

SPECIAL BULLETIN

18 July 2005

What's in this Special Bulletin?

A call for Legal Aid Queensland to allocate funds for Public Interest Environmental Test Cases, that's what!

Did you know that the last grant of Queensland Legal Aid for an environmental case was thirteen years ago? Yet we live in a State with an internationally significant natural environment and intense development pressures, including on the coast and in SEQ which has the fastest population growth in Australia.

EDOs run a *few* important cases every year, relying heavily on the support of key Queensland barristers. But the failure to run all but a few environmental cases leads to irreparable social and environmental degradation. EDOs call on Legal Aid Queensland to allocate funds for public interest environmental test cases!

This Special Bulletin comprises a summary of the EDO Qld and EDO NQ's submission to Legal Aid Queensland on the review of the Legal Aid's Civil Law Services. The whole submission can soon be viewed at www.edo.org.au.

Please send letters in support of this submission to the Attorney-General, The Hon Rod Welford at GPO Box 149 Brisbane QLD 4001, with copy to Ms Elizabeth Shearer at Legal Aid Queensland at GPO Box 2449 Brisbane QLD 4001.

EXECUTIVE SUMMARY

EDO'S SUBMISSION TO LEGAL AID QUEENSLAND REVIEW OF CIVIL LAW SERVICES

Current Services: No Civil Law Services Address Public Interest Environmental Matters

The six civil law services provided by Legal Aid Queensland do not address any form of public interest environmental matters.

The only public interest environmental legal services in Queensland are the two Environmental Defenders Offices, in Cairns and Brisbane respectively. Those offices classify as poorly funded. Commonwealth funds may not be used for "litigation" hence less than half of those solicitors' time may be spent on litigation.

Compare those two part time lawyers working on litigating public interest environmental issues to our estimate for Queensland of 60 lawyers working for private developers keen to exploit the environment with big tax deductible budgets. We desperately need more funding for public interest Planning and Environmental law to address this overwhelming imbalance.

Small Number of Test Cases Run Without Legal Aid

As there have been no grants of Legal Aid for environmental matters for over 13 years, needy clients in our experience do not bother applying to Legal Aid Queensland.

With great effort, the EDO offices might run 2-3 main cases each per year for clients with assistance from the Barristers operating pro bono or at reduced rates. Barristers cannot "spec."

cases in the Planning and Environmental Court, the usual jurisdiction for environmental cases in Queensland, as it is a “no costs” jurisdiction.

Need for Services for Public Interest Planning and Environmental Law

We estimate that over the State there are over 20 excellent cases per year with a willing and able client which fail due to lack of resources (and many more worthy cases with no clients). The failure to run those cases leads to irreparable social and environmental degradation.

Why Queensland Especially Needs Legal Aid for Public Interest Environmental Cases

All Legal Aid Offices are stretched for funds and have the difficult decision as to where to grant aid and where not. In NSW there is a system where the State Legal Aid office makes grants of environmental legal aid. NSW has traditionally lead Australia in terms of public rights in the environmental laws.

However Queensland needs environmental legal aid more than any other State. Queensland has a spectacular natural environment of international importance, problems of rapid growth and air pollution, especially in South-East Queensland (SEQ has the fastest growing population in Australia). Referrals to the Commonwealth under Commonwealth Environmental legislation for assessment of development proposals with impacts on Commonwealth environmental matters are consistently higher for Queensland than the number of referrals for any other State.

Proposals for Changes to Civil Law Legal Aid Scheme

Recommendation:

That the Guidelines or eligibility for the Civil Law Legal Aid Scheme are amended to include public interest environmental and planning cases, including test cases.

That for such cases, there is:

- 1. no requirement that the court has power to award costs;*
- 2. no means test;*
- 3. the outlays that may be paid include such things as experts’ fees and part barristers’ fees; and*
- 4. A cap on the total outlays granted under this category per annum.*

We ask LAQ in conjunction with the State Attorney–General to make a grant to the fund sufficient to ensure that each year the total granted outlays under this public interest environmental category may total \$270,000. That figure will enable between 8-10 important public interest environmental cases to be run.

For more information contact Jo Bragg at EDO Qld or Kirsty Ruddock at EDO NQ.

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