

GREENLAW

NEWSLETTER OF THE ENVIRONMENTAL
DEFENDERS OFFICE



ENVIRONMENTAL
DEFENDERS
OFFICE (SA) INC

Our apologies for the delay in the production of this newsletter - it has been many months since the last one.

In that time, the EDO has been busier than ever, with lots of new client files and several matters now before the Environment Resources and Development Court.

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

September 1999: No 12

EDO AGM and Annual Dinner

The highlight of the year's environmental law calendar will be held on Friday October 15th at the Astor Hotel, 437 Pulteney Street, Adelaide.

In previous years, reputations have been made and lost during this evening of subtle but witty humour, good food, excellent company and a few tipples.

So, mark the 15th October in your diaries now (and perhaps the following morning?).

The short AGM will be held 5.30pm followed by drinks, with dinner to follow at 7.30pm.

The set menu cost is \$25 plus drinks.

Omnivores and vegetarians catered for.

Please Contact Chris Hales at the EDO on 8232 7599 to book your spot.

Friends, work colleagues, spouses, lovers (if different) and vague acquaintances are all welcome!

EDO Litigation a smorgasbord of olives and tuna

Thanks to the Lottery \$\$, the EDO has been able to independently fund its representation of the Conservation Council of SA in three appeals against development consents - all cases of vital public interest.

Two of the appeals relate to olive grove developments in

the South East of SA.

One olive appeal was resolved through the developer consenting to the revocation of the development approval.

Negotiations continue with the developer regarding the site for future olive development.

The other is set down for hearing in the week commencing 11 October 1999.

The tuna appeal (which is actually six consolidated appeals) relates to tuna feedlot developments in Louth Bay, near Port Lincoln - see below for more detail.

If you have legal and/or research skills that you would like to donate to assist in these appeals, please contact James Blindell (olives) or Mark Parnell (tuna) at the EDO.

EDO Drinks

On Thursday 29th July, the EDO sponsored drinks and nibbles for government officers and members of statutory bodies who have dealings with the EDO.

Around 40 invited guests attended the function at Tempo restaurant in Flinders St.

One of the objects of the exercise was to introduce key decision-makers in government to the hidden nine-tenths of the EDO iceberg.

As EDO Chairperson, Mark Griffin, pointed out in his close-to-defamatory remarks (about David Cole's tie), many people in Government think of the EDO as just the staff, without realising that there is a large group of talented and dedicated professionals directing the work of the office from behind the scenes.

Mark also pointed out that it was important to retain some perspective about our shared vision for long-term environmental outcomes, a task that can seem difficult when much of our day-to-day contact with government officers is adversarial.

Thanks go to EDO management committee member, Leonie Paulson of Thompson Playford for organising this successful function.

Rural Outreach Programme Extended

The EDO has continued its visits to the Riverland, Port Lincoln, Whyalla and Kangaroo Island.

In addition, (thanks to funding from the Department of Environment, Heritage and Aboriginal Affairs), the EDO has commenced a year long pilot outer metropolitan outreach programme - visiting Victor Harbor and Gawler.

EDO outreach visits continue to attract a lot of clients and a lot of media attention.

These visits usually also include a number of community seminars and lectures to the public, school children and TAFE students.

EDO Lottery

The lottery is on the bubble again.

Following the success of our last BMW lottery, we are now organising another car lottery for later this year - probably close to Xmas.

Fundraising ventures such as this are vital to ensure that we have a pool of money that can be used for "litigation-related" activity.

As most of you now know, the EDO is the only Community Legal Centre in Australia which is precluded from using Commonwealth Legal Aid funding for litigation - including test cases.

Local Government Act 1999

The EDO has contributed to this Bill (now Act) throughout the public consultation process and more recently, during Parliamentary debate.

A number of EDO-proposed amendments were adopted, including recognition of "ecologically sustainable development" as a guiding principle for local Councils - contact James for more detail.

Other EDO submissions dealt with native vegetation, noise regulation and fisheries.

EPA Roundtable

The annual EPA roundtable is an opportunity for the EPA and the Minister to hear the views of the community, industry and local government on the operation of the Environment Protection Act and the activities of the EPA.

Unfortunately, the majority of attendees were industry representatives as it is often very difficult for community members to take time off work to attend during the week.

The EDO has suggested that future Roundtables be held on the weekend (as the first was) to enable a wider section of the community to attend.

Papers from the Roundtable and recommendations arising out of discussion groups are available from the EPA.

DAC Forum

The Development Assessment Forum on 25 March 1999 generated some lively debate about community scrutiny of the DAC decision-making process and the need for more openness in that process.

The EDO is pleased that improvements are being made, albeit at a very cautious rate.

DAC meeting agendas are now available several days in advance of meetings and copies of documents can be purchased as well as inspected.

DAC is reluctant to engage in dialogue with third parties during hearings, which leaves the Court process as the only avenue for formal negotiation over development approvals or conditions.

Media

As awareness of the EDO spreads through the community, we find ourselves frequently approached by print, radio and TV media to comment upon topical environmen-

tal and planning issues.

These have included the Port Stanvac oil spill, the proposed wine centre, the role of the EPA, native vegetation protection law reform, the Mt Barker Foundry, Pelican Point and much more.

The EDO recently featured in the regular Greening Australia column in the Saturday Advertiser.

Community Education

The EDO continues its commitment to community education through seminars and lectures to groups, schools, service clubs, university and TAFE colleges and public meetings.

Our production of information material continues with the addition of two new fact sheets - Protection and Management of Native Vegetation and Water Resource Management, Conservation and Protection.

Management Committee member and University of South Australia lecturer, Duncan Hartshorne and Mark Parnell recently completed a major re-writing of the Environment and Planning chapters of the Legal Services Commission's "Law Handbook".

The Fourth Edition of this invaluable reference will be available from the LSC from September.

Duncan and Mark are also in the process of writing the definitive Guide to Environmental Law in South Australia, to be published by the EDO (perhaps in collaboration with the universities) early next year.

It is also hoped that we will be able to complete our "Guide to Protest Law in South Australia" shortly.

With an increasing number of community groups resorting to direct action to protect the environment, the need for this publication is greater than ever.

If any EDO members have skills or interest in writing, editing or publishing legal materials for the general public, then feel free to contact EDO staff.

EPA Inquiry

The ERD Committee of Parliament will investigate the Environment Protection Agency and its enforcement policies, practice and resources.

A key question for the Committee will be whether this criticism is justified, and if so, whether the cause is lack of resources, inadequate legislation or lack of political will.

The EDO will be making a submission and giving evidence to this inquiry.

If members want to contribute to the submission contact Mark Parnell or James Blindell - the inquiry is likely to commence in November or December.

Feature:
Aquaculture
Law and Policy
Reform
Background

Following the success of the EDO's appeal against four aquaculture proposals in upper Spencer Gulf last year, the State government has introduced a number of reforms to address the issues raised in the appeal.

Foremost of these was the abolishment of the Aquaculture Committee - this was a general purpose committee comprising government, industry and community representatives to which Development Act and other statutory powers had been delegated.

The EDO argued that this "one stop shop" was flawed both legally and administratively.

The disbanding of the Committee and the revocation of its delegated powers now means that the Development Assessment Commission is again directly responsible for approving new aquaculture proposals.

Whilst the DAC members may not be personally as knowledgeable in marine environmental issues as the Aquaculture Com-

mittee members were, the EDO believes the process of assessing development applications is now more transparent and not as vulnerable to allegations of conflict of interest and administrative unfairness as the former Committee.

New
Aquaculture
Regulations

A far less constructive response of the Government to the issues raised in the EDO appeals of 1998 was the introduction just prior to Easter of new regulations under the Fisheries Act 1982 (Aquaculture Management Committee Regulations).

These Regulations had the effect of triggering currently inoperative provisions in the Development Regulations which would have resulted in a substantial erosion of public participation rights.

Under the proposed new regime, once an area had been "zoned" for aquaculture under the Fisheries Act, all rights of public notification, representation and appeal were extinguished.

Whilst the mechanism by which this erosion would have occurred is convoluted and not apparent from reading the

Regulations in isolation, the EDO was able to convince several Members of Parliament to agree to support a motion of disallowance.

This call was echoed by leading environmental lawyers, conservationists and residents groups.

Ultimately, the Government saw the writing on the wall and revoked the Regulations before they became operative.

Where
to
now?

The EDO acknowledges that there is a policy and legislative vacuum in relation to aquaculture, however the EDO favours a complete review of all aquaculture laws, rather than reactive and piecemeal Regulations which erode existing community rights.

Such a review was announced by the Government in late 1998, however the promised "stakeholder working groups" were never convened and the Review appears to have stalled.

The EDO has met with the Director of Fisheries (twice) and the Minister for Primary Industries and Resources to voice our concerns and to propose alternatives to the now revoked Regulations.

Louth Bay appeals

The EDO is representing the Conservation Council of SA Inc. in a Development Act appeal against a DAC decision to approve 6 new tuna feedlot developments comprising 42 cages in the waters of Louth Bay near Port Lincoln.

Tuna feedlotting involves the capture of wild fish in the Great Australian Bight (and elsewhere) and towing the fish in cages back to Port Lincoln where they are transferred into moored cages and fattened on pilchards (mostly imported) before being sold overseas.

The grounds of appeal included both procedural matters and merits issues.

The procedural grounds of appeal involved claims that the applicants failed to provide all information "reasonably required by the relevant authority" "in a form determined by the Minister" and "accompanied by the appropriate fee".

In addition, the appellant claimed that the DAC failed to notify all relevant persons about the proposed development.

In dismissing these grounds of appeal, the ERD Court made a number of observations which clarify the standard to which a Development Application must reach before it can be regarded as "validly made".

It seems that the failure of an applicant to provide all information requested or to answer all questions asked by a relevant authority will not be fatal to the validity of its development application.

The Court also held that it is only the \$26 application fee which is required to validate an application.

All other fees can be paid later, even after the approval date.

The grounds of appeal relating to the merits of the proposed development are mostly environmental, including the question of whether the development is "ecologically sustainable".

The hearing will take place in Port Lincoln and Adelaide from 20th September.

Parliamentary Inquiry into Louth Bay tuna feedlots

Whilst the EDO appeal against tuna feedlotting in Louth Bay

relates to future development, the Environment Resources and Development Committee of Parliament has announced an investigation into alleged past illegal tuna feedlot development in the area.

The main task of the Committee will be to investigate whether illegal development has taken place, and if so, what action was taken.

Apparently there have been tuna feedlots in the Louth Bay area for the last two or three years without development approval, land tenure or fish farming licences.

The Development Assessment Commission is also conducting an investigation into alleged breaches of the Development Act.

In a related issue, the EPA has investigated whether foreign ships recently in the Port Lincoln area are in breach of the Environment Protection Act by processing tuna from feedlots without an EPA authorisation.

Media reports indicate that the EPA accept that licensing (or an exemption) is required, but that enforcement action is unlikely to be taken.

The EDO will be giving evidence at the ERD Committee hearings, probably in September.

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**EDO can give free legal
advice on any planning or
environmental issues. A
FREE Thursday night Advi-
sory Service is available by
appointment only.**

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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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(work).....

(home).....

FACSIMILE.....

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New Membership or,

Renewal

My fee of \$15 pa, (\$10 concession) or \$50 corporate is
enclosed.

Donation \$.....

Total \$.....

I am interested in volunteer work. **Legal / Administration**
(please circle preference)

Thankyou to one of the EDO's longest serving volunteers, Robert Pilcher, who resigned after working here for over two years, one day a week. Thankyou to Stuart McIntyre from Cache Computing; and Andrew Weinmann, Kellie Stocker and Ben Tanti, who have been working with Mark Parnell; and Amanda Nichols who has been working with James Blindell; and Norwood and Marion CLCs for assisting Chris with accounting software. I found Quickbooks more user friendly than MYOB.

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