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WA Environmental Protection Authority knocks back proposed shark drum lines program

Patrick Pearlman, Principal Solicitor

The WA Environmental Protection Authority (EPA) dealt a stunning blow to the Department of Premier and Cabinet (DPC) on 11 September 2014 (an ill-omened date it seems), when it issued Report 1527 recommending refusal of the DPC's proposed Shark Hazard Mitigation Drum Line Program 2014-2017 being implemented. In its report, the WA EPA advised that:

> *[B]ased on available information, it is the EPA's opinion that there remains a high degree of scientific uncertainty as to whether the proposal can meet the EPA's environmental objective for Marine Fauna (*ie, *to maintain the viability of fauna at the population level) and there is a risk that, if the proposal is implemented, it may compromise the viability of white sharks at the population level (for the south-western white shark population).*
>
> *In view of that high degree of scientific uncertainty, the EPA considers that a cautious approach should be adopted and that the proposal should not be implemented.*

(Report 1527, pp iii and 21 – copy available on EDOWA's website). If the Minister for Environment, Albert Jacob, determined to nonetheless approve the DPC's proposed drum line program, the EPA also provided a number of conditions that it recommended must be included, to diminish potential environmental impacts associated with it (pp17-19 of Report 1527).

The EPA's 11 September decision very likely puts an end – for the foreseeable future – to the government's dogged effort to deploy baited drum lines targeting protected species of sharks, despite widespread and determined opposition.

The Department of Fisheries deploying drum lines off Cottesloe Beach on 1 February 2014. – Sea Shepherd

As noted in earlier issues of *EDOnews* (May and July 2014), the DPC's proposed drum line program would have expanded upon the trial drum line program that EDOWA, on behalf of Sea Shepherd Australia Ltd and Sharon Burden, sought unsuccessfully to stop in the WA Supreme Court in February-March 2014. The trial program was implemented from late January to 30 April 2014 pursuant to exemptions issued by the Commonwealth Environment Minister, under s158 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the State Fisheries Minister under s7 of the *Fish Resources Management Act 1992* (FRM Act).

In essence, the EPBC Act s158 exemption allowed the trial drum line program to go forward without requiring federal assessment and approval, weighed against the program's potential to have significant impacts on matters of national environmental significance (MNES) – namely listed threatened and migratory species such as the Great White Shark. Commonwealth Environment Minister Greg Hunt determined on 10 January 2014 that the "national interest" – specifically concerns about the impact of recent fatal shark attacks on Western Australia's ocean-based tourism industry – justified the exemption. Shortly thereafter the WA Fisheries Minister granted the trial program two exemptions from the prohibitions and offences provisions of the FRM Act, which would have otherwise applied to the trial program because all >>

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<< three species of sharks targeted – Great White, Tiger and Bull sharks three metres in length or more – are "totally protected fish" under the FRM Act.

The DPC-proposed program knocked back by the EPA would have expanded upon the trial drum line program by:

- extending the "static" drum line program in the Perth and Southwest marine monitored areas from 15 November-30 April each year for three years (2014-17);
- expanding a "temporary" shark response mobile drum lining program to any WA coastal waters (*ie*, waters out to three nautical miles) – including conservation and World Heritage areas; and
- implementing the shark response drum lining program at any time of year, not just mid-November to May.

EDOWA assisted Sea Shepherd in preparing lengthy submissions in opposition to the DPC's proposed drum line program. The EPA received thousands of comments from other individuals, the vast majority of which were strongly opposed to the program. Notably, the Conservation Council of WA organised and assisted submissions from opponents, while approximately 100 shark scientists from around WA, Australia and the world also organised to make submissions strongly opposing the program.

It is worth noting that, in large measure, the EPA's advice and recommendation in Report 1527 were shaped by input from the CSIRO. The EPA had previously engaged CSIRO to undertake a peer review assessment of the DPC's June 2014 Public Environmental Review (PER) against the work required in the approved Environmental Scoping Document (ESD) and report its views and conclusions directly to the EPA.

All indications are that Minister Jacob will accept the EPA's advice and recommendation, and refuse to allow the DPC's proposed program to be implemented. Moreover, the media ("WA drops Federal push on drum lines", *The West Australian*, 25/10/2014) reported that Premier Barnett had announced his withdrawal of the proposed shark drum lining program from consideration by the Commonwealth. However, this is tempered by his statements that the State has reached an "agreement" with the Commonwealth to deploy baited drum lines where sharks purportedly pose an "imminent hazard". In any event, we anticipate that, sooner or later, the government will push for approval to use of baited drum lines again, or develop new, purportedly scientific support for such a program. There's also little doubt that such efforts will meet with strong opposition as well.

Regardless, opponents of the program can at least take a breather and enjoy a rare win for the environment, biodiversity, and the laws that are supposed to protect them. ■

Got any fundraising ideas?

If you have ideas for EDOWA fundraising events please contact **Majella Metuamate** at mmetuamate@edowa.org.au or on 9221 3030

EDOWA farewells Jessica Smith

Patrick Pearlman, Principal Solicitor

It is with great regret that EDOWA must announce that Jessica Smith, our long-serving and well-known Outreach Solicitor, resigned her role at the beginning of October.

Jess joined EDOWA in February 2010 and worked part-time here and part-time at the Employment Law Centre, another community legal centre focused on advising and assisting employees with claims arising under employment law. Before joining EDOWA Jess worked at Clayton Utz for three years, where she specialised in environmental law, and energy and resources law after graduating with a Bachelor of Laws and a Bachelor of Arts from the University of Western Australia.

Many of EDOWA's members and clients who worked with Jess and can appreciate what a loss her departure represents to the organisation, our staff and management committee. Jess worked on a number of significant cases and liaised closely with some of our largest clients, all while managing to provide timely and thorough advice to the many members of the public with less complex questions about their rights and obligations under state and federal environmental laws. In addition, Jess participated in several community legal education presentations that provided valuable information in a lively, easily-understood way and contributed to EDOWA's Factsheets.

Some of Jess's more important contributions to EDOWA, though perhaps less visible outside the organisation, were her sage and steady counsel on human resource matters and mamagement issues >> *page 9*

Jess Smith.

WA's environmental laws critiqued at CLE events

Patrick Pearlman, Principal Solicitor and ***Carolyn Dearing, Outreach Solicitor***

For the past month or so EDOWA solicitors have been busy making community legal education presentations to the general public and environmental professionals. By and large those presentations delivered sharp criticisms of current environmental laws in WA.

On Sunday 28 September 2014, Carolyn Dearing represented the EDOWA at a Fracking Forum in Perth, organised by the WA Labor Party and initiated by Shadow Environment Minister Chris Tallentire MLA.

David Guise of AWE Limited and Damian Ogburn of Buru Energy Limited delivered the pro-fracking case, while Piers Verstegen of the Conservation Council of WA and Carolyn on EDOWA's behalf responded with opposing views. Carolyn was asked to specifically address the risks of ground water contamination from fracking, and how well the law is currently able to respond to this threat.

Each speaker delivered a presentation of around 15 minutes, and then the floor opened for questions and answers. Carolyn fielded a substantial number of the questions, which spanned a broad range of environmental issues raised during the course of each of presentations. People were particularly keen to learn more about the weakness in WA's environmental laws and what changes need to be made to deal with key risks of shale-gas exploration activities that AWE and Buru have recently been authorised to carry out in the Kimberley and Greenhead and Leeman areas of the State.

Meanwhile, on 16 October 2014, Patrick Pearlman made a presentation at the National Environmental Law Association's (NELA) Western Australia State Conference in Perth. The topic of the conference was "After the Approval – Appeals, Compliance and Prosecutions". Patrick's presentation dealt with the subject of "Legal Rights of Third Parties in Environmental and Administrative Law" – a topic near and dear to the hearts of EDOWA members and supporters.

As readers no doubt know, the rights of third parties (*ie*, individuals and community organisations interested in proposed development projects or government actions/decisions) are significantly curtailed in Western Australia, either by statute or by operation of Australian common law. This is especially so once a proposal has been approved. Patrick discussed such limitations from the perspective of a community legal centre solicitor who advocates on behalf of the public interest in environmental and planning matters, focusing on the hardships such limitations impose on third parties, the inefficiencies caused by such limitations in the administration of justice and implementation of important public purposes, and the rationale (or lack thereof) for the limitations. In addition he offered some suggestions for reforms that might reduce or eliminate the most problematic restrictions on third-party rights.

Patrick's 30-minute presentation was followed by a fairly lively panel discussion focusing on challenges to environmental approvals. Joining Patrick on the panel were Kane Moyle (manager Environment and Land Access, Chamber of Minerals and Energy WA), Piers Verstegen (Conservation Council WA), and Darren Walsh (CEO, Strategen). Questions posed from the attendees included whether environmental decision-making should remain with government ministers, and whether a specialised court is necessary to deal with environmental approvals and subsequent issues.

Copies of Carolyn's and Patrick's presentations are available on the EDOWA website. ■

Mining company throws in the towel on opposition to groups' objections

Patrick Pearlman, Principal Solicitor

As readers of *EDOnews* may recall from the August 2014 issue, EDOWA is representing three community organisations opposed to proposed iron mining by Polaris Metals Pty Ltd in banded iron formations in the Helena and Aurora Range in the Yilgarn region of WA. The three groups – the Wilderness Society of WA Inc, the Wildflower Society of WA Inc, and the Helena and Aurora Range Advocates Inc – lodged objections in the Mining Warden's Court in May 2014 to two mineral tenement applications – General Purpose Lease G77/124 and Miscellaneous Licence L77/27 – by Polaris. The applications would provide for infrastructure needed to service Polaris' proposed J5 and Bungalbin East iron mines. Those proposed mines are currently undergoing assessment by the WA EPA.

Banded iron formations in the Helena and Aurora ranges have long been recognised as unique, important and fragile ecosystems, and home to many threatened and localised species of flora and fauna. For nearly 40 years the region has been the subject of attempts to put it into a conservation status that would protect it from any form of mineral development. Moreover, the two mineral tenement applications and the mines they would serve are located entirely within the Mt Manning Helena and Aurora Range Conservation Park (MMHARCP).

Unfortunately, conservation park designation alone does not protect the areas from mineral development, and the organisations had little choice but to lodge objections and enlist EDOWA's assistance.

At a 1 August 2014 mention hearing the Mining Warden agreed to adjourn the organisations' objections until 12 September, to allow the groups to identify any issues that should be addressed by the Warden outside of the EPA's environmental assessment process. At the 12 September mention, Polaris' legal representative contested whether the Warden should exercise his jurisdiction to hear any of the objections identified by the groups. In light of the parties' dispute, Warden Tavener directed them to file written submissions in support of their positions – with the groups being required to provide their submissions on 2 October and Polaris being required to file its submissions two weeks later, on 16 October. >>

<< With the parties' agreement the Warden also adjourned the proceeding until 18 September 2015, in order to allow the completion of the EPA's assessment and subsequent proceedings, subject to his ruling on jurisdiction.

On the groups' behalf, EDOWA prepared and filed comprehensive 16-page submissions setting forth the reasons why the Warden can, and should, entertain the groups' objections, on the grounds that they raise "public interest" matters (visual amenity, public access, impact on tourism, etc) in addition to environmental issues, long recognised by the courts in Western Australia as proper grounds for objection. When it came time for Polaris to file its submissions in reply, however, the company instead submitted a letter advising the Warden that: "With the benefit of the Objectors' submissions, Polaris now appreciates the nature of the objections made ... [and on] this basis, Polaris considers that the objections fall within the jurisdiction of the Warden's Court, and accordingly will make no submissions to the contrary".

EDOWA anticipates that the Warden will not now decline jurisdiction, in light of the Polaris concession. This means that, should the EPA process ultimately turn out in Polaris' favour, the Warden will still have to address the conservation groups' objections some time in the future. ■

Mining in banded iron formations not appropriate, EPA says

Patrick Pearlman, Principal Solicitor

The opposition to Polaris Metal's iron mining proposals around the Mt Manning Helena and Aurora Ranges Conservation Park noted in the prior article stems from unsatisfactory efforts (to date) to protect these unique landforms and the rare and endangered species of plants and animals they shelter. In its annual report last year (2012-13), and again in this year's annual report (2013-14), the WA EPA has recognised the need to protect not only the banded iron formations near Mt Manning in the Goldfields, but also in the Mungada/Karara/Koolanooka area of the Midwest, 200km southeast of Geraldton.

With regard to banded iron formations, the EPA notes the following in its 2013-14 annual report:

> *The EPA has provided advice and recommendations on the values of Banded Iron Formation (BIF) Ranges for over 40 years. These ranges form part of the Yilgarn Craton geological formation that stretches from the southern Pilbara through the Midwest and east to the Goldfields.*
>
> * * *
>
> *BIF Ranges are isolated ancient ranges, set in a predominantly flat landscape, that provide specialised habitats for plants, animals and ecological communities. These environments have high levels of plant endemism (with plants confined to a particular range) and host rare and geographically restricted species. The ranges were formed through uplifting, and have been undisturbed by seas or glaciers for more than 250 million years.*
>
> *As high points in the landscape, the ranges are cooler and wetter than the surrounding plains and form island-like refuges for plants and animals not found in the flat, dry plains below. As a consequence each BIF range is biologically distinct, often supporting ecological communities and plant species that only occur on one range.*
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> * * *
>
> *The EPA continues to support the State Government commitment to establish a class 'A' nature reserve on Mungada Ridge in recognition of its high environmental and landscape values and the cumulative impacts of development on the surrounding BIF Ranges.*

Helena and Aurora Range. Smokebush contrasts with banded ironstone outcrops. – TWS (WA)

EDOWA and the groups it represents are often at odds with the EPA. However, on the importance of, and need to protect the unique banded iron formations of the State's Goldfields and Midwest regions, we wholeheartedly support the EPA's view. We urge the Authority to conduct assessments in accordance with these views, and support conservation groups' request to the Minister of Mines that he exercise his authority, under s111A of the *Mining Act 1978*, to exempt these areas from mining and mineral tenement applications in the future. ■

Clouds gathering over WA resource boom?

Patrick Pearlman, Principal Solicitor and ***Hannah Spivey, EDOWA volunteer***

Much of WA's economy (and government spending and budget projections) has been built on the long-running mineral resources boom. However, there are signs that the boom may be over, with significant consequences for the State's economy and government-funded infrastructure investments.

The State's Budget Paper No 3 (Economic and Fiscal Outlook) presented to Parliament on 8 May 2014 contained the following observations and projections: >> page 9

Government "whites out" tainted EPA approvals, pushes gas hub no-one wants to build, at James Price Point

Patrick Pearlman, Principal Solicitor

Aftershocks continue to be felt following the successful challenge mounted against the State's proposed $45b natural gas precinct at James Price Point by The Wilderness Society (WA) Inc and Goolarabooloo lawman Richard Hunter (see *EDOnews*, September 2013).

Overview

As readers will recall, EDOWA was part of the legal team that challenged the State's "strategic proposal" to approve James Price Point, some 60km north of Broome, as the site of future development of an on-shore facility capable of processing up to 50 million tonnes per annum of natural gas extracted from the offshore Browse Basin. The proposal would have included a massive export shipping facility, requiring the excision of several hundred metres of coastline for a port, as well as massive dredging activities to develop and maintain a shipping channel capable of handling deep-draft tankers. The proposal was first referred to the WA EPA in March 2008, and the EPA purported to assess the proposal over the next four years, culminating in a July 2012 report recommending that the strategic proposal could be implemented. The July 2012 decision was followed by the EPA's December 2012 decision that Woodside Energy's proposal to construct and operate a processing and export facility over half of the site was a "derived proposal" consistent with the approved, strategic proposal, amd required no further assessment.

Public opposition to the proposed gas hub was loud and determined. Development of James Price Point raised numerous environmental and heritage issues. Among other things, James Price Point is home to the largest, best-preserved community of monsoon vine thicket on coastal dunes of the Dampier Peninsula – an ecological community listed as threatened by the Commonwealth after assessment of the proposal had begun. The site is also habitat for the endangered Greater Bilby. The offshore waters are one of the calving grounds for the Southern Right Whale, and lie within the whales' migratory routes. In and around the proposed development site are areas of fossilised dinosaur tracks that are unique in the world. And James Price Point is an important site in the Song Cycle of the Goolarabooloo and other indigenous peoples of the area, who refer to the site as Walmadanj.

As discussed in the September 2013 issue of *EDOnews*, the WA Supreme Court on 19 August 2013 invalidated the State approvals given for both the strategic proposal and Woodside's derived proposal, on the grounds that the assessment process was tainted by the participation of conflicted EPA members in the process. Three of the five EPA members had direct or indirect financial interests that could be affected by the ultimate decision whether to recommend approval or disapproval of the proposals. On this point, Chief Justice Wayne Martin wrote (at page 4 of his opinion:

> *[T]here had in fact been no valid assessment of the Browse LNG Precinct Proposal. That is because the assessment was undertaken following a process which was directed and controlled by a number of decisions purportedly taken by the EPA, but which were invalid because they were taken at meetings at which a number, often a majority, and on one significant occasion, all of those participating in the decision-making were disqualified from participation by reason of their pecuniary interest in the Proposal. Those invalid decisions were an integral and indispensable part of the assessment process. When the powers of the EPA with respect to the Browse LNG Precinct Proposal were delegated to Dr Vogel on 5 July 2012, he did not himself undertake an assessment of the Proposal, but rather adopted, in substance, a report which had been prepared during the course of the assessment process which was vitiated by the participation of the disqualified members.*

Moves to "white out" other, similarly tainted EPA decisions

During the course of the debate associated with the government's gas hub proposal, it became clear that there were significant concerns about the participation of EPA members in the assessment process who had conflicts of interest. In response to questioning in Parliament by Greens Senator Robin Chapple, the government advised on 6 September 2012 that two of the conflicted EPA members – Dr Whitaker and Mr Glennon – had also declared potentially conflicting interests in 43 other assessments between 2002 and 2012.

In the wake of Chief Justice Martin's 19 August 2013 decision the government asked the EPA in September 2013 to provide written advice to the Environment Minister regarding its treatment of perceived and actual conflicts of interest, including the status of the EPA's internal Code of Conduct and Procedures, and the regularity with which that code was reviewed and updated. The EPA was further requested to seek—and sought—advice from the Public Sector Commissioner regarding its governance arrangements in preparing this advice. The EPA undertook a review of its governance arrangements, and in April 2014 adopted a revised Code of Conduct which took into account advice from the Public Sector Commissioner. The government believes the 2014 Code of Conduct fully addresses the legal requirements of the *Environment Protection Act 1986* and all public sector and government requirements for Boards and Committees.

On 10 September 2014 the government introduced the *Environmental Protection Amendment (Validation) Bill 2014* (EPA Validation Bill) in Parliament. According to the Explanatory Memorandum (EM) accompanying the proposed legislation, the Bill was intended 'to effectively provide that the rights, obligations and liabilities of all persons shall be the same as if each relevant action of the Authority and subsequent environmental approval had been validly done'. (EM, p1) According to the Explanatory Memorandum, '[t]he relevant actions to which >>

<< the validating legislation will apply will be those actions which are invalid by reason of:

- a failure to comply with section 11 and/or 12 of the Act;
- the existence of a reasonable apprehension of bias by Authority members; or
- the response to a perceived conflict of interest being to rely on a delegation where no delegation was in fact available.'

These three actions are referred to as "grounds of invalidity" in the Bill. Section 136(1)-(3) of the Bill provides (to paraphrase) that any ground of invalidity that may have affected an EPA action prior to 19 August 2013 (the date of the Court's decision on James Price Point) is deemed to not be a ground that would invalidate that EPA action. Section 136(4) goes further, however, and provides that any ground of invalidity that occurs before the date of enactment of the EPA Validation Bill is likewise deemed valid and effective.

As part of the EPA Validation Bill, the government also provided Parliament with a list of 25 environmental approvals potentially affected by conflicts of interest. Those 25 approvals overlapped with some of the 43 assessments identified in September 2012, in which Dr Whitaker and Mr Glennon declared potentially disqualifying interests, but included several other approvals in which other EPA members with such interest participated. Moreover, in response to questions, the government provided still more assessments in which yet other EPA members declared potentially disqualifying interest.

The nature of the interest declared and the extent of participation by declaring EPA members has not – to EDOWA's knowledge – been fully revealed by the government during debate over the EPA Validation Bill. Ultimately, those questions may be academic given the width and breadth of the Bill. In essence, the Bill provides that whatever the interest and whatever the participation, any of the enumerated grounds of invalidity that predate the date of the Bill's enactment are deemed not a ground of invalidity and the assessment/approval is nonetheless effective and valid. In other words, any errors based on the participation of EPA members whose objectivity could fairly be questioned will be "whited out" as a result of the Bill.

In EDOWA's experience, such action by Parliament is extraordinary.

The rationale provided by the government for the extraordinary measures taken in the EPA Validation Bill is summed up in the EM to the legislation:

> *[T]he fact remains that the past failings could only be cured by undertaking a reassessment of the affected proposals, some of which are already in the course of being implemented, or by validating legislation. As well as the considerable public expense which would be involved in a reassessment of all those matters, significant investment in private and public works which underpin the State's economic development would be put at risk. The reputation of the State as a secure place for substantial capital investment would be compromised. The Government has decided that validating legislation is necessary to avoid these outcomes.*

While EDOWA appreciates that the business community wants "certainty" that Western Australia is a secure place for investment, there seems to be an equally important interest that is being left out – namely, the interest of the public in good government, including transparency, accountability, and overall unbiased and scientifically sound decision-making. While the Bill gives the business community the security it presumably wants, it clearly fails (in EDOWA's view) to deliver on WA citizens' entitlement to good government.

The EPA Validation Bill has, as of the date of this writing (23 October), passed the Legislative Assembly but has not yet been passed in the Legislative Council. No-one should be in doubt as to the final vote or content of the legislation, however, as every proposed amendment has been voted down on party lines. Whether the legislation will pass muster on any possible court challenge is uncertain. >>

Aerial photo of James Price Point. – Ingetje Tedros

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Government presses on with "reassessment" of JPP proposal

In another development related to the Court's August 2013 decision invalidating decisions approving the proposed gas hub at James Price Point, the EPA – through three delegates – is currently "reassessing" the proposal at the government's request.

The request to "reassess" a hub for the processing and export of natural gas produced from the Browse Basin was submitted to the EPA in a 26 September 2013 letter – written shortly after Chief Justice Martin invalidated the State approval decisions. In its letter the Department of State Development advised the EPA that it "wishes to progress the Environmental Impact Assessment of the Browse LNG Precinct Project" and asked the EPA to "advise as soon as possible of the next steps". EPA chairman Paul Vogel responded on 18 October 2013, advising the State that "for the purposes of this reassessment", the EPA would appoint, with Ministerial approval, one or more delegates to undertake the assessment and that it would be up to the delegate(s) to "determine the manner of that assessment, and to consider the extent to which the material currently available is sufficient for the purposes of conducting that assessment".

On 4 February 2014 the State Environment Minister, Albert Jacob, released a media statement advising that he had approved the appointment of three delegates to assess the proposed Browse Liquefied Natural Gas (LNG) precinct: Gerard Early PSM, Dr Tom Hatton, and newly-appointed EPA member Glen McLeod (collectively, the Browse Delegates). Thereafter, in a 16 May 2014 EPA media statement, the Browse Delegates – through Mr Early – announced the manner in which they would undertake their reassessment of the Browse LNG Precinct Proposal. According to Mr Early: "[T]he delegates would review the environmental review report prepared by the proponent, additional available scientific information as well as public submissions received to date"; would not "be considering the EPA's previous assessment report or any of the decisions arising from processes which followed, including the appeal committee's report"; and would "determine the sufficiency of the information currently available and then if necessary what further information is required for our assessment".

Not until 29 July 2014 did the Browse Delegates finally announce, in yet another media release, the manner of the reassessment they had decided to undertake. Speaking again as the Delegates' "chairman", Mr Early advised that "individuals, non-government organisations and government agencies that provided a non-proforma submission during the previous process would be invited to update technical or scientific information". Just who would be considered "non-proforma" submitters and therefore "invited" to comment was apparently left to the unfettered discretion of the Delegates. Invited submitters would then have until September 9, 2014 to respond to the Delegates' invitation.

More significantly, Mr Early also advised that "as the Strategic Assessment Report (SAR) on the Browse LNG proposal was released for public review in late 2010, the Delegates have confirmed with the Department of State Development that the proposal remained the same". In other words, despite the fact that the strategic proposal was referred to the EPA in March 2008, with a request that the EPA determine a possible site (or sites) in or outside the Kimberley, for the Browse LNG Precinct, the Browse Delegates would jump forward to the December 2010 SAR, by which time the State – with the EPA's advice – had already selected James Price Point as the site for the project.

Environmental and indigenous groups opposed to the selection of James Price Point as the site for the proposed Browse LNG Precinct have been raising concerns about the Delegates' proposed course of assessment since August 2014. So too have members of Parliament, concerned about the "reassessment" process.

In addition to the concerns about the basis on which the delegates are determining who is a pro-forma versus a non-proforma submitter, and the appropriateness of the starting point (December 2010 SAR) for the Delegates' reassessment, there are still questions about the scope of the proposal being assessed, as well as concerns about the justification and rationale for the reassessment. With respect to the these issues, the government has made clear that the proposal to be assessed is the proposal that was referred to the EPA in March 2008. That referral incorporated an agreement between the State and the Commonwealth, pursuant to s146 of the EPBC Act, which set forth the scope of the strategic assessment that the EPA would undertake on behalf of the Commonwealth under the parties' bilateral assessment agreement. Among other things, that agreement and attached draft terms of reference contemplated an assessment process to select a site or sites, including outside the Kimberley (Agreement, cl 4.6) and also an analysis of the justification for the proposed Precinct (Terms of Reference, cl 3).

However, the Delegates' proposal to undertake their reassessment from the 2010 SAR rather than from the original March 2008 referral means that alternative sites for the Browse LNG Precinct won't be considered, let alone evaluated. Likewise, it appears that the Browse Delegates have no intention of considering the justification for the Browse LNG Precinct (based on a 3 October 2014 letter from the delegates to The Wilderness Society (WA)). This is disconcerting because, as noted above, the justification for the proposed precinct is required under the State's agreement with the Commonwealth. It is also disconcerting in view of the fact that there is no current or prospective foundation proponent for developing an onshore facility to process or export gas produced from the Browse Basin – at James Price Point or anywhere else. The prior proponent for an onshore facility, Woodside Energy, is no longer pursuing such a development and instead is – on behalf of the main companies developing the Browse field – seeking federal approval of a floating, offshore processing and export facility (see Woodside Energy Ltd/Energy generation and supply (non-renewable)/Marine Waters, 425km north of Broome, WA/WA/Browse FLNG Development, EPBC Referral 2013/7079; available at **www.environment.gov.au**).

This is just a sampling of the concerns with the Delegates' proposed course of reassessing the Browse LNG Precinct proposal. EDOWA continues to advise various groups on this process. ■

Commonwealth releases new maps for listed species

Hannah Spivey, EDOWA volunteer

On 19 August 2014 the Commonwealth Department of Environment announced its release of more than 1700 new maps and data that local communities can use to find protected species in their area. The maps were developed using details from state, territory and national databases, as well as information published in species recovery plans and listing advices.

The maps form the "Species of National Environmental Significance Database" (accessible at ***www.environment.gov.au/science/erin/databases-maps/snes***) and provide information on the distribution of species listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), including threatened and migratory species. The maps have been divided into categories including flora, frogs and reptiles, mammals, birds and fishes. To develop the maps spatial ecologists used modelling software to map the known and predicted distribution of listed species, including areas of potential habitat. The department warns that the maps are not the product of a comprehensive scientific assessment but rather provide a starting point for further environmental investigation.

EDOWA has reviewed the maps and they indeed are summary versions – meaning that they provide a generalised distribution that will ensure that locations of species that are sensitive to disturbance or illegal collection are not made public. The GIS grids used in the maps are coded to correspond to areas where the species are "likely to occur" or "may occur". Known distributions are included in the "likely to occur" category. The maps are therefore somewhat lacking in specificity but at least are very easy to understand and can provide a broad overview of the distribution of a species at a glance. ■

Carnaby's Black Cockatoo. – John Kooistra, Queensland birder

York landfill case postponed for five months

Ella Wisniewski, EDOWA volunteer

Our office continues to assist the Avon Valley Residents' Association (AVRA) in its opposition to SITA Australia's proposed landfill at Allawuna Farm, approximately 18km west of York. The site is located in an agricultural and conservation zone near Wandoo National Park and the Mundaring Weir catchment, and the proposed landfill would accept up to 250,000 tonnes per annum of Class II municipal waste from Perth.

Proceedings are afoot at the State Administrative Tribunal (SAT), after SITA applied for a review of the Wheatbelt Joint Development Assessment Panel's decision to reject the proposal in April this year. Proceedings were to begin in earnest in September. However, the SAT, on 22 August 2014 granted SITA's request to postpone proceedings for five months, to allow adequate time for the Department of Environmental Regulation (DER) to conduct a works approval assessment. The assessment is expected to be carried out by early December 2014.

As potential intervenors AVRA, the Shire of York, and two individual landowners near the proposed landfill opposed SITA's request for postponement . The Shire of York raised concerns about the works approval being given an elevated, determining role in the proceeding. AVRA objected to the delay on the basis that the proposed development remains a matter of considerable community concern, and a further postponement would do little to alleviate community concerns. AVRA also expressed a desire for certainty about what role it would have in the proceedings. For its part, the Wheatbelt Joint Development Assessment Panel, which refused SITA's landfill application, did not oppose the company's request for extension.

Whether AVRA will be granted leave to intervene remains to be seen. The right of the public to intervene or lodge submissions in such matters is strictly limited to circumstances in which a "sufficient interest" in the matter can be demonstrated. The would-be intervenor must also show that his/her participation will assist the SAT to make an appropriate decision. ■

Greater Bilby. – Wikipedia

Community organises successful fundraiser for EDOWA

Patrick Pearlman, Principal Solicitor

Last month's Great Bee Cull fundraiser for EDOWA was a tremendous success. The fundraiser, organised by Jane Genovese and Peter Langland, was held on 12 September 2014 at Rosie O'Grady's in Perth. The event was sold out, with more than 120 people enjoying the panellists' tongue-in-cheek assessment of the mortal dangers posed by killer bees, politicians' misguided efforts to eradicate the bees, and the media's swooning reporting over the government's threat assessment and public fears.

A very good time was had by all, and we raised $5355.57 from door sales, raffles, table donations, an auction and a quiz.

We thank all our supporters and friends for making this a great event, particularly Jane and Peter, but also our four enthusiastic panellists – Natalie Banks of No Shark Cull, Dr Martin Drum of Murdoch University, Katrina Aniere of Millennium Kids Inc, and Tiffane Bates from the Centre for Integrative Bee Research. Big thanks too, to our fantastic presenters Katrina Bercov and Elisa Williams of Strictly Hypothetical (***www.strictlyhypothetical.com.au***). ■

Staff changes at EDOWA

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that were of great benefit to the organisation – and to me personally. Jess took on the role of acting Principal Solicitor after Josie Walker departed in January 2013, and reprised that role whenever I was on extended leave. Jess assisted in recruiting and interviewing new solicitors, staff and volunteers, and contributed significantly to many of the new policies and procedures that were developed to attain accreditation with the National Association of Community Legal Centres.

Anyone who knows Jess also knows that her sunny disposition and clever wit are two of her most winning attributes that we'll miss dearly. On a brighter note, we're lobbying Jess hard to stay active in the organisation, and she remains deeply committed to EDOWA's mission and objects.

Please join us in wishing Jess every success in the future, both professionally and personally.

Other staff changes

In addition to Jessica Smith's departure, other changes to EDOWA staff are happening. Annaleen Harris, who took family leave in August 2013 rejoined EDOWA in August as a casual solicitor, and is working two days a week. We're pleased to have Anni back.

Our other casual solicitor, Carolyn Dearing, is leaving EDOWA at the end of October. Carolyn came on board in March, when EDOWA was overwhelmed with requests for assistance and under-staffed, and did yeoman work during her time with us. Though Carolyn is leaving us, she has opened her own legal practice – called Watershed Legal (for now, 0414 356 488) – and will continue to assist clients with a variety of legal problems, including issues arising under planning and environmental legislation. ■

Cloud over resources boom

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- "Moderating" business investment has caused Gross State Product to "ease" from 7.3% in 2011-12, to 5.1% in 2012-13, to an estimated 3.75% in 2013-14 and 2.75% in 2014-15. GSP is then projected to increase to 5% in 2017-18, based on assumptions that WA's total mineral exports rise 28% from $142.1 billion in 2013-14 to $182.3 billion in 2017-18 (an increase of 28%);
- Business investment peaked in 2012-13 and is forecast to decline each year as spending on iron ore and LNG projects wind down and completed projects move into production phase. This trend is expected to moderate population growth and "soften" the labour market, resulting in weaker growth in tax collection, particularly payroll tax.
- WA's revenue outlook is heavily influenced by a decline in GST payments, with the State's share in GST revenue falling from $2.5 billion in 2013-14 to just $799 million in 2017-18.

There is reason to be concerned that the State's projections regarding revenue from mineral exports won't be realised, with the result that GSP fails to rise sufficiently to offset falling revenues and investment. For example, the Department of Mines and Petroleum's (DMP) "Mineral and Petroleum Industry 2013-14 Review", released on 19 September 2014, noted that coal exports fell approximately 15%, both in terms of quantity and value, from 2012-13 to 2013-14. Falling commodity prices are a significant factor in this decline. However, another factor likely to be significant in continuing this decline is the drop in China's demand for Australian coal. This drop is due in part to the Chinese government's shift to less CO2-intensive energy supplies and its 15 September 2014 decision to ban the import of high-ash/sulphur coal, which characterises much of the coal exported from Australia and WA.

In addition, iron ore prices continue their slide and have reached their lowest levels in five years, dropping from $US135/tonne last year to around $US80/tonne this past week ("BHP talks down iron ore price rebound", The *Australian Business Review* 25/10/2014). According to the DMP annual review, iron ore production represents about 61% of WA's overall mineral production, and revenue growth was largely premised on steady or increasing commodity prices for iron ore. Meanwhile alumina, gold and nickel production all declined from 2012-13 to 2013-14.

With the State recovering only about 5.7% in royalties from mineral production in 2013-14 ($6.98b out of $121.6b), EDOWA sees the decline in WA's mineral sector putting increasing pressure on the State to raise revenues elsewhere, or else having to substantially cut spending. ■

Environmental Defender's Office
Western Australia (Inc)

Core funding for EDOWA (Inc) is provided by the WA State Attorney General's department.

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