



## **Guidelines for assistance**

This information sheet explains the criteria used by the Environmental Defenders Office (SA) Inc. ("EDO") in deciding whether or not we are able to assist clients and if so, what level of assistance is appropriate.

### **Who is eligible for assistance?**

The EDO's charter emphasises "Public Interest" environmental law. This means that the EDO may decline to assist prospective clients who are:

- seeking to avoid their environmental responsibility; or
- involved in environmentally-damaging activities; or
- being prosecuted for criminal offences under environmental law; or
- facing civil enforcement action by public authorities for breaches of environmental law.

In addition, most appeals by applicants for development approval (developer appeals) fall outside our charter and are referred to appropriate private lawyers. Also, minor neighbour disputes (eg. fencing disputes, noisy air conditioners & barking dogs) are referred to other agencies such as Neighbourhood Mediation Centres.

As a law office, we are bound by rules governing "conflict of interest". This means that we will also decline to assist prospective clients where the opposing party is an existing client.

The EDO will assess any requests for assistance on a case by case basis including an assessment of the merits of the matter, public interest credentials and any existing or potential future conflict situation. Where the EDO cannot assist, referral to private lawyers or other services is offered.

## **PRELIMINARY ADVICE**

Wherever possible, individuals or groups who approach the EDO for advice on matters of public interest environmental law will be assisted with one free interview of up to 30 minutes with a rostered volunteer lawyer at the evening advisory service.

Non-metropolitan clients or those with access disabilities will be provided with telephone advice when possible.

Where it is clear that a matter involves purely private interests (rather than the public interest), then clients will be referred to appropriate private lawyers.

## **THE EDO ONLY PROVIDES ON GOING ASSISTANCE FOR "PUBLIC INTEREST" MATTERS**

Whether or not a matter involves the "public interest" is a question to be answered on a case by case basis. However, set out below are a number of criteria that the EDO will consider when deciding this question.

a) Is there community concern / involvement?

Whilst the EDO will not automatically refuse to represent a person acting on their own, the fact that people have formed a community group is evidence of some community concern and increases the likelihood that we will be able to help.

b) If successful, will the client obtain any personal benefit, particularly financial benefit?

The private benefit will need to be weighed up against any identified broader public benefit that might flow from a successful result. For example, saving local bushland from development may benefit adjoining property owners as well as the general community.

c) If successful, will the result substantially affect amenity, public use or enjoyment of the environment?

The issue may impact upon local, state, national or international communities. It may involve health concerns, amenity concerns (noise, dust odour etc.). It may impact upon the social and cultural needs of the community.

d) Does the case relate to issues which have a significant impact on the environment?

All human activity impacts on the environment to a greater or lesser degree. We are most interested in using our scarce resources for cases where a significant impact is involved.

e) Does the case involve the way in which a decision was made or the right of the community to defend the environment?

Government bodies in reaching decisions that impact upon the environment must follow certain administrative procedures and principles. A failure to do so may make the decision invalid.

In addition, under some environmental legislation, the decision-makers must involve the community in the decision-making process. A failure to do so may provide an opportunity for the decision to be reviewed. The community also has certain rights to access information which may need to be enforced in the "public interest".

In some circumstances, the community can take action to enforce compliance with environmental legislation when the relevant government authority has failed to do so.

### **PROSPECTS OF SUCCESS**

There must be a reasonable (more likely than not) prospect of desirable outcome in terms of environmental protection/conservation/enhancement.

If mounting a test case, prospects of success may be difficult to estimate.

### **EDO RESOURCES AVAILABLE**

The EDO will always ask itself whether it has sufficient resources or access to resources to ensure that the case is handled competently.

It would be professionally negligent to stretch resources to the extent that clients were not receiving adequate representation. Where only limited assistance can be given, we will make that clear to clients at the outset.

### **PRECEDENT VALUE**

Does the case raise issues that could set important precedents in environmental law?

This may influence the EDO to take on a case that has relatively low environmental value but potentially high precedent value.

### **EDO PRIORITY**

Does the case fall within any of the priority work areas identified in the annual EDO Strategy Plan?

Each year the EDO reviews its activities and sets priorities for the following year to ensure that its resources are focused upon issues of highest environmental value.

### **SELF HELP**

Due to the limited resources available to the EDO, our clients will need to help the EDO with case preparation, such as finding appropriate witnesses and materials.

Undertaking litigation is costly not only of money but also of time. Groups and individuals need to consider whether they can make the time available before commencing court proceedings.

The EDO reserves the right to cease acting as solicitor on the record at any stage during a court action. This would only happen in special circumstances such as the prospects of success no longer being reasonable, the EDO discovering that the client is not motivated principally by the public interest or the resources of the EDO are overextended. If such a situation were to arise, the EDO would refer clients to appropriate private legal firms to take over the case.

Is there a means test?

The EDO does not formally assess the means (or financial resources) of clients. You do not have to be poor to receive assistance. It is expected however that clients will use the services of private lawyers where the dispute involves mainly private or personal issues (eg. concern about private property values).

The EDO does not charge legal fees for advice or representation. However, donations towards the cost of running the EDO are welcome and are tax-deductible.

What assistance does the EDO provide?

The primary service offered by the EDO is the provision of free legal advice to individuals and groups. This advice may include:

Understanding ERD Court processes and procedures;

Appropriate types of legal action and how to bring them;

Advice on specific environmental laws such as the Development Act or Environment Protection Act;

How to represent yourself at an ERD Court conference or hearing; or

How to prepare your case.

In most cases, this service is provided on behalf of the EDO by experienced solicitors from private law firms in Adelaide or by suitably qualified public sector or academic lawyers. Face to face consultations are usually limited to 30 minutes. Telephone advice may be available for urgent matters or country clients who are unable to attend in person.

Does the EDO represent clients in court?

Generally, no. In exceptional circumstances, representation may be available to conservation groups and individuals involved in major public interest cases. On average, the EDO only represents clients in 1 or 2 cases each year.

What does it cost?

Clients are required to pay a \$50 administrative fee ( \$25 concession) and we will ask you for a donation. Donations are tax-deductible. If a client is referred to a private lawyer then the client will almost certainly have to pay the private lawyer's fees.

### **Evening Advisory Service**

How do I make an appointment?

The EDO advice service is held on various week night evenings. An appointment must be made in advance by telephoning the EDO on 8359

2222 (or SA country Freecall 1800 337 566) during office hours. Appointments are made on a first-come first-served basis. When making an appointment, you will be asked questions about the nature of the dispute and the names of the other parties. This is to enable us to identify whether the rostered volunteer lawyer has a "conflict of interest" (eg. he or she may already act for the relevant local council or one of the other parties involved in your dispute).

What should I bring to my appointment?

You should bring all relevant paperwork, including copies of Court documents, Development Applications or Decision Notification Forms "DNFs".

Can I make further appointments as my case progresses?

The EDO will assess on a case-by-case basis whether clients will be provided with ongoing assistance. The EDO gives priority to public interest cases and matters where clients are representing themselves in Court with the aim of protecting the environment.

EDO contact details

In addition to the details below - visit our web site: <http://www.edosa.org.au> for the latest information on EDO activities or information guides to areas of environmental law.

REMEMBER:

APPOINTMENTS ARE NECESSARY. Ph: 8359 2222 or 1800 337 566