and it is not acceptable that their serious concerns are dismissed by bureaucrats who appear to have already decided about the planning direction in which they wish to head and have closed minds about alternative approaches which have better environmental outcomes.”

The ACT Government has recently announced that the plans to develop Central Molonglo 560 ha of yellow box-red gum grassy woodlands has been taken off the plans.

A copy of the EDO (ACT)’s submission on the original draft variation will be available at our website www.edo.org.au/act shortly or by contacting EDO ACT.

ACTPLA’s community consultation report and ACTPLA’s responses to key issues raised in consultation are available at ACTPLA’s website: http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_p

[lan/recommended_final_variations.](#)

Information about the Planning Committee's inquiry into the draft variation, including submissions received are at the ACT Legislative Assembly website at

<http://www.parliament.act.gov.au/committees/index1.asp?committee=55&inquiry=746>

ACT Gains Voting Power Under Murray Darling Agreement

The *Murray Darling Agreement Act 2007* (ACT), effective as of 29 May 2008, allows the ACT to fully participate in the discussion and decision making processes of the Ministerial Council and Murray Darling Basin Commission for the first time.

Upon formation of the Murray-Darling Basin Agreement in 1992 only New South Wales, Victoria, South Australia and the Commonwealth were parties. Queensland joined in 1996 and the ACT commenced conditional participation in 1998 through a Memorandum of Understanding. Importantly, the memorandum did not allow the Territory to factor into decision making processes. The commencement of the above legislation alters this and the ACT now has a vote in the resolution of matters as it is considered a Contracting Government.

News from Around Australia

The Australian Network of Environmental Defenders Offices (ANEDO), which is made up of nine EDO offices throughout Australia, including EDO (ACT), has recently made law reform submissions on:

- the House of Representative's inquiry into climate change and environmental impacts on coastal communities;
- aviation and climate change and the Commonwealth National Aviation Policy Statement Issues Paper;
- carbon capture and storage and the Commonwealth draft Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill;
- the design options for the expanded National Renewable Energy Target Scheme
- the recent carbon sinks legislative amendments.

All these submissions are available at www.edo.org.au/policy/policy.html.

Current Inquiries and Opportunities to Comment

ACT

Towards More Solar Efficient Housing

ACTPLA has released an issues paper seeking views from the community on measures that would increase the solar efficiency of suburban housing

to inform future policy development.

Submissions are due by **23 August 2008**.

The issues paper and details on how to make a submission are available from the ACTPLA website:

www.actpla.act.gov.au/_data/assets/pdf_file/0004/9580/Towards_more_solar_efficient_housing.pdf

Draft Variation to the Territory Plan No. 296 – Amendments to Water Use and Catchment General Code

A draft variation is proposed to amend the Water Use and Catchment General Code of the Territory Plan. The Water Use and Catchment General Code identifies the purposes for which water may be used in different parts of the ACT. The purpose of the changes is to enable the implementation of a range of stormwater harvesting, reticulation, pumping and extraction projects under the auspices of the National Water Initiative. These approaches to water management were not envisaged when the water use policies in the Territory Plan were originally formulated.

Written comments are invited on the Draft Variation by **11 September 2008**.

The Draft Variation and information on how to provide comments can be accessed from the ACTPLA website at:

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

Draft Noise Environment Protection Policy

The Environment Protection Authority has released the draft Noise Environment Protection Policy for public comment. The draft policy is designed to help people understand the *Environment Protection Act 1997* and regulations as they apply to noise.

Submissions are due by **29 September 2008**.

The draft policy and details of where to send submissions are available from the EPA website

http://www.tams.act.gov.au/work/environment_for_business_and_industry/environmentprotectionpoliciesandguidelines#

Federal

Inquiry into proposed national feed in tariff legislation

The Senate is holding an inquiry into Senator Christine Milne's Private Member's Bill to introduce a national feed in law, the *Renewable Energy (Electricity) Amendment (Feed in Tariff) Bill 2008* (as mentioned above).

Submissions are due by **15 August 2008**.

Terms of reference for the inquiry and details on how to make a submission are available from the Federal Parliament website:

http://www.aph.gov.au/Senate/committee/eca_ctte/renewable_energy/index.htm.

Review of Kyoto Protocol

The Federal Parliament's Treaties Committee is conducting an inquiry into the Kyoto Protocol following the tabling of it in Parliament on 25 June 2008.

The Committee will hear evidence concerning the position Australia should be taking to future international negotiations and the obligations arising from ratification, including the development of an emissions trading scheme.

Submissions are due by **15 August 2008**.

Terms of reference for the inquiry and details on how to make a submission are available from the Committee website:

<http://www.aph.gov.au/house/committee/jsct/25june2008/index.htm>.

Review of Commonwealth EPBC Act

The Senate is holding an inquiry into the operation of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Submissions are due by **5 September 2008**.

Terms of reference for the inquiry and details on how to make a submission are available from the Parliament website:

http://www.aph.gov.au/Senate/committee/eca_ctte/epbc_act/index.htm.

Green Paper on Emissions Trading

The Federal Government's response to the Draft Garnaut Report was unveiled on 16 July 2008 with the Emissions Trading Scheme Green Paper. Comments on the Paper are now being sought.

Comments are due by **10 September 2008**.

For more information on how to submit comments see the Government website:

www.climatechange.gov.au/greenpaper/index.html.

Litigation News

High Court Dismisses Greens Appeal

On 23 May 2008, the High Court, in a 2–1 split judgement, decided against an appeal by Greens Leader Bob Brown of the full Federal Court's decision which overruled Justice Marshall's 2006 ban on logging in Tasmania's Wielangta Forest.

Justice Marshall found that the Swift Parrot, Wielangta Stag Beetle and Giant Tasmanian Wedge-tailed eagle (all nationally-listed endangered species) were all at risk due to a loss of habitat from logging under Forestry Tasmania's management. Two months after Justice Marshall's ban on logging in the area, then Prime Minister Howard and then Premier Lennon altered the Regional Forest Agreement to agree that, despite the court, it did protect these species.

The High Court effectively ruled that this alteration, which has no parliamentary approval, overrode Justice Marshall's judgement. This decision places Tasmania's endangered species at an increased risk of extinction. The Court, citing public interest, did not award costs against Senator Brown.

For a short history of the Wielangta Forest Case visit the website: www.on-trial.info.

A Win for Clean Air in Georgia, USA

In a landmark decision, a Court in Georgia, USA has ruled that a proposed coal-fired power plant cannot proceed because the proposal does not make provision for the reduction of CO2 emissions.

The Court made a number of nationally significant findings, including that CO2 is subject to regulation under the US Clean Air Act - therefore best available control technology for CO2 must be included in a permit.

The decision in *Friends of the Chattahoochee, Inc and Sierra Club v Dr Carol Couch, Director Environmental Protection Division, Georgia Department of Natural Resources and Longleaf Energy Associates, LLC* is likely to be appealed but represents a great win.

The decision is available at: <http://greenlaw.org/Files/GreenLaw/2008/LongleafFinalSuperiorCourtDecision.pdf>.

Background to the case is available at:

<http://greenlaw.org/net/content/go.aspx?s=52505.0.101.19069>.

Community Education and Events

A New Architecture for Domestic Climate Change Policy: Trading, Tax or Technology

Where: Lecture Theatre, Hedley Bull Centre, Corner Liversidge St & Garran Rd, ANU Campus, Acton

When: Wednesday 13 August, 1-2pm

The Australian National University Centre for Climate Law and Policy and The Embassy of the United States of America Present Professor W. Michael Hanemann, Director of the California Climate Change Centre at the University of California, Berkeley. Prof. Hanemann will analyze the economic arguments for emission trading versus a carbon tax, and for either of those versus regulatory policies ("command and control").

This event is free and open to the public. Details are at <http://law.anu.edu.au/cclp/Index.asp>

Making Your Home Sustainable

Where: Majura Community Centre, Rosevear Pl, Dickson, ACT

When: 7pm, Wednesday 13 August 2008

This is a talk by Derek Wrigley, author, architect, industrial designer, and solar consultant, about retrofitting your home to reduce energy and water use in Canberra's climate. Presented by the Inner North group of [SEE-Change](#). Entry by gold coin donation. For more information, contact Vanessa on 6248 0885.

Climate Change Adaptation and Mitigation Workshop

Where: Albury, NSW

When: 20 August 2008

This workshop is part of the Sustainable Economic Growth for Regional Australia annual conference. The workshop aims to strengthen the essential links between perspectives and policy on climate change adaptation and the tools and techniques for reducing risks and impacts and to demonstrate how economic development practitioners, planners and natural resources managers in regional Australia can be readily equipped to meet the challenges of climatic variability and extreme weather conditions.

Further details are available at www.segra.com.au/segra/

National Walk to Work Day

When: Friday 3 October 2008

With average use, an Australian family car travels 15,000km a year, generating about 5 tonnes of greenhouse pollution and costing its owners about \$13,000. Walking just 10km a week (1km each way, to and from work), instead of driving, saves about \$900 in transport costs and 300 kilograms of greenhouse pollution each year.

Walk to Work Day (WTWD) is an annual event held around Australia which promotes regular walking and a cleaner environment. By registering for participation at www.walk.com.au individuals, businesses and organisations can take the first step to improve our nation's health and environment.

Other News

EDO Memberships now due

A reminder that EDO memberships for 2008/09 are now due. You should have received an email reminder with a membership renewal form. However if you have not received a renewal form please contact the Office.

Conservation Council - New Director

The Conservation Council has appointed a new Executive Director, Catherine Potter. EDO congratulates Catherine on her appointment.

The Conservation Council has also changed its name from the 'Conservation Council of the South East Region and Canberra Inc' to 'Conservation Council ACT Region'.

EDO job vacancies

NSW EDO Acting Policy Director

NSW EDO is seeking an Acting Policy Director to lead the Office's policy activities. This is a maternity leave position in EDO's Sydney office and is expected to be for 12 months.

Applications close Friday 15 August 2008.

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

North Qld EDO Environmental Lawyer

North Qld EDO is seeking an experienced environmental lawyer. The position is based in Cairns with a salary range between \$43,000 - \$55,000.

Applications close Friday 8 August 2008.

For more details contact the North Qld Office at adminng@edo.org.au or (07) 4031 4766.

Student Writing Competition: Overeating the Environment?

In the event of the launch of its new national environmental law journal, *IMPACT!*, the EDO would like to invite tertiary students to participate in a student writing competition, with a chance to be published in the upcoming edition of *IMPACT!* and win \$500, courtesy of Maddocks.

The topic of the next edition will be 'Overeating the Environment?', dealing with issues relating to food and sustainability.

The rules and guidelines for the competition are listed below:

- The competition runs once a year (*IMPACT!* is a biannual publication)
- The winning entry will receive \$500 and be published in the upcoming edition of *IMPACT!*
- Entrants must have been enrolled at an Australian tertiary institution in the previous 12 months
- Entries must relate to the topic of the upcoming edition
- Articles should focus on Australian law but use international examples where applicable
- Minimum word count 2,500, maximum 3,000
- Deadline for all entries is 8 September 2008

- Send your entries as attachments to education@edonsw.org.au
- Publisher reserves the right to edit entries

For more information and suggested essay topics for the upcoming edition, go to www.edo.org.au/edonsw and follow the student prize link.

ANU Opens Centre for Climate Law

The Australian National University has opened a Centre for Climate Law and Policy– the first of its kind in Australia. Professor Tim Bonyhady has been appointed Director and will teach Australia’s first course dedicated to climate law.

For further details see <http://law.anu.edu.au/cclp/Index.asp>.

Awards Australia Nominations Open

Awards Australia is now accepting nominations for the Regional Achievement and Community Awards. The awards are about recognising rural and regional achievers in the community. Categories include Environment and Landcare, and Regional Service.

Nominations Close **8 August 2008**.

For more details visit the website:

http://www.awardsaustralia.com/RACA_nsw.html.

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