



GREENLAW

(OCTOBER 2011)

ENVIRONMENTAL DEFENDERS OFFICE

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Native Vegetation (Miscellaneous) Amendment Bill 2011

On 22 June the *Native Vegetation (Miscellaneous) Amendment Bill 2011* was introduced into the House of Assembly and is currently in the Legislative Council. The Bill sets out a number of proposed amendments which may impact the protection and enhancement of native vegetation, and also may have wider implications for biodiversity in South Australia.

A summary of the significant amendments follows:

Application of the Act: The Bill requires that the Native Vegetation Act applies to the City of Mitcham. This is a welcome change (the Act does not apply to the metropolitan area of Adelaide), however, we recommend that the application of the Act be broadened to allow it to apply to the metropolitan area of Adelaide.

Native Vegetation Council:

- The Bill gives the Minister general direction and control of the Native Vegetation Council, except with respect to the Council's advices, recommendations or hearings. This is of concern as it has the potential to compromise the Council's operations;
- The Minister must nominate a person with extensive knowledge and experience in planning and development to the Council. Given that planning is one of the major threats to native vegetation¹, this is opposed.

Native Vegetation Fund: The Bill gives the Council added flexibility to use the fund to establish, regenerate or maintain native vegetation in a region other than the region where the land which is to be cleared is located in certain circumstances. Whilst this may be of benefit, the trend allowing clearance if there is an offset by way of a significant environmental benefit is concerning.

Section 26: The offence of clearance - expiation fees and time limits:

- expiation fees for clearance are increasing from \$500 to \$750, but we submit the increase should be higher; and
- the time limit for the Native Vegetation Council to initiate proceedings for clearance is increasing from 21 days to six months. This is a welcome change.

Offsets: A Credit for Environmental Benefit Scheme: This allows the Native Vegetation Council to credit a person with having achieved an environmental benefit. This proposed change together with the significant environmental benefit currently operating form a nascent offsets scheme which in itself is of concern as it does not have the rigorous regulation that should be required to ensure that the scheme benefits native vegetation and not the reverse.

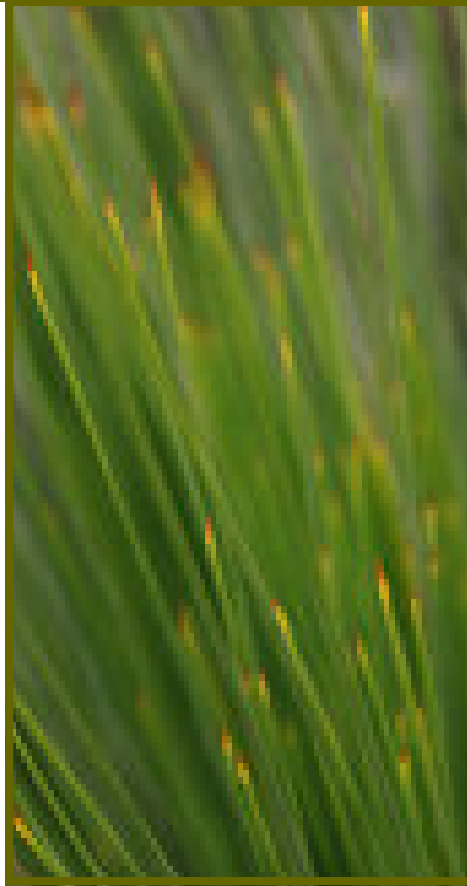
¹ Native Vegetation Council Report 2008/2009 p3

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Section 31EA: Make good provisions proposed to be deleted for “minor matters”:

The proposed section 31EA allows a person, who has received a make good order for a minor breach, to apply to the Native Vegetation Council for a substituted direction. There is concern that such a section will result in many applications to avoid the make good provisions which were put in place to deter clearance. Without a “make good” requirement there is a real risk that a person will clear the land and accept the fine. This is particularly the case where the commercial gain is far greater than the fine. As a result, this should not be allowed.

Ruth Beach, EDO Solicitor



The Opposition’s proposal for SA’s Planning Future

The Shadow Minister for Urban Development and Planning, David Ridgway MLC has released a discussion paper on SA’s planning system ‘Developing a Better South Australia’.

The paper proposes establishing a Planning Commission as used currently in WA. It is proposed that this independent statutory body would be responsible for State development strategies. The Commission would consist of a range of planning, environmental and social experts and be serviced by a number of committees with similar expertise.

The discussion paper alleges numerous inadequacies in the SA Government’s 30 Year Plan, in particular its failure to address the potential of regional growth. It is proposed that South Australia should establish planning committees specialising in the development of regional areas, which are to be equipped with the requisite knowledge of each region’s community interests.

Submissions are due by 31 December. For a copy of the paper visit: www.lga.gov.au

**Notice of Environmental Defenders Office
ANNUAL GENERAL MEETING**

**Launch of the EDO’s report
LAND BIODIVERSITY AND THE LAW:
THE CASE FOR REFORM**

**Wednesday 26 October 2011
5.30pm launch, 6.00pm AGM
Finlaysons
Level 12, 81 Flinders Street, Adelaide**

Please let us know by **Friday 21 October**
if you will be attending the AGM and/or the launch.

Email: edosa@edo.org.au or phone: 8410 3833



Government's New Direction for South Australia's Planning System

The SA Government has announced plans to overhaul the current zoning system, engage in more comprehensive infrastructure planning and immediately review the City of Adelaide's planning policy framework. The Opposition's proposal for a new planning model based on the Western Australian system has been rejected on the basis that it would impose another level of bureaucracy on the planning process.

Part of the reforms will be by way of changes to the Residential Code to be implemented by the end of 2011. This includes the reduction of the number of zones from 650 to around 27.

Reforming policies which affect the City of Adelaide region is another major government concern. A steering committee will be specifically created to examine the opportunities for actively using buildings across the city centre.

Updated EDO Information Guides now online

The following Information Guides are available for download on our website: <http://www.edo.org.au/edosa/>

- 1. Corporations and the Environment**
- 2. Incorporation of Community Groups**
- 3. Mobile Phone Towers**
- 4. Roads Opening and Closing Act**
- 5. Volunteers Protection Act**

New EPA Illegal Dumping Unit established

EPA establishes Illegal Dumping Unit

The South Australian Environment Protection Authority is to establish an Illegal Dumping Unit (IDU) to focus on illegal waste activities such as illegal landfilling, illegal dumping of hazardous wastes, illegal dumping of commercial quantities of demolition and industrial waste, and waste businesses operating without an EPA licence.

The IDU will use intelligence, covert surveillance and other investigative techniques to identify all parties that are involved in an illegal waste activity, including parties along the waste chain, from producer, through transporter to the disposer. The EPA states there will be a zero tolerance approach to offenders, including cost recovery and confiscation of the profits of illegal activity, to remove the financial incentive associated with illegal waste activity.

The EPA has also set up an Illegal Dumping Hotline for members of the public to report illegal dumping or illegal activity:

- Telephone: (08) 8204 2004 or 1800 623 445 (non-metropolitan callers)
- Fax: (08) 8124 4670

Email: epainfo@epa.sa.gov.au

Updated and new EDO Fact sheets now online

The following Fact Sheets are available for download on our website: <http://www.edo.org.au/edosa/>

- 1. Public Participation in Development Plans**
- 2. Public Participation in Development Plan Amendments**
- 3. Development control in SA**
- 4. Appeals Applications under the Development Act**
- 5. Procedure in the ERD court**
- 6. Access to Documents**
- 7. Freedom of Information**
- 8. Taking Urgent Action**
- 9. Public Participation in EPA licensing policy formulation**
- 10. Appeals civil remedies**
- 11. Native Animals**
- 12. Native Vegetation**
- 13. Water**
- 14. Defamation**
- 15. Climate Change Act**
- 16. Community Land**
- 17. Lobbying for the Environment**
- 18. Contaminated Land**
- 19. Spray Drift**
- 20. Noise Pollution**
- 21. Natural Resources Management**

Renewable Energy and Economic Incentives: Lessons from Germany

In the weeks and months after Fukushima, Germans took to the streets demanding closure of the 25 nuclear reactors responsible for producing nearly a quarter of the nation's electricity. What ensued in the following months was remarkable: on 30th May 2011, the German cabinet signed off on a Bill phasing out nuclear power by 2022. The Nuclear Exit Bill, as it is commonly known, has been described as the most significant political U-turn in Germany since Unification. To understand how and why it was possible to cede so quickly and definitively to public pressure, one has to go back and examine environmental and economic policy in post-Chernobyl Germany.

While German renewable energy policy pre-dates Chernobyl (it actually goes back to 1974, just after the first oil crisis), government spending on solar and wind research and development reached a peak in 1982 before declining steadily over the next four years (Lauber and Mez 1 – 2). The events of 26 April 1986 were to reverse that trend, inspiring policy and investment that would establish Germany as a world leader in the green energy sector.

Cataclysmic events, though in and of themselves tragic, can provoke debate and mobilise the public around important social and environmental issues. So it was in Europe where the 'nuclear question' became firmly embedded in the zeitgeist. While individual nation states and their communities demonstrated varying degrees of concern about the safety of nuclear energy (the most dramatic rise in anti-nuclear protests took place in Germany, followed by Switzerland), the issue was now well and truly out there in the public sphere

(Duyvendak and Koopmans 238).

The broader international community reacted by creating safety laws designed to minimise the possibility of another large-scale nuclear accident. Germany, however, was sufficiently haunted by the ghost of Chernobyl to seriously contemplate going one step further: doing away with nuclear power.

With 70% of the population opposed to nuclear energy by 1988 (Lauber and Mez 1-2), the idea of a post-nuclear Germany was beginning to take shape. By 1990 it had gained enough momentum for parliament to pass the Electricity Feed-in Law, a statute so pragmatic that not even the conservatives tried to vote it down. In essence, the law *required* electricity utilities to connect renewable energy generators to the grid and to purchase the resulting electricity for between 65 and 90% of the final sale price (known as a feed-in tariff)¹. This of course formed part of a broader strategy intended to nurture the renewable energy industry through the delicate development and growth phases, thereby allowing it to evolve into an economically viable and competitive sector. To that end, the new law exonerated renewable energy companies from negotiating contracts with utility companies and offered considerable financial incentives to investors (which were complemented, *inter-alia*, by state-based subsidies).

¹ *There are two types of feed-in tariffs: net and gross. In short, 'a net feed in tariff...pays the PV system owner only for surplus energy they produce; whereas a gross feed in tariff pays for each kilowatt hour produced by a grid connected system.'* *The highly successful German model is based on a gross feed-in tariff system. (Energy Matters)*

Following a change in government, the Feed-In Law was repealed and replaced with the Renewable Energy Sources Act of 2000 (RESA), the purpose of which was to double renewable energy production by 2050. This goal has since been revised to 100% by 2050 following detailed feasibility studies commissioned by the German government (Morgan).

While the new law did maintain the crucial feed-in mechanism, it was varied so as to account for differing production costs and economies of scale within the renewable energy sector. In the first instance, feed-in tariffs were to be based on the actual cost of generating a particular type of renewable energy rather than being expressed as a percentage of average end customer tariffs. This meant that more expensive forms of energy production would be adequately 'compensated' under the new scheme. Furthermore,

...the new rates were now fixed for 20 years (earlier on, there was no such guarantee, and prices had declined of late as a result of liberalisation). For wind power, they were made dependent on the quality of the location: all operators would receive a favourable rate for at least five years, thereafter the rate would decline, but later in the case of less favourable locations. Rates were particularly favourable for PV, offshore wind and biomass. (Lauber and Mez, 10 – 11).

Tariffs continue to change with each iteration of the law, the most recent of which was passed in 2010. The results speak for themselves, with a report published in March 2011 by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety noting that in 2010:

- The overall share of renewables in total final energy consumption increased to 11% (from 10.4% in 2009).
- The share of renewable electricity in total electricity consumption increased to 16.8% (from 16.3% in 2009).
- Greenhouse gas emissions avoided through the use of renewables increased from 111m tonnes to 120 million tonnes.
- Investment in renewable energy sources installation increased to 26.6 billion Euros (from 19.9 billion Euros in 2009, which represents almost 25% growth in one year).
- Jobs in the renewable energy sector increased to 367,400 (from 339,500 in 2009, which represents 9% growth in one year).

(Federal Ministry Report 3, 14, 15).

While I've glossed over the complexities of the economic incentives developed and refined between 1990 and 2010, the story is relatively simple: well-thought out economic incentives work. They result in measurable environmental benefits and they encourage investment, which results in jobs.

Although nuclear energy isn't on the agenda in Australia, the fundamentals of the German model can still be applied to the energy sector and to biodiversity conservation, to cite but two examples. To give credit where credit's due, we have already adopted a number of incentive-based programs, including State-based feed-in tariff schemes².

² *The only States and Territories with gross feed-in tariff schemes are ACT, NT and NSW (though the NSW scheme has closed). The rest are net. (Energy Matters)*

While some of these schemes have been remarkably successful (for example in South Australia), there is a strong argument to be made in favour of a uniform, national gross feed-in tariff scheme³ supported by state-based subsidies and other incentives. This argument is particularly persuasive when we consult the statistics. According to Geoscience Australia, renewable energy sources still account for only about 5% of our primary energy consumption, while coal accounts for around 40%.

Again, the Germans are looking down the barrel of 100% renewable energy by 2050 because they set ambitious targets (in spite of strong opposition from the conventional energy sector), which they then *exceeded*.

Australia is the world's largest exporter of coal. This means that in addition to burning vast quantities of it in Australia, we are also perpetuating its use in other countries and to that extent are implicated in millions of tonnes of greenhouse gas emissions beyond our borders.

By the time this is published the drawn out saga that has come to be known as the carbon tax (which is in fact a price on carbon, not a tax) will have culminated in the passing of the relevant bills through both houses of parliament. In any case, while pricing carbon is an important step on the path to enlightenment, we won't be able to just sit back and wait for windmills to pop up across the continent. As the Germans have shown, significant change requires decisive action in the form of take-no-prisoners legislation providing for (*inter alia*) an array of persuasive economic incentives.

³ *Renewable Energy (Electricity) Amendment (Feed-In Tariff) Bill 2008*

Emma Carmody, EDO volunteer

Australia's Third Annual Wild Law Conference

In September 2011 Australia's Third Wild Law Conference titled 'Earth Jurisprudence: Building Theory and Practice' took place at Griffith University, Queensland. Earth Jurisprudence proposes rethinking our political and legal systems to ensure they support, rather than undermines, the integrity and health of the planet. Lawyers, government workers, scientist, activists, educators, students and other concerned individuals from all over Australia and the world gathered to explore the ideas behind earth jurisprudence, wild law and the rights of nature.

Keynote speakers included: Emeritus Professor Ian Lowe, Cormac Cullinan from EnAct International South Africa and author of the book 'Wild Law,' the Honourable Justice Brian J Preston, Chief Judge, NSW Land and Environment Court, as well as Professor Douglas Fisher (QUT), Senator Larissa Waters, Dr Chris McGrath (UQ), Jo-Anne Bragg (EDO Qld), and Professor Klaus Bosselmann (University of Auckland).

The conference concluded with the launch of two new Australian networks: The Australian Wild Law Alliance (AWLA) and the Earth Laws Network. AWLA is the new Australian Network on Wild Law and Earth Jurisprudence and a member of the Global Alliance for the Rights of Nature. For more information, contact Michelle Maloney at email: wild-law2011@griffith.edu.au or phone 0419 497 596. The Earth Laws Network has been launched by Southern Cross University and will focus on research to develop wild law and earth jurisprudence. For more information contact Alessandro Pelizzon at email alessandro.pelizzon@scu.edu.au or phone 02 6620 3369.

The Government's Response to the Hawke Report: A Summary

The Federal Government has released its response to the 'Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)' (the Review). The Review made a total of 71 recommendations, some of which the government has agreed to act upon.

Significant changes which the government has agreed to make to the Act include: Creating a single list of threatened species; facilitating Biodiversity Banking through the creation of national standards; including 'Ecosystems of National Significance' in the Act as a new matter of national environmental significance; allowing the Environment Minister

to make emergency listings of threatened species; and an increase in penalty provisions for certain offences.

However, the government's response in other areas was most disappointing. Other recommendations including a number advocated by the EDO network were rejected, many on the basis that environmental considerations needed to be balanced with economic and social considerations. Recommendations which were rejected by the government included: conferring more power on Environment Minister to weigh a number of environmental considerations before making an approval decision;

decisions about granting permits along with many other Ministerial decisions to be made open to merits review; an extended definition of legal standing to include people who made a formal public comment during the decision-making process; the Federal Court not to require an applicant give undertaking as to damages as a condition of granting an injunction; and empowering the Federal Court to decide whether a case is a 'public interest proceeding' and, if so, to determine the appropriate form of 'public interest costs order'.

For more information go to: www.wilderness.org.au/sa

Melissa Ballantyne, EDO solicitor

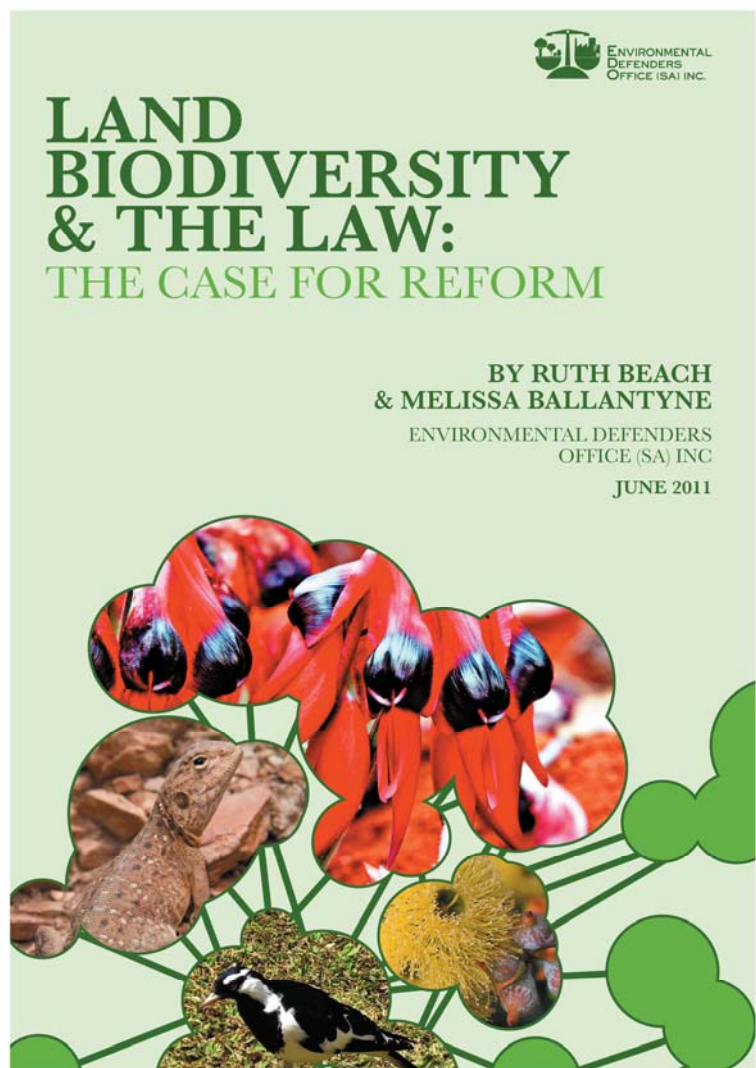
LAND BIODIVERSITY AND THE LAW: THE CASE FOR REFORM

Digital and printed copies of the EDO's report will be available at the launch (see page 2) and from the EDO office after Thursday 27 October.

Disks of the report: free

Printed copies: \$15

Donations towards reproduction costs would be gratefully received.



Amendments to the Mining Act 1971 and Mining Regulations 2011

On 1 July amendments to both the Act and Regulations came into effect. Amongst other matters there is a new definition of environment, the protection of which must be considered when the grant of a mining licence is to be determined. "Environment" includes:

- Land, air, water (includes surface, underground water and seawater), organisms, ecosystems, native fauna and other features or elements of the natural environment and
- Buildings, structures and other forms of infrastructure, and cultural artefacts; and
- Existing or permissible land use; and
- Public health, safety or amenity; and
- The geological heritage values of an area; and
- The aesthetic or cultural values of an area.

Tenement holders are now required to have an approved program for environment protection and rehabilitation (PEPR).

A PEPR must contain the following:

- Proposed mining operations;
- Environmental outcomes;
- Criteria to measure those environmental outcomes;
- Ability to achieve environmental outcomes;
- Any information required by licence condition.

The amendments provide for a new compliance framework. Where mining operations may result in undue damage to the environment or a breach under a PEPR authorised officers may, by written notice, direct mining operators to undertake action including:

- Ceasing operations either indefinitely or for a period of time;
- Undertaking a particular action, tests or monitoring;
- Undertaking rehabilitation activities;
- Providing the Minister with results or compliance reports.

Illegal mining activity now attracts a fine of up to \$250,000 or imprisonment for two years.

Melissa Ballantyne, EDO solicitor



Data Projector for hire

The EDO has a NEC Data Projector which is available for hire to not-for profit groups or individuals.

Hire fee is \$25.00

ENVIRONMENTAL LAW VOLUNTEER ADVISORY SERVICE

The Environmental Defenders Office invites lawyers with environmental law experience and who have an unrestricted practicing certificate to offer their services, free of charge, at the EDO Advisory Service on a Thursday evening.

Rostered environmental lawyers generally attend the EDO 3-4 times per year to advise clients face to face on their legal rights regarding a range of environmental and planning issues.

Please contact the EDO if you are able to assist by phoning 8410 3833 or emailing edos@edo.org.au

Environmental Defenders Office on
Kangaroo Island
FREE LEGAL ADVICE
On all aspects of environmental law

Monday 24 October 2011
in Kingscote

Appointments for Mon 24 October must be made by calling the EDO in Adelaide on 8410 3833

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	Duncan Hartshorne	Paul Leadbeter
		Richard Cook
		Brendan Grigg
		Tiana Nairn

EDO solicitors run an Outreach Program with visits to regional centres within South Australia. There are up to four outreach visits each year, where EDO solicitors provide free legal advice to community groups and individuals on all aspects of environmental law. For information on future outreach sessions, please contact the Environmental Defenders Office.

EDO SUBSCRIPTION

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All memberships expire on 30th June 2012

The information contained in this newsletter is not a substitute for proper legal advice. Contact the EDO or your solicitor for more detailed legal advice if you have a specific problem on an environmental law issue.