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TOOLKIT 4:  
PRIVATE PROSECUTION IN THE  
NORTHERN TERRITORY



**ENVIRONMENTAL  
DEFENDERS OFFICE NT**

## ABOUT THE ENVIRONMENTAL DEFENDERS OFFICE (NT) INC

The Environmental Defenders Office NT (EDO) is an independent non-for-profit, community legal centre that specialises in environmental law. The EDO provides legal advice, representation and education through the Northern Territory. The EDO also advocates for stronger environmental protection laws by making submissions on law reform.

The EDO is the only community legal centre in the Northern Territory that provides legal advice on environmental matters in the public interest. The EDO is an incorporated association established under the *Associations Act* (NT).

In addition to NT based activities, the EDO is a member of a national network of EDO's working collectively to protect Australia's environment through public interest planning and environmental law.

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### LEGAL ADVICE SHOULD BE SOUGHT IN SPECIFIC CASES

While all care has been taken in the preparation of this publication, it is not a substitute for legal advice in individual cases. For any specific questions you should seek legal advice.



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## What is private prosecution?

A private prosecution involves a party other than the Director of Public Prosecutions, such as a public interest group or member of the public, to enforce prosecution against another group or individual.

In Australia, the common law permits any person to prosecute any offence of a public nature. While we are unaware of any cases in the Northern Territory that have expressly recognised an individual or organisation's right to enforce a private prosecution.

Relevant case law in other states of Australia has affirmed this right and provided that an individual enforcing a private prosecution, does not necessarily require the consent of a party or authority to whom the penalties are payable.<sup>1</sup>

**You have a right to bring a private prosecution.** *The right of a private individual to institute a prosecution for a breach of the law has been said to be "a valuable constitutional safeguard against inertia or partiality on the part of authority"* (per Lord Wilberforce in *Gouriet -v- Union of Post Office Workers* [1978] AC 435 at 477). However, in practice this mode of prosecution is rarely used.

<sup>1</sup> *Sargood v Veale* (1891) 17 VLR 660

## Private prosecution in environmental law

Private prosecution can be particularly relevant to environmental law. This is because an individual may bring a prosecution for an offence, against an enactment "for the benefit of the public at large"<sup>2</sup>. Many environmental laws<sup>3</sup> have been held to fall within the category of an Act "for the benefit of the public at large"<sup>4</sup>.

Individual environment advocacy groups have therefore brought actions under private prosecution<sup>5</sup>. For example, an environmental protest group, 'Pulp the Mill', brought a private prosecution against Gunns, a timber company, in the Launceston Magistrates' Court, for undertaking work without a permit.

<sup>2</sup> *Sargood v Veale* (1891) 17 VLR 660

<sup>3</sup> such as the *Planning and Environment Act* (1987) (Vic)

<sup>4</sup> *Howes v Victorian Railways Cmrs* [1972] VR 103; (1970) 23 LGRA 227 at VR 115.

<sup>5</sup> <http://www.abc.net.au/news/2011-11-03/20111103-gunns-denies-planning-breach/3616828>

**Caption:** EDO Lawyer speaks at a community meeting about a proposed offshore island development.



**Caption:** Like the Northern Territory's rivers, private prosecutions carry some big risks.



## DPP intervention in a private prosecution

The Department of Public Prosecutions (“DPP”) has the power to intervene in a private prosecution. In practice, the DPP will often use their discretion in deciding to take on a case. Amongst other factors, the DPP will consider whether the case is in the public interest and whether there is a reasonable prospect of conviction. The DPP can also bring legal proceedings to an end if it does not think that a private prosecution is in the public interest.

If the question arises as to whether the DPP will stop a case from continuing, and you are opposed to this, you will be able to continue in your prosecution unless;

- the court determines that there is no reasonable prospect of a conviction being secured on the available evidence;
- there are reasonable grounds for suspecting that your decision to prosecute was actuated by improper personal or other motives, or otherwise constitutes an abuse of the prosecution process such that, even if the prosecution were to proceed it would not be appropriate to allow it to remain in the hands of you as the private prosecutor;
- to proceed with the prosecution would be contrary to the public interest - law enforcement is necessarily a discretionary process, and sometimes it is appropriate for subjective considerations of public policy, such as the preservation of order or the maintenance of international relations, to take precedence over strict law enforcement considerations;
- the nature of the alleged offence, or the issues to be determined, are such that, even if the prosecution were to proceed, it would not be in the interests of justice for the prosecution to remain in private hands;
- the nature of the charges do not disclose an offence; or
- the court in which the private prosecutor has commenced proceedings has no jurisdiction.

## Things to consider before trying private prosecution

- **Legal costs** - If you fail to establish a case, you may be ordered to pay the legal costs of the other party. Therefore, it is often cheaper if you can resolve the problem without going to court. Please look at our 'Beyond Litigation' Toolkit for more information.
- **Indictable offences** - An indictable offence is a serious offence and is tried by a judge and jury. For example, manslaughter is an indictable offence. You can bring a public prosecution for an indictable offence, however, if the alleged offender is subsequently directed to stand trial, the DPP will ultimately decide whether your case goes ahead.
- **Summary offences** - A summary offence is less serious than an indictable offence and is tried by a judge only. For example, a road traffic offence is a summary offence. For some summary offences your right to bring a private prosecution will be restricted because the offence in question cannot be characterised as being 'of a public nature'.
- **Excluded or limited by legislature** - Certain legislation excludes the right of an individual to bring a prosecution by expressly providing who may bring a prosecution. Alternatively, some legislation requires the consent of a public official. Please refer to the table below for Northern Territory environment legislation to confirm in what circumstances you can bring a private prosecution.

## Can I bring a private prosecution under NT legislation?

NT Act	What does the Act cover?	Can I bring a private prosecution?	Relevant section	Notes
<i>Water Act</i>	Provides for the investigation, allocation, use, control, protection, management and administration of water resources	Yes, with signed consent of the Controller, and must be commenced within 12 months from when the Controller first had knowledge of the offence.	s105	Controller of water resources:  <b>Water Resources Division</b> (08) 8999 4455 waterresources@nt.gov.au
<i>Mining Management Act</i>	Provides for the authorisation of mining activities, the management of mining sites, the protection of the environment on mining sites, the provision of economic and social benefits to communities affected by mining activities	Yes, with written approval from the Chief Executive Officer, and must be commenced within 3 years from when the Chief Executive Officer first had knowledge of the offence.  (You will need a certificate by the CEO saying when they first became aware of the alleged offence)	s78	
<i>Waste Management Act</i>	Provides for the protection of the environment through the encouragement of effective waste management and pollution prevention and control practices	Yes, provided that the NT EPA has been aware of the alleged offence for less than 12 months	s94	<b>NT EPA</b> GPO Box 3675, Darwin NT 0801 (08) 8924 4218 ntepa@nt.gov.au
<i>Territory Parks and Wildlife Conservation Act</i>	Makes provision for and in relation to the establishment of Territory Parks and other Parks and Reserves and the study, protection, conservation and sustainable utilisation of wildlife	Yes	--	
<i>Planning Act</i>	Provides for appropriate and orderly planning and control of the use and development of land	No private prosecutions	s78	

## Further resources

### Prosecution policy of the Commonwealth

Note that this is relevant for Commonwealth legislation only  
[www.cdpp.gov.au/wp-content/uploads/Prosecution-Policy-of-the-Commonwealth.pdf](http://www.cdpp.gov.au/wp-content/uploads/Prosecution-Policy-of-the-Commonwealth.pdf)

### NT Office of the Director of Prosecution Guidelines

[www.dpp.nt.gov.au/legal-resources/documents/dppguidelines.pdf](http://www.dpp.nt.gov.au/legal-resources/documents/dppguidelines.pdf)



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**Caption:** Reflections, Glen Helen Gorge, West MacDonnell Ranges National Park.

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