



Issue 20 – Q2 2013

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National Update

1. A New Planning System for NSW

The NSW government's White Paper and draft legislation for [A New Planning System for NSW](#) is open for public comment until Friday 28 June 2013. EDO NSW has released a briefing note with preliminary analysis of the White Paper and draft legislation. [Click here](#) to read this briefing note on our website.

A clear message of the White Paper and draft legislation is that the new system will have a strong focus on strategic planning, which can be an important tool in planning

for and implementing for climate change adaptation and mitigation measures. However, neither the White Paper nor the draft legislation explicitly incorporates climate change or renewable energy development into strategic planning processes.

For EDO NSW's submission on the planning reforms generally, and the place of climate change in these planning reforms specifically, [click here](#).

You can [have your say](#) on the White Paper and draft legislation under **Friday 28 June 2013**.

2. Quarterly Update of Australia's National Greenhouse Gas Inventory: December 2012

The Federal Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education has released its [quarterly update](#) of Australia's National Greenhouse Gas Inventory.

The report finds that greenhouse gas emissions increased in the December quarter of 2012, with the main contributors to this being fugitive emissions from the production, processing, transport, storage, transmission, and distribution of fossil fuels, and stationary energy (excluding electricity) including emissions from the direct combustion of fuels, predominantly in the manufacturing, mining, residential and commercial sectors.

The report also discusses land use and forestry, as well as Australia's commitments under the Kyoto Protocol. According to the report, Australia remains on track to meet its Kyoto Protocol target of limiting emissions to 108 per cent of 1990 levels on average over the Kyoto period 2008-2012.

[Click here](#) for more information and to read the report.

3. ARENA's funding reduced in Commonwealth Budget 2013-14

The [Commonwealth Budget 2013-14](#) reveals changes to [Australia's Renewable Energy Agency's](#) (ARENA) funding arrangements. ARENA will undergo a funding cut of 5 per cent, and its \$3 billion funding will be extended until 2022 rather than 2020. Funding for investment in solar projects through the [Education Investment Fund](#) will be reduced by almost \$160 million. This money will be returned to the Education Investment Fund.

[Click here](#) for more information.

International Update

4. United State Climate change case: *Native Village of Kivalina v. ExxonMobil*

The Native Village of Kivalina in Alaska brought a case against ExxonMobil and a number of other oil, energy, and utility companies in the United States. Kivalina sought damages for public nuisance, arguing that the huge amount of greenhouse gas emitted by these companies has resulted in global warming, which has severely eroded the land where the City of Kivalina sits. Kivalina's survival is now threatened as a result of this erosion.

The Court found because the legislative and executive arms of government already impose measures for the limitation of greenhouse gas emissions through the *Clean Air Act* and action taken by the [Environment Protection Authority](#), and that therefore the common law right to seek damages for public nuisance is extinguished. In making its decision, the Court found that Kivalina's future lies in the hands of government, not in remedies provided by the common law.

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

5. United States Climate Change Case – *Comer v. Murphy Oil*

A group of residents from the Mississippi Gulf Coast in the United States of America filed a case against Murphy Oil and a number of other energy, fossil fuels, and chemical companies arguing that these companies contributed to global warming, including sea level rise, which intensified the effects of Hurricane Katrina in 2005, causing damage to their properties. The District Court dismissed the case, agreeing with Murphy Oil and the other companies that the argument was political, not legal, and that the residents did not have standing to bring the case.

The residents appealed this decision, and in 2009 the Court of Appeal found that the residents did indeed have standing to bring some elements of their case, reversing the District Court's decision. However, several judges were removed or removed themselves from hearing the proceedings, meaning that the Court of Appeal did not have the numbers required to hear the case. Despite this, the majority of remaining judges held that they did still have the power to dismiss the appeal, which they did, reinstating the District Court's original dismissal of the residents' case. This meant that the residents' only remaining avenue for an appeal was in the Supreme Court.

The residents applied to the Supreme Court seeking a review of the Court of Appeal's dismissal of the appeal. This application failed. The residents were ultimately left with no ability to secure an appeal hearing from the District Court's original decision.

In 2011, the residents filed another case in the District court on mostly similar grounds to the original case. The District Court dismissed their case again, this time holding that their case was barred from being reheard because it had already been heard and concluded on its merits in the original lawsuit. The residents appealed against this decision in the Court of Appeal, arguing that due to the way that the

Court of Appeal had dismissed their appeal, this was not the case. However, the Court of Appeal found that the original lawsuit had been properly concluded by a final judgement on its merits, despite the way that it was dismissed, and therefore the residents were barred from bringing an identical lawsuit.

Click [here](#) and [here](#) to read the judgments.

6. Bonn Climate Change Conference – June 2013

United Nations Framework Convention on Climate Change (UNFCCC) talks are taking place in Bonn, Germany 3-14 June 2013. These talks will include discussion on global equity, including enhancing climate change adaptation, capacity building, and support for implementation and response measures, particularly in relation to the [2015 agreement](#). Also on the agenda is a discussion of issues related to the Kyoto Protocol, which has entered its [second commitment period](#). Parties are also expected to discuss strategies for raising greenhouse gas emissions reduction targets.

[Click here](#) for more information.

Media, Reports, and Other News

7. The Standard: *Moyne seeks certainty over climate change liability* (1 May 2013)

The Moyne Shire Council in Victoria has raised concerns about liability for coastal erosion caused by climate change. Councillor Jill Parker is concerned that local councils do not have the resources to deal with the effects of coastal erosion related to climate change, and has sought the support of the Australian Local Government Association to ask the Federal Government to provide a coordinated national approach to coastal management and planning.

[Click here](#) to read the full article.

8. Productivity Commission Report: Barriers to Effective Climate Change Adaptation

The Productivity Commission has released a report following a public inquiry into regulatory and policy barriers to effective climate change adaptation. The Commission examined the costs and benefits of various options to address identified barriers, including taking no action, and assessed the role of markets as well as non-market mechanisms in facilitating climate change adaptation. The Commission also assessed whether government intervention is appropriate in these markets and non-market mechanisms.

The report acknowledges that the climate is changing and will continue to do so for the foreseeable future, and that the way most Australians will experience climate

change through the frequency, location, timing, and intensity of extreme weather events. The Commission recommended that all levels of government should consider climate change in risk-management practices and include regulatory and policy flexibility so that business and the community can manage climate change risks. The Commission recommended that this include flexible land use planning regulation which is aligned with building regulation, clarifying the role of local councils and their liability in relation to the impacts of climate change.

[Click here](#) to read ANEDO's submission to the inquiry.

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

9. Report: Major companies fail to report greenhouse gas emissions

The [Environmental Investigation Organisation](#) (EIO) has reported that the many of the largest companies in the world fail to report their greenhouse gas emissions correctly. The EIO's 2013 Carbon Ranking research into the greenhouse gas emissions reporting of the world's 800 largest companies found that only 37 per cent of companies worldwide report a complete set of data. Only 21 per cent externally verify their data. The purpose of the Carbon Rankings is to put pressure on companies by rewarding lower emissions and encouraging greater transparency. The aim is to create an environmental tracking stock market index which directs capital away from the least efficient companies and towards the most, linking company share price to pollution.

[Click here](#) for more information.

10. Climate Commission Reports: The Critical Decade: Global Action Building on Climate Change

The [Climate Commission](#), an independent commission established by the Australian government, has released a report on action being taken on climate change around the world. The report focusses on the United State and China, which produce approximately 37 per cent of global greenhouse gas emissions.

The report finds that China will commence seven emissions trading schemes (ETS) in 2013, a key regulatory tool for combatting climate change, and that a national ETS is in the works, and the US State of California, the ninth largest economy in the world, has commenced its own ETS. The report recommends that significant action must be taken this decade in order for emissions to be rapidly reduced by 2050.

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

11. Report: Climate Change Adaptation in the Boardroom

The [National Climate Change Adaptation Research Facility](#), in conjunction with [Future Ready](#), [Climate Planning](#), and [DLA Piper](#), has published a report discussing

climate change adaptation in the corporate sector. The report finds that companies are not giving enough consideration to climate change, and that there is support lacking from the Federal Government. The report makes recommendations for companies and peak bodies to explore the risks of climate change and the opportunities that adaptation and other responses present.

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

12. Invitation to Join EDO NSW's Scientific Expert Register

EDO NSW is seeking scientific and technical experts with 10 or more years' experience in a range of fields to join our [Expert Register](#). PhD students are also encouraged to apply.

The Expert Register is a list of scientific experts who are willing to assist EDO NSW with public interest environmental matters on a pro bono basis. A key aim of the service is to increase the public's capacity to participate effectively in the environmental planning and development assessment process.

EDO NSW is also seeking to develop relationships with research organisations and environmental consultancies interested in doing pro bono work.

If you would like more information on how to be involved in the scientific work of EDO NSW, and have expertise in climate science or a relevant environmental field, please contact EDO NSW on 02 9262 6989.

13. Legal Aid cuts threaten environmental justice

From 1 July this year, [Legal Aid will no longer be available for environmental cases](#).

That's the Legal Aid that has provided financial support for community groups to take public interest cases for the environment for a quarter of a century, that helped to save our forests through iconic legal cases in the 1990s, and that has enabled us to take on landmark cases like the [Walker case](#), the first case in Australia to consider the impacts of climate change on a proposed development.

Legal Aid has been a long standing part of the landscape for over 27 years. And it has now been scrapped. To make sure that we can continue to take on the cases that matter to the community and the environment, we're expanding our [Environmental Defence Fund](#) to help fill the gap that will be left from the loss of Legal Aid.

Please support the [Environmental Defence Fund by clicking here](#) today. We must be ready to protect our fragile environment.