

GREENLAW

NEWSLETTER OF THE ENVIRONMENTAL
DEFENDERS OFFICE



ENVIRONMENTAL
DEFENDERS
OFFICE (SA) INC

BMW Lottery Result

There is no doubt as a fund raiser and profile raiser the EDO lottery was a roaring success.

From a standing start, about 120,000 of the 150,000 tickets were sold.

High octane excitement could be detected in the air as the draw was made at the Stamford Hotel on North Terrace on 27 November.

About 30 hopeful BMW heads gathered for the event - but to no avail, the lucky winner was blissfully unaware of his luck until he was contacted by phone the next day.

If you are passing through Golden Grove, you may well get a glimpse of the BMW zipping down the byways and highways.

In 1999 the EDO intends to hold a similar lottery so that the office can continue to strive for financial independence and further support its litigation related activities.

So for those of us who but glimpsed the glorious mirage as we handed over our hard earned cash - do not despair - there is

always the next lottery!

Thanks to all EDO members and friends who bought and sold the lottery tickets. Hang in there - maybe next time!

Threatened species in SA - is Law Reform Needed?

The EDO in conjunction with the Threatened Species Network, Conservation Council and Nature Conservation Society will be holding a **one day workshop on Friday 26th February 1999** to explore possible future approaches to the identification and protection of threatened species and ecological communities in South Australia.

South Australia is one of the few Australian jurisdictions with no legislation specifically covering endangered species. Is a special Act necessary? If so how should it work?

Speakers at the workshop (to be held at the Black Hill Flora Centre) will include conservation and government representatives as well as a representative from the EDO.

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

January 1999: No 11

We have also invited a lawyer from the NSW EDO to talk about Commonwealth and NSW endangered species laws. What works and what doesn't?

Numbers will be strictly limited, so ring the EDO office today to ensure a place.

Law Reform

The EDO has made submissions in relation to the following legislation or proposed legislation:

Local Government Act Review - Draft Bills

The three Bills circulated in May 1998 have now been consolidated into two "Negotiation Draft Bills" - the *Local Government Bill* and the *Local Government Elections Bill*.

According to the Minister for Local Government, "it is not proposed that the ... Bills be the subject of a further comprehensive consultation process...".

The Government proposes to introduce the Bills into Parlia-

ment in February 1999.

Copies are available on the internet - <http://www.localgovt.sa.gov.au> or free hardcopies can be obtained from the Office of Local Government phone 8207 0600.

As suggested by the Minister, if you want to comment further on the Bills, you will need to lobby the Local Government Association, your local council, the Minister and other Members of Parliament.

No doubt the non-government members of the Legislative Council will be examining the Bills closely and would welcome community comment.

The EDO is examining the *Negotiation Draft Bills* in detail and will make further submissions if necessary.

Bill to amend the Electricity Corporations Act 1994

This deals with proposed exemptions from the *Environment Protection Act 1993* and amendments to the *Development Act 1993* arising from proposed changes to the electricity industry.

Mining (Private Mines) Amendment Bill 1998

The EDO submission focussed on the inclusion of community right to know and third party civil enforcement provisions.

Competition Policy Legislative Review of the Development Act 1993

Our submission focussed on the retention and expansion of community right to know and third party civil enforcement provisions.

Review of the Development Act 1993

The EDO participated in meetings and workshops associated with this low-key review which was mainly concerned with the overall workings of the planning and development control system, rather than the detail of the legislation.

Review of Schedules 7,8 & 9 of the National Parks & Wildlife Act 1975

After many years, the lists of endangered, vulnerable and rare species is being updated.

The EDO believes that the whole regime for protecting endangered species needs to be overhauled.

Competition policy review of Commercial Water Services Legislation

This review has allowed us to promote the reforms proposed in the EDO's 1997 paper - "Getting Adelaide Unplugged - A

Review of Legislation Relevant to Domestic Waste Control Systems, which argued that there were legal, administrative and financial impediments to the use of alternative green technologies in urban areas.

If you would like further information or copies of EDO submissions, please contact the office.

Forthcoming Reviews

Over the next few months, the EDO will also be commenting on:

- Review of SA Agricultural and Veterinarian Chemicals legislation
- Review of Environment Protection Act 1993 (expected, but not yet announced)
- Review of the Petroleum Act 1940
- Review of the Fisheries Act

New EDO files

The EDO continues to assist community groups and individuals to participate in and critically analyse the application and enforcement of planning and environmental law.

In addition, the EDO is providing essential guidance on the formal and informal ways the community can influence decision-making processes and ways in which the community can access vital information.

On behalf of various clients, the EDO has lodged Freedom of Information Act requests with various government agencies.

These include:

- Development Assessment Commission (Aquaculture approvals).
- SA Water (Trade Waste discharges to sewer).
- Environment Protection Authority (pollution monitoring).
- Native Vegetation Council (local council roadside vegetation management plans).

The EDO continues to be involved in Aquaculture issues and has assisted clients in making representations to the Development Assessment Commission.

Recently, the Conservation Council (and other parties) were successful in preventing the expansion of Tuna feedlots into the pristine waters of Thorny passage near the Lincoln National Park Wilderness Area on lower Eyre Peninsula.

The EDO has been involved in other community-driven campaigns including the fight to save ancient remnant vegetation on Corryton Park in the Barossa Valley from proposed vineyard development.

The EDO made representations to the Native Vegetation Council on behalf of local conservationists and the Conservation Council of SA.

So far, these representations have been successful, however there is still potential for litigation in relation to the meaning and extent of exemptions under the Native Vegetation Act and the relationship between the Act, the exemptions and the De-

velopment Act.

The Burge Corp (Grant Burge Wines) chainsaws have been active over January with serious "pruning" of some of the more spectacular trees.

Native vegetation issues have featured prominently in EDO files recently.

These files include significant tree protection on the Adelaide plains as well as the threat of feral olive invasion from poorly planned orchards near National Parks in the semi-arid regions.

Other recent EDO files involve issues such as urban parkland protection, land contamination, coastal water pollution, river catchment pollution, land use changes in rural areas and much more.

As a law office, the EDO is bound by the same rules of client confidentiality as private firms.

However, given the public interest nature of our work, the EDO will be requesting from appropriate clients their consent to discussing their cases through newsletters, presentations and other media.

We are also hoping to list the organisations (cf individuals) we have advised in order to give our members an idea of the variety of clients who use the EDO.

The NSW EDO has followed this practice for many years.

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People at the EDO

A new management committee was elected at the last AGM.

Continuing members:

Mark Griffin (Chairperson)
8216 3381
Craig Tidemann (Treasurer)
David Cole
Michael Doherty
Judy Goode
Duncan Hartshorne
Paul Leadbeter

New members:

Robin Lister
Leonie Paulson

The EDO will be using the services of the following law students during the university break as summer clerks -
Omar Mirza (Flinders Uni)
Jessica Lawson (Adelaide Uni)
Sara Beazley (Adelaide Uni)

EDO Community Education

In the last six months the EDO has presented seminars and workshops to Friends of the Earth, Norwood Morialta High School, TAFE students (via video conferencing), local and state government representatives, community groups in Gawler and the Mid-North and the Enviro Expo '98.

The topics usually focus upon the role of the EDO and the challenges facing community groups when they want to take action to protect our environment and the ways they can meet those challenges.

EDO Aquaculture Court Win

Last October, the EDO was successful on behalf of the Conservation Council of SA Inc (CCSA) in four appeals against Aquaculture developments in Upper Spencer Gulf.

The appeals were against development approvals for snapper farming in remote Fitzgerald Bay, north of Whyalla.

The approvals had been granted by the Development Assessment Commission (DAC) through its delegate, the "Aquaculture Committee" and authorised the placement of moored sea cages to be stocked with commercial quantities of fish.

The CCSA appeals followed many years of generally fruitless submissions and representations to government fishing and planning bodies urging the adoption of "ecologically sustainable development" (ESD) and "community right to know" (CRTK) principles in planning and approval processes for aquaculture.

Whilst these concepts are already incorporated in various degrees in relevant legislation, they are poorly applied in practice.

How much poo does a snapper do?

The CCSA arguments on the merits focussed on the lack of environmental data and the potential risks that aquaculture posed to the local environment.

In particular, the water beneath the proposed cages appeared to be too shallow and the risk of nutrient-rich waste causing algal blooms had not been properly investigated.

Due process

In addition to arguments over the merits of the proposals, the CCSA case highlighted a litany of procedural errors it claimed were made by both the developers and DAC.

These included allegedly misleading public advertisements and the failure to provide potential representors with required information about the proposed developments.

The appeals also challenged the delegation of decision-making power from DAC to its Aquaculture Committee.

The "case"

The matter was first listed for a pre-trial conference in September 1998.

Shortly after the third adjournment of the conference, both DAC and the developers conceded that the approvals were "probably invalid" and they declined to contest the appeals. Orders allowing the CCSA appeals were granted by consent on October 7.

Whilst a win at the pre-trial stage was a good outcome in relation to the specific developments appealed against, it was a little disappointing not to have

either the process or the merits arguments judicially determined.

No specific concessions were made by any of the respondent parties in relation to any of the seven specified grounds of appeal.

This means that the possibility of subsequent test cases remains high.

The CCSA is particularly keen to have the ERD Court determine the meaning of ESD, a concept increasingly used in legislation and government policy documents.

One-Stop-Shop

Under the government's one-stop-shop policy, aquaculture developers are able to lodge a single application with the resource department - Primary Industries and Resources SA (PIRSA) for the three different approvals required to farm fish in marine waters.

As well as development approval under the Development Act 1993, proponents are required to obtain a "fish farming licence" under the Fisheries Act 1982 and land tenure (lease or licence) under the Harbours and Navigation Act 1993.

All three approvals were granted by the Aquaculture Committee pursuant to delegations.

The difficulty with this approach is that the standards, discretions and degree of public participation vary under each Act.

For example, CRTK is specifically provided for in the Development Act, but is absent from the other two.

Similarly, representation and third party appeal rights only exist in the Development Act. The one-stop-shop also embodied a real potential for bias and lack of procedural fairness.

It is arguably very difficult for the decision-making Committee (or its individual members) to keep an open mind about the Development Act process (and the representations of third parties) if it has already made up its mind in relation to the other two approvals.

Reforms

As a result of the CCSA appeals, a number of reforms have been made or are in process.

Misleading advertisements

Following the appeals, DAC has changed the form of newspaper advertisement it uses to invite public representations on Category 3 developments.

The Development Act provides that "any person who desires to do so" may make a representation.

The DAC ads, however, implied that a person needed to be "affected" in order to be entitled to make a representation.

The ads have now been changed to reflect the words used in the Act.

Whilst the DAC has not formally conceded that the previous ads were misleading, the EDO believes that potentially, all previous approvals which

used the older form of advertising are suspect.

This extends to local council advertisements also.

The EDO will be writing to all local Councils urging them to modify their advertisements.

Aquaculture Committee axed

Following the appeals, DAC acted quickly to abolish the Aquaculture Committee and effectively bring an end to the one-stop-shop.

This means that the Development Act assessment of aquaculture will now be handled by the full Commission and not by a delegate.

The licence and land tenure approvals will be made by public servants under delegated authority.

With the current review of the Fisheries Act, it is hoped that a one-stop-shop can be re-established, however it must provide for extensive CRTK and 3rd party rights to be acceptable to the EDO and its clients.

No more inky fingers

One particularly frustrating aspect of the approval process for aquaculture (and other Category 3 development) was the informal policy of DAC never to provide (or even sell) photocopies of development applications or supporting documentation to members of the public. This meant that prospective representors had to sit in the DAC waiting room with ink and quill to copy out long-hand any particulars they required from the DAC records.

Now this policy has now been

reversed and copies can now be purchased over the counter.

An end to secret agendas

Another important reform within DAC is the decision to make agendas available for public inspection on the day prior to DAC hearings.

These agendas include copies of EPA, Coast Protection Board and other referral agency comments as well as the proponent's response to 3rd party representations.

This is a most important reform because before, representors were at a distinct disadvantage at DAC hearings because they only had access to a small fraction of the material available to the proponent and the decision-maker.

The EDO is now advising all clients to avail themselves of this opportunity before they make their oral representations to DAC.

Where to next?

The EDO and CCSA are currently working on a revised development application form for use in aquaculture assessment. The EDO has also asked to be invited onto a stakeholders reference group overseeing the reform of aquaculture laws. This could be a more productive use of our time than instituting further appeals.

However if law reform is unsuccessful, the EDO could well be back in Court in 1999.

Mark Parnell
EDO staff solicitor

EDO (SA) journeys to Sydney

In October, Mark and James attended the annual National EDO Network Conference and the EDO-sponsored "Defending the Defenders" Conference.

The Network Conference provided an opportunity to determine national strategies and direction for the Network in the coming year and to enjoy the company of some inspiring and inspired lawyers, administrators and committee members from all over Australia.

Issues discussed included: key strategic directions and relationships; the topic of funding; recent litigation, advice, education and policy work; office procedures and precedents.

At this meeting the network decided to develop a network logo and letterhead, a joint mission statement and set of objectives.

The "Defending the Defenders" Conference allowed us to meet some very courageous environmental activists and lawyers from overseas who have more to worry about than whether they will be sued for what they say.

They have to consider whether they will be assaulted and threatened because of what they do!

Amongst some outstanding
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speakers was the Indian environmental lawyer MC Mehta who provided an entertaining and thought provoking insight into the progressive view the Indian Supreme Court (High Court) takes of the Indian Constitution in order to protect the environment.

The increasing use of defamation proceedings in Australia and elsewhere to silence community and environmental groups was the subject of much discussion and concern.

Papers from the Conference are available from the EDO (NSW) phone (02) 9262 6989.

The Rural Outreach Programme

In the last six months the EDO has visited the Riverland, Port Lincoln, Mt. Gambier and Whyalla.

Once again, the requests for assistance from individuals and community groups in country SA was enormous.

Communities are starting to monitor more closely the activities and decisions of their local councils.

In addition, they are requesting that the EPA spend more time and resources on monitoring environmental conditions in rural SA.

One of the most important roles of the EDO during these visits

has been to inform the community about what rights they have to access information about proposed and existing activities that impact upon our environment.

The EDO continues to talk with high school students and is now speaking at Rotary and Lions Club dinners during the visits.

Both audiences are very receptive and generate a lot of ideas and discussion with some thought provoking questions.

Why does the EDO only provide advice to community groups and not to industry groups - everyone pays the taxes that help fund the EDO? No prizes for the right answer!

Indonesian Training Courses

In the past six months the EDO has run two training courses (5 day and 1 day) for Indonesian public servants, mostly from the Indonesian EPA.

The courses continue to be a two way education process with James and Mark learning much about the politics and law of Indonesia.

Hopefully the participants gather a good understanding of the political and legal avenues for and challenges to environmental protection in Australia.

The EDO expects to be involved in further Indonesian Training Courses in 1999.

DEHAA Community Grant 1998/99

The EDO has received a further \$12,500 grant for the continuation of the Rural Outreach Programme, a trial Outer Metropolitan Outreach Programme (to visit Victor Harbor, Murray Bridge or Gawler), the writing and production of more Fact Sheets and updating our Web Page.

The spreading of the money over more projects will mean that the Rural Outreach programme, to be continued in its present form of eight country visits per year, will need to be partially funded from other sources.

The EDO extends its thanks to Minister Kotz for her continued support for the EDO.

Xmas Drinks

The location was perfect, the weather refreshingly cool and the revellers were full of the good spirits of the season.

Formal entertainment was provided by David Cole from the EDO Management Committee who kept the audience spellbound with a witty, accurate and concise overview of the EDO's activities in 1998, followed by David's unique interpretation of the late Frank's greatest ballad "My Way".

No amount of gentle persuasion could convince him to cap off the evening with "New York New York" but we wait in anticipation for next year's Xmas bash.

But seriously, it was great to see a mixture of familiar faces from the legal profession and the judiciary as well as many EDO clients and supporters, some of whom we had not met face-to-face before.

A special thanks to all those people who travelled from the country for the occasion and a particular thanks to Heather for her name tag writing skills.

As one person commented, the presence of so many EDO clients indicates that the community identifies with the objectives of the EDO and feels part of the EDO organisation.

A loss for the environment

EDO member, Ken Walter AO, passed away in 1998.

From the beginnings of our organisation 6 years ago, Ken was one of our greatest supporters and most prolific clients.

We could always rely on Ken to have his finger on the environmental pulse of Riverton. When everyone else seemed to be turning a blind eye to the environment, Ken would be there (and on the phone to us) seeking to see that the right thing was done.

He wasn't a man who would let 'the system' get in the way of what was right - particularly when the environment was at stake.

Our condolences go to Ken's family.

A Thankyou

...on behalf of Tim Barritt, myself and the Barossa Natural Heritage Group, I would like to thank you for the wonderful work you are doing in assisting groups such as ours to protest successfully against the likes of the Grant Burge Corps of this world. Congratulations on helping us to a (seeming) victory for the 'Corryton Park' redgums in the Barossa Ranges.

Sincerely, Chris Hall



Saved: one of the redgums at Corryton Park

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Contributors

James Blindell
Chris Hales
Mark Parnell

Layout

Toula Gronthos
Chris Hales

EDO (SA) office: 1st floor,
118 Halifax St, Adelaide.
Postal address: GPO Box 170,
Adelaide, SA 5001.
Phone: (08) 8232 7599
Facsimile: (08) 8232 7544
E-mail: edosa@edo.org.au
Country freecall 1800 337 566

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

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THE EDO AND CURRENT ENVIRONMENTAL LAW ISSUES.**

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

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New Membership or,

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