

# GREENLAW



Environmental Defenders Office (SA) Inc.

APRIL 2009 GREENLAW # 29

## ADVANCE NOTICE

### CLIMATE CHANGE AND THE LAW EDO SEMINAR 2009 25 June 2009

The annual EDO seminar will take place this year on 25 June 2009 and will be held at Alan Scott Lecture Theatre at the University of South Australia. Topics to be covered include:

- Adapting to the consequences of climate change - the role of the planning system in South Australia.
- Reducing greenhouse gas emissions - who can do what?
- Future International Action - The Post-Kyoto Regime, from Bali to Copenhagen.

Registrations will be opening soon. For more information visit the EDO website on:  
[www.edo.org.au/edosa](http://www.edo.org.au/edosa)

## LOWER LAKES AND COORONG

On 5 March 2009, the Premier of South Australia, the Honourable Mike Rann, said in Parliament:

*"I have asked that a team be assembled to bring together all of the legal and scientific expertise necessary to prepare a constitutional court challenge that I am prepared to take all the way to the High Court of Australia. Our Solicitor-General will lead the legal team and we will recruit eminent constitutional law experts and private practitioners to develop our case. We will not undertake such an action lightly. ....*

*Our objective shall be to return sufficient permanent fresh water to the river to restore its health. I have asked a legal team to examine all avenues to secure South Australia's rights to water.*

...

*Our state will not shirk its duty to keep the Lower Lakes and their environment in a sustainable*

*article continued on page 2 ...*

*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*

condition until the Commonwealth government can purchase enough permanent water licenses to send additional environmental water down the river.”<sup>1</sup>

We welcome these comments and applaud this decision. We call on the State government to take this action urgently and to withdraw its plans for the so-called temporary weir near Wellington and its plans for the introduction of salt water into the lakes. Such action is likely to permanently impact the wetlands habitat and the international listing of the lakes as a freshwater to slightly salty area of water on the RAMSAR Convention on Wetlands.

We also call for proper regulation of the water market to ensure that the ordinary person's access to water is not subject to the uncertainties of multinational corporations, large enterprises and governments.

This office will continue to advise its clients on these issues so as to ensure that the Premier's promises are fulfilled.

1. Hansard records the full speech at page 1885. See: <http://hansard.parliament.sa.gov.au/pages/loaddoc.aspx?i=77263>

Ruth Beach, EDO Solicitor

## DONATE TO THE EDO!

The EDO relies on the generosity of our supporters to provide vital legal assistance to the community on all environmental issues. You can donate via our secure online facility at:

<http://www.edo.org.au/edosa/index.htm>

Alternatively print a form from the same page and post it in. or give us a call on (08) 8410 3833.

Thanks to recent donors :

Garry Ryan & Pat Bergin for their kind donation of \$200.

Norman Waterhouse Lawyers for their assistance in producing this newsletter

## THANK YOU TO DLA PHILLIPS FOX & WELCOME TO EYENIA ADAMOPOULOS

In February Evyenia Adamopoulos, an associate solicitor was seconded to the Environmental Defenders Office from DLA Phillips Fox for a period of six months.

Evyenia will be assisting staff solicitors Melissa Ballantyne and Ruth Beach with the day to day running of the EDO office. The EDO would like to thank DLA Phillips Fox for this generous contribution and welcomes Evyenia to the EDO legal team.

## MARATHON RESOURCES & ARKARoola SANCTUARY

In late January, 2009 Marathon Resources submitted a report to Primary Industries & Resources SA (PIRSA) detailing recent clean up activities they had undertaken at Arkaroola Wilderness Sanctuary. In 2008 it was discovered that the company had been illegally dumping waste from their uranium exploration activities at Mt Gee within the sanctuary. On 5 Feb 2009 Marathon Resources served a Notice of Entry on the Sanctuary's owners seeking to conduct exploration. This was prior to any indication from PIRSA that the clean up had been satisfactorily completed.<sup>1</sup> When questioned by Greens MLC Mark Parnell in parliament the Minister for Mineral Resources Development, Paul Holloway, stated that he was unaware that Marathon Resources had served a Notice of Entry and indicated that he would not be approving any such entry until their clean up report had been approved.<sup>2</sup> To date no notification of approval of the report has appeared on the PIRSA website.

1. The Greens *Marathon up to old tricks as it tries to re-commence mining activities at Arkaroola*, media release 06/02/09, <http://markparnell.org.au/mr.php?mr=551>

2. Notes of Legislative Council, 05/02/09, [www.parliament.sa.gov.au](http://www.parliament.sa.gov.au)

Kathy Whitta, EDO Administrator

## CLIMATE CHANGE & THE PLANNING SYSTEM

On 26 February 2009 the *Development (Bushfire Protection) Variation Regulations 2009* varied the *Development Regulations 2008* in relation to future development in bushfire protection areas. Bushfire protection areas are areas which will be designated in the Development Plan of a relevant Council area.

Climate change impacts will be taken into account in locations where there is a bushfire risk. As a result of changing weather patterns fire seasons are becoming longer. Consequently, areas across Australia are experiencing more days of extreme fire danger. The measures will make South Australia one of the first jurisdictions in the world to take into account the impacts of climate change on planning matters.

Melissa Ballantyne, EDO Solicitor

## EPA REVIEW OF THE SA ENVIRONMENT PROTECTION (WATER QUALITY) POLICY 2003

The EPA is proposing changes to four key matters in the policy namely; a) removal of the obligation not to contravene water quality criteria, b) removal of the obligation not to discharge or deposit listed pollutants or waste into waters or onto certain land; c) removal of the obligation not to discharge listed pollutants or waste into bores, mine shafts etc and d) expansion of the meaning of wastewater lagoons.

The EDO is opposed to the changes as the mandatory obligations currently act as a preventative measure. It is proposed to replace these obligations with a general duty which adopts a 'reasonable and practicable' approach to the discharge of waste. The test is too subjective and does not seek to prevent the activities addressed in the policy. Furthermore, the EPA would be limited in its ability to monitor, enforce and punish offenders under the proposed changes.

Evyenia Adamopoulos, Phillips Fox secondee solicitor

## REVIEW OF NATIVE VEGETATION & BUSHFIRE RISKS

A new policy review will consider how native vegetation can be better managed to reduce the risk of bushfires in South Australia. The review panel will comprise the head of the Environment Department, the presiding member of the Native Vegetation Council and the head of the Country Fire Service (CFS). Amongst the matters to be considered will be the roles played by local government, the CFS and environmental agencies in bushfire protection.

Melissa Ballantyne, EDO Solicitor

## PROPOSED ENVIRONMENT PROTECTION (WASTE TO RESOURCES) POLICY

The EPA has recently released this document for public consultation. The draft policy is intended to support the achievement of the State's Strategic Plan target of reducing waste to landfill by 25% by 2014. In particular it contains a regulatory framework designed to promote resource recovery and the diversion of waste from landfill. In part this includes that in most instances waste is not to be disposed to landfill unless it has first been subject to resource recovery. The policy will supersede the Environment Protection (Waste Management) Policy 1994.

For more information visit [www.epa.sa.gov.au](http://www.epa.sa.gov.au)

Melissa Ballantyne, EDO Solicitor

## LAW REFORM SUBMISSIONS & PRESENTATIONS

Do you need help with a law reform submission? Would you like one of our staff to give a presentation on a particular environmental law topic? If yes please call our office on 8410 3833 or 1800 337 566 (country callers).

## RECENT AMENDMENTS TO THE DEVELOPMENT ACT (1993)

Several planning reforms in South Australia took effect from 1 March 2009, implemented by amendments to the *Development Act 1993* ("Act") and *Development Regulations 2008* ("Regulations"). The majority of the amendments have arisen out of the *Development (Planning and Development Review) Amendment Act 2009* ("Amending Act") and *Development (Residential Code) Variation Regulations 2009* ("Amending Regulations"). In short the substantial changes to the Act include:

- The introduction of certain development which requires building consent only;
- Faster assessment times for certain types of development;
- Increasing the types of development which require no approval at all, such as shade sails, decking, pergolas, and roller doors provided that they meet specific criteria under the Act.
- Increasing the list of development which is complying development and therefore must be approved.

Felicity Niemann, Solicitor,  
Norman Waterhouse Lawyers

## NEW DWELLINGS & SITE CONTAMINATION REQUIREMENTS UNDER THE DEVELOPMENT ACT 1993

Following the commencement of the *Development (Residential Code) Variation Regulations 2009* ("Amending Regulations") certain forms of development are now described as complying developments in respect of a Development Plan.

Clause 2B of Schedule 4 to the Amending Regulations deals with new dwellings and when they will be *complying* development. These provisions in Amending Regulations presently have no practical effect because the Minister has not yet determined any area to which that Clause 2B will apply. Specific exceptions apply when a new dwelling is complying de-

velopment under the Act. One exception is that, where there is actual or potential site contamination of an allotment, Clause 2B will not apply unless certain requirements are satisfied.

The amended version of Schedule 5 now requires that any application for a new dwelling made pursuant to Clause 2B must include a declaration by or on behalf of the applicant indicating whether or not, to the best of their knowledge and belief, the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land. Schedule 5 also requires that if the indication in that declaration is that the allotment is or may have been subject to site contamination then the applicant must furnish a site contamination audit report that complies with the requirements of Clause 2B(4) of Schedule 4.

Clause 2B(4) requires that a site contamination audit report under part 10A of the *Environment Protection Act 1993* ("EP Act") must be furnished. Under that clause the site contamination audit report must show either that site contamination does not exist (or no longer exists) at the allotment or that any site contamination at the allotment has been cleared or addressed to the extent necessary to enable the allotment to be suitable for unrestricted residential use.

It is important to note that much of part 10A of the EP Act is not yet operative. It is anticipated that those provisions will become operative in June or July 2009. It is also important to note that the requirement under Clause 2B(4)(d) to "clear" or "address" the site contamination so that is suitable for "unrestricted residential use", is somewhat stricter than the remediation requirements under the EP Act. The remediation requirements under the EP Act are that site contamination be treated, contained, removed or managed so as "to eliminate or prevent actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses". There is no requirement under the EP Act that an allotment to be cleared or addressed to be suitable for unrestricted residential use.

Felicity Niemann, Solicitor,  
Norman Waterhouse Lawyers

## THURSDAY NIGHT ADVISORY SERVICE

Clients make appointments with our volunteer lawyers who are on a roster to give advice on environmental and planning issues. There are usually times for two appointments starting at 6pm. Clients can ring 8410 3833 to book a time to see a lawyer.

### DO YOU HAVE A COMPUTER YOU COULD DONATE TO THE EDO?

We are still on the look out for a desktop computer and a laptop for the EDO office. If you have anything that meets the following specifications please give us a call on (08) 8410 3833.

- No more than 2-3 years old
- 1GB DDR2 RAM if possible (otherwise DDR ok)
- 20GB hard drive
- Celeron is ok if it is recent otherwise a fast P4 type of CPU

No more than 2-3 years old is the most important criteria, if in doubt about the others just give us a call.

## VOLUNTEER AT THE EDO!!

### Currently Seeking:

#### Lawyers:

If you have an unrestricted practicing certificate, experience in environmental law, and the odd free Thursday evening you may be interested in volunteering for our advisory service.

#### Law students:

Especially if you have completed the Environmental Law course.

#### Fundraiser:

We are after someone to research and undertake fundraising activities for the EDO. Would suit someone with previous fundraising experience and the ability to commit for a reasonable period of time.

## EDO SUBSCRIPTION

TAX INVOICE  
ABN: 76 179 048 350

### ENVIRONMENTAL DEFENDERS OFFICE (SA) INC MEMBERSHIP FORM

I wish to join the Environmental Defenders Office (SA)

Name..... Signature.....

Address.....

.....P/C.....

E-mail.....

Telephone: (work).....

(home).....

I enclose my annual fee of \$44.00  
\$22.00 – concession  
\$99.00 – corporate (includes law firms)  
\$44.00 – corporate concession (not for profits)

(all GST inclusive)

Donation \$..... (pay no GST on this)

Total \$.....

Payment (CHEQUE, MONEY ORDER, CASH) enclosed or

Credit card (circle one)      Visa      Mastercard      Bankcard

Name on Card..... Signature.....

Card No    \_ \_ \_ \_ \_    Expiry Date:.....

All memberships expire on 30<sup>th</sup> June

If you are happy to receive this newsletter by email please contact Kathy Whitta at [edosa@edo.org.au](mailto:edosa@edo.org.au)

## Contact Us

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