

e-Bulletin

No. 3 of 2018, 8 March 2018

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](#).

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NEWS AND EVENTS

South Australia

- Chairperson's Report
- Adelaide waste company fined \$25,000 for stockpiling uncovered waste

NOTICES AND INQUIRIES

South Australia

- Accredited Professionals Scheme discussion paper

Commonwealth

- House of Representatives Inquiry - the management and use of Commonwealth environmental water
- Consultation on the operation of the Emissions Reduction Fund Safeguard Mechanism
- Productivity Commission to undertake Murray-Darling Basin Plan 5yr assessment

PREVIOUS NOTICES: REMINDERS

NEWS AND EVENTS

South Australia

[Chairperson's Report](#)

The countdown to the state election is well under way, and you will find the EDOSA's campaign policies on our website. Please take the time to read them. Our environmental policies canvass a wide range of legislation related to the protection of environment.

https://d3n8a8pro7vhmx.cloudfront.net/edosa/pages/1/attachments/original/1519112020/2018_EDO_State_Election_Position_Paper_080218.pdf?1519112020

While the majority of our citizens and parliament might agree on objectives - such as protection of significant trees, clearly the processes established to manage the objective often do not deliver. For example, under planning legislation, principles and objectives guide the decisions regarding the proposed removal of significant and regulated trees. In recent times there have been a number of applications to remove such trees which have been granted planning consent. I suspect it is possible to 'save' a significant tree by having development designed to retain the area of the tree. It is important to note that conditions attached to consents contain details of process and management, often requiring revegetation in the place of a tree to be removed. There have also been a number of applications to remove trees where there are issues of public and private liability as well as conflicting arborist reports. The regulations covering management is also an issue with many clients reporting over zealous pruning of our urban trees.

The main issue with legislative process is the way public participation is provided as an inherent element of legal process. We will continue to maintain that the ability of third parties to have a say and challenge decisions through the relevant courts must be enshrined in law.

This election will be an opportunity for selecting candidates who will defend the right to be informed and involved fully in the management of environmental protection and sustainable planning. It is also important that consultation on draft regulations and legislative amendments occurs with relevant groups prior to Parliamentary tabling. Gaining the support of the wider community relies heavily upon open and transparent drafts being circulated for feedback.

Also, I'd like to acknowledge the volunteers and committee members and other supporters who put in a sterling effort to make the recent Capri Film Night a success. The Silent Auction raised \$515, and with the raffle, drinks and tickets sales we raised a total of \$1,510.

As Chairperson of the Management Committee, I welcome our lovely new volunteers who are assisting with a wide range of tasks including law reform submissions, update of resources and research. If you have any ideas on way we can improve what we do on limited resources please feel free to contact our office. Wishing you an enjoyable Mad March, including your considered voting for the state election on the 17th!

Dr Iris Iwanicki, PhD, M. Env.Law, FPIA – EDO(SA) Chairperson

[Adelaide waste company fined \\$25,000 for stockpiling uncovered waste](#)

The South Australian Environment, Resources and Development Court has handed down a fine of \$25,000 and recorded a conviction against Adelaide Resource Recovery Pty Ltd for breaching its license conditions. The license required the company to store Construction and Demolition Waste ('CDM waste') undercover, rather than in the open air. The case had been subject to lengthy litigation, with the EPA successfully appealing the original ERD Court acquittal to the Full Court of the Supreme Court, and then withstanding a later application to the High Court by the defendant, which was refused.

A central issue of the case was the question of how much processing of waste is required for it to be converted into a product, and no longer considered waste. The Supreme Court was of the opinion that initial processing was not sufficient, and that if the substance still required significant further processing then it should still be considered waste – which in this case, was required to be stored undercover.

EPA Chief Executive Tony Circelli said this successful outcome in the courts is significant as it provided greater clarity for the waste industry around what is deemed waste and what can be claimed as a product, an area of contention for the sector in South Australia and nationally.

"This case upholds and reinforces the EPA's regulatory approach and policies relevant to the waste sector. Licence conditions are placed on companies to ensure the environment and community are protected from harm and that waste depots manage waste responsibility to meet these obligations."

NOTICES AND INQUIRIES

South Australia

[Accredited Professionals Scheme discussion paper](#)

As part of South Australia's new *Planning, Development and Infrastructure Act 2016* the Minister for Planning is empowered to establish an accreditation scheme for planners, building certifiers and other industry professionals involved in making development decisions. The Government says that the objective of the scheme is to improve confidence in these decisions, as well as the professionalism of decision making processes more generally.

Under the new scheme there will be a range of accredited planning and building professionals who can make important decisions based on the nature and complexity of a proposed development. The scheme will establish and maintain the minimum standards against which professionals are assessed to determine their level of accreditation.

The scheme will be first applied to assessment panel members from mid-2019. Accreditation for planning professionals other than assessment panel members will be introduced concurrently with the new assessment pathways under the Act and launch of e-planning. This is likely to occur in 2020. Building certifiers will continue to operate as they do currently until this time.

A copy of the discussion paper is available at the above link.

Submissions are due by **30 April 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 SCAP](#)

[Current Ministerial Development Plan Amendments](#)

[Current YourSAy consultations](#)

[Current EPA license applications](#)

[Current DSD mining proposals](#)

[Current DSD petroleum proposals](#)

Commonwealth

[House of Representatives Inquiry - the management and use of Commonwealth environmental water](#)

The House of Representatives Standing Committee on the Environment and Energy has resolved to inquire into the 2016-17 annual report of the Department of the Environment and Energy. The terms of reference require that the Committee inquire into and report on the management and use of Commonwealth environmental water, giving particular consideration to the role of the Commonwealth Environmental Water Holder in:

- maximising the use of environmental water for the protection and restoration of environmental assets;
- considering innovative approaches for the use of environmental water;
- monitoring and evaluating outcomes of the use of environmental water; and
- options for improving community engagement and awareness of the way in which environmental water is managed; and
- any other matter of relevance that the committee wishes to consider.

Submissions are due by **12 April 2018**.

[Consultation on the operation of the Emissions Reduction Fund Safeguard Mechanism](#)

The Federal Department of Environment and Energy has released a consultation paper on the Emissions Reduction Fund and its Safeguard Mechanism, The Department is seeking submissions from businesses and members of the community on ways to bring the Safeguard Mechanism baselines "...up-to-date with current circumstances and make it fairer and simpler."

The Safeguard Mechanism establishes emissions baselines for Australia's largest greenhouse gas emitters. Facilities covered by the Safeguard Mechanism must keep their emissions below baseline levels or purchase domestic carbon offsets to make up the difference. Baselines are intended to accommodate business growth and allow businesses to continue normal operations.

The Safeguard Mechanism covers facilities with more than 100,000 tonnes of carbon dioxide equivalent emissions each year. It applies to around 200 businesses in the electricity, mining, oil and gas, manufacturing, transport, and waste sectors. Together these businesses are responsible for around half of Australia's annual emissions.

Submissions are due by **30 March 2018**.

[Productivity Commission to undertake Murray-Darling Basin Plan 5yr assessment](#)

The Federal Treasurer, Scott Morrison, has instructed the Productivity Commission to undertake an Inquiry into the effectiveness of the implementation of the Murray-Darling Basin Plan and the water resource plans. This is to be the first of the five-yearly assessments that are required under s 87 of the *Water Act 2007*.

Overall, the Inquiry is to assess progress towards implementing the actions required under the Plan within legislated timeframes, as well as the extent to which the current framework for implementing the Basin Plan, including the framework for monitoring, compliance, reporting and evaluation, is likely to be sufficient.

The Terms of Reference for the Inquiry may be found at the above headline link. A number of public forums will be held throughout the Murray-Darling region during the consultation period, although specific dates are yet to be announced. An issues paper is due to be released for public consultation before the end of March, with the final report due by the end of the year.

[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

[National Energy Guarantee consultation open](#)

- Submissions due by **8 March 2018**.

[Senate Inquiry - Clean Energy Finance Corporation Amendment \(Carbon Capture and Storage\) Bill 2017](#)

- Submissions due by **13 March 2018**.

[Draft Revision of Australia's Biodiversity Conservation Strategy – consultation open](#)

- Submissions due by **16 March 2018**.

[Better Laws for a Better Planet: A Symposium on the Future of Australia's Environment Laws](#)

- Event will take place in the A.C.T. on **27 March 2018**.

[Senate Inquiry - United Nations Sustainable Development Goals](#)

- Submissions due by **29 March 2018**.

[Senate Inquiry – Selection process for a national radioactive waste management facility in South Australia](#)

- Submissions are due by **3 April 2018**.

[Submissions open for Murray-Darling Basin Royal Commission](#)

- Submissions are due by **30 April 2018**.