

Environmental and Planning Law



Melissa Ballantyne, Solicitor
Environmental Defenders Office

The logo of the Environmental Defender's Office (EDO) is located in the top left corner. It features a stylized figure holding a scale of justice, with the letters 'EDO' below it.

The Environmental Defender's Office SA

- Community legal centre specialising in public interest environmental law including:
 - planning, pollution, biodiversity, heritage, natural resources management & public health
 - legal advice & some representation
 - law reform & legal education
- Aim: To empower the community to protect the environment through law



How the EDO operates

- Non profit
- Managed by a committee selected by its members
- State wide
- Paid & unpaid staff
- Free initial advice generally
- Ongoing cases:
 - The matter involves a public interest environmental issue
 - The matter involves a real threat to the environment
 - The EDO has the resources to properly advise you
 - The matter has reasonable prospects of success



Environmental Advocacy

- A range of advocacy tools are required for effective community involvement in environmental decision-making.
- For example:
 - Submissions, letters and petitions
 - Meetings with the decision-maker
 - Public meetings
 - In the media and on the internet
 - Fact-sheets and posters
 - Non-violent direct action protest

Defamation





DEFAMATION

- Common Law
- SA Defamation Act:
 - Defamatory conduct on or after 1 January 2006
 - Court considers:
 - Publication took place in SA
 - Place of residence of plaintiff
 - Most alleged harm in SA
 - Extent of publication elsewhere
 - Corporation can only sue if:
 - Objects – not for financial gain
 - Less than 10 employees
 - Note: employees can sue in own name
 - Note: Companies can rely on Trade Practices Act



DEFAMATION

- **Elements:**
 - defamatory comment:
 - likely to discredit plaintiff's character or reputation (includes innuendo)
 - in the eyes of reasonable person
 - regarding the plaintiff
 - published
 - no defence
- Note: no need to prove actual injury to reputation



DEFAMATION: Defence

- **Defence: Justification – Truth**
 - defamatory statements are substantially true
 - substantially true means:
 - true in substance or
 - not materially different from the truth
- **Defence: Contextual truth**
 - more than one defamatory imputation
 - one or more are substantially true
 - no further harm caused by defamatory imputations because of substantial truth of contextual imputations



DEFAMATION: Defence

- **Defence: Absolute Privilege:**
 - publication in the course of proceedings by:
 - parliamentary body or
 - Australian court
- **Defence: Publication of Public Documents:**
 - the above material is contained in public document or an extract from public document
 - defence defeated if not published:
 - honestly for the information of the public or the advancement of education



DEFAMATION: Defence

- **Defence: Fair report of proceedings of public concern**
- Defence if:
 - material is contained in published report e.g. proceedings of a parliamentary body or court
- Also Defence if:
 - material was contained in published report; and
 - material was contained in fair copies, summaries & extracts from an earlier published report
 - no knowledge that earlier report “not fair”
- Defence defeated if:
 - not published honestly for the information of the public or the advancement of education



DEFAMATION

- **Defence: Qualified Privilege**
- Recipient had an interest in having the information
- Material is published to the recipient in the course of giving the recipient information on that subject
- Conduct of defendant reasonable. Will consider for example:
 - if public interest
 - seriousness of defamatory imputations
- Can be defeated if plaintiff proves that publication was motivated by malice
- Not defeated merely because published for reward



DEFAMATION

- **Defence: Honest Opinion**
- An expression of opinion rather than a statement of fact
- Matter of public interest
- Opinion was based on proper material i.e. material that is:
 - substantially true
 - was published on an occasion e.g. where absolute or qualified privilege applies or
 - published in fair report
- Defeated if proved that the opinion was not honestly held by the defendant



DEFAMATION

Defence: Innocent dissemination

Defendant:

- published the material as an employee or agent of a distributor
- did not know material was defamatory and should not have reasonably known
- lack of knowledge wasn't due to negligence

Defence: Triviality

- Plaintiff is unlikely to sustain any harm
- Actual harm need not have occurred
- Must disregard previous circumstances



DEFAMATION

- **Offers:**
 - Must be in writing
 - Readily identifiable as an offer
 - Any limitations must be clear
 - Must include an offer to publish a reasonable correction
 - Must agree to advise those who received the material initially
 - Must include an offer to meet plaintiff's reasonable expenses to date and in considering the offer
 - May include other offer to redress harm, eg: an offer to publish an apology or pay compensation
 - Time limit – 28 days of Concerns Notice
- Offers affect costs orders



DEFAMATION

- **Remedies:**
- Damages or compensation for harm sustained to the reputation of the plaintiff
- Defamation Act - there is a maximum limit of \$280,500 for non-economic loss
- Aggravated damages
- No punitive or exemplary damages
- The defendant's state of mind is generally irrelevant



DEFAMATION

- **Costs**
- Court may consider how case conducted
- Example: not reasonably engaged in settlement negotiations
- **Time Limits**
- Defamation Act – 1 year but extensions are possible in certain circumstances



DEFAMATION

- **Summary:**
 - Many corporations are now unable to sue but employees still can
 - Corporations have other actions they can use e.g. action under the Trade Practices Act
 - Defences are now uniform across Australia
 - Some defences have been modified & some are new
 - New procedure for making pre-action apologies



DEFAMATION

- **Precautions:**

- Don't make sweeping statements & generalisations
- Check facts & report correctly
- State if something is an opinion
- Make it clear if comments are a response to statements made by another
- Fight the issue, not the personality
- If statement about a company, don't refer to individuals within the company
- Obtain legal advice before publication

Community Campaigns & the Law





Incorporating Associations

- A community group should incorporate
- Separate legal entity – can sue and be sued
- Gives best protection (not necessarily complete protection) to individuals re:
 - defamation
 - costs (but note personal interest)
 - management of group



Lobbying

- Focus on one issue
- Research and support your issue
- Articulate what result you want
- Be honest
- Worked out a clear, well defined strategy
- Know the decision-making processes
- Know the relevant decision-makers
- Track your issue



Lobbying

- Telephone
- Letters
- Face to face meetings:
 - Identify yourself, your organisation, and briefly explain your issue.
 - Thank him/her for taking the time to see you
 - Be friendly and polite
 - Don't be disappointed/surprised if your appointment is with another person.
 - Clear message
 - Identify what action you want taken and why
 - State why the decision-maker should take your position



Lobbying

- Use facts and supporting evidence
- Be prepared for questions
- Be willing to negotiate or compromise
- Be prepared for rejection
- Listen to the decision-maker's view
- Recognise anything they have already done for your issue
- Establish that they clearly understand your objectives
- Ask for a firm commitment for action
- Stay friendly even if a staff member/ decision-maker expresses opposition to your view
- Look for similar groups who share your position and can help you lobby.
 - Allows you to share information and expertise
 - Provide practical and moral strength



Media

- Essential to convey a simple message.
- Timing is important - take advantage of events, opportunities.
- Pro-active, not reactive
- Know your target audience
- Be friendly with the journalist you will be dealing with
- Defamation risk
- Media releases
 - One page maximum
 - Catchy headline
 - Angle in your first paragraph
 - Quotes from your spokesperson
 - Contact details
- Interviews techniques:
 - Be prepared
 - Speak slowly
 - Speak clearly
 - Always be accurate and honest



Criminal Law – public protest and property offences

- Police can:
 - charge a person
 - impose an on the spot fine
- Only a court can:
 - convict
 - impose a fine, prison sentence or other penalty
- **Trespass s 17 Summary Offences Act**
 - Offence if on premises without permission or
 - return within 24 hrs after you have been asked to leave by either the owner, their representative or the police.
 - premises includes land, building, structure, vehicle, or other private property. Not applicable in a public place.
 - Maximum penalty \$2,500 or 6 months prison



Criminal Law – public protest and property offences

- **Damage to property** - s85 Criminal Law Consolidation Act
 - Offence to damage another's property
 - Does not have to be intentional
 - Includes reckless behaviour or deliberate damage
 - Maximum: where damage > \$30,000 - life in prison, damage not > \$2,500 - 2 years prison
- **Graffiti, posters & stickers** – s48 Summary Offences Act & s9 Graffiti Control Act
 - Offence to post a bill or
 - distribute a bill to others for posting unless could not reasonably foresee further posting or took precautions
 - marking with graffiti
 - max penalty \$2,500 or 6 months prison
 - + pay owner for damages and repairs



Criminal Law – public protest and property offences

- **On premises for unlawful purpose** – s 17 Summary Offences Act
 - Entering premises with no lawful excuse
 - Maximum penalty 2 years prison
 - If you refuse to leave - maximum penalty \$2,500 or 6 months prison
- **Serious Criminal trespass** – s168 Criminal Law Consolidation Act
 - Entering or remaining in a place (not a public place) with the intention of committing an offence
 - Public place includes
 - Place where admission charge
 - Limited entry by public invitation
 - Maximum penalty - 10 years prison



Criminal Law – public protest and property offences

Interfering with farm Animals ss17B & 17C Summary Offences Act

- Offence to, without occupiers authority:
 - open and leave gate open
 - unfasten a gate or
 - close an open gate
- Defence
 - not intend to cause loss, annoyance or inconvenience
 - Not reckless indifference to owner or animal
- Must not disturb any animal whilst trespassing on land or cause harm to any animal, or loss or inconvenience to owner
- Animal - only those kept in the course of primary production
- Maximum penalty \$750



Criminal Law – public protest and property offences

- **Public rallies & demonstrations:**
 - Often attract charges alleging offences against public order
 - To avoid arrest mind your language and behaviour
 - Protest chants, songs, drumming, dancing, shouting and running are generally safe forms of conduct
 - swearing and violence are not
- **Disorderly or Offensive conduct or language - s7 Summary Offences Act**
- Offence to:
 - behaving in disorderly or offensive manner
 - fight with another
 - use offensive language
 - disturb the public peace
- Must be committed in a public place - includes ships, harbours, ports, docks and rivers
- Maximum penalty \$1,250 or 3 months prison



Criminal Law – public protest and property offences

- **Indecent language or behaviour** ss22 & 23 Summary Offences Act
- Offence to use indecent language or behaviour:
 - in a public place
 - which is audible from public place
 - which is audible in neighbouring occupied premises
 - where you intend to offend or insult any person
- Public place is:
 - where free access is permitted to the public
 - where public are admitted on payment of money
 - a road, street, footway, court, alley or thoroughfare for public use even though on private property
- Language or behaviour routinely seen on television or films may be “indecent” in public
- Maximum penalty \$1,250 or 3 months prison



Criminal Law – public protest and property offences

- **Obstruction of roads and other public places** s58 Summary Offences Act
- Offence to wilfully obstruct free passage in a public place
- Maximum penalty \$750
- **Disobeying an order to Move on or Disperse** s18 Summary Offences Act
- Offence to refuse to move when a police officer requests provided that:
 - Person loitering in a public place or a group assembled in a public place
 - Police officer reasonably believes:
 - Offence committed or about to be
 - Breach of peace or about to be
 - Pedestrians & traffic obstructed or about to be
 - Safety of people at risk
- Maximum penalty \$1,250 or 3 months



Criminal Law – public protest and property offences

- **Rallies & public meetings**
- Protest or demonstration with bicycles or other transport
- Be familiar with the Road Traffic Act and the road rules
- **Public meetings** s18A Summary Offences Act
- Offence if you:
 - are in, at or near a place where a public meeting is being held and
 - behave in a disorderly, indecent, offensive, threatening or insulting manner, or
 - use threatening, abusive or insulting words.
- Maximum penalty \$1,250 or 3 months



Criminal Law – public protest and property offences

- **Rallies and public meetings**
- Often local council permission needed to:
 - Distribute anything to bystanders
 - Conduct surveys
 - Collect from bystanders
 - Receive donations
 - Amplify sound
 - Sing, chant, dance, busk, play music
 - Attach anything to tree, plant, fixture



Criminal Law –offences against police

Assaulting and Hindering Police s6 Summary Offences Act

- Offence to:
 - assault police
 - hinder or resist police acting in the execution of duty
- Maximum \$10,000 or 2 years prison

Giving your name and address s74A Summary Offences Act

- Police may request you to give your full name and address if officer has:
 - reasonable cause to suspect offence is or about to be committed or
 - may be able to assist police re investigation of offence
- Must not refuse or give a false name
- Maximum \$1,250 or 3 months prison

False reports to Police s62 Summary Offences Act

- Must not make a false representation to police
- Maximum \$10,000 or 2 years prison

The logo for the EDO (Eastern Districts Office) is located in the top left corner. It features a stylized figure holding a scale of justice, with the letters 'EDO' below it.

Arrest procedure & basic rights

- Police can arrest anyone who has:
 - committed an offence
 - suspected of committing an offence or
 - about to commit an offence.
 - No warrant is required.
- Arrest: Police officer says “you are under arrest”
- It is not an offence to run away before they can arrest you but this may constitute “resisting arrest”.
- An officer may ask you to accompany them to the station without arresting you
- You do not have to go unless you have been arrested
- If you go willingly and give them information it will be regarded as being detained voluntarily



Arrest procedure & basic rights

- Police can use as much force as is reasonably necessary to arrest you
- Handcuffs etc can be used if you get physical
- If believe wrongfully arrested - make a verbal objection to the officer in charge of the station
- Always seek legal advice prior to giving voluntary information as you may incriminate yourself or close an avenue of defence you may wish to use later
- Anything you say may be used against you - “off the record” talks with the police don’t exist
- Right to remain silent, to have a friend or relative informed and to speak to a lawyer



At the Police station

- You are legally obliged to give your name and address
- You have the right to make one phone call to solicitor, friend or relative
- You may need to ask several times to use the phone
- You are entitled to ask for an interpreter if necessary
- If Aboriginal or Torres Strait Islander you may have an officer from Aboriginal Legal Rights Movement present
- If under 16 you should have a parent or guardian or another adult you know and trust present



At the Police station

- Custody - you will be searched and anything you carry will be taken
- Carrying an illegal substance or weapon - higher penalties
- If charged police may take photographs and fingerprints
- Refusing to comply is an offence: s81(4)(a) Summary Offences Act, penalty \$1250 or 3 months prison.
- If charges withdrawn or dismissed in court your samples will be destroyed
- At the station you will be formally charged or released
- If charged - obtain copies of the charge sheets



At the Police station

- If charged and taken into custody can apply for bail
- Bail is an agreement where you agree to:
 - attend all court sessions
 - comply with bail conditions
 - pay an agreed sum of money if you fail to comply
- Another person may agree to pay
- Can apply for police bail at the station
- If refused bail you must be brought before a court prior to 4pm on the next working day
- You can apply for court bail at that court session

Effective Submission Writing





Submission Writing

- Public comment on environmental assessment processes: often via written submissions
- One of most effective ways to influence decisions
- Failure to make a submission within time limit may affect your legal rights



Legislation - Environment Protection Biodiversity Conservation Act (Cth) 1999

Environment Protection Biodiversity Conservation Act (Cth) 1999:

Part 3 EPBC Act:

Matters of National Environmental Significance (MNES):

- World heritage property
- National heritage property
- Wetlands of international importance
- Listed threatened species and communities
- Listed migratory species
- Protection of environment from nuclear action
- Marine environment



Legislation - Environment Protection Biodiversity Conservation Act (Cth) 1999

- Proponent refers an action
- Controlled action?
- Approval needed? (20 days)
- Assessment approach, eg:
 - Environmental impact statement
 - Public environment report
- Guidelines
- Public comment
- Decision
- Judicial Review
- Compare: Bilateral Agreement
- EPBC Act site: <http://www.environment.gov.au/epbc/index.html>



Legislation – Development Act

- **Development Act (SA) 1992:**
- Major project:
 - Development Assessment Commission:
 - report, invites submissions
 - decides assessment procedure:
 - Environmental impact statement
 - Public environment report
 - Development report
 - assessment procedure advertised & availability of guidelines, inviting submissions
 - Proponent response
 - Governor: assessment report
 - No appeal
- Other development: Category 1, 2, 3
 - Some notice given - only 2 & 3
 - Appeal – only 3
 - www.planning.sa.gov.au



Access to information

- Local Governments:
- Upon request *must* give you access to:
 - development applications and their associated documentation
 - minutes and documents from council and committee meetings
 - recommendations and resolutions from council and committee meetings
- Freedom of Information requests:
 - Freedom of Information Act 1982 (Commonwealth)
 - Freedom of Information Act 1991 (South Australia)
- Legal right to access information at all levels of Government
- Many exceptions, for example:
 - cabinet documents
 - commercial confidence



Online Resources

- EDO Fact sheets www.edo.org.au/edosa
- South Australian Legislation <http://legislation.sa.gov.au/index.aspx>
- Commonwealth legislation www.comlaw.gov.au
- Australian Legislation & Cases www.austlii.edu.au
- Planning South Australia www.planning.sa.gov.au
- Department of Water, Land and Biodiversity Conservation SA www.dwlbc.sa.gov.au
- Department of Environment & Heritage www.environment.sa.gov.au/
- SA Office for Local Government www.localgovt.sa.gov.au
- SA Department for Transport, Energy and Infrastructure http://dtei.sa.gov.au/about_us
- SA Environment Protection Authority www.epa.sa.gov.au
- Federal Department of Environment & Heritage www.environment.gov.au
- Universities
- Experts



Identify Key Issues

- What are your key concerns
- Were these identified in the guidelines or development application?
- Obtain as much information on issues
- Only include what is directly relevant in your submission
- Focus on a few issues well
- Focus on issues authority required to consider for decision
- Evidence in support of the submission can include:
 - physical evidence/ observations
 - documentary evidence
 - scientific or technical nature evidence



Environmental Impact Statement (EIS”)

- Does EIS have:
 - Clear description of proposal?
 - All key elements assessed?
 - All key environmental issues included with proper weight?
 - Impacts of construction and operation?
 - Alternatives?
 - Cumulative impacts including on:
 - natural and built environments
 - social and economic re locality
 - Off-site impacts?
 - Planned monitoring program?



Submission Writing

- Professional
- Include date, your name and address
- Executive summary & conclusion
- Headings, sub-headings, bullet points, summaries
- Focus on key issues
- Evidence
- Attach relevant supporting documents
- Use plain English – non pejorative
- Give sufficient detail - don't assume
- Source material
- Thesaurus
- Follow up on the submission



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