

2018 SA ELECTION

ENVIRONMENTAL LAW REFORM PRIORITIES PAPER

INTRODUCTION

This paper sets out the law reform priorities for South Australia as identified by the state's leading non-government environmental law advisory service – the Environmental Defenders Office SA Inc. (EDOSA). EDOSA has provided high quality environmental law advice to government and the community for over twenty five years. In that time, while important gains have been made, environmental law reform, and environmental protection generally, have lagged far behind community needs and expectations – and the gap is widening.

This 2018 state election is a crucial time for all parties and candidates to commit, as a priority, to improving SA's environmental laws, with a strong focus on creating more transparent, engaging and rigorous environmental planning and assessment processes – leading to better decisions about SA's greatest asset: our beautiful, biodiverse and productive environment.

Summary of key reforms

In almost all SA's environment-related legislation and associated planning, assessment and approvals processes there is a fundamental lack of opportunity for effective public participation. Instead, the legislation and processes encourage poor planning, promote unsustainable development and lack fundamental safeguards for the environment and communities.

Set out below, in summary form, are the key changes needed to put SA's future on a more sustainable footing.

- 1. Greater legal protection for native vegetation, urban forests and the fauna they support**
- 2. Planning laws and policies which enhance community participation and environmental protection**
- 3. Simplified heritage listing and management systems which prioritise protection and community participation**
- 4. Enhanced regulation of mining and petroleum to protect environmental assets and arable land**
- 5. Improved transparency and accountability in relation to environmental decision making**
- 6. Immediate increase in recurrent government funding for the EDOSA in the amount of \$200,000 per annum**

A. PROPERLY VALUING, PROTECTING AND RESOURCING THE NATURAL ENVIRONMENT

- a. An audit of all land in South Australia to determine areas over which mining tenements will not be granted eg arable land
- b. Ban on mining and petroleum activities in national parks
- c. Review new native vegetation regulations to ascertain how they are being used and the extent of vegetation removed as a result of their use (including exemption in bushfire areas)
- d. Mandatory reporting of all clearance of native vegetation under the exemptions to the Native Vegetation Council together with payment of a significant environmental benefit amount.
- e. Give the Native Vegetation Council power to make directions in relation to native vegetation clearance associated with land sub divisions
- f. Review use of 'offsetting' of clearing and the cumulative impact of many small patches of native vegetation being cleared
- g. Commence process to integrate various pieces of legislation governing native vegetation, including modernization of out-of-date provisions
- h. Public reporting of clearance of native vegetation resulting from mining activities
- i. Assessments on significant/regulated trees to be carried out by independent, properly qualified arborists, paid for by developers but contracted to local councils to avoid a conflict of interest.
- j. Moratorium on further removal of significant and regulated trees pending a metropolitan wide audit of trees remaining and their condition
- k. Legislative requirement that once a tree has been assessed as being regulated or significant, and poses no risk to the public, there is a moratorium of 5 years on any further application for its removal, after which public consultation is again required.
- l. Planning policy which prioritises the retention of significant and regulated trees
- m. Building plans to be finalized before removal of significant and regulated trees is considered
- n. Review of planning regulations which are relevant to significant and regulated trees.
- o. Public consultation on all applications which seek to remove a significant or regulated tree.

B. PLANNING

- a. Enhanced notification and consultation rights in regulations
- b. Community Engagement Charter to apply to both policy and assessment matters
- c. Where not currently legislated for and where applicable, public availability of all applications, planner's reports, agency and public submissions, proponent's response, advice to Minister and reasons for decision
- d. Open meetings where decision makers are considered applications
- e. Repeal of the ability of any decision maker or the Planning and Design Code to reduce or remove public consultation rights
- f. Expanded third party review rights including including but not limited to general impact assessed developments and change of land use applications where the subject land is adjacent a different zone.
- g. Restricted development appeals to be published online within 7 days of being notified by the appellant or the Court
- h. Public consultation on proposals to develop and enhance the open space of the Adelaide Park Lands

- i. Development of policies which prioritise protection of the environment (including arable land)
- j. Use of prescriptive planning policies in the new Planning and Design Code
- k. Replace spot rezoning and catalyst site development with the preparation of a planning policy framework involving public input. Specific guidance to be provided for high-rise development addressing location, access to open space, light, form and design.
- l. Repeal use of the Coordinator-General's "call in " powers
- m. Declarations and decisions about significant projects to be subject to Parliamentary disallowance/review
- n. New development adjoining heritage buildings and places should be complementary in terms of overall height, bulk, form and appearance.
- o. Promotion of independent and ethical planning

C. HERITAGE PROTECTION

Improve the system for dealing with heritage matters by:

- a. Including all heritage listing matters within a single Heritage Act.
- b. Establishing a single integrated statutory body to handle all listing of heritage matters.
- c. Establishing an integrated single heritage register covering all listings, managed by the independent statutory body.
- d. Retaining all current listings, including heritage protection zones
- e. Streamlining listing criteria whilst having regard for local characteristics
- f. Simplifying and streamlining process for new listings which includes mandatory timeframes for listing (with automatic listing if timeframes are not met) and gazettal of approved listings.
- g. Removing legislative requirement for property owners to vote for establishment of heritage conservation zones.
- h. Requiring reasons for listing or non-listing of heritage
- i. Increasing community participation in heritage listing through an open public nomination system.
- j. Introducing third party appeal rights in relation to local heritage listing decisions.
- k. Providing incentives to owners of heritage listed places

Improve the regulation of development as it affects heritage listed places by:

- a. Reviewing classification of demolition applications for both State and local heritage places, including a right for third parties to appeal planning consent
- b. Allowing minor works on heritage listed places to be exempted from planning approval only in well defined circumstances.
- c. Having a mandatory Heritage Code of Practice for adaptation of heritage buildings.
- d. Increasing penalties for intentional neglect of heritage listed structures.

D. MINING AND PETROLEUM

- a. Immediate moratorium on petroleum operations utilising hydraulic fracturing.
- b. Transfer environmental impact assessment (EIA) of projects to either the Environment Protection Authority (the EPA), or the South Australian Department of Environment, Water and Natural Resources (DEWNR).
- c. EIA to be undertaken by independent assessors overseen by the EPA or DEWNR.

- d. EIA fund to be set up with contributions from proponents.
- e. New independent expert scientific committee to ensure decisions (whether about conventional or unconventional resource extraction) are informed by the best available science
- f. New office of Land and Water Commissioner to provide oversight and advice with respect to exploration across South Australia.
- g. New right of veto with the Environment Minister in relation to grant of a lease or licence where a proposed operation is likely to have significant impacts on the environment and community
- h. More comprehensive assessment of environmental impacts in relation to the grant of exploration licences
- i. Environment Protection Authority (EPA) to have power to decide whether a lease or licence should be cancelled, renewed or suspended if there has been a failure to abide by approvals which results in material or serious environmental harm in a protected area. In the alternative formal arrangement requiring conferral with the EPA on sanctions or with DEWNR.
- j. Wider range of information available on mining public register
- k. Mandatory consultation with respect to substantial new or increased impacts not considered in the original lease assessment;
- l. Community input into decisions regarding the lifting of exempt land status;
- m. Effective community participation involvement programs which includes parties whose rights may be directly and adversely affected by the nature and extent of a proposed activity
- n. Multi stakeholder advisory committee which assists consultation and allows community recommendations to be considered and implemented
- o. All proposals subject to public consultation
- p. Updated notification procedures
- q. Introduction hird party merits review and enforcement rights in the Environment, Resources and Development Court
- r. Allow members of the public and local councils to make applications for certain areas to be reserved from mining and petroleum activities and establish a task force, which includes community representatives, to resolve land use conflicts over the siting of such activities

Amend the Mining Act to:

- a. Include explicit reference to the need for the Minister to consider the principles of ecologically sustainable development when administering the Act
- b. Include criteria to guide court decision making as to when it is appropriate for mining to be allowed to proceed at the expense of farming (as per native title)
- c. Provide for a wider range of modern compliance and enforcement mechanisms available to the regulator, and strengthen existing mechanisms
- d. Include a fit and proper person test when decisions are made to grant tenements, with such a test to include mandatory consideration of Regulation 89 information together with the proponent's history under other regulatory regimes
- e. Strengthen provisions to ensure land and water is rehabilitated, and legacy issues are addressed, including the provision of an industry fund for the rehabilitation of abandoned mines (in addition to bonds as a means of ensuring rehabilitation of current and future mines)
- f. Make private mines subject to equivalent environmental protection provisions as mines operated under tenements

- g. Repeal Part 8A, to ensure that special mining enterprises are not exempt from the environment assessment, approval and compliance and enforcement provisions of the Act.

Amend the Petroleum Act to:

- h. Make the primary object of the Act the development of the petroleum industry in a way that ensures SA's unique environment is not adversely affected
- i. Require the Minister and all agencies and persons involved in the administration of the Act to;
 - act consistently with the objects in Parts 1 and 12 of the Act and the objects of the Natural Resources Management Act 2004;
 - take into account climate change impacts;
 - take into account cumulative impacts, or potential cumulative impacts of petroleum operations and;
 - use objective criteria when making a decision whether or not to approve a project.
- j. Mandated Codes of Practice for unconventional gas fracture stimulation activities and shale gas well integrity which set out the most up to date proven, cost-effective technology, practices and requirements for the industry both nationally and internationally;
- k. Require landholder's consent to drill a well prior to the commencement of any activity and enter property for the purposes of exploration or production if a relevant court has made a compensation order.
- l. Require operators to compensate landholders for reasonable legal costs in negotiating land access agreements
- m. Provide for a presumption that any damage from activities regulated under the Act is caused by the operator.

E. FAIR, OPEN AND DEMOCRATIC PROCESSES

- a. Ban on developer donations
- b. Make public the operations of the Independent Commission Against Corruption
- c. Reform the set up and powers of Parliamentary Committees
- d. Review procedures by decision making bodies including the State Commission Assessment Panel. Procedures include access to information, public consultation and attendance at meetings
- e. Include an independent member with experience in community engagement, social planning and community development onf the State Planning Commission
- f. No costs rule for enforcement proceedings brought in the public interest;
- g. Remove security for costs and undertaking as to damages provisions in court proceedings
- h. Introduce third party rights to join actions where acting in the public interest
- i. No requirement to pay court and transcript fees if public interest proceedings
- j. Mandatory upload of all regulated information on EPA register within 5 business days

F. LEGAL ASSISTANCE

- k. An immediate additional \$200,000 in annual State government funding to the Environmental Defenders Office SA to increase the ability of communities to access legal advice and assistance.

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