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# May 2002 (no. 15)

## GREENLAW

NEWSLETTER OF THE ENVIRONMENTAL  
DEFENDERS OFFICE (SA) Inc.

May 2002: No 15

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### Welcome [\[Back to Contents\]](#)

Welcome to the May edition of Greenlaw, the newsletter of the South Australian EDO. This edition of Greenlaw is our first electronic newsletter, so if you have received this in hard copy and would prefer to receive it via e-mail, then just drop us a line to [edosa@edo.org.au](mailto:edosa@edo.org.au) and we'll put you on the e-mail distribution list.

### Feedback [\[Back to Contents\]](#)

We are interested to know what kind of newsletter our members are interested in. Our intention is to keep you informed about the work of the EDO including case files of interest, publications, policy work and other new developments in environmental law. What else would you like to see? One of the advantages of an electronic newsletter is that we can incorporate links to other topical sites such as Draft Bills and Discussion Papers or our conservation group clients' web sites. Also we'd like to know if you prefer one or two pages by e-mail every month or so, or a more comprehensive newsletter two or three times per year. Please drop us a line to [edosa@edo.org.au](mailto:edosa@edo.org.au).

### EDO 10th Birthday [\[Back to Contents\]](#)

Don't forget our 10<sup>th</sup> birthday celebration at the Criterion Hotel, 5.00pm Friday 21st June 2002. We would love you to join us in celebrating this important milestone.

## **A potted history of the EDO** [\[Back to Contents\]](#)

On World Environment Day 1992, a small group of environmentalists and lawyers gathered at the Bowden Brompton Community Legal Centre to officially launch a new free service aimed at helping people to use the law to protect the environment.

From humble beginnings with no money, no staff and no office (but plenty of enthusiasm), the Environmental Law Community Advisory Service (ELCAS) has now transformed into the Environmental Defenders Office (SA) Inc. (EDO) - South Australia's only public interest environmental law service.

In its early days, ELCAS was a simple roster-based service where volunteer private lawyers gave their time to dispense free legal advice to the public from borrowed premises on Thursday evenings. Despite now having its own premises and two paid staff, this aspect of the service is still going strong after 10 years. In fact many of the original ELCAS lawyers from 1992 are still volunteering their time to the EDO in 2002. So much for the entire stereotype jokes about greedy and selfish lawyers!

The main transition from a small voluntary community group to a fully fledged legal office, came in 1996 with the Federal Government's "Access to Justice" package of funding. This program acknowledged that people and groups concerned about environmental problems had no access to traditional legal aid and little access to any other type of legal service (unless they were wealthy enough to afford \$200 per hour or more for a private solicitor).

To meet this need for "Green Legal Aid", an Environmental Defenders Office was established in each State and Territory. The funding for South Australia was awarded to ELCAS and the name was changed shortly afterwards to the EDO - to bring it into line with the 8 other EDOs around Australia. Despite a change of Federal Government in 1996, this Commonwealth Legal Aid funding has been continued for the last 6 years and been supplemented with State Environment Department funding as well as private tax deductible donations and other fundraising.

Whilst the EDO is still too young to have a "Hall of Fame", we would like to acknowledge the following people and organisations who have provided long service or made key contributions at critical stages of the EDO's development over the last 10 years.

### **EDO Firsts** [\[Back to Contents\]](#)

#### **Early "mover & shaker"**

Rob Fowler for his "National Environmental Law Firm Proposal" 1991 which helped in the development of the current EDO National Network

#### **Founding members**

Marcus Beresford, David Cole, Rob Fowler, Brian Hayes, Paul Leadbeter, Stephen Lieschke, Mark Parnell, John Scanlon, Felicity Tepper, Christine Trenorden, Penny Wright

#### **Early political supporters who helped ensure public funding of the EDO**

Peter Duncan (C'th)

David Wotton (State)

**First funding bodies**

1992 Environmental Law & Policy Unit, Adelaide University (\$5,000) and National Environmental Law Association (SA Division) (\$5,000)

**First recurrent funding**

1994 SA Dept of Environment & Natural Resources (\$10,000 pa for three years)

**First (and only) EDO Life Member**

2001 - David Cole (even though he voted against our change of name!)

**First honorary co-ordinator**

1992 - Penny Wright

**First paid co-ordinator**

James Blindell (1 day pw)

**First office**

1992 - Bowden Brompton Community Legal Centre, Green Street, Brompton

**First real office**

1996 - The back storeroom / kitchen of David Cole & Associates, Hutt Street.

**First (and only) administrator**

1996 - Chris Hales

**First staff solicitors**

1996 - James Blindell & Mark Parnell

**First item of office equipment purchased**

A 12 cup coffee plunger

**EDO Milestones, Memories & Magic Moments** [\[Back to Contents\]](#)

**Official Launch**

Hon Chris Sumner, Attorney-General 1992

**EDO Chairpersons 1992 to present**

Paul Leadbeter, David Cole, John Scanlon, Mark Griffin, Rob Fowler

### **Most prolific client**

Conservation Council of SA (220 files and advice records)

### **Most unconscionable client**

Animal Liberation (for wearing allegedly defamatory T-shirts in the Supreme Court) (2001)

### **Most lucrative client**

Animal Liberation for securing \$8,000 costs in the battery hen injunction case (2000)

### **First ELCAS Litigation Assistance**

Kangaroo Island native vegetation private prosecution; Sellicks Cave destruction; Port Augusta boat ramp.

### **First EDO Litigation**

Will Vandenberg (and other Victor Harbor residents) fighting inappropriate coastal development. (1997)

### **Most memorable judicial quotes**

"So, Mr Parnell, you're a lawyer are you?" Burley J. during an unsuccessful application. (2001)

"Of course chickens are part of the environment!" Kelly J. during a successful application (2001)

"Mr Blindell, this is a most inappropriate application!" Bowering J. (1998)

### **Biggest waste of time**

James Blindell seeks to explain the moral dimension of toxic pollution to corporate lawyers from the big end of town.

### **Most subtle judicial hint**

Doyle CJ: "Mr Parnell, I think that Mr Hayes has already covered that issue".

"Yes your Honour, but I just wanted to add a few points"

"Don't - you might mess it up!"

"Thank you your Honour, I have nothing more to add." (2000)

### **Most enlightened judicial listing decision**

Trenorden J. setting hearing dates so as to avoid conflicting with Eden Hills Playgroup. (1999)

### **Best investment**

Forgetting to tell NELA that we had a dozen bottles of their wine

### **Worst investment**

Allowing some of the wine to go off before we could drink it.

### **Best fundraiser**

BMW raffle (c.\$40,000 profit)

### **Worst fundraiser**

Dinner at the Terrace Hotel (but at least we got our deposit back)

### **EDO fundraising idea destined to never get off the ground**

James Blindell's Karaoke Night

## **The Law of Protest in South Australia** [\[Back to Contents\]](#)

The EDO is pleased to announce the availability of its latest publication aimed at all those who engage in public debate or action over pressing environmental or social issues. Written for the general public, the Law of Protest covers both civil and criminal consequences of various types of community action, from writing letters to organising demonstrations, Picketts and boycotts.

Designed to fit neatly into the hip pocket, this guide is a must for all those who dare to speak out.

Copies are available from the EDO for \$5 posted. We gratefully acknowledge the support of the Conservation Alliance in funding part of the cost of production.

## **Protection of Public Participation Act for SA?** [\[Back to Contents\]](#)

The EDO is embarking on a major law reform campaign to protect the rights of citizens engaged in public debate and non-violent protest action on environmental and social justice issues. It is hoped that the campaign will culminate in a Protection of Public Participation Act for South Australia.

The proposed Act aims to prevent environmental campaigners from being sued for damages arising out of the exercise of free speech and other peaceful campaign methods such as protests and boycotts. The Act would create a statutory right of public participation that is enforceable through the Courts and can be used to prevent actual or threatened SLAPP suits (Strategic Litigation Against Public Participation).

The EDO has recently produced a discussion paper and draft Bill. Contact the Office if you would like a copy. Also, a special meeting has been set for World Environment Day (5<sup>th</sup> June) to develop strategies for refining and advancing this important law reform agenda.

The meeting will be held at the Environmental Defenders Office, 1<sup>st</sup> floor, 408 King William Street, Adelaide on Wednesday the 5<sup>th</sup> June at 5:30pm. If you wish to attend this meeting or otherwise contribute to this important campaign, please contact the EDO

on [edos@edo.org.au](mailto:edos@edo.org.au) or ph: 8410 3833.

## **EDO Case work** [\[Back to Contents\]](#)

Since our last newsletter, we have provided hundreds of advices to clients on a wide range of issues. We have been most pleased by the outcome of a number of ERD Court merits appeals where we assisted our clients to represent themselves. These have included petrol stations at Brighton and Jamestown and vineyard developments in the Adelaide Hills.

Where possible, the EDO prefers to help clients represent themselves, however in complex public interest matters, the EDO provides on-going advice and (in a small number of cases), representation in Court. The EDO is still hamstrung to a certain extent by our inability to use Commonwealth or State funds for litigation. These sources provide 90% of our funding, which means that our "untied" litigation resources are limited.

### **Coastal issues**

Over the last year or so, the EDO has been devoting an increasing amount of time to groups and individuals seeking to stop inappropriate coastal development. These have included boating facilities and marinas proposed for various bays around the SA coastline. Two of these, at Victor

Harbor and Beachport have been axed without the need for litigation. In relation to Beachport, the EDO has sent bouquets to Minister Hill and Coast Protection Board and a brickbat to the SA Recreational Advisory Committee.

The EDO is also assisting some local Coffin Bay residents who are opposing an "International Health Clinic" and residential subdivision on 25 acres of high quality coastal native vegetation on the outskirts of the township. This matter has been adjourned at the developer's request until September.

### **Pollution**

Earlier this year, the EDO represented the Linear West Residents Committee in an attempt to be joined to a foundry (Hensley Industries) appeal against an Environment Protection Order issued by the EPA. Whilst the residents were not officially joined to the case, they were granted "observer" status at the conference and were able to support the EPA's efforts to try to reduce local air pollution which has plagued residents for many years. Following a deal between the company and the EPA, the company's appeal was dismissed, however the matter could end up back in Court if the foundry has not improved its performance by July.

### **Battery hens**

One of our most dedicated, persistent and effective clients has been Animal Liberation. The EDO first became involved with this group following the grant of an injunction in favour of a battery hen farmer attempting to stop the broadcast of video footage taken by the group during a "late night uninvited farm visit". The EDO determined that the matter fell within our public interest guidelines and we subsequently were successful (with costs) in having the injunctions lifted. Animal Liberation and its office bearers are now being pursued for damages by the chicken farmer for various losses alleged to have resulted from the adverse publicity. It is no secret that this skirmish is part of a wider political debate about the future of battery hen farming.

Whilst the EDO is no longer acting for the group, we have observed with interest how lay clients (no pun intended) are able to deal with a well-resourced opponent. So far, the matter has included defamation, contempt of court, a private prosecution and various interlocutory proceedings that have tested the legal skills and patience of all involved, not to mention their understanding of obscure Latin defences. New legal concepts that have already arisen from the case include the "Groundhog Day Strategy" and the "Balls of Steel Strategy". Watch this space for more instalments or visit the Animal Liberation web site.

## **Feature article: The bookmark collection - Top 12 Internet sites used by the EDO solicitor** [\[Back to Contents\]](#)

As a student at Melbourne University in the 70s, I managed to get through the first year or so of law school without setting foot in the law library. Whilst my professed fear of leather-bound books was in fact pure sloth, it is certainly possible these days for even the most conscientious student to avoid the library and still do all the research needed to get top marks. The simple reason for this is that so many legal resources are now on the Internet and can be accessed from virtually anywhere.

At the EDO, we make the most of our ancient heritage-listed computers and troublesome dial-up connections and conduct most of our legal research via the Internet.

The list of web sites below is just a sample of those we use and why. Of course for those with more money, there are numerous "value-added" services from legal publishing houses (eg. Butterworths, LBC etc.) that makes life even easier. The list below is confined to free resources.

Mark Parnell

EDO Solicitor

### **National EDO Network**

<http://www.edo.org.au/>

The entry point for all the home pages of the 9 EDO offices around Australia.

### **Australasian Legal Information Institute**

[www.austlii.edu.au](http://www.austlii.edu.au)

Once a leader in its field, the Australasian Legal Information Institute has struggled to maintain currency with its vast array of legal databases. This is still the only site to carry decisions of the SA Environment Resources and Development Court. The cases may be several months behind and not every decision is reported, but it is useful to be able to electronically search for key words in ERDC decisions of the last 4 years. The EDO has asked the SA Courts Administration Authority to consider hosting ERD Court decisions on its own website.

### **Scaleplus**

<http://scaleplus.law.gov.au/>

This is the Commonwealth Attorney-General's law site and until recently, this was my favourite legal information site. The best feature of the site is an automated notification

service. On request, you can be notified by e-mail whenever new material is added to the database. At present, this includes Supreme Court decisions, but previously included all SA Acts and Regulations. We are now lobbying the keepers of the SA Parliamentary web site to implement a similar "notify me when" service for legislation. Such a service can save the EDO thousands of dollars in library costs.

## **SA Parliament**

<http://www.parliament.sa.gov.au/>

The two main uses of this site are the on-line Hansard and a fairly up to date database of SA Acts and Regulations. Since the scaling down of "Scaleplus", this has become the main site for SA legislation.

If you have a few minutes to spare, why not key your name into the Hansard search engine and find out if you've been "mentioned in dispatches" or defamed under Parliamentary privilege!

This site has great scope for future improvement. In particular, it would be great to see the Hansard reports of the Environment Resources & Development Committee and the Legislative Review Committee. Currently, only the Estimates Committee is available.

## **Legal Services Commission - Law Handbook**

<http://www.lawhandbook.sa.gov.au>

This site was launched on 14<sup>th</sup> May and comprises an updated on-line version of the popular Law Handbook. The site is free, but requires you to register by providing non-identifiable information. One of the employment categories you can nominate on the registration form is "Attorney General"! The Law Handbook is a useful starting point for those areas of law where "you haven't got a clue". Whilst not often seen on the bar table, you can be assured that the top silks usually have one not too far away. The chapters on environment and planning were written by the EDO solicitor.

## **Planning SA & the DAC**

<http://www.planning.sa.gov.au/>

This is where to go if you can't afford the \$1,920 annual subscription to the CD-ROM version of the Development Plan for South Australia. As well as being able to read on-line or download the Development Plan to your computer, there is other useful information including Plan history and the current status of PARs.

The site offers access to a wide range of publications and links to the Development Assessment Commission web site –<http://www.planning.sa.gov.au/dac/>. This site provides information about DAC, its members and committees, operating procedures and when it will hold meetings. Access is available to the agendas and minutes of the meetings. Agendas are available on-line on the Monday before the scheduled meeting and minutes are available after being confirmed by DAC. Attachments, which include application plans and details, reports from Councils, reports from referral agencies and representations, are available on the 5th Floor at Roma Mitchell Building 136 North Terrace, Adelaide. Publications available on-line include "What is the Development Assessment Commission?", "Development Assessment Commission - Operating Procedures" and "How does the Development Assessment Commission Conduct Hearings".

## **SA Government Gazette**

<http://www.governmentgazette.sa.gov.au>

Whilst not everybody's first choice for bed-time reading, the Government Gazette is vital to keep track of those pesky proclamations that are made under various bits of legislation. The database is searchable but slow. PDF format is used to keep the electronic copy true to the paper original. Type your name in the search engine and see if you've been appointed to any lucrative government committees!

## **SA Central**

<http://www.sa.gov.au>

This is the entry point to SA government departments and agencies. The site is massive, but generally easy to navigate around. It is useful for finding organisational structures or publications outlining agency functions and processes. The most common sites I visit are the EPA, DEH and Primary Industries (I can never remember the new names).

It is also a useful site for finding Ministerial Press Releases. The EDO often gets calls from members of the public reacting to environmental issues on the news. We find that it helps to go to the source of any new policy announcements rather than relying on the media's interpretation of what the Minister said.

## **Conservation Council of SA Inc.**

<http://www.ccsa.asn.au>

The State's peak non-government environment group is the EDO's most important and regular client. With around 60 member groups, the Conservation Council is the main voice for the community conservation sector. On this site you can read the latest media releases and find out why they were sued for opposing the Hindmarsh Island Bridge. Learn about upcoming events, research projects and campaigns and what is publicly available through the CCSA Library. During election periods, the site also provides reviews of important environmental developments and party policies.

## **WWF / HIS EPBC Unit**

<http://www.wwf.org.au/default.asp?p=../epbc/index.htm>

The new Commonwealth environment laws are still a mystery to many lawyers. The resources on this site should answer all your questions. There are also links to the official government site where you can track the status of referrals and declared "controlled actions". There is also a free notification service available on request.

The site provides access to on-line fact sheets concerning animal welfare and conservation programs.

## **South Australian Annotated Development Act**

<http://www.law.adelaide.edu.au/publishing/saada/saada.html>

Despite its fraudulent launch in hard copy form some years ago, (the folders were there for the media cameras, but the content was still at the printers!), this Adelaide University publication is possibly the most useful resource for lawyers and lay folk preparing

planning appeals in the ERD Court. As its name implies, the publication consists of the Development Act (& Regulations) annotated with summaries of cases from the ERDC and Supreme Court dealing with different aspects of planning law. The index will quickly point you to all the important cases dealing with, say, funeral parlours or piggeries near residential areas.

Currently, the paper version is more up to date than the on-line version, but the advantage of a downloaded version is that it can be searched electronically.

### **Adelaide Morris-men**

<http://rsc.anu.edu.au/~pdc/Ozmorris/AMM/index.htm>

Important information about morris dancing in Adelaide.

## **Recycling used toner bottles and cartridges** [\[Back to Contents\]](#)

The EDO has recently established itself as a recycling centre for used photocopier and laser printer cartridges and bottles. Now, instead of going to landfill, these can be re-used or recycled into plastic posts and park benches. This FREE recycling service is run by Corporate Recycling, who will provide a plastic lined box and arrange collection. To get involved, ring Louise Stewart of Corporate Recycling on 8340 4500 or simply drop your old cartridges and bottles to the EDO office when next you are going past.

## **Acknowledgments** [\[Back to Contents\]](#)

Articles - Mark Parnell

Layout - Emmalene Gottwald

**EDO offers 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.

**EDO (SA)** office: 1st floor,

408 King William St, Adelaide.

Postal address: GPO Box 170, Adelaide,

SA 5001.

Phone: (08) 8410 3833

Facsimile: (08) 8410 3855

E-mail: [edosa@edo.org.au](mailto:edosa@edo.org.au)

Country freecall: 1800 337 566

Web site: <http://www.edo.org.au>

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