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THE SOUTH EAST FORESTS OF NEW SOUTH WALES LEGAL IMPLICATIONS

by Nicola Pain, Principal Solicitor, Environmental Defender's Office Ltd

Over the last two years the EDO has been closely involved in the legal and environmental issues arising because of the destruction of the Southeast Forests of NSW. The legal issues have both Commonwealth and State implications and raise important questions about how effective our laws are in dealing with such environmental issues.

The south east forests of NSW provide an interesting context in which to examine NSW and Commonwealth environmental laws. This is due to the coincidence of areas listed on the National Estate by the Australian Heritage Commission pursuant to the Australian Heritage Conservation Act 1975 (Cth) with areas of NSW state forest controlled by the Forestry Commission of NSW under the Forestry Act 1916 (NSW).

Circumstances in the south east forests have given rise to litigation in the Federal Court of Australia and the Land and Environment Court of NSW. In addition, with the arrest of over 700 people in the south east forests during 1989 in the course of protest action by people opposed to logging of parts of these areas there have been police prosecutions in the Local Court at Eden. The latter has focussed attention on the scope of the Forestry Regulations passed pursuant to the Forestry Act 1916 (NSW) enabling the Forestry Commission of NSW to prohibit access to state forests.

The South East Forests of NSW

The Eden Forest Management Area controlled by the Forestry Commission of NSW comprises approximately 279,000 hectares of state forest in NSW. Three forests are central to the current dispute and comprise approximately 65,000 hectares of that area. The forests are Coolangubra, Tantawangalo and Egan Peaks. The Coolangubra area is the largest remaining area of escarpment wilderness in NSW. Tantawangalo is an area of diverse oldgrowth forest. Its catchment provides water for about one third of Bega Shire. Part of the catchment was selectively logged for sawlogs more than 20 years ago. The Egan Peaks forest contains drier hinterland forest.

The Forestry Commission controls access to the state forests under its jurisdiction. Interestingly, there is an open invitation on the back of the topographical maps produced by the Forestry Commission which states in relation to State Forests:

> Who Can Use Them?
>
> There's room for everyone in State Forests; that's the beauty of them. They can be enjoyed by tourists, motorists, bushwalkers, campers, fishermen, swimmers, picnickers, or by those who simply want to sit and admire the scenery. Come and see for yourselves how these forests are managed and how they welcome visitors.

There have been some flora and fauna studies conducted in the area by officers of the National Parks and Wildlife Service, interested independent scientists and ecologists. All people wishing to study in the area should obtain permission of the Forestry Commission to enter the area for research purposes. The study of these areas is far from complete, however, and much is still to be learnt about the habitats and vegetation in the forests. It is known that a number of rare animal communities for animals such as the Yellow Bellied and Greater Gliders, the Powerful Owl, the Eastern Pygmy Possum the Koala and the rarest mammal in Australia, the Longfooted Potaroo are possibly living in these areas.

In May 1989 the Department of Primary Industries and Energy published an examination of wood resource issues in the context of s.30 of the Australian Heritage Commission Act (to be discussed below). In July 1989 Senator Cook, then Commonwealth Minister for Natural Resources, and the NSW Minister for Natural Resources reached agreement relating to forestry operations in the south east forests. This agreement provided for a joint survey of Coolangubra, Tantawangalo and Yowaka National Estate areas.Forest industry, both sawmilling and woodchipping, is conducted in the Eden Management Area. Both industries rely on logs from native forests in the southeast of NSW. The local sawmilling industry consists in the main of three privately owned mills. The woodchipping is carried out by a wholly

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owned Australian subsidiary of a large Japanese corporation called Harris Daishowa (Australia) Pty. Ltd. The woodchipping plant at Eden processes logs from state forests, chips these and loads them onto ships for export to Japan.

Civil Law Aspects

Legal Framework at Commonwealth Level

Any discussion of Commonwealth powers and environmental law is always preceded by the comment that Commonwealth laws must be based on a specific power in the Australian Constitution (for example G. Bates **Environmental Law in Australia** 2nd ed. Butterworth Sydney 1987 p. 37). The Commonwealth has no specific power to legislate with respect to the environment and has relied on various heads of power under the Constitution to found its environmental laws. For example, the World Heritage Properties Conservation Act 1975 (Cth) is based on the external affairs power, the corporations power and the peoples of any race power. The Commonwealth has no automatic power to legislate about the use of land in State government control, such as state forests in NSW controlled by the NSW Forestry Commission.

National Estate Legislation

Involvement of Commonwealth law occurs in part because of the application of the Australian Heritage Commission Act (the AHC Act) in the south east forests of NSW.

Additionally the Federal Government influences the use of stateowned forests in NSW because of its power to grant or withhold licences for the export of timber and timber products under the Export Control Act 1982 (Cth).

Parts of Coolangubra, Tantawangalo and Bondi State Forests have been assessed by the Australian Heritage Commission as worthy of inclusion on the Register of the National Estate as defined under the AHC Act. Inclusion of an area on the National Estate Register does not provide for its protection in the same way as a World Heritage nomination under the World Heritage Properties Conservation Act 1983 (Cth). Listing of an area as World Heritage provides protection by law against development or exploitation under the World Heritage Properties Conservation Act. The main protection which could be said to apply to areas listed as National Estate under the AHC Act is by virtue of s.30.

Section 30 provides that "a minister in considering an activity which will affect the National Estate area must not approve any activity unless he or she is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken and shall not take any action unless he or she is satisfied." This responsibility also applies to decisions administered by the Department for which the Minister is responsible. The same responsibility also applies to Commonwealth government agencies under s.30(2). The Australian Heritage Commission must be notified under s.30(3) by a Minister's Department or government authority if it takes any action that might affect, to a significant extent, a place that is in the Register. The Commission must be given a reasonable opportunity to consider any such proposal.

Export Control

Under the Export Control (Unprocessed Wood) Regulations passed pursuant to the Export Control Act 1982 (Cth) the Minister for Natural Resources must approve the export of woodchips from Australia. This means that in relation to the south east forests of NSW the exporter, Harris Daishowa (Australia) Pty. Ltd., must obtain a licence to export woodchips from the Minister for Resources under those regulations. In reaching his decision whether or not to issue such a licence the Minister must comply with s.30 of the AHC Act. The Minister is required to take into account, where appropriate, environmental considerations under Regulation 7(3)(a). That regulation provides that the Minister may require information in relation to the effect on the environment of obtaining the prescribed goods. This duty was confirmed in **Minister for Aboriginal Affairs & Anor v Peko Wallsend Ltd. & Ors** (1986) 162 CLR 24 at pp 39,40 per Mason J.

Environmental Impact Assessment

Under the Environmental Protection (Impact of Proposals) Act 1974 (Cth) it may also be necessary for an environmental impact statement to be prepared where an activity in relation to which a federal minister has decisionmaking responsibilities is one which may considerably affect the environment. In fact Harris Daishowa (Australia)Pty. Ltd. prepared an environmental impact statement in order to comply with the provisions of the Impact of Proposals Act for the Eden export woodchip operation for the period 1989-2009. The final EIS was released in 1986.

The Scope of Section 30: Federal Court proceedings ACF & Harewood v. Minister for Resources & Anor

The first court case concerning s.30 and its application was recently completed in the Federal Court of Australia. **The Australian Conservation Foundation and Harewood v Minister for Rescources & Anor** No. G326 of 1989, unreported, Davies J., 20 December 1989.

The applicants sought Orders of Review of the decision of the Minister of Resources made on or about 29 December 1988 to grant a licence or decide to grant a licence to Harris Daishowa (Australia) Pty. Ltd. for the export of woodchips from Australia for a period of 17 years from 1 January 1990 at a rate of 850,000 tonnes of woodchips per year. The challenge was mounted pursuant to the provisions of the Administrative Decisions (Judicial Review) Act 1977 (Cth)(the ADJR Act) which provides that unlawful administrative decisions may be challenged in the Federal Court of Australia. The Applicants sought to argue the Minister had not acted lawfully in relation to his responsibilities under s.30 of the AHC Act.

Standing

A preliminary but significant issue in the proceedings was the challenge to the standing of both applicants by the Minister to take the proceedings at all. Ultimately the Australian Conservation Foundation was held to have standing, but Michael Harewood, the local resident, was held not to have standing in a surprising decision by Davies J. The standing question was reviewed in an article by the writer and Len Karp which appeared in the last edition of **Impact.**

Scope of Section 30 of Australian Heritage Commission Act

In relation to the substantive issues in the proceedings Davies J. made some significant comments on the scope of s.30 as follows: "...when s.30(1) speaks of action that

adversely affects a part of the National Estate, it must be read as encompassing not merely action that has a direct adverse impact upon the National Estate but also action which has a tendency indirectly to impact adversely upon the National Estate. The grant of a licence which assists the taking of action adverse to a part of the National Estate, which promotes or facilitates that action, is itself action that adversely effects that part of the National Estate." (p.39-40) Davies J. went on to state that it was clear the grant of a licence to export 850,000 tonnes of woodchips per annum from Australia was action that adversely effected the National Estate for it encouraged and promoted logging in the National Estate.

Failure of the Woodchip Licence to Protect National Estate

In their defence the Respondents sought to rely on Clause 6(c) of the Licence to Export Woodchips granted to Harris Daishowa (Australia) Pty. Limited. Clause 6(c) states that "The Company shall not extract pulpwood or export woodchips under this licence from any areas which have been entered on the register of the National Estate or placed on the interim list of the register of the National Estate unless the Department has notified the Company that the proposed operations are acceptable to the Department." Davies J. found that the section had little practical effect, as it was not complied with. Pulpwood timber was cut from Coolangubra and the logs stockpiled until approval was given for their export.

At issue in the case was whether or not the Minister had discharged his duties under s.30(1) so that the Minister could not have been and was not satisfied that there was no feasible or prudent alternative to the granting of a licence for a period of 17 years. Ultimately Davies J. held the inference was open that the Minister took all the steps that he considered he reasonably could take to protect the National Estate areas in light of the role of the NSW Government and the fact that the management of the areas was the task primarily of the NSW Forestry Commission.

Davies J. did emphasise in his judgment that whatever the decision in December 1988, the decision to grant longterm licences to Harris Daishowa (Australia) Pty. Ltd. was not irrevocable or unchangeable. On each occasion the Minister grants an annual licence it is necessary for him to consider the s.30(1) issues in the light of the then prevailing circumstances. Each licence must be adjusted and framed accordingly.

Legal Framework at State Level

Forestry Act (NSW)

Under the Forestry Act 1916 (NSW) the Forestry Commission of NSW has control of State Forests vested in it under that Act. Section 8A of the Act sets out the objects of the Commission and these include: "to conserve and utilise the timber on crown timber lands to the best advantage of the State" (subsection (a)) and "to encourage the use of timber derived from trees grown in the state" (subsection (d)). The Commission can issue licences annually to sawmill owners allowing the holder of the licence to work a mill for sawing and treatment of timber. Under s.27A the Forestry Commission can issue timber licences for the purpose of allowing the extraction of logs from land controlled by the Forestry Commission. Harris Daishowa (Australia) Pty. Ltd. receives an annual licence from the Commission.

The Commission's officers actually mark the trees to be logged or kept as habitat or seed trees. Logging contractors employed by sawmillers or Harris Daishowa (Australia) Pty. Ltd. must take out logs in accordance with the directions of officers of the Forestry Commission. The Commission prepares management plans, which are made available to the public when completed, which form the basis for the logging regime in a particular area. The Commission is not required to consult with any outside bodies or people in the preparation of the management plans.

Environmental Planning & Assessment Act (NSW)

The Commission is subject to the provisions of the Environmental Planning & Assessment Act 1979 (NSW) in its operations. Section 111 of that Act requires that "For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of the Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity." Section 112 of that Act requires that "A determining authority shall not carry out an activity that is a prescribed activity, an activity of a prescribed kind or an activity that is likely to significantly affect the environment unless ... has obtained ... and considered an environment impact statement...." An environmental impact statement was prepared in order to comply with the provisions of Part V, s.112, following successful litigation against the Forestry Commission of NSW which had previously refused to prepare one. The Forestry Commission argued the activities carried out by them did not have a significant impact on the environment. This was the case of **Jarasius v The Forestry Commission of NSW & HarrisDaishowa (Australia) Pty. Ltd.**, unreported, Hemmings J LEC No. 40173 of 1989. This concluded in the Land & Environment Court in March 1988. Following exhibition of the EIS the Forestry Commission has proceeded to allow logging in the Eden Working Circle Area including areas of forest in Coolangubra and Tantawangalo. Parts of these areas are listed permanently on the Register of the National Estate.

National Parks & Wildlife Act (NSW)

Another Act which may have application is the National Parks & Wildlife Act (NSW). Section 99 provides that taking and killing of endangered fauna is illegal. Taking or killing includes "disturb" under subsection 5 of the Act. Section 99(3) provides that the provisions of the National Parks & Wildlife Act take precedence over any other Act. The habitat of the Longfooted Potaroo, an endangered species under the NPWA Act, in Sheep Station Creek is threatened by logging operations at present.

Wilderness Act (NSW)

Areas such as Coolangubra have been nominated for declaration as Wilderness Areas under the Wilderness Act 1987 (NSW). Section 7 of the Act provides that anybody can submit to the Director of National Parks & Wildlife Service a written proposal that an area be identified as wilderness. Such a proposal has been submitted by conservation groups. The Director must consider the proposal no later than two (2) years after receiving the proposal and advise the Minister administering the National Parks & Wildlife Act in relation to the proposal. The National Parks & Wildlife Service (NPWS) prepared

a report which identified the areas in Coolangubra as containing wilderness values and recommended the areas by declared as wilderness under the Wilderness Act.

The Minister for Environment decided not to make such a declaration, however. This wide discretion of the Minister highlights the deficiencies of the Wilderness Act in protecting valuable areas.

The limitations of the Wilderness Act are demonstrated by this situation. The Minister for Environment has complete discretion as to whether or not he declares an area to be a wilderness area under the Act. Even when advised by the relevant government department, NPWS, that the requisite wilderness values exist there is no obligation on the Minister to use the Wilderness Act to protect the areas in question.

Criminal Law Aspects (Commonwealth and State)

A Commonwealth Perspective Export Control Act (Cth)

On 6 January 1989 Harris Daishowa (Australia) Pty. Ltd. was granted a licence under Regulation 9 of the Export Control (Unprocessed Wood) Regulations. Clause 6(c) of the Licence appears in full on page 3 (under Failure of Woodchip Licence).

It was discovered that pulp logs were being extracted from Coolangubra without consent of the Minister or his Department to do so as was required under Clause 6(c) of the Licence. These logs were in turn stored at Harris Daishowa's Eden mill until such time as clearance was obtained from the Minister.

The Export Control Act under s.9 provides power to the Minister to prosecute a company for a breach of a condition of the licence and also to seek orders restraining the company from breaching obligations under the licence.

The circumstances raised interesting legal possibilities in relation to whether or not a third party could take action to restrain a criminal action which was apparently taking place under the Export Control Act. The issue of the third party prosecution of criminal offences also arose. The onus of proof lies heavily on the prosecutor who must prove the case beyond reasonable doubt. This is a much heavier onus than in the case of civil proceedings where proof is required only on the balance of probabilities.

Ultimately it was considered that the decision not to enforce the licence by the Minister was an issue which could be reviewed under the Administrative Decisions (Judicial Review) Act provisions and accordingly Federal Court proceedings seeking certain orders in this regard were commenced in the Federal Court of Australia with the applicants the Australian Conservation Foundation and Phillip Childs against the Minister for Resources once again. It was clear the Minister would argue an initial preliminary point on whether the applicants had standing to sue. The Minister subsequently gave his consent to the export of the stockpiled pulp logs and the need for the proceedings disappeared. Accordingly they were discontinued. It is clear that the existing licensing system does not appear to be protecting the National Estate forests as on its face the export licence is intended to do.

State Perspective

Large numbers of people were arrested in the south east forests in the period February to August 1989. Most were arrested in the course of protest action and were charged with minor (or summary) offences under a variety of legislative provisions. The number of people arrested in that period was approximately 650 to 700 people. On three occasions 100 people were arrested at one time.

Forestry Act

Under the Forestry Act 1916 (NSW) regulations may be passed by the Forestry Commission of NSW which restrict access by members of the public to forests controlled by the Commission.

Notices Prohibiting Entry

Regulation 17 provides that the Forestry Commission can post notices in conspicuous positions in the forests. The notices prohibit members of the public from entering an area defined in the notice. Entering an area in breach of such a notice is a minor offence punishable by a fine of up to $500. The majority of people arrested in 1989 were charged under Regulation 17.

The notices which describe prohibited areas of the forest provided for under Regulation 17 are generally posted near trails and roads which lead into areas which are being logged or are to be logged. Most arrests took place when groups of people attempted to enter an area (known as a coupe) where logging was actually taking place. In these cases the Forestry Commission had often posted a notice under Regulation 17.

Trespass

Approximately 40 to 50 people were also charged with offences under Regulation 15(a), which offence is closer to trespass in the common law sense. Under the Regulation a person must be shown to have stayed in an area after being told by an authorised officer to leave. This contrasts with Regulation 17 under which there is no requirement that a person be ordered to leave an area before being arrested.

Other charges were laid under section 10 of the Summary Offences Act in relation to obstruction of vehicles.

The absurdities of the situation can be demonstrated by circumstances surrounding some of the arrests. On one occasion 38 people were charged under Regulation 17 after being requested to stay in an area by a police officer who discovered them on a bushwalk. The group was not involved in any action designed to prevent logging at the time and had merely taken the opportunity to examine the area for themselves. The group saw no notices posted, as is required under Regulation 17. On being discovered the group was asked to remain in the coupe by a single police officer and did so. The police officer left to return with a number of police and police wagons who then arrested all 38 people.

Following successful defences raised by lawyers acting on behalf of people arrested in February and March in the Eden Local Court the police prosecutor decided to drop the bulk of charges under Regulation 17, 15 and s.10 of the Summary Offences Act. In all 510 charges out of 582 charges were dropped for those persons with hearing dates up to 23 December 1989.

As people continued to be arrested in the course of protest action in the forests there are likely to be further hearings in the future.

Other charges were laid under the Inclosed Lands Act following entry by some individuals into the mill property of Harris Daishowa (Australia) Pty. Ltd. at Eden. Under section 195 of the Crimes Act charges were also laid against several individuals who were found chained to a roadway in the south east forest area. Following successful argument by lawyers representing those charged in relation to one incident the police dropped the balance of charges laid under this section.

Charges were also laid under the Maritime Services Act section 13 following an incident where several protesters took canoes into the port area near Harris Daishowa's mill yard to try and obstruct a vessel from Japan arriving to load woodchips.

Bail

A disturbing and thankfully shortlived episode concerned the granting of onerous bail conditions by police. One of the bail conditions which police originally sought to impose was a requirement that people not reenter designated areas of the forest. Five people refused to enter into the bail conditions and were therefore kept in custody. The three women and two men spent a day in the police cells at Eden Police Station before being brought before the magistrate at Eden who refused to vary the conditions. The five continued to refuse to enter the bail conditions. The men were later transferred to Cooma Gaol and the women to Mulawa Women's Detention Centre in Sydney. The women ultimately served 10 days in custody before being brought before the Central Local Court in Sydney. The magistrate in Sydney granted unconditional bail and the women were released. The men had previously decided to enter into the recognisance required and leave Cooma gaol. Subsequently the police no longer sought to impose similar bail conditions on persons facing charges of trespassing in the south east forests. It is clearly undesirable to have people, who would otherwise be facing a monetary penalty if found guilty of the offence with which they are charged, spending periods of time in custody because of bail conditions.

Given the purpose of the protest action was to prevent the destruction of valuable areas of forests in NSW it was also considered appropriate that there be some United Nations involvement in the interests of having those people in jail released. Accordingly representations were made to the United Nations in New York through the Australian Conservation Foundation requesting that a representation be made to the Australian representative at the U.N. concerning the possible abuse of human rights where people were in gaol for political activity as in the case of the south east forests.

Conclusion

Despite the welter of Federal and State legislation applying to the south east forests, discretionary decisions by government ministers or agencies made about valuable areas of forest are still left relatively unfettered, particularly at the state level. The fact that the Wilderness Act cannot be implemented in a meaningful way to protect the Coolangubra area, and given the responsibilities of the Forestry Commission of NSW to manage state forests subject always to the economic imperatives of harvesting those forests, it is arguably a matter where the Federal government should exercise powers to legislate to protect areas where an intransigent State government will not.

There has been considerable discussion about the need for legislation to protect the National Estate areas. Ex-Independent Senator Irina Dunn introduced legislation which provided for the passing of regulations by the Governor-General, inevitably on the recommendations of Ministers or Cabinet, to implement provisions which provide for protection of areas nominated on the National Estate. While not ideal the legislation was an attempt to provide the Federal government with a mechanism to exercise its powers to protect National Estate areas.

The Australian Heritage Commission (National Estate Protection) Amendment Bill introduced by ex-Senator Dunn provided for the Governor-General to make regulations prohibiting the doing of acts in any place that is in the register of the National Estate if those acts would or might adversely affect to a significant degree any place that is in the Register of the National Estate S.30A(1). Section 30A(2) similarly provides for regulations prohibiting the doing of acts outside a place that is on the National Estate Register and where the act might adversely affect places that are in the Register. Sections 28 to 30 of the Australian Heritage Commission Act are retained in their present provisions subject only to minor amendment.

Other aspects of the Bill were important. It also provided for injunctive relief and penalties to be applied for in the Federal Court restraining corporations from breaching s.30A. Parties who would have standing to seek injunctions included the Minister, a person whose use or enjoyment of any place in the National Estate may be adversely affected and interested organisations whose activities related to the conservation and protection of the National Estate. The granting of standing to so-called third parties to take action would overcome one of the initial hurdles inevitably faced by public interest groups seeking to act in this area when the government takes issue with the applicant on the question of standing to sue. There was provision for the imposition of daily penalties of up to $20,000 for each day a corporation contravenes the Act for two or more days.

The bill appeared to be based on the Commonwealth's Constitutional powers to make laws with respect to corporations in that it sought to regulate the conduct of corporations in matters affecting places on the Register of the National Estate.

Legislation of similar intent, if passed, is obviously an improvement on the existing situation whereby listing of an area as on the National Estate Register does not provide any automatic protection in the same way as listing under the World Heritage Properties Conservation Act provides protection. Section 30 of the present AHC Act is the only mechanism whereby areas may be protected.

The Federal government could consider drafting its own legislation now that there is considerable political force in having the government pass legislation designed to protect National Estate areas. Given the current makeup of the High Court and its decisions in cases such as **Richardson v The Government of Tasmania** (1983) 46 ALR 625 it is more than likely that properly drafted legislation will be upheld on a constitutional basis and can be used to protect valuable areas of the natural environment which do not necessarily satisfy World Heritage criteria but which are nevertheless worthy of conservation.

THE LAW AND THE SOUTH EAST FOREST CAMPAIGN

By Jeff Angel
Convenor, South East Forest Alliance

Legal avenues and groups such as the Environmental Defenders Office are viewed by campaigning environmental groups as an important component in their fight to protect the environment. In the case of the south east forests dispute several legal strategies have been pursued and all provided benefits to the forests.

The undertaking of legal action is a financially and logistically daunting task for environment groups, even those as large as the South East Forest Alliance (SEFA). The Alliance is comprised of more than 30 groups, including national and environment organisations and several local south coast groups. It attempts to combine the actions and policies of all the groups and employs its own staff and raises funds to supplement their efforts.

As such there are some major management needs involving consultation and strategic and financial decision making. For example some groups may be very keen on a court action but the financial and time implications for SEFA, as well as the effect of a loss in the courts has to be extensively assessed and canvassed. SEFA has attempted to take a 'hard-headed' approach to such decisions and the availability of the Environmental Defenders Office and its legal contacts has assisted this process.

Legal action has taken three forms over the last 5 years of the campgaing:

1. Part V actions.
2. Administrative Appeals.
3. Defence of those arrested trying to peacefully obstruct logging.

Part V Actions

Appeals to the Land and Environment Court about the absence or inadequacy of environmental impact statements (EISs) by the NSW Forestry Commission have given significant breathing spaces to the forests. In the **First Jarasius case** woodchipping of national estate forests was delayed for over a year allowing further scientific research and public campaigning.

While the principle that EISs should be prepared for such areas has had to be fought repeatedly in the Court and must be pursued, the case also gave a very important morale boost to forest campaigners. It showed that the Forestry Commission was not invincibile despite the barrage of lawyers and experts on its side of the bar table and proved in an impartial forum that the logging did have significant environmental impacts.

It also delayed the apparent Forestry policy of sterilising high conservation value forests by logging, thus leading to their removal from the national estate list and future national park protection.

The **Second Jarasuis case** concerning the construction of Wog Way into the heart of the Coolangubra wilderness also lead to a stop to work - this time voluntarily by the Forestry Commission. At the time there had been alleged incidents of violence against conservationists and one environmentalist had fallen from a tripod after it was pushed down by police and loggers. The respite was very welcome and again lifted the spirits of those at the cutting edge of the campaign.

At a later stage SEFA withdrew from the case as prospects for success were not good; its finances were dwindling and it needed to embark on raising further funds and resources for a crucial decision time in mid 1990.

2. Administrative Appeal

This case in the Federal Court tested the ability of the Federal Minister for Resources to allocate 17 years of woodchipping to Harris-Daishowa - a decision that signalled the death knell of the forests.

While this case was substantially lost, the Court judgment provided two wins which will be of use in future issues:

1) It confirmed that only the Australian Heritage Commission could decide on national estate values and that the opinions of other bodies such as Primary Industry about the values, were irrelevant in the final decision about logging impact.

2) The Australian Conservation achieved standing, providing a foundation for future appeals in such issues.

In the event of a court loss there was other political avenues to follow and the overall result was not devastating.

Both court cases demonstrated that environmental conflicts can push environmental law to new limits.

3. Arrests

More than 1,000 people have been arrested attempting to peacefully prevent logging of the national estate. In response the Forestry Commission 'closed' the forests.

While the closure and subsequent arrests makes no impact to people who believe they are acting justly and appropriately, the ability to defend the cases (and many were successfully) reinforces the view that the Forestry Commission bungled again.

Conclusion

The image of the Commission as the legitimate decision maker about the forests has been undermined by the court actions. This result echoes a fundamental theme in forest conflicts in Australia - the defence by established bureaucracies of their power to decide the future of the native forests to the exclusion of legitimate and changing community demands.

THE GREENING OF AUSTRALIA'S POLITICIANS – Part 1

In a special feature to be published in 3 parts ***Jill Vidler*** *examines the development of environmental awareness in Australian politics.*

Introduction

The 1980's have been a watershed for the Australian conservation movement as public concern for the environment has increased to the point where it seems to be permanently fixed on the decision-making agenda of government.

The increasing community fear about environmental issues such as the depletion of the ozone layer and the greenhouse effect, has altered the national political equation so radically in the past year that it was predicted that the green vote could well determine the March 24 election. The Federal Minister for the Environment estimated the green vote would be worth 15% (ABC PM 9/10/1989), a figure which was a far cry from estimates of the green vote being worth a mere 1% to 2% in the 1987 Federal election.

This study concerns the greening[1] of Australia's politicians - a process which has been happening, if sporadically, since the Whitlam years. The first four major pieces of Commonwealth legislation which form the framework for Australia's environmental legislation were passed in 1974 and 1975. These kept pace to a certain extent with growing community concern for the environment and paved the way in 1983 for the successful campaign to Save The Franklin, a Labor Party victory and the World Heritage legislation. The High Court decision in the **Tasmanian Dams** case, meant a broader interpretation of the constitutional powers which affect the environment.

It will be argued that the way a government chooses to use or not use powers inherent in the Constitution and the subsequent environmental legislation is an indication of how seriously environmental issues are being taken in the community and how seriously the strength of the lobby is perceived to be.

The environmental lobby has played a significant role in the way media has interpreted environmental concerns for the wider community. Organisations such as the Australian Conservation Foundation have a high media profile and the ear of the present government, but they will work with whomever is prepared to further environmental causes and issues.

Out of the green movement have come the Green Independents who now hold the balance of power in Tasmania and are poised to play an important role in the next Federal election. The argument advanced in this paper is that far from being a passing fashion, green politics will change the Australian political scene irrevocably and that whatever the motives behind the greening of politicians, if they do not become part of this process, they will be out of a job.

Early Campaigns

There have always been active, eloquent conservationists at work in the post-colonial epoch. The trouble is that they have been vastly outnumbered by those interested in clearing and development. In 1874, Australia gained the world's second national park, south of Sydney, simply called the Royal National Park. In 1908, James Watt Beattie was engaged in a successful tussle to stop BHP mining the limestone Marble Cliffs, beside Tasmania's Gordon River. Between the world wars, bushwalking and native plant appreciation clubs were springing up in our capitals and Myles Dunphy and friends in NSW were campaigning for primitive areas or wilderness to be set aside for these areas' own intrinsic value.

The first of the Tasmanian 'public' conservation disputes began in the 1930s when it was learned the HEC planned to dam Lake St Clair, situated within the 'protection' of a national park. The government fobbed off protesters and bushwalkers with bland assurances, just as it did in 1946 when the plan to transfer 1600 hectares of a national park to a private newsprint company was revealed. A public outcry forced the government to reduce the area and the Premier himself stood trial for alleged corruption over another forestry affair, but was acquitted on the grounds that the case was 'not proven beyond all doubt' (Current Affairs Bulletin, 16/12/68:12).

Lake Pedder

The flooding of Lake Pedder in 1972 is considered the beginning of the conservationist fight to take on government instrumentalities with their seemingly inevitable decisions in the name of development and technological progress. Those who founded the Lake Pedder Action Committee were a group of concerned naturalists and bushwalkers, who received no support from Australia's first national environmental group, the Australian Conservation Foundation. The attitude of the ACF at the time was the Lake Pedder was closed issue and too political for the society to get involved in.

"Four Corners" (1971) made a programme about Lake Pedder which gradually helped gain some mainland support, but the Committee was met with the constant problem of uncovering the true facts of the situation from a conspiratorial officialdom, especially the Hydro Electric Commission (HEC).

In 1929, the Hydro-Electric Department became the Hydro-Electric Commission, to give it a more commercial trading image (a change which would have significance for the Commission in 1983 during the Tasmania Dams Case, as will be shown later)[2]. The large construction and other HEC-based unions controlled the trade union movement in Tasmania and, in turn, strongly influenced the State Parliamentary abor Party machine. A number of big industries had been given favourable rates of electricity, a privilege they were keen to defend. These industries had a strong influence on the Liberal Party and there were also direct links between the HEC and media interests. Irrespective of whether Labor or Liberals were in power, Tasmania was effectively ruled by this small but powerful clique of politicians, union bosses, industrialists and the mainstream press.

During the 1960s awareness of the environment was growing but it was widely believed that the long standing policy of intensive hydro-electric development would automatically create economic growth and employment. Generations had been brought up on the idea that Man's

conquering of nature in the form of massive engineering masterpieces was what life in the 20th century was all about.

Lake Pedder and SW Tasmania were still far distant from the cities where there were other fights to be won. The liberalisation of the universities, the anti-Vietnam movement and for those interested in conservation, the takeover by the developers of our inner cities kept many future greens busy in Sydney, Brisbane and Melbourne. In particular, the application of the Green Bans in the early 1970's forged alliances between community groups, residents, unions and some politicians and fostered an environmental consciousness for inner city Sydney[3].

Back in Tasmania, the Save Lake Pedder Committee and other groups had fought until Parliament approved the scheme in 1967, then gave up; but the issue did not fade away. It was taken up by the Lake Pedder Action Committee, an enterprising and very articulate group, some of whose members formed the first Green Party, the United Tasmania Group (UTG), which came within 200 votes of winning a seat in Hobart in the 1972 State election.

The Reece Labor government had given way to a Liberal government, whose Premier said: "The issue can be simply stated. It is the value of Lake Pedder, which is a matter of opinion, set against the value of a power development, which can be assessed in real terms..". (Jones, R Damania: The HEC, The Environment and Government in Tasmania,1972). As we shall see, this one of the crucial differences between the Lake Pedder and Franklin campaigns: in the case of Lake Pedder, the government was not prepared to put a value on the wilderness[4].

When presented with over a quarter of a million signatures against the HEC scheme, the Tasmanian Parliament (both government and opposition) at first refused to accept them because the were in conflict with government policy despite the constitutional right of all Australians to petition Parliament. Further petitions were sent to Federal parliament and the Minister for the Environment, Howson, was approached to see if the Federal government could offer Tasmania the necessary financial aid to save the lake. His reply was that his Government could not interfere in the sovereign affairs of a State.

Prime Minister McMahon, after further public outcry, did attempt to discuss the question of Federal financial assistance to Tasmania but was promptly rebuffed by the Premier: a response which would be repeated by the Queensland State Premier in 1986 after the offer of funds by the Hawke Labor government to stop the building of the Cape Tribulation road.

In 1971 the Lake Pedder Action Committee (LPAC) and UTG obtained legal advice the effect that the HEC had breached provisions of the 1971 National Parks and Wildlife Act, which had been passed specifically to give such reserves better legal protection. The Tasmanian Attorney-General informed LPAC the case was strong but he resigned without signing the requisite writ to start an action. The Tasmanian Parliament promptly drafted a bill which would give the HEC retrospective authority where it was found to be in conflict with the law.

The election of the Whitlam government in December 1972 saw renewed efforts by LPAC lobbyists after Tom Uren's pledge (in a pre-election speech) to use Lake Pedder as a test case for the ALP's new environmental policy. The Federal government with Moss Cass as Minister for the Environment, still a minor portfolio, set up an enquiry in 1973 which announced its Interim Report: Lake Pedder can and should be saved and recommended a moratorium of 3 - 5 years, the expense of which was to be underwritten by the Federal government. Eventually the Cabinet decision was made not to accept the Enquiry's findings and whilst Caucus overturned Cabinet's decision, the PM offered Tasmania the financial assistance recommended by the Committee of Enquiry. The Premier refused the offer and the final avenue of support for the LPAC, the unions, refused to consider alternative proposals[5].

The conservationists had fought a formidable establishment, an intransigent state government, a secretive bureaucracy, influential vested interests, reactionary unions and a hostile press. Despite this, they had got remarkably close to victory and along the way had started the process of raising the environmental consciousness of some politicians. They had instigated the formation of a green political party and revived a strong conservationist lobby in Tasmania and on the mainland.

And yet Lake Pedder was damned, while fifteen years later the Franklin was not. What happened in those intervening years? What were the substantive differences between these two campaigns?

At one level the issues remained the same: the perceived need for cheap electricity provided for an underdeveloped area of Tasmania in order to attract industry and provide jobs; a unique area of "immense aesthetic value" whose destruction to provide power was regarded as a great ecological tragedy; the sovereignty of state parliaments threatened by Federal government's centralist moves; the importance of a well co-ordinated media campaign in order to combat the power of unions, industry and government; the importance of expert legal advice regarding constitutional issues and the use of appropriate legislation. An obvious difference was the enormous shift in sentiment by the public and politicians and a media campaign which meant there was no escaping the Franklin issues. But not quite so obvious, though just as crucial, was the fact that 'heritage' had been accepted on the political agenda and there was legislation to reflect this, plus a new willingness by the Federal government to use constitutional powers to protect his heritage. In the next edition of Impact I will explore these legislative and constitutional changes. **To be continued.**

Footnotes

1. The world "greening" has become part of every day language in the past decade. It denotes a process of consciousness raising in relation to environmental issues. "Greenies" seems to be the more derogatotory term used to describe the radical fringe in the movement. "Greens" has a tone of respectability.

2. Meaning of trading corporations. The Tasmania Dam case, clarified certain important aspects of this power in relation to trading corporations. First, a corporation is a trading corporation if a substantial part of its activities are trading activities. A principle function of the HEC was the sale of electricity. Secondly, it is clear since the Dam case that the power under S51(xx) is not confined only to regulating the trading activities of trading corporations. Non trading activities, such as

the construction of the Dam, may be regulated so long as they are being carried out for the purpose of engaging in trading activities.

3. There are some excellent books and films about this period: notably Jack Mundey's "Green Bans and Beyond" and the films "Woolloomooloo" by Pat Fiske and "Waterloo" by Tom Zubryski.

4. This is a new way of looking at the environment by economists. They are trying to put a cash value on the services provided by the natural environment. See: "Economists Befriend The Earth", New Scientist - 19 Nov 1988; "Making Money From Protecting The Environment", Australian Business July 5 1989; "Britains Radical Plan For The Environment: Get A Costing On It", Sydney Morning Herald, Sept 20 1989.

5. After sixty years, the ACTU is taking its first tentative steps towards a comprehensive policy on the environment. A sub committee of the ACTU Executive will be called the "Environment and Sustainable Development Committee!" (Sydney Morning Herald 26th September 1989). This marks a change in policy over the last two years as concern for the environment has increased. The Congress is now of the opinion that environmental problems "threaten the livelihood and health of workers and their families". Only in 1987 (Sydney Morning Herald 14th July 1987) it was stated that sooner or later the ACTU is going to have to work out a better relationship with the environmental movement for it risks being portrayed as the new enemy of the environment - a sort of Liberal party of the labour movement.

EDO NEWS

Pacific Region Networking

On 29 May the EDO convened a meeting with nongovernment organisation representatives from ten South East Asian and Pacific countries to discuss regional environmental problems. The diversity of needs became apparent in the meeting. In some countries, relatively evolved regulatory frameworks for environmental protection exist and the problem is one of enforcement. In other countries the environmental protection laws are simply nonexistent. In some countries NGO representatives looked towards the international environmental treaty and convention framework as a basis to place pressure on domestic governments to meet international standards. In other countries, particularly those where civil rights and freedom of speech existed in practice, reform by lobbying from within was seen as the best approach towards environmental protection.

The EDO proposal for AIDAB funding for a regional environmental law and awareness project to train South East Asian and Pacific Island officers in environmental protection was endorsed by the meeting.

Transport And Use Of Hazardous Chemicals Workcover Inquiry

As a result of the Diversey Chemicals Fire which contaminated Toongabbie Creek in December 1989, the State Government initiated an inquiry into the transport and use of hazardous chemicals, including the need for a data base information system. The Environmental Defender's Office completed in June this year a submission with regard to the need for a more unified and coherent approach to the planning issues involving hazardous and toxic substances. The submission was prepared by Rinke Schoneveld and Nicola Pain.

Road and Rail Transport

On 18 and 19 June 1990 a Land Transport Seminar was held covering the policy options facing Australia in road and rail transport. The cost issue with regard to land transport was discussed. Frequently public rail transport costs are criticised as exorbitant whereas the public costs associated with maintaining a private road transport scheme are underestimated. The EDO is following the land transport debate with interest, as the externalities, involved do not just relate to costs, but also to the environmental implications of extending, closing or restructuring the road/rail mix.

Sustainable Futures

Dr Dale Powell spoke at a seminar organised by the EDO in conjunction with Sydney University Law School on Sustainable Futures on Friday 1 June 1990. Dr Powell is a Fellow Director of the Conflict Resolution Programmes at the Carter Centre, a public policy centre founded and headed by exPresident of the USA, Jimmy Carter.

TEC Campaigners' Course

On 14 and 15 July an Environmental Campaigner's Course was held by the Total Environment Centre of NSW. Nicola Pain spoke on legal aspects of environmental campaigning. The trainees course offers an invaluable introduction and refresher for citizens concerned about environmental issues to improve skills and increase knowledge aimed at more effective participation in planning and pollution control processes.

Resource Assessment Commission

The EDO in conjunction with David Farrier has applied for a consultancy to review the legal framework which applies to forests on private lands throughout Australia. The Resource Assessment Commission has called for expressions of interest in the consultancy.

Future Events

All unpaid workers and Friends of the EDO are invited to our next Green Drinks gathering at the Office on Wednesday 8 August at 5.15pm.

John Connor, volunteer with EDO and currently tipstaff with Mr Justice Hemmings of the Land and Environment Court, is organising with Alderman Matthew Baird on 5 and 6 October 1990 a Public Interest Environmental Law Conference modelled in part on the University of Oregon's Annual Conference in the same field.

New Volunteers

The Office welcomes the involvement of John Novak, Lisa Narezzi, Judy Fitzsimmons, Ebohr MunozFigueroa, Adam Morrison, Louise Clegg, Geoff Thompson, Janet Titchmarsh, Jane Bennett and Sarah Hopkins and others in recent months. The efforts of all volunteers are invaluable for the office and greatly increase the amount of work the office is able to undertake.

E.D.O (QLD) INC. - "CHILD OF A NEW ERA"

The Queensland E.D.O. is at last off and running, having received a Legal Aid giant for 1989-90. The new office could not have commenced at a more opportune time with Queensland in mood for change. ***Maria Corina*** *brings us up to date on the recent developments.*

In late 1987 a public meeting was called to discuss problems in conducting environmental litigation in Queensland, including inter alia, the consistent refusal of the State Legal Aid Office to fund environmental cases. The outcome of the meeting was the formation of the Environmental Defender's Office (Queensland).

The office was incorporated on the 7th June, 1989 under the **Associations Incorporation Act 1981**, an act administered by the Queensland Justice Department.

The office made two applications to the Federal Attorney-General's Department for funding under the Community Legal Centres Programme for the 1988-1989 and 1989-1990 financial years, both of which were unsuccessful. However, in the 1989-1990 financial year the E.D.O received its first grant of $8,000.00 from the State Legal Aid Commission. An office was set up and telephone advice sessions, conducted by volunteer lawyers, commenced, taking place on the second and fourth Wednesday of each month.

The grant moneys were also used to employ Chris Richards, a solicitor and former commissioner with the Victorian Law Reform Commission, for five weeks to write a preliminary discussion paper on reform of Queensland's environmental legislation. The paper which was circulated to government bodies, community groups and other practitioners with various expertise, generated interesting debate.

In March 1990, a further grant of $8,000.00 was received from the Grants Committee of the Queensland Law Society, to employ a solicitor for ten weeks to further research reform of Queensland's environmental legislation.

That research is currently under way at a very interesting time in Queensland's history, a time when much needed review is being initiated in many areas. Considerable energies are required simply to keep informed of the reform processes being undertaken by the various government departments.

In February the Department of Environment and Heritage published a report entitled "State of the Environment in Queensland 1990", which highlighted the key areas of concern. The Department is reviewing its **National Parks and Wildlife Act 1975** and other legislation with a view to drawing up integrated conservation legislation. It has also been preparing heritage legislation and looking at the introduction of an Environment Protection Act to establish an environmental protection authority.

It is however the Fraser Island Commission of Inquiry which has been attracting greater publicity. In addition to the major questions to be decided concerning the future of the Great Sandy region, the Commission is to make full and careful inquiry with respect to:-

"3. The establishment of principles, systems and procedures for the orderly development and implementation of policies, and the resolution of issues or disputes concerning areas of Queensland in relation to which particular regulation or control may be needed for environmental, cultural or other special reasons;

4. Any legislation or other action by the government of the State of Queensland necessary or appropriate to implement or give effect to such recommendations".

In performing its tasks the Commission will make, as explained by the chairman in his opening statement, "Every attempt...to proceed as informally, inexpensively and expeditiously as is practicable. Hopefully, all who participate would join in a search for the best possible outcome in the public interest".

Clauses 3 and 4 of the terms of reference have generated interest from all sections of the community including Mr. Robin Town, the former general manager of Central Queensland Cement, the defendant in the action brought by Central Queensland cavers in respect of alleged breaches of the Fauna Conservation Act 1974 at the Mount Etna Cave. Mr. Town, now with Queensland Cement Limited, sought and obtained leave to appear at the inquiry.

At the initial hearing of the inquiry on the 2nd of April, persons representing some forty-five organisations, including conservation groups, government departments and mining interests, were granted leave to appear.

Two discussion papers are to be released, each followed by the hearing and then a production of a final report. The first of the discussion papers, which will rely principally on information provided by government departments and their consultants, was due to be released on the 31st May, 1990 followed by a public hearing on the 14th and 15th of June. Submissions to the inquiry will be accepted until the 28th September, with the final hearing to be held in October.

The "Systems Review", is another "forum" consuming the energies of many. The review being conducted by the Department of Housing and Local Government had its genesis in the special premiers' conference on housing convened by the Commonwealth Government on the 3rd March, 1989, at which it was agreed that the Commonwealth and State Governments would work together to address the problems confronting the housing industry, in particular issues of land supply, servicing and development regulations.

Funding programmes were provided and the Department engaged John Mant, Bob Graham and John Eagles as consultants. Workshops have been arranged with "key information holders" and the consultants are currently considering models for public participation in the review process.

From its beginnings of seeking to establish mechanisms which would promote a greater availability of cost effective housing alternatives, the objectives of the review have been widened by the announcement in February 1990 by the Deputy Premier and new Minister for Housing and Local Government that the Government would carry out a complete review of State and Local

Government development approval processes. This would include a review of the procedures to be contained in the new **Planning and Environment Act**, the responsibility of the Department of Housing and Local Government, but also a review across all State Departments, including development over the coastal seabed. The key concern has been the lack of co-ordination between the existing separate approval systems and in many respects therefore parallels Commonwealth initiatives for consolidation of the approval processes.

The "new" Planning and Environment Bill, expected to be passed by August of this year, has sought to consolidate and streamline the provisions of the current **Local Government Act 1936** and **City of Brisbane Town Planing Act 1964**, which statutes set out the powers and procedures for local government as well as town planning procedures. The first draft of the bill was circulated over three years ago and there was further drafts to the bill prior to the last election. Since the change of government further amendments have been made to the bill, including the tightening of the procedures for the preparation of environmental impact statements. However, the bill does not introduce any new approaches to planning. Accordingly, a review of this legislation will be included as part of the overall review which is to be completed by the end of the year.

The new government has also made policy statements in relation to the existing court system to the effect that it was considering that it may be preferable to adopt a tribunal system along the lines of that which exists in South Australia. An examination of the dispute resolution process is therefore being conducted in parallel with the overall systems review.

There are many other reform programmes dealing with matters affecting the administration of environmental legislation. The Electoral and Administrative Review Commission has called for submissions in respect of freedom of information legislation. On another front, a committee has been set up to review land policy and administration under the **Land Act 1962**. However, the stated objectives of the review are to generate a fair return to the State on its land assets, to ensure consistency and fairness within land policy and administration, and to enhance the sustainable economic growth of Queensland. It is not intended that the review will make recommendations on other policy areas such as the environment or Aboriginal land rights, though it has been said that lease types which impact on other policy areas will be considered as far as they are relevant to the state objectives of the review.

A perceived danger at this time is that there is little communication between departments with every government department having its own legislative agenda. Nevertheless in this atmosphere of review, the E.D.O's key role must be to participate in the debate, and there is now the opportunity, if funds are forthcoming, to participate in a meaningful debate concerning the development of an improved legislative framework and thereby improved environmental decision making. The development of such a framework will of course be no easy task, "there is powerful inertia in existing legal arrangements,...And, in practice, the different groups of actors in the system can all equally tend to lack perspective on the system as a whole,...These who operate within any given legal system...may have views about a particular way in which the system is malfunctioning, but they do not generally find it easy to design radical amendments: after all, their knowledge of the existing system is an intellectual property interest!"[1]

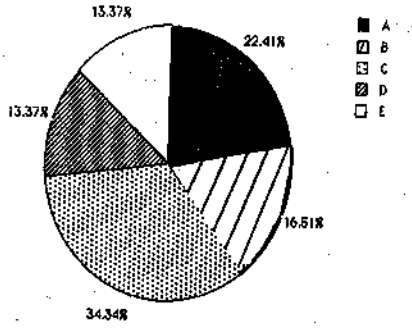
EDO NEWS (cont)

Inquiries to the EDO January : June 1990
In the first half of 1990 the EDO responded to 620 inquiries from community groups and members of the public.

Most inquiries are received by telephone. The time spent on each inquiry range from a few minutes to several hours. Some inquiries eventually became part of the EDO case load.

Many inquiries relate to a range of subject matters, as indicated by the fact that 828 subjects were covered in the 620 inquiries.

The graph shows proportions of inquiries relating to different subject areas.



A. **Planning and Development.** Includes Environmental Planning Assessment Act and Local Government Act inquiries.

B. **Water Resources.** Includes inquiries relating to pollution, hazardous chemicals and pesticides.

C. **Lobbying and Legal Process.** Includes inquiries relating to the work of the EDO and other environmental organisations, referrals, legal process, legal education and law reform.

D. **Natural Environment.** Includes soil conservation, wildlife, forestry, tree preservation, land clearance and open space inquiries.

E. **Miscellaneous.**

Overall, the greater number of inquiries received relate to the operations and services of the EDO and the planning and development process.

A new inquiry registration procedure has now been developed which will allow more detailed analysis of inquiries from July 1990. The aim is to monitor community concerns about the environment more extensively so that areas of concern for test cases and law reform can be identified.

SUBSCRIPTION FORM

I wish to become a Friend of the EDO which allows me to receive IMPACT, attend seminars held by the EDO and support the work of the office.

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Phone

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In addition to becoming a Friend of the EDO or subscribing to IMPACT, you can make a separate tax deductable donation through the ACF.

Please make your cheque payable to the Australian Conservation Foundation, sign the statement of preference below and post this donation form to the Australian Conservation Foundation, 340 Gore Street, Fitzroy, Vic 3065.

"I prefer that this donation be spent for the purposes of the EDO."

Signed

Name

Address

Cheque enclosed for $

CATCHMENT MANAGEMENT IN URBAN AREAS SEMINAR

EDO solicitor David Robinson reports on the first of the EDO water resources seminars for 1990, held at Sydney University Law School on 5 June. Proceedings of the seminar can be purchased from the EDO for $10.00.

The Hawkesbury Nepean river system is at a crisis point. Siltation, run-off, flooding, urban crowding, quarrying, agricultural waste disposal, industrial and recreational usage problems worsen in the absence of integrated management by regulatory authorities.

Mr Kevin Rozzoli, MP, Speaker of the Legislative Assembly and Member for Hawkesbury opened the seminar with an address on the Bill which he drafted in 1984. The Bill proposed the establishment of a **Hawkesbury River Authority** (HRA). The HRA would coordinate and direct the management of the river catchment.

David Robinson commented on the **Catchment Management Act, 1989**. That Act provides for the establishment of a State Catchment Management Coordination Committee, Catchment Management Committees for regional areas, and Catchment Management Trusts. The Trusts are the only body to have financial power. It is envisaged that the Trusts would pursue a corporate plan as approved by the Minister establishing the Trust. The corporate plan would propose catchment management programs involving, for example, earth works, tree preservation, research and monitoring activities. Trust programmes would be funded through contributions levied on landowners in catchment management areas. Problems with the Act include the absence of community participation other than that controlled by the Ministers involved, and the need for integration of TCM into the land use planning framework.

Dr David Hughes, Chairperson of the Coalition of Hawkesbury and Nepean Groups for the Environment (CHANGE) spoke forcefully of the need for implementation of new management systems to address the flood, pollution and conflicting land use problems in the vast Hawkesbury Nepean catchment and rivers system. CHANGE, representing over 40 member environmental groups in the region, supports the Hawkesbury River Authority proposal provided two conditions are met. First, the HRA must be given the resources and power to oversee and direct the private and regulatory bodies whose activities affect the rivers. Second, scope for active community participation in the functioning of the HRA must be given.

Mr Alan Dodds, Manager, Works Investigation and Planning Branch, **Water Board**, graphically described the enormity of the problems facing the Hawkesbury – Nepean catchment, the current absence of legislative or administrative structures capable of addressing those problems, and initiatives of the Water Board.

In discussion after the formal papers, Richard Gosden of Stop the Ocean Pollution raised the question of **enforcement**. Under the Clean Waters Act, possible prosecutions are not being made to prevent point source pollution. The existing laws adequately address pollution problems, but are simply not being enforced by the regulatory authorities.

The Environmental Defender's Office acknowledges the generous assistance of the Water Board in organising its 1990 Water Resources Seminars.

On 9 October 1990, a further seminar on "Water Conservation: Pricing Policies and Clean Waters" will be held in Sydney University Law School. Members of the public are invited.