

# GREENLAW

NEWSLETTER OF THE ENVIRONMENTAL  
DEFENDERS OFFICE



ENVIRONMENTAL  
DEFENDERS  
OFFICE (SA) INC

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

JUNE 1997: No 7

## **THE EDO SURVIVES BUT.....**

A big thankyou to everyone who wrote letters of support for the EDO to the Federal Government prior to the Federal Budget. This Office and other EDOs interstate spoke directly with many state and federal politicians to highlight the invaluable role that the EDOs play. This Office met with Senator Nick Bolkus, the Shadow Federal Attorney-General; and David Cole our Chairperson, was part of an EDO delegation that had a meeting with the Federal Attorney-General, Daryl Williams, in Canberra.

Feedback from Canberra indicated that many letters of support from all over Australia were received by the Federal Government and that the letters were making the Federal Government give careful consideration to its commitment to EDO funding.

### **The good news**

The Federal Government has decided to maintain funding to the EDO (SA) and to the other EDOs interstate. In a letter to all EDOs the Attorney-General's Department has indicated that

"The ongoing total allocation of around \$0.6m per annum for the delivery of community based environmental legal service is part of the Government's comprehensive approach to sound environmental management both in the short term and for the future. ... The Government looks forward to the continued success of environmental legal services as an effective and well targeted element of this strategy."

## **ENVIRONMENTAL DEFENDERS TOLD TO STAY OUT OF COURT**

*National EDO Network Joint Media  
Release -13 June 1997:*

New guidelines issued by the Commonwealth earlier this week to Environmental Defenders Offices (EDOs) around Australia have confirmed that the Federal Government will no longer tolerate federal funding being used for legal challenges to protect the environment.

The National Network of EDOs was set up last year to provide the public with independent legal advice and representation on environmental issues.

Under the new guidelines, the

Commonwealth has told EDOs that they are no longer allowed to use federal funding to represent clients in court cases. Unless alternative funding can be found, this means that the public will no longer be able to obtain legal representation from EDOs before tribunals or courts, even in preliminary matters such as freedom of information appeals. Similarly, EDOs will not be able to assist people who are representing themselves to draft their own court documents. Only the NSW EDO has substantial alternative funding.

The guidelines also give the Commonwealth power to withdraw funds for existing court cases in which an EDO is acting for a client.

The National Network of EDOs met today to discuss a joint response to the new restrictions.

James Johnson, Director of the NSW EDO said,

"On principle, the Network does not believe the restrictions being imposed by the Commonwealth are appropriate because one of the core functions of

EDOs is to provide affordable legal representation to members of the public who wish to take action to protect the environment. The EDOs will continue to seek to persuade the Federal Government to abandon this new condition."

"In the meantime, EDOs have no alternative but to comply with the restrictions, as without federal funding most EDO offices would have to close. The Network is also investigating alternative funding sources so that it can continue to provide legal representation to the public," said Johnson.

The new conditions will greatly restrict the community's ability to enforce environmental laws because of the difficulty in obtaining legal representation.

Roland Browne, Chair of the Tasmanian EDO, said:

"It is pointless to have laws which protect the environment unless they can be enforced. The Federal Government has acknowledged the important role that EDOs play in educating the public about environmental laws, but it is not prepared to allow federal funding to be used for legal representation which enables the public to enforce those laws."

"It's like funding doctors to diagnose illness, but not allowing them to cure the patient," said Browne.

Freya Dawson, Chair of the Northern Territory EDO, said,

"The Commonwealth has sug-

gested that EDOs try to find other lawyers for clients who wish to take court action. This ignores the fact that in many States there are virtually no alternatives available."

*Copies of the Commonwealth Guidelines are available on request.*

## The Rural Outreach Programme

Since the March edition of Greenlaw, James Blindell has visited Port Lincoln and Mark Parnell has made his second visit to Port Augusta. Both visits generated much interest in both communities and in the local media. Local Council representatives attended the public seminar in Port Lincoln and James gave talks at the Port Lincoln Primary and High Schools.

Some of the issues raised by the country clients included air quality, local council development approval processes, compulsory acquisition of land, built heritage protection, shack freeholding and general planning issues.

The EDO also advised a residents' lobby group on appropriate responses to threats of SLAPP suits. The crime of these people was to suggest in a local newspaper that a proposed residential subdivision on low lying land would be affected by mosquitos. The developer has threatened to sue the group un-

less a retraction and apology are forthcoming.

A secondary impact of the Rural Outreach Programme is that there has been a noticeable increase in the number of telephone requests for advice from the regions that the EDO visits. The media coverage that each visit receives raises the profile of the EDO in rural South Australia and therefore raises community awareness of the services that the EDO offers.

The EDO has made an application to the Department of Environment and Natural Resources for continuing and increased funding for the Rural Outreach Programme and for the production of more environmental law Fact Sheets. A decision regarding the application is likely to be made by mid July. If increased funding is forthcoming the programme will be expanded to include visits to outer metropolitan centres and near country centres such as Noarlunga, Gawler, Victor Harbor and Murray Bridge.

In a recent meeting between the EDO and the Minister for the Environment and Natural Resources, the Hon. David Wotton, the Minister expressed his support for the Rural Outreach Programme and congratulated the EDO on the success and extent of the Programme.

## EDO Litigation

While the EDO is not currently undertaking any litigation on behalf of clients, it is involved

in providing advice to a number of environmental groups who are undertaking or considering litigation. Because the litigation is time consuming, the EDO can usually assist more clients by helping them to run their own cases. This help usually involves assistance with drafting applications and affidavits as well as advice on the conduct of hearings and the presentation of evidence. With the Commonwealth's threat of "no litigation related work" hanging over us, the EDO will need to carefully consider how such cases are handled in the future.

## EDO Advice

The topics upon which the EDO is asked to advise continues to expand. False imprisonment, peaceful protest, too many birds in one backyard, the sale of council reserves are some of the more unusual. The advice service has been in great demand so a back-up roster has been created enabling up to 6 appointments on each Thursday night.

## Community Education

The EDO has given seminars to a number of TAFE classes on the topic of community environmental law rights and responsibilities. The EDO will be presenting a workshop at the National Association of Community Legal Centres Conference to be held in Adelaide in September.

The EDO has also been involved in preparing curriculum advice for TAFE natural resource management students studying environmental law.

## The EPA and community right to know

Many EDO clients want to know how their local environment may be affected by the operation of large polluting industries. Often, this requires access to data that is held by agencies such as the EPA. What the EDO has found however is that obtaining access to that data is not that easy.

Many of South Australia's biggest polluters are required to monitor their emissions as a condition of their EPA licence. Typically, this monitoring data must be independently certified and forwarded regularly to the EPA which then checks on compliance with maximum emission levels.

Generally, the Environment Protection Act allows fairly open access to many of the records held by the EPA. In this regard, the EPA is more open than other agencies where secrecy is the rule rather than the exception.

The one big area of uncertainty however is access to polluters' monitoring data. Under the "public register" provisions of the Act, the EPA has a discretion as to whether or not to make this monitoring data avail-

able for public scrutiny. The EPA can also determine the form in which access is to be granted.

The public policy rationale for allowing the EPA to withhold pollution data from the public is difficult to pin-point. The most likely reason is that companies fear that important trade secrets may be discovered by scatologically literate competitors if open access to pollution records is allowed. Perhaps it is possible to discover the recipe for steel or chipboard by sniffing at the smokestack and drain pipe!

The EDO has lodged a number of applications for access to monitoring data with the EPA and we have been told that the Authority has not yet determined its position on the issue. Perhaps in the two years the Act has been operating, no-one has ever asked before? The companies we are interested in include many of the "top ten" polluters recently identified in the Advertiser.

In our view, the answer is quite simple - the public should have unfettered access to all pollution monitoring that is required to be undertaken as a condition of an EPA licence or exemption. To provide any less than full disclosure is to invite the question - "what is the EPA hiding?"

In our view, the EPA needs to recognise that in the long run, the public will be its best friend in advocating the importance of the agency and the budget it needs to do its work.

# Fundraising

The proposal to prohibit EDOs using Commonwealth funds for "litigation related work" makes it all the more important that the EDO has an independent and untied funding base. Money that is raised by the EDO outside our government grant is able to be used for any purpose approved by the management committee and will not be subject to government interference.

The EDO needs to develop a fundraising programme; ideas include social events such as a formal dinner, a bush dance, a quiz night and a karaoke night! Why not combine them all? Other ideas are sponsorship and the promotion of the EDO Gift Fund, donations to which are tax deductible.

*If there are some experienced and enthusiastic fundraisers among our members, please contact the EDO Administrative Officer, Chris Hales, on 8232 7599.*

# Law Reform

The EDO continues to make submissions to the government and opposition parties on proposed legislation. Recently we commented on proposed changes to a number of Acts necessitated by the new Water Resources Act 1997. Whilst generally supportive of the

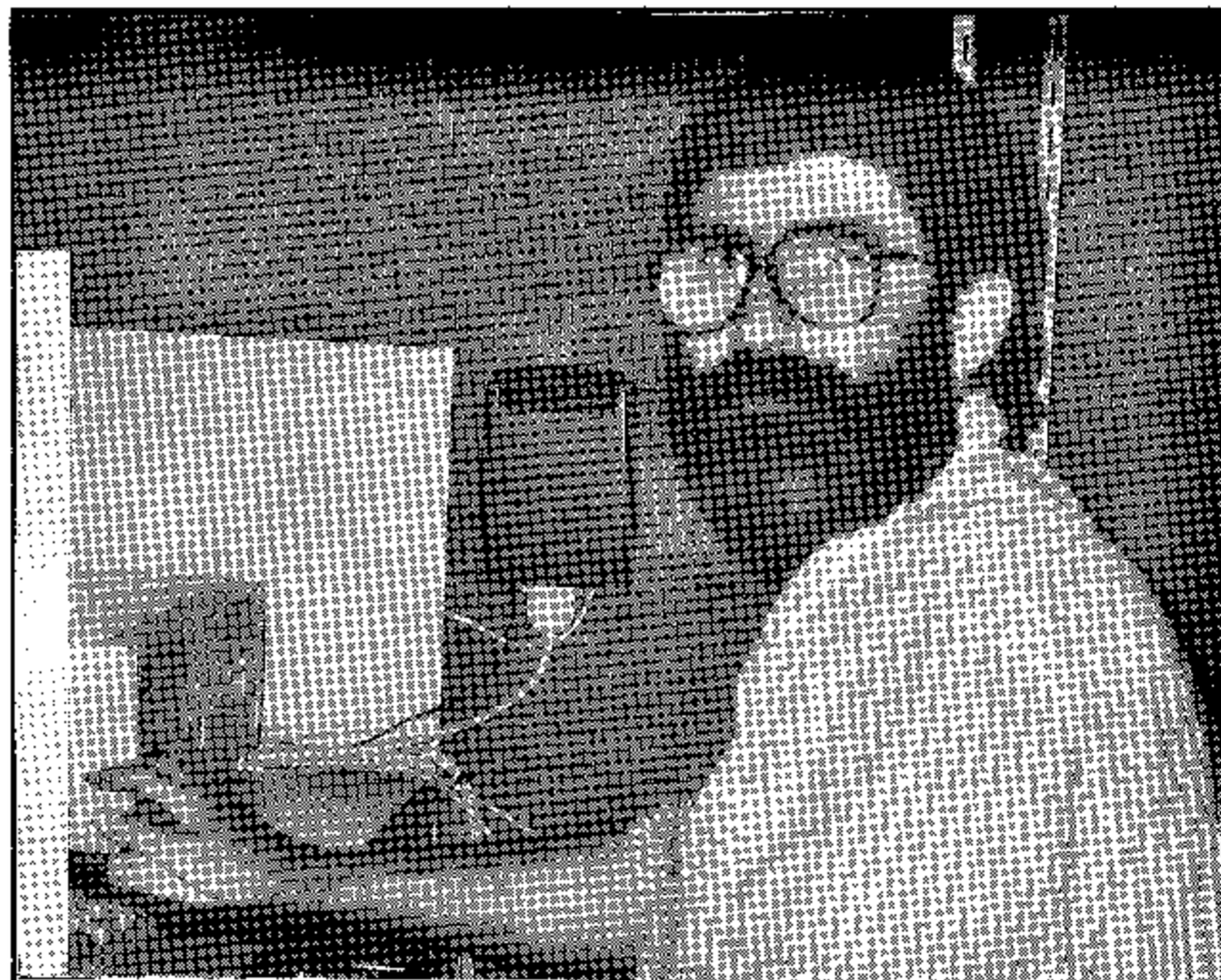
Government's aim to better integrate existing resource management legislation with the new Act, we offered a number of suggestions to improve rights of public participation and environment protection such as:

- \* improving the system of referrals to other agencies;
- \* transferring enforcement responsibilities from the Minister to the EPA;
- \* removal of the right to pollute private property with impunity;
- \* requiring pastoral and soil authorities to have regard to the objects of the Water Resources Act when making decisions that could affect water.

Unfortunately, none of these suggestions were adopted, largely because of an inadequate public participation process, which provided no opportunity for considered debate.

In other submissions, the EDO has advised the EPA of our objection to a proposal to extend the availability of pollution exemptions, particularly in relation to noise from motor racing venues. In our view, extending or entrenching exemptions calls the whole question of minimum pollution standards into question.

*Copies of all EDO submissions are available from the office.*



*Mark Parnell is an EDO solicitor who job shares the one solicitor position with James Blindell. Mark has had many years experience in the conservation movement, most recently working for the Australian Conservation Foundation.*

# Members! Members! Members!

The EDO needs financial members. If the organisation does not have over 50 financial members then the tax deduction allowance on donations cannot be claimed. A renewal membership form is provided if you were financial in 96/97 but have not paid the subscription for 97/98.

# WHAT WOULD WE DO WITHOUT YOU?

Congratulations! Anne Boutros and Anastasia Potiris have worked in the EDO office one day a week for about two months while looking for paid employment - now, both have found work. Anne managed to put the backlog of National Information Scheme (NIS) forms onto the computer. These forms relate to all phone and person to person advice given out by the EDO. The statistics are required by the Commonwealth Government as a condition of receiving funding. Anastasia helped with word processing, database entry and general office work.

Maria Ruez continues to help the EDO Tuesday afternoons, mainly working on organising the Outreach visits by the EDO lawyers to country locations. Twice a year the EDO visits Berri, Port Augusta, Port Lincoln and Mt Gambier. Graham Marshall also helped steer EDO through the NIS computer maze.

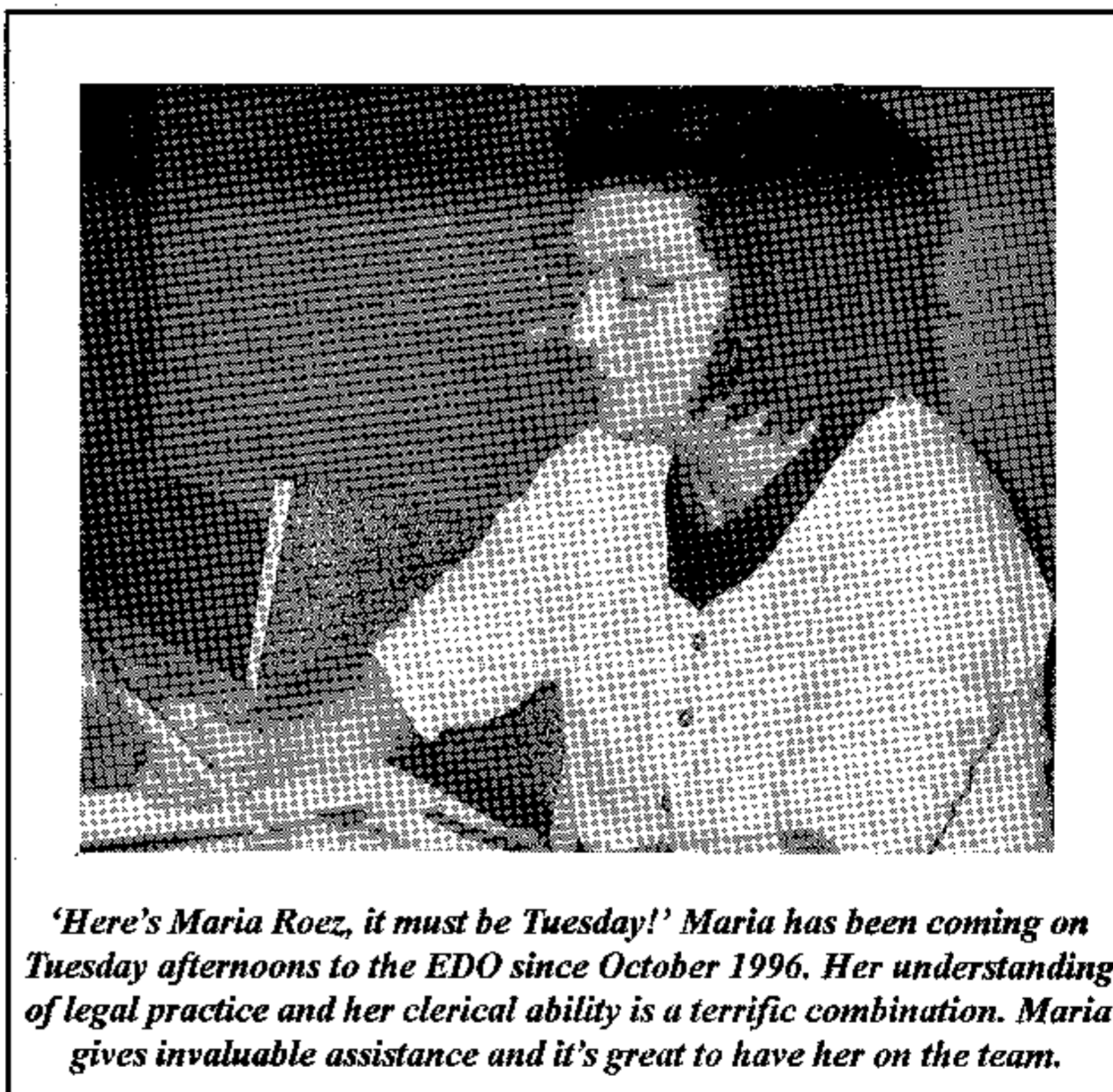
Robert Pilcher has worked for the EDO three days a week for the last three months sorting the mail, banking and organising the brochure stand. Toula Gronthos is the newsletter assistant. Toula squeezes the EDO in between different paid jobs to give us a hand with desktop publishing.

## FIRST BIRTHDAY DRINKS

Thank you to all those members who came to celebrate the first birthday bash of the Environmental Defenders Office (SA). A lot of work and support has been necessary to get the EDO up and running and now that it is running we intend to keep it going. It was good to see many members at the celebration all showing their strong support a year down the track.

## DONATIONS

Consider the environment then consider the EDO and put your donation to good use. The EDO advises not only individuals but also residents groups and conservation groups such as the Conservation Council (SA) and the Australian Conservation Foundation (SA) on environmental law.



*'Here's Maria Ruez, it must be Tuesday!' Maria has been coming on Tuesday afternoons to the EDO since October 1996. Her understanding of legal practice and her clerical ability is a terrific combination. Maria gives invaluable assistance and it's great to have her on the team.*

## EDO NETWORK CONFERENCE

This month the EDO network is getting together in Sydney to discuss the topics that concern all the EDOs. James Blindell will represent SA at the conference.

## New Computer Monitor needed

We need a new monitor for one of our IBM compatible computers. The one we have is a bit fuzzy, so if you have one lying around give us a ring.

## Pulling the Chain -

# A Review of Legislative impediments to innovative Domestic Waste Control Systems

This article is a summary of the EDO submission to the Review of Water Services Legislation and also the Draft Guidelines for the use of Recycled Water in South Australia. Both reviews are expected to be completed later this year.

### Introduction

The original purpose of this study was to identify the legal, bureaucratic and financial impediments to new environmentally-friendly domestic waste control systems.

With the pong from Bolivar still hanging heavy in the air over Adelaide, the time seemed ripe to release this report to a range of government working parties currently investigating water and sewerage law reform.

The EDO took advice from clients and others working in the field and a common story began to emerge. That is, that the maze of bureaucratic red tape and associated financial penalties means that many prospective water recyclers in South Australia are giving up their plans for environmentally-friendly waste control in the

home and sticking with the easy option - the metro sewerage system.

For most of this century, emphasis on public waste control has been the principal reflection of public health policy seeking to improve the base health standard in society.

In particular, deep drainage in urban areas has been seen as the major contribution to public health. Only where human occupation densities are low in rural and urban fringe locations, and public infrastructure provision costs high, has on-site waste control been considered acceptable.

In both urban and rural locations, the traditional emphasis has been on removal of waste as a hazard. Only in recent decades has the resource value of portions of the waste stream been acknowledged, principally in relation to a growing environmental ethic abhorring environmental damage from human activities and resource wastage.

Whilst not every home will have the space to adequately treat or use "wastewater" on site, the advantages for those properties that can, include:

" Return of waste to the local environment in a beneficial and controlled form;

" Reduction in the demand for potable water;

" Reduced load on communal sewerage facilities in terms of both volume and contaminants;

" Reduction in discharges of waste to the marine environment;

" Encouragement of individual responsibility towards waste.

As well as taking pressure off our ailing sewerage infrastructure, the EDO's recommendation will also help the marine environment by reducing discharges of treated effluent to the Gulf. These discharges have been implicated in the massive decline of sea grasses in Gulf St Vincent and elsewhere in South Australia.

The EDO Report contains a number of recommended changes to government policy and to relevant legislation (including the Sewerage Act and Regulations and the Public & Environmental Health Act and associated Waste Control Regulations).

### EDO Recommendations included:

1 Legislative acknowledgment of the difference between "greywater" (from bathrooms, kitchens and laundries) and "blackwater" (from toilets). Currently all "used" water is legally regarded as wastewater even though the distinction between different grades and uses of wastewater is now well and truly acknowledged around the world.

2 Promotion and encouragement of recycling and re-use of greywater in urban environ-

ments. Currently, the attitude of most authorities is to treat with great caution anyone who tries to do things differently. Whilst this impediment is social and institutional in nature, there is clearly room for a legislative response in terms of the Objects of water and sewerage legislation.

3 Streamlining the approval process for new "alternative" waste control systems. Currently, every second agency seems to have a finger in the pie. Local Council planners and environmental health officers, South Australian Health Commission officers and SA Water officers all have statutory responsibilities for wastewater management.

4 SA Health Commission to actively seek out and promote new "alternative" technologies with domestic application. Currently, the onus is on householders and their architects or builders to satisfy health authorities of the safety of proposed new systems. This means that the impediments can become daunting, particularly for technologies that haven't before been used in this State. The EDO believes that our public authorities could reduce some of this burden by pro-actively taking on the task of approving new and emergent technologies.

5 Removal of SA Water's right of veto over sewer disconnections. If the sewer goes past your property, SA Water must give their approval for customers or potential customers to disconnect. It is likely that SA Water would make such

a decision on economic grounds rather than public or environmental health grounds. It is also possible that the outsourcing of water services to private contractors could also be an encouragement to keep as many customers connected to the sewerage network as possible.

6 Full rebates on sewerage rates for properties not connected to sewer. (Currently, the maximum rebate is 50%). Users of alternative waste technologies have to pay SA Water rates as well as the maintenance costs for their on-site system. This is reported to be a major disincentive to householders unplugging from the sewer.

7 Partial rebates of sewerage rates for properties with a "blackwater only" connection to sewer;

8 Exemption from capital contributions for properties not connected to sewer and a relaxation of reporting requirements for such properties (currently every 3 months).

9 Partial exemption from capital contribution for "blackwater only" connections. Many users may choose to continue to use the sewer for toilet waste, but to treat and re-use their bathroom, laundry and kitchen wastewater on-site. Given the clear benefits to society and the environment of removing water that is only slightly contaminated from the sewerage system, the EDO believes that financial incentives should be provided.

10 Incorporation of domestic greywater recycling and re-use into the South Australian Reclaimed Water Guidelines.

11 Relaxation of water quality required for recycled water used in toilet flushing and domestic drip irrigation. Generally, water that comes into regular direct contact with humans would need to be of a higher standard than non-contact water. The Draft South Australian Reclaimed Water Guidelines suggest that only "Class A" reclaimed water should be used for non-potable residential uses including:

- " garden watering
- " car washing
- " path / wall washing
- " toilet flushing

The EDO believes that this standard may be too high for some uses such as toilet flushing or domestic drip irrigation systems. For these non-contact uses, the lower "Class C" water should be permitted.

Finally, it is important to note that the vast majority of water re-use and recycling in domestic situations is "informal" and probably illegal. Any mandatory standards for water re-use that are developed in the future should approach the issue from a perspective of encouraging re-use and recycling, rather than imposing unrealistic standards that are unlikely to be observed.

Mark Parnell

*Special thanks to Gavin Brosche & Emilis Prelgauskas who undertook much of the research for this project.*

# GREENLAW

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The GREENLAW newsletter has been  
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## MEMBERSHIP FORM

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

I wish to join the Environmental Defenders  
Office (SA)

Name.....

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New Membership

Renew

My fee of \$10 pa (\$50 corporate) is enclosed.

Donation \$.....

Total \$.....

I am interested in volunteer work: Legal/  
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