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Tasmanian Conservation Trust Inc. v. The Minister for Resources & Gunns Limited.

"Storing the pulpwood on the stump".

James Johnson, Director. Environmental Defenders Office.

On 10 January 1995 His Honour Justice Sackville delivered reasons for judgment in a case brought by the Tasmanian Conservation Trust against the Minister for Resources and a timber company, Gunns Limited. The judgment is important because it is the first time consideration has been given to the meaning of the Administrative Procedures under the Environment Protection (Impact of Proposals) Act 1974 ("Impact Act"), and in particular, when an "initiative" has been taken and what is a "proposed action". The case also reviewed the Commonwealth practice of giving "in principle" approvals.

Facts

On 10 June 1994 the Minister for Resources issued a woodchip export licence to Gunns Limited to export woodchips until the end of December 1994. The Minister advised that he had also granted "in principle" approval to allow Gunns to export up to 200,000 tonnes of hard woodchips until the end of 1999, subject to the issue of annual export licences. The Minister received advice from his department, which he followed, that it was not necessary to designate Gunns as a proponent under the Impact Act as Gunns' export proposal did not raise any issues of environmental significance not already taken into account under an earlier environmental impact statement on the Tasmanian woodchip industry conducted in 1984.

On 15 June 1994 the Trust wrote to the Minister seeking his reasons for the Minister's decision to issue the licence pursuant to the Administrative Decisions (Judicial Review) Act 1977 ("AD(JR)Act"). Despite repeated requests the Minister refused to provide a response and proceedings were commenced on 23 August 1994. The Minister provided a response within 1 hour of being served with the proceedings.

The proposal by Gunns was for the export of woodchips over a period of 10 years in two stages. Stage 1 was for the export of 175,000 tonnes per year, Stage 2 involved a further 300,000 tonnes per year. Stage 2 would require the construction of a dedicated chipping facility and the construction of infrastructure at Stanley to enable the export of the chips.

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The Department of Primary Industries & Energy (DOPIE) sought informal advice from the Commonwealth EPA about the impact of the proposal. This advice was sought on three separate occasions and each time the EPA advised that both stages of the proposal are likely to affect the environment to a significant extent.

Standing

The first question to be determined by the Court was whether the Trust was " a person aggrieved" within the meaning of s.5 of the AD(JR) Act. This question is discussed on page 4 in the article 'Behind the Woodchips' in this edition of IMPACT.

The Administrative Procedures

Clause 1.2.1 of the Administrative Procedures made under the Impact Act provides that:

> "Subject to these procedures, the Action Minister, or a person on behalf of the Action Minister, shall, as soon as possible after any initiative has been taken in relation to a proposed action designate a person or a department as the proponent of the proposed action and shall ensure that the department is informed of the proposed action and of the name and address of the person or the department so designated."

This clause establishes the trigger for environmental assessment and was the subject of debate and interpretation in the Gunns Case.

Proposed Action

Proposed action means a matter referred to in any of the paragraphs of s.5 of the EPIP Act.

Section 5 provides that the object of this Act is to ensure to the greatest extent that is practicable, that matters affecting the environment to a significant extent are fully examined and taken into account in and in relation to:

> (a) the formulation of proposals;
>
> (b) the carrying out of works and other projects;
>
> (c) the negotiation operation and enforcement of agreements and arrangements (including agreements and arrangements with authorities of the states);
>
> (d) the making of or the participation in the making of decisions and recommendations; and
>
> (e) the incurring of expenditure by or on behalf of the Australian Government and authorities of Australia, either alone or in association with any other government, authority, body or person.

The Trust alternatively argued that either the decision to grant a licence or the logging, transport and exporting of timber was the " proposed action".

His Honour held that:

> "In a case where a corporation seeks Commonwealth approval for a project, the phrase "proposed action" in context, seems to me to be intended to describe the project rather than the approval for it (or for some part of it). The grant of an approval, for example in the form of a licence to export woodchips, does not necessarily have any impact on the environment."

On the facts of the case, it was the proposal by Gunns in its application to export woodchips identifying its intended activities in obtaining and processing logs and transporting and exporting woodchips that was held to be the "proposed action". His Honour also held that a proposed action only falls within paragraph 1.2.1 of the Administrative Procedures if the matter affects the environment to a significant extent.

Jurisdictional Fact

The question arose as to what was the appropriate test for deciding whether a proposed action affected the environment to a significant extent. On one view, the test is objective, to be determined upon evidence. The alternative view is that the test is subjective, subject only to judicial review. His Honour held that the question is one for the Minister to determine. His Honour examined the structure and language of the Administrative Procedures and the practical difficulties that would result from an objective test.

Error of Law

Clause 1.2.1 of the Administrative Procedures requires the Minister to determine whether the proposed action would affect the environment to a significant extent. His Honour held that the Minister had not addressed his mind to this issue, as he had asked himself the wrong question, namely, whether the environmental impact of the proposed action was substantially different from that of proposals previously assessed in preparing the 1985 EIS.

Effect on the Environment

Although not strictly necessary, His Honour considered the question of effect on the environment. His Honour held that site specific impacts can be significant depending on the circumstances and that the impact of logging in particular forests can have a significant impact on the environment even though there may be other forests nearby which remain untouched (see Jarasius v. Forestry Commission of NSW No. 1 (1988) 71 LGRA 79 at 90-93 cited).

As to the word "significant", His Honour used it in the sense of an "important or notable effect on the environment" *(Drummoyne Municipal Council v. Roads & Traffic Authority* (1989) 67 LGRA 15 at 163). His Honour went on to hold that the draft and final versions of the EIS contained statements which reinforce "what is tolerably clear in any event" that the harvesting, transportation and processing of the quantity of logs required to produce 475,000 tonnes of woodchips is likely to have a significant effect on the forest in which the activities are to take place.

The respondents argued vigorously that there would be no impact because the chips to be exported came from timber that would be burnt or left to rot in the forest. Indeed in his press release announcing the licence, the Minister states:

> "This is part of an innovative project by the company to maximise the recovery of sawn wood from low quality logs which would otherwise be used solely for woodchips or left to rot on the forest floor."

That this is nonsense was highlighted by a handwritten memo on the minute to the Minister which read "Storing the pulpwood on the stump." The Gunns proposal stated that

> "The region is relatively remote from existing pulpwood demand centres and, for this reason, has a large surplus of eucalypt pulpwood, under utilised for many years."

In plain language, this means that there is no mill close by and areas of forest have been selectively logged for the best trees. The surplus of pulpwood referred to consists of trees growing in the forest.

Initiative

The Minister argued that there was no initiative because the Commonwealth had directed the preparation of an EIS in 1983. His Honour held that:

> "The fact that the Minister contemplated granting an export licence to Gunns in accordance with its application, and made inquiries to this end, constituted an initiative capable of enlivening the obligations in paragraph 1.2.1 of the Administrative Procedures."

He went on to hold that:

> "I think there may well be circumstances in which an action or contemplated action by the Minister is so closely related to a previous action, such as the grant of an earlier licence or an earlier direction to designate a proponent, that the later action cannot properly be described as an initiative in relation to a proposed action."

On the facts of the case it did not seem that what occurred in the preparation of the EIS was sufficiently related to the specific application by Gunns in October 1993 or to the Minister's response to that application. His Honour also noted that the consequence of designation is not necessarily an EIS.

His Honour also held that a better interpretation of "an initiative" is that it may be taken not only by the Commonwealth but by a person or corporation proposing that the Commonwealth take action in relation to a particular proposal. The word "initiative" describes a significant step taken by the corporation to promote a proposed action. The most obvious step is the application for a licence to permit the proposed action to be undertaken.

The In Principle Approval

His Honour considered the reasoning in *Australian Broadcasting Tribunal v. The Bond* (1990) 170 CLR 321 which dealt with the distinction between substantive and procedural decisions. In applying the reasoning to the facts before him, Sackville J held that in principle approval was not a decision which the *Export Control (Unprocessed Wood) Regulations* required or authorised. Because it was a merely step in the process of reasoning for the issue of a future licence it did not amount to "conduct". His Honour held that Gunns may have a legitimate expectation that a licence would not be denied on other grounds and an entitlement to procedural fairness would flow from that expectation. However this would not create a substantive entitlement in Gunns beyond the term of the licence. Nor was the approval in principle a procedural step of the kind constituting conduct for the purpose of s.6 of the AD(JR) Act.

His Honour noted that this result is not entirely satisfactory. The in principle approval was intended to have significance despite the limitations on its legal effect. Although the Trust was ultimately unsuccessful on this point, it was obviously crucial that it be determined and highlights that woodchipping companies in Australia would have no entitlement to compensation if, having been given the right to be heard, these licences were not renewed.

On 19 December 1994, The Minister for Resources issued a fresh licence for 1995 to Gunns Limited prior to the handing down of this judgment. The Trust has commenced fresh proceedings challenging this new licence on substantially the same grounds.

COSTS

Sackville J handed down his judgement on the question of costs in the case on 17 February 1995. His Honour noted that while the Trust had succeeded in obtaining an order setting aside the Minister's decision to grant a licence to export woodchips, the Trust failed in its claim to set aside the Minister's "in principle" decision to approve the export of woodchips until the end of 1999. His Honour held that:

> "A distinction can be drawn between a case where a party fails on a particular issue in the course of substantially achieving the order it seeks and one where it fails on an issue which is severable from the issue on which it succeeds."

Having failed on a severable issue such as the " in principle approval " argument, His Honour held that some allowance needed to be made for the failure of the Trust. Taking into account the relatively little additional court time or preparation involved, His Honour ordered that the Minister and Gunns pay two thirds of the Trust's costs.

Sackville J rejected the argument put by Gunns that they are an "innocent victim" and that all the costs should be paid by the Minister on the basis that Gunns chose to participate in the proceedings and did not simply file a submitting appearance. Accordingly, His Honour ordered that the 2/3rds costs order be paid by the Minister and Gunns equally.

LEGAL AID

One of the primary considerations from a client's point of view in commencing public interest proceedings is whether legal aid is available.

Legal aid is sometimes available from the Tasmanian Legal Aid Commission in public interest environmental matters. However the Trust, was not eligible under the Commission's means test.

Application was made to the Commonwealth Legal Aid and Family Services division of the Attorney General's Department. The Commonwealth Government operates a limited scheme of legal aid with quite stringent environmental test case guidelines. The EDO spoke with Legal Aid and Family Services (LAFP) in July 1994 and we were advised that in the case of an urgent application, a response could be provided within two days. On 27 July 1994, the EDO made application for legal aid on behalf of the Trust. After several follow-up calls, the EDO received a letter on 19 August 1994, saying that further information, including a statement of reasons was necessary. This was despite the fact that one of the aims of the proceedings was to compel the Minister to provide such a statement of reason. The letter from LAFP stated: " I would imagine that you will have at least received some reasonable correspondence that casts light on the matter". Once this documentation was received, LAFP would obtain "specialist advice" from the Australian Government Solicitor, who was also acting for the Minister for Resources.

Eventually the specialist advice turned up, advising that the Trust had no prospects for success because the Trust would not be granted standing as a person aggrieved.

For those of you representing clients who may wish to apply to Legal Aid and Family Services for a grant of aid, buy a lottery ticket; your client will have greater prospects for success.

Behind the woodchips–"special interest" identified

Maria Commino, Solicitor. Environmental Defenders Office.

INTRODUCTION

The historical need in environmental matters to show a person's entitlement to bring proceedings has most often had the practical effect of precluding a Court from deciding whether an environmental law has been broken, and thereby prevented the enforcement of many environmental laws.

The procedural requirement to show standing has been necessary where there have been no statutory provisions conferring open standing or where a statutory "standing" test has been imposed in the legislation.

A statutory standing test is imposed in the *Administrative Decisions (Judicial Review)* Act 1977 ("ADJR Act") which enables a "person aggrieved" to seek relief in relation to decisions to which that legislation can be applied and therefore reviewed.

Two decisions in June 1994 by the Minister for Resources to issue export woodchip licences were such decisions capable of judicial review under the ADJR Act.

The right to seek relief in relation to those decisions was therefore dependent upon the environment group showing it was a "person aggrieved" by those decisions within the meaning of the ADJR Act.

The scope of the ADJR standing provision was considered the Federal Court judgments - *Tasmanian Conservation Trust Inc. v Minister for Resources and Anor*[1] and *North Coast Environment Council v Minister for Resources*[2] - relating to the Minister's decisions to issue woodchip liciences.

The judgments go a long way in clarifying what factors will give environment groups standing to bring legal proceedings, and more specifically, what will comprise the necessary "special interest" enabling recognition before the Courts.

THE EXPORT WOODCHIP CHALLENGES

Two cases were brought by environment groups in 1994 relating to export woodchip licences, and heard by the Federal Court in late November 1994.

In the first, the Tasmanian Conservation Trust (the "Trust") challenged the decision by the Minister for Resources in June, 1994, to issue a six month export woodchip licence to the Tasmanian sawmilling company, Gunns Limited.

The case involved a substantive challenge to the licence, namely the Trust sought to set aside the licence on the grounds the Minister hadn't followed the environmental impact assessment processes set out in the Administrative Procedures made under the *Environment Protection (Impact of Proposals)* Act 1974.

To mount the challenge to the Minister's decision, the Trust had to show that it was a "person aggrieved" within the meaning of the ADJR Act.

In the second case, the North Coast Environment Council ("NCEC"), brought proceedings in relation to a three month export woodchip licence issued by the Minister for Resources in June, 1994.

The case did not involve a challenge to the licence. Rather the NCEC only sought reasons from the Minister under section 13 of the ADJR Act for his decision to issue the licence.

Entitlement to reasons was dependent upon the NCEC showing that it too was a "person aggrieved" within the meaning of the Act.

THE TASMANIAN CONSERVATION TRUST

The Trust was formed in 1968 and has 450 members. It is the peak state based environment group for Tasmania. As such, it has been a member of the Commonwealth government's Peak Conservation Organisation.

It has as its prime object the promotion of conservation of the Tasmanian environment.

THE NORTH COAST ENVIRONMENT COUNCIL

The NCEC was formed in 1977 and is the peak environmental organisation for Northern New South Wales. It describes itself as the

> "regional umbrella organisation for conservation and environmental groups on the North Coast of New South Wales."

It has 48 members of which 44 were member groups, with each paying an annual subscription of $20.00. It is a member group of the Nature Conservation Council which is the umbrella organisation for about eighty environmental and scientific societies promoting conservation in New South Wales.

The main object of the Council is to promote conservation throughout the region from Newcastle north to the Queensland border, and west to the New England Highway. That area included the areas from which Sawmillers Exports were to obtain woodchips under the licence granted by the Minister.

THE COMMON LAW

A significant part of the hearing in the Trust case related to the standing of the Trust to bring the proceedings.

A few days later the NCEC case was heard. With the Court's mind freshened to the issue and with an applicant of smaller size and different stature asking to be heard before it, the Court had to look even harder at the law on standing.

The main authorities on standing are set out in the judgment of His Honour Justice Sackville in the NCEC case. His Honour posed the issue for decision in the case in the following terms: -

> "There is much to be said for the view that the focus of attention where decisions of public authorities are challenged or reasons for those decisions are sought should not be any benefit that might accrue to the plaintiff or the applicant. On this view, the focus should be on those "who can represent the public interest [in litigation] most effectively and faithfully".[3] Indeed the law, at least for the purposes of the ADJR Act, appears to be in a state of transition, although it is fair to say that there has been a progressive widening of the law of standing and of the concept of a "person aggrieved" over the last century: *Coles Myer Ltd v O'Brien[4]; Australian Institute of Marine and Power Engineers v Secretary Department of Transport.*[5] The question in this case is, perhaps, how far the latest transitional process has gone."[6]

Justice Sackville recognised the clear authority of the 1980 High Court decision in ACF v Commonwealth.[7]

> "I have already said that, although *ACF v Commonwealth* should be read in the light of the submissions with which the High Court was concerned, its authority cannot be ignored. Furthermore, although cases interpreting the phrase "person aggrieved" in the ADJR Act have used broad language, it has never been held that the principles governing the award of declarations and injunctions under the general law have been superseded by different and broader conceptions under the ADJR Act."[8]

His Honour referred to certain principles relevant to the NCEC case, established by *ACF v Commonwealth*. In particular His Honour referred to the need to show -

> "a 'special interest in the subject matter of the action.'... A 'mere intellectual or emotional concern' for the preservation of the environment is not enough to constitute such an interest... The asserted interest must go beyond that of members of the public in upholding the law and must involve more than genuinely held convictions..."

His Honour identified three factors emerging from the *ACF v Commonwealth* case which did not, of themselves, operate to confer standing. They included -

- Any alleged non-compliance with the *Environment Protection (Impact of Proposals)* Act 1974 or the Administrative Procedures.
- The making of comments on an EIS made under the Administrative Procedures.
- The formulation of objects that demonstrate an interest in and commitment to the preservation of the physical environment.[9]

His Honour made it clear that *ACF v Commonwealth* is authority for the principle that a person may be able to demonstrate a "special interest" in the preservation of a particular environment.

The concept of "special interest" was further explained in *Onus v Alcoa,*[10] which also established that an intellectual or emotional concern in the environment would not be a disqualification from standing to sue.

His Honour referred to "influential" observations of Stephen J. -

> "As the law now stands it seems rather to involve in each case a curial assessment of the importance of the concern which a plaintiff has with the particular subject matter and of the closeness of that plaintiff's relationship to that subject matter."[11]

Brennan J's observations were summarized as accepting that -

> "modern legislation often protects non-material interests, and that an applicant will have standing to complain of an alleged breach if there is an 'affection or threatened affection' of the applicant's interests by the apprehended breach of duty."[12]

His Honour concluded that the formulations of Stephen J. and Brennan J required -

> "a close examination of the circumstances of an individual case and are inconsistent, in my opinion, with any rigid or easily identifiable dividing line."[13]

THE ADJR ACT

His Honour compared the tests required to show common law standing and how the term "person aggrieved" under the ADJR Act had been interpreted.

> "The authorities interpreting the phrase 'person aggrieved' in the ADJR Act have taken a generous view of its scope, certainly no less broad than that articulated in *Onus v Alcoa*....The term ..covers a person who can show a grievance which will be suffered as a result of the decision, beyond that which he or she has as an ordinary member of the public....the ADJR Act employs the broadest of technical terms, indicating that the required interest need not be legal, proprietary, financial or otherwise tangible. Nor need it be peculiar to the particular applicant."[14]

These are general statements of principle interpreting the reach of the ADJR Act. It is the application of these principles that raises the key question of the circumstances when non-financial and non-proprietary interests can suffice to establish a special interest.

The cases of *Ogle v Strickland* and *ACF v Minister for Resources* were discussed for this purpose.

NON-FINANCIAL AND NON-PROPRIETARY INTERESTS COMPRISING "SPECIAL INTEREST"

Religious Beliefs

The case of *Ogle v Strickland* involved a challenge by two priests to the decision of the Censorship Board to import an allegedly blasphemous film.

The majority relied on the vocation and professional calling of the appellants, being more than an intellectual or emotional concern, and referred to a 'closer proximity' with the subject matter than other members of the community to show standing.[15] To repel blasphemy was a necessary incident of their vocation.[16]

Wilcox J founded the standing of the appellants on a wider basis, not distinguishing between the position of committed Christians and the professional calling of the appellants. Rather, it was enough that the appellants, as committed Christians, had suffered damage different in kind from the general damage suffered by the community generally when the law is broken.

His Honour Justice Sackville concluded that reliance on the fact of the professional vocation of the appellants was not an entirely satisfactory basis for according standing to challenge a decision

offensive to their religious or spiritual values, particularly as some religions have no vocational structure.

His Honour also observed that if the decision is not to be confined to the case of blasphemy, the decision has implications that go beyond the field of religious beliefs.

The case poses the question of how the position of an organised group that regards the preservation of the environment to be of profound cultural and spiritual significance, differs from the position of the priests.

However, His Honour concluded it was not necessary to answer these questions in the NCEC case.

Conservation Interests

The second case considered was ACF v Minister for Resources,[17] which decision His Honour emphasised was not in anyway inconsistent with the decision of the High Court in *ACF v Commonwealth*.18

It involved the grant of an export woodchip licence to Harris Daishowa for the export of woodchips from the South East Forests of New South Wales.

The issue for decision was whether the ACF had a special interest in the subject matter of the application, in accordance with the principles stated by Stephen J. in *Onus v Alcoa*.[19]

Davies J found that the ACF did have a special interest in relation to the South East Forests and certainly in those areas of the forests on the national estate.

> "The ACF is not just a busybody in this area. It was established and functions with governmental financial support to concern itself with such an issue. It is pre-eminently the body concerned with that issue. If the ACF does not have a special interest in the South East forests, there is no reason for its existence."[20]

His Honour referred to Davies J. statements on the need to take account of current community perceptions and values in determining standing.

> "In my opinion, the community at the present time expect that there will be a body such as the ACF to concern itself with this particular issue and expects the ACF to act in the public interest to put forward a conservation viewpoint as a counter to the viewpoint of economic exploitation."[21]

His Honour concluded that the reasoning of Davies J. in *ACF v Minister for Resources* should be followed, "although it is necessary to consider carefully the factual differences between that case and the present."

FACTORS SHOWING NCEC'S SPECIAL INTEREST

ACF v Commonwealth had established that NCEC could not rely solely on its objects, its role in making submissions on the EIS prepared by the exporter, or on any alleged non-compliance with the procedures under the *Environment Protection (Impact of Proposals) Act.*

To determine whether NCEC had standing, it was necessary to "assess the nature of the applicant's concern with and relationship to the subject matter."[22] In the language of Stephen J. in Alcoa - to assess "the importance of NCEC's concern with the subject matter of the decision and the closeness of its relationship to that subject matter."[23]

His Honour identified 5 key factors to show the closeness of NCEC's relationship.

> 1. The NCEC is the peak environmental organization in the North Coast region of New South Wales, having 44 environmental groups as members. Its activities relate to the areas affected by operations generating the woodchips that are the subject of the export licence.
>
> 2. NCEC has been recognized by the Commonwealth since 1977 as a significant and responsible environmental organization, ...through regular financial grants for the general purposes of the organization. While the grants have been modest, they have been recurrent and reflect acceptance by the Commonwealth of the significance of the role played by North Coast in advocating environmental values.
>
> 3. NCEC has been recognised by the government of New South Wales as a body that should represent environmental concerns on advisory committees. The most important form of recognition for present purposes has been membership of North Coast's nominees on the Forest Policy Advisory Committee, the role of which is to advise the State Minister on forestry matters, including the management of State forests. This and other forms of participation in official decision making processes show that the State government has accepted North Coast as a representative of environmental interests.
>
> 4. NCEC has conducted or co-ordinated projects and conferences on matters of environmental concern, for which it has received significant Commonwealth funding. While these have not specifically concerned forest management or woodchipping, they reflect North Coast's standing as a respected and responsible environmental body.
>
> 5. Independently of NCEC's long involvement with successive licences granted to Sawmiller, it has made submissions on forestry management issues to the Resource Assessment Commission and has funded a study on old growth forests, focussing upon the Wild Cattle Creek State Forest.[24]

His Honour further explained the basis for concluding that NCEC was a "person aggrieved" in relation to its claim for reasons for the Minister's decision to grant Sawmillers an export licence.

> "North Coast's concerns are, in my opinion, far more than mere "intellectual or emotional". It is recognised by both the Commonwealth and State as a responsible environmental organisation, deserving of financial support and participation in government decisions making processes. It is recognised by the State as a body with a particular concern in the management of forests, including State forests and private lands. Thus North Coast has a particular interest in the decision which gave rise to the request for a statement of reasons. North Coast, independently of its opposition to Sawmillers' licence, has examined forestry issues in submission and research activities. The evidence shows that North Coast has had a keen interest in woodchipping operations for a number of years. While its expressed opposition to sawmillers' operations does not suffice of itself to confer standing on North Coast, its opposition over a long period, in combination with its other activities, illustrates a strong commitment to the values it regards (whether rightly or wrongly) as under threat by the licence granted to Sawmillers."[25]

FACTORS SHOWING THE TRUST'S SPECIAL INTEREST

Following the approach taken in the NCEC case, His Honour identified 6 key factors showing the importance of the Trust's concern with the subject matter of the export licence decisions and the closeness of its relationship to the subject matter sufficient to give the Trust standing to challenge the Minister's decision. They were:

1. The Trust is the peak environmental organisation for Tasmania, recognised as such by the State and Commonwealth governments. Its activities include research, advice, lobbying and consultations in relation to Tasmanian forests and to woodchipping in Tasmania. Its areas of concern include the forests, the subject of its licence and the "in principle" approval.

2. The Trust has been recognised by the Commonwealth as a significant and responsible environmental organisation. This is reflected in the Trust's membership of the Peak Conservation Organisation since 1983 and in the annual administration grants provided by the Commonwealth to the Trust. Recognition of the importance of the Trust's role is also shown by the extensive support given by Commonwealth agencies to projects undertaken by the Trust or in which it has participated.

3. The Trust is recognised by the Tasmanian Government as a body that should represent environmental interests on advisory or consultative bodies. Its annual reports show that it is represented on a large number of committees and advisory bodies, covering a wide range of topics, including forestry issues.

4. The research and advisory activities of the Trust, although extensive, have involved detailed considerations of woodchipping and the preservation of Tasmanian forests, the very subject matter of the present litigation. It is of particular significance that the Trust, either alone or in combination with other conservation organisations, has received Commonwealth funding to undertake projects designed to identify forests of high conservation value and to consider their relationship with proposed woodchipping activities.

5. The Trust has made submissions and engaged in other activities (such as supporting areas for inclusion in the World Heritage) that demonstrate its commitment to conservation values. These activities go well beyond submissions made in relation to the 1985 EIS that has been referred to earlier.

6. "While, as appears from North Coast, I do not regard the size of an organisation or its resources as a critical factor, the Trust is a substantial body, in terms of membership, income and range of activities."[26]

THE ACF COMPARISON

With two previous legal authorities on standing examining the nature of ACF as a conservation body, comparisons between the ACF and the subject applicants were inevitable.

The following differences were identified.

ACF receives much greater funding than the NCEC. The NCEC received $10,188 in general grants for 1993/94, compared with $197,463 received by ACF. ACF also has a much larger income than NCEC, which, one could infer, is modest.

ACF employs staff. NCEC employs no staff, reflecting its limited resources.

ACF is a national body with 6500 members, whereas NCEC has a regional focus. NCEC is one of 82 members of the Peak State Conservation body, though an umbrella group itself with 48 members.

Commonwealth and State support to NCEC did not extend to projects specifically concerning forestry matters or woodchipping.

Differences between ACF and the Trust were not as great.

The Trust is the peak environment group within Tasmania, with a substantial budget (though not as large as ACF's) and employs paid staff.

However, they were not differences such as to disqualify NCEC or the Trust from having standing.

The fact that NCEC was a regional rather than national organization could be seen as a positive factor. A regional group may be able to show a closer concern with a particular decision affecting the regional environment, than a national organization that had broad interests.

The smaller scale of NCEC's activities was not crucial. Its activities still related to a large part of the state.

Significantly, the issues of income and paid staff, though strong indicators, were not seen as the only indicators.

> "To hold otherwise would place an unjustified premium on attracting financial support, as opposed to other forms of commitment to environmental issues, including part-time organisational activities, research and consultation. In this connection, ... it is important to bear in mind the scope and purposes of the ADJR Act...It is not legislation which is intended to be exclusively for the benefit of large or national organisations."[27]

His Honour also found there was nothing to show NCEC was not capable of effectively representing the interests it was seeking to promote. On the facts, there was no other conservation body with a greater interest or commitment to the issue raised by the grant of the export licence.

CONCLUSION

His Honour Justice Sackville concluded in the NCEC case that "differences (with ACF) show that the present case is closer to the line where a special interest in the subject matter of the action ends."

Where the line is to be drawn in the future will depend on the facts of the particular case. As His Honour observed it would be inconsistent with the formulations of the tests from the caselaw to establish "any rigid or easily identifiable dividing line".[28] Rather, there needs to be a close examination of the circumstances of an individual case, to assess the nature of the applicant's concern with and relationship to the subject matter.

The closeness of the relationship will be the key issue and will be determined by examining the facts revealing the nature of the relationship.

In the future, therefore, it may well be the smaller environment groups who are better placed to show a closer concern about a decision affecting the particular geographical areas in which their activities are concentrated and which they are seeking to protect, with income of the group not being a key indicator.

This may be an adequate approach.

However, for the future, it is still worth considering the ▸

desirability of the approach expressed by His Honour Justice Wilcox in *Ogle v Strickland.*[29]

His Honour noted that there was nothing in the authorities to prevent the Court from discarding altogether the requirement of special damage or special interest.[30] The answer in those cases that occasionally arise where a person bringing the proceedings is manifestly incapable of representing the interest being promoted, is not to deny standing but to refuse the claim on discretionary grounds. The Courts are entitled to insist on a plaintiff who adequately represents the case sought to be made, in the public interest.[31]

This approach is preferable because it reflects the reality of the motivations of those that commence legal proceedings in the public interest.

> "'The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the courtroom.' Litigation - in the public interest and for no personal advantage, especially against a wealthy opponent and under a costs regime requiring the losing party to pay the costs incurred by the victor - has some similarity to marriage as described in the Book of Common Prayer: it is 'not by any to be enterprise, nor taken in hand, inadvisedly, lightly or wantonly."

This is not to say that Justice Sackville's judgments or the majority judgment in *Ogle v Strickland* was conscious of or even considered the "floodgates" argument.

However, current law on standing in Australia has not progressed so far as to embrace the approach expressed by His Honour Justice Wilcox. The two decisions of His Honour Justice Sackville need only be considered in the context of the approach in the two ACF cases requiring identification of special interest. In that light, the judgments are refreshing by further explaining and analysing the factors that go to show special interest where non-financial and non-proprietary interests are involved.

More frequent judicial discussion of the nature of non-financial and non-proprietary interests is important in progressing recognition in the law of those interests, and the value in pursuit of those interests to society. After all, as stated by His Honour Justice Wilcox in *Ogle v Strickland*

"..to assume that competitive instincts are aroused only by concern for material wealth would be to ignore history. Much of the progress of mankind has been achieved by people who have sacrificed their own material interests in order to champion ideals against fierce resistance."[32]

1.Unreported Federal Court, 10 January 1995 No NG536 1994
2.Unreported Federal Court 16 December 1994 No NG614 1994
3.M Allars, "Standing: The Role and Evolution of the Test" (1991) 20 Federal Law Review 83, at 95
4.(1992) 28 ALD 555 (NSW CA), at 556-558, per Kirby P
5.(1986) 13 FCR 124 (FAC/Gummow J.), at 130-132
6.Unreported Federal Court No NG614 1994, page 22
7.(1980) 146 CLR 493
8.Unreported Federal Court No NG614 1994 page 41
9.Unreported Federal Court No NG614 1994 pages 42-43
10.(1981) 149 CLR 27
11.*Onus v Alcoa* @ page 42
12.Unreported Federal Court No NG615 1994 page 30
13.Unreported Federal Court No NG614 1994 pages 31-32
14.Unreported Federal Court No NG614 pages 31-32
15.*Ogle v Strickland* @ page 308
16.*Ogle v Strickland* @ page 318
17.(1989) 19 LAD 70
18.Unreported Federal Court No NG614 1994 page 41
19.*Onus v Alcoa* @ page 39
20.ACF v Minister for Resources @ page 73
21.Unreported Federal Court No NG614 1994 at page 41
22.Unreported Federal Court No NG614 1994 page 30
23.Unreported Federal Court No NG614 1994 page 44
24.Unreported Federal Court No NG614 1994 pages 44-45
25.Unreported Federal Court No NG614 1994 page 47
26.Unreported Federal Court No NG535 1994 pages 74-75
27.Unreported Federal Court No NG614 1994 page 48
28.Unreported Federal Court No NG614 1994 page 30
29.(1987) 13 FCR 306
30.Unreported Federal Court No NG614 1994 page 56
31.Unreported Federal Court No NG614 1994 page 58
32.*Ogle v Strickland* ibid @ page 58

A Brief History of SLAPP Suits

By Anthony Reilly, E.D.O. Brisbane Locum Solicitor

In this article, Anthony Reilly discusses SLAPP suits. The EDO has edited references to particular cases to avoid defamatory imputations. This highlights the nature of the SLAPP problem. People are entitled to uphold their rights. If a person is defamed, the law allows compensation for the damage to reputation. If proceedings are brought to intimidate people via a SLAPP suit, this is an abuse of process.

SLAPP suits are hard to determine because the motive of the litigator will seldom be expressed explicitly. They are more clearly identified when the case has little or no prospects for success. All litigation is a lottery to some extent, but the EDO has seen, as we are sure have many other practitioners, many letters of demand and legal proceedings which are lacking in any legal merit.

In theory, an award of costs at the end of the hearing will compensate people who have been unnecessarily put to the expense of litigation. In practice the inconvenience and stress, let alone the real financial costs, are never compensated. Litigation is intimidating by its nature; an adverse costs order could financially ruin a person because of a heated remark to the media.

With corporate legal costs a tax deductible expense, a SLAPP suit can be a cost effective means of frustrating and intimidating any opposing party.

Perhaps the legal profession ought to take more responsibility for the problem. Would you refuse to act when your client wanted to commence proceedings with a SLAPP objective where they had little chance of success?

SLAPP stands for Strategic Litigation Against Public Participation. Every year in the United States hundreds of SLAPP suits are filed in an attempt to intimidate protesters and quell debate on public issues including environmental issues. SLAPP suits are commonly utilised in Australia by developers and governments for the same reasons.

The following article discusses SLAPP suits and their potential effect on public debate and protest about environmental issues.

The phrase "SLAPP" suit was coined by Professor George Pring, an American academic, in 1989 in response to the thousands of suits being filed in the United States against members of the public who dared protest against dubious government and private development activity. In the paper 'Dealing with SLAPP Suits' Keim describes SLAPP suits as:

> "a piece of civil litigation used as a tactic in a public debate mainly for the purpose of silencing the opposition. In the environmental context such litigation is likely to be used to silence residents or other environmental groups opposing the development."1

Similarly Pring describes the 'apparent' goal of SLAPP suits to be

> "to stop citizens from exercising their political rights or to punish them for having done so."2

What distinguishes SLAPP suits from other suits is that they are not employed to address legitimate grievances but as a 'tactic' in the sense referred to above.

In "Muzzling the Dingo Forest Mob"3 Prest refers to studies of SLAPP suits in the United States which found that the most frequent filers are real estate developers, property owners, alleged polluters, public utilities, police officers and State and local governments. The subjects of the suits are citizens involved in disputes over metropolitan land development issues, and those who speak out against pollution, health hazards, or destruction of wilderness.

A typical form of SLAPP suit is an action for damages, perhaps of several hundred thousand dollars, for alleged defamatory statements against a protester who has made public statements on an issue. The action will include a claim by the plaintiff for the defendant to pay the plaintiffs legal costs.

Another version of a SLAPP suit is a suit for injunctive relief preventing future trespass, damages arising from the trespass and legal costs against activists forming a blockade of a proposed development site.

Regardless of the chances of success or the outcome of the suit the plaintiff stands to gain from bringing the suit in a number of ways.

Principally, the action is intimidating, not only for the defendant but also any other protesters. The prospect of paying damages for defamation as well as a plaintiff's legal bill is enough to frighten many protesters and make them think twice about continuing to participate in public protest.

Bringing the action will also distract attention away from the issue which is at the heart of a protest to defending the allegations.

Defending an action may take years and involve substantial personal and financial resources, exhausting the scarce resources available to environmental action groups. An aspect of this exhaustive effect, as noted by Zdenkowski in "Civil Liberties", is that when a demonstrator becomes a defendant

> "the political nature of his/her behaviour is neutralist. Rules of evidence ensure that the issue is whether or not X was guilty of trespass or offensive behaviour not the motives for the protest... The defendants are scattered over the court process and the collective significance of their protest is dissipated."[4]

Additionally SLAPP suits are usually initiated against the leaders of a protest. By neutralising the leadership a SLAPP suit can have a damaging effect on the protest as a whole.

A SLAPP suit may have two other useful (for the Slapper) side effects. First, as noted by Keim "The action can also have a useful by-product of making media outlets wary of publishing press releases from the targeted group."5

Second, bringing the action can enable a party to subpoena documents, including police records, of defendants. EDO NSW has had experience where this has happened to its clients. Similarly, in a 1982 case by the Coors Beer Company against Californian protesters staging a boycott of their products, Coors sought and initially obtained access to membership lists and information about the groups internal procedures.6

The usefulness of SLAPP suits has seen them utilised around the world to quell public protest. At the Second All Asia Public Interest Environmental Law Conference delegates from countries including the Philippines and Sri Lanka described examples of SLAPP suits in their countries.

The Filipinos delegate referred to a $35 million libel claim against a doctor who spoke out about harmful products produced by a large corporation. The Pakistan delegate said that there were no SLAPP suits, instead protesters were beaten up!7 Prest reports a New Zealand multinational Fletcher Challenge filing a SLAPP suit against people protesting clearance of temperate rainforest in Canada.8

Harassment in the form of SLAPP suits has become most common however in the USA. There, SLAPP suits are marked by excessive damages claims and the inclusion of unnamed persons in the list of defendants. Thousands of such suits are filed every year.

While US courts have generally been dismissive of SLAPP suits this has not affected their popularity for all of the reasons cited above.

SLAPP suits have also been used in Australia, although to name particular cases would be to invite litigation. This is because to call litigation a SLAPP suit is to say that the action was commenced to silence or intimidate people and is an abuse of process.

SLAPP suits are an abuse of the legal system in that they seek to utilise the system to achieve an ulterior motive rather than redressing a legitimate legal grievance. United States Courts have generally viewed SLAPP suits as "efforts to penalise the exercise of constitutionally protected liberties".

In two leading decisions US courts voiced their disapproval of SLAPP suits by laying down tough rules about whether SLAPP suits should survive dismissal. It is important to note that these decisions were made against a background of constitutionally protected rights to freedom of speech and to petition politicians.

The case Protect Our Mountain Enviroment9 concerned an unsuccessful campaign by Colorado citizens against a rezoning application to construct 465 residential units. The protest included the POME filing an action against the developer and local authority seeking to overturn the approval. The developers responded with a complaint seeking damages from POME for abuse of process and civil conspiracy. POME in turn moved to dismiss the developers complaint on the basis that their action was an exercise of the fundamental right to petition the court for address of grievances.

The Colorado Supreme Court held that in order to survive dismissal the developer must demonstrate inter alia that the citizen or citizen's groups "primary purpose was harassment" and their petitioning "lacked any cognisable basis in law".[10] These requirements were stricter than those required in a case not involving public interest issues.

In Oregon Natural Resources Council v. Mohla and Others 944 F 2D 531 (9th Circuit, 1991) the Avison Timber Company brought a counterclaim to dismiss a suit made against them by ONRC with respect to a timber contract for a tract of land known as the Badger Resell partly on the basis that it interfered with business relations. ONRC claimed that their suit should not be dismissed as it was protected under the Noerr Pennington Doctrine which protected the

right to petition government bodies including the courts.

The United States Court of Appeal dismissed Avison's counter-claim and in so doing stated that "Where a claim involves the right to petition governmental bodies...we apply a heightened pleading standard... This heightened level of protection accorded petitioning activity is necessary to avoid a chilling effect on the exercise of this fundamental First Amendment Right".11

Recent decisions in Australia raise the prospect of similar considerations becoming relevant here. As Keim notes "The 1992 decisions of the High Court in *Nationwide News Pty Ltd v. Willis* (1992) 177 CLR 1 and ACT Television v. The Commonwealth 1992 177 CLR 106 have raised a lot of speculation about the long term effect of the judgments in those cases with their exposition of the implied protection to free speech contained in the Commonwealth Constitution."

Keim concludes after discussing the decisions that "It is perhaps not too far fetched to see an implied protection of the right to petition government being extended to make it more difficult for SLAPP writs to operate."12

The issue remains - what should be done about SLAPP suits? One option is for activists to avoid statements or actions which may be actionable. Spokespersons on environmental issues who are issuing press releases and making public statements should be aware of defamation laws in their state and how to avoid making defamatory statements. That way, even if you become the defendant in a SLAPP suit, you can be confident of the outcome of the proceedings.

The alternative is to SLAPP back. Keim notes that the tort of abuse of process and the tort of malicious prosecution may be useful in this regard.13

Trespass type SLAPP suits are another story. Before any proceedings are issued the prospective plaintiff, perhaps a developer, will usually approach the targetted protester with an offer that they will not sue the protester for trespass if the protester provides certain undertakings. The undertakings sought may include an undertaking not to trespass on the site in the future but also not to counsel any other person to trespass. Protesters in such a position would probably be well advised to provide the undertaking not to trespass onto the subject property. However, the above comments by Justice Windeyer cast doubt upon whether the Courts would grant injunctive relief to a plaintiff in circumstances where the protester fails to provide other undertakings. In any case legal advice should always be sought.

A longer term approach is to campaign for the introduction of anti-SLAPP legislation. For example in the United States, the state of Washington enacted laws in 1989 which make immune from civil liability any communication made in good faith to a public agency. The state of New York has a law providing for expedited hearings for certain actions in motions involving public participation.

In California, the Code of Civil Procedure, effective January 1 1993, extends protection to any act performed in connection with a public issue including written or oral statements made before any official proceeding or in a public forum. The Californian law permits the initial filing of claims but subjects them to a special motion to strike unless the Court determines the plaintiff has established a substantial probability of prevailing on the claim.14

Similar solutions may not be achievable in Australia until basic political freedoms are recognised as rights within the legal system, either impliedly by the Courts or through legislative measures. In the meantime SLAPP suits will have to be endured by all those who assume the mantle of protecting the environment.

1.S.Keim "Dealing with S.L.A.P.P. suits" A paper delivered at the Defending the Environment Conference, Uni. of Adelaide, 9 May 1994, p.1
2.Pring "S.L.A.P.P.S. : Strategic Lawsuits Against Public Participation" 7 Pace Environmental Law Review 3 (1989) pp.5-6
3.J.Prest in Chain Reaction No 70 p.20
4.In Environmental Protection and Legal Change, Federation Press, 1992, p.171
5.Keim above p.1
6.Prest above p.20
7.Conference Papers, 28 January to 3 February 1994, p.14
8.Prest above p.22
9.677 p.@d 1361 (Col.2984)
10.p.1369
11.p.533
12.Keim above pp.5 and 7
13.Keim above pp.15 to 16
14.Washington - Revised Code of Washington, Section 4.24.510 effective 1989; New York - New York Assembly Bill 4299, effective 3 August 1992; California - California Code of Civil Procedure Section 452.16.

EDO NEWS

Queensland

Port Hinchinbrook— Protesters Sued for Trespass

On 1st December 1994 'The Courier-Mail" newspaper reported that developer Keith Williams of Cardwell Properties was

> "set to take his battle for his proposed Port Hinchinbrook resort to the courts, with civil action for damages to cover an estimated $1 million he says he lost when the project was shut down."

Mr Williams was reported as stating that

> "I am working with my legal advisers right now with the view to taking civil action against all of those people, be they just plain greenies or obstructionists or scientists or pseudo scientists."

Ever true to his word on 14th December 1994 Cardwell Properties issued a writ of summons against Ken Parker and Margaret Thorsborne, seeking declaratory and injunctive relief, damages and legal costs. The relief sought by the Writ of Summons includes a declaration that each defendant is not entitled to enter upon the plaintiffs land, being the proposed Port Hinchinbrook development site. The suit arose out of Ken and Margaret's attempts to halt the destruction of mangroves on the site.

Ken and Margaret are both local residents. In 1994 Margaret was made Cardwell Shire Citizen of the Year and in November was awarded the Australian Conservation Foundation's Peter Rawlinson Award for services to conservation.

In addition to filing the writ, Cardwell Properties has also sought undertakings from Ken and Margaret that they not trespass onto the land in future and also that they not incite or encourage any other person to enter onto the land.

The EDO has been assisting Jim Gibney of the Cairns Community Legal Centre to advise Ken and Margaret about the matter. We hope to provide a full report on the matter when it is resolved.

These events led EDO Brisbane locum solicitor to write the article on S.L.A.P.P. suits. (see page 8 of this issue)

EDO NEWS

Elcas South Australia

ELCAS (The Environmental Law Community Advisory Service of South Australia) has been growing strong over the last year. Paul Leadbeter, Chairperson of ELCAS, has provided a brief report on recent ELCAS activities.

James Blindell has been appointed as administrator of ELCAS to commence from 1 March 1995 for one day per week. The essential tasks will be to organise the advisory service roster, look after the financial affairs of ELCAS and attend to the day to day correspondence and similar requirements of the organisation. If there is time, it is also expected that the Administrator will be able to assist the committee in the preparation of ELCAS submissions to government and others.

ELCAS is hopeful that if funding on a national basis for Environmental Defender's Offices is eventually forthcoming through the government's justice package, it may be able to expand the operations of its Administrator into the employment of a lawyer to provide some legal services on a full or part-time basis.

Fact Sheets

ELCAS has prepared environmental law fact sheets along the lines of the initiative by the NSW EDO, to provide clear advice in plain language to the non-lawyer about various areas of environmental law and peoples rights in those areas. Five environmental law fact sheets have been commissioned by the management committee relating to the amendment of development plans under the Development Act, the process of appeals under the Development Act in the Environment Resource and Development Court and development control procedures under the Development Act 1993. Students from Flinders and Adelaide University have been engaged by the management committee to assist in the preparation of these fact sheets. They have also assisted in providing advice on the new Environment Protection Act 1993 and the regulations and environmental protection policies under the Act.

Submissions

There have been at least three submissions made by the ELCAS management committee in recent months in response to various government calls for submissions.

ELCAS made a submission to the State Parliament's Statutory Authorities Review Committee relating to the Legal Services Commission and the funding activities for the Commission. The ELCAS submission dealt essentially with our concerns that at present in South Australia there is no legal aid funding provided for environmental law issues. The submission linked in with our national submission which has been made as part of the chain of Environmental Defender's Offices throughout Australia. The latter calls for better funding of environmental law disputes if more people are to have proper access to justice.

A submission was made to the State Parliament Environment Resources and Development Committee with respect to the Sellicks Hill Cave and in particular the Committee's examination of all aspects surrounding the attempt in late 1993 to implode a cave at Sellicks Hill.

One criteria upon which the Committee sought submissions was whether there should be remedial legislation. ELCAS primarily concentrated on this aspect submitting that it is essential if such disputes are to be avoided in the future that there be legislation governing the obligations of parties who discover possibly significant caves.

A submission was recently drafted by the Committee relating to the Government's discussion paper on the review of the Development Act. ELCAS has indicated that it objects to the proposals in the discussion paper which call for modification to the current legislative requirements for environmental assessment of major developments or projects. The submission points to some of the deficiencies in the proposed approach.

Anyone interested in reading any of the above submissions can obtain a copy by contacting Paul Leadbeter on 08 210 1227.

EDO NEWS

Victoria

1994 was a financially challenging year for the EDO, but we still managed to provide legal assistance to a wide variety of groups and individuals. 74 clients have so far been advised on issues varying from beach protection to Freedom of Information rights.

Park Protection

The EDO has acted successfully before the Administrative Appeals Tribunal (AAT) in a number of matters.

The Darebin Parklands Association, for example, was able to stop the development of land adjoining Darebin Creek and facing Darebin Park, after the EDO appeared for them in the AAT.

Anglesea Heathland Saved

In 1993, the EDO represented Anglesea conservation groups opposing development of 70 hectares of heathland west of Anglesea. Professor James Kirkpatrick described plant life in this area as some of the most diverse in the world outside tropical rainforests.

Despite strong argument put forward by the EDO, the Minister decided to allow development of the land after a hearing in January 1994. This important area of heathland looked doomed to destruction.

Undaunted, the local community launched a momentous fundraising effort. As a result, the Anglesea heathland was bought by the Victorian Conservation Trust in December 1994. A management plan is currently being negotiated and it is likely that this and adjoining lands will become part of a nearby Flora Reserve. This represents a tremendous victory for the Anglesea residents concerned and the EDO.

Environment Effects (Amendment) Bill

The Environment Effects Act 1978 will be virtually shelved by a Bill currently before the Victorian Parliament.

Under the original legislation, preparation of an Environment Effects Statement (EES) was mandatory for all public works capable of having significant impact upon the environment. Preliminary

Environment Reports (PERs) were required wherever there was doubt as to whether the Act applied. In practice, these protections were already weak.

Now EESs will no longer be mandatory in any circumstances. PERs will not be required at all. Preparation of an EES will only be necessary if and when the Minister of Planning makes a declaration in relation to specific works. No minister other than the Minister of Planning will be able to require preparation of an EES.

In contrast with the more rigorous system of Environmental Impact Assessment in NSW, Victoria will soon have a practically impotent Environmental Effects Statement system.

The EDO is vigorously opposed to these developments and will be consulting with environmental organisations about them.

Saved from Ruin

In late November, the EDO's financial situation (tenuous at the best of times) became desperate. It looked very likely the EDO would close its doors.

Fortunately, the Myer Foundation came through with a life-saving $15,000 grant at the eleventh hour. Thanks to Myer, the EDO will be alive and kicking in 1995!

NELA Conference

The EDO was grateful for the support of the National Environmental Law Association during its October conference.

As well as sponsoring the EDO's photographic exhibition "Australia's Natural Wonders", NELA assigned a conference session to the EDO for discussion of public interest issues. Katherine Wells presented a discussion paper on behalf of the EDO: "Access to Justice for the Environment: Giving the Environment an Effective Voice Within the Victorian Legal System".

Annual General Meeting

The 1994 Annual General Meeting of the EDO took place on Sunday 4th December.

The Board of Directors remained substantially the same as in the previous years - an indication of their ongoing commitment.

The Directors for 1994 are:

Simon Molesworth (Chairman)• Peter Atkins (Vice-Chairman) • Rob Larkins (Secretary) • Katherine Wells (Acting Secretary) • John Dick (Treasurer) • Beverly Kennedy • Rosemary Ward • Felicity Faris • Murray Raff • Jennifer Pick • Geoffrey Mosley • Fleur Johns

Chris Loorham and Mandy Bathgate, the dedicated staff of the EDO, will remain as EDO Solicitor and Administrative Officer respectively.

Pollution Breaches Human Rights Convention

Lopez Ostra V Spain, December 1994 European Court of Human Rights.

Mrs Lopez Ostra used to own a home in Lorca Murcia which was some twelve metres from a tannery waste treatment plant which opened in 1988. Evidence was led that as soon as the plant started up, fumes caused health problems and nuisance. These problems prompted the municipal authorities to evacuate nearby residents and to order the partial cessation of the plant's operations. Mrs Lopez Ostra returned to her home but continued to suffer health problems and a deterioration in her quality of life. The plant was closed in October 1993.

The Court held that a fair balance had not been struck between the interests of the town of Lorca (that is the benefit of having a waste treatment plant) and Mrs Lopez Ostra's enjoyment of her right to respect for her home and her private and family life. The Court held that this was in breach of article 8 of the European Convention on Human Rights and ordered the Spanish Government to pay Mrs Ostra the sum of 4 000 000 pesetas.

Source: Paul's Sheridan McKenna and Company London.

LAW FOR LANDOWNERS IN PAPUA NEW GUINEA

The EDO is pleased to announce the release of its latest publications "Law for Landowners" and "Lo Bilong Ol Papa/Mama Graun". The second publication is a translation of Law for Landowners in Tokpisin (pidgin English in Papua New Guinea) with assistance from the Individual and Community Rights Advocacy Forum (ICRAF).

The handbook was developed because landowners need to understand the types of rights and obligations that the law gives them. These can then be used as tools to achieve their goals, including one of the goals in the constitution of Papua New Guinea, to have an equal opportunity to participate in and benefit from the development of their country.

The handbook covers a wide range of fundamental legal areas and principles including the Constitution, land law, womens' rights, contracts, corporations and business structures and how to take action. The handbooks will be an invaluable resource in the ongoing community education work being conducted by ICRAF.

IMPACT is published by the Environmental Defender's Office Limited, a Sydney-based independent community legal centre specialising in environmental law. Printed on 100% recycled paper

IMPACT NOTICE BOARD

A national symposium and skills workshop, On Common Ground, resolving disputes in environmental, social and economic issues at a local scale is being held on 30-31 March 1995, University House, Canberra, Canberra ACT. For further information contact NILGERN on 06 - 249 4670.

Congratulations to former EDO solicitor **Nicola Pain** and partner Michael on the birth of their first baby - a boy, James!

The Toxic Playground, *hazardous chemicals in schools and childcare environments.* Practical information, expert presentations and workshops. 4 May 1995, State Library of NSW, Macquarie Street, Sydney. For more information, contact: Total Environment Centre, 1/88 Cumberland st, Sydney. Phone: 247 4714

Environmental Issues for Councillors. On Sat, 3 June 1995, The Total Environment Centre is running a workshop on **Local Government and the Environment: the Next Four Years** which will be of interest to environment groups and councillors alike.

Inland Rivers - The full conference papers from the one day conference held by the EDO in November 1994 are now available from the EDO, Suite 82, 280 Pitt Street, Sydney 2000. Tel 02 -261 3599. Conference paper - $30 per set

The **EDO Anuual Conference** will be held on 19/20 October 1995. This year, the conference will focus on **Commonwealth Environmental Impact Assessment.** Write the date in your diary now and look out for further information!

The EDO is having **Green Drinks** from 5.30 pm on Wed, 12 April 1995. We look forward to seeing any members, friends or volunteers.