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### EDO NSW EBULLETIN – 16 March 2018: Number 1047

A free weekly bulletin that includes news, events, notices and opportunities for public comment. These are also listed on our website in [Have Your Say](#).

EDO News & Events	Court & Compliance	Law Reform & Policy Watch
Have Your Say Alerts	Community News	Support EDO NSW

### EDO NSW News and Events

#### Land clearing Code declared invalid by Court – then immediately remade



*Coming out of Court: Elaine Johnson, EDO NSW Principal Solicitor, Rachel Walmsley, Policy and Law Reform Director, David Morris CEO, Meg Lamb Solicitor and Kate Smolski, Nature Conservation Council CEO.*

Last Friday, the NSW Land & Environment Court made an order that “on and from 24 August 2017, the Land Management (Native Vegetation) Code 2017 has been invalid and of no effect.”

This extraordinary order stemmed from a legal error made by the NSW Minister for Primary Industries in the making of the Code. The Minister had a legal obligation to obtain the concurrence of the Environment Minister before making the Code, which he failed to do.

Following the Court order, our CEO David Morris stated, “In conceding that they failed to follow due process, the Government gives the strong impression of making laws on the run. This is not simply a matter of incorrect paperwork. Ecologically sustainable development is not just another box to tick – the Environment Minister has a legal responsibility to protect biodiversity in this state.”

Later the same day, the Minister for Primary Industries remade the Code without amendment.

Although not unexpected, it was very disappointing, for both us and our client – the Nature Conservation Council - that this was done without addressing any of the serious concerns raised in the legal challenge.

In addition to the argument that the Primary Industries Minister failed to obtain the Environment Minister's concurrence, we argued that, in making the Code, the Ministers did not take into account the legal principles of ecologically sustainable development, as they are legally required to do.

Because the Government conceded the first ground, it does not now have to answer the second ground of the challenge in Court.

Challenging the failures of Government Ministers to adhere to the laws made by Parliament is an important part of defending democratic principles and the rule of law. We are now scrutinising the new Code and will keep you informed of developments.

[Read about the case »](#)

[Read our blog on the declaration of the Code as 'invalid' »](#)

### **EDO NSW in the news**

- [WaterNSW took almost a year to act on water theft accusations: EDO](#)
- [Qube's Moorebank Intermodal to proceed with conditions](#)
- [Laws that make land clearing easier ruled invalid by NSW court](#)
- [Native vegetation laws in chaos after court says act invalid](#)
- [NSW remakes code deemed invalid by court](#)
- [Berejiklian Government allows open slather on wildlife](#)

### **EDO Insider MCPD seminars**

EDO NSW is pleased to offer professional development seminars covering mandatory fields for lawyers – Professional Skills and Ethics and Professional Responsibility – in the context of environmental law.

### **[Environmental law in the South Pacific - Today 12:30pm](#)**

How can lawyers in Australia help our colleagues in the South Pacific protect the environment?



*Serua Island, Fiji. Photo by Cyrielle Randrianarivony.*

Our International Program Manager BJ Kim will discuss the deep-seabed mining litigation being run by our partners in Papua New Guinea, our International Program's work building the capacity of environmental lawyers in the South Pacific and opportunities for both solicitors and barristers to get involved.

### **Using professional skills to protect the marine environment – 21 March**

What tools do lawyers have at their disposal to protect the marine environment and achieve justice more broadly in administrative law processes?



*White shark. Photo by Terry Goss, Wikimedia.*

Belinda Rayment, EDO NSW Solicitor, will discuss how professional skills, including advocacy, alternative dispute resolution and administrative and court processes, can be effectively applied to achieve outcomes. Humane Society International Marine Scientist Jess Morris will also join the discussion.

### **Ethics and climate change litigation – 29 March**

Do we have an ethical obligation to use the law to try to effect the change needed to preserve a safe climate?



*Hazelwood power station. Photo by Mriya, Wikipedia.*

Barrister James Hutton and Elaine Johnson, our Principal Solicitor, will discuss the ethics of climate change litigation and cases being run both domestically and internationally.

*The seminars will run from 12:30-1:30pm at McCabes Lawyers, Level 38 MLC Centre, 19 Martin Place, Sydney. Cost is \$45 and a light lunch will be provided.*

*All funds raised from these seminars go towards our core work of helping the community protect the environment through law. We are very grateful to our pro bono partner McCabes for hosting these events.*

### **EDO NSW Community workshops on new Cultural Heritage Laws**



The NSW Government is planning to make big changes to Aboriginal Cultural Heritage laws. (See Have Your Say below for public consultation on a draft Aboriginal Cultural Heritage Bill.) The EDO will be holding a series of free community workshops to discuss the proposed new law. Keep an eye on our [Community Workshops page](#) for future listings.

- [Bourke Tuesday 27 March](#)

**Help us continue our vital work**



Photo Chad Beranek



EDO NSW was Australia's first community legal centre focused on public interest environmental law. Since losing 100% of our Federal Government funding, we've relied on your support to continue our vital work - ensuring that people and nature have access to environmental justice, that our planning system is accountable and transparent and that laws properly protect our environment.

If you like our work, you can help by donating to our [Environmental Defence Fund](#).

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### **Court and Compliance Watch**

#### **Cement mill fined for storing raw materials in the open**

The NSW Environment Protection Authority (EPA) fined Port Kembla Milling \$30,000 for storing raw materials in the open, contrary to a strict requirement of the facility's planning approval and licence conditions for the materials to be stored in an enclosed location to prevent dust emissions.

[Read more »](#)

#### **Brickworks fined for exceeding dust emissions limits**

The NSW EPA has fined PGH Bricks & Pavers Pty Ltd \$15,000 for exceeding the particle emission limit from one of its kiln stacks as set out in the conditions of an environment protection licence.

[Read more »](#)

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### **Law Reform and Policy Watch**

## NSW Regional Forests Agreement

Based on evidence of how the agreements have operated to date, EDO NSW does not support the proposed rollover of RFAs. Accordingly, in this submission on the proposed extension of the RFAs for a further 20 years, EDO NSW reiterates five issues with the performance and review of NSW RFAs to date:

- RFA reviews have not occurred in the required timeframes
- Poor community consultation
- Lack of third party civil enforcement and a culture of non-compliance
- Limited data on environmental indicators
- Need for transparent forestry governance and operational requirements.

The submission also raises four related issues that require further consultation:

- a draft of any RFA renewal
- review of the NSW Integrated Forestry Operations Approvals (outstanding since 2014)
- review of the National Forest Policy Statement and principles that underpin the RFAs
- new and robust approaches to climate change in any future RFAs (noting that the 2015 Paris Agreement urges nations to take action to conserve and enhance carbon sinks and reservoirs, including forests).

[Download this submission »](#)

## Recent EDO submissions and reports

- [NSW Regional Forests Agreement](#) – EDO NSW submission
- [Ancillary rules for use of mine site ecological rehabilitation as an offset](#) – EDO NSW submission
- [Improving Mine Rehabilitation in NSW](#) – EDO NSW submission
- [Regional Forests Agreements Review](#) – EDO NSW submission
- [Draft VLAMP and Mining SEPP](#) – EDO NSW submission
- [Draft Large Scale Solar Energy Guidelines](#) – EDO NSW submission
- [New State Environmental Planning Policy \(Environment\)](#) – EDO NSW submission
- [Water Use by Extractive Industry](#) – EDOs of Australia submission
- [Primary Production and Rural Development proposed SEPP](#) – EDO NSW submission

Find all our law reform submissions and briefing papers [on our website](#).

## Local Environmental Plan tracking

- *No new listings have been placed on exhibition since the last eBulletin.*

To access the LEP tracking system, visit the Department of Planning and Environment [website](#), go to [Current Proposals](#) and search for 'On Exhibition'. Read more about LEPs in our [Fact Sheets](#). Visit your [local council's website](#) to see if there are any planning proposals or LEP changes open for public comment.

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## Have Your Say Alerts – Opportunities to Comment

The eBulletin gives alerts for opportunities to comment on changes to law and policy and activities that may impact the environment in your area. For a comprehensive list of current opportunities to have your say on a range of environment and planning matters, visit our [Have Your Say site](#).

Our online resource [also helps the community to effectively engage](#) with decision-makers and [request a workshop](#) for your community.

### Consultations

- **Draft Aboriginal Cultural Heritage Bill**

This draft Bill proposes a new framework for the management and protection of Aboriginal cultural heritage in NSW. The new legislation would establish a new Aboriginal Cultural Heritage Authority empowered to make regulations, policies and guidelines that provide detailed rules for how the new arrangements will work.

There will be consultation workshops around NSW throughout March:

- Albury – 20 March
- Bega – 20 March
- Bathurst – 22 March
- Port Macquarie – 23 March
- Broken Hill – 26 March
- Muswellbrook – 26 March
- Griffith – 28 March
- Nowra – 28 March

Submissions close on 20 April 2018.

[Read more and have your say »](#)

- **NSW Water Reform Action Plan**

The NSW Department of Industry is seeking community feedback on consultation papers to inform the NSW Water Reform Action Plan. The papers cover the following topics: Better Management of Environmental Water; Water Take Measurement and Metering; Transparency Measures; and Floodplain Harvesting Policy.

There will be community consultation events held around NSW:

- Dubbo – 16 March
- Broken Hill – 20 March
- Bourke – 22 March
- Moree – 27 March
- Coffs Harbour – 28 March
- Gunnedah – 28 March
- Wentworth – 4 April
- Griffith – 6 April

Submissions close on 15 April 2018.

[Read more and have your say »](#)

- **Draft Regional Strategic Pest Management Plans**

NSW Local Land Services is seeking input into 11 draft regional strategic pest animal management plans. The plans identify the risks in each region, set regional pest animal management priorities and provide for the coordinated management of pest animal risks within and across Local Land Services regions.

Plans will be on exhibition until 5pm on Friday 20 April 2018.

There will be local information sessions around NSW throughout March and April.

[Read more and have your say »](#)

- **Review of the Carbon Credits (Carbon Farming Initiative)**

The Commonwealth Department of Environment and Energy's Emissions Reduction Assurance Committee is conducting a review of the Human Induced Regeneration method and the Native Forest from Managed Regrowth method. The Committee has released discussion papers and invites written submissions from the public to inform its review.

Submissions close on 13 April 2018.

[Read more and have your say »](#)

- **Review of the Greenhouse and Energy Minimum Standards Act 2012**

The Commonwealth Department of Environment and Energy's GEMS Regulator is undertaking an independent review of the Greenhouse and Energy Minimum Standards Act 2012. The review is to ensure the GEMS Act remains appropriate and effective in reducing Australia's energy consumption and greenhouse gas emissions. The review invites public submissions on the Discussion Paper, which will be considered to inform the development of a Draft Report.

Submissions close on 28 March 2018.

[Read more and have your say »](#)

## **Threatened Species and Endangered Ecological Community Listings**

- **Nominations invited:** Nominations are invited for species, ecological communities or key threatening processes to be considered for listing under national environment law during the assessment period starting 1 October 2018. Nominations close at 5pm on Friday 30 March 2018. For further information, contact the Species Information and Policy Section, by email [epbc.nominations@environment.gov.au](mailto:epbc.nominations@environment.gov.au) or telephone (02) 6274 2535.
- *No new listings have been placed on exhibition since the last eBulletin..*



For a full listing of threatened species and endangered ecological community listings currently open for public comment, visit the [NSW Office of Environment and Heritage website](#) and the [Australian Department of the Environment website](#).

### **Fisheries assessments**

- *No new assessments have been placed on exhibition since the last eBulletin.*

For a full listing of fisheries assessments currently open for public comment, visit the [NSW Department of Primary Industries website](#) and the [Australian Department of the Environment website](#).

### **Plans of Management: Invitation to comment**

- *No new plans of management have been placed on exhibition since the last eBulletin.*

### **Major Project proposals: Invitation to comment**

- [6A Averys Lane, Cessnock](#) – Developer contributions to infrastructure. Submissions invited until 12 April 2018
- [Glebe Island Silos, Leichhardt](#) – Extension of the duration of consent for the display of advertising signage. Submissions invited until 28 March 2018
- [Austen Quarry, Lithgow](#) – Modification of conditions of consent to quarry extension. Submissions invited until 10 April 2018
- [Sandigo Solar, Narrandera](#) – Development of a 100MW solar farm. Submissions invited until 8 April 2018
- [Thredbo Ski Slopes Merritts Spur Precinct, Snowy River](#) – Replacement of chairlift and detachable gondola lift. Submissions invited until 6 April 2018
- [Perisher Range Ski Slopes Perisher Valley Precinct, Snowy River](#) – Snow rock removal on sky run at Perisher Valley. Submissions invited until 4 April 2018
- [St Catherine's School, Waverley](#) – Modification to Staged Redevelopment of School Campus. Submissions invited until 21 March 2018

For a full listing of major project proposals currently open for public comment, visit the Department of Planning and Environment's [website](#). To learn more about the planning process for major projects, read our [Fact Sheet](#) on State Significant Development and State Significant Infrastructure.

### **EPBC Referrals: Invitation to comment**

- [Point Lonsdale, VIC](#) – Reconfiguration of existing golf course.
- [Epping, VIC](#) – Subdivision and development of land for industrial, logistics and commercial purposes
- [Altona North, VIC](#) – Subdivision and development of land for industrial use
- [Cairns, QLD](#) – Removal of 16 trees on a Novotel resort, 4 of which are roost trees for spectacled flying-foxes
- [Sutton, NSW](#) – Development of a solar farm in a greenfield site

Referrals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) can be viewed on the Australian Environment Department's [website](#). To learn more, read our [Fact Sheet on the EPBC Act](#).

### **New Coal and Petroleum Exploration Licence Applications**

- *No new coal or petroleum exploration licence applications have been listed since the last eBulletin.*

To view current coal and petroleum (including CSG) exploration licence applications and approvals, visit the Minerals and Petroleum [website](#). [Common Ground](#) is the NSW Government's online tool to help you find information about current exploration and mining activity in your area. The [NSW Government Gazette](#) also contains a list of all exploration and mining lease applications and determinations. Public comment can be made on coal and petroleum (including CSG) exploration licence applications on the Minerals and Petroleum [website](#). To learn more, read the EDO NSW publication [Mining Law in NSW: A guide for the community](#).

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### **Community News**

#### **Aurora Project Legal Internships**

The Aurora Project works closely with a range of specialists in native title, Indigenous education and the broader Indigenous sector to deliver programs and services across Australia. Applications for the winter 2018 round of legal internships close on 30 March 2018 at 5pm.

EDO NSW recently hosted an Aurora intern, William Field-Papuga, who assisted with our work on the NSW Aboriginal cultural heritage reforms and ongoing legal advice work for our Aboriginal clients.

[Find out more »](#)

#### **Better Laws for a Better Planet – Symposium on the Future of Australia's Environmental Laws**

This symposium organised by the Australian Panel of Experts on Environmental Law brings together experts from across disciplines and sectors to discuss the key challenges, opportunities and directions for the next generation of environment laws to deliver genuine environmental protections.

EDO NSW CEO David Morris and Law Reform Director Rachel Walmsley will be speaking at the conference.

When: Tuesday 27 March 2018

Where: University House Hotel, Acton, Canberra

[Read more »](#)

#### **2018 Future of Environmental Law Symposium**

The Legal Practice Section of the Law Council of Australia will be hosting the 2018 Symposium. The event will include a special presentation honouring the contribution of Justice Murray Wilcox AO QC to environmental jurisprudence in Australia.

When: Thursday 19 April 2018 11:45am – late (dinner)

Where: NSW Law Society 170 Phillip St Sydney

[Read more »](#)

### **2018 Mahla Pearlman Oration**

The oration will be delivered by former Chief Justice of the High Court, the Honourable Robert French AC, who will be introduced by the Honourable Justice Rachel Pepper. The oration will also include the presentation of the Mahla Pearlman Australian Young Environmental Lawyer of the Year Award.

When: Thursday 19 April 2018 5 – 7pm

Where: Federal Court of Australia, Sydney

[Read more »](#)

### **Narratives of Climate Change Symposium**

This will be an interdisciplinary collaboration inspired by the possibility that the gap between scientific knowledge and effective political, legal and social action can be bridged by alternative forms of narrative, including fiction, social and other media, performances of all types, visionary planning and innovative litigation.

When: Thursday 5 – Friday 6 July 2018

Where: Newcastle Law School, 409 Hunter St, Newcastle

[Read more »](#)

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## **Support EDO NSW**

### **We need your help to keep defending our environment**

EDO NSW has been providing critical legal support to communities for over 30 years. We are the only legal centre in NSW specialising in public interest environmental issues. As a not-for-profit, non-government organisation, we rely on your support to help fund our programs and services.

Your help is vital to ensuring that community groups and individuals across Australia and the South Pacific have access to environmental justice.

[Find out more here »](#)

[Make your donation online here »](#)

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