

# GREENLAW

NEWSLETTER OF THE ENVIRONMENTAL  
DEFENDERS OFFICE



ENVIRONMENTAL  
DEFENDERS  
OFFICE (SA) INC

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

## EDO'S 'COMMUNITY RIGHT TO KNOW' CAMPAIGN

MARCH 1998: No 9

The EDO is embarking on an ambitious law reform campaign aimed at increasing the right of citizens to access information about the environment. The concept of 'Community Right To Know' (CRTK) is not new. Much environmental legislation enshrines CRTK in various forms (such as the EPA's public register). Many of these sources of information are set out in the new EDO Fact Sheet "Access to Government Records".

However, even where CRTK is given force of law, it is often watered down with discretions. Some statutory authorities are known to always exercise their discretion against the public's right to access information. The simple technique of refusing to provide (or even sell) photocopies of documents is one technique used to make public participation as difficult as possible, even if the agency can't prevent citizens from physically inspecting the material.

Of course, government agencies never admit to a culture of denying access to information. The official excuses range from

"protection of commercially confidential information" to the "floodgates argument" (where frivolous and vexatious information-hungry citizens overwhelm agencies with voluminous requests for photocopies).

The EDO's CRTK campaign will focus on the legislation and policy of a range of government agencies known to hold information about the environment. We have already identified the EPA (pollution monitoring data), Development Assessment Commission (development applications) and Department of Industrial Affairs (administering Dangerous Substances Act), as key agencies. To help us with this campaign, we are urging all EDO members and supporters to provide us with any information about problems you have had with accessing information from government agencies or statutory authorities. We also want to know which agencies are particularly good. The EDO appreciates that many agencies offer excellent support for individuals and community groups by making information freely available, even though such

agencies could legally insist on a request under the Freedom of Information Act (FoI).

A key objective of our campaign is to try to encourage a culture within government agencies and statutory authorities that accepts CRTK as the norm and secrecy as the exception. FoI is important, however the EDO believes that real citizen participation is more likely to be accepted when agencies routinely and voluntarily make information available to the community as part of their core business, without the formal and reluctant imposition of FoI.

For more information, contact Mark Parnell at the EDO.

## RECENT AREAS OF WORK

The EDO has or is providing advice on issues as diverse as fish farming, uranium mining, the law of the sea, mushroom farms, piggeries, chicken battery farms, coastal and hills develop-

ment, land sub-division, resumption of Crown land, the responsibilities of incorporated non-profit organisations, pollution licensing procedures, EIA procedures, cruelty to animals, riparian rights, native vegetation protection, spray drift and the use of bird scaring gas guns.

### **INDONESIAN AUSTRALIAN SPECIALISED TRAINING UNIT**

In December, Mark and James presented a three day work shop to twenty Indonesian public servants working in Indonesia's mining, forestry, industry departments and the Indonesian EPA. The workshop looked at water resource management law in SA and included a visit to the Environment Resources and Development Court for a view of the workings of the Court from Commissioner Hodgson and a mock argument between two environmental vandals, represented by Stuart Henry and James. Many thanks to Stuart and the Commissioner for their contributions. The EDO obtained an insight into the challenges facing environmental protection in Indonesia and, hopefully, the participants returned home with some useful information and ideas. The workshop was funded through AUSAID and the funds have assisted the EDO to keep its head above water.

The workshop is likely to be repeated later this year and in March, the EDO may be presenting a four day workshop on pollution law in SA to Indonesian pollution control officers.

## **THE LATEST NEWS FROM CANBERRA**

It appears that the Federal Government is about to implement a proposal to make all Community Legal Centres (including EDOs) impose a user pays fee on clients (a so-called client contribution). The EDO has very little information about the proposal so far but will be developing a response to such a proposal if it is formalised.

The 1998 Federal budget is looming and once again there is no certainty that EDO funding will be maintained at the current levels.

### **MEDIA MEGA STARDOM FOR THE EDO**

Yes, since January, the EDO has had a regular weekly 10 minute discussion segment on ABC regional radio (Fridays 10.05 am - tune in or tune out!). Topics covered so far include accessing information, pollution and development control, the Federal Constitution and protecting the environment and water resource protection. James will continue with this segment while he awaits offers from CNN and/or the BBC (*Ed - don't give up your day job, James*).

## **LITIGATION FUND**

This year the EDO is aiming to raise funds so that we can litigate suitable cases for our clients. We are looking for your help and support.

As you probably know, nearly all of our current funding comes from the Federal Government and a lesser amount from the State Government. What you may not know is that these funds are now what are called 'tied funds'. This means that there are specific purposes for which the money can be used and none of it can be spent on litigation related activities. This is why we need to create an independent fund which will allow us to perform one of our most important functions - to fight for clients and defend the environment.

The fundraising efforts will include special social events, seminars, training programs and later in the year our own lottery. We hope to have a range of options which will be of interest to all of our members and friends. At the same time we see this as an opportunity to increase public awareness of the EDO and the good work we do.

Your support will be greatly appreciated. If you have some time available and are interested in helping the fundraising team then why don't you give Chris Hales a call and register your interest. As for the events themselves, we will give you all the details in a special mail out or in

the next newsletter. It will be important for all of us not only to support the events ourselves but also to make an extra effort to get family, friends and total strangers to them. We need to make a success of this fundraising because our future as an effective organisation depends upon it.

Let's make 1998 the year in which we set in place a strong financial future for the EDO.

Regards,  
Mark Griffin, Chair of the EDO.

## FUNDING GRANT APPLICATIONS

The EDO has made a number of funding applications for specific projects in the last six months. Our first success of 1998 has been a grant of \$3500 from the Norman Wettenhall Foundation in Melbourne to produce a fact sheet on the protection of native species and their habitats and to set up a toll free 1800 EDO Advice Line for country clients. Many thanks to the Foundation for its support.

Last year we received a grant from the Conservation Alliance to publish the EDO's "Guide to Protest Law in SA." This publication should be out in the next couple of months. Thanks to the Conservation Alliance for their support.

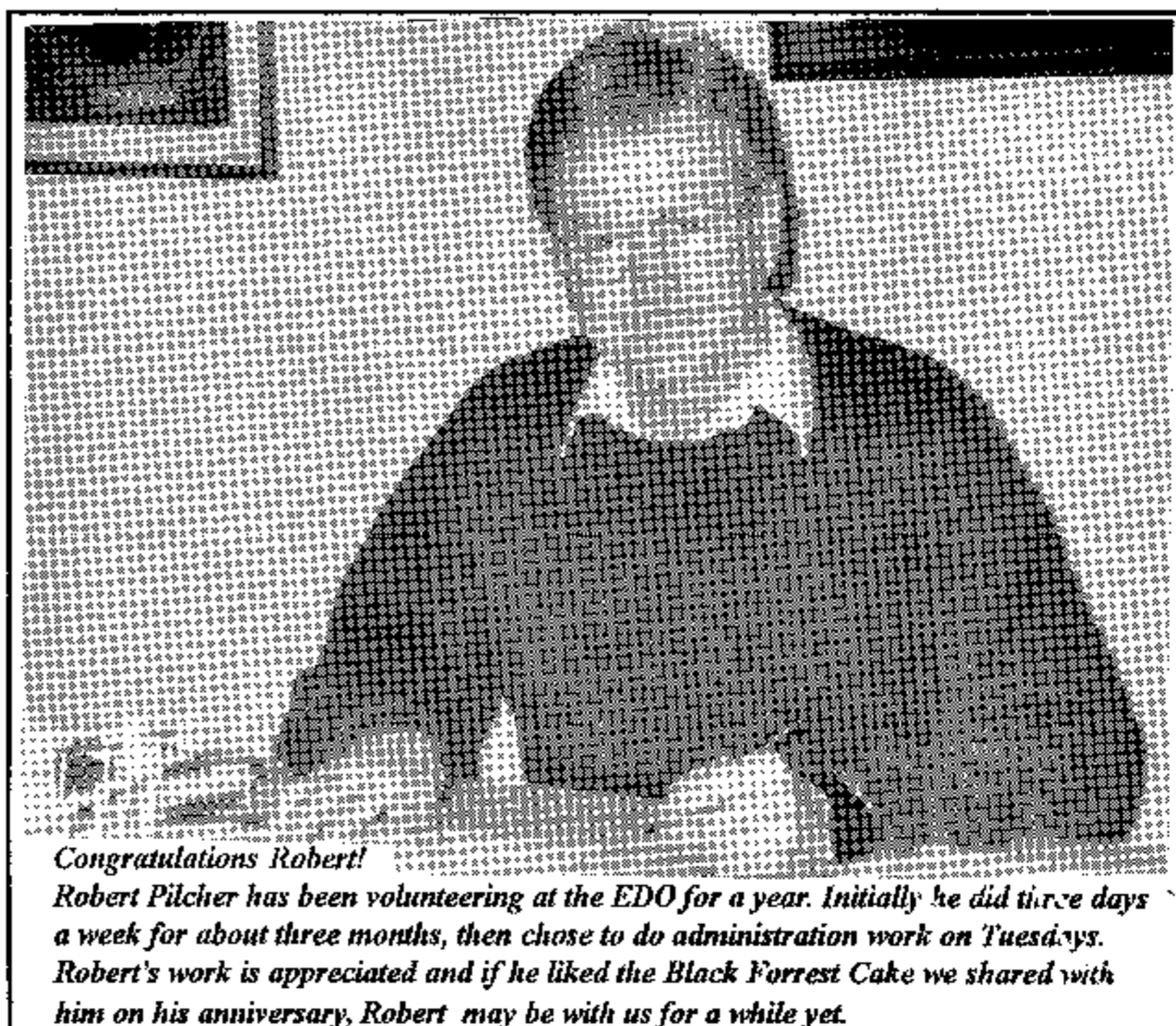
## GOOD NEWS FOR UNSUCCESSFUL PUBLIC INTEREST LITIGANTS IN CIVIL ENFORCEMENT PROCEEDINGS

On 25 February 1998, the High Court handed down its decision in *Oshlack v Richmond River Council* [1998] HCA 11 (available on the internet <http://www.austlii.edu.au>). In a 3:2 decision, the High Court overruled a decision of the NSW Court of Appeal that the "public interest" nature of an unsuccessful civil enforcement action was not a factor that the Environment Court (in NSW) should have considered in determining whether an unsuccessful public interest litigant should be made to pay the legal costs of the successful respondent.

The High Court held that it is the scope, purpose and provisions of the legislation under consideration that provide indicators as to the circumstances in

which a court may depart from the normal costs rule that the unsuccessful party pays the costs of the successful party. While the "public interest" nature of the litigation alone, if considered a relevant indicator, is unlikely to be enough to persuade a court to exercise its costs discretion so as to deprive a successful respondent of a costs order against the applicant, it is heartening to know that the High Court has recognised that it is a factor that may be taken into consideration.

Due to printing deadlines, a more detailed analysis of the High Court decision cannot be provided. However, should you want more information on the decision and its implications for South Australia, please contact James Blindell.



*Congratulations Robert!*

*Robert Pilcher has been volunteering at the EDO for a year. Initially he did three days a week for about three months, then chose to do administration work on Tuesdays.*

*Robert's work is appreciated and if he liked the Black Forrest Cake we shared with him on his anniversary, Robert may be with us for a while yet.*

## SUMMER CLERKSHIPS

Between December and February four dedicated and intrepid law students ventured into the EDO to volunteer their skills and services. The energy and enthusiasm they all brought to their work was amazing. The standard of their work was very high and their work was invaluable. Many thanks to Kirsten Sandstrom, Fleur Downard, Emily Strickland and Maria Zotti.

Each student stayed approximately a month and worked three days a week. Clerkships are often 'paid' in the more lucrative firms, but the EDO Summer Clerkships were unpaid and experience in environmental law doesn't come much better than at the EDO. On all accounts they found their time with the EDO to be friendly, supportive, challenging and informative.

## PUBLIC BENEVOLENT INSTITUTION STATUS

Despite two applications and appropriate amendments to the Constitution of the EDO, the Australian Taxation Office has yet to be convinced that the provision of advice and information to the community about how to protect our environment (upon which we all rely for our well being) relieves "suffering and/or distress". Perhaps they should talk to some of our clients. If the EDO obtains the PBI status, the EDO will be entitled to substantial tax relief benefits.

## Court of Appeal upholds demolition order for Iron Gates development

### *Iron Gates Pty Ltd v Oshlack*

The Court of Appeal has unanimously upheld the landmark decision of the Land and Environment Court in the controversial Iron Gates case. Last year, the developer of the Iron Gates site at Evans Head, on the NSW north coast, was found to have breached the State's planning laws by developing in breach of its planning consent. It was ordered to rip up the infrastructure for its illegal 100 lot residential subdivision and to replant 40 hectares of native vegetation.

The developer, Iron Gates Pty Ltd, appealed against the decision.

The Court of Appeal has now confirmed that the developer must not only comply with the demolition order, but also revegetate the entire site.

The case against the development was brought by a north coast conservationist, Mr Alan Oshlack, who has lobbied to protect this site for over 10 years along with many others in the local community. The case was legally aided. Mr Oshlack was represented by the Environmental Defenders Office. Said Mr Oshlack, "This decision will

send a clear message to developers that they must comply with environmental laws in NSW."

"It makes the law absolutely clear. Companies which develop land in breach of the State's planning laws now face the real risk not only of being ordered to demolish their development, but to return the land to its pre-development condition. Financiers of development will also have to consider those risks," said Ms Ogle, solicitor with the Environmental Defenders Office.

In the face of strong community protest, including over 50 arrests, the environmentally sensitive Iron Gates site was clear-felled to make way for a 110 lot subdivision in July 1996. Habitat for at least 10 of the State's threatened species, including a resident Koala colony, was cleared. A rare coastal rainforest and protected wetland were also damaged.

Chief Justice Murray Gleeson said in his judgment: "Contrary to what was proposed, there was extensive clearing of the land. Indeed the timber on substantial portions of it was clear-felled. The proposed wildlife corridor was obliterated. Far from retaining all of the native vegetation except to the extent to which its destruction was necessary, the developer, in substantial areas of the land, totally destroyed all vegetation."

"The Land and Environment Court has always had the power to order demolition and rein-

statement of land, but there was a perception that the Court was reluctant to use those powers, particularly where a development was already in place. This decision has fundamentally changed that position," said Ms Ogle.

"Questions need to be asked about why the Richmond River Shire Council, and the National Parks and Wildlife Service, did nothing to stop this illegal development. It really should not be left up to the public to enforce laws to protect the environment in NSW," said Mr Oshlack.

For more information contact Lisa Ogle, EDO NSW on (02) 9262 6989.

## Raffle Raffle Raffle

The EDO will be raffling a car to make huge amounts of money so we don't have to worry about cutting staff hours. The Government just doesn't give us enough money to do what we want to do.

Comments or more ideas, please ring Chris.

## THE RURAL OUTREACH PROGRAMME

The programme is off and running in 1998 with visits to the Riverland and Whyalla in March and then visits to Port Lincoln and Mt Gambier in April.

## Christmas Drinks and launch of Fact Sheets

It sounds like a long time ago. Staff, Management Committee, volunteers, members and invited guests all had a good time. Mark Griffin (EDO Chairperson) said fine words about the staff and volunteers who had put many hours into the 10 Fact Sheets.

Mark also acknowledged the recent bequest to the EDO from Brian Callen, who being an environmental artist, left us three pieces of environmental art for the Office. Another generous gift was acknowledged: the State Attorney General's Department donated a second hand computer to the EDO with the promise of another in the new year. All Community Legal Centres benefited from this upgrade in the AGs Dept.

## WILL CLAUSE

**WHEN MAKING YOUR WILL,  
PLEASE REMEMBER THE  
CONSTANT NEEDS OF THE  
ENVIRONMENTAL  
DEFENDERS OFFICE (SA) INC**

*For your assistance, and in order to obviate legal difficulties, it is suggested that the following clause be used:*

*"I bequeath to the Environmental Defenders Office (SA) Inc (EDO SA Inc) of GPO Box 170, Adelaide, 5001, the sum of*

*.....(\$.....) free of duty, to be applied in accordance with the constitution of the Environmental Defenders Office (SA) Inc.*



**Lucy Liebrecht**

*Lucy has been volunteering one day a week for the EDO since September while she has been looking for paid administrative work. Lucy has taken leave from the EDO while she undertakes further training in retail management. Good luck Lucy.*

# GREENLAW

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

Greenlaw 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 or,**

**Renewal**

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)

**ENVIRONMENTAL  
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