

15 October 2018

LandscapeReform@sa.gov.au

RE: Managing our Landscapes: Conversations for Change

The Environmental Defenders Office (SA) Inc (“the EDO”) is an independent community legal centre with over twenty five years experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education.

The EDO appreciates the opportunity to provide a response to this Discussion Paper which focusses on the operation of the *Natural Resources Management Act 2004* (NRM Act) and the introduction of a new Landscape South Australia (the new Act). In our view the new system must be:

- Robust, clearly principled and enforceable;
- Science-based and evidence-driven;
- Strategic and integrated across the whole of government; and
- Supported by good governance, resourcing and accountability

Question 2

What do you think is working well about how we manage natural resources?

There are many positive aspects of the NRM Act which should be transferred into the new Act including;

- The landscape and integrated approach to NRM including planning

- The broad definition of natural resources in section 3 which provides that natural resources includes— (a) soil; (b) water resources; (c) geological features and landscapes; (d) native vegetation, native animals and other native organisms; (e) ecosystems.
- The current objects in section 7 for long term conservation and particularly the concept and long standing principles of ecologically sustainable development (ESD).

Question 3- What do you think should be changed about how we manage natural resources?

General Statutory Duty

The EDO recommends broadening the criteria in section 9 (2) NRM Act for interpreting the duty of care provision to include protection of biodiversity as set out below in the underlined sections:

9(1) A person must act reasonably in relation to the management of natural resources within the State.

(2) In determining what is reasonable for the purposes of subsection (1), regard must be had, amongst other things, to the objects of this Act, and to—

- (a) the need to act responsibly in relation to the management of natural resources, **including the protection of biodiversity**, and the potential impact of a failure to comply with the relevant duty; and
- (b) any environmental, social, economic or practical implications, **including the current state of matters pertaining to biodiversity**, any relevant assessment of costs and benefits associated with a particular course of action, the financial implications of various measures or options, and the current state of technical and scientific knowledge; and
- (c) any degrees of risk that may be involved **including risk to the environment and the state of biodiversity**; and

- (d) the nature, extent and duration of any harm, **including harm to biodiversity**; and
- (e) the extent to which a person is responsible for the management of the natural resources; and
- (f) the significance of the natural resources, including in relation to the environment **and its biodiversity** and to the economy of the State (if relevant); and
- (g) the extent to which an act or activity may have a cumulative effect on any natural resources **and the environment including a loss of biodiversity**; and

Question 17- Are there any minor amendments that could be made in this Bill to current water management processes?

Question 18 - What more substantial water reform do you believe should be looked at as part of subsequent reform processes?

The NRM Act provides for the protection and management of catchments and the sustainable use of water resources, seeking to enhance and restore already degraded water resources. The NRM Act furthers these aims through prescription of water resources, the subsequent development of water allocation plans, the issuing of water management authorisations, restrictions where appropriate on water usage and the issue of permits for Water Affecting Activities.

A major concern is that effectively the NRM Act has no application to the Olympic Dam mine operated by BHP Billiton, a very large mining concern. Whilst other mines are regulated primarily by the provisions of the Mining Act, the Olympic Dam mine is regulated by a special Act – the Roxby Downs (Indenture Ratification) Act 1982 (SA) (Indenture Act). The Indenture Act takes precedence over any other state government environmental legislation.

For environmental protection within the Olympic Dam and broader area the Indenture sets up its own set of rules in Clause 11 for the “Protection and Management of the Environment”. These provisions require the joint venturers to submit 3 year programs to the Minister (responsible for the Indenture) regarding the protection, management and

rehabilitation (if appropriate) of the environment in respect of each project. The Minister has the sole power to approve or refuse the application on the basis of those programs.

In relation to mining activities more broadly there are inconsistencies though regarding the legal requirements of mining enterprises with regard to extracting water and using it for mining purposes. These differ depending on a number of factors including location, water source and method of extraction. Most importantly different rules apply depending on whether the mining location and / or points of extraction of water are within a prescribed or non prescribed water resources area.

The EDO recommends the inclusion of the following legislative requirements to enhance protection and provide consistency in the management of water resources:

- a. Application of new Act to the Olympic Dam mining project
- b. Environmentally sustainable diversion limits in Water Allocation Plans
- c. Metering of all bores
- d. Prescription of all non-prescribed water resources
- e. Water management authorisations be subject to:
 - an environmental watering plan which includes water conservation measures
 - an environmental improvement program
 - financial bonds
- f. Revision of the stock exception to prevent stock from taking water before the needs of the environment.
- g. Mandatory consideration of Water Allocation Plans when granting a licence
- h. Increased penalties regarding the maintenance of a watercourse or lake and in relation to water restrictions
- i. Introduction of incentives to comply with the duty to care

Question 21 -How do you think the new legislation can best enable effective compliance arrangements?

The EDO recommends the following legislative changes to enhance environmental protection and compliance:

- a. Amendment of the duty of care to enable it to apply to inherited degradation of natural resources and to improve the condition of the land where it is degraded ie delete subparagraph (h)
- b. Reward beneficial environmental performance, (performance which is more than the duty), for example by a reduction in Council rates provided there is compliance with particular standards set out in legislation.
- c. Increasing the penalties for failure to comply with the notice to produce the action plan as the maximum of \$20,000 is a minimal amount which can easily be factored into the operational costs of a business enterprise
- d. Certain community members can seek court orders against those allegedly breaching the NRM Act. In order to be able to apply to the Environment, Resources and Development Court the community member must be someone whose interests have been directly affected or they have the permission of the court to proceed. To obtain permission a community member must convince the court that their action has been brought in the public interest. This is somewhat limiting and consequently the EDO recommends provisions in the new Act similar to those in Part 18 of the *Planning, Development and Infrastructure Act 2016* which includes the right of anyone to seek court orders.

Please advise if you have any queries in relation to this submission. We request that the EDO be consulted on the draft Bill.

Yours faithfully



Melissa Ballantyne

Coordinator/Principal Solicitor

Environmental Defenders Office (SA) Inc.