# IMPACT

A QUARTERLY NEWSLETTER ON ENVIRONMENTAL LAW
**Environmental Defender's Office Ltd**
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## THANKS TO BRIAN PRESTON

IMPACT was first published in February 1986 under the editorship of Brian Preston. Brian continued to carry out the very time-consuming and often thankless task of editing IMPACT on a voluntary basis until October 1989.

Due in large part to Brian's efforts IMPACT has been published regularly and has continued as a journal of high standard since its inception.

We wish Brian well in his career at the NSW Bar and thank him for all his efforts as editor. The EDO welcomes Peter Comans of the NSW Bar as the new editor of IMPACT.

## 1989 – THE YEAR IN REVIEW

by Nicola Pain, Principal Solicitor with the EDO

### International

It has been an eventful year for the EDO with very interesting opportunities for both solicitors overseas. Elena Kirillova and I each spent a fascinating two months at the Western National Resources Law Clinic at the University of Oregon early in the year. The clinic is one of the courses students can take for their J.D. degree – the U.S. equivalent of our LL.B. – at the University of Oregon and provides practical litigation experience by conducting actual environmental law cases in which a professor at the Centre is the attorney on the record and students are, under the professor's supervision, responsible for the conduct of matters. Much of the clinic's work is conducted in U.S. Federal Courts. It was informative to see the differences between litigation practice and styles in the USA and Australian legal systems. We met some inspiring lawyers and environmentalists there and made contact with numerous groups in the environmental field.

Elena Kirillova and two American law professors also spent four weeks in the Soviet Union in August meeting with Soviet lawyers, judges and environmentalists. The aim of the trip was to set up a public interest law centre, possibly similar in operation to the EDO in Sydney. The trip was highly successful and there are now firm plans to establish the office in 1990.

Elena Kirillova's report of these experiences are found on page 4 of this issue of **IMPACT**.

As a result of all this international activity there are now possibilities of a global network of environmental lawyers being set up, knows as Environmental Lawyers Alliance Worldwide. Contact made with lawyers overseas meant that lawyers at the EDO have a greater exposure to environmental issues overseas. Increased contact with American lawyers has also proved invaluable when research and information is required for cases in Australia.

### National

In the course of a visit in April to Brisbane, for a national community legal centre conference, I also spent time talking to a group establishing an EDO in Brisbane. I gave a public seminar and spoke to an inaugural public meeting about the EDO. It is now very gratifying to find that the EDO has just been established there (from November) operating on a shoestring, of course, with an initial grant from the Queensland Legal Aid Commission. We await further developments on funding for the office and hope to have a thriving sister office in the North to work with in the future.

Discussions were also held in the course of the year with Rob Fowler of Adelaide University about establishing a national network of offices throughout Australia. Following discussion at the National Environmental Law Association Conference in Adelaide on 19–23 November, proposals to set up such a network will now be implemented.

### South East Forests of New South Wales

Closer to home the EDO has spent a lot of time on issues concerning the South East Forests of NSW in 1989. As well as conducting civil actions in the Land & Environment Court of NSW and the Federal Court of Australia, the Office

has also been involved in acting for about 600 people arrested in the south east forests of NSW in the course of protest action against logging in those forests. We have recently been advised that of nearly 600 charges initially laid by police the bulk, approximately490, are to be discontinued, constituting a significant victory for the EDO. This follows the successful conduct of several test cases at Eden Local Court by our barristers. It was impossible to deal with such large numbers of people without assistance from numerous people. I would like to thank Joanne Bragg for all her assistance in organising lawyers to interview people arrested, and for doing so herself, and David Robinson, Michael Priddis, Warwick Baird, Susan Ferrier, Katherine Thorpe, Judy Bennett, David Rickard, Laura Beecroft, Sibila Von Wietersheim, Lucy Lennon, Greg Melrose, Kevin Duncan, Peter McGrath, William Lowe for all their Saturday mornings.

Mark Austen provided invaluable expertise in briefing the lawyers and interviewing clients all over NSW. And Tony Simpson provided much needed advice at all stages of the operation. We have also had great assistance from barristers Mark Lynch, Tony Cook, Malcolm Rammage and Henry di Suvero, who managed to win so many of the cases argued by them.

We could not have survived the ordeal without the help of Kate Josephson from ACF who arranged appointments for people interviewed.

The case in the Federal Court of Australia was a challenge by the Australian Conservation Foundation and Michael Harewood, a resident of the South East Forest area, of a decision by Senator Cook, Federal Minister for Resources and Energy, to grant a 17 year licence to Harris Daishowa (Australia) Ltd to export woodchips from Australia. This involves supplying Harris–Daishowa with pulp logs from the South East Forests of NSW including from areas listed on the national estate. Judgment was handed down on 20 December. Although the judge dismis the application by ACF, the judgement ruled favourably on the standing of the ACF.

Proceedings have also been commenced recently in the Land and Environment Court in respect of the Environmental Impact Statement prepared by the Forestry Commission of NSW in relation to the Eden Forest Management Area arguing that the Environmental Impact Statement is inadequate and that all matters affecting the environment have not been taken into account to the fullest extent possible.

**Lawyers for the Forests**

As part of the South East Forest campaign the office and other interested lawyers such as Joanne Bragg, Tony Simpson and Mark Austen, arranged a workshop on legal issues at the University of New South Wales on 13 May 1989. This was well attended by lawyers, law students and interested individuals. People split into groups to discuss administrative, criminal and international law as these affected the South East Forest situation. Some interesting ways of approaching the South East Forests issue were devised and the discussion was extremely thought-provoking.

Lawyers for Forests, as the group loosely referred to itself, may be reactivated in the future if the need arises.

**Other Litigation**

Another interesting matter the office acted in was a challenge to a re–zoning in the Gosford Shire Council area. Proceedings were taken on behalf of a local umbrella group for several citizen and conservation organisations against the Minister for Planning and his department and Gosford Shire Council. The residents argued that the re–zoning had not been carried out in accordance with the procedures required under the Environmental Planning & Assessment Act. The group was particularly concerned because the area in question appeared to involve bushland covered by SEPP 19 and this factor was not a matter Gosford Shire Council had adequate regard to. The area was also the subject of an announcement by the Premier of NSW for a national park prior to its re–zoning to allow tourist development, in part. The challenge was unsuccessful. Although breaches of the Environmental Planning & Assessment Act were found, Mr Justice Cripps of the Land & Environment Court held that the matter had been adequately dealt with overall by the Respondents. This result opens the way for an area of tourist development in a proposed national park at Wyrrabalong on the Central Coast near Gosford. The result also demonstrates the difficulties in challenging rezoning applications in the Land & Environment Court of NSW.

The EDO acted on behalf of the Housing Information & Referral Service and residents at a Commission of Inquiry under the Heritage Act (NSW) concerning historic houses in Mount Street, Pyrmont. The owner of the houses, CSR Ltd, was objecting to a conservation order being placed on the houses as it wanted to demolish these to extend its truck depot.

The office also acted for the Rooty Hill Resident Action Group which had joined in Class 1 proceedings in the Land & Environment Court commenced by BHP following refusal of development consent for a mini–steel mill at Rooty Hill by Blacktown City Council. The EDO was asked to act for the group in the final two days of proceedings which had lasted two or three weeks. The resident group's solicitors had ceased acting for them following disagreement. The Court granted additional time to the EDO to make final submissions and much work was done to prepare these in a short space of time. The Court ultimately gave development consent to the steel mill, much to the disappointment of the resident group.

**Conferences/seminars**

Solicitors from the office have been asked to speak at various conferences and seminars during the year, both overseas and in Australia. Both solicitors spoke in March at the Western Public Interest Law Conference in Oregon on aspects of Australian Environmental Law and gave talks about the EDO to interested bodies in the USA.

Other lectures have been given at workshops and courses for environmentalists and students run by the University of Newcastle, the Total Environment Centre and the University of New England. I most recently gave a briefing paper at a very interesting Conference at the University of New South Wales on issues relating to sustainable development.

**Advice/Submissions**

The solicitors have advised on much new legislation brought forward by an active State Government in NSW. Legislation has related to issues such as pollution, medium density housing, Crown lands and legal aid.

The scope and number of inquiries has also increased markedly in the course of the year with issues concerning heritage, development, bushland, pollution, pesticides, solar access and tree preservation to name a few. Other areas of work have included issues such as freeways in Sydney and surrounds, toxic and hazardous chemicals, the adequacy of environmental impact statements for several projects and the Rozelle Bay marina.

Submissions have been prepared for government and assistance given to groups in the preparation of submissions to government on such issues as protected fauna legislation and NSW coastal development guidelines.

**Changes to Personnel**

Elena Kirillova, solicitor with the EDO for the last three years, left for the UK on 14 December. The Board and staff have been most appreciative of her enterprise and contribution towards the growth of the office, and wish her continuing career success.

We have also had some changes on the Board of Directors. Our thanks to retiring Directors, David Farrier, Ian Armstrong and Harry Hamor for their efforts on the Board over two years or more. The Board is also pleased to welcome Andrew Chalk.

Because of the increasing workload the office is experiencing we have taken on secretarial office assistance for Dorothy Davidson, our always hard working administrator. Denise Farrier has joined us for two days a week and this has greatly assisted management of the office.

Generally the demands on the Office have expanded with a noticeable increase in inquiries of all kinds. There is an obvious need for expansion of staff at the EDO, ideally to include a project officer to assist in combining our casework, law reform and educational functions.

**Our Thanks To**

We have had strong support from the Environmental Law Association with payment of travel expenses during the year and on-going interest by ELA members in EDO activities. The Law Foundation also provided funding earlier in the year to enable the trip to Oregon to proceed. Our thanks to both organisations.

# BEHIND THE SCENES

David Robinson, who replaced Elena Kirrilova as solicitor at the EDO in late '89, writes his first impressions of life in the trenches.

Briefs to photocopy, research to be done. Affidavits to be obtained, phones answered and cases assessed and prepared. Alone, the EDO staff could never cope.

Students, donors and volunteers support the EDO and help extend its core resources into a broad range of litigious, information providing and law reform activities. Appreciative of its Legal Aid Commission funding, the EDO could never run its expanding case load if that funding were its sole resource. The "hands-on", practical assistance of volunteers buoys the morale of EDO, helps its solicitors dedicate more time to advice work, and enables a prompt community outreach through the telephone inquiry service.

The EDO thanks all active volunteers in 1989, including Ben Richardson, John Connor, Chris McElwain, Lisa Ogle, Angus Martyn, Scott Corish, Len Karp and Paul Costello. Robert Balzola has provided invaluable assistance with the EDO computer.

In recent months Angus Martyn has been most persistent in re-organising EDO's library, while Len Karp has juggled police, court and EDO lists necessary to brief counsel in the South-East Forest charges brought against protesters.

In anticipation of Elena Kirillova's departure for the UK, I commenced employment in November as EDO's second solicitor. I have practised predominantly in commercial and property matters, initially with the firm of Gadens (1984-1986), and then with Gells and on my own account.

As a solicitor coming from private practice to the EDO, I am impressed by the mileage EDO gets from its funding. Private firms simply do not have the human resources (the time and input of volunteers whose contribution is never commercially costed) to dedicate to public interest issues. EDO thus provides cost efficient legal advice and is able to run a variety of important environmental cases in furtherance of the community participation objectives of the Environmental Planning and Assessment Act.

My first case was a Class 1 application before the Land and Environment Court on behalf of the Total Environment Centre on 30 November. TEC had appealed against a determination of Shoalhaven Council to approve the Council's own application to open a quarry, being designated development on Comberton Grange in the Jervis Bay area.

Even before the matter was heard, public involvement in the planning process was vindicated by the fact that the Council radically changed its original plans. EDO, with evidence from a number of environmental scientists, argued that environmental impacts had not been fully considered. The case settled on very favourable terms, with detailed safeguards and conditions imposed, including measures to prevent water run-off polluting the nearby Jervis Bay wetlands. In fact, the consent orders approved by the Court provide for a quarry only one-fifth the size of that initially approved by the Council. No approval was granted for an extended quarry, proposed by the Council to provide armour-stone for the controversial plan of the Navy to establish an armaments depot and harbour at Jervis Bay. This is fortunate given the recent announcement by the Prime Minister to the effect that the Navy will not now be moving to Jervis Bay.

Solicitor Chris Clancy, barrister Jennifer Blackman and TEC supporters including Penny Coleing and May Leech helped the EDO achieve the positive outcome in the Shoalhaven Council quarry case.

The international outlook of the EDO is of particular interest to me, as my legal practice has had close contact with Italy. The Italian Department of Environment was established in 1988 and the Greens succeeded in having the Italian parliament designate substantial funds for the creation of national parks. Italy is also under pressure to comply with the European Community directive on Environmental Impact Assessment. These factors prompted the commissioning of an international study of the legislative and administrative experiences of Canada, Japan, the United States and Australia in environmental matters. I completed the paper on the Australian framework in November and shall report on the recommendations put to the Italian Department of Environment as a result of the four-country comparative study in a future issue of **IMPACT.**

# AN ENVIRONMENTAL PUBLIC INTEREST OFFICE IN MOSCOW

Environmental Law: A Soviet Perspective.
by Elena Kirillova, solicitor with the Environmental Defenders Office.

*The author together with two environmental law professors from the United States visited the Soviet Union in August–September, 1989 to discuss the possibility of establishing an EDO–style office in Moscow as part of the Environmental Lawyers Alliance Worldwide (ELAW) proposal. Funding has been sought for ELAW to establish public interest law offices throughout the world and to maintain regular contact for litigation support and information exchange between these offices. The EDO is taking part in the ELAW proposal. In this article, the author describes her impressions of environmental law in the Soviet Union.*

One of the reasons to visit the USSR was to meet environmental lawyers and to discuss the possibility of establishing an Environmental Defender's Office in Moscow which could be part of ELAW in Moscow. With the change and expansion of administrative and environmental law in the USSR, there is scope for public interest litigation challenging government decisions to be implemented in the future. The establishment of an EDO–style office in Moscow would provide opportunities for members of the public and for environmental groups to obtain legal advice and take court action if necessary to prevent breaches of environmental laws. At present the role of lawyers in the environmental movement is a limited one which in turn discourages many lawyers from being actively involved. (1) The office would also be able to get the assistance of public interest lawyers in other countries and become an integral part of the ELAW proposal. If funding is available, it is planned to establish an EDO–style office in Moscow sometime in 1990.

The protection of the environment has become a major issue in the Soviet Union. In concurrence with the spirit of Glasnost, the press is full of vigorous debate on environmental issues. There appears to be a consensus in public opinion, that environmental problems in the Soviet Union have reached a level where desperate measures need to be taken. The government is responding by treating the environment as a high priority issue. (2) It is likely that the increase in interest and concern for the environment has been as much a result of the recent freedom for the press to inform the public about the extent of environmental problems as anything else. More "grass roots" environment groups have been formed throughout the Soviet Union in the last 2 years than in the previous 50 years of Soviet rule. (3)

Environment groups play a major role in influencing government decisions on environmental matters by political lobbying publicity and frequent representations to government.

It is usual for opportunities for public submissions to be available prior to the decision being taken and for the government body to indicate how the submissions by the public were taken into account in the decision–making process. Legislation in Russia has since the 1950's provided for compulsory involvement of the All–Russian Nature Protection Society, the oldest and most established public interest environmental group in the Soviet Union, in all major environmental decision–making in Russia.(4) Most decisions are advertised but until recently there has been no established mechanism for challenging decisions for breach of administrative procedures. As a result there has been little opportunity for public interest litigation in the Soviet Union.

The role of environmental lawyers in the Soviet Union consists largely of the preparation of "expertisi", detailed advices on the application of environmental and planning laws, and investigation and scrutiny of government documents at local regional level to determine how the decision was or is going to be made and by whom, and how best to attack it. It is often difficult to obtain important and controversial documents from government, so lawyers often take on a "detectives" role. (5) The preparation of an "expertisa" often takes between 6 months to a year and is usually conducted before a major public campaign can be mounted. It is then used as a political rallying point and as a basis for corresponding with government.

Environmentalists then conduct detailed discussions with government officials regarding scientific and economic factors against a proposal. A successful campaign often results in government bodies such as the Procuracy (discussed later) prosecuting the offending government body; or higher levels of government ordering the proposal to be abandoned.

The environmentalists' task is often most difficult when the proposal is being made by one of the smaller republics. The republics often perceive the intervention of the central government, which they view as controlled by Russians, as threatening their ability to self–govern. Nationalist anti–Russian sentiments often surface in what should be an environmental debate.(6) In the European republics, (the Baltic republics, the Ukraine and Belorussia) nationalist sentiment has been harnessed effectively by the environmental movement to oppose major central government proposals.(7)

**Environmental Law Reform**

The USSR became a party to the World Heritage Convention in 1986. In the USSR, as in many parts of the world including Australia, important wilderness areas are subject to development threats. Currently an area in south west Siberia, known as the Altai Wilderness, is under threat from a major hydro–electric proposal. Lawyers I spoke to expressed great interest in the Australian experience of using the Convention effectively to protect wilderness.

New laws similar to the Administrative Decisions (Judicial Review) Act, 1977 (Cth.) have been recently passed in the USSR allowing aggrieved persons to apply to the Courts for review of decisions of officials. A separate law regarding review of decisions of committees and other 'group' decision–makers is being prepared for the consideration by the Supreme Soviet.

The distinction is important, as major decisions by government bodies in the Soviet Union are often made by

committee decision–makers rather than by individuals. One of the problems with commencing litigation challenging government decisions to date has been to identify the person or group responsible for making the decision.

The enactment of both laws is being opposed by the bureaucracy and development oriented government committees, who are using arguments familiar to environmental lawyers in common law countries, such as the perceived "floodgates".

It is likely that legislation will be passed removing standing barriers for public interest litigants in 1990. (8)

A recent victory for the environmental movement has been convincing the government to abandon the environmentally disastrous "Northern Rivers Scheme", a proposal to change the course of several major rivers, which flow north into the Arctic Ocean, in an attempt to replenish the Caspian Sea. The proposal would have resulted in the flooding of large areas of wilderness and populated areas.

The Caspian Sea, in the south of Russia, is the largest lake in the world. It is the only habitat for several species of Sturgeon, the fish which provide most caviar, one of the most lucrative export products for the Soviet Union. There has been a steady reduction of waters of the Caspian for many years.

The major reason has been extensive irrigation programs on the Volga which flows into the Caspian. Extensive cotton farming concerns near the Volga and heavy industry in cities along banks of the Volga have resulted in severe pollution of the Volga and the Caspian Sea. The depletion of waters in the Caspian appears to be due to irrigation along the Volga. This has affected the Sturgeon, which is now in danger of extinction. The Committee for Saving the Volga is one of the largest environment groups in the Soviet Union.

Another major campaign in the Soviet Union at present is against a proposal to construct a major hydro–electricity project on the Katun River, in southern Siberia. The proposal threatens the Altai wilderness area, one of the most pristine areas in the world.(9)

In Leningrad, the Green Union, another environment group, is fighting against a proposal to extend a cancer research centre in Karelia, a natural recreation area north of Leningrad. The centre is responsible for dumping radioactive waste into Lake Razliv which eventually flows into the Bay of Finland. The major problem facing the Green Union is the lack of equipment needed to measure radioactivity, which is necessary to mount an active political campaign.

**Goskompriroda**

Following vigorous debate about how best to reorganise government protection for the environment, the Government Committee for the Protection of Nature (called Goskompriroda for short) was established in 1988. Prior to its establishment, decision–making regarding environmental assessment and control, was divided between a multitude of government departments and was subject to a complex system of environmental laws enacted at different times.

Goskompriroda has effectively replaced The Commission on the Environment which was chaired by a Vice–Chairman of the Council of Ministers and was used to resolve differences regarding environmental matters between the competing ministers.

Goskompriroda has been given authority over almost all matters relating to protection of the environment. Some important land management decisions have been excluded, such as the management of forests, coal and oil resources. Goskompriroda's authority in relation to some other government committees is still unclear and there is an on–going dispute within the government as to whom Goskompriroda should be answerable.(10)

Goskompriroda has a new Minister, Nikolai Nikolaevich Vorontsov, who has made history by being the first Minister of government who is not a member of the Communist Party. (11) Vorontsov is a biologist, which makes him well suited to heading a department dealing with the protection of the environment. Goskompriroda's power will be bolstered by a new Environmental Code which was to be completed for presentation to the Supreme Soviet for consideration and debate on 1st October this year. The Code will provide environmental controls and procedures for both government and non–government proponents of development.

Since the recent change in the law allowing the establishment of co–operative ventures, legislative changes have become necessary to control potential abuse of the environment by private enterprise.(12)

**The Procuracy**

Concurrently with establishing Goskompriroda, the environment arm of the Procuracy of the USSR has been given increased powers against polluters, such as, injunctions without the need to apply to Court, increased fines and imprisonment of directors and other persons responsible for breaching environmental laws. The Procuracy, which is the "watchdog" over all government committees, has been lobbying for these increased powers for several years. Its responsibility is to ensure that government committees comply with the law and to prosecute committees and officials for failure to comply with the law. The Procuracy is sceptical about the effectiveness of Goskompriroda in environmental protection, considering its own practical litigation approach to remedy and restrain environmental breaches by government to be more effective. (13)

One of the major recent improvements to the Procuracy has been the establishment in the last year of twenty eight (28) new offices in the USSR dealing only with environmental breaches.

The Procuracy often investigates a polluting government enterprise in response to representations to it by local residents or environment groups. If the pollution is severe, the Procuracy can apply to the Court for a declaration that the enterprises is in breach of the law and close the premises by putting a seal on each entrance to the premises. This effectively shuts down the enterprise, as there are severe personal penalties for breaking the seal.

One of the greatest difficulties the Procuracy has controlling polluters is in proving the cause of pollution to the Court. Enterprises can go to great lengths to mislead the Procuracy. In one incident, employees in an enterprise declared by the Court guilty of severe water pollution continued to dump the pollution into the river by using the pipes of another enterprise further down the river.(14)

**The Institute of State and Law**

We met with the Director of the Bureau of Environmental Protection and Rational Use of Natural Resources at the Institute, Oleg Stepanovich Kolbasov, Alexander Sergeevich Timoshenko, a Doctor of Laws and others at the Institute of State and Law. The Institute is the principal law reform body in the Soviet Union and plays a major role in drafting legislation and advising the Central Committee of the Supreme Soviet of the USSR on law reform. The Institute has had a section on Environmental Law since 1973.

Members of the Institute are often required to attend meetings of the Supreme Soviet to advise delegates and the Central Committee regarding draft legislation. Since the Soviet legal system has greater similarities to legal systems in civil law countries than to the common law system, research bodies such as the Institute have more influence over the legislature than practitioners and the Courts.

We had detailed discussions with the Institute regarding the establishment of an 'EDO' in Moscow.

**CONCLUSION**

The Soviets are very much aware of the fact that environmental issues cannot be confined to political boundaries and are strongly in favour of working towards the establishment of similar laws to protect the environment worldwide. They are keen to learn from our mistakes and not to "re–invent the bicycle" with environmental laws. We were told again and again that the strength of environmental lawyers in the USSR was dependent to a large extent on regular contact with environmental lawyers in other countries, which they are keen to increase. ELAW is a first step in establishing this contact.

ELENA KIRILLOVA 13 December 1989

**FOOTNOTES**


1. K.N Ryabchikhin, Convernor, Green Union at a meeting on 4 September, 1989.
2. M.S Gorbachev, Perestroika; New Thinking for our Country and The World (1987)
3. T.A. Shipula, Executive Member, Mir, Priroda, Politica at a meeting on 30 August, 1989
4. A.G. Tarnavskii, Law and Voluntary Nature Conservation in the USSR. Connecticut Journal of International Law, Vol. 4 Winter 1989 No. 2.
5. T.G. Kalinichenko, Director, MIR, Priroda, Politica at a meeting on 30 September, 1989
6. T.G. Kalinichenko, Director, Mir, Priroda, Politica, at a meeting on 12 September, 1989
7. T.A. Shipula, Executive Member, Mir Priroda, Politica at a meeting on 30 August, 1989
8. T.A. Shipula, Executive Member, Mir, Priroda, Politica at a meeting on 30 August, 1989
9. His Honour, I.K. Peskarev, Chief Justice of the Civil Division of the Supreme Court of the USSR at a meeting on 8 September, 1989
10. N.A. Robinson, Perestroika and Prioroda: Environmental Protection in the USSR. Pace Environment Law Review Vol. 5. No.2. Spring 1988.
11. Moscow News August, 1989.
12. M.E. Proskorin, Head of the Legal Department of Goskompriroda at a meeting on 31 August, 1989.
13. Meeting with the Procuracy for the Moscow Region on 8 September, 1989
14. Meeting with the Procuracy for the Moscow Region on 8 September, 1989


# SOME REMARKS ON THE OZONE PROTECTION ACT 1988 (CTH) AND THE ENVIRONMENTAL OFFENCES & PENALTIES ACT 1989 (NSW)


by J G TABERNER, Partner Freehill, Hollingdale and Page


**Background**

1. Pollution liability in Australia is no longer a peripheral issue in Australia .

   The Federal Parliament is taking an increasing role in the area of pollution control . On 24 November 1988, the Agricultural and Veterinary Chemicals Act 1988 (Cth) was given assent . On 16 March this year, the Ozone Protection Act 1988 (Cth) was also given assent . In September 1988, the enactment of more general Federal legislation in respect of chemicals and hazardous wastes was presaged(1). That legislation was introduced into the House of Representatives on 7 September this year.

   There is reason to think that this trend is part of a larger pattern and that, as Australia continues to increase the ratio of its manufactured exports to its total exports' (2) it will increasingly encounter, at both Federal and State levels, the pressures in favour of comprehensive pollution control legislation that have been encountered in, for example, the United States and Canada.

   Examples of this pattern are the recent enactment by the Commonwealth Government of the Ozone Protection Act 1988 ( Cth ) and by the New South Wales Government of the Environmental Offences and Penalties Bill 1989 (NSW). The latter statute imposes significant new penalties in addition to those under existing New South Wales pollution control legislation(3).

**OZONE PROTECTION ACT 1988 (CTH.)**

2. The objective of the Ozone Protection Act is to institute a system of controls on the manufacture, import, export, distribution and use of substances that deplete ozone in the atmosphere. The Act will override State or Territorial legislation to the extent that the legislation is incapable of operating concurrently with the Act.

**Sections 13-22 of the Ozone Protection Act**

3. Section 13 of the Act prohibits the manufacture, import and export of "CFCs" and "halons" except under licence. Maximum penalties of $50,000 (in the case of a natural person) or $250,000 (in the case of a corporation ) apply .

   "CFC" and "halon " are defined by reference to Parts I and II respectively of Schedule 1 to the Act. They contain a list of the chemical names of eight ozone-depleting substances.

   The section is very wide in its operation. It extends to prohibit the manufacture, import and export of the substances "alone or in a mixture".

4. Section 13 commences to operate:

(a) (in respect of CFCs) "after the beginning of the first CFC" period; and

(b) (in respect of halons) "after the beginning of the first" period .

   The "first CFC " period commenced on 1 July 1989 and the "first halon" period will commence on 1 January 1992.

5. Section 14 of the Act provides for the making of applications in a prescribed form to the Minister for licences under Section 13.

   Section 15 enables the Minister, within 60 days of the making of an application, to require the applicant to give "such further information relating to the application" as is specified in the notice.

6. The following provisions (in Section 16 of the Act) apply in respect of an application to the Minister for a licence:

(a) the Minister has, subject to (b ) and (c), the discretion whether or not to grant the licence;

(b) the Minister is obliged, subject to (c), to grant the licence if the applicant manufactured, imported or exported CFCs or halons immediately before 16 March 1989; and

(c) the Minister is prohibited from granting the licence unless the Minister is satisfied that the applicant is "a fit and proper person to be granted a licence " . Matters which the Minister may take into account in reaching a decision on the point are at large.

   Section 17 of the Act provides that, if the Minister has "neither granted a licence nor made a request under Section 15 " within 60 days of the making of the application, the Minister shall be deemed, for the purpose of an appeal under Section 66 of the Act (considered at (41) below), to have refused the application on the 60th day. It is to be noted that no deemed refusal arises if the Minister has made any request for further information under Section 15 of the Act.

7. By the virtue of Section 18(1) of the Act, a licence remains in force for 10 years.

   Section 19 of the Act allows for the making of applications for renewal of a licence within 6 months prior to the expiry of the licence, and considerations similar to those applying to the grant of a licence apply in respect of a renewal.

   Section 20 of the Act allows the Minister to cancel a licence if the Minister "is satisfied that the licensee is no longer a fit and proper person to hold a licence". Matters which the Minister may take into account in reaching a decision on this point are at large. Cancellation is effected by written notice to the licensee setting out reasons for the cancellation. Cancellation takes effect 60 days after the notice is given to the licensee.

8. Section 22 of the Act allows regulations to be made for periodic publication of details of licences granted, refused, cancelled or surrendered .

**Sections 23-36 of the Ozone Protection Act**

9. Sections 23(1), 24(1) and 25(1) of the Act, prohibit a licensee respectively from manufacturing, importing or exporting CFCs in "in a CFC quota period" unless:

(a) the licensee is the holder of a quota permitting the manufacture, import or export of CFCs in that period; and

(b) the sum of all CFCs manufactured, imported or exported by the licensee during the quota period does not exceed the quota held by the licensee for that period.

   Sections 23(2) and 24(2) of the Act make similar provision respectively for the manufacture or import by a licensee of halons in a "halon quota period " .

   Maximum penalties of $50,000 (in the case of a natural person) and $250,000 (in the case of a corporation) apply.

   Each CFC quota period or halon quota period has a duration of 12 months unless extended by the Minister. The first CFC quota period began on 1 July 1989. The first halon quota period begins on 1 January 1992.

10. Section 27 of the Act provides for the making of applications in a prescribed form to the Minister for quotas under Sections 23-25 (inclusive) of the Act.

11. By Section 28 of the Act, the Minister is obliged to allocate a quota to an applicant if the applicant manufactured, imported or exported CFCs or halons immediately before 16 March 1989. The quota is allocated by written notice specifying, as terms of the quota:

(a) whether it is a CFC quota or a halon quota;

(b) whether it is in respect of the manufacture, import or export of CFCs or the manufacture or import of halons;

(c) the quota period to which it relates; and

(d) the size of the quota.

   The size of a CFC quota is the quantity of CFCs that the holder of the quota may manufacture, import or export. The size of a halon quota is the quantity of halons that the holder of the quota may manufacture or import.

   The procedures for ascertaining the size of quotas are complex and are set out in Sections 29 and 30 of the Act.

12. By virtue of section 29 of the Act, the total quota of CFCs and halons manufactured in or imported into Australia during the first quota period is prohibited from exceeding 1986 levels.

   Section 30 provides that, for the first quota period, the total quota of CFCs exported from Australia shall not have "an ozone-depleting effect exceeding $3 ,800 ,000 " . Section 11 of the Act sets out the process, related to molecular weight, of determining "ozone-depleting effect".

13. Section 31 of the Act provides for the making of an application for the renewal of a quota, and Sections 32 and 33 of the Act provide for the review of the quotas on renewal.

Applications for renewal may only be made "not less than one month and not more than three months before the end of the quota period to which the quota relates". The application is made to the Minister in a prescribed form.

Again, the procedures for ascertaining quotas are complex.

14. The general aim of Sections 23-33 (inclusive) of the Act is to allow progressive reduction in quotas . The Department of the Arts, Sport, the Environment, Tourism and Territories ( "DASETT") is developing, a national strategy to phase out the use of CFCBs and halons in Australia by the end of the century.

15. Sections 34-37 (inclusive) of the Act contain miscellaneous provisions relating to quotas:

(a) Section 34 of the Act allows for applications to the Minister in a prescribed form for the variation of a quota;

(b) Section 35 of the Act provides that quotas are freely transferable, wholly or partially, with or without consideration. The transfer is only effective on notice (in the form prescribed by Section 35(3) of the Act) being given to the Minister;

(c) Section 36 of the Act obliges the Minister to publish in the Gazette, within one month after the beginning of each quota period, a variety of statistical information relating to the total quantity of CFCs permitted to be manufactured, imported or exported and the total quantity of halons permitted to be manufactured or imported in that quota period.

**Sections 37-40 of the Ozone Protection Act**

16. These sections of the Act apply in addition to the sections discussed in paragraphs ( 17)-(29) . They are directed particularly at the activities of certain types of corporation listed in Section 37(1) of the Act ("Corporations").

17. Section 38 of the Act prohibits Corporations from manufacturing or importing:

(a) dry-cleaning equipment which "is capable of being operated using " CFCs or halons;

(b) automotive air-conditioning units using CFCs or halons;

(c) (after 30 June 1989) disposable containers of refrigerants;

(d) (after 31 December 1989) polystyrene packaging or insulating material containing CFCs or halons; and

(e) (after 31 December 1989) aerosol products containing CFCs or halons .

Maximum penalties of $25,000 apply.

18. Section 39 of the Act permits the addition, by regulation, of other products to the list referred to in (31).

19. Section 40 of the Act permits the Minister to grant exemptions from Sections 38 and 39 of the Act. An application to the Minister for exemption is required. A form of application is prescribed. The exemption is granted (or refused) by way of written notice. The Minister is permitted to grant the exemption if satisfied that:

(a) the product is essential for medical, veterinary, defence, industrial safety or public safety purposes and no practical alternative exists to the use of CFCs or halons in the operation or manufacture (as the case may be) of the product if it is to continue to be effective for such purpose;

(b) because of the requirements of a law concerning the manufacture or use of the product, there is no practical alternative to the use of CFCs or halons in the operation or manufacture (as the case may be) of the product; or

(c) the product is for use in conjunction with the calibration of scientific, measuring or safety equipment .

The exemption is required to be time-limited and to be placed before each House of Parliament within fifteen sitting days.

**Sections 41-45 of the Ozone Protection Act 20.**

20. These sections of the Act also apply in addition to the sections discussed in paragraphs (17)-(29). They are directed at controlling the import and export of CFCs and halons from "non-Protocol " countries . In short, a "non-Protocol " country is one which is not, at any relevant time, a party to the Montreal Protocol on Substances that Deplete the Ozone Layer, a copy of the English text of which forms Schedule Three to the Act.

21. In short, the operation of Sections 41-45 (inclusive) of the Act, is as follows:

(a) as from 1 January 1990, Section 42 of the Act will prohibit the import of CFCs or halons from non-Protocol countries;

(b) as from 1 January 1993, Section 43 of the Act will prohibit the export of CFCs and halons to non-Protocol countries;

(c) as from a date to be proclaimed pursuant to Section 44(2) of the Act, Section 44(1) of the Act, will prohibit the import of products containing CFCs or halons from non-Protocol countries;

(d) as from a date to be proclaimed pursuant to Section 45(2) of the Act, Section 45(1) of the Act will prohibit the importation from non-Protocol countries of products "in the manufacture of which " CFCs or halons were used;

(e) maximum penalties of $10,000 (in the case of a natural person) or $50,000 (in the case of a corporation) apply in each case.

**Sections 46-48 of the Ozone Protection Act**

22. These sections impose significant importing obligations on the regulated community and the Minister . Their provisions, in short, are as follows:

(a) Section 46(1) of the Act obliges each person who, during 1986, manufactured or imported any CFC or halon to report in writing to the Minister in respect of that activity and to state the quantity manufactured or

imported. The report is required to be delivered to the Minister "within one month of the commencement of the Act " (that is, by 16 April 1989) . Accordingly, the period for compliance has expired . Maximum penalties of $10 ,000 (in the case of a natural person ) and $50,000 (in the case of a corporation) apply;

(b) Section 46(2) obliges the Minister, using information supplied under Section 46(1), to publish in the gazette the total quantity of CFCs and halons that was manufactured or imported into Australia during 1986;

(c) persons licensed pursuant to Section 13 (see (17)-(22) above) must report in writing to the Minister within fifteen days of the end of each quarter on a variety of matters listed in Section 47(1) of the Act to do with the quantities manufactured and imported during the quarter. Maximum penalties of $10,000 (in the case of a natural person) and $50,000 (in the case of a corporation) apply;

(d) Section 48 authorises the making of regulations requiring licensees to keep records of various types. Regulations to that effect were made on 27 April 1989 and penalties for non-compliance set under the Regulations . In short, licensees are required to keep monthly records of quantities and qualities of CFCs and halons manufactured, imported or exported . In addition, details of the date and place of importation, exportation and delivery are required to be kept;

**Sections 49-65 of the Ozone Protection Act**

23. These sections contain important provisions concerning enforcement of the Act. The sections are divided into four Divisions:

(a) Division 1: Inspectors;

(b) Division 2: Injunctions;

(c) Division 3: Forfeiture of Goods; and

(d) Division 4: Offences .

**Inspectors**

24 (a) Section 49(1) of the Act permits the Minister to appoint in writing a variety of people listed in the section as inspectors under the Act. Appointment of State Officers may be made with State concurrence.

(b) Section 51 of the Act gives inspectors wide powers of search entry and inspection of premises on which "quota activities " are being carried out and records held there. The powers are exercisable without search warrant. The powers cannot be exercised if the inspector has been requested and has failed to produce his or her identity card. Identity cards are issued under Section 50 of the Act.

(c) Sections 52 and 53 of the Act give inspectors wide powers of search entry and inspection of other premises pursuant to a search warrant.

**Injunctions**

25.(a) Section 56(1) of the Act, enables the Federal Court to grant injunctions where "a person has engaged, is engaging or is proposing to engage in any conduct that constituted or would constitute a contravention of this Act or the Regulations".

(b) The Court may grant the injunction "if, in the Court's opinion, it is desirable to do so".

(c) Injunctions may require or restrain action (that is, they may be positive or negative in effect).

(d) The Court is also empowered to grant interim injunctions (which are positive or negative in effect) pending final hearing .

(e) Applications for injunctions may be made by the Minister or by "any other person". This phrase appears to do away with the requirement that the applicant have "standing to sue" according to common law principles. The only disincentive to such an applicant would appear to be the risk of the cost of proceedings if the application is unsuccessful: if successful, the applicant can ordinarily expect costs to be awarded in his or her favour against the party enjoined.

**Forfeiture**

26. Sections 57-61 of the Act provide for forfeiture to the Commonwealth of certain goods, including CFCs or halons manufactured or imported in contravention of the Act. Inspectors are entitled by Section 59 of the Act, to seize forfeited goods, and Section 60 of the Act sets maximum penalties of $5,000 or two years in jail (or both) for moving or interfering with goods so seized.

**Offences**

27. A variety of offences, additional to those already discussed, are set out in Sections 62-64 (inclusive) of the Act.

(a) Section 62 makes it an offence, punishable by a fine of $5,000 or imprisonment for two years or both (in the case of a natural person) or by a fine of $25,000 (in the case of a corporation), to knowingly or recklessly make false or misleading statements in respect of applications made or information given pursuant to the Act.

(b) Section 63 of the Act makes wilful obstruction of an inspector carrying out his or her duties under the Act and offence punishable by a fine of $1,000 or imprisonment for six months or both.

(c) Section 64 of the Act sets out offences relating to failure to answer questions. Again, substantial penalties apply.

28. Section 65 of the Act is aimed at facilitating the proof of a state of mind of a corporation in proceedings against that corporation for an offence under the Act. It is sufficient, in establishing the state of mind of a body corporate in relation to particular conduct, to show that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority, and that the director, servant or agent had the state of mind.

**Miscellaneous**

**Appeals**

29.Section 66 of the Act provides for appeals to the Administrative Appeals Tribunal against a range of decisions of the Minister under the Act.

30.Section 68 of the Act obliges the Minister to prepare and table before Parliament annual reports in respect of the operation of the Act .

31. Section 69 provides for the collection of licence fees.

32. This Act aims to supplement existing environmental protection legislation in New South Wales by accomplishing three objectives:

(a) by creating new offences regarding the disposal of waste and the leaking, spillage and escape of substances from containers, which result in harm to the environment;

(b) by establishing new penalties for these offences; and

(c) by enabling the courts to make orders which restrict persons charged under the Act from disposing of or dealing with their property. This is in order to ensure that persons charged have sufficient assets to pay clean up costs and any other damages which may be awarded against them.

33. The Act addresses these three objectives in a number of sections which are reviewed below.

**Offences: Disposal of Waste without Lawful Authority**

34. Section 5 of the Act provides that it is an offence to dispose of waste without lawful authority in a manner which harms or is likely to harm the environment.

A person is liable for an offence under this section if they act deliberately or negligently in disposing of the waste . In addition, any person who attempts to dispose of waste in such a manner or persons who aid, abet, counsel or procure another person to make such an unlawful disposal are also guilty of an offence. Persons who conspire to commit an offence under the Act are also liable as offenders under the Act.

Section 5 of the Act provides that defendants in any proceedings under this Act bear the onus of proving that they had lawful authority to dispose of waste. This is important because it reverses the normal onus on the prosecuting authority to prove its case.

**Offences: Spills**

35. Section 6 of the Act establishes that if any substance leaks, spills or escapes from a container, causing harm to the environment, a variety of persons named in the section will be guilty of an offence . These persons include:

(a) any person causing, either wilfully or negligently, the leak, spill or escape;

(b) persons in possession of the substance at the time;

(c) the owner of the substance;

(d) the owner of the container;

(e) the owner of the land on which the container is located at the time of the leak; and

(f) the occupier of the land upon which the container is located at the time of the leak.

For the purposes of section 6, "container " includes any thing used for the purpose of storing, transporting or handling the substance in question. The full scope of this definition is not known. For example it is not clear whether something like a tailing pond or a settling pool for sewage would be "containers".

**Defences**

36. Persons charged with any of the offences referred to above may defend themselves by proving that the offence was committed as a result of causes over which that person had no control and against which it was impracticable for that person to make provision (section 7).

It is important to note that, as in section 5 of the Act, the onus is on defendants to prove their defence rather than the usual onus on the prosecuting authority to prove its case.

**Penalties**

37. If the person committing an offence under the Act is a corporation, the corporation is liable to a penalty of up to $1,000 ,000 . In all other cases the maximum penalty is $150 ,000 or seven years imprisonment, or both (section 8).

In imposing penalties, section 9 of the Act makes it mandatory that the court consider, in addition to any other relevant factors, the extent of the harm caused to the environment and practical measures which may be taken to prevent, control, abate or mitigate the harm. The court is also required to consider the extent to which the person committing the offence had control over the causes of the offence and whether that person was complying with orders from an employer or supervising employee. The legislation is unclear in this last respect regarding the status of contractors.

38. If a corporation commits an offence under the Act, directors of the corporation or persons concerned with the management of the corporation will be deemed to have contravened the same provision of the Act (section 10). Again, there are certain defences available to such persons . However, the onus rests with the defendant to establish that the corporation contravened the Act without their knowledge, including imputed or constructive knowledge, or that they were not in a position to influence the conduct of the corporation in relation to the contravention of the Act, or that they used all due diligence to prevent the corporation from contravening the Act.

It is not necessary for proceedings to be implemented against the corporation in order for proceedings to be commenced against any of the individuals noted above.

**Offence proceedings**

39. Section 11 of the Act, establishes a three-tiered method of proceeding under the Act. If proceedings are brought in a Local Court, the maximum penalty that can be imposed is a fine of $10 ,000 or 2 years imprisonment, or both . If proceedings are brought in the Land and Environment Court the maximum penalty that can be imposed in the case of a corporation is a fine of $1,000 ,000 or in any other case a fine of $150 ,000 or 2 years imprisonment, or both . If proceedings are brought on indictment before the Supreme Court, the maximum penalties prescribed by the Act, $1,000 ,000 for a corporation or in any other case, a fine of $150,000 or 7 years imprison-

ment or both, may be imposed.

If proceedings are brought before the Local Court or the Land and Environment Court, the proceedings must be commenced no later than 3 years after the alleged date of the commission of the offence. No similar time limits are imposed by the Act on proceedings in the Supreme Court.

Proceedings for an offence under the Act may only be instituted upon the written consent of the Minister, or the State Pollution Control Commission (section 13).

Section 25 of the Act allows proceedings to be commenced in the Land and Environment Court by the persons listed in the section to restrain a breach of the Act or any other Act or any statutory rule under that Act, or a threatened or apprehended breach, if the breach is causing or is likely to cause harm to the environment. The persons who may commence proceedings under section 25 are:

(a) the Minister;

(b) the State Pollution Control Commission;

(c) a member of the State Pollution Control Commission authorised in writing by the Minister for the purposes of the section;

(d) a member or officer of the State Pollution Control Commission authorised in writing by either the Minister or the Commission for those purposes; or

(e) any other person with the consent of the State Pollution Control Commission.

The Land and Environment Court may make such orders as it thinks fit. This may include the suspension of any licence under other pollution control legislation.

**Restoration, compensation and damages**

40. In addition to the penalties which may be imposed under the Act, a court with functions under the Act may also order persons convicted under the Act to take steps to prevent, control, abate, or mitigate any harm to the environment caused by the commission of the offence.

A public authority may also recover costs or expenses incurred in mitigating, preventing controlling or abating the harm caused by the offence.

Also, if a public authority or other person has suffered loss or damage resulting from the commission of the offence or has incurred costs and expenses in preventing or mitigating such loss or damage to property, the court may order persons convicted of the offence to pay such damages, costs and expenses.

**Restraining Orders over Property**

41. A new, and particularly important, section of the Act allows persons bringing proceedings under the Act to apply to the Land and Environment Court (in most cases) for an order against persons charged under the Act (whereby the person may be required to pay damages or to reimburse Costs or expenses of other parties ) for a direction that any property of such defendants not be disposed of or dealt with by the defendant except in accordance with court instructions (section 16). The court must be satisfied that there is a real risk that the defendant will dispose of, or deal with, his or her assets in order to avoid paying costs and expenses or damages for which the defendant may be ultimately liable .

If the court makes such a restraining order against the assets of a defendant, the court may make other ancillary orders including, without limitation, orders that the defendant or other persons be examined under oath concerning the nature and location of their assets, or orders varying the original restraining order, or any of its conditions. Such ancillary orders may be applied for by the defendant or the applicant for the restraining order or by other persons if they have the leave of the court.

If the court issues such a restraining order it creates a charge against any of the assets referred to in the order. Any person who knowingly contravenes such a restraining order is guilty of an offence and punishable by a fine equivalent to the value of the property or by imprisonment for period not to exceed 2 years, or both .

It is open to persons subject to such a restraining order to give satisfactory security to the court for payment of any costs, expenses or damages sought in the proceedings or to give undertakings satisfactory to the court concerning the property.

Restraining orders cease to be in force if the charge is withdrawn and the person is not charged with any related offences, or if the person is acquitted of the charge and not charged with any related offences .

**FOOTNOTES**

(1) On 12 September 1988, Senator the Hon G Richardson (Federal Minister for the Environment) and Hon P Morris MP (Federal Minister for Industrial Relations ) announced the Federal Government's decision to proceed with the preparation of legislation in respect of hazardous chemicals. The announcement stated that the legislation will be aimed at "importers and manufacturers of new chemicals " and "industrial chemicals already in use in Australia". There was no express reference to means by which the Constitutional hurdles to fulfilling some of these aims would be overcome. The announcement stated that the legislation would require notification from "companies intending to introduce new chemicals into Australia " for purposes of an assessment of the chemical, and that the legislation would "provide for public access to information " subject to "compelling commercial reasons for confidentiality " .

(2) See Lougheed, A .L. "Australia and the World Economy ", (Sydney, Penguin, 1988), pp57-62 .

(3) On 9 April 1989, the New South Wales Minister for the Environment announced the imminent introduction of "the harshest anti-pollution laws ever seen in Australia " . Significant increases in fines, and a range of related measures (including criminal liability for directors of offending companies), were foreshadowed. The Environmental Offences and Penalties Bill 1989, to implement these measures, was introduced in August 1989 into the New South Wales Lower House. That Bill is summarised in Part 3 of this paper.

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# COMBINED LEGAL CENTRES CONFERENCE

The EDO will be represented at the annual conference of the 21 community legal centres of New South Wales to be held in Sydney on 24 and 25 February 1990. The annual national conference of legal centres will take place in Geelong on 18–21 April 1990. Friends of the EDO are invited to the State Conference.

A workshop for legal centre staff and volunteers on responding to development, local government and pollution enquiries received from the public shall be run by Environmental Defender's Office's solicitor David Robinson, at 2pm on Sunday 25 February 1990. New student volunteers with the EDO are particularly invited to the workshop.

Telephone the EDO for further information.

# IMPACT COPY DEADLINES FOR 1990

The EDO invites contributions, including letters, for publication in IMPACT. Typewritten contributions should be forwarded to the Editor, c/–The EDO, by the following dates in 1990:–

5 March
4 June
3 September
3 December

# GREENPEACE-EDO VIGILANCE AT KURNELL VINDICATED

Greenpeace Australia won a significant victory on 2nd February 1990 against lax pollution control licensing procedures.

Greenpeace had monitored discharge fluids from the Caltex Refinery at Kurnell over a number of weeks, and on 15 January laboratory tests from a sample taken by Greenpeace indicated phenolic compound levels of 29mg/litre, far exceeding the 5 mg/litre limit under its licence from the State Pollution Control Commission (SPCC). Concentrations exceeding 10 mg/litre cause acute toxicity in fish, according to U.S. Environmental Protection Agency water quality guidelines.

At 1 pm on 1 February the SPCC advised Greenpeace that no renewal application had been received from Caltex even though its licence to discharge liquids at Yena Gap Kurnell expired that day.

The Environmental Defender's Office, solicitors for Greenpeace, then requested the consent of the SPCC consent to bring proceedings for an injunction to prevent breaches of the licence and consequent environmental harm under section 25 of the Environmental Penalties and Offences Act 1989.

As result of the action taken by Greenpeace, and of the media attention brought to the lax licensing procedures of the SPCC, the Minister for the Environment Mr Moore announced on 2 February that Caltex would be prosecuted under the new penalties legislation and that its 1990 licence would be limited to three (3) months, subject to tighter interim testing and sampling procedures.

# EDO RESEARCH OPPORTUNITIES

The EDO convenes periodic Environmental Law Reform and Policy Meetings of peak environmental organisations. As a result of projects suggested by member organisations, and of requests made direct to the EDO, a number of on-going research possibilities exist in 1990.

Current topics for research include:

1. Draft State Environmental Planning Policy on Offensive and Hazardous Industry
2. Legislation on Recycling
3. Clean Waters Act - proposed changes to water classification regulations
4. Endangered species legislation

Students may wish to incorporate research projects into their academic study programs. Please inquire with David Robinson at the EDO.