

Australian Capital Territory by Camilla Taylor

Parliamentary agreement for ACT minority government

After a tight contest for the ACT election on 20 October 2012, the balance-of-power holder ACT Greens MLA Shane Rattenbury supported the Chief Minister Ms Katy Gallagher MLA and the ACT Labor Party to form a minority government. He also acquired a ministerial portfolio, and entered into a Parliamentary Agreement with ACT Labor. The Agreement includes a list of policies, initiatives and reforms to be implemented 2012–16. Mr Rattenbury became the Ministers for Ageing, Housing, Corrections, Aboriginal and Torres Strait Islander Affairs, and Territory and Municipal Services.

Some environmental aspects of the Parliamentary Agreement include the commitment to progressing a light rail network for Canberra, restoring the health of Canberra's lakes, and helping Canberra households reduce energy, emissions and save money on utility bills. The Agreement also supports the revision of the Territory Plan so that it is consistent with the Government's target of reducing greenhouse gas emissions by 40% by 2020,⁵³ and delivering the electricity consumption target of 90% renewables by 2020, including the amendment of the *ACT Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* to facilitate this target. The Agreement commits to other initiatives in relation to the environment, climate change and energy, including to:

- provide at least an additional \$24m to fund new and improved bus routes
- build new park'n'ride and bike'n'ride facilities and introduce a car sharing policy
- provide \$15m above estimated budget funding for improved walking and cycling infrastructure
- progress high speed rail linking Canberra to Sydney, Melbourne and Brisbane
- provide a 20 year guaranteed payment, at a price commensurate to the large scale auction price, for households and businesses installing solar PV systems up to 200kw

- expand the program of public housing energy efficiency upgrades
- ban coal seam gas from government energy contracts
- merge the ACT's existing conservation services into a single conservation agency to achieve better integration of biodiversity policy, planning, research and management
- provide resources for 5 additional Park Rangers
- provide an additional \$7m over 4 years for nature park improvements
- support an ongoing approvals role for the Federal Government on matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999*(Cth)
- ban cage egg production and sow stalls in the ACT.

The Parliamentary Agreement is available at <www.cmd.act.gov.au/__data/assets/pdf_file/0004/383476/parliamentaryagreement.pdf>.

Forum on Strategic Environmental Assessment

On 13 February 2013 the Environment Institute of Australia and New Zealand held a forum on strategic environmental assessments ('SEAs') at the ANU. Speakers included Peter Cowper, Manager at Umwelt responsible for the SEA at Gungahlin, ACT. Speakers discussed the SEA process using case studies in NSW, Victoria and the ACT. Discussion included the lessons learnt, what is needed to improve the process and the overall merits and advantages of the SEA process.

The draft North Gungahlin SEA was released in March 2013. The draft plan seeks to avoid areas of high ecological value and to improve landscape connectivity and protected area functions. The Forum was told that a total of 926ha would be impacted by greenfield development in North Gungahlin, including 212ha of low quality threatened Box Gum woodland, and 179ha of Golden Sun Moth, but that offsets would be identified consistent with the Offset Assessment Guide. The forum was also told that there would be no significant impact on natural temperate grassland. There has been a good outcome for the Pink Tailed Legless Lizards as large areas of their habitat have been avoided.

53 See also: *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) ss 6, 7.

A short discussion was also had about the potential for applying the SEA process to the twelve solar farms proposed for the ACT.

'Is Democracy Failing the Biosphere?'

The former Senator and Greens leader, the Hon Dr Bob Brown, presented the Annual Krebs Lecture at the University of Canberra on 18 February 2013. Dr Brown argued that part of the solution to the world's environmental challenges could be 'one person, one vote' as foreshadowed by the likes of Thomas Jefferson, Abraham Lincoln, Woodrow Wilson, Franklin D Roosevelt and Dwight Eisenhower for democracy in the US, but at a global level, involving the world's population of more than seven billion.

Dr Brown expressed strong concerns about the expanding plutocracy and discussed contemporary Australian examples whereby the democratic process was being corrupted by private wealth, and situations whereby important issues were failing to receive media coverage. He discussed the expansion of coal mining and coal exports in Queensland and the significant public investment in rail coal freight infrastructure; the decision that the Tarkine in Tasmania should remain open for mining; the very real threat to the world's biggest humpback whale nursery in the Kimberley; and the illegal refuelling of the Japanese whaling fleet in Western Australian waters.

Dr Brown emphasised that we have a right to hope, and that optimism, like pessimism, feeds itself. He called for more debate about 'ecology v economic ruination'.

New South Wales by Anna Lindeman⁵⁴

Changes to liability for environmental offences for directors and managers

There have been a number of recent changes to the statutory liability of directors and persons concerned with the management of corporations that breach environmental laws. Every offence under the *Contaminated Land Management Act 1997* (NSW) ('CLM Act') and the *Protection of the Environment Operations Act 1992* (NSW) ('POEO Act') is now classed as an 'executive liability offence' or a 'special executive liability' offence when it is committed by a corporation. Directors and managers of those corporations will attract the corresponding 'executive liability' or 'special executive liability'.

Executive liability

For a director or manager to attract 'executive liability', the prosecutor must prove:

- that the director or manager knew, or ought reasonably to have known that an offence would be or is being committed; and
- that the director or manager failed to take reasonable steps to prevent the commission of the offence.

A director or manager may be considered to take 'reasonable steps' to prevent the commission of an offence if they:

- assess the corporation's compliance with Act (including ensuring that regular professional assessments are undertaken)
- ensure that adequate training has been provided for employees, agents and contractors
- ensure that plant and equipment are appropriate in the circumstances
- maintain a corporate culture that does not encourage non-compliance.

Under the CLM Act, key offences that will attract executive liability for directors or managers of a corporation include failure to comply with a management order, an ongoing maintenance order or the duty to report contamination.

Under the POEO Act, key offences that will attract executive liability include failing to hold an environment protection licence, failing to comply with a clean-up notice, emitting odour from a premises and failing to comply with the requirements which relate to pollution incident response management plans.

Special executive liability

Offences which attract special executive liability for directors or managers will deem a director or manager liable for any breach of the Act by the corporation, unless that director or manager can establish they were not in a position to influence the conduct of the corporation, or if they were, they used all due diligence to prevent the offence.

Special executive liability offences are, broadly speaking, the more serious offences under the POEO Act, such as breaching a licence condition, failing to comply with prevention or prohibition notices, unlawfully disposing of waste, or causing air, water or land pollution.

54 Lawyer, Henry Davis York