

# GREENLAW

NEWSLETTER OF THE ENVIRONMENTAL  
DEFENDERS OFFICE



ENVIRONMENTAL  
DEFENDERS  
OFFICE (SA) INC

## The EDO BMW Roadster Lottery

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

JULY 1998: No 10

### Get Involved - Buy A Ticket Or Sell A Book

*The EDO is running a lottery with a BMW sports car as the prize. The EDO wants to raise \$25,000 to provide the basis of a litigation fund for public interest cases. Since last year, EDOs around the country have been forbidden from using Federal Government EDO funding for any "litigation-related activity". EDOs are the only community legal centres in Australia banned from using Federal funds for litigation. The lottery is a direct response to this funding problem. Can you sell a book for us? Books can be sent out or visit the office and buy a ticket.*

Ticket Price

**\$2**



**BMW Z3 Roadster Lottery**

Not For Sale

Only \$2. To help us defend the  
Environment and give you a chance to  
**WIN a BMW Z3**

Value of Prize on road **\$70,264**

With 1.9 litre., 4-cylinder, multi-valve, twin cam engine,  
power steering and manual transmission. Plus many  
other features. Registered for 12 months.

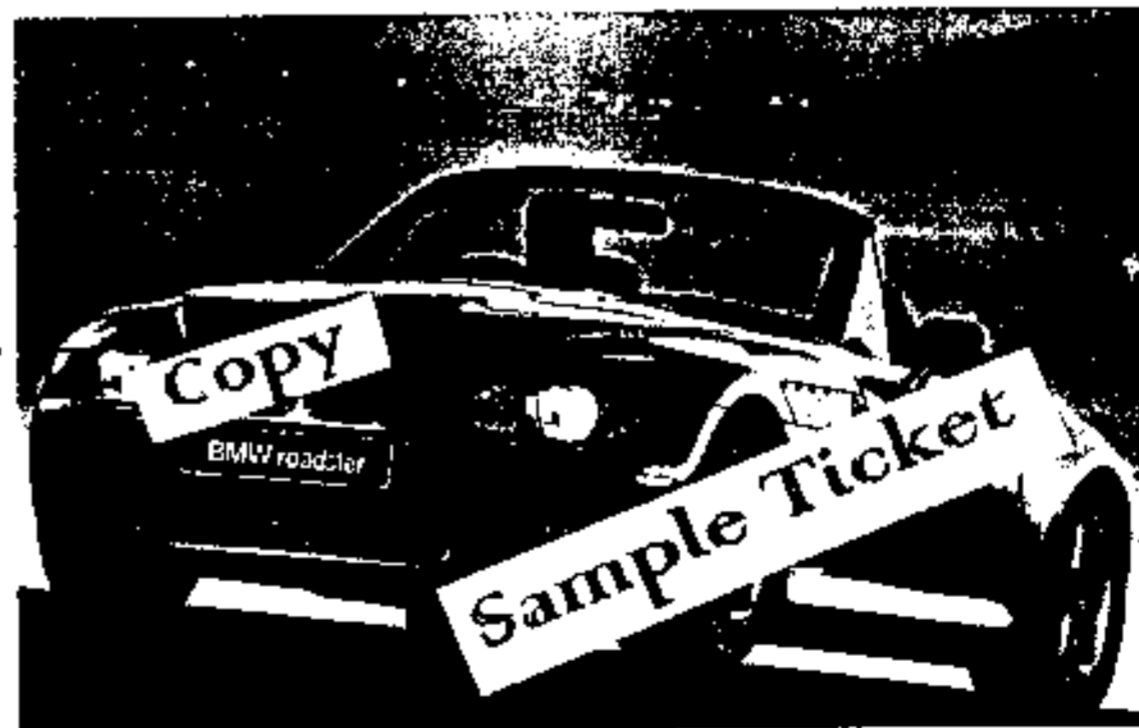
*Car will have some kilometres due to display  
purposes.*

Drawn at The Stamford Plaza Hotel,  
Friday, 27th November, 1998 at 9.00 p.m.  
Results published in the Advertiser, Thursday, 3rd  
December, 1998

*In aid of and conducted by the Community  
Environmental Law Office  
(EDO) ENVIRONMENTAL DEFENDERS OFFICE (SA) INC.*

NUMBER OF TICKETS 150,000

WINNER NOTIFIED



Car Supplied by:



**ADELAIDE MOTORS**

21-23 West Terrace, Adelaide, S.A. 5000

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

On 20 May 1998, the High Court handed down its decisions in *South-West Forest Defence Foundation v Dept. of Cons. & Land Management*, and *Bridgetown-Greenbushes Friends of the Forest v Dept. of Cons. & Land Management (No 2)* [1998] HCA 35.

Two environmental groups, who had unsuccessfully challenged a Western Australian Government department forestry decision, submitted that they should not be liable for costs as the proceedings were "of a public interest character, in that they seek to enforce environmental laws for the benefit of the general public and for the benefit of ... endangered species of flora and fauna".

The High Court, while accepting that a court may consider the public interest nature of proceedings when awarding costs, unanimously dismissed the environmental groups' argument.

Gaudron, McHugh, Hayne and Callinan JJ cursorily dismissed the argument by saying that notwithstanding public interest considerations, "the costs of the applications should follow the event". In other words, the result of the litigation is the most important guiding principle for awarding costs.

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Kirby J agreed with this proposition, but elaborated on the circumstances in which a court could properly depart from the general rule that the unsuccessful applicant pay the respondent's costs.

His Honour considered the recent case of *Oshlack v Richmond River Council* (reported in *GreenLaw* No 9). In this case, the court exempted an individual representing the public interest from an adverse costs order. Kirby J pointed out that a particular consideration in *Oshlack* was legislation that facilitated an "increased opportunity for public involvement and participation in environmental planning and assessment". This legislation created a new costs regime. His Honour emphasised that in the absence of similar legislation, an unsuccessful environmental group is less likely to be immune from an adverse costs order.

The position in SA is unclear. Certainly, there is no statutory regime that persuades courts to exempt public interest litigants from adverse costs orders. It is worth noting, however, that the objects of the Development Act 1993 include "to provide for appropriate public participation in the planning process". Whether this is sufficient to protect public interest litigants from adverse costs orders remains to be seen. In the meantime, the effect of the recent High Court decisions may be to discourage otherwise meritorious claims by environmentally motivated groups and individuals.

Paul Hayes EDO Volunteer  
Researcher

GREENLAW

## NEW EPPs

In the last 12 months two new Environment Protection Policies (EPPs) have come into force. These deal with the proper disposal of dairy farm effluent and the proper storage and disposal of waste from vessels on inland waters.

The new Milking Shed Effluent Management EPP 1997 requires all new dairy farms (and all dairy farms in the State after 1 January 1999) to comply with new standards covering effluent lagoons, separation pits and spreading of effluent on land. Already, the EDO has given advice on alleged breaches of the policy by dairy farmers in the South East.

The Environment Protection (Vessels on Inland Waters) Policy 1998 requires that waste (other than bathing, shower or washing water) produced on certain types of boats (boats less than 6 metres in length but have a toilet or a galley; boats more than 6 metres in length that provide sleeping accommodation or have a galley or toilet or are commercial passenger boats) should be properly stored and disposed of, not dumped in the water. Toilets and holding tanks are required to be fitted, the size of the tanks depends upon the type of boat. Garbage grinders cannot be kept on any boats (not just those mentioned above) and portable toilets must provide for waste retention and be in working order. The EPP provides that non-compliance by the owner or person in charge of the boat at-

tracts a \$4000 maximum fine or an expiation fee of \$300 or if the non-compliance is intentional or reckless, a maximum fine of \$30000. If you own or use a boat, you should obtain a copy of this EPP from the State Information Centre in Grenfell Street.

## EDO Meetings

Since the last newsletter, the EDO staff lawyers have met with the State Ombudsman, Eugene Biganovsky, and members of his staff, and with The Minister for the Environment's Chief of Staff, Bob Jackson.

The meeting with the State Ombudsman provided that office with a more detailed understanding of the role of the EDO and the services offered by the EDO. A substantial number of EDO clients are referred to the EDO by the State Ombudsman.

The meeting clarified the complementary roles that the EDO and the State Ombudsman have in assisting the community to obtain information about environmental issues and in assisting the community to take action to protect the environment.

The meeting with the Minister's Chief of Staff provided the EDO with the opportunity to fully brief the Minister about the role and services of the EDO, particularly the EDO Rural Outreach programme that is funded, on an annual basis, by the Minister's Department (DEHAA).

## Introducing the Conservation Alliance

Last year, the EDO received a grant of \$1,850 from the **Conservation Alliance**. The grant was to fund the production, printing and distribution of a guide to protest law aimed at environmental campaigners involved in direct action protests. The guide should be available in a month or two.

The **Conservation Alliance** was formed two years ago and is made of 16 member and supporter businesses - **Adventure one, Outdoor Survival, Snowgum, Wild publications, Patagonia, Bogong, Wilderness Wear, Fairydown Australia, Swazi Apparel, REI, Inov8, Paddy Pallin, Wilderness Photo, WL Gore, Wild Horizons and Outdoor Australia magazine.**

Each of these companies donates money or advertising space to help protect the environment. This is no mean feat in areas of business with low profit margins. So far, the Conservation Alliance has made grants totalling nearly \$40,000 to non-profit conservation groups. This amount should grow substantially as the number of member businesses increases. The businesses hope that members of environmental groups will help the grants pool grow by doing their shopping with member businesses.

Grant beneficiaries have mainly

been small environment groups struggling to protect areas as diverse as Kakadu National Park, the Tasman Peninsula, the Tarkine (Tas.) and the D'Entrecasteaux National Park in WA. Projects such as training for environmental organisations in New Zealand and legal guides have also been funded.

For more information about the **Conservation Alliance**, visit their web site at <http://www.hydra.org.au/ca/> or contact their Public Officer, Chris Harris on 02 66872425; email: [ca@conalliance.hydra.org.au](mailto:ca@conalliance.hydra.org.au)

## Development of new Environmental Protection Policy (EPP) on Noise

The EPA is undertaking a review of the industrial noise and machine noise policies.

The EPA has established a Noise Working Group to assist in the development of a new noise EPP. Participants in the Group include Local Government, employer and industry representatives and acoustic engineers. The EDO recently joined the Group and attended the second meeting in which the proposed method of assessment of environmental noise was discussed. A number of other meetings of the Group are planned before a draft EPP is released for public comment and consultation.

Contact James Blindell at the EDO for more information.



## **EDO CASE WORK**

The matters upon which the EDO is advising (or has since the last newsletter) include incorporation of community groups; protection of national parks; protection of the Heysen Trail; existing and proposed mining activities; the disposal of Crown land; aquaculture and fishing activities; a number of planning and enforcement cases; defamation; air, noise & water pollution and contaminated land.

### **Application to DEHAA for a 1998-99**

#### **Community Grant**

For the past four years, the EDO (and its predecessor, ELCAS) has received a Grant from the State Department of the Environment. Last year the grant was increased from \$10,000 to \$12,500. Last year's grant was used to fund the Rural Outreach Programme and the production of Fact Sheets.

The EDO has made an application for a further grant for a number of projects including the maintenance of the Rural Outreach Programme; the establishment of a pilot Outreach Programme at Gawler, Victor Harbor and Murray Bridge; the production of five more Fact Sheets; and the organisation of a community conference on Endangered Species Protection in SA. The EDO is hopeful the application will succeed in light of the very efficient and effective use that the EDO has made of the previous grant monies.

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## **EDO Management Committee meeting with Ms Jennifer Cashmore, Member of the EPA**

At its April meeting, the EDO management committee met with Ms Cashmore to discuss the respective roles of the EPA and the EDO and the ongoing relationship between the two organisations. The meeting was very informative and useful for the EDO staff and Management Committee. The meeting reflected the commitment that EPA members have to their task and the need for a continuation of the constructively critical relationship that exists between the EDO and the EPA.

### **The Rural Outreach Programme**

In May, the EDO visited Mt Gambier and Port Lincoln.

At Port Lincoln the local media took an interest with radio and TV interviews as well as follow up articles in the local press. The visit to Port Lincoln allowed for face to face discussions with two of the EDOs ongoing country clients who up to that point had been but voices on the phone and letters in the mail. Three other clients obtained advice on issues relating to conflicting land use and conflicting use of marine resources. In addition, the EDO presented a community seminar on community protection of the environment and talked with three high school classes.

Mount Gambier clients presented the EDO with a range of pollution and planning problems including one dairy effluent case which appears destined to spend considerable time in the Courts.

### **Conferences & Lectures**

In July, Mark Parnell delivered a paper on Community Right To Know and Pollution laws in SA at the State Conference of the Australian Institute of Environmental Health. A talk on the same topic was given to the Port Adelaide Environment Forum in June. Mark also presented a lecture at the University of South Australia on the Glenelg West Beach development to a class of Project Appraisal students.

Also in June, the EDO conducted a week-long training course on water pollution laws for 18 visiting Indonesian government officials. The majority of our "students" are employed in policy or regulatory functions within BAPEDAL - the Indonesian equivalent to the EPA. As well as looking at case studies from the EDO's files, the Indonesians visited the ERD Court and Parliament House. Thanks to Leanne Burch and John Cugley of the EPA for their presentations. Thanks to Commissioner John Hodgson of the ERD Court and the Hon David Wotton MP for their time.

## People at the EDO

The EDO continues to attract high quality law student (and recent graduate) volunteers. Special thanks to Paul Hayes (ex-Flinders Uni) who assisted with some major research, including a paper on endangered species protection under SA law. We wish Paul well with his new job at the Department of Transport. Thanks also to Amanda Holling who spent most Monday afternoons in first semester doing research on some of the trickier EDO files.

Last semester we were grateful for the help provided by Annabel Lenaine-Smith, a University of Adelaide Clinical Legal Education Student. In second semester the EDO will be hosting another student, Naomi Lindsay, on Mondays.

The EDO is also sad to be losing Management Committee member, Tim Holden. Tim has left Finlaysons to take up a new position in the environment section at Blake Dawson Waldron in Sydney. We'll look forward to catching up with Tim at the EDO national conference in Sydney in October.

### THE EDO IS APPRECIATED

#### *Recent fan mail:*

...I enjoy receiving your regular newsletters on environmental law...Keeping a watch on the relevant legislation and those who go against it is an absolute necessity...Thanks for the newsletter, keep up the good work.

## National Pollutant Inventory

A new "Community Right To Know" initiative which commences on 1st July 1998 is the National Pollutant Inventory (NPI). The NPI is designed to provide information to the community on emissions to air, land, and water from private and government facilities in Australia. The information will be presented geographically in electronic and printed form. This will mean that pollution data for individual companies will be available on the internet in much the same way as the US EPA's Toxic Release Inventory.

The NPI is being implemented by the Commonwealth, States and Territories on a cooperative basis, against the recommendations of leading environment groups which insisted that a legislated approach was necessary. Led by Greenpeace, all conservation NGOs eventually abandoned the NPI consultative process because of major concessions that were made to industry late in the process. These concessions included removing all "transfers" of pollution from reporting requirements. This means that industrial waste deposited in landfill, tailings dams or sewerage systems will not be counted as "pollution".

Nevertheless, the NPI represents a move in the right direction and will provide for access to pollution data that has been unavailable up until now. The requirement to collect pollution data commences on 1st July 1998 for facilities which exceed a threshold test and the first results of NPI monitoring should be available in around 18 months.

### RECYCLING TENANTS

There are ten other tenants who share the first floor at 118 Halifax Street with the EDO. Eight of these have joined forces and established a paper recycling system. All forms of paper are placed into a wheelie bin and collected fortnightly. This should cost our group between \$160 and \$200 a year.

The EDO was previously saving white office paper for free collection, but unfortunately this now attracts a cost. It seemed better to have all coloured, glossy and white paper collected for about the same amount of money even if it is ultimately being made into cardboard rather than higher value office paper.

### COMPUTER HELP NEEDED

From time to time, the EDO needs the services of a computer person. Like the day the virus shut us down. Who do we call? Where can we get help? Are you a computer person working at a Help Desk somewhere that may be able to give the EDO a hand now and then? If so, please call Chris at the EDO on 8232 7599.

# Community Right To Know Campaign

The EDO has welcomed the decision by the SA EPA to make industry pollution monitoring data available to the public. News of this decision was communicated to the EDO in May by EPA Chair Stephen Walsh QC.

Most of South Australia's biggest polluters are required to monitor their air and water emissions and to provide the EPA with audited pollution data. The EPA uses this data to ensure that industry is not exceeding maximum pollution levels and to assist industry to improve its environmental performance. The EPA's acknowledgment of the community's right to information about pollution data came after requests by the EDO on behalf of clients concerned about pollution from various industries such as ETSA, BHP, Pasminco, Penrice and CSR.

The EPA have advised that the new policy will commence on 1st July 1998. Applications from the community for access to earlier pollution data will be dealt with on a case by case basis.

At the June EDO Management Committee meeting, the Committee passed a vote of thanks to the staff for achieving this significant break-through in public rights.

# Media

*The EDO featured recently in a front page story and editorial in Mt Gambier's THE BORDER WATCH newspaper.*

*"During a time of government cuts to legal aid services, it is a relief to discover the existence of an Environmental Defenders Office.*

*It is interesting that the EDO considers the impending new laws on dairy effluent to be a major issue for the South East. Gone are the days when the dairy industry, any industry, can just dump its waste without considering the pollution impact. The wider community has demonstrated its concern by contacting the environmental office about the issue during its recent visit to Mount Gambier.*

*But the dairy industry is also aware of the environmental problems associated with effluent disposal. Regional industry leaders are confident the vast majority of farmers will comply with new laws scheduled to be introduced next year. Now it has to take on board the added pressure of an environmental watchdog observing its progress."*

*James & Mark have both continued to attract media interest in relation to the EDO's country outreach visits. This has included radio, TV and newspaper coverage of the visits and the issues raised by our country clients.*

*Mark Griffin was a guest on ABC metropolitan morning radio speaking about the EDO's lottery and the need for a litigation funding base separate from government grants.*

# DO YOU SUBSCRIBE TO 'IMPACT'?

This is the publication on Public Interest Environmental Law put out by the EDO Network.

The June issue covers such topics as 'Environmental Laws for the 21st Century: What Role for the Commonwealth', 'How will the Native Vegetation laws work? Critique from the environmental lobby', 'Community enforcement costs orders. The High Court and the need for reform', 'MAI and the environment', 'Who gets to keep the fine in contempt proceedings?', 'Public Participation & the ACT's new Environment Protection Law' and 'Local Government Amendment Bill 1998. Pecuniary Interest refined'.

If you would like to subscribe, contact EDO, Level 9, 89 York Street, Sydney 2000, Ph (02) 9 2 6 2 6 9 8 9 ; e m a i l : edonsw@edo.org.au

# COMMONWEALTH BUDGET

The May budget came and went without much ado. There was no change of heart on the EDO not being able to litigate using Commonwealth funds, but funding levels were maintained at last year's level. One unexpected bonus was that the Commonwealth is now going to pay the bulk of all Community Legal Centres' superannuation bill. For the EDO, this means about an extra \$4000 pa!



## ADMIN VOLUNTEERS

The EDO has a wonderful crew at the moment. Robert still comes and works every Tuesday. He has mail, banking and membership and donations responsibilities as well as assisting as jobs come up on the day.

Margarita has been coming for half a Wednesday for several months now. She looks after our databases and has just completed distributing our fact sheets to community organisations, libraries and councils.

Graham works here for a day once a month, balancing the accounts and helping with computer software.

Toula still loves to return to us every three months and do this newsletter.

The EDO would like to thank all these people for their dedication to the EDO. With these administrative volunteers the EDO nearly gets 2 administration officers for the price of 1.

### DONATION FROM THE UNIVERSITY OF SOUTH AUSTRALIA

The School of Law and Legal Practice has generously given the EDO \$500. This enabled the EDO to buy much needed computer technology; ie, an anti-virus package, modem sharing software and a back-up facility. Thanks to EDO Management Committee member, Duncan Hartshorne, for recommending the EDO to the University.

## FISHY VIRUS: BE WARNED

The EDO computer recently had the Goldfish virus. When activated, this nuisance virus requires you to type in "fish food" to stop your computer crashing! This was not picked up by our out-of-date virus checker. We have now updated our virus checking software and the system is now clean.

Any EDO members or volunteers who have used disks on our machines or been in e-mail communication with us, should check their systems, as it is a major inconvenience to have your work disrupted or destroyed.

We found the Vet anti-virus package good value at \$90 (including one year of updates).

## Pedal Power Wheels In Rewards

The EDO is a rare workplace in that all members of staff ride bicycles to work.

Over the last few months, the staff have been entering a competition known as "Ride to Win" which offered random prizes to regular cyclists.

In May, James Blindell's number came up and he was presented with a \$400 voucher to spend on bicycle products from Trak Cycles. James generously shared his winnings with the other staff, whose bikes now sport new tyres. Thanks James.



*The EDO chairperson, Mr Mark Griffin, furrows his brows as he contemplates how many EDO lottery tickets to buy.*

*He commented that EDO could have had a chook raffle or cake stalls but the organisation wanted to raise some serious money.*

*Photo courtesy of The Advertiser*

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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.**

# MEMBERSHIP FORM

*MEMBERS RECEIVE REGULAR NEWSLETTERS ABOUT THE  
EDO AND CURRENT ENVIRONMENTAL LAW ISSUES.*

I wish to join the Environmental Defenders Office (SA) Inc:

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)

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