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EDOWA joins legal team challenging James Price Point Gas Hub

Patrick Pearlman, Principal Solicitor

The Wilderness Society (TWS) has involved EDOWA to assist the legal team challenging the Environmental Protection Authority's assessment of James Price Point as the site of a massive liquefied natural gas (LNG) precinct for processing and shipping LNG produced from the Browse Basin (James Price Point Gas Hub). The site is located on the Dampier Peninsula some 52km north of Broome.

The formal proponent of the Gas Hub at James Price Point on the Kimberley coast is the Premier of WA, Colin Barnett, as Minister for State Development.

The Joint Venture planning to build the first of three possible LNG plants at James Price Point consists of Woodside Energy Ltd, Shell Developments Australia Pty Ltd, BP Developments Australia, Japan Australia LNG (MIMI Browse) Pty Ltd – itself a joint venture of Mitsubishi and Mitsui, and PetroChina Corp.

According to the EPA's 16 July 2012 Report and Recommendations (Report 1444) the James Price Point Gas Hub – also referred to as the Browse LNG Precinct – contemplates three LNG facilities capable of processing up to 50 million tonnes per annum (mtpa) of LNG, port facilities extending over 1000ha that include breakwaters up to 3km long, and a dredged shipping channel some 550m wide that extends to the limit of State waters (about 7km). Dredging activities associated with construction of the offshore facilities and shipping channels are expected to generate up to 34 million cubic metres of dredge material, which apparently will be disposed of in Commonwealth waters, together with an unspecified amount of dredging for annual maintenance of the port and channels.

The July 2012 EPA report also notes that construction of the Hub will include clearing up to 132ha of native Monsoon Vine Thicket (MVT) which was listed by the state as a "threatened ecological community" at the time. However, after the EPA report's release, this ecological community was listed by the Federal Environment Department as an "endangered ecological community", suggesting a higher level of vulnerability and protection than under the State's listing. The Commonwealth's 27 February 2013 listing advice notes that only about 2600ha of this ecological community remains in existence, meaning that its clearing associated with the James Price Point Gas Hub accounts for just over 5% of the entire ecological community. The EPA in 1991 recommended against any clearing of MVT in this same area.

Horizon Falls, near James Price Point. Jenita Enevoldsen

A long and murky process

The process leading to the State's approval of James Price Point has been over 5 years in the making, extremely complex and fraught with controversy. Some degree of complexity and controversy is to be expected in any project of the scale and scope of the James Price Point Gas Hub, but this particular project has generated more than any before it.

Since 2008, two assessment paths have been underway: a Commonwealth/State 'strategic assessment' of a master plan for an LNG precinct in the Kimberley under s 146 of the Federal Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act); and an environmental assessment of a strategic proposal for the James Price Point Gas Hub under ss 37B and 38 of the WA *Environmental Protection Act 1986* (EP Act). The process gets even more complicated from there.

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Commonwealth shelves plan to hand over federal environmental approval powers to states

Sarah Randell, volunteer

In December 2012, to the relief of environmental advocates, the Commonwealth government announced its intention to shelve plans to hand over to the States its environmental approval powers under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).[1] The proposal to delegate the approval process for most matters of National Environmental Significance (MNES) under the EPBC Act, was one of a number of key reformsproposed last year by the Council of Australian Governments (COAG) to 'streamline' Australia's environmental regulation regime.[2] There is no doubt that EPBC Act reforms would be welcomed if they improved the efficiency and effectiveness of environmental regulatory processes. However, it is likely that handing Commonwealth approval power over to the States is the surest way to undermine critical regulatory safeguards and jeopardize the protection of MNES without neccesarily achieving any improvements in government efficiency.

Brief background

Australian environmental law is characterized by a high degree of fragmentation, which is largely a consequence of our federal constitution.[3] Currently, all levels of government—local, state, territory and federal government—are involved in the regulation and assessment of environmental impacts.[4] The Commonwealth's environmental assessment and approval powers are limited to proposed actions that have the potential for significant adverse impacts on the various MNES identified pursuant to the EPBC Act.[5] Under Australia's constitution, significant space has been preserved for the development and implementation of State environmental law.[6] As a result, there are many instances where the EPBC Act applies in addition to State environmental legislation. Therefore, depending on its likely impact on MNES, a project may need to be assessed and approved under both Commonwealth laws and applicable State environmental impact assessment and approval regimes.[7]

Proposed EPBC Act reforms

Due to the frequent overlap and duplication in State and Commonwealth environmental assessment and approval processes, there have been consistent calls for significant reform to Australia's environmental laws, particularly the EPBC Act.

In October 2008, the Commonwealth government commissioned an independent expert review of the EPBC Act by Allan Hawke. A year later the "Hawke Review Report" was released.[8] Among its 71 recommendations, were streamlining current assessment processes and increasing the use of bilateral approval processes.[9] In July 2011, in response to the Hawke Review Report, the Commonwealth government, while rejecting a number of recommendations, announced its intention to streamline assessment and approval processes and to develop cooperative national standards to harmonise the approaches of the various jurisdictions.[10] COAG assumed a primary role in driving the reform promised by the Commonwealth and delivered on those reforms less than a year later.

At its April 2012 meeting in Canberra COAG held its inaugural meeting with the Business Advisory Forum (BAF), a body formed by the Prime Minister only a month earlier. The purpose of that meeting was to consult on a discussion paper prepared for the BAF by the Business Council of Australia (BCA), delivered to COAG, which set out the BCA's views on competition and regulatory reform.[11] The view presented to COAG was that complying with both Federal and State regulatory requirements was excessively costly and placed an unnecessary administrative burden on businesses.[12] This assertion drove the BCA's proposal that the Commonwealth commit to accrediting State environmental approval processes within a six-month timeframe.[13] Such reform, if implemented, would effectively grant to the states the power to deal with the entire assessment and approval process for projects falling within the scope of the EPBC Act. This would severely limit the role that the Commonwealth has played in protecting the environment at the national level.

The BAF/BCA presentation apparently was quite persuasive because at the conclusion of this first meeting with the forum, COAG issued a communique announcing that it had agreed to 'fast-track the development of bilateral arrangements for accreditation of state assessment and approval processes, with the frameworks to be agreed by December 2012 and agreements finalised by March 2013.' See COAG Communique, p2 (13 April 2012); available at http://www.coag.gov.au/coag_meeting_outcomes/2012-04-13/index.cfm

While allegedly maintaining a commitment to the recommendations of the Hawke Review Report, COAG agreed with the BCA's proposal and launched an ambitious reform agenda to fast-track the accreditation of state assessment and approval processes and to develop national standards for the accreditation of environmental approvals.[14]

Why a continuing Commonwealth role in development approval is critical

There are a number of reasons why the Commonwealth is the most appropriate body to hold final approval power in relation to developments that could significantly impact upon MNES. Firstly, the Commonwealth has a reputation for exercising higher standards of environmental regulation than the State and Territory governments.[15] Currently, some State and Territory legislation regarding assessment processes are under-developed and inadequate to protect nationally sensitive environmental areas.[16]

Secondly, State and Territory governments frequently are the proponents of developments or stand to gain financially from development approval - consider Browse Basin natural gas processing hub at James Price Point, proposed by the government of Western Australia as a case in point.[17] In these situations the states are >>

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in a conflict of interest, which may prevent them from making impartial decisions on whether certain developments should be approved, approved with stringent conditions or refused. A state's role in enforcing environmental compliance is also compromised when the state is, for all practical intents, the developer. Under these circumstances Commonwealth approval power acts as a critical safeguard against self-interested state approval of environmentally harmful developments.[18]

Lastly, the Commonwealth is responsible for implementing and complying with Australia's international environmental obligations.[19] The states are not mandated to act in the international interest.[20] Therefore, if the Commonwealth was removed from environmental regulation it could raise legal issues and precipitate actions to hold the federal government accountable under international law.[21] Likewise, Australia's states and territories do not have a strong history of acting in the international or national interest, and as a result the delegation of power to them could limit the means of compelling effective compliance with Australia's international obligations.[22]

The future role of the Commonwealth in environmental regulation

From an environmental perspective, the Commonwealth's December 2012 decision to shelve the COAG initiative to hand over Commonwealth environmental approval powers to the states is an encouraging development. Unfortunately, the Commonwealth has asked the states to present it with a unified position on which decision-making powers should be transferred, and how they propose to meet high federal standards before negotiations continue.[23] This means that the future role of the Commonwealth in environmental approvals is still highly uncertain.

If the states satisfy the Commonwealth that they can meet federal standards, a transfer of EPBC Act approval power to the states could still occur. This may not necessarily be a negative outcome. It is possible that the implementation of national accreditation standards could lift the quality of state and territory legislation, promoting law reform that would advance environmental protection.[24] However, the current Draft Standards framework, released by the government in November 2012, relies heavily on devolved federalism and as such could suffer from a lack of transparency and accountability.[25] Therefore, it is equally possible that the framework could entrench existing deficiencies in state law and would not provide a means of maintaining, let alone strengthening, the national standards.[26]

Environmental advocates clearly have a significant task ahead of them. The Commonwealth government must be reminded that in the face of ever-increasing development pressures, climate change and declining biodiversity, Australia needs its environmental laws to be strengthened – not weakened. It is not acceptable to the environmental movement – nor is it wise for the populace or beneficial for the biodiversity for which we are stewards – for the Commonwealth to transfer its approval powers and wind back critical environmental protection laws. Current assessment processes can be simplified and coordinated without the Commonwealth surrendering its approval powers regarding nationally significant environmental matters.[27] Reform honestly based on the Hawke Review Report's recommendations would be the most comprehensive way to streamline environmental regulation while protecting Australia's exceptional natural environment.[28]

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Australia's sharks need protection and conservation management

Sarah Randell, volunteer

Sharks rarely top the list of animals whose continued survival and health generate much empathy or concern among the general public. But around the world increases in human populations have led to intensified use of coastal waters for, among other things, recreation.[1] Increases in marine recreation also increase the chances of shark-human interactions and the possibility of fatal shark attacks.[2]

Western Australia's coastal waters are notorious for shark attacks and an increase in fatal shark attacks over the past 12 months has sparked public anxiety and pressured the Government to respond aggressively to reduce the risk of future incidents.[3] The government's rapid response included a recent decision to allow Fisheries officers and members of the WA Police Force to cull Great White sharks that pose a risk to public safety.[4] This decision has angered conservationists and members of the public alike, and has been criticised as "an appeasement tactic, based on emotion rather than real science'.[5] The government's reaction to public fears has generated questions and discussion about the conservation status of sharks, their importance to marine ecosystems, and the sustainability of shark exploitation activities along the Australian coast.

Sharks are cartilaginous fishes of the class *Chondrichthyes*.[6] Some 370 shark species have been described worldwide, of which almost half, 170 species, inhabit Australian waters.[7] Of these it is estimated that at least 100 frequent WA waters.[8]

Although many aspects of shark biology and ecology remain unknown, marine scientists generally believe that sharks are functionally important to marine ecosystems because of their status as apex predators.[9] As high-level predators sharks play an important role in controlling prey populations that occupy lower levels of the food chain.[10] The removal or substantial reduction of a shark species from the marine ecosystem could therefore have far-reaching consequences, including altering prey populations and potentially triggering entire community or ecosystem level changes.[11]

However, despite the importance of sharks to the health of marine ecosystems, shark populations are in trouble in Australia and around the world. International Union for Conversation of Nature (IUCN) statistics indicate that 17% of shark species are classified as "threatened" – that is, either critically endangered, endangered or vulnerable – and a further 13% are "near threatened".[13] In Australia, Queensland's Shark Control Program recorded a downtrend in the catch of all sharks over the 14-year span of the project. Similarly, catches of sharks in New South Wales shark nets have dramatically decreased over the past 30 years.[14]

There are a number of threatening processes that are known to be the cause of shark decline in Australian waters. The greatest threat to maintaining healthy numbers of sharks is direct and indirect commercial fishing.[15] Commercial fisheries in Australian waters catch sharks either as target species, such as the Gummy Shark,

Sharks in their ocean home. Flickr/PacificKlaus

(*Mustelus antarcticus)*, or as by-catch in fisheries targeting other fish species. Because sharks are slow growing, late maturing, long lived and give birth to few young, they are extremely vulnerable to over exploitation. Commercial fishing therefore has the potential to severely deplete shark numbers, particularly because many fisheries are operating without a good understanding of shark reproductive biology and their ability to withstand fishing effort.[16]

In addition to overfishing, other processes threatening the long-term health and survival of shark species include habitat modification and destruction, pollution and other environmental changes.[17] Climate change, which results in increased water temperatures, ocean acidification, and changes in ocean currents, is predicted to result in significant alterations to marine ecosystems. As high-order predators, sharks will be particularly vulnerable to such alterations.[18]

Despite the significant threats to sharks and the decline in their populations, Australia has relatively few legislative or policy instruments in place to protect shark species. In general Australian laws that protect and manage sharks can be divided into two categories: conservation instruments that list specific species in need of protection, and fisheries regulations.

At Commonwealth level it is the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) that provides for the listing of species in need of special protection.[19] Currently only nine shark species have been deemed to require protection and placed on the Act's list of threatened fauna. In the context of the Western Australia government's recent decision to allow the culling of Great White Sharks, it is important to note that this species is one of the nine protected under the EPBC Act, and is currently classified as "vulnerable". The situation is similar in Western Australia, where only two shark species have been listed as threatened under the *Wildlife Conservation Act 1950* (WA). Again, the Great White Shark is one of these species, currently classified as "fauna that is rare or is likely to become extinct."

The vast majority of Australia's 170 shark species thus have no regulatory status under federal or state law. >>

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This is problematic, since Humane Society International (HSI) and other conservation groups have submitted that many more Australian shark species are threatened and need their conservation status recognised.[20]. It is therefore imperative that urgent assessment of all Australian sharks be undertaken to determine their conservation status and eligibility for listing under the EPBC Act. Prompt research and assessment is needed to update the list and protect vulnerable shark species – not only from deliberate taking or culling, but also to ensure that fisheries regulations properly incorporates protections for such threatened shark species.

Recognising the conservation status of sharks is only the first step in promoting their protection and recovery. To ensure actual recovery, legislative and policy instruments are needed to guide recovery action and regulate human interactions with the species. Unfortunately comprehensive regulatory instruments to stem shark decline are scarce. In response to the Australian government's lack of action on shark conservation and regulation, HSI has submitted policy recommendations that it believes are essential to maintain healthy shark populations in Australian waters.[21] The Marine Stewardship Council, responsible for certifying well-managed fisheries, has not accredited the commercial fishing of any shark species in Australia as "sustainable".[22] In consequence, HSI's most significant recommendations are targeted at the regulation of Australian commercial fisheries.

The first of HSI's recommendations is that the Australian government end targeted shark fishing in Australia.[23] This is based on the unsustainability of current commercial fishing practises and the critical lack of data on which to base proper shark management.

Secondly, HSI suggests that the federal Environment Minister adopt a policy position under which the government does not approve the export of shark products.[24] Under the EPBC Act, an export fishery cannot be approved unless it is an ecologically sustainable Wildlife Trade Operation. The exploitation of sharks is not ecologically sustainable and risks detrimental impacts on shark populations, and the ecosystems they serve to maintain. As such HSI urges that exportation of shark products should not be approved. Another recommendation is aimed at the importation of shark products.[25] Currently there are no regulations in Australia supervising the import of shark products. HSI recommends that the importation of shark products to Australia should be prohibited to ensure that Australians do not support shark catches from unregulated, illegal or unsustainable fisheries. At the least, HSI urges that stricter codes for the quantification and reporting of exported and imported shark products should be introduced.

Other important recommendations made by HSI seek an end to "by-caught" sharks being sold as "by-product". Such action would discourage their continual catch. Likewise the organisation appeals to the government to support a number of international conventions and promote the inclusion of a number of shark species on the conventions' threatened species lists.[26]

The HSI's and other conservation groups' recommendations call for drastic action to successfully combat the decline of Australian shark species, highlighting the severity of their conservation status both nationally and internationally.

In Western Australia mainstream media reports would have us believe that shark populations, particularly Great White Sharks, are on the increase in our coastal waters. However scientific data from around Australia evincing a steady and continual decline in shark numbers shows the media's presentation is highly inaccurate. The Western Australian government should be commended for allocating $4million to applied research and tagging programs to understand shark movements and to determine the root cause of shark attacks.[27] However, given the protected status of the Great White Shark at both the Commonwealth and State level, it is unacceptable to sanction the culling of this species under any circumstances.

The threatened status of large terrestrial predatory animals, such as the lion, Bengal tiger and grizzly bear, is internationally acknowledged and significant conservation efforts are underway to restore the populations of these species, despite the potential risks they pose to humans. The same respect is owed to the Great White Shark and other shark species generally. Sharks are functionally important in maintaining healthy marine ecosystems. Australia, with its extensive coastline, has an immense responsibility to promote the conservation and recovery of its diverse array of shark species. Rigorous research and tougher legislative protection is sorely needed to safeguard the future of these important natural predators.

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EDOWA joins Gas Hub challenge

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On the State EP Act path, the James Price Point Gas Hub proposal was referred to the five-member EPA by the Premier and Minister for State Development in March 2008. Since then the proposal has, over the course of four years, moved ahead to approval, ultimately not only of James Price Point as the site of the Gas Hub, but also to subsequent "derived" approval of Woodside's specific proposal to begin building the first of possibly three LNG plants at James Price Point (it should be noted that the Commonwealth EPBC Act path is still unresolved).

In mid-December 2010 the EPA released for public comment a draft Strategic Assessment Report (SAR) regarding the proposed James Price Point Gas Hub. The public was given 12 weeks to review and comment on the 9,000-page SAR, and indeed thousands individuals and organisations did so (over 11,000 in total – a record), including TWS. The local community, Traditional owners, scientists and conservation groups raised strong objections to the proposed LNG precinct and the supporting information provided by the proponent (ie, the Minister for State Development).

Notwithstanding the community and scientific concerns raised, the EPA released its report (Report 1444) on 16 July 2012, concluding that the proposed LNG precinct could be implemented at James Price Point, provided that "strict" environmental management conditions and appropriate offsets were applied. The report listed the conditions and offsets that should be applied. TWS appealed the report to the Environment Minister's one-person "Appeals Committee'"at the end of July 2012, but ultimately its appeal and those of hundreds of other appellants were rejected by the Minister in October 2012.

Conflicts of interest

One of controversies regarding the EPA's assessment, culminating in Report 1444, relates to concerns raised regarding conflicts of interest that several EPA members had with respect to the Gas Hub.

Under the EP Act, the EPA Board is composed of five members. Section 11 requires a quorum of three to act on questions before the Authority, and s12 prohibits board members who have a direct or indirect pecuniary interest from participating in a matter before the EPA.

During the course of the EPA's strategic environmental assessment of the Gas Hub, four of its members disclosed a potential conflict of interest. Notwithstanding, some of them continued for many months, or even years, to attend meetings of the EPA where the Gas Hub was considered and key decisions were made.

A first attempt to address the disclosed conflicts was made in late June 2011, when the EPA purported to delegate, pursuant to s19 of the EP Act, all of the authority's powers and duties to those members "present at a meeting ... who do not have a direct or indirect interest in a matter before the meeting". The delegation was published in the *Government Gazette* on 15 July 2011.

However, the delegation had limited impact on how the EPA went about its business and which Authority members participated in discussions regarding the LNG precinct. Only one member who had disclosed a potential conflict of interest did not partake in discussions and decision-making from November 2011 onwards; the other three with declared conflicts continued to participate. This changed from 1 March 2012, when four of the board members – its chairman being the sole exception – were excluded from certain discussions and decisions regarding the proposal – in essence, from 1 March 2012 the EPA chair, Dr Paul Vogel, began meeting on his own as "the EPA" and deciding on the assessment.

There was an effort to make official Dr Vogel's sole assessment. Notwithstanding the June 2011 delegation, a second delegation was made on 5 July 2012, this time delegating to the EPA chairman alone power to make all decisions regarding the Gas Hub proposal. This delegation was published in the 17 July 2012 *Government Gazette*.

This reduction of the EPA from five members to one is one element of an application for judicial review that TWS and Traditional Custodian Mr Richard Hunter lodged in the Supreme Court of Western Australia in December 2012.

Another element of the application focused on the fact that on 17 December 2012 – one day before TWS's application for judicial review was lodged – the EPA declared Woodside's proposal to construct the first LNG plant to be a "derived proposal" under s39B of the EP Act, meaning that it could proceed without further environmental assessment. That particular decision, however, was the product of yet another delegation of the EPA's authority – this time to two of its five members – made on 6 December 2012 and published in the *Government Gazette* on 14 December 2012. As noted above, however, s11 of the EP Act provides that a "question" before the EPA "shall not be decided unless at least 3 Authority members vote thereon."

Other questions related to the scope of the EPA's environmental assessment of the Gas Hub are also raised in TWSs' application for judicial review, but the impact of conflicts of interest and whether the Authority's collective decision-making responsibility was properly delegated to one or two members will likely figure prominently in the Supreme Court proceeding.

The other members of the TWS legal team are Slater and Gordon, solicitors instructing, and Dr Johannes Schoombee, barrister.

James Price Point. Jenita Enevoldsen

EDOWA wins on FOI matter

but agencies' handling of FOI requests remains a concern

Jessica Smith, Outreach Solicitor

EDOWA recently had a win on a freedom of information (FOI) matter that it was handling on behalf of James Pillsbury, a Derby resident.

In July 2011 Mr Pillsbury sought access to two documents that Rey Resources had lodged with the Department of Mines and Petroleum (DMP) regarding Rey's Derby Export Facility – a Health, Safety & Environment Management Interface Plan and an Occupational Hygiene Management Plan.

The DMP refused Mr Pillsbury's request in August 2011, relying on one of the exemptions in the *Freedom of Information Act 1992* (WA) (FOI Act), namely that disclosure would reveal information that had a commercial value to third parties and could reasonably be expected to destroy or diminish that commercial value.

EDOWA applied in mid-September 2011 to the DMP for internal review of the agency's refusal, arguing that it was highly unlikely that the documents in question contained commercially sensitive information (amongst other things).

In late September 2011 the DMP upheld its original decision to deny access to the documents and added another ground justifying the refusal, namely that the release of the documents would reveal information about the business and commercial affairs of a third party, and could reasonably be expected to have an adverse effect on those affairs.

EDOWA then made a complaint to the Information Commissioner in November 2011 challenging the DMP's continued refusal to provide Mr Pillsbury access to the documents.

The Information Commissioner finally ruled on EDOWA's complaint in January 2013. The Commissioner completely agreed with EDOWA's arguments on behalf of Mr Pillsbury that the documents were not subject to the exemptions claimed by the DMP, and rejected the arguments put forward by the DMP, Rey Resources and Cimeco, another company joined as a party to the complaint. The Commissioner ordered that Mr Pillsbury be given access to the documents.

The Commissioner's decision represents a clear victory for both Mr Pillsbury and the public generally. However, the case also raises some concerns about how well the FOI regime is working in WA.

First, the case is a reminder that government agencies often refuse access to documents sought as part of an FOI request by broadly applying exemptions from disclosure under the FOI Act. In many cases, applicants are denied access to documents that they should have been given.

Second, the case demonstrates that even if the Information Commissioner eventually decides that the applicant should have been provided with access, it can take a very long time to obtain the relevant documents. In Mr Pillsbury's case, he applied for the documents more than a year and eight months ago, and is still having problems obtaining access, even after the Commissioner's decision in his favour. This is very concerning, because in many cases the applicant needs the documents within a short period of time after lodging the FOI request.

Third, while the decision in Mr Pillsbury's case was that he should be given access to the documents, the Commissioner also decided that access should be provided by way of inspection only because, in his view, the documents were *prima facie* the subject of copyright and providing access would involve an infringement of copyright. EDOWA is concerned that the *Copyright Act 1968* (Cth) is being interpreted too broadly and that this broad interpretation of copyright is defeating the purpose of FOI legislation.

The Commissioner's decision is available at <http://www.austlii.edu.au/au/cases/wa/WAICmr/2013/1.html>

EDOWA has Factsheets on FOI laws at the state and federal levels – see <http://www.EDO(WA)wa.org.au/discover/factsheets/>

If you need advice or assistance with an FOI matter relating to the environment, please call the EDOWA on 9221 3030. ■

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Interesting fact: what information is accessible?

The *Freedom of Information Act 1992* (WA) (the Act) gives every person the right to apply for access to documents held by government departments, local authorities, statutory authorities and government ministers.

Information may be stored in a number of formats, all of which are defined as "documents" under the Act. This may include paper documents, maps, plans, drawings or photographs, electronic records and sound and video recordings. All documents held by agencies covered by the Act are accessible, unless the document contains exempt information. There are 15 categories of exempt information, which are outlined on our FOI Factsheet.

EDOWA welcomes its new Principal Solicitor...

Just in time for the WA state elections, EDOWA has seen a change in the organisation's Principal Solicitor role. On 1 February 2013 Patrick Pearlman assumed the role previously held by Josie Walker, who resigned on 14 January. The Principal Solicitor is responsible for the day-to-day running of EDOWA and the provision of the various legal services EDOWA provides to communities and individuals on environmental law issues of public interest.

Prior to joining EDOWA, Patrick was Principal Solicitor of the EDO Northern Queensland, based in Cairns, a role he assumed at the end of March 2010. Unlike other Australian states and territories, there are two independent EDOs operating in Queensland: the EDONQ provides service from Mackay north and the EDOQld in Brisbane serves the state south of Mackay.

During the nearly three years he was with the EDONQ, Patrick was instrumental in shifting that organisation's focus toward a greater role in litigation. Unlike Western Australia, where environmental appeals are usually heard by administrative tribunals, environmental and planning challenges in Queensland are typically litigated in either the state's Land Court (mining cases) or its Planning & Environment Court (most other environmental or planning cases). Between July 2010 and March 2012, Patrick acted, unassisted, as solicitor advocate in four planning appeals in the Planning & Environment Court, most recently successfully supporting Cairns local council's refusal to permit development over an iconic coastal headland. In addition, Patrick obtained successful outcomes in other litigation related to protecting rural areas from urban sprawl and essential habitat of the Southern Cassowary from development.

In his role at EDONQ Patrick also spent a great deal of time providing legal advice and assistance to individuals and communities in the organisation's service area, on a variety of matters such as coastal development, water pollution, industrial permitting, vegetation clearing and fisheries protection. Patrick also represented EDONQ in stakeholder meetings with the UN's mission to monitor the state of conservation of the Great Barrier Reef World Heritage Area and the Great Barrier Reef Marine Park Authority's efforts to undertake a strategic environmental assessment of the reef under Commonwealth law. Patrick authored numerous law reform and policy-submissions, as well as community education materials and outreach presentations to communities in far north Queensland.

Before joining EDONQ, Patrick practised law in the United States for nearly 22 years, including 14 as an attorney with the West Virginia Public Service Commission and its Consumer Advocate Division, dealing with state and federal regulation of telecommunications and other utility services, and five as an environmental lawyer with a large law firm in Charleston, West Virginia.

Since the Principal Solicitor's role and responsibilities in any EDO are broadly similar, much of Patrick's experience with EDONQ will be relevant to his new role. Of course, there's an entirely new system of state laws

Patrick Pearlman.

and regulations to learn, so Patrick hopes EDOWA's members and clients will be patient while he "learns the ropes" in Western Australia. That said, he knows the best way to learn is to do, and he has begun providing advice and assuming an active role in connection with ongoing litigation related to the James Price Point gas hub. Patrick looks forward to meeting EDOWA's members and clients in the coming months.

Joining Patrick in his move to Perth are his wife, two daughters, aged 12 and 14, and two cats.

Josie's legacy

Josie Walker served from January 2009, making her one of EDOWA's longest-serving principal solicitors. Originally from New South Wales, Josie was a litigation solicitor in that state's EDO and a tipstaff (research assistant) to a NSW Land and Environment Court judge before moving to Perth. Josie has returned to her native state to become a barrister specialising in environmental law – but no-one should be surprised if she makes a return appearance to help protect Western Australia's environmental values from time to time.

During her four years at the helm, Josie represented local citizens and community groups in numerous Mining Warden's Court proceedings, where she was able to achieve a remarkable string of successes. She also appeared in the Supreme Court of Western Australia for traditional owners seeking to protect cultural and natural heritage values jeopardised by the gas hub proposed for James Price Point.

In addition to her work as a litigator on behalf of individuals and community groups seeking to protect the environment, Josie was also incredibly prolific in her community legal education and law reform activities during her stint with EDOWA. She canvassed the state, delivering educational presentations from Broome in the north to Margaret River in the south. She also authored a "how to" guide for citizens wishing to have their objections to mining and exploration

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proposals heard in the Mining Warden's Court. Much of Josie's effort at law reform went into efforts to improve public access to government documents under Freedom of Information laws. Sadly, there is a good deal of work left to do to improve government transparency and accountability in Western Australia – one of the tasks that now fall to Patrick.

... and a new admin officer

Djuna Hallsworth joined the EDOWA in November 2012 as a part-time administration officer, to assist with updating old EDO procedures and policies, and meeting accreditation standards developed by the National Association of Community Legal Centres.

Djuna is currently studying a Bachelor of Communication Studies with an English major at UWA and has interests in filmmaking, creative writing, WAFL football and analytical research. She pursues these interests in between studying and working part-time with us.

Djuna Hallsworth.

... AND new volunteers!

EDOWA would like to welcome its new volunteers, Tich Mazhawidza, Emily Austin and Matt Olson. Tich, Emily and Matt are all current or former law students with a passion for the environment. They are each helping the solicitors with environmental law research and article writing (see page 10 for Tich's piece on uranium!). EDOWA would like to thank all of its past and present volunteers for all their hard work over the years. ■

What's Josie doing now?

Josie recently sent the staff and volunteers of EDOWA a postcard from Queenstown, New Zealand! She's enjoying the opportunity to take a break between leaving EDOWA and commencing her next big adventure. Josie's love of the environment is not just limited to the office- she has just completed two hiking expeditions and commented on how beautiful the experience was in her postcard. We look forward to hearing more about Josie's life post-EDOWA! ■

Josie Walker.

EDOWA launches Facebook page

EDOWA has set up a Facebook page to keep Perth locals as well as people around Australia in touch with what we do. We are hoping to broaden our stakeholder demographic and ensure that young people are getting involved with our service, through volunteering, contributing financially or just by spreading the word about the services we offer. EDOWA is looking forward to hosting some exciting fundraising events in the future, and we feel that Facebook would be another way of connecting with our community to provide information about these. If you or anyone you know has Facebook, please take a look, and "like" us to receive posts about what's going on in the local environmental and legal world!

You will still be able to access all the important information about EDOWA through our quarterly newsletters and our website, but Facebook will allow us to forge bonds with like-minded people and organisations through the sharing of posts.

www.facebook.com/Environmental-Defenders-Office-WA-inc ■

Can the environment afford a uranium mining future?

Tich Mazhawidza, volunteer

While mining and non-renewable resource development have been and remain central pillars of Western Australia's economy, they frequently raise concerns about the state of the environment for the benefit of future generations.

One such ongoing concern has been the mining of uranium in Western Australia, which has been strongly opposed for decades. On 17 November 2008 a policy ban on the mining of uranium was lifted, reigniting sharp public debate about the social and environmental impacts associated with uranium mining, processing and exporting. The question most people are asking is whether Western Australia is prepared for this extremely toxic industry and whether the state judicial system has the capacity and requisite independence to protect the environment and the communities likely to be affected by radioactive uranium.

There are, as yet, no commercial uranium mines operating in Western Australia, but since the policy ban on mining uranium was lifted, five uranium mine proposals are in the approvals process. If all five are approved they will produce an estimated 18,250 tonnes of uranium per year . This is more than four times the 4,000 tonnes per year produced by the Olympic Dam mine at Roxby Downs in central South Australia – Australia's largest uranium mine. Some of the environmental impacts of Olympic Dam are well known, and include dewatering of approximately 35 million litres of water a day from the Great Artesian Basin, drying up mound springs; the wind-borne discharge of radioactive tailings into the environment from the mine site; liquid waste from the mining process contaminating fresh groundwater by seeping into local creeks or leaching; Greenhouse emissions of carbon dioxide associated with uranium production (a by-product of fossil fuel operated machinery); and physical disturbance of the landscape and ecosystems.

The proposed mine in Wiluna alone will produce an estimated 11,000 tonnes of uranium per year – nearly three times what the more experienced Olympic Dam mine is currently producing.

In addition to the five mining proposals in the approvals process, there are at least 45 uranium exploration projects in progress. Should any of these be successful they will add to the number of possible uranium mines.

In summary, Western Australia is going from having no uranium mines to potentially being the largest uranium producing state in the country. While most of the companies proposing to mine uranium may have experts in the industry, the companies themselves are new to mining radioactive uranium.

The sudden increase in proposals is also likely to put additional pressure on Western Australia's Environmental Protection Authority (EPA), which is currently struggling to catch up with the growing mining sector. That pressure is likely to be most acutely felt in the EPA's implementation of the Environmental Impact Assessment (EIA) process associated with uranium mining proposals.

Briefing at the proposed Toro site.

The EPA's 2009 review of the EIA process in Western Australia cited increased concern over its capacity to deliver timely, high quality advice to government whilst dealing with an expanding range of environmental issues, as well as risks to community health and important ecosystems and biodiversity values.

To deal with perceived shortfalls in the current EIA process, the review offered 47 recommendations to improve the process. However, only 25 have been implemented to date.

Too much pressure on the EPA compromises the quality of the EIA process, which in turn may affect the Minister's decision on the mining proposals. In the interest of the environment, under the *Environmental Protection Act 1986* (WA), the EPA is required to provide the Minister with a well set-out report with recommendations following completion of the EIA process. At this stage the only safeguard for the environment rests with the Minister's decision.

Unlike the mining of traditional minerals such as gold, iron or coal, uranium ore is significantly radioactive, and the radioactive waste (tailings) remains radioactive for thousands of years. Radioactive contact has significant health implications, including the mutation of genetic material, a characteristic that is very different from most minerals mined in Western Australia. Uranium is also unlike most other minerals mined in the state in that it can also be used to make military weapons, and there is no guarantee that uranium sold to nuclear states will not end up in conflict zones.

The hazardous nature of uranium – not to mention its potential as a weapon – imposes a high responsibility for the safe mining, milling, processing and transportation of uranium.

Though there is federal oversight of uranium mining – it is considered a "matter of national environmental significance" under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) – state and territory governments have their own legislative controls. Despite the anticipated growth of uranium mining under the current government, Western Australia is yet to propose specific legislation to regulate the mining, transportation, storage and processing of uranium ore and will be relying on the *Mining Act 1978* and the *Radiation Safety* >>

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Act 1975 as its key legislative instruments. Neither piece of legislation is designed to deal with uranium- or radioactivity-specific issues. Other states, such as South Australia, have specific legislation, such as the *Radiation Protection and Control Act 1982*.

There seems to be a rush to mine uranium but no rush to adequately safeguard people or the environment for future generations. It is our responsibility 'to ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.'

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Australia's sharks need protection

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MEMBERSHIP RENEWALS DUE BY JUNE 30

Thank you for your support during the past 12 months: your financial assistance is crucial to our ongoing commitment to environmental justice in WA, and we invite you to sign up again for the 2013-2014 financial year.

Many thanks to those who have made a donation to the Environmental Defender's Fund. Have you considered making a donation before the end of the financial year? All donations – large or small – assist us to keep up with the statewide demand for advice and litigation work.

Got any fundraising ideas?

If you have ideas for EDOWA fundraising events, please contact me at jsiddall@edowa.org.au or on 9221 3030 on a Monday, Tuesday or Thursday.

Many thanks.

Jane Siddall, Coordinator

SEE MEMBERSHIP FORM ON BACK PAGE

EDOWA first CLC to complete 2013 cross-check

On 28 March EDOWA completed its mandatory cross-check to fulfil requirements outlined by the National Association of Community Legal Centres. Cross checks are undertaken on a yearly basis. Each West Australian Community Legal Centre (CLC) is nominated to check another West Australian CLC, which can sometimes involve a lengthy journey for CLCs located outside the Perth Metropolitan area.

The process involves ensuring that the CLCs are complying with legal and risk management procedures, and have the proper measures in place to ensure that staff and volunteers are adequately trained in their fields.

A long questionnaire is filled out by the checker as they discuss the practices of the CLC with the Responsible Person (in our case, it was Principal Solicitor Patrick Pearlman).

Albany CLC conducted our cross-check, which we passed with flying colours, meaning that EDOWA was the first CLC to pass the 2013 program. We will be conducting our cross -check of a different CLC within the next few weeks.

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* *Please note: memberships are subject to approval by the EDOWA Management Committee. Members must agree to abide by the EDOWA's Rules.*

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