

# GREENLAW

NEWSLETTER OF THE ENVIRONMENTAL  
DEFENDERS OFFICE



ENVIRONMENTAL  
DEFENDERS  
OFFICE (SA) INC

## The New Management Committee

A new 1997/1998 EDO management committee was elected. Re-elected were David Cole, Michael Doherty, Paul Leadbeter, James Levinson and Jill Tideman. The new members are Sandra Bennett, Mark Griffin, Duncan Hartshorne, Craig Tidemann and Judy Triggs.

## The Annual General Meeting

An enthusiastic band of about twenty EDO members attended the AGM at the Earl of Aberdeen on September 26. It was very pleasing to have a range of members giving their support to the management committee and staff.

Those of you who did not attend missed out on some extraordinary erudite contemplations by our long serving and committed outgoing chairperson, David Cole and EDO solicitor, Mark Parnell.

## The Annual Dinner

Following the AGM, Mr Cole retreated to a quiet corner to enjoy the bottle of red presented to him by the EDO and the bottle of "chardonnay" (apparently provided by one D Williams) while the room swelled to capacity with 32 EDO aficionados who prepared to party all night.

And, Oh La-La, what a night. Will the Earl ever be the same again? Where will the EDO dinner be held next year? Only the prospect of an endless merry go round of SLAPP and SLAPP back actions for defamation prevented a fuller expose of the evenings revelations and celebrations.

Guest speaker at the dinner was lawyer and transport activist, Dr Paul Mees from the ANU in Canberra. Paul had the audience enthralled with his often tongue-in-cheek and irreverent account of public interest litigation against Jeff Kennett's freeway mania in Victoria. This litigation (with its attendant SLAPP suit responses) shows that David can sometimes give Goliath a run for his money. Paul also gave useful advice on how to distinguish a process server's door knocking technique from that of more welcome visitors.

*A Community Legal Centre specialising  
in public interest environmental law.*

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## NACLCL Conference 1997

The National Association of Community Legal Centres (NACLCL), of which the EDO is a member, held its annual conference in Adelaide in September.

The EDO staff attended various days of the Conference as representatives of the National EDO Network.

The EDO raised the profile of the EDO Network at the Conference and also presented a seminar on the funding issues confronting the EDO Network members.

EDO (SA) thanks the EDO (NSW) for providing a \$200 subsidy to assist in the payment of the Conference registration fee.

# EDO Advice

A growing number of matters are coming to the attention of the EDO regarding the disposal of Crown Land, Reserves and open space by State and Local Government.

This trend has led to the formation of a new community-based lobby group - the SA Council of Open Space Preservation Associations (SACOSPA) - to help co-ordinate the various campaigns occurring around the State. The EDO has been able to offer advice on how community groups can become involved in the "re-zoning" process that is usually required before public open space can be sold off for housing. The EDO is also considering producing a community guide on the subject. Such a guide would be a useful companion to the recently-written EDO publication - 'A Guide to Protest Law in South Australia'. Whilst the Protest guide is currently only available in photocopied form, the EDO has applied for funding to have it properly published in a user-friendly "pocket-sized" format.

With recent changes to Commonwealth telecommunication laws and the decision by Optus to halt its cable roll-out, the EDO expects to receive fewer calls for help on this vexed subject. Nevertheless, there are a number of battles against mobile phone towers still raging in the suburbs. It seems there was a flurry of activity on the part of telecommunications carriers just prior to the changes which

became effective on July 1. This has led to the continuation of various resident picket lines, while legal opinions are sought as to whether the old or new laws apply. The new Telecommunications Act 1997 now requires carriers to comply with normal State planning laws such as the Development Act. The EDO believes this is a long overdue reform.

The EDO recently closed one of its longest running files which involved land contamination in the Mid North of SA. Following lengthy negotiations and discussions with the four Government bodies involved a satisfactory outcome was obtained on behalf of the client. The land in question is now subject to a management plan which has been developed in conjunction with the EPA and the local community.

The EDO has provided initial advice to a number of rural councillors on issues of concern to their local communities in circumstances where the councillors have been dissatisfied with advice from the council's administration.

It is becoming evident from client enquiries that, to the alarm of the EDO, a number of development authorisation decisions taken by councils are made in breach of the provisions of the Development Act relating to the proper procedures that should be followed in assessing development applications.

## Funding

The EDO is in the process of establishing a "Litigation Fund" that will consist of funds raised, independent of Federal and State funding, exclusively to fund the EDO's future litigation related activities.

All donations are welcome and are tax deductible.

In the New Year the EDO will hold its first fund raising social event - so start saving now!

The EDO is exploring other funding avenues with a view to making the EDO as independent of Government funding as possible.

## DENR Community Grant

The EDO received a DENR Community Grant for 1997/98 of \$12,500 (an increase of 25 % on 1996/97).

The funds will be used to continue the Rural Outreach Advisory Programme and to update existing Environmental Law Fact Sheets and produce a new series.

The EDO wishes to thank the Honourable David Wotten MP, Minister for the Environment and Natural Resources for his continuing support of the EDO.

# Law Reform

The EDO is finding that many State Government Departments allow little time for community comment on proposed amendments to legislation. In addition, many Departments fail to provide the EDO with notice of the proposed amendments. The EDO is contacting the relevant Government Departments to try to address these issues.

*The EDO has made submissions to Government on the following draft legislation:*

## **The Soil Conservation and Land Care (Miscellaneous) Amendment Bill 1997**

- The Bill expressly recognises the principle of ecologically sustainable land use and its application to land management. However, it continues to give priority to mining and petroleum activities over ecologically sustainable land management.

- The proposed use of telephone meetings for the Land Management Council (the current Soil Conservation Council) creates a further restriction on public participation in and knowledge about Council meetings.

- The current functions of the Land Management Boards (the current Soil Conservation Boards) require them to undertake advisory, regulatory and enforcement duties. The Bill does not change the duties of the boards. Therefore, the

boards continue to face the dilemma of how to fulfil these three (possibly conflicting) functions effectively.

- The Bill places a duty on a landowner to manage land in accordance with "the principle of ecologically sustainable use and development of the land". However, there is no community right of enforcement of that duty in the Bill.

- There is inadequate provision in the Bill for notification to prospective land purchasers of conservation levies and enforcement notices.

## **Offshore Mining Bill 1997**

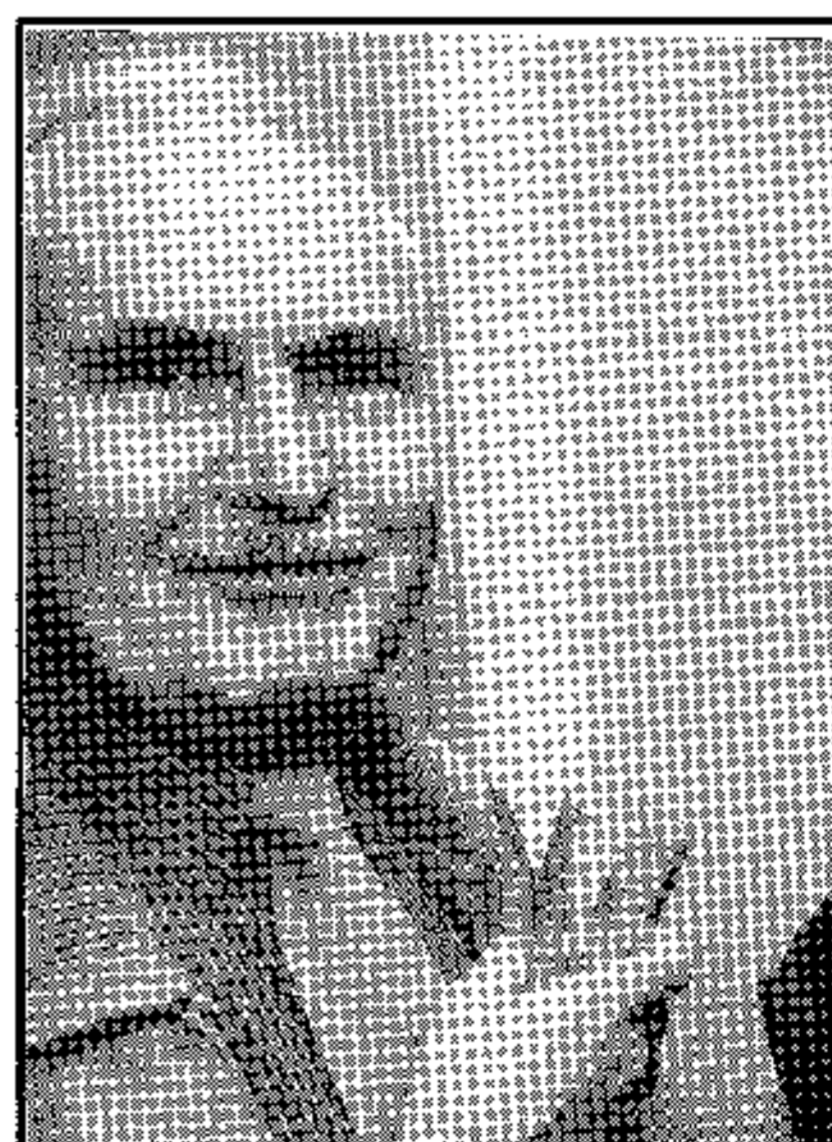
The EDO's submission was that this Bill was totally inadequate to protect the marine environment. Dredging the seabed for diamonds is one activity being proposed for South Australian waters and the EDO believes that extensive public and scientific consultation is necessary before any legislation is presented to Parliament.

## **"Anti-Teoh" legislation**

The Senate is soon to consider the Administrative Decisions (Effect of International Instruments) Bill 1997. This Bill seeks to remove the "legitimate expectation" that citizens have, that bureaucrats will have regard to international treaties that Australia has signed, when they make administrative decisions. Whilst the Bill does not prevent government officers from having regard to treaties, it does prevent any legal challenge based on a failure to take Australia's treaty obligations

into account. The High Court in the Teoh case affirmed what most people would have thought of as common sense - that Australia signs international treaties intending them to influence our domestic policies and actions.

This Bill has great significance for the environment because most of the environmental treaties signed by Australia have never been enacted into domestic law. The EDO has written to all political parties pointing out that the Bill makes a mockery of Australia's international reputation as a good environmental citizen. On the other hand, given Australia's current stance on greenhouse gas emissions, it may be that we no longer have a reputation to defend! So far, only the Greens and Australian Democrats have promised to oppose the Bill.



*Graham is always in good cheer!  
He has been assisting the EDO  
with its computing work for a year  
now and survived the National  
Information Scheme statistical  
collection for the Commonwealth.  
He helped set up the databases and  
is currently trying his hand at the  
accounting and budgeting systems.  
Thankyou Graham.*

# Big EDO win in NSW

## *Oshlack v Iron Gates Pty Ltd*

### *Court orders full restoration of Iron Gates site*

In a landmark judgment, the Land and Environment Court has ordered Iron Gates Pty Ltd, a major North Coast Queensland developer, to demolish its residential subdivision and restore the Iron Gates site to its pre-development condition. The judgment is one of the most comprehensive restoration orders the Land and Environment Court has ever made.

The developer, Iron Gates Pty Ltd, must:

- . establish a plant nursery within one month of the decision
- . rip up all of the roads within 2 months
- . backfill all of the drains and undo the extensive earthworks within 3 months, and replant the entire site with native vegetation, including a wildlife corridor, within 9 months.

Before clearing and development of the 110 lot subdivision began in July 1996, the Iron Gates site had a resident koala colony and numerous other endangered species, including bats and small marsupials. The site contains a wetland, rare coastal rainforest and is bounded on three sides by national park. The illegal development has placed

the survival of these species in serious jeopardy.

A permanent injunction has been placed over the site restraining any further development from being carried out. Iron Gates Pty Ltd must now get a fresh development consent from the Minister for Planning if it wishes to continue to develop the site.

The EDO is hoping that the Federal Government takes notice of this decision as it demonstrates the crucial role that EDO's can play in protecting the environment through litigation.

## EDO Network Conference June 1997 Sydney

James Blindell attended this second EDO Network Conference. Representatives from each of the nine EDOs attended. The issue that dominated the conference was the Federal Government's "no litigation related work" restriction on EDO work funded by the Federal Government and the guidelines relating to the interpretation of that restriction. Concerns raised included client/solicitor confidentiality; professional indemnity insurance and appropriate accounting procedures. The enthusiasm and ideas generated at the conference reinforced the advantages of having at least an annual face to face conference of EDO staff.

# Summer Clerkships

The EDO had nearly 30 applications from law students who wished to work for the EDO over the summer holidays.

Most firms pay for this work but many students were still willing to work for the EDO without pay.

We held interviews in September and have taken on four students who will work three days per week for between one and two months each.

Mark and James have many research projects for these students to work on as well as the development of several new publications.

## *Stateline EPA feature*

The EDO was approached by ABC TV's "Stateline" in September to contribute to a feature programme on the EPA they were running. The programme was triggered by an earlier well-publicised chemical spill that threatened to damage coastal mangroves. Whilst the EDO's remarks about the EPA's enforcement record caused some disquiet within the agency, it has resulted in increased dialogue between us and the EPA. This dialogue is important if the EDO is to be effective in "watching the watchdog".

# Community Legal Education

In addition to seminars the EDO presented during its visits to rural South Australia there was:

- three seminars on "Local Government and Biodiversity Protection" as part of day long seminars organised by the Nature Conservation Society.
- a seminar for year 12 Legal Studies Students at Norwood/Morialta High School.
- a seminar at the University of the Third Age (organised through Flinders University).
- an address to the Catholic Luncheon Club in Adelaide.

In December the EDO (in conjunction with the Australian Centre For Environmental Law, Adelaide University), will be presenting a three day workshop on "Australian Environmental Law and Enforcement" to a group of Indonesian Government health, mining, industry and environment protection employees.

The workshop is part of a three month programme on Water Pollution Control that the employees are undertaking in Australia.

The EDO is also preparing curriculum material for a local TAFE college on environmental law.

The course will be taught to students of natural resource management, many of whom already have positions in environmental management with private companies and local government.

Proceeds from these projects will be added to the EDO Litigation Fund.

Special thanks to Adelaide University law students Brenda Barnett and Martin Meredith, who have worked with the EDO as part of their Clinical Legal Education placement with the EDO.

## *Sponsorship*

Would you or your workplace like to sponsor the EDO for one of our expenses. \$50 - toner for our photocopier, \$70 - couriers, \$100 - Professional Indemnity Insurance, \$150 - six months of e-mail, \$200 - advertising, and many more.

Whilst the Commonwealth Government give us enough to cover the wages of three part-timers and our office space, things get really tight for the extras.

Donations are tax deductible.



*Unknown reveller at EDO's 1st birthday party celebrations says:  
"No I'm not going to let you see the size of my pupils".*

# GREENLAW

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Thankyou to Lucy Liebrecht, Robert Pilcher and  
Maria Roesz (EDO's administration volunteers).

*EDO can give free legal advice on any planning  
or environmental issues. A Free Thursday night  
Advisory Service is available by appointment only.*

The GREENLAW newsletter has been printed  
on recycled paper.

## Membership Form

Members receive regular newsletters about the  
EDO and current environmental law issues.

I wish to join the Environmental Defenders  
Office (SA)

Name.....

Address.....

Telephone

(work).....

(home).....

Facsimile.....

E-mail.....

New Membership

Renew

My fee of \$15 pa, (\$10 concession) or \$50  
corporate is enclosed.

Donation \$.....

Total \$.....

I am interested in volunteer work:

Legal/Administration

(please circle preference)

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