



e-Bulletin

No. 19 of 2017, 30 November 2017

The environment's legal team since 1992 - protecting the public interest - evening the odds

The EDO is an independent community legal centre specialising in public interest environmental law. We provide legal advice and assistance, engage in law reform and participate in legal education activities for the South Australian community.

If you are seeking advice on any environmental or planning issue please visit our website <http://www.edosa.org.au/> or email edosa@edo.org.au

Our services are only possible with the support of the South Australian community. The need for community support to keep the EDO's services going is stronger than ever. Your donation will enable us to continue our fight to defend the environment using the law. Please consider a tax deductible donation - all amounts over \$2 are tax deductible.

Click here to [join us](#) or [make a tax-deductible donation](#).

We are also on [Facebook](#).

Please feel free to share this eBulletin with your networks.

Christmas closure

After a very busy year we advise our office at the Flinders University City Campus will be closed during the holiday period from **5pm Thursday 21 December**. We will reopen on **Tuesday 16 January**.

Christmas picnic

Don't forget to help us celebrate the year's achievements at the **[EDO Christmas Picnic – Sunday, 10th of December](#)**

This year we will be at Heywood Park, Northgate St Unley Park from 12 noon -4pm – look out for the EDO banner!

Please mark the date in your diary, and bring family and friends. It is a beautiful park, with barbecues, playground, shady trees, tables, toilets and open space for a petanque tournament.

Bring a plate to share, chairs and drinks for a relaxing afternoon before the Christmas rush seriously gets underway.

WHEN: Sunday, **10 December 2017**, 12noon onwards.

WHERE: [Heywood Park](#), Northgate St, Unley Park

NEWS AND EVENTS

South Australia

- SA Govt introduces controversial Bill allowing for the suspension of any law in the State
- Mining Acts Review 2016-17
- SA Major Development – Nora Creina Golf Course granted provisional approval
- SA Major Development blanket status to be revoked for Aged Care Facilities

NOTICES AND INQUIRIES

South Australia

- Consultation on a Disaster Resilience Strategy for South Australia

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NEWS AND EVENTS

South Australia

[SA Govt introduces controversial Bill allowing for the suspension of any law in the State](#)

The South Australian Government has introduced, and now passed in the lower house of Parliament, the Research, Development and Innovation Bill 2017 – a Bill with a fairly innocuous title, but which could have quite radical consequences. The Bill, ostensibly designed to attract

foreign investment from overseas technology giants like Google, Amazon and Tesla, allows for the Governor to suspend the operation of any State law (with the single exception of the *Aboriginal Heritage Act 1988*) in order to "...facilitate opportunities for research and development".

This represents a highly concerning expansion to the powers of the executive. The Law Society of South Australia has stated that it is fundamentally opposed to "... any legislation which would allow the Government of the day, by way of delegated legislation, to declare that a law of the Parliament does not apply." The Society further said that "...for a Bill conferring such broad powers to the Government, it lacks sufficient safeguards."

Such a Bill could theoretically allow for the suspension of any State law, including environmental laws, health and safety laws, anti-discrimination laws, or even the criminal law. It seeks to attract research and development by placing select corporations above the law to which all other South Australians are bound.

The Bill has been seemingly rushed before the upper house, which is now in the last week of sitting before the next election. The Government has refused extra time for the Parliament to consider the Bill.

[Mining Acts Review 2016-17](#)

On 27 September 2016, the SA government announced it would undertake the "Leading Practice Mining Acts Review of the *Mines and Works Inspection Act 1920*, the *Mining Act 1971* and the *Opal Mining Act 1995*".

As mining has numerous potential adverse impacts on the environment, the EDO has been involved in a significant way in the review process. After reading the Discussion Papers released in late 2016, we prepared a major submission to the Review, which was supported by a number of other environmental groups in South Australia. The current Mining Act and Regulations contain significant deficiencies, as we identified in our EDO Submission to the Review. In September 2017, the government released a sum of 22 Recommendations to the public. We were pleased to see the government's Recommendations and proposed amendments addressed some key points made by the EDO in our submission. Following the release of the Recommendations, the *Statutes Amendment (Leading Practice in Mining) Bill 2017* was introduced into Parliament on 18 October 2017. The EDO strongly supports amendments contained in this Bill as we believe they are likely to create benefits for the environment, compared to the situation under the current Act and Regulations. The provisions/amendments that we support are listed below.

1. Amendments that will result in increased transparency, especially provisions that will ensure a wide range of information will be available to the public, including through the Mining Register.
2. A number of provisions that expand and improve the range of investigation, monitoring, compliance and enforcement mechanisms available to the Regulator under the Act, to make these consistent with other modern environmental and resource legislation. These include: the introduction of civil offences and penalties, continuing offences, expiation

fees and enforceable voluntary undertakings; introducing directors' liability for offences; making all offences summary offences; and expanding evidentiary provisions to remove obstacles to conviction.

3. All provisions which seek to ensure land is properly rehabilitated, and in particular, the establishment of a rehabilitation fund, which will create better environmental outcomes by providing funds for legacy sites to be rehabilitated.
4. A new provision that the Minister must not grant a mining lease, retention lease or miscellaneous purposes licence unless satisfied that "appropriate environmental outcomes will be able to be achieved".
5. Amendments to ensure the content of Programs for Environment Protection and Rehabilitation (PEPR) is adequate, and that operators are abiding by their PEPR, through the Ministerial power to condition a PEPR and the new Ministerial power to require an independent audit of a PEPR.
6. The transition of private mines to ensure "more consistent regulation of private mines" under the Act.

In our view, these provisions should already be in the Mining Act. In particular, the community should already be empowered to have access to the types of information covered in the Bill and the Regulator should already have the powers of monitoring, investigation, compliance and enforcement that have been available to the Environment Protection Authority for years, as well as to regulators in other jurisdictions. The fact that the current Mining Act and Regulations do not address these matters is a significant deficiency in the legislative and regulatory regime. However, it is our view that the Bill does not go far enough and further significant reforms are needed, several of which we raised in our Submission to the Review. Other matters which we consider to be of importance to better environmental protection, which should be addressed in the Mining Act, include:

- the inclusion of ecologically sustainable development as a specific objective or as an express matter for consideration by the Minister when administering the Act;
- the identification and inclusion of specific principles or criteria to guide Ministerial decision-making in relation to the grant of tenements, in particular exploration licences and mining leases;
- environmental assessment to be undertaken by the EPA
- merits review of decisions to approve (and reject) large mining leases, with broad standing provisions;
- expanding the new civil remedies provisions to members of the public; and
- the possibility of a mandated code for undertaking community consultation.

We also believe that the government should pursue the following actions:

- continued efforts to bring Olympic Dam in line with community expectations and to be consistent with other major mines, for example, in relation to application of the Aboriginal Heritage Act 1988 (SA), and rehabilitation and closure requirements; and
- the prohibition of mining in certain protected areas (to be discussed further in conjunction with DEWNR).

At the time of this release, the Bill has been passed in the House of Assembly, however debate in the Legislative Council has been deferred to possibly May next year. Whilst the future of the Bill and this process is somewhat uncertain we will still continue to be involved in discussions around this Bill, and/or other Bills, to take the opportunity to improve the legislative regime in relation to mining and protection of the environment.

To access a copy of the Bill:

http://minerals.statedevelopment.sa.gov.au/mining/leading_practice_mining_acts_review

To access the EDO submission:

https://d3n8a8pro7vhmx.cloudfront.net/edosa/pages/30/attachments/original/1491194734/Mining_Act_Submission_300317.pdf?1491194734

SA Major Development – Nora Creina Golf Course granted provisional approval

Provisional development approval has been granted by the State Government to the Nora Creina golf course and resort facility that was declared a Major Development in March 2014.

The proposed golf resort site is located approximately 15 km SE of Robe in South Australia, and occupies approximately three kilometres of coastline, 80 hectares of cleared grazing land and 242 hectares of a coastal dune system. The proposal comprises a 36-hole public golf course, a boutique Wagyu beef farm, a boutique vineyard and recreational facilities (such as nature trail, recreational fishing and diving).

The Government has said that a decision on the coastal protection, native fauna and water supply aspects of the proposal must be address prior to final approval being granted. Further investigations are to be undertaken with guidance provided by the Department of Environment, Water and Natural Resources, before final approval can be given and construction can commence.

SA Major Development blanket status to be revoked for Aged Care Facilities

The Minister for Planning has stated in Parliament that he will revoke his blanket Major Development declaration, made in of April of this year, that provided retirement villages and residential care facilities valued over \$20 million with automatic eligibility for Major Development status.

Subsection (1) of s 46 of the *Development Act 1993* allows the Minister for Planning to apply that section to a kind of development if the Minister is of the opinion that it is a development of major environmental, social, or economic importance, and a declaration under that section is appropriate or necessary for the proper assessment of the development. Declaration as a Major Development removes the project from the ordinary process of approvals in South Australia, allowing the Development Minister to have control over final assessment.

The Minister stated that "...it has become clear that the broader community engagement in delivering aged-care services is necessary."

NOTICES AND INQUIRIES

South Australia

[Consultation on a Disaster Resilience Strategy for South Australia](#)

The South Australian Government is looking to compile a Disaster Resilience Strategy for the State. An independent review of the emergency management response to the extreme weather event that took place between 28 September and 5 October 2016 and included the statewide blackout, was led by former South Australia Police Commissioner Gary Burns who investigated the adequacy of the state's then prevention, preparedness, response and recovery arrangements.

Recommendation 33 of the report focused on disaster resilience outcomes:

Develop practical policy outcomes to support resilience (e.g. the 72- hour model) and promote this broadly to community through media, awareness campaigns, policies etc. Research should be undertaken to gain insight into the types of messaging and activities that have the most impact on sustained behaviour change within the community before committing to a particular model.

In order to advance this policy, the Government has developed an online survey to seek community responses, as well as calling for more formal public submissions. The online survey may be found by following the above link.

Submissions are due by **31 January 2018**.

[Regular SA Government Consultations](#)

Below are links to a number of SA Government agencies and bodies who undertake regular environmental audits or assessments open for public consultation. Whilst there are too many such consultations for us to list them all fully in the e-Bulletin, the links are included here as they may nevertheless be of interest to readers. The e-Bulletin will publish consultations in these categories where we deem them to be of wide public importance.

[Current Crown Developments and 'Category 3' Developments before the DAC](#)

[Current Ministerial Development Plan Amendments](#)

[Current YourSAy consultations](#)

[Current EPA license applications](#)

[Current DSD mining proposals](#)

[Current DSD petroleum proposals](#)

Commonwealth

[Review of the National Gene Technology Scheme – Phase 2](#)

The 2017 Review of the National Gene Technology Scheme is being undertaken as a partnership between the Commonwealth and States and Territories under the Intergovernmental Gene Technology Agreement. Phase 2 of the consultation is now underway, with the development of a Consultation Paper on the back of the initial feedback received from Phase 1.

The Review Terms of Reference seek to investigate the current gene technology legislation, the Gene Technology Agreement and its interface with other regulatory schemes. The Review aims to improve and strengthen the Scheme's effectiveness whilst ensuring it supports innovation.

The Review includes, but is not limited to, assessing and making recommendations in relation to:

1. Current developments and techniques, as well as extensions and advancements in gene technology, to ensure the Scheme can accommodate continued technological development.
2. Existing and potential mechanisms to facilitate an "agile and effective" Scheme which ensures continued protection of health and safety of people and the environment.
3. The appropriate legislative arrangements to meet the needs of the Scheme now and into the future, including the Gene Technology Agreement.
4. Funding arrangements to ensure sustainable funding levels and mechanisms are aligned with the level and depth of activity to support the Scheme

Submissions are due by **15 December 2017**.

[Regular Commonwealth Government Consultations](#)

Below are links to Federal Government agencies and bodies who undertake environmental audits/assessments that may be open for public consultation. Whilst there are too many such consultations for us to list them all in the e-Bulletin, the links are included here as they may nevertheless be of interest to readers. The e-Bulletin will publish consultations in these categories where we deem them to be of wide public importance.

[EPBC Act Public Notices and Invitations to Comment](#)

[Department of the Environment and Energy - Public Consultation Notice Board](#)

PREVIOUS NOTICES: REMINDERS

[Commonwealth Water - Investing in Environmental Activities: Discussion Paper](#)

- Submissions due by **30 November 2017**.

[NOPSEMA begins consultation on first environmental reference case](#)

- Submissions due by **2 December 2017**.

[SA Planning - Community Engagement Charter – Consultation Stage 2 opens](#)

- Submissions due by **8 December 2017**.

[Senate Inquiry – Water use by the extractive industry](#)

- Submissions due by **15 December 2017**.

[Feral Pigs – policy draft consultation](#)

- Submissions due by **7 January 2018**.

[Feral Deer – policy draft consultation](#)

- Submissions due by **7 January 2018**.