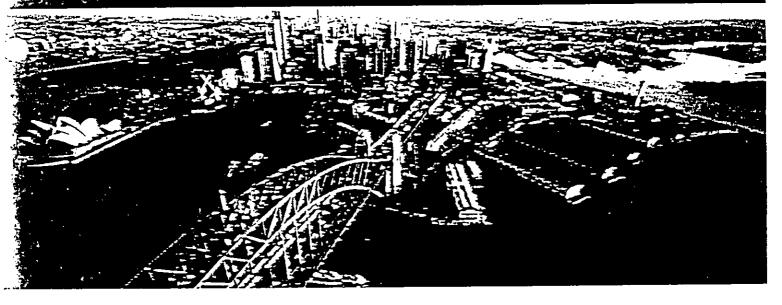
INVITATION

Sydney City Waterfront Forum

Thursday 20 February 1997 Darling Harbour



one day forum presented by the New South Wales Government to examine te inner harbour as a whole.

- This forum is of vital interest to all those neerned with waterfront planning.

 Takes covered include:
 - TOURISM
- DEVELOPMENT OPPORTUNITIES
 - A WORKING HARBOUR

The forum's structure provides ample opportunity for questions and comment, with the aim of ensuring that all matters are canvassed in a coordinated manner.

The Honourable Craig Knowles MP, Minister for Urban Affairs and Planning and Minister for Housing will open the forum. Mr Gerry Gleeson. Chairman of the City West Development Corporation and the Darling Harbour Authority will introduce and chair the forum.

The Star Room, Panasonic IIVIAX Theatre, Darling Harbour
Thursday 20 February 1997, 8.45am to 4.00pm. Lunch will be provided.
Attendance at this special Forum is by invitation only and numbers are strictly limited.
RSVP by 15 February 1997. Please fax your acceptance to 9518 8638, attention Alan Bright.

J.Johnson Principal Solicitor EDO 280 Pitt St. Sydney 2000

Dear James,

This Council has asked me to express its appreciation and congratulate you for the recent series of workshops conducted on the North Coast.

We would appreciate receiving any feedback from the workshops as to how successful they were in introducting new faces to what environmental law can and cannot accompolish .Whether they have led to a keener interest in the environmental causes and whether there has been criticism of what environm, ental groups are doing.

Can we have more workshops on the North Coast in the future ?

Yours sincerly

James L.O.Tedder Honb.Sec.

17 November 1994

and/or the Public Fund referred to in rule 40 of these rules any surplus assets in the said fund shall be transferred to another fund which is on the Register of Environmental Organisations and which is eligible to receive tax deductible gifts under section 78 (1) (a) (cix) of the Income Tax Amendment Act 1936.

(2) Any remaining property or assets shall be transferred to another incorporated association having objects similar to the objects of this Council, and one which fulfills the requirements specified in section 53 (2) (a) - (c) of the Act and that is a registered or exempt charity under the provisions of the NSW Charitable Collections Act 1934.

Dear Member,

Just a note to remind you that the Annual General Meeting of the EDO will be at 262 Pitt St at 6.00pm on next Wednesday 23 November 1994.

We have received nine nominations for the EDO board; please find enclosed a brief note about each of the nominees.

If you would like to have a say in the election of the EDO Board but you cannot be present, don't forget that you can appoint someone else as your proxy by completing and faxing your proxy form to the EDO before the meeting.

Yours faithfully Environmental Defender's Office Ltd

James Johnson
Solicitor

Encl.

DAVID O'DONNELL

David is a partner with Mallesons Stephen Jaques solicitors. He heads up the environmental law section for Mallesons.

David has a long involvement with the Environmental Defenders Office and is one of the original directors of the office when it was formed in December 1984. David is Vice President of the Environmental and Planning Law Association of NSW and the NSW representative to the National Environmental Law Association.

David brings an understanding of practical issues of environmental litigation and professional responsibilities as a solicitor together with a knowledge of the history of the EDO which is probably unmatched.

NICOLA PAIN

I have been employed in the Commonwealth Department of Environment, Sport and Territories for the last two years as an Assistant Secretary in the Environment Strategies Directorate and in the Commonwealth Environment Protection Council, setae of environment reporting and a range of economic, legal and environmental issues such as trade and environment issues. Prior to this I was Principal Solicitor at the Environmental Defenders office for five years. Before working at the EDO I was in private practice as a solicitor.

I have not sought membership of the EDO Board since leaving because I was unable to guarantee regular attendance at Board Meetings due to working in Canberra. I will be able to attend Board meetings regularly in the next twelve months as I will be spending more time in Sydney. After an absence of two years from EDO activities and with a new perspective of life gained from working in the environmental policy field in Canberra I feel I can contribute positively to the Board and bring a national perspective to the EDO's work.

DR JUDY LAMBERT

Dr Judy Lambert conducts a small consultancy business, Community Solutions, which specialises in research, policy work, campaign and strategic planning and advocacy for governments, community organisations and the corporate sector. Since June last year, when the consultancy was established, she has completed a diverse range of projects in the areas of environment, consumer and women's affairs.

Prior to establishing Community Solutions, Judy worked in Canberra for almost six years, three as the Wilderness Society's National Liaison Officer (NLO) then as an Environment Consultant to former Federal Minister Ros Kelly.

Judy's primary degrees in Pharmacy then Science, where followed by a PhD in Pharmacology which led to more than a decade of work as a research scientist in para-medical areas. During that time she became increasingly involved in the

voluntary conservation movement and in 1986 - 87 retrained in Environmental Management.

Judy has been an active member of The Wilderness Society since 1977 and is an Hon. Life Member of that organisation. Before working in Canberra in the 1980s, she served as a member of the NSW Nature Conservation Council's executive. While the Wilderness Society's NLO, Judy developed extensive networks with conservationists, both in the mainstream movement and elsewhere. Those networks have been strengthened and extended both through her work as Environment Consultant to Ros Kelly and more recently through her work as a consultant.

If elected to the Board of the EDO, Judy will bring with her a broad - ranging knowledge of environmental issues, a sound understanding of Federal parliamentary and public service processes and an extensive network of contacts.

BRUCE DONALD

I have been a practising lawyer for 25 years. I studied Environmental law during my Masters degree at Harvard and while I have not practised directly in the field, I have maintained my interest and commitment to strong environmental law. I have had a major role in public interest law for the last eight year having established and run the ABC legal practice. Prior to that, as a lawyer for the CLC in land rights movement, I spent two years in a wide ranging land use and public policy legal practice.

During the ten years up to that time, I had been a partner of Stephen Jaques and Allens as well as teaching trade practices and mining law. My major treatise was Donald and Heydon, Trade Practices Law and I have written in a wide variety of areas.

I am presently a regular writer for the Fin Review and also a legal commentator on Radio National and 2BL. I have been involved in local and metropolitan development issues for ten years.

I would hope to bring substantial public law experience to the Board as well as useful media skills.

JEFF ANGEL

Jeff Angel is CoDirector of the Total Environment Centre and has been a member of the EDO Board since the EDO's inception.

He has worked as a environmental campaigner for over 20 years and been prominent in campaigns to save the rainforests; remove lead from petrol; protect old growth forests in particular the south east forests; oppose new tollways; reduce. Sydney's air pollution; improve public participation rights in planning and development decisions; and preserve wetlands.

He conceived the Endangered Fauna (Interim Protection) Act;

and the South East Forests Protection Bill; and was active in amending the Fisheries Amendment Act and Local Government Act. He is currently negotiating amendments to the Water Board (Corporatisation) Bill on behalf of a coalition of environment, consumer and welfare groups.

Jeff Angel was a founder of the Wildlife Information and Rescue Service and its chairperson for seven years. He is currently Convenor of the South East Forest Alliance.

He is committed to maintaining the EDO's permanent role in environmental law reform, litigation and public education.

CHLOË MASON

Currently I am an appointed member of the Board and the Company Secretary. Since my appointment in late 1992 I have attended most Board meetings. Over the last year I have served on a management working group, with Paul Murphy, to assist the EDO resolve some staffing issues and adopt a Staff Agreement.

My initial appointment, I believe, was on account of my knowledge and experience in managing workplace health and safety - particularly hazardous and toxic substances - and its relationship to environment protection. I have maintained working relationships with several NGOs and played an advocacy role in a number of matters affecting the public interest. My work has focussed increasingly on environment protection and I have now completed a Masters of Environmental Studies at the University of NSW.

However, the principle skills I bring to the EDO Board are management and organisational development. I believe these skills are essential to the vitality of the EDO.

I seek election to the Board of the EDO and could provide some continuity during its first term of an elected membership.

PAUL MURPHY

Paul is a solicitor with Jones Staff and Company. He works specialises in administrative, industrial and labour law with a particular interest in employment and discrimination/human rights issues.

Paul strongly supports the aims and objectives of the EDO and its work and has a particular interest in the functioning of the organisation in relation to the strategic plan and its day to day operation. To this effect he has been involved in various committees of the EDO that have examined the operations of the office, including staff selection.

PATRICK QUINLAN

Patrick Quinlan has been a board member with the EDO for three years. He is currently employed with the Tobacco Institute of Australia where he is an operations manager involved with

government submissions related to regulation of the industry.

Patrick has extensive experience in employer/union negotiations, including the construction of Darling Harbour and redundancies in coal mining in the Hunter Valley. He has participated on boards of superannuation and redundancy funds as well as training foundations.

Patrick brings to the EDO a wide range of commercial and management skills

FELICITY HALL

I am interested in becoming an EDO Board Member as I believe my qualifications and experience would provide the Board with another perspective on environmental issues.

I was a founding member and president of SEA, the environment group at the University of NSW. In SEA'I was involved in the following campaigns: paper recycling on Campus, establishing a permaculture garden and the South East Forests. Also I have been a volunteer at the EDO researching economic issues on inland rivers.

In 1990 I graduate from BCom(Honours) with a major in economics from the University of NSW. My honours thesis addressed the issue of the appropriateness of the Federal Government's paper recycling policy.

Since August last year I have been working as a research economist for the industry Policy and Customs Group on a wide rage of assignments for public and private sector clients.

I have research experience in economics and social policy. This includes working at the Public Sector Research Centre and at the Urban Water Policy Centre, both at UNSW. While at PSRC I researched case studies on corporatisation and privatisation off government utilities.

As an EDO board member, I believe that I could contribute a range of skills and knowledge on issues relating to companies and government policy.

6/1

Our Ref: jj Your Ref:

29 November 1994

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney Peg: EDO

TEL: (02) 261 3599

FAX: (02) 267 7548

Dear Member

Just a short note to let you know of the results of the Annual General Meeting on 23 November 1994. The following have been elected as members of the Board:

David O'Donnell
Paul Murphy
Jeff Angel
Patrick Quinlin
Chloë Mason
Felicity Hall
Judy Lambert
Bruce Donald
Nicola Pain

Some people have been asking about our strategic plan. We have enclosed a copy of the strategic plan as revised approximately twelve months ago. Please give some thought to the matters raised and let us know if there are areas that you think the EDO should be concentrating more or less on.

We hope to hold our Policy Day in March 1995. If you would like to put some thoughts on paper, please get them to us by the end of January in order that we might prepare an agenda for the policy day and circulate any written comments well in advance of the day to start everybody thinking.

Although it is short notice, we hope you can come to the EDO Christmas celebration at 6.00pm on Thursday 15 December 1994 at the EDO. Volunteers, Friends and Members of the EDO together with other supportive folks will be invited to help us celebrate the end of another successful year.

Just a reminder that the first meeting of the new Board will be on Tuesday 13 December 1994. At that meeting a schedule will be finalised for Board meetings during 1995. You are always welcome to attend Board meetings.

Hope to catch up with you soon.

Yours faithfully Environmental Defender's Office Ltd

Times Johnson

James Johnson Solicitor Encl.



ENVIRONMENTAL DEFENDERS OFFICE STRATEGIC PLAN

MISSION STATEMENT

To empower the community to protect the environment through law

recognising

the importance of public participation in environmental decisionmaking in achieving environmental protection

the importance of fostering close links with the community

that the EDO has an obligation to provide representation in important matters in response to community needs as well as areas the EDO considers to be important for law reform

the importance of Aboriginal involvement in protection of the environment

OBJECTIVE 1 - TO PROVIDE REPRESENTATION TO THE COMMUNITY

- 1. To provide prompt and accurate advice to the community about environmental law and policy in response to telephone inquiries
- 1 Publicise the times during which telephone advice will be available and ensure service is available during these times
- 2 Provide telephone or written advice, provide fact sheets where these will assist and refer callers to other organisations where appropriate
- .3 Record the details of our inquiries and analyse monthly statistics to establish areas of concern and trends
- 4 Evaluate our service with regular follow up of a sample of our inquirers, then amend our service to address any problem which may be highlighted
- .5 Coordinate volunteers to assist with these strategies
- 2. To provide effective representation in public interest environmental law issues:
- .1 Identify and monitor key public interest environmental law issues and issues of environmental significance, through our inquiries and regular contact with community and conservation groups
- .2 Provide a range of representation which goes beyond telephone advice, and includes letter writing on behalf of clients and watching briefs to assess performance of regulatory bodies
- Develop, make available and regularly review our guidelines for prioritising cases to be taken on by the Office.
- .4 Investigate particular issues for preparation of advice by the EDO or counsel.
- .5 Represent clients in litigation, mediation and inquiries within our guidelines.

OBJECTIVE 2 - TO IDENTIFY DEFICIENCIES IN THE LAW AND WORK FOR THE REFORM OF THESE AREAS

- 1. Ensure that legislation and administrative decision making procedures contain the key principles of open government and public participation, including open standing and access to information
- .1 Liaise with the ELO, MPs and others to be aware of legislative developments
- .2 Review draft legislation and prepare advice for public dissemination
- .3 Initiate alternative legislation or amendments that contains key principles
- .4 Link in with education programme to encourage participation
- .5 Review the operation of FOI legislation
- .6 Review the impact of corporatisation of public authorities on public participation
- 2. Strengthen Environmental Impact Assessment procedures and raise the standard of EIA
- Prepare a review of the federal law as it stands including discussions of case examples and current problems. Prepare a submission reviewing the EIA processes on behalf of the peak groups.
- Prepare a comparison of the EPIP Act with other models. Seek advice from ELAW about minimum environmental impact assessment standards overseas.
- .3 Participate in formal and informal EIA review processes, Commonwealth and State
- .4 Conduct test cases to challenge
 - *inadequate environmental impact assessment, including fauna impact statements and failure to designate under EPIP where endangered species are involved
 - * failure to conduct environmental impact assessment within Australia and the threshold for requiring assessment
 - * failure to conduct environmental impact assessment for major overseas projects.
- .5 Conduct a seminar on Commonwealth Environmental Impact Assessment.
- Link with other people who have done work in the area, for example Ralph Buckley, ACF. Raise the issue with the Environment Institute of Australia and EPLA. Prepare a submission to the government on their behalf.
- .7 Speak with key decision makers in CEPA and Parliament to put our case. Write to supporters and urge them to write to these people. Liaise with EDOs in other states to campaign.
- 3. Reform the law to ensure public participation in pollution licensing and approvals.
- .1 Develop an EDO position paper draft a discussion paper on the issue, review overseas models and interstate models, consult widely with the community, seeking

input to the paper, finalise discussion paper.

- .2 Inform the community about the issue circlate position paper, produce a one page flier and circulate widely to groups and individuals calling for support.
- Make contact with key decision makers. Meet with the Minister for the Environment. Write to and meet with each EPA Board Member, the Government, the ALP and Independents etc. The aim is to highlight the problem and potential solutions.
- .4 Ensure the issue is on the NCC conference agenda for July. Ensure ELO group members are thoroughly informed and supportive.
- .5 Hold a seminar involving key players to discuss the issue.
- .6 Conduct a test case involving a person whose rights are affected by pollution to try and establish a common law right to be heard in order to afford natural justice.
- .7 Get media for examples where people are affected by pollution and it is unjust for them not to be able to participate in the decision. Get international media. Use ELAW.
- .8 Link in with PIAC's activities.
- 4. Reform the Current Law and Administrative Processes Relating to Identification and Registration and Clean Up of Contaminated Sites.
- Research current NSW law, together with other models such as Queensland and United States law on contaminated land and liability.
- .2 Consult widely about the results of our research and propose a model for NSW.
- Prepared a one page flier and forward to groups and individuals seeking support for our position.
- .4 Seek media for cases which highlight the inadequacies of the current system.
- Research as many contaminated sites as we are able to locate to establish to history of the site and how the site first came to the attention of the EPA.

OBJECTIVE 3 - TO ASSIST THE COMMUNITY TO UNDERSTAND THE LAW AND TO PARTICIPATE IN ENVIRONMENTAL DECISION MAKING

- 1. Produce plain language educational materials in appropriate formats explaining environmental law and policy
 - .1 Environmental Law for Farmers
- 2 Taking Action avenues and methods of participation in environmental decisions
- 2. Conduct workshops with the community to enable practical participation in environmental decisions
- .1 One day regional workshops for community groups

- .2 Sydney workshops, hosted by local councils
- 3. Create a major forum and smaller seminars for developing strategies for law reform in areas of public interest environmental law of major interest/relevance

OBJECTIVE 4 - TO ENSURE EFFICIENT ADMINISTRATION OF THE EDO'S AFFAIRS

- 1. Provide efficient support for litigation, conference and other EDO activities.
- 2. Provide the EDO with an "institutional memory"
- .1 prepare and update EDO Calendar
- prepare EDO policy and procedures manual
- 3. Improve information systems
- .1 Ensure mail list generation and queries can be done easily by all admin staff
- 2 Ensure a rational filing system, with access to all staff, so that anybody ought to be able to find anything anytime.
- .3 Ensure all matters and research within the office are tracked
- .4 Monthly generation of financial and matter reports
- 4. Improve Staff Conditions
- 1 Ensure adequate pay and working conditions
- 2 Ensure appropriate training by reviewing training needs and recording training attended by staff
- .3 Maintain a job description for each position and annually review performance and conditions in conjunction with the job description
- .4 Maintain Board subcommittee dealing with pay and conditions

OBJECTIVE 5 - TO IMPROVE THE EDO'S FUNDING BASE

- 1. Broaden the funding base and maintain existing funding.
- .1 Establish administration for fundraising
- .2 Identify and appeal to our market for membership and support

- 2. Raise the profile of the EDO
- .1 Alert the media to the work of the EDO
- Distribute legal, educational and promotional material to key organisations and people Endorse and participate in other events

OBJECTIVE 6 - ESTABLISH EDO'S IN EACH STATE AND TERRITORY IN AUSTRALIA

- 1. Obtain funding to establish an Environmental defenders Office in each State and Territory in Australia sufficient to allow full time operation for one solicitor and one support staff.
- .1 develop a proposal in conjunction with each of the States and Territories
- .2 publicise and circulate that proposal, gathering as much support as possible
- .3 Make representations in Canberra supporting the proposal, arranging for meetings with Environment/Justice Ministers
- .4 Assist the development of steering committees in each State where no EDO exists.
- ,5 Keep in touch each month with each State and assist with networking between the States.
- .6 Leading up to the Budget for 95 96, ensure that funding for EDOs is on the agenda, ensure that there is a letter writing and lobbying campaign around Australia from as broad a coalition of groups as possible.

6[1

Our ref: JJ

Dear Member

19 October 1994

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney Peg: EDO

TEL: (02) 261 3599

FAX: (02) 267 7548

Re: Annual General Meeting

On behalf of the Board, thank you for accepting our invitation to be a member of the EDO. Hopefully by now you will have received a copy of our Memorandum and Articles of Association and the September edition of Environmental Defender. Please let us know if you do not have a copy of either document.

The purpose of this letter is to advise you of the procedure to be followed leading up to and during the Annual general Meeting. The formal notice of the Annual General Meeting, which will be on 23 November 1994 at 6.00pm at Pilgrim House, 262 Pitt Street Sydney, is enclosed.

As I indicated to you in my earlier letter, this will be an opportunity for you to elect the Board of the EDO and also to stand for election to the Board.

Voting for the Board

On about the 11th November 1994, we shall write to you again and forward a copy of a voting form together with a short paragraph about those people who are standing for election. There are two ways you can vote. One is to attend the AGM in person and we encourage you to do this in order to meet other members at the first formal meeting of the new membership. Alternatively, if you are unable to attend on the 23rd November, you may complete the proxy form nominating another person to vote on your behalf. That other person need not be a member of the EDO.

Election to the Board

At the AGM, members will be voting to elect a Board consisting of: Chairperson/Convenor, Vice Chair, Honorary Treasurer and Secretary, together with between two and seven other members of the Board.

In order to stand for election, a member must be nominated by two other members of the company. The nomination should be in writing and forwarded to the EDO by at latest the 9th of November 1994. We will prepare a ballot list of the names and candidates in alphabetical order.

We enclose a list of the current Members of the EDO in order to assist other members with their nominations. We request that you complete a short paragraph giving a description of your background and the skills and qualities you could bring to the Board of Management (No more than 300 words). We shall circulate the various descriptions prior to the Board meeting.



Conclusion :

Should you have any questions you would like to ask please do not hesitate to contact the writer or any of the current board members. Please let us know if you are unable to attend the AGM as soon as possible and please forward your proxy form.

We look forward to seeing you on 23rd November 1994.

Yours faithfully, Environmental Defender's Office Ltd

James James Johnson <u>Director</u>

EDO BOARD MEMBERS

Mr David O'Donnell

Mr Jeff Angel

Mr Harvey Sanders

Prof Ben Boer

Ms Chloe Mason

Mr Paul Murphy

Mr Andrew Chalk

Mr Patrick Quinlan

Mr Aden Ridgeway

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney Peg: EDO

TEL: (02) 261 3599

FAX: (02) 267-7548

EDO MEMBERS

Assoc Prof Rob Fowler

Dr Helen R Harding

Ms Penny Figgis

Mr Rod Simpson

Mr Duncan Leadbitter

Mr AJ Brown

Ms Melinda Murray

Ms Zada Lipman

Ms Jill Anderson

Ms Felicity Hall

Mr Keir Vaughan Taylor

Ms Linda Gill

Mr Bruce Donald

Dr Judy Messer

Mr Stuart White

Ms Nicola Pain

Mr Andrew Kelly

Ms Sue Kennedy

Mr Tony Norton

Mr John Connor

Ms Jan McDonald

Ms Lyn Fraser

Ms Kate Lamb

A. Prof Paul Adam

Mr Tim Bonyhady

Mr James Tedder

Dr Harry Recher

Ms Louise Byrne

Ms Anne Reeves

Mr Rod Ritchie

Dr Judy Lambert

Mr Warwick Pearse

Mr Ben Slade

Mr Bruce Woolf

Mr Ian Dodd



ENVIRONMENTAL DEFENDER'S OFFICE LIMITED

NOTICE OF ANNUAL GENERAL MEETING

NOTICE IS HEREBY GIVEN that the annual general meeting of the above company will be held at the company's office at 8th floor, 280 Pitt St, Sydney on Wednesday 23 November 1994 at 6.00pm, when the Directors' report for the period ended 30 June 1994 will be submitted to the company for consideration and the following ordinary business will be transacted:

- 1) to receive and consider the Directors' report and audited financial statements for the year ended 30 June 1994;
- 2) to elect Directors

By order of the Board

3) to transact any other ordinary business that may lawfully be brought forward.

	• •			
				•
David O'Donnell		•	• • • •	
		_	•	
Appointment of p	roxies: a	member	entitled	to attend

Appointment of proxies: a member entitled to attend and vote at this meeting of the company is entitled to appoint a proxy to vote on his or her behalf. A proxy need not be a member of the company. To be effective proxy forms must reach the registered office of the company not later than 5.30pm on 21 November 1994.

PUBLIC
INTEREST
ADVOCACY
CENTRE

21 October 1994

Dear colleagues,

URGENT HELP REQUIRED Support for community legal centre submissions about the Prime Minister's proposed 'Justice Statement'

You may be aware that the Prime Minister has committed himself to launching a 'Justice Statement' in November. This flows from the call in a report of the Access to Justice Advisory Committee (AJAC) for a National Justice Strategy.

PIAC, with bodies such as the National Association of Community Legal Centres and the Australian Federation of Consumer Organisations, submitted detailed responses to the AJAC Report. Other community groups such as ACOSS, AFAO and FECCA also responded.

We called for such measures as:

- increased resources for the Community Legal Centres program;
- enhanced legal aid funding, especially increases for family and civil law;
- a National Public Interest Legal Assistance Scheme to fund test cases, representative actions and other public interest matters;
- implementation of specific justice programs for women, for children and young people, for environmental matters and certain other issues.
- reform of the 'rules of standing' (which say who is allowed to participate
 in court cases) to improve access to the courts for ordinary Australians,
 and also for groups with a special interest; and

We believe it's vitally important for the Government to commit itself to playing a greater leadership role in delivering access to justice to the Australian community. This is essential if people, especially the disadvantaged, are to have the means to exercise their civil, economic and social rights. Access to justice is not an end in itself, it is about maximising the health, safety and well-being of the community. It is also a means to social justice.

The draft statement is expected to go before Cabinet in a fortnight. The 'horse-trading' is still going on. We seek your help to make our voices heard.

We need your *urgent help* to demonstrate support for the initiatives above, and in particular for community legal centres. While we welcome all indications of support, it is especially valuable coming from the grassroots, such as from consumer, community and environmental organisations.

Please write or fax the Treasurer, Hon. Ralph Willis MP, the Finance Minister, Hon. Kim Beazley MP, and the Attorney General, Hon. Michael Lavarch within the next week. You may also wish to encourage other people you know to do the same. Some points you may wish to raise are set out at the end of this letter.*

Telephone: (02) 299 7833 · Facsimile: (02) 299 7855 · DX 643 Sydney ·

E-mail: PIAC@SULAW.LAW.SU.OZ.AU (Internet) or piac (Pegasus) or 100242,266 (Compuserve)

Level 1, 46-48 York Street Sydney NSW 2000 Australia - Ach 002 773 524 -

Hon. Michael Lavarch, Attorney General:	Fax: 06 273 4102
Hon. Ralph Willis, Treasurer:	06 273 4320
Hon. Kim Beazley, Finance Minister:	06 273 4110

If you are able, please also send copies to the Minister for Justice, Duncan Kerr MP, and other relevant Ministers as set out below.

Hon. Duncan Kerr, Minister for Justice:	Fax:	06 273 4136
Hon. Paul Keating, Prime Minister:		06 271 5414
Hon. Carmen Lawrence, Minister for Health and Human Services:		06 273 4146
Hon. Brian Howe, Minister for Housing and Urban Development:		06 273 4126
Hon. John Faulkner, Minister for the Environment:		06 273 4130
Hon. Jeannette McHugh, Minister for Consumer Affairs		06 273 4075
Hon. Gary Johns, Special Minister of State:		06 273 4106

The common mail address for all these ministers is:

Parliament House,

Canberra ACT 2600.

If it would assist you, we can provide copies of PIAC's response to the AJAC Report. Please contact David Vaile or myself at PIAC on (02) 299 7833 if you have any queries or suggestions.

Thanks for your attention and your support.

Yours faithfully,

Public Interest Advocacy Centre

Michael Hogan Director

*Points you may wish to raise could include:

- Who you are, and who your constitutents are.
- What sort of problems you or your constitutents face.
- Contact you have had with community legal centres, legal aid commissions and other advocacy bodies for grass roots issues.
- How these bodies have helped you or your constituents, and what effect this had.
- How else these bodies might have been able to help, if they had adequate resources and support.
- Your support for the measures mentioned above, and in particular resources to enhance community legal centre and legal aid services.

Senator John Faulkner

Minister for the Environment, Sport and Territories

Mr James Tedder MBE Honorary Secretary North Coast Environment Council Inc Pavans Road GRASSY HEAD via STUARTS POINT NSW 2441

- 5 OCT 1994

Dear Mr Tedder

Thank you for your letter of 23 August 1994 giving your support to a number of proposals contained in the Access to Justice Action Plan. You mentioned in particular the importance of establishing Environmental Defender's Offices in all States and Territories.

The Environmental Defender's Office Ltd has recently sent me a copy of their submission to the Access to Justice Action Plan. I believe Environmental Defender's Offices play an important role in the community and have written to the Attorney-General, the Hon Michael Lavarch MP, advising him of my support for the proposal.

Thank you for your interest in this important public issue.

Yours sincerely

JOHN FAULKNER

ENVIRONMENTAL JUSTICE

In Australia access to environmental legal services has been appallingly unequal. Those who want to protect the environment have had minimal access to legal services. Government and industry wanting to carry out development have always had full access to legal advice and representation.

Often, environmental regulators can't or won't take action to enforce the law. Access to legal services allows the community to uphold the law in the most important cases.

The Commonwealth government is preparing an Access to Justice Action Plan. This provides a timely opportunity for the government to ensure access to justice in environmental cases.

A proposal has gone to Duncan Kerr seeking implementation of three reforms needed to address the resource imbalance – specialist community legal centres, legal aid for public interest environmental cases and the right of people to bring environmental cases.

- 1. ENVIRONMENTAL DEFENDER'S OFFICES The proposal seeks the establishment of a full time EDO in each state and territory. EDO's are community legal centres which specialize in environmental law. They –
- provide legal advice in relation to particular environment disputes;
- respond to government proposals for law reform or suggest ways of amending laws where the environmental legal system is not working;
- prepare materials and conduct workshops to educate the community about environmental law

EDO's help inform the community of their rights, about decision making processes generally, and ways of improving the system for the overall goal of better environmental outcomes.

New South Wales is the only state with a full time Environmental Defender's Office. There should be EDO's in all states and not only in some states. The need for environmental protection is just as great (or greater) outside NSW.

2. <u>LEGAL AID FOR ENVIRONMENT CASES</u> gives the public the means to exercise their legal rights. The proposal seeks legal aid for environmental cases in each state and territory and for national issues.

Legal aid is required to enable on-going advice and representation of environmental and community interests in particular disputes.

Without legal aid for cases, EDO's can provide no more than initial legal advice on particular issues.

The proposal seeks legal aid for environment cases in your state.

3. THIRD PARTY CIVIL ENFORCEMENT OF ENVIRONMENTAL LEGISLATION

Third party rights in environmental law allow any person to go to Court to stop the law being broken. These rights will lead to better decision making.

It is wasteful of resources to require those seeking to uphold the law to establish a special interest in doing so ("standing") in every environmental dispute.

Third party civil enforcement of legislation simply ensures that government is accountable in its decision making processes. The proposal means you will have the right to stop the law being broken.

Please write to the Commonwealth government asking it to implement the following proposals in its final report on access to justice –

- 1. The Commonwealth government must fund the establishment of EDO's in each state and territory.
- 2. The Commonwealth government must make moneys available to state Legal Aid Commissions for legal aid in environmental cases and for a national fund for national cases.
- 3. The Commonwealth government should amend Commonwealth environmental legislation to include third party civil enforcement provisions and encourage state legislatures to include similar provisions in state environmental legislation.

Letters should go as soon as possible to the following Ministers -.

* The Honourable Michael Lavarch MP Attorney General Parliament House, Canberra. Phone: 06 277 7300

Phone: 06 277 7300 Fax: 06 273 4102

 The Honourable Duncan Kerr MP Minister for Justice Parliament House, Canberra.

Phone: 06 277 7260 Fax: 06 273 4136



Civil Law Division Access to Justice Unit

14 September 1994

Mr J Tedder Hon Secretary North Coast Environment Council Inc Pavans Road Grassy Head via STUARTS POINT NSW 2441

Dear Mr Tedder

On behalf of the Attorney-General and the Minister for Justice, thank you for your submission in response to the report of the Access to Justice Advisory Committee, Access to Justice – an Action Plan.

As you know, the Attorney-General and the Minister for Justice are committed to reform of our justice system. Your submission will be considered by the Government over the next few months in the development of reforms. These will be announced in the Justice Statement, which is to be delivered by the Prime Minister later this year.

Thank you again for your submission.

Yours sincerely

Renée Leon

Renée Leon A/g Senior Government Counsel Access to Justice Unit

ENVIRONMENTAL JUSTICE

New South Wales is the only state in Australia with a full time EDO, environmental legal aid, and extensive third party rights for enforcement of environmental legislation.

There is a desperate need for these services and rights in other states.

The federal government's access to justice action plan provides a unique opportunity for the government to provide access to justice in environmental matters in other states. A proposal has gone to the Hon. Minister for Justice, Duncan Kerr, seeking implementation of three reforms – EDOs, environmental legal aid, and third party civil enforcement rights – to provide access to justice in all states and territories.

Your support is urgently needed to convince the federal government that the proposal will lead to better environmental decisions, and that government will be better off in the long term.

Please write to the federal government, this month, supporting the proposal. The government will be releasing its response to the proposal in September.

1. ENVIRONMENTAL DÉFENDER'S OFFICES

The proposal seeks the establishment of a full time EDO in each state. EDO's are community legal centres which specialise in environmental law. They:

- provide free initial legal advice
- respond to government proposals for law reform and suggest amendments to law where the environmental legal system is not working;
- prepare materials and conduct workshops for community education about environmental law

EDO's help inform the community of their rights, about decision making processes and ways of improving the system for the overall goal of better environmental outcomes.

New South Wales is the only state with a full time Environmental Defender's Office. There should be EDO's in all states. The need for environmental protection is just as great (or greater) outside NSW.

2. THIRD PARTY CIVIL ENFORCEMENT OF RIGHTS

Third party rights in environmental law allow any person to go to court to stop the law being broken. Introducing these rights will not cost the government anything; it must simply amend the law. These rights will lead to better decision making.

It is wasteful to require those seeking to uphold the law to establish a special interest in doing so ("standing") in every environmental dispute. Where the law is not enforced it is not respected and it becomes a joke.

Third party civil enforcement of legislation simply ensures that government is accountable in its decision making processes. The proposal means you will have the right to stop the law being broken.

3. LEGAL AID FOR ENVIRONMENT CASES

Legal aid gives the public the ability to exercise their legal rights. The proposal seeks legal aid for environment cases in each state and for cases of national significance.

Legal aid is required to enable representation of environment and community interests. It is crucial where the only way to enforce the law is to go to court. Without legal aid for cases, EDO's can provide little more than initial legal advice on particular issues.

Please write to the federal government asking it to implement the following proposals in its Access to Justice Action Plan –

- 1. The federal government must fund the establishment of EDO's in each state and territory.
- 2. The federal government should amend federal environmental laws to include third party civil enforcement provisions and encourage state governments to include similar provisions in state environmental legislation.
- 3. The federal government must make moneys available for State Legal Aid Commissions to fund legal aid in environment cases and for a national fund for cases of national significance.

Letters should go as soon as possible to the following Ministers -

 * The Honourable Duncan Kerr MP
 Minister for Justice Parliament House, Canberra. Senator, the Hon., John Faulkner
Minister for the Environment
Parliament House,
Canberra.

Fax: 06 273 4136

Fax: 06 273 4130

For further information, please contact Maria Comino at the Environmental Defender's Office in NSW on 02 261 3599.

.C.N. 002 880 864

Environmental Defender's Office Ltd

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia

TEL: (02) 261 3599

FAX: (02) 267 7548

DX: 722 Sydney Peg: EDO

Jim Tedder "Pavans Access" Grassy Head via STUARTS POINT

12 August 1994

NSW 2441

Dear Jim

Submission to Access to Justice Action Plan

We are writing to seek your support for the enclosed proposal prepared on behalf of the New South Wales, Queensland and Victorian EDOs, ELCAS in South Australia and steering committees for the establishment of EDOs in all other states and territories.

The Commonwealth government's Access to Justice Action Plan has provided a timely opportunity to address the need for access to justice in environmental issues and thereby to promote the development of effective environmental protection laws throughout Australia.

The submission proposes three key reforms for implementation by government. They are-

- 1. The establishment of EDOs in all states and territories.
- 2. Legal aid for environmental cases in all states and territories, and nationally.
- З. Third party civil enforcement.

In contrast to other states and territories, New South Wales is well advanced in implementation of these proposals.

Please write to the relevant ministers (see the attached list) supporting the proposal and indicating the benefits that have resulted from the New South Wales experience in implementing these reforms.

It would also be worthwhile highlighting how the community is seeking a greater role in environmental protection and decision making. Introduction of these proposals will promote community involvement in the implementation of environmental

The proposals in the submission also affect New South Wales. The submission asks the Commonwealth to provide \$200 000 additional funding to each state LAC, (excluding ACT for which only \$40 000 is sought) for legal aid for environmental cases. This amount was sought on the basis of estimates of previous need and expenditure by the New South Wales LAC.



In the case of New South Wales, this would mean a topping up of \$100 000 in the first year and a further \$150 000 in the second and third years. This is because the New South Wales LAC has presently only allocated \$100 000 for legal aid in the first year and \$50 000 in subsequent years.

The time frame for expressing support for the submission is short, with the government to release its white paper in response to the action plan in September.

Your support by way of letters and any direct representations that can be made to responsible ministers or other parliamentarians is therefore needed as soon as possible.

Please also speak with any colleagues and friends encouraging them to do the same.

For our records, a copy of any correspondence forwarded would be appreciated.

Your support is crucial to the development and implementation of effective environmental protection laws throughout Australia, and we thank you in advance.

Yours faithfully

Environmental Defender's Office Ltd:

Maria Comino Solicitor

enc

The Honourable Duncan Kerr MP.
Minister for Justice
Parliament House,
Canberra.

Phone: 06 277 7260 Fax: 06 273 4136

The Honourable Michael Lavarch MP
Attorney General
Parliament House,
Canberra.

Phone: 06 277 7300 Fax: 06 273 4102

The Honourable Peter Duncan MP
Parliamentary Secretary to the Attorney General
Parliament House,
Canberra.

Phone: 06 277 4260 Fax: 06 277 8597

Senator, the Hon., John Faulkner Minister for the Environment Parliament House, Canberra.

Phone: 06 277 7640 Fax: 06 273 4130

SUBMISSION BY

ENVIRONMENTAL DEFENDER'S OFFICE LTD (NSW) ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC. ENVIRONMENT DEFENDERS OFFICE LTD (VIC) ENVIRONMENTAL LAW COMMUNITY ADVISORY SERVICE (SA) INC.

Steering Committees for the establishment of EDOs in Western Australia, Tasmania, Northern Territory and the ACT.

To the Access to Justice Action Plan

Co-ordinated by: Environmental Defender's Office Ltd Suite 82 280 Pitt Street SYDNEY NSW 2000

Phone: 261 3599

Fax267 7548

Contact: Maria Comino

8 August 1994

EXECUTIVE SUMMARY

In environmental issues, there is serious inequality in access to justice between private or government interests and persons or groups seeking to protect the public interest. Private or government interests are well resourced and have access to legal advice and representation whilst protectors of the public interest have no or limited access to legal advice and representation.

The effect of this imbalance on decision making is that solutions to environmental problems do not reflect detailed consideration of all interests and are predestined to be inadequate.

The government should implement three reforms to begin to address this imbalance. They are -

1. THE ESTABLISHMENT OF ENVIRONMENTAL DEFENDER'S OFFICES

1.1 NEED

Environmental Defender's Offices perform three functions - legal advice and litigation, law reform and community legal education in public interest environmental law.

The NSW EDO is the only full time office in Australia. Other states and territories have no or very limited access to these services.

Inquiries received by existing offices show that the community has a changing expectation about its role in environmental protection as a result of the increasing scriousness of environmental problems and initiatives to implement the principles of ecologically sustainable development. The community is demanding greater involvement in environmental decision making.

These demands are leading to the creation of new rights and responsibilities in environmental laws.

There is significant unmet need for legal advice and community education about rights of the public to participate in decision making processes and for the on-going formulation of participatory environmental laws.

There is a need for EDOs in all states and territories and not only in some states. To perpetuate the imbalance is to imply there is a greater need for environmental protection in some states than in others.

1.2. MEETING THE NEED

Over the next three years, the Commonwealth should provide funding to be administered by the Attorney General's Department, for the following purposes –

- 1. To bring the services provided by the Queensland, Victorian and South Australian offices up to a minimum standard of service.
- 2. To commence the establishment and operation of Environmental Defender's Offices in Western Australia, Tasmania, the Northern Territory, and the ACT.
- To enable members of the NSW EDO to assist and co-ordinate each of the new EDOs in their establishment, and for initial national co-ordination of EDOs once established.

Recurrent funding of up to \$96000 is sought for all states and territories except NSW. That amount is equivalent to the core grant received by EDO NSW and is based on the established community centres funding formula for two positions.

Capital funding of \$30000 is sought for South Australia, Western Australia, Tasmania, the Northern Territory, and the ACT.

Total Funding Sought

First year	Capital
	Recurrent
	EDO NSW\$31,000
Second year	Recurrent\$604,000
Third year	Recurrent \$604,000
TOTAL FUNDING	\$1.801.000

2. LEGAL AID FOR ENVIRONMENTAL CASES

2.1 NEED

Legal aid enables the remedying of serious breaches of environmental laws and the conduct of test cases.

Legal aid for environmental cases enables on-going advice and representation of community interests in particular environmental disputes. On-going representation is required to allow negotiation on an issue, with litigation being a matter of last resort.

Legal aid is necessary because, as shown by the NSW EDO experience, the core grant allocated to a community legal centre permits no more than initial legal advice on particular issues.

Legal aid for environmental cases is only available in New South Wales. In other states LACs have no guidelines for the provision of legal aid in environmental cases. There are commonwealth guidelines for legal aid in matters of national significance.

There is a need for legal aid funding to enable members of the public to exercise the public rights provided in environmental legislation.

The public's ability to pursue litigation is also discouraged by cost indemnity rules.

It is an unacceptable requirement that public interest litigants have to undertake the risk of personal financial loss whilst the benefit of enforcement of public environmental rights flows to the broader community and is not specific to the individual litigant. The conduct of the litigation also involves voluntary donation of enormous personal time.

There is a need for special costs provisions in public interest environmental litigation.

2.2 MEETING THE NEED

The Commonwealth should -

1. Recommend that state LACs provide legal aid for environmental cases.

In its national plan for priorities for legal aid, the Commonwealth should identify public interest environmental cases as an area of law in respect of which LACs are to provide legal aid.

Guidelines for legal aid in public interest environmental cases should recognise the special needs of environmental cases and waive any requirements for a means test. Appropriate precedents are Section 35 of the <u>Legal Aid Commission Act</u> 1979 (NSW) and the NSW LAC legal aid guidelines in public interest environmental cases.

2.. Provide funding to state LACs for legal aid in environmental cases.

The Commonwealth should provide increased funding to LACs by way of tied grants for public interest environmental cases.

LACs in Queensland, Victoria, SA and WA should each receive \$200 000 additional funding each year for the next three years.

The NSW LAC should receive \$100 000 additional funding in the first year and \$150 000 in the second and third years.

Tasmania and the Northern Territory should each receive \$100,000 additional funding in the first year and \$200,000 each in the second and third years.

The ACT should receive \$40 000 additional funding in the second and third years.

Total moneys that the Commonwealth should provide are set out below:-

First Year	QLD, VIC, SA, WA\$800 000)
	NSW\$100 000)
•	TAS, NT\$200 000)
Second Year	QLD, VIC, SA, WA, TAS, NT \$1 200.00)
	NSW\$150,000)
	ACT \$40 000)
Third Year	QLD, VIC, SA, WA, TAS, NT)
,	NSW\$150 000)
	ACT\$40 000)

- 3. Amend Commonwealth legislation to provide for cost indemnities and costs orders in public interest environmental litigation.
- 4. Recommend that state legislation be amended to provide for cost indemnities and costs orders in public interest environmental litigation.

Courts should have the power to make an order that another party to proceedings indemnify the applicant in relation to costs incurred in an application, or that a party only bear its own costs to the proceedings regardless of the outcome of proceedings. An appropriate provision would be Section 49 <u>Judicial Review Act</u> 1991 (QLD). In making such an order the Court should consider whether the proceedings are being brought in the public interest.

Criteria for identifying whether a matter is in the public interest should be listed. Reference can be made to guidelines of the NSW LAC in determining appropriate criteria.

Similarly, there should be provisions for costs indemnities as exist under Section 47 of the Legal Aid Commission Act 1979 (NSW).

Total additional funding .

5. Establish an Australian Legal Aid Commission.

The Commission should be an independent body responsible for administering the national legal aid fund.

6. Establish a national legal aid fund for environmental test cases.

A national fund for test cases should have clear criteria for identifying what makes a matter an environmental test case that should be funded by the commonwealth.

Such a fund would complement state legal aid funding, which would remain an important source for environmental representation, as environmental laws are predominantly state based.

3. THIRD PARTY CIVIL ENFORCEMENT

3.1 NEED

Enforcement of environmental laws is primarily the responsibility of government authorities. However, sometimes those authorities do not take proceedings where the law has been broken. That can be due to a lack of resources or commitment to taking appropriate enforcement action.

The failure to enforce environmental laws means that public resources such as air, water; endangered species and heritage are not protected. That leads to frustration, contempt for government and the legal process, and eventually, functional breakdown of the system.

Third party civil enforcement provisions are now recognised by government departments, like the NSW Department of Planning, as essential to the proper administration of the environmental legal system.

The right of any person to remedy or restrain a breach of the Act is a <u>fundamental</u> <u>safeguard</u> of the system's proper processes.

Third party civil enforcement provisions enable resources to be directed to substantive questions of breach of environmental laws and not exhausted on procedural issues.

It is a waste of resources, legal aid or other, to require those seeking to represent environmental interests in environmental proceedings to establish their special interest in doing so. This is particularly so, considering that it is no longer disputed that environmental interests should be represented and count in the decision making process.

There is a need for third party civil enforcement provisions in environmental legislation to ensure that government is accountable.

3.2 MEETING THE NEED

The following proposals advance Action 2.1 of the Action Plan.

The Commonwealth should -

- 1. Recommend that state legislatures include third party civil enforcement provisions, in the same terms as Section 123 of the Environmental Planning and Assessment Act 1979 (NSW), in all environmental protection legislation.
- 2. Further recommend that a state environment protection statute include a provision in the same terms as Section 25 of the Environmental Offences and Penalties Act 1989 (NSW) to allow restraint of a breach or threatened breach of any Act where the breach is causing or is likely to cause environmental harm.
- 3. Amend Commonwealth legislation to include third party civil enforcement provisions, in the same terms as Section 123 of the Environmental Planning and Assessment Act 1979, in the following legislation –

Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984

Australian Heritage Commission Act 1975

Antarctic Marine Living Resources Conservation Act 1981

Antarctic Treaty (Environment Protection) Act 1980

Endangered Species Protection Act 1992

Environment Protection (Impact of Proposals) Act 1974

Environment Protection (Alligator Rivers Region) Act 1974

Environment Protection (Nuclear Codes) Act 1978

Environment Protection (Sea Dumping) Act 1981

Great Barrier Reef Marine Park Act 1975

National Parks and Wildlife Conservation Act 1975

Ozone Protection Act 1989

Protection of the Sea (Discharge of Oil from Ships) Act 1983

River Murray Waters Act 1983

Whale Protection Act 1980

Wildlife Protection (Regulations of Exports and Imports) Act 1982

World Heritage Properties Conservation Act 1983

- 4. Amend the Environment Protection (Impact of Proposals) Act 1974 to include a provision in the same terms as Section 25 of the Environmental Offences and Penalties Act 1989 (NSW) to allow restraint of a breach or threatened breach of any Act which breach is causing or is likely to cause environmental harm.
- 5. Amend the Administrative Decisions (Judicial Review) Act 1977 and recommend that state legislatures amend relevant judicial review legislation, to provide that any person may apply for the relief provided in that legislation, where the decision the subject of

review, is causing or is likely to cause environmental harm, or is made in breach of an environmental statute. A list of the statutes can be specified by regulation.

CONCLUSION

These reforms will promote achievement of the objectives of the Access to Justice Action Plan.

The establishment of EDOs will lead to greater equality of access to legal services for persons having legitimate interests to protect, regardless of their place of residence.

Legal aid for environmental cases will meet the need for the Commonwealth to provide resources for legal aid to those who have legitimate interests to protect, and in respect of matters for which there is an increasing demand for legal services.

Third party civil enforcement provisions will enable the Commonwealth to improve access to justice in relation to areas of law within Commonwealth power, and to formulate "best practice" principles for matters affecting access to justice but which require implementation by the States.

If these reforms are implemented government decision making will benefit and there will be costs savings in the long term. That this will happen is supported by the findings of the Frascr Island Commission of Inquiry, into public issue disputes. In May 1991, the Commission reported:—

Effective community involvement may require not only access to information, opportunities to participate and representative participation, but also the expenditure of public funds on financial support for appropriate community organisations to enable them to act within and contribute to, rather than oppose and seek to circumvent, the making and implementation of decisions. The ... Legal Aid Commission already provides some financial support in relation to environmental disputes to the Environmental Defender's Office.

One instinctive reaction to such a proposal is that it will promote disputes and obstruct land and resource use. However, provided that appropriate controls are implemented, public funding should have exactly the opposite result....Effective public participation is likely to improve and expedite the decisions which are made.

Resourcing community interests is necessary to give expression to those community interests and to ensure that outcomes of environmental disputes are determined on merit rather than according to means and that processes set down by law are followed. Otherwise private interests will always dominate, and the expression of the broader public interest will be forever inhibited.

Hon.Duncan Kerr Minister for Justice Parliament House Canberra 2600

Dear Minister,

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دار

This Council is composed of 44 conservation societies between the Tweed river and the Great Lakes and east from the New England highway. Being in one of the most rapidly growing areas of Australia we are surrounded by development proposals which if left to go forward as planned would result in future environmental and social problems.

Unfortunately so many of the Local Governments see only an immediate return to the area in dollars that they fail to assess the long terms impacts. In these circumstances one of the last means to bring sanity to the situation is to seek legal advice and in a last resort , take court action. This is where the Environmental Defenders Office has proved invaluable in helping the community right the balance where the main players have been developers and Councils, both with more than adequate financial resources, and the community!

The problem is of course that accountants have not been ablest to put dollar values on the natural environment and therefore the playing field is tilted against protecting it. But it is the community that is disadvantaged , both the present and the future, when the environment is damaged. It is therefore incumbent upon the community in the form of the Government to ensure that developments are properly assessed. This will involve investigation of the legal aspects and in some cases court action. As the environment involves the whole community it is only right that the government should make provision for proper legal representation of the environment.

This Council is therefore asking you to support a proposal to be included in the Access to Justice Action Plan .This proposal would be

- * fund the establishment of Environmental Defenders Offices in all States and Territories
- * amend federal government laws to include third party civil enforcement provisions and encourage state governments to include similar provisions in state legislation
- * provide moneys to State Legal Aid Commissions to fund legal aid in environmental cases and for a national fund for cases of national significance. And to ensure that funds so allocated to Legal Aid Commissions are used only for environmental cases.

Yours sincerely

James L.O. Tedder Hon. Sec.

23 August 1994

ensure they understand problems and can also have a say in mgmt.

Bushfire Management Committees, North Coast - NCC Rep Vacancies

BALLINA SCONE **BYRON** SINGLETON

TAREE 23 August 199 COFFS#HARBOUR 1594## Hon. Sec.

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* prov:(099)34433555 State Lege! Aid Commissions are used only for contact: planta significance, And to ensure that fund, to course the fund, to commissions are used only for provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used only for the provided to legal Aid Commissions are used to legal Aid Com

Env Preferred Paper Products: o-L Industry and Unions rejected proposed policy: A series of principles on paper recycling prepared by EPA rejected again. EPA has nowhere to go - environment groups granted funds to engage acconsultant to develop a Policy of Govt. Govt Depts currently ignore existing guidelines for purchasing

recycled paper in the years to anatice we ton boil a biology for M17/7/4 That NCEC write to Minister Faulkner stating that Government Policy rejecting the use of recycled paper or other paper substitutes

is contributing to the demise of Old Growth Forests. G Commerced in Contributing to the demise of Old Growth Forests. G Commerced in Contribution of the Contribution

recommence atuPthLookout ion 123 September, ffinishing at New Country Swamp (Enfield StatiForest), where a Council of All Beings Workshop will take place to control to the first control yand uct point in More will take place to control to the first control yand uct point in More with the proposals before next Old elections, and are pushing ahead with combined NSW/Old proposal. I No public participation/Regional Assessment prepared from the proposed by NEFA to callow Old nominations to go ahead but force full participation in NSW for control to the first participation

Moved: J Corkill -- Seconded: *P McEntee CARRIED

Concept of (Coastal World Heritage Reserve System being discussed, with east-west corridors linking Great Central Escarpment, hen nominations. Jet it combosed et 44 contara from abutation pathialiage

M17/7/6 - That NCEC agree in principle that a proposal for nomination of a NE NSW Coastal Environment World Heritage Listing be developed, and that Member Bodies be asked to consider their input, based upon World Heritage basic nomination criteria. Moved: ~'J'Corkill - Seconded: CARRIED

Environmental Defender's Office Ltd

Annual Report 1992–1993

Environmental Defender's Office Ltd

ANNUAL REPORT 1992–1993

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Director's Report

The year 1992–1993 has brought tremendous change to the Environmental Defender's Office.

Nicola Pain, Principal Solicitor of the office for almost five years, left the EDO to work with the Commonwealth Environment Protection Agency. David Robinson, Solicitor with the EDO for three years, left the EDO for the United Kingdom to do research and assist with the care of his daughter.

The loss of Nicola and David represents a loss of tremendous amount of public interest law experience from the office.

However, the EDO is more than the sum of its paid staff. Our volunteers, some of whom have long associations with the office, help to maintain a depth of experience. This was highlighted when David Mossop commenced as a solicitor with the EDO in January 1993. Although a recent graduate, David brings with him three years of EDO experience as a volunteer.

The EDO's external environment has changed dramatically also. During the second half of 1992, it became increasingly difficult for the office to obtain grants of legal aid. Indeed the sole grant of legal aid made by the Commission to clients of the EDO during the year did not contain an indemnity against costs orders. Without the indemnity our clients were unable to make use of that grant because they risked great personal loss in bringing public interest proceedings.

On 1 January 1993 the Commission changed its policy and legal aid was officially no longer available for environmental matters.

The abolition of legal aid impacts on the EDO in two major ways. Firstly, it restricts the scope of representation we are able to provide before the Courts and therefore the number of test cases, which are so valuable to law reform.

Secondly, the loss of legal aid impacts on the EDO financially. During the year 91–92, income from representing legally aided clients earned approximately 30% of our income. Recognising the need to diversify our support and funding base, the EDO employed a development officer in May 1993. Tasks will include working to expand membership of "Friends of the EDO" and raising our profile in the community.

As well as diversifying income, we have taken measures to improve efficiency, including the installation of a computerised account system and the provision of a computer on each solicitor's desk.

Despite the cutbacks and reduction in the number of solicitors from four to three, the EDO has continued to be effective, continuing to provide a high standard of advice and representation in litigation. Major activities include:

- * acting for Mr Brown in proceedings against North Broken Hill Ltd and the NSW EPA. These broke new ground in establishing the rights of an individual to seek orders in court and prompted the announcement of a major upgrade of the paper mill, a fresh development application and examination by a Commission of Inquiry
- * acting for several people brought unjustly before the Supreme court by the Forestry Commission of NSW in proceedings relating to logging near Wingham. Some people were named because they had made a Freedom of Application application to the Commission; others were the registered owners of cars that had been seen in the area.

* providing advice and conducting workshops in Papua New Guinea and Solomon Islands.

The outlook for the EDO is positive. As community awareness for environmental matters grows, so does the need for the EDO's services, empowering people in the community to protect the environment in the public interest. We will continue to work for the restoration of legal aid in public interest environmental matters as well as building on community support for the EDO through membership and volunteers.



James Johnson, Director of the EDO

Aims and Objectives of the EDO

The aim of the EDO is to protect the environment through law. To further this aim, the EDO Board and staff have developed a strategic plan, the essential elements of which are as follows:

Goal 1 - Representation

- 1. To provide timely and accurate advice in response to telephone inquiries
- 2. To provide effective representation in public interest environmental law issues.

Goal 2 - Law Reform

- 1. To ensure that new legislation contains the key principles of open government;
 - (a) open standing (b) community participation (c) access to information
- 2. To widen and strengthen Environmental Impact Assessment procedures
- To incorporate aboriginal issues into environmental law
- 4. To reform the law relating to the storage and transport of hazardous chemicals and to contaminated land
- 5. To improve protection of Threatened species and Biodiversity at Commonwealth/State levels
- 6. To maximise the environmental and community benefit from the reform of environmental laws currently under way (Protection of the Environment Stage 2 legislation)
- 7. To work for the reform of the laws of New South Wales governing the use of water.

Gaol 3 - Education Programme

- 1. To run a self-funding education programme
- 2. Empower people to use the law for environmental protection
- Create a major forum for developing strategies for law reform in an area of public interest environmental law of national interest

Goal 4 - Efficient Administration

- 1. Provide efficient support for litigation, conference and other EDO activities.
- Make the library resource accessible and useful
- 3. Improve information systems
- 4. Improve the EDO workplace

5. Involve Board in implementation of Strategic Plan

Goal 5 - EDO Funding and Profile

- 1. Broaden the funding base
- 2. Ensure that legal aid is restored for environmental matters in NSW
- 3. Foster relationship with EDO Clients and Friends
- 4. Write and publish EDO History 1984-1994
- 5. Raise the profile of the EDO



"To maximise the environmental and community benefit from the reform of environmental law currently under way"

Board of Directors/Structure

The EDO is a company limited by guarantee. The EDO board of management provides policy direction and assistance to staff. The board is elected at the annual general meeting held each year. Board members all work on a voluntary basis and attend monthly meetings and annual policy days.

The Directors are:

Jeff Angel - Co-Director, Total Environment Centre

Ben Boer - Professor Environmental Law, University of Sydney

Zada Lipman - Senior Lecturer, Macquarie University Law School

Chloe Mason – Occupational Health and Safety and Environmental Consultant

Paul Murphy - Partner, Jones Staff & Co.

David O'Donnell - Partner, Mallesons Stephen Jacques

Sue Salmon – NSW Campaign Convenor, Australian Conservation Foundation

Harvey Sanders - Consultant Planner, Wellings Smith & Byrnes

Patrick Quinlan - Australian Federation of Construction Contractors

Staff and Volunteers

During 1992–1993 the following paid staff worked at the Environmental Defenders Office:

Nicola Pain - Principal Solicitor to October 1992

David Robinson -Solicitor to January 1993

James Johnson - Solicitor and appointed Director November 1993

Maria Comino - Solicitor

David Mossop - Solicitor appointed January 1993

Dorothy Davidson - Office Administrator

Jackie Wurm - Conference Organiser

Denise Farrier - Administrative Assistant

Melinda Murray, Louisa De Feranti and Margot MacManus also provided part time administrative assistance.

Volunteers who assisted the EDO during 1992–93 included the following:

Elaine Teoh
Melinda Murray
Tim Marshall
Katherine Biber
Rick Abram
Julia Humphrey
Samuel Herps
Tony Moody
Ginger Mudd
Shauna Jarret
Helen Gould
Sophie Davies

Louisa Davies Melissa Eaton Sally Arundell

Marc Allas Louise Byrne Katrina Buarikis Atticus Fleming Helen Boyton

Helen Boyton
Sophie Davies
Liam Walsh
Virginia Bell
Lilla Pretor
Belinda Paxton
Robyne Vershoof
Miriam Wheeldon
Matthew Koertge

Joan Adams Julia Horsley

Libby Blakey

Al Oshlack

Gabriel Mackenzie Victoria Pallant Winnie Poon Libba Ranken

Phillip Khoo Sally Webber Kristen Webb Stephen Johns Paul Zissermann Michael Lusk

Katy Brady Fred Smith

Dominique Hogandoran

Kelly Godfrey Rebecca Ashcroft

Freya Yule Chris Tsovolos Cassy Richmond Jacqui Ford

Jenny Marr
Jane Holden
Louise Wilson
Chris Battye
Lenore Fraser
Sean Docker
Suzanne Hillier
Theo Magoulas
Thomas O'Sullivan

Jane Cook

Fiona Lim Alex McMillan Katrina Stone Tiffany Swinton Staff attended the following/seminars and training sessions:

National Training Showcase & Exhibition

Indigenous Women & Museums Conference Adelaide

Aboriginal English & the Law Seminar.

Environmental Economics Seminar conducted by the Institute of Engineers Australia

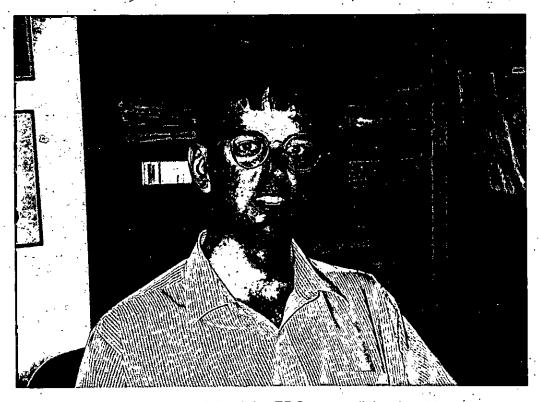
Seminar on Economic Instruments conducted by the NSW EPA.

Australian Association for Environmental Education workshop on Aboriginal culture and education.

Media Skills Course conducted by Greenpeace

In March Maria Comino attended the Public Interest Law Conference and ELAW Annual Meeting, Oregon, USA. The support of the Environmental Law Alliance Worldwide is acknowledged in enabling Maria to attend.

The EDO staff undertook training using the Locus accounting system.



David Mossop joined the EDO as a solicitor in 1993

Inquiries, Litigation and Advice Work

During 1992–93 the EDO responded to 1545 telephone enquiries. This represents a 7% decrease from last year's figures. While demand continues to increase for our services, the number of solicitors on staff to give advice was reduced from 4 to 3 in September 1992. This means that in 1992–93 solicitors increased their inquiry response rate, the number of inquiries each was able to respond to in any month, by 17%.

For the purpose of our statistics we define metropolitan area to include Wollongong and Newcastle. This year enquiries from outside the broad metropolitan area exceeded enquiries from the metropolitan area by 25%.

Our statistics reflect an increasing demand for legal education information, with 283 enquiries. 144 enquiries for the year came from the media.

Our statistics also demonstrate that the EDO is increasingly unable to meet the need demonstrated by the enquiries received at the office. A particular area which cannot be met includes responding to requests for participation in legal education, addressing schools and groups.

The EDO was unable to provide significant input into the progress of the Local Government Bill. The EDO was obliged to decline an invitation to participate in the Commonwealth Government's Building Better Cities Program, particularly participation in the Seminar "Five-Contaminated Sites: Legal and Financial Responsibility and Planning Solutions".

The last major category of unmet need involved enquiries where large numbers of documents needed to be read and understood in order to give the level of advice requested. The EDO was unable to properly respond to several written requests for advice of this nature.

Groups assisted by the EDO during 1992-93 include the following:-

Australian Conservation Foundation Shoalhaven

Adavate Association Inc.

Australian Chemical Trauma Alliance Inc

Australians for Animals

Ballina Environment Society

Brewarrina Community Development Project

Byron Environment Centre

Coalition of Transport Action Groups

Coastal Councils

Coastwatchers Association

Colong Foundation

Environment Centre Northern Territory

Exeter Village Association

Friends of Durras

Great Lakes Environment Association

Green Point Action Committee

Greenpeace

Grey Gum Action Committee

Individuals and Community Rights Advocacy Forum (PNG)

Inland Rivers Network

Jenolan Caves Environment Protection Committee

Lismore Greens Maryland Residents Group National Parks Association (NSW) Inc Native Fish Australia Inc ... North Coast Environment Council Northern Parks and Playgrounds Movement Save Blue Lagoon Beach Action Group South East Forest Alliance South East Forests Conservation Council Inc. Suffolk Park Protection Group The Wilderness Society Towards 2000 Conservation Group Tumut Valley Canoe Club Inc Valley Watch Inc. Wolli Creek Preservation Society World Wide Fund for Nature

In 1992-93, 80 files were opened for litigation and advice work, including research on particular issues of environmental law and policy.

The major advices given and cases undertaken by the office during the year were:-

Adavale Association

The EDO provided ongoing advice to the Adavale Association relating to the Peko Wallsend copper and gold mine at Parkes. The EDO represented the Association in the Land and Environment Court, arriving at consent conditions after a mediation. Some months later the Company put an application to amend their development application to the council as consent authority. The Association did not have the resources to challenge the amendments. The law has since been amended so that where the Land and Environment Court imposes consent conditions, any application to vary those conditions must come back to the Land and Environment Court.

Ballina Environment Society

The EDO represented the Ballina Environment Society in Class 1 proceedings in the Land and Environment Court challenging a sewerage scheme proposed by Ballina Shire Council. Consent conditions following mediation involved ongoing monitoring, disclosure of monitoring results and the conduct of studies prior to each stage of the development going ahead.

Blue Lagoon

The office is acting on behalf of the Save Blue Lagoon Beach Action Group Inc which has filed Class 4 proceedings in the Land and Environment Court relating to a caravan park/tourist resort development in a coastal lands protection zone at Blue Lagoon near Bateau Bay on the Central Coast.

Brown v Environment Protection Authority and North Broken Hill Ltd

The EDO represented Mr AJ Brown in proceedings against the Environment Protection Authority and North Broken Hill Limited. There were two main aspects to the challenge. Firstly, the proceedings challenged the policy of "prosecutable reality", where pollution licence levels were raised to accommodate existing levels of pollution.

. Secondly, the challenge sought a declaration that an EIS was required for the

issue of the licence to use the river for waste disposal, pursuant to Part 5 of the Environmental Planning and Assessment Act 1979.

On 12 November, 1992 Justice Pearlman handed down judgment. Her Honour held that the policy was not inflexibly followed and was not unreasonable. Evidence before the Court showed that the background levels of mercury in the Shoalhaven River were already 480 times the EPA's recommended maximum level. Her Honour also held that no EIS was required because use of the river was "ancillary to use of the land".

The judgment dealt with several important questions relating to standing under the Environmental Offences and Penalties Act. The case is the first and to date only case brought under the revised provisions of Section 25 of the Environmental Offences and Penalties Act. The case was brought with probono representation by Malcolm Craig Q.C. and Jonathan Simpkins with additional representation from Patrick Larkin on several occasions.

The decision was appealed to the Court of Appeal. On 1 April 1993, the Court of Appeal ruled on an application for security costs brought by North Broken Hill Limited against Mr Brown in respect of the Court of Appeal proceedings. Mr Justice Priestley found that Mr Brown was not acting on behalf of others. He also held that, on the material before the Court, the appeal was of sufficient significance to outweigh the prejudice APPM would suffer if the appeal were allowed to proceed. He noted that North Broken Hill Ltd is one of Australia's 35 largest public companies with a market capitalisation exceeding \$1.5 billion dollars. In this regard a failure to obtain an order for security of \$15,000 would not be of great importance.

On Friday 28 May Parliament passed the Protection of the Environment Administration (Amendment) Act 1993. The effect of this Act was to exempt the Environment Protection Authority from compliance with Part 5 of the Environmental Planning and Assessment Act when renewing licences to pollute.

In the face of this legislative intervention, the appeal was withdrawn.

The EDO will be carefully reviewing the proposed new pollution control legislation when it is introduced to ensure that there is public participation in the process of assessing the impact of pollution and issuing pollution control licences.

Club Med Proposal for Byron Bay

The office has advised residents of Byron Bay in relation to the proposal to construct a Club Med Resort at Byron Bay.

Coastal Councils

The EDO has provided advice to the Coastal Councils, a group of Councils in the Sydney Metropolitan area which border on the marine environment. The Councils are considering their legal position with regard to Water Board overflows of sewerage into the stormwater drains which they own or manage.

Environment Centre Northern Territory

We have provided ongoing advice to the Environment Centre Northern Territory regarding the legality of the Federal Minister for the Environment's approval process for the Macarthur River Project, the first of the Federal Government's fast-tracked developments.

Forestry Commission of NSW v Sheed

The office acted as agent for Woolf and Associates in representing Chris Sheed of Wingham Forest Action in proceedings brought against him by the Forestry Commission of New South Wales. The Commission sought to restrain Mr Sheed and "unknown persons" from taking part in protest activities in Bulga and Dingo State Forests. Mr Sheed gave undertakings that were accepted by the Court. The Commission failed to get orders against "unknown persons" and failed to get leave to appeal from the decision of Justice Windeyer refusing relief. The Commission later discontinued the proceedings.

Forestry Commission of NSW v Aimann & Ors

The office acted for five defendants in Supreme Court proceedings brought by the Forestry Commission of New South Wales. The proceedings sought to restrain thirty two named defendants from entering Bulga and Dingo State Forests near Taree. These proceedings followed immediately upon the failure by the Commission to obtain orders restraining "unknown persons" in Forestry Commission v Sheed. The application for an interlocutory injunction was dismissed with costs and the Commission discontinued the proceedings.

Friends of Durras

It is not often that an environmental organisation raises over \$100,000 towards its cause. For years the Friends of Durras who seek to add land adjoining Durras Lake to Murramarang National Park on the South Coast have sought to raise money for the purchase. Almost all the elements for a successful purchase of the privately owned land seem to be in place, as the Department of Planning and the National Parks & Wildlife Service had agreed to share the cost of the land purchase.

Ironically contracts for sale to a private buyer were exchanged in the same week that the final approval from the Department of Planning to provide funds for the land purchase was given, albeit just days too late. It is still hoped that a subdivision of the land into the environmentally sensitive lake area and already cleared land near the Pacific Highway can be made. EDO was grateful for the assistance of David Brigden of Freehill Hollingdale & Page who took over the matter in helping the Friends of Durras on a pro bono basis.

Grey Gum Action Committee

The office gave advice to the Grey Gum Action Committee and the Great Lakes Environment Association concerning the failure of Great Lakes Shire Council to prepare a fauna impact statement when seeking consent from itself to subdivide land which was koala habitat.

Hunstein Range

The office gave preliminary advice on the lawfulness of certain timber purchases in the Hunstein Range in East Sepik Province in Papua New Guinea.

Nancy Malcolm on behalf of the Maryland Residents Group

Last year we reported that in November 1991, Mrs Nancy Malcolm acting on behalf of the Maryland Residents Group, challenged by way of Class 4 proceedings, the decision by the Newcastle City Council to grant development consent to a waste management facility at Summer Hill near Newcastle. It had been successfully argued that the landfill operation was designated development requiring the preparation of an environmental impact statement.

As a result of the Court's decision the Council prepared an environmental impact

statement, and the development proposal was the subject of hearings before a Commission of Inquiry. The Inquiry recommended that the proposal be staged, so that the initial approval be for 20 years only rather than 50 years which was the full life of the proposal. Council granted approval on those terms, and the group again sought advice on the prospects of success of a merits appeal to the Land and Environment Court. Expert advice was sought on the merits of the proposal. That advice noted that the site was unsuitable for a landfill facility, and that in fact the shallow and localised ground water should have precluded the use of the site from the initial EIS site evaluation. The group was unable to pursue Class 1 proceedings as no legal aid was available.

Micalo Island

In September 1992, Valley Watch Inc, a group of concerned residents in the Clarence Valley, filed Class 4 proceedings in respect of a proposal by Shin-Ei Co. Ltd for a tourist development and golf course on Micalo Island located in the mouth of the Clarence River. The development proposal had been the subject of a Commission of Inquiry in January 1992. The Minister for Planning granted consent subject to conditions in June, 1992.

The area is significant environmentally because the Clarence River represents the most important estuary on the east coast of Australia. The central environmental concern is the question of the impact of disturbing the acid sulphate soils during the construction process with the potential for the sulphate to be discharged into the estuary.

Mushroom Composting Industry at Ebenezer

Ebenezer is a long established rural, now urban fringe area. It has the oldest Presbyterian Church in Australia, a school and several tens of houses. In the last ten years mushroom growers have increased their activities, and in order to provide the growers with spawn, industrial scale composting operations involving manure, straw, gypsum and smelly composting procedures have caused friction with the residents, churchgoers and schoolchildren.

The EDO acted on behalf of Peter Foster, convener of the Ebenezer Concerned Residents Group in Class 4 proceedings in the Land & Environment Court seeking to enforce existing development consent conditions that the mushroom composting industry should not interfere with amenity, and should take place only upon appropriately zoned land.

Pearlman J found for the applicants in relation to the relief which both Hawkesbury Council and Mr Foster were seeking. Her Honour declared that the premises were being operated in breach of certain development consent conditions relating to odour and amenity. She granted an injunction, suspended for 12 months, preventing the compost production in breach of those conditions.

Her Honour found against the second applicant, Foster, in relation to the additional relief sought. Her Honour found that the most recent development consent granted to the respondent was not invalid and that although certain parts of the development had been constructed in breach of the Act no relief would be granted.

The question of costs was reserved.

Novocoal Project

The office gave advice on the lawfulness of certain development consent conditions imposed upon the Novocoal mining project near Mount Airlie. The project has the potential to cause cliff collapses in a spectacular area known as the Gardens of Stone.

Oshlack on behalf of the Lismore Greens

The Lismore Greens lodged a Class 1 appeal in respect of a development application for construction of a compensatory wetland, being part of the lrongates development near the Evans River. As part of a development consent granted for the construction of the access road to the development site a condition had been imposed requiring the construction of the wetland.

The Greens, claimed amongst other things, that there had been inadequate archaeological and geomorphological studies of the site. After extensive negotiations, the case was resolved prior to trial with the parties agreeing that the appeal be allowed and development consent be refused.

Oshlack

The EDO assisted the commencement of Class 4 proceedings relating to the Iron Gates development at Evans Head. The case was taken over by Ian Dodd, solicitor. Ian is now the solicitor on the record and is conducting the case on a probonobasis with assistance from barrister Simon Brockwell (who has recently gone to the Bar).

Green Point Action Committee

The EDO advised the committee on the possibility of being "amicus curiae" in respect of an appeal brought by the proponent of a retirement village to be constructed on land at Green Point near Newcastle. The land was the subject of a resolution by the Lake Macquarie City Council to acquire the land and other parcels for the purpose of a public reserve. As the Council were defending their decision to refuse the application, the group decided to offer their assistance to the Council in the preparation of the Council's case.

Jenolan Caves Reserve Trust

The EDO acted for the Jenolan Environment Protection Committee in respect of a development application lodged by the Jenolan Caves Management Trust for a tourist development near the Grand Arch Precinct at Jenolan Caves. The development application submitted to Oberon Shire Council sought consent for extensive earthworks, removal of vegetation and construction of a 2 storey building in close proximity to the Grand Arch and the main show caves system. The Council approved the development application, and the committee sought advice on the prospects of challenging the decision. The EDO participated in a meeting arranged with representatives of the Trust to express the concerns of speleological and conservation groups. The Trust agreed to a proposal from the groups to host a forum at the Caves to discuss the redevelopment proposal. During the forum, evidence was presented showing that major environmental problems would be caused by the through traffic, and it became clear that an alternative development proposal would be required. After the forum, the Trust withdrew its application to redevelop the Grand Arch Precinct. A more thorough investigation of closing the Grand Arch Precinct to through traffic is currently under way.

South East Forests Conservation Council

The office commenced proceedings on behalf of the South East Forests Conservation Council against the Director of National Parks and Wildlife over the granting of a licence to "take" endangered fauna during forestry operations in compartment 1381 Cathcart State Forest, in the South East Forests. The

proceedings are a merits appeal from the decision of the Director for which provision was made by the Endangered Fauna (Interim Protection) Act 1991. These proceedings are the first to be commenced under these provisions.

World Wide Fund For Nature

Upon passage of the Commonwealth Endangered Species Protection Act 1992, the Environmental Defenders Office provided detailed advice to WWF on the operation of the legislation.

Kummer and Central Coast Against Chemicals Inc. v Bayer Australia Limited and Kemcon Manufacturing Limited

This case concerned expansion of the Bayer Agroveterinary Products Formulation Plant at Wyong on the Central Coast. EDO acted on behalf of an ex-employee, Mr Kummer and a local group Central Coast Against Chemicals. The concerns of our clients were that the planning law had not been observed in the way that Bayer had bought the existing chemical plant and had expanded its scale of operations. After an historic settlement agreement in which the company agreed to prepare an environmental impact statement as a result of proceedings initiated in the Land & Environment Court, the case was completed in January 1993. Consent was granted by Wyong Council according to development consent conditions far more stringent than those originally imposed.

As a result of the case the Legal Aid Commission was reimbursed \$45,000.00 towards its costs and disbursements incurred on behalf of our clients pursuant to the settlement deed of 1990. Another aspect of the case is that it precipitated the creation of SEPP 33 on hazardous and offensive industry.



Maria Comino, solicitor at the EDO and David Robinson who left the EDO in January 1993

Law Reform and Policy

Legal Aid

The EDO made a major contribution to the work of the Community Legal Centre Legal Aid Cuts Committee. This included organising a cake stall outside Parliament House, soliciting letters of support to the Commission and assisting in the drafting of a response to the O'Connor Robson report on the Legal Aid Commission.

EDO Policy Group

The EDO Law and Policy Group met on an ad hoc basis during 1992–93. On 8 July 1992, Deputy Director of the United Nations Environment Program, Dr Noel Brown visited the EDO and spoke with a number of environmental organisations and lawyers present at the meeting. He expressed concern that more had not been achieved at the Rio de Janeiro Conference and sought opinions on what priorities should be pursued in the follow up to Rio.

Environment Protection Authority

The EDO provided substantial input to law reform and policy initiatives of the EPA during the year. Staff met with legal officers from the EPA to discuss our concerns for Stage 2 of the Protection of the Environment Administration Act.

The EDO attended meetings with the Director General of the EPA on a range of issues, including the licensing of forestry activities in NSW. The EDO also provided detailed comment on the Draft Prosecution Guidelines in response to a request for input from the EPA.

SEPP on Mines and Extractive Industries

As a result of the Court of Appeal judgment in the Vaughan-Taylor case, industry had expressed concern that current mining and extractive industries were operating illegally. Ministers Causley and Webster decided to prepare a State Environmental Planning Policy for the purpose of allowing a moratorium of 2 years during which operators could apply for development consent. The Department of Planning met separately with representatives from the different interest groups, including representatives of the peak conservation groups. The groups submitted that a SEPP was unnecessary, though acknowledging that there may be some transitional problems whilst operators sought consent. In the event a SEPP was to be prepared, there needed to be public exhibition of the draft SEPP.

The EDO drafted a submission in respect of the proposed SEPP on Mines and Extractive Industries, though a draft copy of the SEPP was never made available, and the SEPP was not publicly exhibited.

SEPP 37 was finally gazetted in June 1993.

CLEAR

The EDO continued to participate in meetings of the CLEAR (Chemical Legal Education and Resource) Reference Group. The CLEAR Reference Group currently comprises representatives from the Australian Conservation Foundation, the Total Environment Centre, the Australian Consumers Association, Occupational Health and Safety Officers and Consultants and individual legal practitioners, in addition to Sue Fenwick from PIAC and Maria Comino from EDO.

This year the group concentrated efforts on preparing a more detailed description of the CLEAR proposal and seeking funding for the proposal. An application for funding was lodged with the Law Foundation of NSW.

Inland Rivers

As a result of the activism of a network formed by various environmental organisations early in 1992, the Inland Rivers Network, the need for new regulatory approaches to manage our inland rivers and prevent toxic algae blooms became apparent by the middle of the year. The EDO sought and obtained funding from the Law Foundation of NSW to conduct research into the regulatory aspects of Inland Rivers Management. A number of cases associated with that research relating to the introduction of non-endemic species (barramundi) into NSW, enforcement of water allocation licence conditions by the Department of Water Resources and the absence of integrated vegetation management along riverine corridors have emerged as a result of that research. Preliminary papers have been published on the EDO investigations.

Research continued on the Inland Rivers Project. Building upon the preliminary paper the office commenced the preparation of the interim report. In April an EDO solicitor attended a meeting of the Inland Rivers Network at Brewarrina in north western NSW. In May the office had a meeting with the Macquarie Western Region office of the Department of Water Resources. The EDO was also represented on the Department of Water Resources' Interim North West Unregulated Flow Policy Working Group.

Contaminated Sites - Fulbright Symposium

The EDO participated at the Fulbright Symposium held at the University of NSW on the Management of Contaminated Sites in October 1992. The activities of NOLEAD (North Lake Environmental Action Defence) was the subject of our paper. This group of residents near the Boolaroo Lead Smelter on the northern tip of Lake Macquarie have had a number of contaminated land, blood lead level and other pollution issues to contend with. Inadequate responses by the EPA, Lake Macquarie City Council and the company, Pasminco, have encouraged our involvement in the issues of land remediation and buffer zone management as well as that of expansion of the smelter. One happy outcome in the case was that parents who wanted to send their children away from a school contaminated by lead dust were, as a result of EDO's submission to the Education Department, permitted to enrol their children at the neighbouring school. Incredibly the Education Department would not allow individual transfers of children even though it had recommended that all children be transferred and the school closed down to enable remediation of Boolaroo Public School.

Clean Power

The EDO was engaged by Greenpeace to review the regulatory framework for energy generation and transmission in NSW. The resulting paper, "Clean Power", was launched by Greenpeace at Parliament House on 9 September 1992. The paper, is available from the EDO and Greenpeace.

Educational Activities

Environmental Law Fact Sheets

With funding from the Water Board, the EDO drafted 42 Environmental Law Fact Sheets. The Fact Sheets were written for environmentalists, staff of local councils and government departments and anyone else wanting to know the law on particular environmental law issues. The complexity and depth of each fact sheet grew from draft to draft, with the support and research assistance of tens of people including Joan Adams, Marc Allas, Katherine Biber, Cesar Bigornia, Libby Blakey, Kate Brady, Pat Burgett, Louise Byrne, Rapti Canagasingham, Kelly Chan, Sophie Davies, Melissa Eaton, Louisa de Farranti, Jan Gill, Helen Gould, Georgie Hayson, Elizabeth Hess, Julia Humphry, Shauna Jarrett, Catherine John, Helga Johnsen, Philip Khoo, Matthew Koetge, Gabriel Mackenzie, Tom McLoughlin, David Mossop, Ebor Munoz Figueroa, Melinda Murray, Athula Pathinayake, Angela Penklis, Lilla Pretor, Carolyn Schmidt, Rinke Schoneveld, Jane Simpson, Elaine Teoh, Kirsten Webb, Sally Webber, Aruni Wijetunga and Michael Young.

In the end we were able to publish a comprehensive set of information sheets, each one ranging from 4 to 8 pages on topics such as water pollution, planning law, contaminated land, development applications and the other major topics upon which EDO is asked to give telephone advice on a regular basis.

As an indication of the demand for the "plain English" publication, over 300 sets were distributed within 3 weeks of their release in January 1993.

NSW Workshops

Funded by workshop participants, the Environmental Trusts of NSW and with the assistance of some local councils, the EDO presented a series of environmental law workshops on Saturdays for interested citizens in various regional centres. The workshops were held in Dubbo (25 July), Forbes (26 July), Nowra (8 August) and Wagga (5 September).

The interest in the workshops was indicated by the large turnout, particularly where local environmental organisations were responsible for the organisation. For example, in Wagga 50 participants attended the Sturt University campus to discuss issues relating to Wagga's urban and industrial growth, the impact on rural/urban fringe areas and planning issues in the area. In addition to EDO solicitors Nicola Pain, James Johnson and David Robinson, Shauna Jarrett, a final year law student and volunteer with EDO, provided the support to run a number of the workshops.

In March the EDO conducted an environmental law workshop in the Blue Mountains with the support of local environment groups, the Council, the EPA, the Waterboard and other authorities.

In May 1993 the office conducted workshops on environmental law in conjunction with the Central West Community College. The workshops were held in Bathurst and Orange. In addition the office conducted a seminar for the environmental managers of Uncle Bens at the Uncle Bens factory at Raglan near Bathurst.

Environment and the Law

On 30 July 1992 during Law Week, the EDO proudly announced the launch of its text, "Environment and the Law", written for students choosing the environmental law option in Legal Studies. The Attorney General; Mr Hannaford,

officially launched the text, with words of support from Mr Terrence Purcell, Executive Director of the Law Foundation. The Law Foundation provided \$27,000 funding to assist with the writing and production of the book.

Law Week Activities

The EDO participated in Law Week 1992. We ran a workshop in addition to the workshop in Forbes, partly funded by the Law Society, we visited Campbelltown Court to speak with high school students on the topic "Your Rights under Environmental Laws".

Clinical Legal Education

In addition to providing informal clinical legal education to large numbers of volunteers, the office supervised two students doing clinical legal education as part of their environmental law course at University of New South Wales. They were Jules Bastable and Mark Cowan who worked on a guide to the procedures under the Environmental Planning and Assessment Act.

Public Interest Law Conference 1992

The most successful Public Interest Law Conference convened by law students to date was hosted by University of NSW on 9 & 10 October 1992.

EDO solicitor, James Johnson, spoke on "Future Directions in Public Interest Advocacy". David Robinson convened a session on Public Interest Environmental Law at which founding EDO solicitor, Brian Preston, and EDO's most recent staff solicitor, David Mossop, then a law student, spoke. Papers are available from the EDO. The Public Interest Law Conference was sponsored by the National Environment Law Association (NSW Branch).

Conferences Addressed and Papers Delivered

- EDOVolunteer Law Student Shauna Jarrett delivered a paper in conjunction with Nicola Pain on genetic engineering and the law at a conference sponsored by ACF and TEC on 1 August 1992.
- * James Johnson addressed the Threatened Species Network on the recently introduced Endangered Species Protection Act 1992
- James Johnson participated in the seminar "Better decisions through Public Involvement" and gave a lecture to UTS Master's of Planning Class
- * On 11 August 1992, David Robinson addressed the Roads & Traffic Authority on Environmental Law aspects of RTA operations particularly with regard to environmental impact assessment.
- On 14 August 1992, Nicola Pain addressed the Key Centre for Mines on the 1992 Mining Act, NSW.
- David Mossop addressed students in environmental law at the University of NSW on the EDO and public interest environmental law
- * On 25 May, Maria Comino addressed the Institute of Engineers on the topic of Environmental Mediation from the perspective of public interest ; groups.

Law for Non-Lawyers Programme

On 28 April Maria Comino and Chloe Mason gave a session on environmental law as part of the Law for Non-Lawyers Programme organised by Redfern Legal Centre Publishing.

Environmental Law for Legal Studies Teachers

On 6 and 15 April, Maria Comino and Chloe Mason conducted sessions on Environmental Law for Teachers of Legal Studies.





Environmental law awareness workshops conducted by the EDO in conjunction with the Solomon Islands Development Trust in Solomon Islands

Financial Report

Audited accounts for 1992-93 are available from the office of the EDO.

Total Income	•	\$299,595
Total Expenditure	•	\$301,004

Major sources of income were:

Core grants from the Legal Aid Commission	\$92,894
AIDAB South Pacific Education Project	\$11,200
Legal Aid casework	\$52,429
Non legal aid casework	\$34,275
Conferences and Publications	\$57,341

Major expenditures were on:

Salaries			\$191,842
Rent		_	\$22,400

Legal Aid Cut

Just before Christmas, the Legal Aid Commission decided to axe legal aid in most civil law matters, including environmental matters. In 1991–92 over 30 per cent of our income had been in the form of legal aid grants for particular cases. Of the approximate \$107,000 raised from legal aid in specific grants for cases in 1991–92, EDO obtained cost orders and had recovered or was recovering approximately \$90,000. The economic rationale for cutting legal aid in environmental matters is thus questionable. The practical effect is that without legal aid, even clients who could raise a few thousand to pay for their own costs will be dissuaded if the possibility of costs being awarded against them in the event of a loss remains. The decision to cut aid has thus meant effectively a cut in EDO's income of one–third.

Administration

EDO Computerises its Accounts

In the second half of 1992 EDO purchased a legal accounting package to automate its receipts, cheques and client and office accounting. As the office has expanded, particularly with regard to its publication sales in recent years, the investment in the integrated software was worthwhile and will provide more accurate financial information as well as cutting down the processing costs incontinuing the manual system. The office was grateful for the support of Trish Kirkland who took over the role of implementing the software and assisting Office Manager, Dorothy Davidson, in its upkeep.

We also thank David Prothero and Peter Hickmont of Coopers & Lybrand for their assistance in implementing the accounting management system at EDO.

Community Legal Centres

The EDO has continued as an active member of the 26 community legal centres in NSW. Until her departure, Nicola Pain, was a member of the Professional Indemnity Committee of the CLCs, David Robinson a member of the Secretariat Management Committee and Maria Comino has been EDO office representative on monthly meetings of the combined group. The CLCs are attempting to improve management within the CLC movement. A problem in the management project for which funding has been sought from the Law Foundation of NSW has been the diverse range of activities and priorities of each of the centres.

Membership

The EDO updated its "Friends" membership and transferred its subscriptions list to Q&A, a database system. This has made our mail-outs and renewals much easier. Q&A has also been used to handle stock control for our publications.

Credit Cards

As a service to our members we have organised credit card facilities for payments to the EDO. This will assist with sale of publications, conference payments and membership subscription.



Office administrator Dorothy Davidson

Publications

Impact

Our quarterly newsletter Impact has grown in size and readership. We thank the National Environmental Law Association (NSW Branch) for their past sponsorship of the publication. NELA has provided a substantial portion of the printing costs by distributing issues to its members.

Unfortunately NELA was unable to continue to provide this service to members and NELA members must now subscribe individually to Impact.

During the year the EDO published the following:

Environmental Law Fact Sheet Kit

This kit contains 42 fact sheets about the most important environmental law issues in NSW. These fact sheets have been written for citizens, local councils, conservation groups, regulatory authorities, lawyers and students. The authors are environmental lawyers from the EDO.

Public Interest Law, Community Legal Centres and the Environment

A selection of papers from October 1992 Public Interest Law Conference. The papers include views of public interest environmental law from solicitors from the EDO. Public interest law is also examined in a more general context, from the point of view of the barrister and Community Legal Centres.

Clean Power: Legislative Reform for Energy Efficiency in NSW

This is a report prepared for Greenpeace Australia by the EDO. It argues that the provision of efficient energy services is being stalled by entrenched institutional barriers. The reforms proposed in the report would create a level playing field for energy efficiency, reduce the monopoly power of energy utilities and reduce greenhouse gas emissions.

Legislating for Biodiversity

This EDO Seminar on "Legislating for Biodiversity", organised in conjunction with the Australian Centre for Environmental Law, exposed some of the inadequacies in the proposed Commonwealth and NSW Threatened Species Legislation and provided an interesting comparison with United States legislation (primarily the Endangered Species Act 1973).

These papers are essential reading for anybody interested in legislating for biodiversity. The issues raised ought to be upper-most in people's minds when the Commonwealth Government comes to implement the Biodiversity Convention in Australia.

Environment and the Law

Most Legal Studies curricula have an environmental law option because of the interest this area of study holds for so many students. **Environment and the Law** seeks

- to bring environmental law to Australian classrooms as well as to the broader interested public;
- to involve students in discussion of the laws through the provision of topical

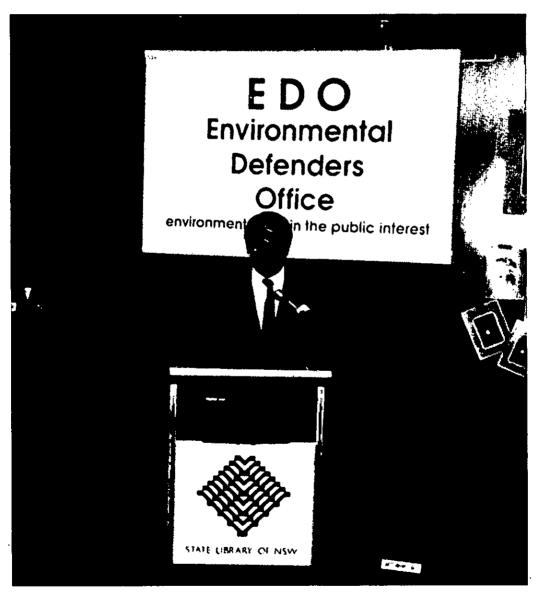
material and case studies:

- * to promote an understanding of the law in practice; and
- ultimately, to encourage community involvement in planning, development, resource allocation and pollution control processes.

As well as describing the origins of environmental law and outlining the various laws that exist to control development activities and protect the environment, difficult issues such as development versus conservation and the developed world versus the developing world are addressed.

Environmental Law Workshops Handbook

The handbook aims to explain environmental law and its impact upon the community. This involves showing how individuals can be involved in the legal process of NSW environmental issues and providing information on the law and how to use that information.



Attorney General John Hannaford launching the EDO book Environment and the Law

Friends of the EDO

Finally a thank you to the Friends of the EDO for their support during the year. Without this support, the EDO would cease to continue as a thorn in the side of those who ignore our environmental laws.



Friends and supporters of the EDO at Nicola Pain's farewell

Companies (New South Wales) Code

Association not for Gain Limited by Guarantee

MEMORANDUM OF ASSOCIATION

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ENVIRONMENTAL DEFENDERS OFFICE LIMITED

- The name of the Company is "Environmental Defenders Office Limited".
- 2. The objects for which the Company is established are:-
- 2.1 To arrange the provision of legal assistance, advice, information and services in connection with the conservation, protection, enhancement and/or promotion of the built or natural environment or any part of it.
- 2.2 To take or hold mortgages, loans or other charges to secure payment of the purchase price of any part of the Company's property of whatsoever kind sold by the Company or any money due to the Company from purchasers and others.
- 2.3 To establish and support or aid in the establishment of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependants of any such persons, to grant pensions and allowances and to make payments towards insurance.
- 2.4 To subscribe or guarantee money for the charitable or benevolent objects of any public, general or useful object.
- 2.5 To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading or other negotiable or transferable instruments.
- 2.6 To appoint, employ, remove or suspend such persons as may be necessary or convenient for the purposes of the Company.
- 2.7 To inform the public by advertisement or other means of legal and other services provided by the Company, and the conditions upon which these services are provided.
- 2.8 To promote community educational programs in matters relating to environmental law in the legal system.
- 2.9 To undertake research with a view to ascertaining the needs of the community for legal assistance in environmental law matters and the most effective way of meeting those needs.

- 2.10 To purchase, take on lease or in exchange, hire or otherwise acquire any real and personal estate which may be deemed necessary or convenient for any of the purposes of the Company.
- 2.11 To construct, maintain, and alter any houses, buildings or works necessary or convenient for the purposes of the Company.
- 2.12 To take any gift of property, whether subject to any special trust or not, for any one or more of the objects of the Company.
- 2.13 In furtherance of the objects of the Company, to print and publish any newspapers, periodicals, books or leaflets that the Company may think desirable.
- 2.14 To sell, manage, lease, mortgage, dispose of, or otherwise deal with all or any part of the property of the Company.
- 2.15 To borrow or raise money in such manner as the Company may think fit.
- 2.16 To invest any moneys of the Company, not immediately required for any of its objects in such manner as may from time to time be determined.
- 2.17 To undertake and execute any trusts or any agency business which may seem directly or indirectly conducive to any of the objects of the Company.
- 2.18 To subscribe to any charities and to grant donations for any public purpose, and to provide a superannuation fund for the servants of the Company, or otherwise to assist any such servants, their widows and children.
- 2.19 In furtherance of the objects of the Company, to establish and support, and to aid in the establishment and support of any other associations formed for all or any of the objects of this Company.
- 2.20 In furtherance of the objects of the Company, to amalgamate with any company, institution, society or association having objects altogether or in part similar to those of this Company provided that it is a registered or exempted charity and which shall prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under or by virtue of Clause 3 hereof.
- 2.21 To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities, and engagements of any one or more of the companies, institutions, societies or associations with which this Company is authorised to amalgamate.
- 2.22 In furtherance of the objects of the Company, to transfer all or any part of the property, assets, liabilities and

engagements of this Company to any one or more of the companies, institutions, societies or associations with which this Company is authorised to amalgamate.

- 2.23 To guarantee (either alone or jointly with any other person) or (either alone or jointly as aforesaid) to become liable for the payment of moneys or for the performance of any obligations by any person 'whatsoever or whomsoever and for the purpose of securing the payment of any moneys or the performance of any obligations for which this Company has or may become liable under or by virtue of any guarantee or other contract entered into by this Company pursuant to this or any other provisions of this Memorandum of Association to mortgage or charge in such manner as the Company may think fit all or any of the Company's assets and property (both present and future).
- 2.24 To sell, manage, lease, mortgage, dispose of or otherwise deal with all or any part of the property of the Company and should any such property be subject to any trusts the Company shall only deal with the same in such manner as is allowed by law having regard to such trusts.
- 2.25 To enter into any arrangements or contracts with any Governments or other Companies, Corporations, public bodies or other authorities supreme, municipal, local or otherwise, that may seem conducive to the Company's objects, or any of them, and to obtain from any such Government, Company, Corporation, public body or authority any rights, privileges, and concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights privileges and concessions.
- 2.26 To obtain any provisional order or Act of Parliament for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly, to prejudice the Company's interests:
- 2.27 To pay the costs, charges, stamp duties and expenses preliminary or incidental to the formation, establishment and registration of the Company and the preparation and printing of the Memorandum and Articles of Association of the Company.
- 2.28 To do all or any of the above things in any part of the world as principals, agents, directors, trustees or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others.
- 2.29 To do all such other lawful things as are incidental or conducive to the attainment of the above objects.

- 2.30 To establish a public fund, to be known as the Environmental Defender's Fund:
- (i) to which gifts of money or property for the environmental objects of the Company are to be made;
- (ii) to which any interest on money in he fund is to be credited;
- (iii)to which money derived from the property given to the fund
 is to be paid;
- (iv) that does not receive any other property; and
- (v) that is used only to support the Company's environmental object.

The Fund is to be maintained as a separate public fund for the specific purpose of the environmental objects of the Company set out in clause 2 and is to comply with section 78AB of the Income Tax Assessment Act 1936.

INCOME AND PROPERTY OF THE COMPANY

3. The income and property of the Company, whencesoever derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Memorandum of Association; and no portion thereof shall be paid or transfered, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the members of the Company.

Provided that nothing herein shall prevent the payment in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any member of the Company, nor prevent the payment of interest at a rate not exceeding the rate for that time being charges by banks in Sydney for overdrawn accounts on money lent, or reasonable and proper rent for premises demised or let by any member to the Company, but so that no member of the Board of Management of the Company shall be appointed to salaried office of the Company, or any office of the Company paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Company to any member of such Board except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Company. Provided that the provision last aforesaid shall not apply to any payment to any company of which a member of the Board of Management may be a director or any other company in which such member shall not hold more than one-hundredth part of the capital, and such member shall not be bound to account for any share of profits he may receive in respect of such payment.

- 4. The liability of the members is limited.
- 5. Each member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding ten dollars (\$10.00).
- If upon winding up or dissolution of the Company there remains after the satisfaction of all its debts liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other institution or institutions which are registered or exempted charities having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 3 hereof, such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given the aforesaid provision, then to charitable object.
- Where the property referred to in clause 6.1 is property held in the Environmental Defender's Fund, that property will not be paid to or distributed amongst the members of the Company, or given or transfered to an institution in the manner set out in clause 6.1, but shall be given or transfered to an institution which is eligible to receive tax deductible gifts under section 78(1)(a)(cix) of the Income Tax Assessment Act and which prohibits distribution of its income or property amongst its members to at least as great an extent as that imposed on the Company by clause 3, hereof, such an institution to be determined by the members of the Company at or before the time of dissolution and in default thereof by application to the Supreme Court for determination.
- 7. True accounts shall be kept of the sum of money received and expanded by the Company, and the matter in respect of which such receipt and expenditure takes place, and of the property, credits, and liabilities of the Company; and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Company for the time being, shall be open to the inspection of the members. Once at least in every year, the accounts of the Company shall be examined and the correctness of the balance sheet ascertained by one or more property qualified auditor or auditors who shall report to the members in accordance with the provisions of the Companies (New South Wales) Code.

8. The names, addresses and occupations of the subscribers to the Memorandum of Association of the company are as follows:

Mr David O'Donnell Partner Mallesons Stephen Jaques AMP Building SYDNEY

Mr Harvey Sanders Planner Design Colloborative 225 Clarence St SYDNEY

Mr Jeffrey Angel Director Total Environment Centre Gloucester Walk 88 Cumberland St SYDNEY

Ms Sue Salmon NSW Campaign Co-ordinator Australian Conservation Foundation Level-1, 88 George St SYDNEY

Professor Ben Boer Faculty of Law, Sydney University 173-175 Phillip St SYDNEY

Mr Patrick Quinlan Aust.Federation of Construction Contractors PO Box 320 ST LEONARDS

Ms Chloe Mason Consultant PO Box A 973 SYDNEY SOUTH

Mr Paul Murphy Solicitor Jones Staff & Co 4 Goulburn St SYDNEY

Mr Andrew Chalk Solicitor Horowitz & Bilinsky 229 Macquarie St SYDNEY Mr Aden Ridgeway
Director
NSW Aboriginal Land Council
33 Argyle Street
PARRAMATTA

Companies (New South Wales) Code Association not for Gain Limited by Guarantee

ARTICLES OF ASSOCIATION of ENVIRONMENTAL DEFENDERS OFFICE LIMITED

INTERPRETATION

In construing these Articles unless the context or subject matter otherwise indicates or requires:-

"The Code" means the Companies (New South Wales) Code.

"The Company" means the Environmental Defenders Office Limited.

"The Board" means the members for the time being of the Board of Management of the Company.

"The Office" means the registered office of the Company.

"The Seal" means the common seal of the Company.

"Secretary" means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary.

"State" means the State of New South Wales.

The words "member" or "members" means respectively a member and members for the time being of the Company.

Expressions referring to writing shall unless the contrary intention appears to be construed as including references to printing lithography photography and other modes of representing or reproducing words in a visible form.

Words or expressions contained in these Articles shall be interpreted in accordance with the provisions of the Interpretation Act of 1897 and of the Code as in force at the date at which these articles become binding on the Company.

2. The Company is established for the purposes set out in the Memorandum of Association.

<u>MEMBERSHIP</u>

3. For the purpose of registration the number of members of the Company is declared to be five (5) but the Board may from time to time register an increase of members.

- 4. The subscribers to the Memorandum of Association and such other persons as the Board shall admit to membership in accordance with these articles shall be members of the Company.
- 5. Every applicant for membership of the Company (other than the subscribers to the Memorandum of Association) shall sign and deliver to the Company an application for admission wherein he agrees to become a member of the Company and otherwise framed in such terms as the Board may require.
- 6. No person other than a subscriber to the Memorandum of Association shall be admitted a member of the Company unless he is first approved by the Board and the Board shall have full discretion as to the admission of any person to membership.
- 7. When an applicant has been accepted for membership the Secretary shall forthwith send to the applicant written notice of his acceptance and a request for payment of his first annual subscription.
- 8. The annual subscription payable by members of the Company shall be such the amount payable from time to time for full membership of Friends of the Environmental Defender's Office, but the Board may reduce this amount in view of the financial means of the proposed member.
- All annual subscriptions shall become due and payable in advance on the first day of January in every year.

CESSATION OF MEMBERSHIP

- 10. If the subscription of a member shall remain unpaid for a period of two calendar months after it becomes due then the member may after notice of the default shall have been sent to him by the Secretary or Honorary Treasurer be debarred by resolution of the Board from all privileges of membership and his name may be removed by the Board from the Register of Members provided that the Board may reinstate the member and restore his name to the Register on payment of all arrears if the Board thinks fit to do so.
- 11. A member may at any time by giving notice in writing to the Secretary resign his membership of the Company but shall continue liable for any annual subscriptions and all arrears due and unpaid at the date of his resignation and for all other moneys due by him to the Company and in addition for any sum not exceeding Ten dollars (\$10.00) for which he is liable as a member of the Company under Clause 7 of the Memorandum of Association of the Company.
- 11A. (1) A member shall cease to be a member of the Company at the annual general meeting of the Company in the third year after the year in which that member first became a member

of the Company or became a member of the company following an application for membership pursuant to subclause (2).

- (2) A member who ceases to be a member of the Company pursuant to subclause (1) may reapply for membership to the Board.
- (3) As a transitional measure, members of the Company on 1 April 1994 are deemed for the purposes of subclause (1) to have become members of the Company on 1 January 1993.

A member who is entitled to attend and vote at the meeting but is unable to attend in person may appoint a proxy a attend and vote instead of the member by completing the a Notice of Proxy and returning it to the Secretary of the Company not later than 48 hours before the meeting. The proxy must be a member of the Company.

12. If any member shall wilfully refuse or neglect to comply with the provisions of the Memorandum or Articles of Association of the Company or shall be guilty of any conduct which in the opinion of the Board is unbecoming of a member or prejudicial to the interest of the Company the Board shall have power to expel the member from the Company and erase his name from the Register of Members provided that at least one week before the meeting of the Board at which a resolution for his expulsion is passed the member shall have had notice of such meeting and of what is alleged against him and of the intended resolution for his expulsion and that he shall at such meeting and before the passing of such resolution have had an opportunity of giving orally or in writing any explanation or defence he may think fit and provided further that any such member may be notice in writing lodged with the Secretary at least twenty-four hours before the time for holding the meeting which the resolution for his expulsion is to considered by the Board elect to have the question if his expulsion dealt with by the Company in General meeting and the event an Extraordinary General Meeting of Company shall be called for the purpose and if at the meeting a resolution for the expulsion of the member be passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the member shall be expelled and his name removed from the Resister of Members.

GENERAL MEETINGS

13. The Annual General Meeting of the Company shall be held if practicable in the month of July in each year at such time and place as may be prescribed by the Board provided always that an Annual General Meeting shall be held at least once in every year. The first Annual General Meeting shall be held within three (3) months of incorporation at a time and place as the Board members may determine.

- 14. The abovementioned Annual General meeting shall be called the Annual General Meeting. All other general meetings shall be called Extraordinary General Meetings.
- 15. Any member of the Board may whenever he thinks fit convene an Extraordinary General Meeting and Extraordinary General Meetings shall be convened on such requisition or in default may be convened by such requisition as provided by the Code.
- 16. Subject to the provisions of the Code relating to Special Resolutions and agreements for shorter notice fourteen days at the least (exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which notice is given) specifying the place the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the Company.
- 17. All business shall be special that is transacted at the Extraordinary General Meeting and also all that is transacted at an Annual General Meeting with the exception of the consideration of the accounts and balance sheets and the report of the Board of Management and the appointment and fixing of the remuneration of the Auditors.

PROCEEDINGS AT GENERAL MEETINGS.

- 18. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided the quorum necessary for the transaction of business at any general meeting shall be that number which is 20% (twenty per cent) of the membership for the time being of the Company provided that if there shall then be a number of Members of the Company which is not divisible by ten then for the purpose of computing the quorum the number of Members of the Company shall be deemed to be increased to the next decimal number. For the purposes of this Article "Member" includes a person attending as a proxy or as representing a Corporation which is a Member.
- 19. If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present being not less than three shall be a quorum and may transact the business for which the meeting is called.

The Chairman shall preside at every General Meeting of the Company or if there is no Chairman or if he is not present

within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act one of the Vice Chairman is present or willing to act the members present shall elect one of their number to be Chairman of the meeting.

- 21. The Chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of any adjournment or of the business to be transacted at an adjourned meeting.
- 22. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands(demanded -
 - (a) by the Chairman; or
 - (b) by at least three present in person or by proxy

Unless a Poll is demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

- 23. If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.
- 24. In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.
- 25. A member may vote in person or by proxy or by attorney and on a show of hands every person present who is a member or a representative of a member shall have one vote and on a poll every member present in person or by proxy or by attorney other duly authorised representative shall have one vote.

- 26. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote whether on a show of hands or on a poll, by his Committee or by his Trustee or by such other person as properly has the management of his estate and any such committee Trustee or other person may vote by proxy or attorney.
- 27. No member shall be entitled to vote at any general meeting if his annual subscription shall be more than one month in arrear at the date of the meeting.
- 28. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct his proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as he thinks fit.
- 29. The instrument appointing a proxy may be in the following form or in a common or usual form.

ENVIRONMENTAL DEFENDERS OFFICE LIMITED

being
a member of the abovenamed Company hereby
appoint of
or failing him of
as my proxy to vote for me on my behalf at the (Annual or
Extraordinary as the case may be) General Meeting of the
Company to be held on the day
of 19 and at any adjournment thereof.

My proxy is hereby authorised to vote in *favour of/against the following resolutions:

Signed this day of 19

- Note 1. In the event of the member desiring to vote for or against any resolution he shall instruct his proxy accordingly. Unless otherwise instructed, the proxy may vote as he thinks fit.

 * Strike out whichever is not desired.
- 30. The instrument appointing a proxy and the power of attorney or other authority if any under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company or at such other place within the State as if specified for that purpose in the notice convening the meeting not less than forty-eight hours before the time for holding the meeting

or adjourned meeting at which the person named in the instrument proposes to vote or in the case of a poll not less than twenty-four hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.

31. A vote given in accordance with the terms of an instrument or proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed if no intimation in writing of such death unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

BOARD OF MANAGEMENT AND OFFICERS

- 32. The officers of the Company shall consist of a chairman, a Vice Chairman, an Honorary Treasurer and a Secretary all of whom shall be members of the Company.
- 33. The Board of Management shall consist of the officers and not less than two nor more than seven other members of the Company elected as herein provided.
- 34. (a) At the Annual General Meeting of the Company in each year the officers and other members of the Board shall be elected from among the members and such officers and other members of the Board shall hold office until the next Annual General Meeting when they shall retire but they shall be eligible for re-election.
 - (b) The first Board of Management of the Company shall be appointed in writing by the subscribers and shall hold office until the First Annual General Meeting of the Company.
- 35. The election of officers and other members of the Board shall take place in the following manner:
 - (a) Any two members of the Company shall be at liberty to nominate any other member to serve as an officer or other Member of the Board.
 - (b) The nomination which shall be in writing and signed by the member and his proposer and seconder shall be lodged with the Secretary at least fourteen days before the Annual General Meeting at which the election is to take place.
 - (c) Balloting lists shall be prepared (if necessary containing the names of the candidates only in alphabetical order and each member present at the Annual General Meeting shall be entitled to vote for

any number of such candidates not exceeding the number of vacancies.

- (d) in case there shall not be sufficient number of candidates nominated the Board shall fill up the remaining vacancy or vacancies.
- The Board of Management shall have power at any time and from time to time to appoint any person to the Board of Management either to fill a casual vacancy or as an addition to the existing officers or other members of the Board of Management but so that the total number of officers or other members of the Board of Management shall not at any time exceed the number fixed in accordance with these Articles. Any officer or other member of the Board of Management so appointed shall hold office until the next following Annual General Meeting.
- 37. The Company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of officers or other member of the Board of Management.

DISOUALIFICATION OF BOARD MEMBERS

- 38. The Company may by Ordinary Resolution remove any Officer or other member of the Board before the expiration of his/her period of office and may by an Ordinary Resolution appoint another person in his stead. The person so appointed shall hold office only until the next following Annual General Meeting.
- 39. The office of a member of the Board shall become vacant if the member:
 - (a) ceases to be member of the Board by virtue of the Code; or
 - (b) shall be absent from more than three consecutive Board Meetings without the consent or ratification of the Board; or
 - (c) by notice in writing resigns his office or refuses to act as a Board Member; or
 - (d) holds any office of profit under the Company; or
 - (e) becomes bankrupt or makes any arrangements or composition with his creditors generally; or
 - (f) becomes prohibited from being a Director of a Company by reason of any order made under the Code; or
 - (g) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

- (h) fails to pay any debt due to the Company on or before the day appointed for payment thereof or within (3) months thereafter; or
- (i) ceases to be a member of the Company;
- (j) is directly or indirectly interested in any contract with the Company.

Provided always that nothing in this Article shall affect the operation of Clause 3 of the Memorandum of Association.

PROCEEDINGS OF THE BOARD

- 40. The Board may meet together for the dispatch of business adjourn and otherwise regulate its meetings as it thinks fit. Subject to these Articles any question arising at any meeting shall be decided by a majority if votes; and a determination by a majority of members of the Board shall for all purposes be deemed a determination of the Board of Management. In case of an equality of votes the Chairman of the meeting shall have a second or casting vote. The Chairman may and the Secretary on the requisition of one (1) Board Member shall at any time summon a meeting of the Board.
- 41. The quorum necessary for the transaction of the business of the Board may be fixed by the Board at any number not less than five and unless so fixed shall be one more than half of the number of the members of the Board. If there shall be an odd number of members of the Board then one shall for the purpose of computing the quorum be added to the number of the members of the Board.
- 42. The continuing members of the Board of Management may act notwithstanding any vacancy in the Board but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of the Board the continuing member or members may act for the purpose of increasing the number of members of the Board to that number or of summoning a General Meeting of the Company but for no other purpose.
- 43. The Chairman shall preside at every meeting of the Board or if there is no Chairman or if at any meeting he is not present within ten minutes after the time appointed for holding the meeting one of the Vice Chairman shall be Chairman or if neither the Vice Chairman is present then the members may choose one of their number to be Chairman of the meeting.
- 44. The Board may delegate any of its powers to sub-committees consisting of such member or members of the Board as they think fit; any sub-committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.

- 45. A sub-committee may elect a Chairman of its meetings; if no such Chairman is elected or if at any meeting the Chairman is not present within ten minutes the members present may choose one of their number to be Chairman of the Meeting.
- A sub-committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in the case of an equality of votes the Chairman shall have a second or casting vote.
 - 47. All acts done by any meeting of the Board or of a sub-committee or by any person acting as a member of the Board shall notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or person acting as aforesaid or that the members of the Board or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.
 - 48. A resolution in writing signed by all the members of the Board for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more members of the Board.

SECRETARY

49. The Secretary shall in accordance with the Code be appointed by the Board for such term and upon such conditions as it thinks fit provided that no remuneration shall be payable for carrying out the functions of Secretary; and any Secretary so appointed may be removed by it. Nothing herein shall prevent the Board from appointing a member of the Company as Honorary Secretary and any member so appointed shall forthwith become an officer of the Company and if not already a member of the Board ex officio a member of the Board and he/she shall be subject to the provisions of Clause 3 of the Memorandum of Association.

MINUTES

- 50. The Board shall cause minutes to be made in books provided for the purpose:-
 - (a) of all appointments of officers made by the Board;
 - (b) of all names of the Members of the Board present at each meeting of the Board and of any sub-committee of the Board;

- (c) of all resolutions and proceedings at all meetings of the Company and of the Board such minutes shall be signed by the Chairman of the Meeting at which the proceedings were held by or by the Chairman of the next succeeding meeting.
- 51. Every board Member present at any meeting of the Board or sub-committee of the Board shall sign his name in a book to be kept for that purpose.

POWERS AND DUTIES OF THE BOARD

- 52. The business of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not by the Code or these Articles required to be exercised by the Company in general meeting, subject nevertheless to any of these articles and to the provisions of the Code and to such resolutions being not inconsistent with the aforesaid articles or provisions as may be prescribed by the Company in general meeting; but no resolution made by the Company in general meeting shall invalidate any prior act of the Board of Management which would have been valid if that resolution had not been made.
- 53. The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property or any part thereof and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the Company.
- 54. All cheques promissory notes, drafts bill of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed drawn accepted endorsed or otherwise executed as the case may be by any two members of the Board or in such other manner as the Board may from time to time determine.
- 55. Without prejudice to the general powers conferred by Article 53 and other clauses of these Articles the Board shall subject to these Articles be at liberty to exercise all the powers authorities and discretions vested in the Company as set forth in the objects were repeated hereunder and in addition thereto the Board shall have the following powers viz:
 - (a) To appoint sub-committees from amongst the members of the Board to deal with such matters and with such powers as the Board shall from time to time determine and to make such rules and regulations as to the carrying on and the conduct of such sub-committees from time to time;
 - (b) To pay the costs charges and expenses preliminary and incidental to the formation establishment and.

management of the Company and also of the transfer to and vesting in the Company of any assets of or to which the Company may become entitled:

- (c) To determine who shall sign documents on behalf of the Company;
- (d) To act for and on behalf of the Company in respect to all claims and legal proceedings by or against the Company;
- (e) To enter into contracts for the purposes of the Company;
- (f) Subject to Clause 3 of the Memorandum of Association to expend the funds of the Company in such manner as the Board shall consider for the benefit of the Company;
- (g) From time to time make regulations or by-laws for the conduct of the business and affairs of the Company not inconsistent with the Memorandum of Association or these Articles and at any time in like manner to annul or vary any regulations so made and all regulations so made and for the time being in force shall be binding on all members of the Company and without limiting the generality of the power to make annul or vary regulations hereby conferred on the Board the following shall be deemed to be matters to which such power shall expressly extend -
- (1) As to arrangements with any other Company for reciprocal concession or otherwise.
- (ii) For the Board of Management's own procedure.
- (iii) For regulating the time and mode of any of its powers.
- (iv) For the exercise by the Company of any of its powers.
- (v) For the appointment of its staff and servants.
 - (vi) As to the procedure to be followed at its meetings by any committee or sub-committee appointed by the Board and as to the appointment duties and removal of the members of any subcommittee.
- (vii) Generally for the control support management and government of the Company and all property vesting in the Company or under its control or supervision and the control and supervision of all officials officers servants and other persons employed by or representing the Company.

PROVIDED THAT the Company in General Meeting may subject as hereinbefore provided rescind or vary any regulations so made by the Board of Management under this Article.

ACTS OF BOARD

56. All acts done by any meeting of the Board or of a duly authorised sub-committee of the Board or by any person acting as a Board Member shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Board Members or persons acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a Board Member or member of such Committee.

SEAL

57. The Board shall provide for the safe custody of the Seal of the Company and the Seal shall not be used except by the Authority previously given of a resolution of the Board and in the presence of two Board Members and the Secretary or some other person appointed for that purpose by the Board and such two Board Members shall sign every instrument to which the Seal is affixed or impressed in their presence and same shall be counter-signed by the Secretary or other person as aforesaid.

ACCOUNTS

- 58. The Board shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the Code Provided However that the Board shall cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to a date not more than five months before the date of the meeting.
- 59. The Board shall from time to time determine in accordance with Clause 7 of the Memorandum of Association at what times and places and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of members not being members of the Board and no member (not being a member of the Board) shall have any right of inspecting any account or book or paper of the Company except as conferred by statute or by Clause 7 of the Memorandum of Association or authorised by the Board in General Meeting.

AUDIT

- 60. A properly qualified Auditor or Auditors shall be appointed and his or their remuneration fixed and duties regulated in accordance with the Code and Clause 7 of the Memorandum of Association.
- 61. Every account of the Board when audited and approved by a General Meeting shall be conclusive except as regards any error discovered therein within three months next after the approval. Whenever any such error is discovered with that period the account shall forthwith be corrected and thenceforth be conclusive provided that nothing in this Article shall make any account conclusive in respect of any matter involving or arising out of a breach of Clause 7 of the Memorandum of Association.

INDEMNITY

62. Every member of the Board, Secretary and other officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability arising out of the execution of the duties of his office which is incurred by him in defending any proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under the Code in which relief is granted to him by the Court in respect of any negligence default breach of duty or breach of trust.

WINDING UP

63. The provisions of Clause 5 and 6 of the Memorandum of Association relating to the winding up or dissolution of the Company shall have effect and be observed as if the same were repeated in these regulations.

NOTICES

- 64. A notice may be given by the Company to any member either personally or by sending it by post to him at his registered address or (if he has no registered address within the State) to the address if any within the State supplied by him to the Company for the giving of notices to him. Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of the post.
- 65. (1) Notice of every general Meeting shall be given in any manner hereinbefore authorised to:
 - (a) every member except those members who (having no registered address within the State) have not

supplied to the Company an address within the State for the giving of notices to them; and

- (b) the auditor or auditors for the time being of the Company.
- (2) No other person shall be entitled to receive notices of General Meetings.

We, the several persons whose names are subscribed being subscribers to the Memorandum of Association hereby agree to the foregoing Articles of Association.

Signature of Subscribers

Signature and Address of Witnesses

Dated this

day of

Environmental Defender is published

quarterly by the Environmental Defender's Office 8th floor, 280 Pitt

St, Sydney 2000

Ph (02) 261 3599

Fx (02) 261 7548

Contributions of

photographs,

articles, letters

and illustrations

are welcomed by:

Want to protect the Environment? Leave it to us!

Our natural world can't stand up for itself against illegal development, forest destruction and pollution. It needs someone to speak up for it. That's why the Environmental Defender's Office exists. The EDO is there to help the public enforce the laws which are meant to protect our environment, and to ensure those laws become even stronger.

But we don't pretend to be able to do it alone. You can ensure that the EDO's work continues by including us in your will. The money will be kept in the Environmental Defence Fund, which has been set up by the EDO Board.

The interest carned will be used to fund the EDO's activities into the future. So why not be a part of that future? For free advice on preparing your will, or for more infórmation, please contact James Johnson at

A suggested wording for your will is:

_ (you can also include part or "I bequeath the sum of \$ all of any property you own), to the Environmental Defender's Office Ltd for its general purposes, and declare that the receipt of the Treasurer of the time being of the Environmental Defender's Office Ltd shall be complete discharge to my executors in respect of any sum paid to the Environmental Defender's Office Ltd.

the EDO on 261 3599.

the editor. Abbie Thomas. Deadlines for submissions are

as follows:

September '94 issue: August 15 December 94 issue: November 14 March '95 issue: Feb 15.

EDO victories during 1993:

- protecting endangered species habitat in the Shoalhaven area and the South East forests.
- saving part of a Wyong beach from development for a convention centre
- designing a major overhaul of state water laws to stop blue green algae and pollution.
- drawing national media attention to a licence to allow pollution of the Shoalhaven River
- supporting Byron Bay residents protesting the expansion of Club Med against claims of defamation.

EMBERSHIP FORM

Membership categories (all Friends receive Environmen	ntal Defender):	Subscribe to Impact!
Full	(\$35)	Published since 1986, Impact is the only public interest environmental law journal
Concession	(\$20) (\$60)	in Australia. Contributors are on the cutting edge of test cases, providing critical analysis of latest developments in law and policy for anyone involved in providing advice, advocacy, and education in the environmental law arena.
Community group	(\$80)	Subscription to Impact only(\$50)
Receive Impact for only		Payment details
\$20 extra	(\$20)	•
		Name
ONATION	\$. 	Address/DX
TOTAL	\$	•
l enclose cheque/postal note/credit card details: Bankcard Visa Mastercard		Phone
		FAX

Councils take stock in first environment report

May saw the closing date for 177 councils around NSW to hand in their first ever annual State of the Environment Report, required under new legislation.

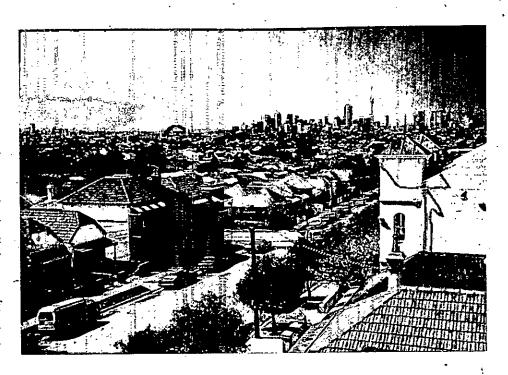
The report is sent to the Department of Local Government and other agencies, such as the NSW Environment Protection Authority.

The idea of the reports is to give councils a greater knowledge of the gaps in environmental information in their area, and develop ways to manage the natural environment more effectively. The information is also planned to eventually go into a state-wide database.

But is it working, or is it just another administrative and financial burden for stretched council resources? Leichhardt Council's environment officer Birgit Seidlich gave Environmental Defender a rundown on her council's experiences.

Leichhardt Council's State of Environment (SOE) Report was co-ordinated by Birgit at no extra cost to council. She had just prepared a Draft Environment Strategy, which dealt with environmental issues in the local area, and proposed a range of actions to improve environment quality and reduce pollution.

"With this plan already underway, council decided to use the SOE report to describe local environmental issues, list available information and identify gaps in knowledge," said Birgit.



Laichhardt Council - environmental challenges of a different kind

She said the information collected for the Strategy was a big help in preparing the SOE report. Additional input came from council's forward planning group and Engineering department.

Birgit said the council had used the guidelines published by the NSW Environment Protection Authority in preparing its SOE report. However, enite a few of the requirements focused on natural areas and protection of biodiversity. "These were not necessarily relevant to inner urban Leichhardt, where almost all native habitat has been lost."

Nevertheless, Birgit said that it became clear that council had no data on what did exist in the way of tree cover, wildlife habitat, wildlife corridors, weed invasion, water pollution, remnant vegetation, soils or local air pollution.

She said there was a strong need for future SOE requirements to focus on the impact of urban consolidation on the local

and regional environment. "While greater urban consolidation has been endorsed by the State Government, no statistical information on its environmental impact has been provided to councils. These impacts include increased runoff, stermwater pellution, loss of vegetation and air pollution."

Birgit suggested that information should be supplied to councils on the impacts of new development on the environment, their consumption of natural resources and their energy and space planning requirements.

She said SOE reports should also apply environmental indicators and standards which could lead to management practices which improved environmental quality.

"Councils would then need to review current practices, policies and development controls which would ensure that new developments would not further degrade the local and global environment." Φ

From the EDO files

When is a park not a park?

When Canterbury Council dropped an appeal in the Land and Environment Court a few months ago, the EDO was able to close its files on a long and interesting story. This case shows how, with a little legal know-how, an area can be saved in a most unexpected way.

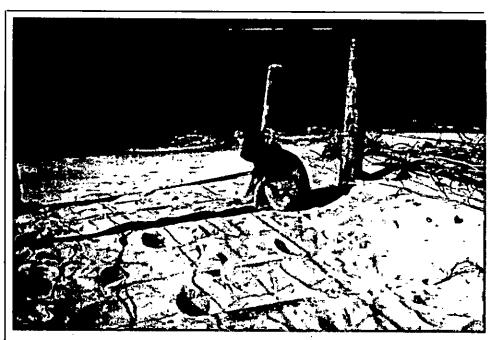
Many of us probably assume that the local park down the road is safe from development. After all, kids have been playing there for years, and it's always been there. No-one would dare, would they...?

It came as a great surprise to Canterbury residents when they read a Council notice in the local paper three years ago announcing a proposed rezoning, so that part of Wiley Park Reserve could be turned into a Sizzlers Restaurant and carpark.

The 7.8 ha park had been bequeathed by John Valentine Wiley in 1895. He put a covenant over the area to ensure nothing would be built there.

So, Canterbury Residents and Ratepayers Association Inc went to court represented by the EDO. They were successful in stopping the rezoning, and the development.

But the court's decision had nothing to do with the value of Wiley Park to the community. The extraordinary thing was that the only reason the local residents won, was because council had made a technical error in advertising the proposed rezoning.



"No more trees - I'll have to go fishing instead." When EDO gave legal assistance to the Hunter Koala Preservation Society in 1990, the "locals" turned out to see what was happening. The Society was attempting to prevent ACI Operations from mining the local dunes of Port Stephens for silica sand to be made into vegemite jars. The dunes also happened to be habitat for the endangered koala.

Technicality

When a council wants to rezone an area, it must create a new Local Environment Plan (LEP). But when it advertised the LEP, Canterbury Council failed to point out that not only would the particular rezoning allow developments like a restaurant, it would also make other kinds of developments possible.

The advertisement also failed to mention that the LEP would nullify Mr Wiley's covenant over any development. The EDO argued these points successfully in court and, as a result, the court decided that the advertisement was misleading, and that the LEP, and therefore the rezoning, were invalid.

You might consider it extraordinary that a development can be halted, not because of

the importance of a park to a local community, or because it has been left to the people in someone's will, but on a technicality most of us would have completely overlooked. But this is, often how the environment gets protected. Our legal system allows councils to make bad decisions, but they still have to follow the right process. And in this case, Canterbury Council failed to do that.

The council initially appealed, intending to revise the incorrect notice and readvertise. But it has now dropped the appeal, and the park is safe. Ironically, if the EDO had gone to court and just argued that the park should not be developed because of its value to the community, it would have probably lost the case.

The law works in strange ways! Φ

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Quick Poison: Slow Poison - Pesticide Risk in the Lucky Country.

by Dr Kate Short published by Envirobook.

Reviewed by Dr Judy Lambert

Kate Short's book is most timely. More and more ordinary people in the community are pursuing their right to know what others are doing to their environment. This book makes a significant contribution.

For too long, farmers, householders and others exposed to pesticides have been left in the dark about the effects of these often potent chemicals on their health and the environment in which we live. Throughout the book Kate uses case studies to illustrate the effects of pesticide exposure on people's lives, and to demonstrate what governments are (or are not) doing to regulate the use of these potent substances. As Kate acknowledges in the Introduction, the case studies are not comprehensive. They are chosen to provide graphic word pictures of what is happening, and they do that in a powerful way.

Through the case studies, a glossary of terms at the beginning of the book and the text which accompanies them, Kate makes comprehensible to ordinary Australians, many complex scientific and health-related aspects of pesticide use.

After six years researching and writing Quick Poison: Slow Poison, Kate's frustration at the bureaucratic maze which surrounds pesticide testing and regulation shows through repeatedly in her text. She identifies the broad range of State and Federal government departments and agencies involved and goes on to look at a system which she describes as "flawed by three fundamental problems: limited assessment methods, trust of the pesticide industry, and a data base which is dangerously incomplete".

Investing in ecosystems

A brochure in this issue of Environmental Defender introduces an organisation which is putting its money where its mouth is to preserve Australia's outstanding natural areas. The Australian Bush Heritage Fund was set up in 1990 by prominent environmentalist Dr Bob Brown and friends, to buy private land of particular natural value.

So far the fund has spent \$340,000, purchasing 241 ha of land in Tasmania next to the World

Heritage Area, and more recently an eight ha block of fan palms in the Daintree area.



The Daintree block is next to other outstanding blocks in the Palm Valley area which have been bought by the Wet Tropics Management Program. Bush Heritage has nominated the whole area for World Heritage Listing.

"The sole aim of Bush Heritage is to purchase and manage private land of outstanding ecological significance, which is under threat from inappropriate development", says founding director Judy Henderson.

She said the fund had enormous potential for protecting natural areas. "The equivalent US fund, called the Nature Conservancy, has an annual turnover of \$200 million, and has secured protection for two million hectares." For more information, call 002 315 475.

Discussing the absence of public review provisions and the lack of opportunity for members of the public to gain access to company data, Kate describes the situation as "near scandalous".

In the final section of the book, Kate discusses the setting of standards for pesticide users. It is here that she raises issues of risk associated with the use of these chemicals, and the differing perceptions of that risk which exist in the scientific, chemical industry and user groups in the community. As she suggests in the final stages of the book, many of these differences come from inadequate information, at the various levels.

Kate ends with the view that "People can make a difference and clearly have no choice but to pursue their right to know about pesticide risk, to defend themselves against exposure and promote pest management systems that do not poison the Earth". This book will prove a useful tool to all who seek to do just that.

Judy Lambert is a partner with Jane Elix in the consultancy business, Community Solutions, which provides services in research, policy advice, planning and advocacy work to the environment, consumer and women's sectors.

A SLAPP in the face

A recent spate of legal suits against people protesting against developments has alarmed many who want open debate on decisions about the environment.

Here, Brisbane Barrister Stephen Keim explains a new anti-environmental weapon called SLAPP suits.

SLAPP stands for Strategic Litigation Against Public Participation. In the environmental context, this type of litigation is likely to be used by a developer as a tactic to silence residents or other environmental groups opposing a development.

SLAPP writs are frequently strategically aimed against the person perceived to be the organising force or "trouble maker". It is likely to have an intimidating effect not only upon the

Intimidation

It has been frequently said that from the point of view of the perpetrator of a SLAPP writ, it does not matter whether one wins or loses. One wins simply from the intimidation, as well as tying up scarce resources. The action can have a useful by-product of making media outlets wary of publishing press releases from the targeted group. The most obvious form of SLAPP suit is the action for defamation.

person served but on all his or her assistants.

Craig Hardy, a Rockhampton caver and accountant, led a campaign to save some of the most significant formations in the Mt Etna caves. When protesters barricaded the mine, Central Queensland Cement sought injunctive relief against Craig. Craig complied with an undertaking not to trespass further,

but when the destruction of a significant cave was imminent, Craig led a further barricade. When the company took further court action which threatened Craig with prison or fines, he had little choice but to stop trespassing.

In another case, Ballina Council was so sensitive to criticism of its ocean outfall arrangements that it brought a defamation action against the President of the Clean Seas Coalition.

Here are a few rules:

- 1. Be careful about facts. Make sure they are reproduced and quoted correctly or you become an easy target.
- 2. Be aware of the difference between fact and opinion. A great deal of protection can come from inserting the phrase "we firmly believe ..." before making damaging statements about a particular development.
- 3. Always give a basis for opinion, eg, "because of the statements by the proponent set out in its EIS, we firmly believe...".



Protection 1

In America, the courts have recognised the potential of SLAPPS for a chilling effect on free speech.

They have acted to protect the First Amendment rights (which allow anyone to petition the government for a redress of grievances) by requiring the plaintiff to establish a high likelihood of success in the action, to avoid the action being summarily dismissed.

The Colorado Supreme Court adopted a new rule that the plaintiff must show, inter alia, that the citizen or group's "primary purpose was harassment" and their petitioning "lacked any cognisable basis in law".

While such protection does not yet exist in Australia, community groups can greatly, lessen their chances of being sued aided with a little knowledge of defamation law.

- 4. When you are responding to statements made by the developer, make this clear. To show that comments were made in the course of a public discussion may be useful as a defence to defamation in court.
- 5. Comments can sometimes be protected by a defence if you can show they were made in good faith for the public good. Make sure this importance comes through when addressing the public.
- 6. Don't make personal attacks stick to the issues.

This area raises interesting issues such as the long term jurisprudential developments of the right of free speech to protect protesters against SLAPPS. Perhaps SLAPP writs are part of a broader phenomena which make it so important not to get mad, but to get organised.

This is an edited version of an address given to the Defending the Environment Conference at the University of Adelaide in May.

EDO T-SHIRTS ARRIVE!

Don't get mad, get dressed.

The all new EDO t-shirt has arrived, sporting an exclusive design by Patrick Cook on the front, with the EDO's name on the back. Thick, comfy off-white with a bottle green design, printed on unbleached cotton. Slip into one, and keep the future of the EDO covered. $ORDER\ FORM$

PLEASE SEND ME:			
EDO t-shirts at \$20 each			
Please indicate sizes (M,L,XL)			
· · · · · · · · · · · · · · · · · · ·			
Name:			
Address:			
Phone: ()			
Post to: EDO, 8th floor, 280 Pitt St. Sydney 2000			

Letters to the Editor

No stamp, but support

In reference to the restoration of legal aid, it was pleasing to hear that public protest can sometimes help to tip the scales, though I will need to win a lottery jackpot to be able to have any influence on the environmental state of affairs.

More so because we all know that court cases are always strung out by those who hold the bigger purse. I am an octogenarian (middle bracket) with no support beyond old age pension.

So I am afraid my influence will be minimal in any improvement in our environment. If it is words you may need to call for, I will do my best to string a few together, and hope to afford a stamp!

1 was also grateful to receive a letter from Colin Neave (the Managing Director of the Legal Aid Commission).

Besse Bramsen Springwood, NSW

Voices still heard

Thank you so much for advising me that legal aid for environmental matters has been restored. It is heartening to know that the voice of the people in a concerted effort can still be heard effectively.

While aid has been restored, I can still appreciate your concern regarding long drawn out litigation, and will be interested to be put in the picture re further developments.

Flo Callaghan Nambucca Heads

> What do you think? Write to: Editor, Environmental Defender Level 8, 280 Pitt St Sydney 2000 Please limit to 300 words and include a phone number.

EDITORIAL

For an FOI officer to make a mistake is reasonable. However it is of grave concern when senior staff of the Environment Protection Authority do not comprehend the clear obligations under the Freedom of Information Act, even when the specific provisions are pointed out to them. Of even greater concern is the suggestion that the response given to our client had the sanction of the EPA's legal section.

In the course of assisting dozens of clients each year, we make frequent Freedom of Information applications. The EPA's recent response is the poorest this office has witnessed.

The FOI system is a clumsy, expensive method of enabling participation and as this case shows can be open to abuse.

The document in question was part of the negotiation process between the EPA and the proponent of the heliport for a pollution control approval. The EPA's reflexresponse was to maintain the secrecy of this process; this is not proving acceptable to the community. There is a clear need for law reform to enable the pollution approval and licencing process to be made public.

Welcome to Anna



The EDO welcomes Anna Salleh as its new Education Officer. Anna brings journalistic skills in environment, science and public policy to the job, and will be organising workshops and seminars, as well as raising the profile of the EDO. She's also a damn fine a capella singer!

NewsBriefs NewsBriefs NewsBriefs

Report from Parliament

EIS thrown out of new Water Act

Some water resource schemes in NSW will no longer be subject to the environmental assessment requirements of the EP&A Act, under new legislation introduced into Parliament.

The introduction of the Irrigation Corporations Act last session means that the issuing of some water licences will not require an EIS.

In the past, few irrigation schemes have been assessed for their environmental impact. Environment groups fear that environmental problems associated with this lack of assessment, such as Blue Green algae and salinity will get worse under this new legislation. Φ

Development Bill thwarted

An amendment to the Environmental Planning and Assessment Act which would havefast tracked development proposals has been withdrawn after protests from environment groups and councils.

The Bill would have allowed local environment plans (essentially a rezoning proposal) to be advertised simultaneously with development applications. EDO director James Johnson said it was essential that these two be advertised separately, for two reasons.

First, it allows enough time for the public to examine what is being proposed from both a planning view and a specific development point of view. Second, James said it would have been misleading to advertise the two together, as it is possible that a completely different development may eventually be put on the site.

"For example, a development application for a flower growing business might be advertised with an application to rezone land to, say, rural industrial. However, once the rezoning was through, a fresh development application for a different use could be lodged, for example, a piggery." Φ

Fish stocks get better protection

A landmark piece of legislation could see far better protection of Australia's dwindling fish stocks in the future.

The Fisheries Management Bill, passed through the May session of NSW Parliament is good news for a number of reasons:

- * It places public consultation as a central and guaranteed right.
- * The committee which sets catch limits is independent of industry and government, and bound by principles of Ecologically Sustainable Development, and the precautionary principle
- * Habitat plans are included
- * It strictly protects seagrasses
- * It allows third party standing to enforce the Act
- * It sets performance standards to evaluate the performance of NSW Fisheries and the operation of management plans.

Ocean Watch co-ordinator Duncan Leadbeater said the Bill was the result of agreement between the industry, environment groups, government and independents. Φ

Legal Aid on Disk

People will soon be able to obtain legal advice cheaply by tapping into their own home computers. The NSW Government recently announced it would make all laws available on computer disk to help people better understand their legal rights.

The package, called Legaldisk, will be on sale through the Government Information Shop for \$18 for the first disk and \$7 after that. Φ (Telegraph Mirror, 25/5/94)

How to develop environmental policy

Does your workplace have an environmental policy? The University of NSW is holding a two day conference to provide information and tools for every organisation, both government and private, to develop its own environmental policy.

The conference on July 18 and 19 begins with Prof John Niland, Chair of the NSW Environment Protection Authority, discussing how to structure and sustain an environmental policy.

Other topics will include an overview of environmental commitment in Australian Organisations; Life Cycle Analysis; Implementation of policy; monitoring and evaluation; and Educating Your Community.

The University said the conference was designed to meet the needs of universities and colleges, councils, government departments, companies and hospitals. Cost is \$190, students \$50. Contact the Environmental Policy Conference Secretariat, c/- Institute of Environmental Studies, University of NSW, NSW, 2052. Phone (02) 385 5687, fax (02) 663 1015. Φ

NewsBriefs NewsBriefs NewsBriefs

Plan to give all access to justice

Access to Justice Advisory Committee chaired by Ronald public comment.

Its recommendations address issues relevant to improving access to environmental justice. Significantly, the report recognizes the need to increase legal aid funding to meet the additional demands being made on existing legal aid resources.

It notes that additional demands have environment protection. Φ resulted from a range of factors, including greater community expectations about particular types of problems that the legal system should address.

EDO solicitor Maria Comino said. "There is no doubt this includes expectations about using the legal system to stop breaches of environmental laws.

"Increased legal aid funding, if forthcoming, will assist environment protection, because it will allow EDOs and other practitioners to conduct environmental cases - a role essential for the proper administration of environmental laws."

The report makes recommendations on other issues relevant to achieving

In mid-May an action plan called environmental justice. These include the Access to Justice, prepared by the need to consider costs indemnities namely, whether a legally aided person should be indemnified against costs Sackville Q.C., was released for sought by a successful litigant. It also recommends the establishment of a fund for test cases of national significance, which would include environmental test

> This report is timely in view of the proposal to establish EDOs in each state and territory. Increased legal aid resources will be essential in enabling EDO's to play their role in

■ International news

The EarthAction Network has called for urgent action on desertification.

The UN Environment Programme has estimated that one quarter of the Earth's land surface is threatened by erosion and soil degradation, caused mainly by overgrazing, overcropping, bad irrigation and tree clearing.

UNEP estimates that 10-20 times the current expenditure is needed to reverse the problem.

This month, a Convention to Combat Desertification is due to be signed in Paris. EarthAction Network has called for letters to be written to Australia's Minister for Foreign Affairs Gareth Evans, urging him to press for a major increase in funding to desertification in the form of direct grants and loans to local individuals and groups who work the land. EarthAction Network was set up in 1992 and consists of 900 community groups in 119 countries. Ф

Environmental law at your fingertips

The EDO has just released the latest edition of plain English fact sheets on Environmental Laws applicable in NSW. An essential tool for every council, student, conservation group. regulatory authority, lawyer and concerned citizen.

42 topics including air and water pollution, coasts, Commissions of Inquiry, contaminated land, defamation, heritage and rivers and much more. \$30 per set.

Phone (02) 261 3599 for your copy.

5

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Mushroom odour proves too much

Hawkesbury residents will be breathing a little easier after court action by the EDO restrained a mushroom composting business from producing foul odours.

The company, Mushroom Composters, was taken to the Land and Environment Court last year by Hawkesbury Council and local residents, over its odour problems. The EDO acted for the residents. The odour is described as a "rotten egg smell", and the compost is made from a rotting mixture of wheat straw, stable bedding, poultry litter, cotton waste and other organic materials. It is supplied to 35 mushroom growers in the area.

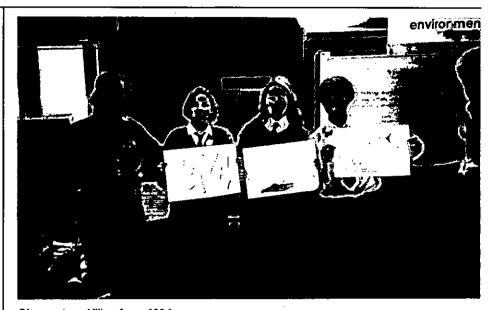
Justice Pearlman placed an injunction on the company in 1993 but suspended this for one year after the company argued that it would rectify the problem with new technology. But last month, the smell was still there, and despite a request by the company for an extension of the suspension, Justice Pearlman ordered that the company had to operate in a way which did not adversely affect local residents.

Now the company is looking for a more remote location where its operations won't get so up the local's noses. It claims current technology is unable to completely remove odours. Φ

New tree council

A new council has been set up by Greening Australia to tackle vegetation loss, land degradation and declining water quality.

The National Greening Australia Council (NGAC) is a coalition of farmers, local government, nursery and forest industries, scientists and conservationists.



Observatory Hill - June 1994
Primary School students learnt how to make banners, write letters to politicians and record a community radio announcement at the EDO Earth Rescue Station for World Environment Day.

Greening Australia spokesman Brain Peck said the new council was an opportunity to link community, business and government to manage vegetation. At the first meeting in March, the council recommended the establishment of an Australian Vegetation Management framework.

The NGAC comprises the Greening Australia Board, Nursery Industry Association of Australia, UN Association of Australia, ACF, National Farmers Federation, Australian Local Government Association, CSIRO, the Ecological Society of Australia, Australian Trust for Conservation Volunteers and the Australian Forest Growers. Φ

What comes out of the pipe?

A discussion paper on a National Pollution Inventory has been released by the Commonwealth Environment Protection Agency (CEPA).

The Inventory would establish baseline data on pellution discharge to the environment, and would require companies using certain chemicals over a certain amount to report back the discharges of these chemicals

Such a national inventory has the potential to enable members of the public to find out exactly what kind of pollution is being produced from a local factory. It could also provide a ranking for the most inefficient producers in a particular industry. Ideally, such a system should allow comparison of pollution between local government areas, or two different companies manufacturing the same product.

Such an Inventory now operates in the United States and Canada. In Oregon, the system is backed up with legislation called the Toxics Use Reduction and Hazardous Waste Reduction Act. This requires companies to identify their chemical use, and account for how much goes into the product, into the waste stream and into the environment.

The closing date for comments on the CEPA discussion paper is August 8. Workshops will be held between June and July. Flease write and express your support for the Inventory, as we understand industry groups are trying to have it shelved. Φ

See also the review of Kate Short's book on pesticides, page 9.

Corkhoard

Smoking out solutions

The Nature Conservation Council of NSW is holding a seminar "Fire -Looking To The Future" in Sydney on June 24 and 25. The seminar will discuss the latest research on sustainable fire management, effects of fire, responsibilities, decision making and education. Details from NCC on (02) 241 2052.

EPLA conference

The Environment and Planning Law Association (NSW) will hold its state conference on August 4 and 5 in Potts Point, Sydney, Enquiries to Michele Kearns (02) 221 3527.

Judge in the box

The Environmental Institute of Australia is running a soapbox forum on August 3 from 6.30-8pm. Guest speaker is Chief Judge of the Land and Environment Court, Mahla Pearlman, She will speak on public interest in the L&E Court. Details Rob Niven 697 5033 or Bruce Woolf 221 8522.

Election plans

A one day workshop, Environment In Crisis, will be held on Saturday August 27 to plan environmental issues and priorities for the next State Election. It will be facilitated by the Nature Conservation Council of NSW at Wentworth Building, Sydney University, Phone Sanja Pavlovich for more information on (02) 241 2052, or (02) 247 4206.

Bill a real pest

The Agricultural and Veterinary The EDO held a seminar on Chemicals Bill, passed by the Federal Government in March has raised the ire of environment groups, the Democrats and the Greens. They say the Bill fails to include environmental representation on the National Registration Authority (NRA) Board.

Other criticisms include: incorporation of the precautionary Anna Salleh at the EDO on (02) 261 principle in the Bill; 'commercial in confidence data' not adequately addressed; no appeal rights on decisions made by the NRA Board; and lack of monitoring procedures for registered chemicals.

(ENVIRONS, April/May 1994).

Fine for sewage spill

Dubbo Council has been fined \$5000 in the Land and Environment Court for allowing eight million litres of untreated sewage to flow into the Macquarie river. The council claims a one in 100 year storm at the time meant the spill could not be prevented. A council committee has voted to limit the chance of a sewage discharge to a 1 in 10 year probability rate, which a council report says is within the NSW Environment Protection Authority's acceptable limits.

World Environment Day

The EDO participated in World Environment Day (June 5) through an Environmental Expo at the Observatory Hill Field Studies Centre in Sydney on June 1, 2 and 3. Primary and high school students learnt how to design their own rescue plan to save threatened places and species.

Successful seminar

"Environment, the Law and the Community" during Law Week in late May. The seminar, attended by over 70 people, explained how individuals and communities can become more involved in environmental decision making. Other EDO seminars will be held later in the year. For more information, contact

1080 protest

Australians for Animals have launched a campaign to ban the use of the poison 1080 in Tasmania. AFA says 80 tonnes of laced carrots are dropped each year by farmers and forest companies with the aim of reducing populations of possums, Brushtail Tasmanian Pademelons and Bennets Wallabies. AFA says the poison also claims wombats, and says that death from 1080 is agonising. AFA is urging Premier Ray Groom to ban 1080.

Water worries

A discussion paper, "Planning Wastewater Services for the Future" has been released by the Water Board. The paper covers planning, water quality, options, developing a strategic plan, costs and community involvement. The main issues identified include algal blooms in the Hawkesbury-Nepean system, and stormwater and sewage contamination on Sydney beaches. rivers and harbour. For further information, phone (02) 350 6898.

Please send Corkboard items to: Editor, Environmental Defender, EDO, 8th floor, 280 Pitt St, Sydney NSW 2000.

EDO takes global warming case to court

Greenpeace has asked the Environmental Defender's Office to represent it in a landmark appeal over a council's decision to approve a 120 megawatt coal-fired power station.

Greenpeace campaigner Keith Tarlo said the EDO would be representing Greenpeace in the Land and Environment Court against Singleton Council and the Redbank Power Company Pty Ltd.

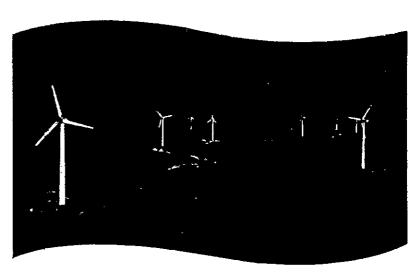
Greenpeace is claiming the \$220 million power station will increase carbon dioxide emissions which contribute to global warming. Keith said burning coal to generate electricity produced almost half of NSW carbon dioxide emissions. NSW already has 50 per cent more power plant capacity than is needed to meet the highest demand.

This was despite the fact that Australia had ratified the international Climate Change Convention in March, committing it to reducing greenhouse gas emissions back to 1990 levels by the year 2000. EDO solicitor David Mossop said the Redbank case was rare in that it linked Australia's international responsibilities to a particular development.

New Zealand Environment Minister Simon Upton recently called for an inquiry into a proposed power station on the basis of its carbon dioxide emissions.

The Greenpeace challenge comes hot on the heels of a breakthrough in solar technology by University of NSW researchers. Within 10 years, the new technology could power a normal house for a one-off outlay of \$2000. Ironically, one of the partners in the Redbank project, ESI Energy has also embarked on a joint investment venture in the United States with US Windpower, one of the largest investors in renewable energy in America. The two companies are investing in wind power stations in California.

The Redbank hearing commences in early September. Φ



A breath of fresh air....

While NSW contemplates going back to the Dark Ages, the State Energy Commission of Western Australia recently opened the first commercial wind farm in Australia. Ten Mile Lagoon Wind Farm was established to supply power to the remote town of Esperance. Electricity from the farm will be 2 cents a kw/hr cheaper than the previous power source, diesel, and will save 1.9 million litres of fuel and 5000 tonnes of carbon dioxide each year. With expected fuel savings of \$650,000 per year, the two megawatt capacity wind farm would pay for itself within 12 years.

All states to defend environment

Media enquiry?

261 3599

establish public environmental law centres in every state and territory of Australia.

NSW EDO Director James Johnson said

strong public support for environmental protection reported in recent surveys showed there was great need for a national network of

network across Australia would provide national access to justice for all Australians.

'Local and state government have prime responsibility for enforcing environmental laws, but often fail to take action when the law is broken. Without community participation in decisions, there will be less support from the community and the quality of the decisions will suffer."

The Democrats and Greens urged support for EDO's in all states in their submissions

The NSW Environmental Defender's to this year's Federal Budget. NSW is only Office has launched a new campaign to one of three states with an EDO. Queensland operates an EDO two and a half days a week, while Victoria's is open wo days. South Australia only has a volunteer-run phone-in service.

> James said a precedent for a national network of legal advocacy centres had been set by Welfare Rights Centres. These are funded

Environmental Defenders Offices. "Such a \$1 million by the Department of Social Security through the Minister for Justice, who administers the Community Legal Centre scheme.

> "The EDC is planning to work with peak environment and community groups to incorporate a formal state-by-state EDO furding proposal in next year's pre-federal election budget," James said. "it's bizarre that areas such as Northern Territory and Western Australia which have vast areas of natural land still have no public interest law group to represent the environment." A

Environmental Defender

Newsletter of the Friends of the Environmental Defender's Office

Vol.2. No.2.

June 1994

Legal aid backwhat a victory!

The Environmental Defender's Office is celebrating the news that legal aid is back for environmental matters, thanks to a fantastic public response.

The Legal Aid Commission of NSW voted to reinstate legal aid in late March after community groups, law firms, individuals and members of Parliament besieged the Commission However, James said things are with letters and calls. Supportive politicians also raised the matter in State Parliament and with the Attorney General, and many people who had been assisted in the past by the EDO added their voices to the campaign.

"We want to thank everyone who got behind the campaign to reinstate legal aid," said EDO director James Johnson. "It's great news for the EDO, and even better news for everyone who wants to ensure our environmental laws are enforced.'

expected to remain tough in the current economic and political climate. "People who apply for legal aid will still be means tested, even if they are trying to protect a public asset, such as a heritage building. Also, the Commission might provide grants only on a lump sum basis, which will make it difficult to pursue a government authority or developer if they string out litigation."

Legal aid for environmental matters was first abolished by the Legal Aid Commission in January last уеаг. Ф

As we go to press, at least four new applications for legal aid are before the Commission, covering issues as wide ranging as power stations and wilderness. The EDO is now preparing to swing into action.

A disturbing new trend in libel law suits against protesters has made this victory all the more important - see report on SLAPP suits, page 8.

In this issue

Global warming casep.2
Report from Parliamentp.6
Letters to the editorp.7
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Reviewp.9

EPA taken to court for breaching FOI

The NSW Environment Protection Authority (EPA) has been ordered to pay legal costs, after it was taken to court for failing to explain why it would not supply documents requested under the Freedom of Information Act.

The documents were requested by a local residents group, the Inner City and Foreshores Community Action Group. These documents related to the conditions of the EPA's approval for a heliport to be built at Pyrmont in Sydney.

The Environmental Defender's Office (EDO), acting for the residents group, first applied for documents related to the heliport under Freedom of Information in February. But the approval conditions were not among those supplied. Despite repeated requests by the EDO, the EPA did not supply the requested documents, and failed to say why.

EDO director James Johnson said FOI legislation stated very clearly that reasons must be given if an application under the Act is refused, but that the EPA had failed to do this.

The EDO commenced proceedings against the EPA in the Supreme Court in May and within a day, the EPA had supplied the documents requested. The Court has ordered that EPA pay the legal costs of the Inner City and Foreshores Community Action Group. The matter has been referred to the Ombudsman's Office and the EPA Board for further investigation. •

Editorial - page 7

WHY IS **LEGAL AID** IMPORTANT?

- · Legal aid is essential if the government wishes to encourage the public participation objectives set out in the Environmental Planning and Assessment Act.
- Increased public participation leads to better decision-making.
- · Legal aid is just a method for allowing individuals to bring a case to court which is in the public good, without risking their own assets.
- · Legal aid provides a way of addressing breaches of the law which would otherwise be overlooked or ignored by the authorities responsible for their administration.

6/i

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney Peg: EDO

TEL: (02) 261 3599

FAX: (02) 267 7548

9 June 1994

North Coast Environment Council c/- Jim Tedder Pavans Access via Stuarts Point NSW 2441.

Dear Jim,

Re: Environmental Law Workshops on the North Coast

This is just to let you know about the EDO law workshops planned for the North Coast in September. The workshops are planned for Forster (13th), Port Macquarie (14th), Coffs Armidale (19th). (17th), Lismore (18th), Harbour environment group contacts co-ordinating the workshops are (Great Lakes Environment Association), Kath Smith Wallace '(Coffs Info Shop), Dee Interman (The Lisa Yeates (Big Scrub Environment Environment Centre), Centre) and Cameron Way (Wilderness Society, Armidale).

Please note that these dates may well change.

Aim of workshops The workshops will:

- 1. Show people how to use the legal tools available to them to participate in planning, conservation and pollution control at their local or state level.
- 2. Explain the importance of timing in taking environmental legal action.
- Provide more specific advice on a particular issue of local concern. A short visit to site(s) in question is also envisaged.

Topics covered will include:

- 1. Introduction to the legal system
- 2. Planning and development law
- Environmental protection law (eg. endangered species, pollution)
- Resource development law (eg. forestry, mining)
- 5. Taking action (eg. briefing a solicitor, Land & Environment Court, gathering evidence, Commissions of Inquiry)



Covering costs

To minimise the costs of giving the workshops, we will be relying on local groups to assist with venue, advertising, publicity, refreshments and a place to stay for two EDO solicitors.

The EDO will be also be approaching several local councils to sponsor each workshops in return for a number of free places at the workshop for cuncil staff. The EDO will also be approaching other funding bodies for assistance but it would also be beneficial for local groups to seek funding support as well. We are suggesting a workshop entrance fee of \$15 per head but obviously if sufficient funding could be found, this fee would not be necessary.

If you have any further queries or suggestions please give me a call. I will send you a copy of the final details and programs when complete.

Yours faithfully Environmental Defender's Office Ltd

Anna Salleh Education Officer

Ref: NCWKSHP\GROUPJT

Legal Aid Commission of New South Wales

LEGAL AID POLICIES

APRIL 1994

This booklet contains general information about the policies of the Legal Aid Commission. To obtain more detailed information, please contact the Policy and Education Branch on (02) 219 5921.

Do you ned copy of Legal Aid Policy
. (Javence Euromat (astre
126 Bacon St
GraHun 2460 PO Box 1073
CVCC - Leonie Blain, Sec or POBOX 286 Copmanhurst Rd
Copmanhurst 2460
NVCA - C/o Len Orrago PO Box 123 Borwairlle 2449 NSV.
BHPC Peter Helman Po Box 706 Byron Bay NEW 2481
Corleil @ Big Scrib Em. Cente Ine 149 Keen St Lismone 2480.
Caldera Environment Centre Henry James P.O. Box 5090 South Mornilloubah 2484.
L. Gill CallEA 21 Hossim Herd Wootion 2423
CONOS, P.O. Box 343, BRINSWICK HEAM, 2483 NSW.

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INFORMATION ABOUT THE LEGAL AID COMMISSION

Advice

The Commission provides general advice to the public at Commission offices, on all matters. Advice is provided free of charge, without application of the means test or ment test. People seeking advice should contact the closest Commission office. A list of the locations of Commission offices appears at p.27.

The Means Test

In most cases, the Commission applies a means test which takes into account an applicant's income and assets. Full details of the Commission's means test, and exempt cases are contained in a separate booklet called "Means Test Guidelines".

The Merit Test

The Commission applies a 'merit test' in most non-criminal matters and in criminal appeals (for further details see policies relating to the relevant area of law, following).

The merit test addresses whether it is reasonable in all the circumstances to grant legal aid. Matters which the Commission takes into account include, but are not limited to,

- (i) the nature and extent of any benefit that may accrue to the applicant by providing legal assistance or of any detriment that the applicant may suffer if legal assistance is refused; and
- (ii) whether the applicant has reasonable prospects of success in the proceedings.

Compulsory and Initial Contributions

In most ongoing cases the Commission requires a contribution of \$40 from a person granted legal aid. Certain cases are exempt. A person granted legal aid may also have to make a further contribution, based on income and assets. Full details of contributions and exempt cases are contained in the separate booklet, "Means Test Guidelines".

Final Contributions

The Commission's policy is that, at the conclusion of the case or the legal aid grant, where possible, the total costs of the matter should be recovered from the person granted legal aid, depending on the person's financial situation.

Legal Aid Policies 1

1. CIVIL LAW MATTERS

(Not including Family Law - see p. 13, Administrative Law - see p. 8, Veterans' Pension Matters - see p. 12, Prisoners' Matters - see p. 21, Mental Health Matters - see p.23.)

For applications for legal aid determined on or after 25 March 1994.

1.1 Matters for which legal aid is available

Legal aid is available for the following matters subject to the means test, merit test, exclusions and guidelines

A. All Applicants

- (a) court or tribunal proceedings at first instance or on appeal
 - (i) where there is a likelihood of loss of the applicant's dwelling
 - (ii) where questions of civil liberties are raised e.g. assault, wrongful arrest, false imprisonment and malicious prosecution, by a person in a special position of authority
 - (iii) under the Protected Estates Act 1983
 - (iv) under the Victims Compensation Act 1987 for applicants
- (b) proceedings before the Equal Opportunity Tribunal and Human Rights and Equal Opportunity Commission and on appeal therefrom
- (c) inquests into deaths where representation is a preliminary step to civil proceedings for which aid is available or where the public interest would be advanced by representation of the applicant
- (d) consumer protection matters for consumers including proceedings
 - (i) relating to guarantees, product liability, wrongful exercise of power by government departments or instrumentalities and tenancy issues (except applications to determine fair rental where no point of law is involved) but not including proceedings for professional negligence
 - (ii) under consumer protection legislation being the
 - Credit Act 1984
 - Fair Trading Act 1987
 - Contracts Review Act 1980
 - Retirement Villages Act 1989
 - Trade Practices Act 1974
 - Insurance Contracts Act 1984 for contracts of insurance relating to home owners, home contents, motor vehicle property, personal accident/illness and loan protection.
- (e) Public interest environment matters

B. Applicants at Special Disadvantage

Where proceedings are taken by or for the benefit of

- a child or
- a person having difficulty in dealing with the legal system by reason of a psychiatric condition, developmental disability, intellectual impairment or a physical disability

Legal aid is also available for proceedings in

- (a) the Supreme Court of New South Wales including all proceedings in the Court of Appeal, and the District Court of New South Wales except for non contentious proceedings in the probate jurisdiction of the Supreme Court.
 - (i) in relation to appeals to the Supreme Court from decisions of the Guardianship Board, see Mental Health Matters p.21.
 - (ii) in relation to applications for adoption proceedings, custody and access disputes, state law affiliation and maintenance proceedings and property disputes between former de facto partners, see Family Law Policies p.13;
- (b) the Local Court;
- (c) the Federal Court of Australia (see also Administrative Law Policies, p.10 and Veterans' Pensions Policies, p.12);
- (d) the High Court of Australia in its original jurisdiction and appeals to the High Court (see also Administrative Law Policies, p.10 and Veterans' Pensions Policies, p.12);
- (e) the Land and Environment Court in relation to proceedings before a judge;
- (f) the Industrial Commission of New South Wales in relation to proceedings pursuant to section 88F of the Industrial Arbitration Act 1940 [ss275-278 Industrial Relations Act 1991]. Grants of aid in these matters are closely monitored and solicitors are required to report at reasonable stages on the progress of the matter;
- (g) the Industrial Magistrate's Court [Local Court] for recovery of payments owing under section 92D of the Industrial Arbitration Act 1940 [s163 Industrial Relations Act 1991] (where possible these matters are dealt with on an inhouse basis);
- (h) Arbitration in respect of:
 - (i) contracts of insurance; and
 - (ii) contracts of construction, maintenance or repair of a structure used or intended to be used entirely as a dwelling house;

- (i) the Commercial Tribunal;
- (j) the Guardianship Board (see Mental Health Policies, p.23); and for
- (k) application for Waiver of Escheat in respect of the estate of deceased persons.

1.2 Exclusions

Except as noted below legal aid is not available for

- disputes arising from commercial or investment transactions conducted by the applicant;
- (b) building disputes:
- (c) assault matters other than those where questions of civil liberties are raised and claims under the Victims Compensation Act;
- (d) disputes arising from the relationship of the parties as neighbours;
- (e) bankruptcy matters being debtors' petitions, deeds of arrangement, creditors' meetings, public examinations;
- (f) defamation proceedings;
- (g) disputes between family members and former family members over property and money. "Family" includes family resulting from a de factor relationship. This exclusion does not apply to
 - proceedings under the De Facto Relationship Act 1984 or the Family Provision Act 1982; or
 - proceedings where there is a likelihood of loss of the applicant's dwelling arising from an arrangement where by the applicant made a financial contribution to the cost of the dwelling.

The Commission will consider the suitability of family disputes for referral to a Community Justice Centre;

- (h) intra association disputes, for example, between members of unions or clubs;
- (i) proceedings in a Local Court where the amount in issue is \$3,000 or less;
- (j) proceedings to be taken in a Local Court which fall within the jurisdication of the Consumer Claims Tribunal;
- (k) matters concerning damage to any property by a motor vehicle;
- (I) proceedings under the Proceeds of Crimes Act 1981, Crimes (Confiscation of Profits) Act 1990, Drug Trafficking (Civil Proceedings) Act 1990 and other legislation relating to tainted moneys/property.

Note:

Legal aid may be granted in matters (a) - (j) where the applicant is a person at special disadvantage as described in 1.1B and where

- there are exceptional circumstances and
- the applicant would suffer undue hardship if legal aid were refused.

For the purposes of exclusion (a) exceptional circumstances shall be considered to exist where proceedings are being taken against a solicitor alleging professional negligence arising in the course of a commercial or investment transaction.

1.3 Guidelines

(a) Loss of Dwelling

Legal aid is only available where the loss of the applicant's dwelling is a likely direct result of the proceedings for which aid is sought e.g. ejectment proceedings or where it is considered necessary to take proceedings to protect the applicant's interest in the dwelling.

Aid is not available for other matters e.g. claims for debts due where there is a likelihood that the applicant's dwelling may have to be sold to meet a judgment or adverse costs order.

(b) Inquests

In all matters regard will be had to the prospects of the applicant being granted leave to be represented at the inquest.

Where the death to which the inquest relates occurred in the custody of the police, or in a prison, mental hospital, child care centre, community welfare facility or juvenile detention centre questions of public interest will generally be considered to have arisen.

In considering the benefit/detriment aspects of the merit test and the reasonableness of granting legal aid consideration will be given to the applicant's relationship to the deceased and the likelihood of the interests of the deceased's family being represented at the inquest if legal aid were not granted.



Test cases and public interest cases

- (i) Legal aid may be granted for test cases and public interest cases in any of the classes of matters for which legal aid is available.
- (ii) Legal aid is available for public interest environment matters where the activity or proposed undertaking raises a matter of substantial public concern about the environment. In deciding whether there is a substantial public concern, regard will be had to at least the following:
 - Whether or not the activity, or proposed undertaking is likely to have a significant impact on the environment in NSW or to substantially affect public use, or enjoyment of that environment.
 - The scarcity of the particular attribute(s) of that environment.

Legal Aid Policies 5

- The value of that environment to the community of NSW.
- Community interests that may be affected including the impact on the social and cultural needs of the community.

In deciding whether the public interest environment matter has merits as defined in the merits test of the Legal Aid Commission, the environmental, economic, cultural and social impact should be considered, where appropriate.

In the case of matters in the Land and Environment Court or on appeal therefrom the following guidelines apply:

- Legal aid is only available for matters coming within Class 1 and Class 4 of the Land and Environment Court Act 1979.
- Legal aid is not available for proceedings coming within Class 2, 3, and
 5 of that Act.
- Legal aid is only available for proceedings proposed to be conducted in the Land and Environment Court before a Judge.

In deciding whether or not to grant legal aid, consideration must be had to the likely cost to the Commission of the proceedings.

Applicants for legal aid and legally assisted persons or groups should, in appropriate cases, be required to pursue settlement of the matter by mediation or negotiation.

Where the application for legal assistance concerns environmental matters which fall within Guidelines 20-24 inclusive, set forth in the guidelines for the provision of legal or financial assistance by the Commonwealth other than under the Conciliation and Arbitration Act (published by the Attorney General's Department in 1989), then the application should be referred to the Commonwealth Attorney General for determination in accordance with the Commonwealth's guidelines for legal aid in environmental matters.

Means Test Guidelines

- The Means Test to be applied to an individual applicant seeking legal aid for an environmental matter is Means Test A.
- Where the applicant seeking legal aid for an environmental matter is a group then the means to be considered are the means of the group.

In considering the means of the applicant/group, regard should be had to the financial support that would be available from those members of the community who would be likely to support the aims of the group in the matter for which aid is sought.

 In considering the means of the applicant/group regard should also be had to the applicant's ability to afford the cost of the legal proceedings having regard to his/her assets or the general assets of the applicant/group. Contributions are to be assessed having regard to the available financial resources of the applicant/group.

Motor vehicle accident claims

In respect of matters under the Motor Accidents Act 1988 legal aid is not available by way of grant of aid, section 33 authorisation or minor assistance for the purpose of preparation of a Notice of Claim form. Applications for legal aid will only be considered once entitlement to commence court proceedings arises under section 43 of the Act.

Representation

An application may be determined

- by granting legal aid on condition that a Commission salaried solicitor, a community legal centre or private practitioner conduct the matter - regardless of the source of the application or
- by refusing the application on the basis that representation is available by a community legal centre

if the Commission is satisfied that legal aid will be delivered in the most cost effective manner due to the expertise of Commission salaried solicitors, the community legal centre or the other practitioner in conducting the type of matter to which the application relates.

(f) Lump sum grants

Where appropriate legal aid will be provided on the basis of a lump sum grant to cover professional costs and/or disbursements.

In the case of grants for public interest environment matters, public interest matters, and test cases, a s47 indemnity will apply to the lump sum grant, unless exceptional circumstances exist.

(g) Alternative dispute resolution

Applicants for legal aid and persons to whom legal aid has been granted may be requested or required to participate in alternative dispute resolution under section 33 of the Act or as a condition of the grant of legal aid.

2. ADMINISTRATIVE LAW MATTERS

(Not including Veterans' Pension Matters, see p. 12)

Legal aid is available for the matters listed in 2.1, subject to the means test and ment test, and subject to the guidelines and exceptions listed below.

These matters are to be conducted by salaried solicitors of the Legal Aid Commission unless a salaried solicitor is unable to act or unless exceptional circumstances exist.

2.1 Matters for which legal aid is available

(a) Court or Tribunal proceedings

Legal aid is available for Court or Tribunal proceedings

- in migration matters involving refugee status, physical danger or gross injustice; or
- for review of a criminal deportation order; or
- pursuant to the Social Security Act 1991.

(b) Applications under the Migration Act 1958

Legal Aid is available for assistance with making the following types of applications and for any consequential review

- application for refugee status or associated entry permit; or
- application for entry permit relating to physical danger or gross injustice.

2.2 Guidelines

- (a) Migration Act applications and Social Security Appeals Tribunal proceedings where legal aid is granted, the grant should normally be limited to the giving of advice, preparation of written material and cost of expert reports. Where in the opinion of the Commission the applicant is unable to properly represent him/herself, the grant may extend to attendance with the applicant at any interview.
- (b) Social Security Appeals Tribunal proceedings legal aid is available only where
 - the case relates to a large over-payment; or
 - there is significant risk that the applicant will incriminate him/herself; or
 - the applicant is unable, by reason of disability, to communicate with the Tribunal; or
 - the appeal raises a complex or novel question of law; or
 - the applicant cannot afford the cost of medical reports and the applicant's state of health is at issue.

2.3 Exceptions - People eligible to be considered under former policies

Legal aid is available, in accordance with the policies relating to administrative law matters that were in force immediately before 1 January 1993, (see p. 10) where the applicant

- · is a child; or
- has a psychiatric condition, developmental disability or intellectual impairment; or
- has a physical disability which creates difficulty in dealing with the legal system.

Legal Aid Policies

- 3. ADMINISTRATIVE LAW MATTERS policies in force before 1 January 1993 and applicable to applicants falling within exceptions (see p. 9)
- 3.1 Legal aid is available subject to a means test and merit test for proceedings in:
 - (a) The Administrative Appeals Tribunal for proceedings under the:
 - (i) Social Security Act 1991, Student Assistance Act 1973, National Health Act 1953 and Health Insurance Act 1973;
 - (ii) Migration Act 1958, Passports Act 1938, Australian Citizenship Act 1948 and Regulations;
 - (iii) Veterans' Entitlements Act 1986, Seamen's War Pensions and Allowances Act 1940, Defence Force Retirement and Death Benefits Act 1973 and Defence Service Homes Act 1978:
 - (iv) Commonwealth Employees' Rehabilitation and Compensation Act 1988 and Superannuation Act 1976; and
 - (v) Freedom of Information Act 1981 and Archives Act 1983.

(b) The Federal Court being:

- (i) Proceedings under Section 39B of the Judiciary Act 1903;
- (ii) Proceedings under the Administrative Decisions (Judicial Review) Act 1977; and
- (iii) Appeals from decisions of the Administrative Appeals Tribunal.
- (c) The High Court being appeals arising from proceedings referred to in (a) and (b).
- (d) Legal aid is available for proceedings before the Social Security Appeals

 Tribunal subject to the means test the merit test, and where:
 - (i) the case relates to a large over-payment, or
 - (ii) there is a significant risk that the applicant will incriminate him/herself; or
 - (iii) the applicant is unable, by reason of disability, to communicate with the Tribunal; or
 - (iv) the appeal raises complex or novel question of law; or
 - (v) the applicant cannot afford the cost of medical reports and the success of the appeal depends on the state of health of the applicant.

Where legal aid is granted it should normally be limited to the giving of advice, the preparation of written submissions and the cost of any necessary medical reports.

Legal Aid Policies

Where possible these matters are to be dealt with on an in-house basis. Matters will only be assigned to a private legal practitioner where a Commission salaried solicitor is unable to conduct the matter or where there are exceptional circumstances.

Legal aid is available subject to the means test and merit test for the purpose of:

- (e) Making application to the Department of Immigration, Local Government and Ethnic Affairs for:
 - (i) refugee status and permanent residence consequent to the grant of refugee status:
 - (ii) permanent residence on strong humanitarian grounds;
 - (iii) permanent residence on strong compassionate grounds; and
 - (iv) permanent residence on any other grounds provided the application is also on strong humanitarian grounds or strong compassionate grounds.
- (f) Seeking reconsideration by any committee, panel or tribunal established to review Departmental decisions to reject any application referred to in (e).

Legal aid will normally be limited to the giving of advice, the preparation of the application and the preparation of written submissions. Where, in the opinion of the Commission, the applicant is unable to properly represent himself/herself, legal aid may extend to attendance with the applicant at interviews with migration officers.

Where possible these matters are dealt with on an in-house basis. Matters will only be assigned to a private legal practitioner where a Commission salaried solicitor is unable to conduct the matter or where there are exceptional circumstances.

Where an application for legal aid is received in relation to a matter that is not specified in 3.1(a) to (f) but it is considered that the application warrants consideration, the matter will be referred to the General Manager, Legal Services or the Managing Director.

4. VETERANS' PENSION MATTERS

- 4.1 Legal aid is available to ex service personnel and their dependants for matters under the Veterans' Entitlements Act 1986 and Seamen's War Pensions and Allowances Act 1940 subject to a merit test. No means test applies except in war service pension matters.
 - Payments under section 33(f) of the Legal Aid Commission Act 1979 (except as may arise by operation of paragraph 4.2(b) below) and payments under section 46 of the Act are not levied in matters where the means test is not applied.
 - Compulsory contributions and other contributions under section 36 of the Act are not levied in matters where the means test is not applied.

4.2 Legal aid is not available:

- (a) until there has been an adverse determination, in the matter for which legal aid is sought, by the Repatriation Commission or the Pensions Committee, as the case may be; or
- (b) in non-psychiatric claims where a finding of no incapacity has been made, unless the applicant furnishes at his or her own expense a medical opinion verifying the existence of the condition alleged; or
- (c) in entitlement matters where the applicant is already in receipt of 100% of the general rate of pension except where the claim is a means to achieving an additional financial benefit.

5. FAMILY LAW MATTERS

(Not including Child Support Scheme Matters - see p. 25)

Legal aid is available for the matters listed in 5.1, subject to the means test and ment test (except where otherwise stated) and the guidelines listed below.

5.1 (a) Family Law Act 1975, Regulations and Rules

- (i) applications for stay and transfer of proceedings;
- (ii) dissolution and nullity of marriage proceedings;
- (iii) custody, guardianship and access proceedings;
- (iv) maintenance proceedings and property proceedings;
- (v) intervention applications;
- (vi) appeals and applications to state a case;
- (vii) contempt proceedings;
- (viii) declarations and injunctions;
- (ix) change of venue applications;
- (x) applications for expedition of proceedings;
- (xi) applications for review of Registrar's decision;
- (xii) Family Court enforcement of maintenance proceedings under Order 33 of the Family Law Rules;
- (xiii) proceedings pursuant to section 111 of the Family Law Act 1975 and under Part IV of the Family Law Regulations to confirm and/or enforce maintenance orders for overseas residents;
- (xiv) preliminary advice to needy persons in remote localities in respect of dissolution proceedings. (The Commission will pay private solicitors to give this advice provided the applicant is more than 50 kilometres from a Family Law Registry, a Commission Branch Office or an advice centre attended by a Commission solicitor. The fee payable is limited to one half hour of professional time at Legal Aid Commission rates.)

. (b) Other

- (i) adoption proceedings;
- (ii) conveyancing costs for transfer of proprietary interests in houses pursuant to family law orders and approved agreements between spouses;
- (iii) costs of travel to take delivery of child pursuant to a court order in respect of custody where assistance is not available from another scheme;
- (iv) domestic violence when these proceedings are incidental to family law proceedings;
- (v) proceedings pursuant to the De Facto Relationship Act 1984.

(c) Separate representation and applications under the United Nations Conventions for Recovery Abroad of Maintenance (UNCRAM)

(i) Separate Representation

Orders that children be separately represented under the Family Law Act 1975 do not require the submission of an application for legal aid. No means or merit test is applied. The Commission will pay costs and disbursements however, as if the matter were one for which aid has been granted.

(ii) UNCRAM

The Managing Director is the delegate of the Collector of Overseas Maintenance and in this capacity acts to recover maintenance from a person or secure variation of an order made by a convention country for payment of maintenance by a person.

In these matters the means and merit tests are not applied and no application for aid is required. The Commission will pay costs and disbursements however, as if the matter were one for which aid has been granted.

5.2 Guidelines

The following guidelines are applied in family law matters:

(a) Dissolution of Marriage

Legal aid is available in respect of applications for dissolution of marriage only where it is imperative that the marriage be dissolved and where the applicant is in a position of special hardship.

(b) Enforcement Proceedings

Legal aid is not available to enforce maintenance orders in the Local Court. Legal aid is available for other types of enforcement proceedings, for example, to enforce the terms of a property settlement order. Where enforcement proceedings involve Family or Supreme Court deliberation, legal aid may be available if it is shown that it is impractical or inappropriate for proceedings to be taken in a Local Court.

(c) Proceedings Pursuant to Part IV of the Family Law Regulations

The Commission co-operates with the Commonwealth in the provision of assistance pursuant to the United Nations Convention on the Recovery Abroad of Maintenance (UNCRAM).

(d) Six Week Separation Guideline (See also 5.2(g)(iii))

Legal assistance for the institution of family law proceedings is generally not available unless or until the parties have been separated for six weeks. However assistance may be available:

- (i) where, in the opinion of the Commission, there are special circumstances in the particular case by reason of which it would be proper to grant such assistance notwithstanding the general policy; or
- (ii) where proceedings within or prior to six weeks of separation are necessary because:
 - there is a real need to obtain injunctive relief;
 - urgent action is required to protect the interests of children;
 - urgent action is required to protect property interests; or
 - urgent maintenance proceedings are required.

Legal Aid Policies

(e) Mediation

- (i) Applicants for legal aid will be required to participate in mediation prior to grants of legal aid being made, subject to the suitability of the applicant or the dispute for mediation. This requirement is to be in the form of an authorisation under s33 for referral to mediation.
- (ii) It is not considered appropriate to refer the following matters for mediation:
 - where there is an allegation of sexual abuse of a child or other abuse of a child;
 - where DOCS is involved in some other allegation of neglect against a child;
 - where there is a history, which is current, of domestic violence;
 - where the application relates to pending proceedings and the next return date is before mediation can be arranged, and an adjournment is unlikely to be granted;
 - where the matter is urgent and it is necessary to approach a court on an interim relief basis;
 - where recently, but prior to making the application for aid, the parties unsuccessfully attempted mediation or family counselling;
 - where there is documentary or other clear evidence establishing the refusal or unwillingness of the other party to attend mediation; or
 - where there is a denial of paternity.

(f) Custody and Access

(i) In the case of custody and access disputes, legal aid is usually limited to negotiations with a view to settlement of the dispute. If the negotiations are unsuccessful, a request for further assistance should be made. Such further assistance should be granted if there has been a genuine attempt to settle the matter by agreement.

(g) Property

- (i) Legal aid will not be provided for a property dispute (unless exceptional circumstances exist) where it is likely that:
 - there will be a sale of the matrimonial property; or
 - the other party will purchase the applicant's interest in the matrimonial property; or
 - the applicant will receive a cash settlement;

resulting in the applicant receiving sufficient funds to pay the anticipated legal costs of the proceedings; or where it is likely that

- the applicant will be in a position to borrow funds sufficient to purchase the other party's interest in the property and pay the anticipated legal costs of the proceedings.
- (ii) In the case of family law property disputes legal aid will not be available until the parties have been separated continuously for a period exceeding three months, except in urgent cases.
- (iii) in determining applications for legal aid in property proceedings, the Commission will weigh the anticipated benefit to the legally assisted person against the likely cost of the proceedings and in doing so shall bear in mind the Commission's policy relating to the application of s46 of the Act (see "Final Contributions", p.1).

(h) Maintenance Proceedings

- (i) In the case of family law maintenance proceedings legal aid is usually limited to negotiations with a view to settlement of the dispute. If the negotiations are successful, a request for further assistance should be made. Such further assistance should be granted if there has been a genuine attempt to settle the matter by agreement.
- (ii) Legal aid is available to commence maintenance proceedings in the Local Court only, unless exceptional circumstances exist.
- (iii) Legal aid is available for a review by the court pursuant to the Child Support (Assessment) Act 1989.

(i) Injunctions

Legal aid is not available where the purpose of the injunctive relief sought is to allow overseas travel or holidays, unless there are cogent reasons for a grant of legal aid and there would be undue hardship to the applicant if legal aid were refused.

(i) Forum for De Facto relationship Act proceedings

De Facto Relationships Act matters should proceed in the Family Court where appropriate, for example, where there are other proceedings in the Family Court relating to children.

5.3 Duty Solicitor Service

The duty solicitor service provided by Commission salaried solicitors in Family Law Act and associated matters at Local Courts and Family Courts is subject to the means test, except where the applicant is in custody, but not the merit test and is limited to:

- (a) legal advice in respect of a first appearance; and/or
- (b) a first appearance on behalf of the client, ordinarily involving an application for an adjournment.

6. CRIMINAL LAW MATTERS

- 6.1 Legal aid is available for criminal law proceedings as follows:
- (a) In the Local Court (subject to the means test but not the ment test) for
 - (i) bail applications (for persons in custody on the first appearance the means test is not applied);
 - (ii) mentions and adjournments;
 - (iii) pleas of guilty in summary charge matters;
 - (iv) defended summary charge matters;
 - (v) defended indictable charge matters which may be dealt with summarily;
 - (vi) coronial inquests where the applicant for legal aid is summonsed to appear but not charged by the police, if he/she is at risk of being charged with a serious criminal offence;
 - (vii) committal proceedings where the applicant is charged with murder or where exceptional circumstances exist;
 - (viii) domestic violence proceedings whether commenced by private information or police charge being proceedings under Part 15A of the Crimes Act 1900 (Apprehended Violence Orders),
 - to complainants and informants where the complainant/informant
 - is or has been married to the defendant;
 - is living or has lived with the defendant on a bona fide domestic basis although not married;
 - is living with or has lived ordinarily in the same household as the defendant (otherwise than merely as a tenant or boarder);
 - is or has been a relative (within the meaning of s4(6) of the Crimes Act 1900) of the defendant;
 - has or has had an intimate personal relationship with the defendant.
 - to defendants only where exceptional circumstances exist. Exceptional
 circumstances may include, but are not limited to matters in which it is likely
 that a gaol sentence will be imposed or where it is likely the matter could be
 resolved by negotiation.

Legal aid is available to defendants for bail applications in the course of apprehended violence proceedings.

(ix) summons matters (other than domestic violence proceedings) only in the following circumstances:

Legal Aid Policies

- for defendants where
 - there is a real possibility of a gaol sentence being imposed, or
 - the matter would ordinarily have proceeded by way of a charge; or
 - exceptional circumstances exist.
- for informants where
 - there is a real or anticipated danger to his/her person or kin; or
 - exceptional circumstances exist.
- (x) extradition proceedings, except that where the proceedings are defended, consideration must be given as to whether it is reasonable in all the circumstances to grant legal aid.
- (xi) offences under s4E, s4F and s5 of the Motor Traffic Act 1909, (PCA, DUI, Refuse/Hinder Breath Test etc) and concurrent traffic offences, only where there is a real possibility of a gaol sentence being imposed, if the applicant were convicted. This policy applies to all such proceedings, whether commenced by charge or summons.

(b) Indictable Matters in the District and Supreme Courts

- (i) are subject to the means test but not the merit test for:
 - bail applications (except Supreme Court bail applications see (ii) below)
 - mentions and adjournments;
 - sentence matters including breaches of recognisance;
 - related summary matters dealt with under Pt 10, Criminal Procedure Act 1986; and
 - trials;
- (ii) are subject to the means and the merit test for:
 - Supreme Court bail applications.

(c) Appeals, subject to the means test and the merit test, to the:

- (i) District Court sitting in its criminal jurisdiction and Supreme Court, from decisions of Magistrates in Local Courts, other than appeals in matters where legal aid would not have been available for the Local Court proceedings (see 6.1(a));
- (ii) Court of Criminal Appeal; and
- (iii) High Court.

- (d) Public Health (Proclaimed Diseases) Amendment Act 1989 for persons subject to Public Health Orders in:
 - (i) Local Court and Supreme Court applications subject to the means and merit test and having regard to the nature of the order sought; and
 - (ii) Appeals to the Supreme Court and Court of Appeal from decisions of the Local Court or Supreme Court concerning Public Health Orders under the Act.

Applications for legal aid for assistance in Public Health Order matters are only to be determined by the Managing Director or General Manager, Legal Services.

6.2 Exclusions

Legal Aid is not available for

- (a) respondents in Victims Compensation matters in the Local, District, or Supreme Court, or the Victims Compensation Tribunal.
- (b) proceeds of Crime Act 1987 (Commonwealth), Confiscation of Proceeds of Crime Act 1989, Drug Trafficking (Civil proceedings) Act 1990 and other legislation related to tainted monies/property.

7. CHILDREN'S COURT MATTERS

- 7.1 Legal aid is available in relation to Children's Court matters as follows:
 - (a) in the Children's Court to:
 - (i) children, not subject to a merit test or means test; and
 - (ii) parents, guardians or people with a special interest in the welfare of the child, subject to the means test. The merit test is also applied in respect of:
 - proceedings concerning irretrievable breakdown between a parent and a child; and
 - applications for variation or recission of orders made under the Children (Care and Protection) Act 1987.
 - (b) for Appeals to the District Court from a Magistrate's decision
 - (i) for children, subject to a merit test, and in criminal matters, subject also to a means test
 - (ii) for parents, guardians or people with a special interest in the child subject to a means and merit test
 - (c) for committal proceedings subject to a means test, a ment test is not applied;
 - (d) for sentence matters and trials in the District Court and Supreme Court subject to a means test but not subject to a merit test;
 - (e) for Court of Criminal Appeal and High Court matters subject to a means and ment test.
 - (f) in the Community Welfare Appeals Tribunal for proceedings relating to wardship or custody of a ward and for proceedings relating to applications by individuals to be foster parents to:
 - (i) adults, subject to a means and merit test; and
 - (ii) children, where an order for separate representation has been made, subject to a merit test but not a means test.

Representation in the Community Welfare Appeals Tribunal should be by salaried staff of the Commission's Family Law Litigation Section, unless exceptional circumstances exist.

- (g) in the Supreme Court (including proceedings in the Court of Appeal) for appeals from decisions of the Community Welfare Appeals Tribunal relating to wardship or custody of a ward or relating to applications by individuals to be foster parents, to:
 - (i) adults, subject to a means and merit test; and
 - (ii) children subject to a merit test.

8. PRISONERS' MATTERS

8.1 Since February 1986, the Commission has provided services to prisoners through the Prisoners' Legal Service (PLS) which is located on Level 6, Daking House, Telephone no. (02) 219 5888. The Solicitor in Charge's telephone no. is (02) 219 5924. The PLS provides legal advice and assistance to prisoners as follows:

(a) Legal Advice and Minor Assistance

General legal advice and minor assistance is provided free of charge and not subject to a means test or merit test to prisoners at selected gaols.

- (i) The general advice given covers many areas of law including crime, bail, family law, estate law and civil law, especially compensation for injuries resulting from accident or attacks in the gaol.
- (ii) Minor assistance is regarded as follow up action to advice which is not complex and involves work of less than one hour. It includes, but it is not limited to, assistance for:
 - classification, administrative and transfer problems;
 - complaints to the Department of Corrective Services, police or Ombudsman's Office;
 - issuing and serving subpoena where there has been no grant of legal aid (on a discretionary basis); and
 - simple wills and simple estate matters.

Minor assistance does not include obtaining transcripts for prisoners except where the PLS acts for a prisoner in a particular matter pursuant to a grant of legal aid.

- (iii) More complicated matters arising from all gaols are referred by telephone to Solicitor in Charge for advice.
- (iv) Where assistance is required beyond minor assistance the Commission's policies and eligibility criteria for the relevant area of law apply. The PLS assists prisoners to complete legal aid applications and forwards the applications to the relevant section/office. Generally the PLS is unable to take detailed instructions from a prisoner except in exceptional circumstances. However, the PLS will pass on messages from Commission staff to prisoners. Contact the Solicitor in Charge on 219 5924 or the Senior Clerk on (02) 219 5888 regarding messages for prisoners.
- (v) The gaols where advice and minor assistance is provided are:
 - Bathurst and East Maitland. (Staff from the Orange and Newcastle Legal Aid Offices respectively, attend these goals.)
 - Cessnock, Cooma, Goulburn and Grafton. (Private solicitors on a rostered basis attend these gaols - the PLS attends to the payment of their costs.)

 Metropolitan gaols - Reception Prison, Industrial Centre, Prison Hospital, Remand Centre, Training Centre, Special Purpose Prison, Special Care Unit, Mulawa Detention Centre, Silverwater Prison Complex, Parramatta Gaol, Norma Parker Centre, Parklea Gaol, Windsor (John Morony) Correctional Centre and Emu Plains Correctional Centre (serviced by PLS staff).

Most gaols are attended on a weekly basis. Some of the smaller institutions are attended on a fortnightly basis. The actual days of attendance vary. The section should be contacted to ascertain actual attendance days.

Enquiries concerning the PLS's current attendance roster for advisings should be made to the Senior Clerk on (02) 219 5888.

(b) Visiting Justice Proceedings, Offender's Review Board Hearings, Serious Offenders' Review Board Applications

The PLS provides representation for prisoners:

- at selected gaols for proceedings conducted by Visiting Justices. For information regarding location and frequency of Visiting Justices contact the PLS on (02) 219 5888;
- (ii) at review hearings conducted before the Offenders' Review Board (solicitors from PLS appear at the hearings); and
- (iii) for resentencing matters referred by the Serious Offenders' Review Board to the Supreme Court (solicitors from PLS act in these matters, private solicitors to be assigned matters only in case of conflict or exceptional circumstances).

Representation in these matters is subject to the means test applied in the Commission's duty solicitor scheme matters. The Commission has determined, pursuant to section 34(3)(b) of the Act, that for these matters there is no right of appeal to a Legal Aid Review Committee for a legal aid application refused wholly or partly on the grounds of means.

9. MENTAL HEALTH MATTERS

- 9.1 The Commission operates a Mental Health Advocacy Service at Level 4, 74-76 Burwood Road, Burwood NSW 2134, telephone no. (02) 745 4277.
- 9.2 The Commission's policy on representation in Mental Health matters is that matters should be conducted by salaried Commission solicitors unless a salaried solicitor is unable to conduct the matter or exceptional circumstances exist.
- 9.3 Legal aid is available in relation to Mental Health Act matters as follows:
 - (a) not subject to the means and not subject to the merit test to:
 - (i) patients or persons appearing in Magistrate inquiries under the Mental Health Act 1990;
 - (ii) forensic patients appearing before the Mental Health Review Tribunal under the Mental Health Act 1990;
 - (iii) persons subject to the Mental Health (Criminal Procedure) Act 1990, except non-forensic patients appearing before the Mental Health Review Tribunal in proceedings under the Mental Health (Criminal Procedure) Act 1990 who have not been granted legal aid for their trial or special hearing, or who do not meet means test C guidelines;
 - (iv) patients appearing before the Psychosurgery Review Board in relation to proceedings under the Mental Health Act 1990; or
 - (v) patients appearing before the Mental Health Review Tribunal on a hearing to determine the question of the making of a continued detention order or a continued treatment patient order, or order pursuant to s19 of the Protected Estates Act 1983.
 - (b) subject to the ment test, but not subject to the means test to patients:
 - appealing to the Mental Health Review Tribunal against the decision of a Medical Superintendent not to discharge a temporary or continued treatment patient;
 - (ii) appealing to the Supreme Court against decisions of the Mental Health Review Tribunal or continued detention in hospital.
 - (c) subject to means test A and the merit test to:
 - (i) persons other than patients appealing against decisions of magistrates or the Mental Health Review Tribunal or continued detention in hospital.
 - 9.4 Legal aid is available to affected persons (other than witnesses) for Disability Services and Guardianship Act 1987 matters.
 - (a) before the Guardianship Board, where the Board has granted leave for the person to be represented. Means Test A and the merit test apply to applicants, except to 'disabled' persons (as defined by the Act). Neither the means test nor the merit test applies to 'disabled' persons in matters before the Guardianship Board.

- (b) on appeal to the Supreme Court from decisions of the Guardianship Board. Means Test A and the merit test apply to all applicants except to 'disabled' persons (as defined by the Act). The merit test only applies to disabled persons for appeals to the Supreme Court from decisions of the Guardianship Board.
- 9.5 The Mental Health Advocacy Service administers and co-ordinates legal aid grants and representation for proceedings before the Guardianship Board under the Disability Service & Guardianship Act 1987, and for appeals to the Supreme Court from decisions of the Board. Representation in these matters is provided by Commission solicitors and private practitioners. Wherever possible Commission staff appear for disabled persons. Other affected persons are represented by private solicitors on a referral basis, except where no conflict exists (between the disabled person and the other affected person) and the Service can therefore appear for both persons.

The Mental Health Advocacy Service has social workers who can advise solicitors on a person's ability to manage himself/herself or handle his or her day to day affairs and on possible alternatives to hospitalisation. The Senior Social Worker may be contracted on (02) 745 4277. The Commission's Education and Information Section provides educational material for staff, interested community groups, health workers, families and friends of clients. The Education and Information Section can be contacted on (02) 560 4933.

10. CHILD SUPPORT MATTERS

- 10.1 The Child Support Service assists sole parent pensioners residing in the Sydney metropolitan area who are the subject of the review of Stage 1 pensioners by the Department of Social Security (DSS). A parent comes within the terms of the DSS Stage 1 Review if:
 - (a) the parent was granted a Sole Parent's Pension (SPP) between 1 June 1988 and 30 September 1989;
 - (b) the parent is currently receiving SPP;
 - (c) the parent has not yet satisfied DSS that the parent has taken reasonable action for maintenance and/or should be granted an exemption from taking maintenance action; and
 - (d) the parent has received a letter from DSS requiring reasonable action to be taken or an exemption to be granted within 3 months and directing the parent to approach a legal aid agency if assistance is required to take action for maintenance.
 - 10.2 The Child Support Service is located at:

Level 4, 74-76 Burwood Road Burwood NSW 2134

Telephone:

(02) 744 3833

(008) 45 1784

for callers outside Sydney area

- 10.3 The Service provides the following services to persons meeting the requirements set out in 10.1 and to others:
 - (a) general legal advice, not subject to a means or merit test, on the viability of child maintenance proceedings and on the conduct of child maintenance proceedings;
 - (b) minor assistance, in particular letters to non-custodial parents attempting to settle the question of child maintenance by negotiation and letters to DSS advising DSS that maintenance action is not viable;
 - (c) legal representation in child maintenance proceedings under the Family Law Act and in proceedings under the Child Support (Assessment) Act, subject to a means and ment test;
 - (d) assistance in negotiating and registering formal agreements for child maintenance under the Family Law Act and under the Child Support (Assessment) Act, subject to means test and a merit test;
 - (e) telephone information (by way of a 008 number) for sole parents outside the Sydney metropolitan area on maintenance proceedings and on obtaining legal aid for maintenance proceedings.

10.4 Solicitors from the Child Support Service provide advice and assistance at the Burwood office and also at other metropolitan offices of the Legal Aid Commission in child maintenance proceedings. Solicitors from the Service also provide representation at several metropolitan courts.

LOCATION OF LEGAL AID COMMISSION OFFICES

HEAD OFFICE
Daking House
11-23 Rawson Place,
SYDNEY NSW 2000
DX 5 SYDNEY
Telephone: (02) 219 5711

Fax: (02) 219 5935

BANKSTOWN

Civic Tower
Suite 9, Level 4
Cnr Rickard Rd & Jacobs
Street
BANKSTOWN 2200
Telephone: (02) 707 4555

(02) 708 6505

BLACKTOWN

Level 3 85 Flushcombe Road BLACKTOWN 2148 DX 8111 BLACKTOWN Telephone: (02) 621 4800 Fax: (02) 831 5597

BONDI JUNCTION

1 Newland Street BONDI JUNCTION 2022 DX 12018 BONDI Telephone: (02) 387 3800 Fax: (02) 389 6553

BURWOOD

Level 4
74-76 Burwood Road
BURWOOD 2134
DX 8541 BURWOOD
Telephone: (02) 747 6155
Fax: (02) 744 6936

CAMPBELLTOWN

Level 3
121 Queen Street
CAMPBELLTOWN 2560
DX 5119
CAMPBELLTOWN
Telephone: (046) 28 2922
Fax: (046) 28 1192

FAIRFIELD
Suite 5, Level 2
25 Smart Street
FAIRFIELD 2165

DX 5068 FAIRFIELD Telephone: (02) 727 3777

Fax:

(02) 724 7605

GOSFORD

207 Albany Street NORTH GOSFORD 2250 DX 7222 GOSFORD Telephone: (043) 24 5611 Fax: (043) 24 3503

HURSTVILLE

Ground Floor
12-14 Ormonde Pde
HURSTVILLE 2220
DX 11328 HURSTVILLE
Telephone: (02) 570 4055
Fax: (02) 580 9676

LISMORE

Suite 6, Level 4
29 Molesworth Street
LISMORE 2480
DX 7740 LISMORE
Telephone: (066) 21 2082
Fax: (066) 21 9874

LIVERPOOL

Suite 3, Level 3
Interdell Centre
Cnr George & Scott Sts
LIVERPOOL 2170
DX 5045 LIVERPOOL
Telephone: (02) 601 1200
Fax: (02) 601 2249
(Liverpool office is a referral centre)

MANLY

Suite 6, Level 4
39 East Esplanade
MANLY 2095
DX 9207 MANLY
Telephone: (02) 977 1479
Fax: (02) 977 3357

NEWCASTLE

Level 1 51-57 Bolton Street NEWCASTLE 2300 DX 7911 NEWCASTLE Telephone: (049) 29 5482 Fax: (049) 29 3347

ORANGE

241 Lords Place ORANGE 2800 DX 3040 ORANGE Telephone: (063) 62 8022 Fax: (063) 61 3983 PARRAMATTA

91 Phillip Street
PARRAMATTA 2150
DX 8293 PARRAMATTA
Telephone: (02) 891 1600
Fax: (02) 689 1082
(Parramatta office is a referral centre)

PENRITH

76 Henry Street
PENRITH 2750
DX 8038 PENRITH
Telephone: (047) 32 3077
Fax: (047) 21 0572

RYDE

787 Victoria Road RYDE 2112 DX 8405 RYDE Telephone: (02) 807 3044 Fax: (02) 809 6739

TAMWORTH

3 Fitzroy Street TAMWORTH 2340 DX 6110 TAMWORTH Telephone: (067) 66 6322 Fax: (067) 66 8303

WAGGA WAGGA

2nd Floor
Dept of Housing Building
Cnr Baylis & Morgan Sts
WAGGA WAGGA 2650
DX 5424 WAGGA
Telephone: (069) 21 6588
Fax: (069) 21 7106

WOLLONGONG

1st Floor
73 Church Street
WOLLONGONG 2500
DX 5167 WOLLONGONG
Telephone: (042) 28 8299
Fax: (042) 29 4027
(Wollongong office deals with inhouse matters, referral matters and client interviews).

SPECIALIST SERVICES

CHILDREN'S LEGAL SERVICE Shop 2, 287 Beames Avenue MT DRUITT 2770 PO Box V139 MT DRUITT VILLAGE 2770

Telephone: (02) 625 5155 Fax: (02) 675 3738

MENTAL HEALTH ADVOCACY SERVICE Level 4, 74-76 Burwood Road BURWOOD 2134 DX 8541 BURWOOD

Telephone: (02) 745 4277

Fax: (02) 744 6936

PRISONERS' LEGAL SERVICE

(based at Head Office) Telephone: (02) 219 5888 Fax: (02) 219 5916

CHILD SUPPORT SERVICE Level 4, 74-76 Burwood Road BURWOOD 2134 DX 8541 BURWOOD Telephone: (02) 744 3833

(008) 45 1784 Fax: (02) 744 6936 VETERANS' ADVOCACY SERVICE Level 5 1 Francis Street DARLINGHURST 2010 Telephone: (02) 339 7677 Fax: (02) 360 4204

9 June 94

The Manager Policy and Education Branch Legal Aid Commission Daking House 11-23 Rawson Place Sydney 2000

Dear Manager,

Could you please forward to the addressees listed below a copy of the booklet entitled "Legal Aid Policies" together with details of the policy for granting of legal aid in environmental cases.

Clarence Environment Centre PO Box 1073 GRAFTON 2460

Clarence Valley Conservation Coalition 286 Copmanhurst Rd COPMANHURST 2460

Nambucca Valley Conservation Association PO Box 123 . BOWRAVILLE 2449

Broken Head Protection Committee PO Box 706 BYRON BAY 2481

Big Scrub Environment Centre f.a. J.Corkill 149 Keen St LISMORE 2480

Caldera Environment Centre f.a. H.James PO Box 5090 SOUTH MURWILLUMBAH 2484

Great Lakes Environment Assoc f.a.L.Gill 21 Possum Pie Rd. WOOTTON 2423

CONOS PO Box 343 BRUNSWICK HEADS 2483

Port Macquarie Conservation Society f.a. P.McEntee PO Box 400 WAUCHOPE 2446,

Thank you.

Yours faithfully

James L.O.Tedder Hon.Sec.



Monday 30th May 1994

Dear Society Member,

Society membership always offers benefits. However, this winter there are perhaps more than you could possibly hope for.

Naturally enough, there are the price advantages. Our absolute aim is to make premium wines easily affordable to our members. Always was, always will be.

But if you are as big a fan of winter picnics as I am, you'll be over the moon about our additional bonus offers of handwoven cane picnic baskets and gifts of pure cotton plaid picnic rugs.

To me there are few pleasures more delightful than a lazy picnic somewhere off the beaten track with the stresses of work rapidly fading in the winter sun. But I wander from the purpose of this letter.

The important news: The Rothbury Estate is releasing its 1992 vintage reds. Winemakers Peter Hall and Keith Tulloch are particularly proud of them, and so they should. These are most definitely "Premium" wines; a couple even Super-Premium.

Being a Society Member you can purchase the mixed dozen for \$35.80 less than our already low Cellar Door price.

All in all there are 6 pre-packed offers. Of course, you can order other wines. A list of current vintages outlines your full choice.

In the pre-packed cases there is a mixture of drink-now and put-down varieties. And as almost all of Rothbury's vineyards throughout Australia and New Zealand are represented I believe you'll find the tasting interesting.

I realise I mention it often, but it does bear repeating: as a Society Member you gain wines that are far, far better than their prices suggest. For example our premium wines are priced more like middle-market ones in the retail bottle shops, even the discounters.

Anyway, enough of the propaganda. I hope you enjoy our Winter selection as much as I suspect you will.

Kind regards

Julie Peters

FREE FREIGHT

As encouragement to get in your orders before the end of the financial year I'll waver the freight charges on all orders of 3 cases or more received before 30th June.

6/1

Our ref: JJ

26 April 1994

Nth Coast Env. Council, Inc. Pavans Road GRASSY HEAD, via STUARTS POINT NSW 2441

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney Peg: EDO TEL: (02) 261 3599

FAX: (02) 267 7548

Attention: The Librarian

Dear Sir/Madam

We are pleased to announce the publication of our updated Environmental Law Fact Sheets.

Our original sheets were published in September 1992 and we distributed almost 1,000 sets. Many changes have taken place since then including changes in the Environmental Planning and Assessment Act and the Local Government Act. Our second edition of the Environmental Law Fact Sheets has incorporated these changes and can keep you up to date in plain english.

The sheets have been written for local councils, conservation groups, regulatory authorities, lawyers, students and the broader community. They contain contacts in government and community groups for further information, together with references to specific laws and publications for further reading.

The sheets are copyright free, which means that they can be photocopied for distribution to people who approach your staff for information on any aspect of environmental law. In addition, you may wish to have some complete sets on hand for sale to the community.

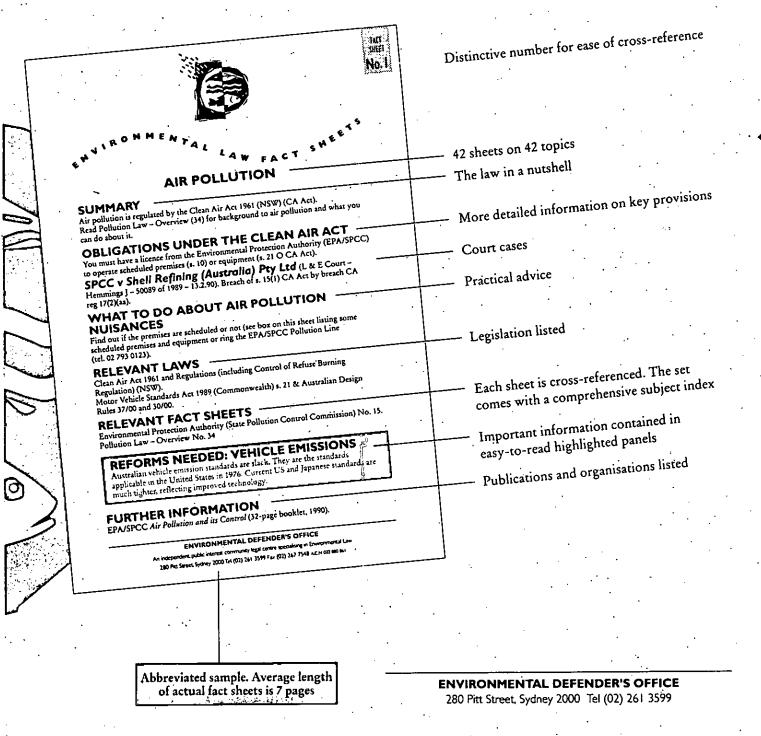
We enclose an information sheet about the Environmental Law Fact Sheets. Please do not hesitate to contact us for further information or to place your order.

Yours faithfully, Environmental Defender's Office Ltd

James Johnson Director

encl:





30 B PLAIN ENGLISH FACT SHEETS ON THE ENVIRONMENTAL LAWS APPLICABLE IN NSW

ENVIRONMENTAL LAW FACT SHEETS

Environmental protection concerns us all. Later plays an important role. However, finding out how environmental laws operate can be difficult. This is where the *Environmental Law Fact Sheet*, can help. The Environmental Defender's Office has produced plain English fact sheets on the 42 most important environmental law topics in New South Wales.

CAN THEY HELP ME?

The Environmental Law Fact Sheets have been written for citizens, local councils, conservation groups, regulatory authorities, lawyers and students.

The sheets are copyright free. They can be photocopied for distribution to clients, colleagues and the public.

THE ENVIRONMENTAL DEFENDER'S OFFICE (EDO)

The Environmental Law Fact Sheets have been written by the specialist environmental law team at the EDO. The EDO is an independent community legal centre specialising in environmental law. It represents citizens in public interest court cases, has education and conference programmes and is an advocate for improved environmental protection laws and their implementation.

Since 1984, the EDO solicitors have responded to over 9,000 environmental protection enquiries from the public.

The EDO knows the most frequently asked questions. The 42 Environmental Law Fact Sheets contain the answers.

ACKNOWLEDGEMENT

"Thanks to financial assistance from the Sydney Water Board, the cost of the 42 sheet set is only \$30, including postage and handling costs".

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4 Commissions of Inquiry	24	Letters, Submission Writing, Petitions,
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Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney Peg: EDO

> TEL: (02) 261 3599 FAX: (02) 267 7548

26 April, 1994

Jim Tedder,
c/ Terry Park

Dear Jim,

Re: Your Inquiry

Further to our telephone conversation of 12 April 1994, I enclose extracts from David Farrier's Environmental Law Handbook, (the Second Edition published last year) which set out the distinction between merits appeals (Class 1) and judicial review proceedings (Class 4).

I hope this information is of assistance. Please let me know if you have any further questions.

More generally, David's book is an excellent text providing an overview as well as alot of detail on the NSW environmental legal framework. It can be purchased from Redfern Legal Centre Publishing.

Yours faithfully,

ENVIRONMENTAL DEFENDER'S OFFICE

Maria Comino Solicitor Act 1970 (CWA). Company employees had hosed away dye which had spilled onto the road after a canister had fallen from the truck they were driving. These were criminal proceedings rather than an appeal against the decision of a licensing body.

The classification issue will only be raised in the licensing context where the alleged polluter contends that its activity or proposed activity does not amount to pollution at all and, therefore, does not require permission. However, because the definition of "pollute" under the *Clean Waters Act* is so broad (CWA ss. 5, 16(2)), it is unlikely that those who do approach a licensing body will try to say that what they propose to do does not amount to pollution.

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In addition, in the pollution context, unlike that of development control, it is far less likely that licence applicants will be met by a blanket refusal by the licensing body exercising its discretion. The issue will be mainly about what conditions should be attached to the licence. Pollution of waters is always permissible provided that a licence is first obtained. There is no equivalent category to the totally prohibited development found in the development control context. For these reasons, applicants for licences are unlikely to contest classification of their activities.

Even in the context of a criminal trial, the issue of classification will rarely be raised in practice. The concept of "pollute" is defined in the legislation so as to allow few loopholes for those wishing to argue that what occurred did not amount to pollution. In addition, outside of the development control context, we no longer find the same attempt to divide a regulated activity into subcategories, the status of which (prohibited, permissible with consent, permissible without consent) varies from zone to zone. There are no subtle distinctions between different types of pollution as there are in plans between different types of development. In practice, different types and degrees of pollution will be permitted in different areas, but this decision will be made in the circumstances of each individual case by the licensing body exercising its discretion.

Although these comments about issues of classification outside of the development control context have focused on questions of pollution control, they are applicable to many other areas of environmental regulation.

Appeals

Role of appeal . body

Appeals can take different forms. An appeal body may have the right to rule only upon disputed points of law. This would include the question of classification, discussed above, or the meaning to be given to a particular factor which a decision-maker is obliged to take into account when making a discretionary decision. Alternatively, an appeal body may be told to assume the same role and powers as the body which made the original decision. In this case, the appeal body would substitute the exercise of its discretion, on the merits, for that originally exercised. The availability of such a "merit appeal" places a considerable restriction on the discretionary powers of the body making the original decision.

Merit appeals

In environmental law, the approach frequently taken is for any initial appeal to take the form of a "merit appeal" and for subsequent appeals to be restricted to points of law. This is the position in relation to many appeals covered by the *Land and Environment Court Act 1979* (LECA) including:

 appeals against licensing decisions made by the Environment Protection Authority (EPA) under the Clean Air Act 1961 (CAA), the Clean Waters Act 1970 (CWA) and the Noise Control Act 1975 (NCA); and

36 Environmental Law Handbook

 appeals against refusals of development consent or the conditions attached to such consent under the EPAA.

The initial appeal is to the Land and Environment Court. It involves a complete reinearing of the case, with the Court exercising its discretion in place of the local council or the EPA.

Other statutes may not spell out the nature of any appeal granted, but it is implicit that the appeal body is entitled to substitute its discretion for that originally exercised. One issue which arises is the extent to which the parties to the appeal have a right to be heard. The *Heritage Act 1977* (HA), for example, provides that, before deciding the Minister may appoint a person to report on the matter. That person must give the applicant, the Heritage Council, and any objectors who have previously submitted their objections in writing, an opportunity to appear and present their cases, either personally or through a representative (HA ss. 70–72: see p. 223).

A right of appeal exists only where it is specifically provided for by legislation. In environmental law, those applying for a permission are often provided with a right of appeal if permission is denied or if conditions are attached which they do not like. On the other hand, a right of appeal is rarely given to those who are aggrieved by a decision to grant permission, such as neighbouring landowners or conservation groups. Where these rights do exist, they are usually called "third-party appeal" rights. If legislation makes no provision for them and the body making the initial decision decides to grant consent, there is no way of having that decision reviewed except by resorting to the uncertain procedure known as judicial review (see below). There may be a volume of opinion that a decision to grant consent is a bad decision, but there is very little that the aggrieved citizen can do about this, unless the courts can be convinced in an application for judicial review that it is not simply a bad decision but an invalid one.

An appeal body is not necessarily a court. It may be a public authority or even a Minister (e.g. the Minister for Planning deals with those appeals from decisions of the Heritage Council, noted above).

Third-party appeal rights

Law, values and politics

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The Land and Environment Court, in deciding merit appeals on development proposals, is regularly accused of acting "politically" rather than "judicially". If all that this means is that its decisions are the result of an exercise of discretion rather than an application of rules, based on legislation or past decisions of the courts (precedent), then the label "political" is accurate. At the same time, it is important to realise that, even when courts claim to be basing their decisions on rules, the existence of uncertainty in many areas of the law, and the use of vague concepts in others, allow them a degree of choice which may be influenced by the individual judge's view of what amounts to a just solution. The difference between this "discretion" of the courts, when interpreting the laws, and the discretion of decision-making bodies, is that the latter are expected to use their own judgment, based on their own values.

The second point to make is that the Land and Environment Court operates in a context where many of the decisions are made by our political representatives. Much of the Court's work involves appeals from local councils which are clearly political bodies. In deciding these appeals, the legislation, in essence, tells the Court to act in the place of the local council. Some matters can be diverted from the Court at the initiative of the Minister for Planning, on the grounds that they involve issues of State

Political or judicial?

or regional significance (see pp. 127-9). In other areas of environmental law, the decisions are also made by politicians. It is difficult, therefore, to avoid the conclusion that the Court is part of the political process, although this is not to accuse it of having party-political allegiances.

Overriding council decisions

In this context, particular decisions of the Court may well have political ramifications. If a particular local council is elected on a platform which includes a commitment to restrict new development, then decisions of the Court favouring developers interfere with the political relationship between the council and its constituency. Many local councillors argue that the Court should not be able to override decisions made by popularly elected representatives. Yet in other situations, councils may use the legislation to avoid having to make politically unpopular decisions. They may deliberately defer making politically controversial decisions. The position is that if a council does not make a decision on a development application within a certain period, the matter can be taken by the developer directly to the Court for a determination (see p. 129).

Judicial review

Distinguished from appeal

Judicial review proceedings before the courts are especially important in situations where legislation does not provide objectors with any right of merit appeal. This is the case in many areas of environmental law where the initial decision is made to grant a licence, registration or consent. With a few exceptions (see e.g. pp. 130–32, 217 and 339–42), the general position is that aggrieved neighbouring landowners and conservationists who wish to prevent certain activities from proceeding have no third-party appeal rights.

The theory, at least, is that judicial review is not concerned with whether a decision is a good or bad one but rather:

- whether decision-makers had any power to make it in the first place; and
- whether they followed the correct procedures in arriving at the decision.

Declaring decisions invalid

The effect of a successful application for judicial review is that the decision challenged will simply be declared invalid. The reviewing court will not substitute a decision favourable to the applicant. Where the court decides that the body making the decision had no power to make it, that will be the end of the matter. If, on the other hand, the review body concludes that the decision-maker had the power but did not exercise it in a procedurally correct fashion, there is still the opportunity of deciding the matter again—this time following the correct procedures. The eventual decision may be the same, with the decision-making process merely being adjusted to take account of the court's observations. There is nothing unlawful about this.

In practice, however, the decision-maker might find it extremely difficult to come to the same conclusion. Moreover, in the field of environmental law, one reason for requesting judicial review is frequently the tactical one of delay. For developers, delay of a few months can often mean the difference between a viable and an unprofitable

On what grounds will a court be prepared to declare a decision invalid? A comprehensive survey is not possible in the present context but below are some of the more obvious grounds of intervention.

Natural justice

One argument might be that the decision-maker has failed to comply with the rules of natural justice, by not giving someone a fair hearing before making a decision. In

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It can now be taken as settled that, when a statute confers power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intendment.

Clearly private property holders will be affected by decisions about the use they can make of their land, although usually in these situations there will be specific statutory provisions ensuring that they will have an opportunity to present their case. In **Simpson v Bradley** (unreported, Land and Environment Court, 20 August 1991), it was held that an opportunity to be heard had to be provided before issuing a soil conservation notice under section 15A of the *Soil Conservation Act 1938*, requiring a landholder to take action (see p. 298). This was the case even though, under the legislation, once an order had been issued landholders had the right to object to the Minister and, if that failed, a right of appeal to the Land and Environment Court. In reaching the decision that this was not sufficient to meet the demands of the rules of natural justice, the Court drew attention to the fact that the issuing of a notice depended upon the Soil Conservation Commissioner reaching the *opinion* that road construction activities on private land were likely to cause soil erosion. The Court also pointed to the short time available to lodge an appeal and the serious consequences of a failure to comply, including conviction of a criminal offence.

On the other hand, it has been held that neighbouring landowners had no right to be heard on the question of whether a foreshore building line should be varied by a council, even though this involved additional loss of views from their land (*Rapid Transport Pty Ltd v Sutberland Shire Council* (1987) 62 LGRA 88).

Another basis on which the courts might intervene involves situations where the decision-making body has exceeded its powers, misunderstood them or, more likely, has exercised them improperly. It might, for example, be alleged that the body has abused its discretionary powers in some way. This includes such things as:

Abuse of discretionary powers

- · being influenced by improper motives or reaching a decision in bad faith;
- acting without evidence or simply complying with somebody else's instructions, instead of reaching a decision independently;
- basing a decision on a predetermined policy rather than examining the facts of the particular case (Corkill v Hope (1991) 74 LGRA 33: p. 220); and
- considering irrelevant factors or failing to consider relevant ones.

Allegations such as these are likely to form the basis of challenges to decisions made by environmental decision-makers in situations where there is no right of merit appeal for those aggreed.

A case study of judicial review

The well known Parramatta Park case (Parramatta City Council v Hale (1982) 47 LGRA 319) involved the argument that a decision-maker had failed to take into account relevant considerations. The Friends of Parramatta Park and the New South Wales branch of the National Trust applied for a declaration that a development consent given by Parramatta Council was of no effect, and for an order that the Council and the developers be restrained from commencing the proposed development—a sports stadium on Cumberland Oval, which is within Parramatta Park. The application was

Parramatta Park case

made to the Land and Environment Court acting not as an appeal body but in its judicial review jurisdiction. This was because the EPAA provided the objectors with no thirdparty appeal rights (the development was not classified as "designated development": see pp. 117-18).

Mr Justice McClelland held that the development consent was invalid on three

different grounds.

 The Council had misconstrued its powers and as a result had failed to deal with the question of whether the stadium should be approved. This was because it had wrongly come to the conclusion that a statute passed by the State Government, the Cumberland Oval Act 1981, had already decided the question of whether the stadium should be built and all that was left to be done by Council was to impose conditions mitigating the impact of the development.

The Council had not given the consideration which the Act directed it to give to the factors set out in EPAA section 90, specifically those dealing with parking,

traffic and access arrangements.

The decision reached was not simply a bad decision but "so unreasonable that no reasonable body, properly understanding its duties, could have reached such a decision".

Taking relevant considerations into account

The Council appealed from this decision to the Court of Appeal, but the appeal was dismissed, with two members of the Court agreeing with Mr Justice McClelland's decision on the second ground, and one disagreeing. The Chief Justice, in the majority, emphasised that in deciding whether relevant considerations had been taken into account, it was the Council's collective state of mind which was at issue. He concluded that although the questions of parking, traffic and access had, technically speaking, been dealt with in the Council's decision, they had not been given due consideration. It was true that these aspects had been, in one sense, dealt with in conditions attached to the consent. But these conditions were much less demanding than those recommended by the Chief Town Planner in a report placed before the Council meeting at which the decision had been made. Some of the conditions were, in fact, little more than "pious hopes", in contrast with the detailed requirements relating to parking, access and traffic movement which the Chief Town Planner recommended. The Council could not, therefore, claim that it was relying on the research of its officers as a basis for its final decision. These officers had not been given any opportunity to reconsider the matter in light of the proposed amendments to their recommendations.

Yet it was not simply this failure which led the Chief Justice to conclude that the relevant factors had not been given due consideration by the Council. It was also the way in which one group of councillors had pushed through the vastly amended set of conditions at the meeting, without giving other councillors an adequate opportunity to understand or evaluate them. There was, for example, no chance to examine the proposed amendments before the meeting, and even at the meeting they were not presented in written form.

Mr Justice Moffitt, coming to the same conclusion, emphasised that in exercising its review function, the Court was not concerned with whether the decision reached was or was not a wise one. The Council might quite legitimately have decided that the desirability of the development and the unfairness of the burden on the developer outweighed the need to protect the environment, as long as the correct procedures were followed.

After a detailed examination of what had happened, he concluded that this was not

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the case. Rather, the evidence supported an inference that the Council had not considered relevant matters before reaching its decision. There was the course of events at the meeting and the total inadequacy of the conditions, in the face of the significant impact on the environment which the development was likely to have. But Moffit J seemed to place special emphasis on the inadequacy of the information before the Council when it reached its decision. It had rejected the advice of its officers, and they had not been given any opportunity even to comment on the changed scenario which the final decision contemplated. Moreover, although the Council's attention had been drawn to the responses of a number of government departments and public authorities to an environmental impact statement prepared by the developer for the Minister for Lands, it had not even bothered to obtain these responses. The result was that the only relevant information before the Council was that presented by the developer.

Manifest unreasonableness

One of the grounds relied on by Mr Justice McClelland in the Parramatta Park case was not used by the Court of Appeal to justify its decision. This was the argument that the Council's decision was so unreasonable that no reasonable body could have reached it. This is a recognised basis for judicial review of decisions by councils and public authorities, frequently referred to as "Wednesbury unreasonableness" after the UK decision in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223. In the leading Australian case of Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24, Mason J framed the issue in the following way (p. 41):

filt is generally for the decision-maker and not the court to determine the appropriate weight to be given to the matters which are required to be taken into account in exercising the statutory power ... I say "generally" because both principle and authority indicate that in some circumstances a court may set aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or has given excessive weight to a relevant factor of no great importance. The preferred ground on which this is done, however, is not the failure to take into account relevant considerations or the taking into account of irrelevant considerations, but that the decision is "manifestly unreasonable" ...

Mason J went on to make it clear that "a Court should proceed with caution when reviewing an administrative decision on the ground that it does not give proper weight to relevant factors, lest it exceed its supervisory role by reviewing the decision on its merits". The courts are extremely reluctant to conclude that a decision is "manifestly unreasonable", because they are concerned that they will be accused of making decisions on the merits of the case without having the full facts before them, as distinct from simply supervising the decision-making process (ULV Pty Ltd v Scott (1990) 69 LGRA 212). An example of the sort of situation in which the courts will be prepared to intervene occurred in Balmain Association Inc v Planning Administrator for Leichbardt Municipal Counctl (1991) 25 NSWLR 615. The Court of Appeal held that a direction by the Minister for Planning under EPAA section 55, requiring the Council to complete the process of making a number of draft plans within five weeks, was manifestly unreasonable. It had to decide whether to hold a public hearing and, if so, to advertise this for a period of three weeks, leaving it only eight days to hold the hearing, make public the report, consider it, and decide whether to make any amendments to the plans.

Reluctance of courts to find "manifest unreasonableness"

Aside from exceptional situations, the general deference to the decision-maker's determination on what weight should be given to particular factors means that the values of particular decision-makers will be decisive. Councils can quite legitimately make "development-at-all-cost decisions", provided that the environmental impact is at least considered before being dismissed. As Mr Justice Moffitt put it in the Parramatta Park case, before an inference can be drawn that the Council failed to take relevant factors into account:

[T]here must be displaced for example a view that the decision, even an unwise one, was come to on the basis that the merits of the development and the burden which would be placed on the developer if required to mitigate the harm to the environment were considered to outweight (sic) protecting the environment, after the relevant s. 90(1) matters had been taken into consideration.

While this tentative approach can be justified where the decisions are those of an elected body, which is in theory supervised and disciplined through the electoral process and, in this way, representative of broader social values, it raises many questions where the decision-maker is a public authority with institutional values derived from a long historical tradition emphasising development. The Western Lands Commission, with its strong links with the farming community, would fall into this category.

One question which arises is whether the legislature should go further than simply telling decision-makers to take certain factors into account, and give clearer guidance on the weighting that should be given to particular factors. There are already some examples of this in legislation. Some statutory formulas, for example, require the decision-maker to be satisfied of certain things before it can make a particular decision. In essence, this means that it must give increased weight to these factors. In certain circumstances, it may create a presumption in favour of the status quo.

Another approach is to require the decision-maker to make an assessment of specified matters before reaching a decision. This clearly imposes an obligation to engage in a primary information-gathering exercise which goes beyond simply looking at secondary sources, such as the reports of government bodies considered in the Parramatta Park case. Although this does not require the decision-maker to give these factors extra weight, it brings them more clearly into the public domain and makes it politically more difficult for them to be dismissed.

State Environmental Planning Policy 19 (see pp. 256-7) contains examples of both these formulas. Before granting consent to the disturbance of native bushland in the areas covered, councils must:

- make an assessment of the need to protect and preserve the bushland, taking into account certain objectives spelt out in the policy;
- be satisfied that the disturbance of the bushland is essential for a purpose in the public interest and no reasonable alternative is available;
- be satisfied that the amount of bushland to be disturbed is as little as possible and, where the disturbance is to allow construction work to be carried out, the bushland will be reinstated as far as possible.

Obstacles to judicial review

Problems of proof

Weighting factors

Mr Justice Moffitt, in the Parramatta Park case, emphasised the formidable problems of proof faced by those wishing to prove a negative state of mind-i.e. that

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relevant factors were not taken into consideration by a group of people as a whole. A conclusion that the Council had not fulfilled its obligations was one to be reached only after "anxious consideration". Moreover, it was a matter of inference, taking into account a range of pieces of evidence which individually would not have been sufficient. The decision-maker has no obligation to record everything taken into account in reaching a decision (Danis Hotels Pty Ltd v Dubbo City Council (1991) 72 LGRA 35). It is usually sufficient to refer only to the most important matters (Somerville v Dalby (1990) 69 LGRA 422).

Dealing with an application in apparently cursory fashion does not necessarily mean that a decision-maker has failed to satisfy its obligation to give due consideration to relevant factors. They are entitled to rely on their officers' summaries of relevant information and their opinions in reaching a determination (Warren v Electricity Commission of NSW, unreported, Land and Environment Court, 31 October 1990). A council is quite entitled, even without debate, to adopt the recommendations of its officers. Councillors are also entitled to make use of their general knowledge, without needing to make further detailed inquiries in the course of each case. The mere fact that there has been political caucusing does not mean that the decision-making process is flawed (Lend Lease Management Pty Ltd v Sydney City Council (1986) 68 LGRA 61 at p. 86). Apart from this, councils can quite legitimately delegate their power to make decisions to their officers.

Apart from expense and any problems of standing to sue (see pp. 52-5), another difficulty faced by those considering whether to bring an action for judicial review is that remedies lie within the discretion of the courts (see pp. 50-51; 153; 374). So, for example, if the factor which the decision-making body has failed to take into account is so insignificant that it was unlikely to have affected the decision, the courts will not intervene (Cooper and Wilton v Maitland City Council, unreported, Land and Environment Court, 19 May 1992). .

Privative clauses

Privative clauses are provisions in statutes which purport to limit or exclude the jurisdiction of the courts to review decisions under the principles discussed above. Under the EPAA, for example, where a plan is gazetted or public notice of a development consent is given (Lend Lease Management Pty Ltd v Sydney City Council (1986) 68 LGRA 61), actions questioning the validity of the plan or consent must be brought within three months (EPAA ss. 35, 104A), unless the challenge is based on such matters as bad faith, breach of the rules of natural justice, or allegations that the body making the decision has exceeded its powers (Woolworths Limited v Batburst City Council (1987) 63 LGRA 55; Yadle Investments Pty Ltd v Roads and Traffic Authority of NSW (1989) 72 LGRA 409; Calkovics v Minister for Local Government and Planning (1991) 72 LGRA 269).

The privative clause in section 17 of the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 goes much further. In essence, it states that even though the environmental assessment provisions of EPAA Part V (see Chapter 14) apply to the tunnelling works, no action can be taken in respect of a contravention of, or failure to comply with them. In North Sydney Municipal Council v Roads and Traffic Authority of NSW (1990) 70 LGRA 440, Hemmings J held that although the courts would interpret these clauses conservatively, this particular provision had the effect of excluding judicial review based on allegations of failure to take into account relevant considerations or taking into account irrelevant considerations, and manifest unreasonableness, but not where there was an allegation of bad faith.

Time restrictions

Validating legislation

State Government intervention

Even if it appears that there are firm grounds on which to base a request for judicial review, there may still be obstacles. The State Government may intervene where it is determined to see that a particular project goes ahead. It may not be prepared to wait for the existing procedures to be followed in a re-run of the decision-making process. So far as the law is concerned, there is nothing to prevent the State Government from introducing into Parliament special legislation, enabling existing legal procedures to be by-passed in particular situations and earlier wrongdoing validated.

The previous State Labor Government did precisely this on a number of occasions involving procedures for plan-making and project control under the EPAA. The Botany and Randwick Sites Development Act 1982 and the Blue Mountains Land Development (Special Provisions) Act 1985, for example, stated that even if certain environmental planning instruments and development consents made or granted under the EPAA were invalid because the correct procedures had not been followed, nevertheless, they were to be treated as if they were valid. Both pieces of legislation terminated judicial review proceedings which had already been commenced in the Land and Environment Court.

The Gosford-Wyong Electricity Supply (Special Provisions) Act 1985 and the Sydney Cove Redevelopment Authority (Amendment and Validation) Act 1985 are further examples of validating legislation.

Although it is quite clear that the State Government, acting through the legislature, is *legally* entitled to act as it did in these cases, some people would dispute its *moral* right to do so. Adopting this sort of approach leaves the Government open to accusations of riding roughshod over the environmental planning legislation.

Cumberland Oval

The proposal to build the sports stadium on Cumberland Oval (*Parramatta City Council v Hale*, discussed above) was handled in a different way. The count proceedings were completed in this case and the development consent was held to be invalid. It was then open to the developers to resubmit their application, and open to the Council to reaffirm its original decision to give the go-ahead, this time making sure that it took into account all the matters it was required to consider. This, however, would have taken time. Besides, it would have been politically difficult for the Council to give approval without making more detailed provision for parking, access and traffic movement. There might even have been the threat of further legal proceedings if the substance of the decision had remained unchanged, however hard the Council tried to follow the guidelines laid down by the Court of Appeal.

To deal with these circumstances, the State Government once again introduced special legislation in the form of the *Cumberland Oval (Amendment) Act 1983* and the *Cumberland Oval (Amendment) Act 1984*. This made no attempt to interfere with the Court of Appeal's decision that the development consent already granted by the Council was invalid. What it did do was to make the issue of development consent redundant, by providing that the relevant parts of the EPAA did not apply to development carried out under the *Cumberland Oval Act 1981* (COA) or leases granted under that Act (COA s. 6(3),(4)). On top of this, once a lease had been granted, environmental planning instruments no longer applied to the land while it was in force (COA s. 6(5)). The 1984 amendments went even further, by excluding the application of the building control provisions of the *Local Government Act 1919* (see pp. 155–63) in relation to development carried out under the COA or leases granted under that Act

(COA s. 6(2A)).

After the development of the sports stadium, the legislation was repealed (see now *Parramatta Stadium Trust Act 1988*).

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A public body may not simply have a discretion to exercise, but a duty to perform. As a rule of thumb, use of the word "may" in legislation introduces a discretion, while the word "shall" places the body under a duty, but in the end it is a question of interpretation of the particular piece of legislation. Where there is a duty to be performed, the public body has no choice in the matter. If it does refuse, those with sufficient standing to sue may obtain from the courts an order requiring performance, or at least a declaration that the public body is under such a duty.

Decision-makers responsible for discretionary decisions still normally have a duty to reach some decision and a duty to take specified factors into account, as discussed above. Beyond this, however, the exact nature of the decision is within their control.

Duty to perform

The role of criminal law

The stereotype

Criminal law is usually thought of as a series of general directions to all members of the community, telling them not to behave in a particular way and pointing out the possible penalties to those who are tempted to do so. Yet, more than this, criminal law is perceived as being concerned with behaviour which poses a fundamental threat to the kind of society we live in-for example, laws forbidding physical and sexual violence and various kinds of interference with private property rights.

Criminal law has strong historical associations and was originally developed by the judges on a case by case basis, using the doctrine of precedent. In other words, its foundations lie in the common law. It is closely associated with the idea of blame, and for those who break the criminal law, punishment is seen to be an almost inevitable consequence. Even where there is an identifiable victim of the offence, the community feels so strongly about the behaviour in question that it is not prepared to leave the matter in the hands of the individual. The offence is perceived to be an offence against the community as a whole and deserving of a response by the official representatives of the community.

There is a general reluctance to condemn those who have caused damage not by acting, but by failing to act. Only in cases where death is caused by somebody failing to fulfil a duty to another person, such as the duty a parent owes to a child, is there any possibility of a murder or manslaughter conviction. There is a feeling that criminal law should be concerned with the minimal level of behaviour necessary for a civilised society, rather than acting as a counsel of perfection.

The criminal law provides defences but their ambit is very restricted. Where there is physical injury, even the consent of the victim does not constitute a defence. These are cases where the harm caused to the community is seen as being more important than the issue of whether or not the supposed victim regards himself or herself as having suffered damage. Defences cannot ordinarily be arranged in advance; the law does not recognise a licence to kill. Evidence of pre-planning will mean that defences such as provocation, self-defence, insanity and duress will be out of the question.

New directions

Where criminal law has expanded through legislation into new fields of human behaviour, including the relationship between human beings and their environment, it has taken on a fundamentally different shape. There are still general criminal prohibitions, such as that contained in the Clean Waters Act 1970 (CWA), stating that a person shall not pollute any waters or cause or permit any waters to be polluted (CWA.

Blame and punishment

Failure to act

Energy policy

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perment of Mineral Resources and the Office of Energy. Its objective is to coordinate energy policy for the State and it has published a State Energy Resources Policy and grategy (SERPS). The Office incorporates the Energy Corporation of New South Wales which was established by the *Energy Administration Act* in 1987. The Corporation has responsibilities under a number of pieces of energy-related legislation.

Pacific Power is responsible for the generation and provision of electrical power in New South Wales. The Government is moving towards corporatising the organisation as the Pacific Power Corporation of New South Wales Ltd, under the provisions of the State Owned Corporations Act 1989 (see pp. 329, 354).

Sydney Electricity, formed under the Sydney Electricity Act 1990, is also responsible to the Minister for Energy. This body is basically the old Sydney County Council and is responsible for the provision of electrical power to the Sydney region.

Courts and inquiries

The Land and Environment Court

The Land and Environment Court is a superior court of specialist jurisdiction. It was established in 1979 and its powers are set out in the Land and Environment Court Act 1979 (LECA). A Layperson's Guide to Procedures and Terms is available from the Court. Although written in 1988, it is still helpful.

The business of the Court is dealt with by judges and assessors. Currently the Court has five judges and nine assessors. Assessors are judicial officers, usually not qualified lawyers, who have expertise in one or more of a range of fields, including town/environmental planning, local government, environmental science, environmental protection/assessment, land valuation, architecture, engineering, surveying, building construction, management of natural resources, and Aboriginal land rights (LECA s.

The LECA divides the jurisdiction of the Court into five classes. Only a judge can hear Cass 4 or 5 proceedings. Broadly, the classes may be described as follows:

Classes of proceedings

Class 1: Environmental planning control. These are merit appeals (see pp. 36-7) under a range of environmental legislation, but most frequently appeals from decisions by local councils involving land development, e.g. appeals under EPAA section 97 against conditions a council has imposed on a consent to a development application, and appeals against the refusal of a development application or neglect or delay in giving a decision.

Class 2: Local government. Most frequently these involve merit appeals arising under the *Local Government Act 1919*, e.g. an appeal over the rejection by a local council of a building application, or against the conditions attached to a building approval.

Class 3: Valuation, rating and compensation.

Class 4: Judicial review of administrative decision-making (see pp. 38–43) and civil enforcement proceedings (see pp. 50–51) under a range of environmental legislation, including legislation which gives broad rights of standing: EPAA section 123, HA section 153 and NPWA section 176A (see p. 54; LECA s. 20). Although some legislation covered in this book is not specifically referred to in the LECA, proceedings can now be brought in the Class 4 jurisdiction under section 25 of the *Environmental Offences and Penalties Act 1989* if the prerequisites of that provision are satisfied (see pp. 54–5). Examples include the *Mining Act 1992* and the *Forestry Act 1916*.

Class 5: Criminal enforcement proceedings under a range of environmental legislation (LECA s. 21). The jurisdiction is summary, which in practice means that the case is dealt with by a judge sitting without a jury, even though in recent years penalties for some environmental crimes have become quite severe. In many situations, it is possible to bring civil enforcement proceedings in Class 4, seeking an injunction or a declaration, as an alternative to bringing criminal proceedings where the outcome is usually a fine (see pp. 50-51).

Voluntary mediation

Changes to the Court's practice and procedure that have occurred in more recent years include the introduction of a scheme of voluntary mediation for matters in Classes 1, 2 and 3 of the Court's jurisdiction. Mediation is conducted by the Registrar or Deputy Registrar. The Court can grant consent orders giving effect to agreements reached by mediation. Issues conferences are compulsory in Class 4 matters. The aim of these conferences is to explore the possibility of settlement, or, at least, to narrow the issues in dispute. (See generally, Land and Environment Court, *Practice Direction—Mediation and Issues Conferences.*)

Legal Aid

Legal aid no longer available in environmental matters The Legal Aid Commission of New South Wales (LAC) is responsible for the provision and administration of legal aid and other legal services in New South Wales. It administers both State and Commonwealth legal aid funds. Until recently, legal aid was available in environmental matters, but on 17 December 1992 the Commission resolved that as of 1 January 1993 no further grants would be given in most civil matters, including those in the environmental area. The decision was made because of funding restraints. This puts at serious risk the conduct of environmental cases in the public interest by community legal centres, such as the Environmental Defender's Office (see below).

Prior to this decision, legal aid was only available for proceedings before a judge in Class 1 or Class 4 of the jurisdiction of the Land and Environment Court. This meant that it did not cover matters falling within Classes 2, 3 or 5 of the Court's jurisdiction, or in Class 1 matters heard by an assessor. Applications were referred to a consultative committee which considered whether or not the matter fell within the Commission's policies and, on this basis, made a recommendation to the Commission as to whether or not to grant aid.

Previous position

The policies provided that legal aid was available in cases where there was a substantial public interest at stake that was worthy of assistance. In deciding whether or not a substantial public interest was involved, the following matters were considered:

- whether the activity was likely to have a significant impact on the environment of New South Wales, or to substantially affect public use or enjoyment;
- the scarcity of the particular attributes of that environment;
- the value of that environment to the community of New South Wales;
- community interests that may be affected, including impact on social and cultural needs:
- the overall benefits flowing to the community, including employment, community services and social infrastructure.

The granting of legal aid was subject to a means test. If the applicant was a group then the means of that group were considered, including the likely financial

Environmental Defender

Newsletter of the Friends of the Environmental Defender's Office

Vol. 1. No. 3. March 1994

Another case that got away

While the Legal Aid Commission ponders whether to bring back legal aid for environmental matters, a unique sand-dune ecosystem is being destroyed on the NSW central coast. It is the latest important environmental issue that has slipped through the EDO's fingers through lack of legal aid.

So far, around 40 hectares of a 240 ha area of bushland near Nelson Bay have been flattened by a sand extraction operation. Resident and president of the Northern Parks and Playground Movement, Doug Lithgow, approached the Environmental Defender's Office some time ago to see if the development could be stopped.

The EDO found that the Council at first could not produce a copy of the development consent proving Boral Country Quarries was allowed to extract sand from the area. When a mining plan was finally obtained under Freedom of Information, it showed that the company only had permission to extract sand from a tiny portion, about 1.6 ha.

Despite this, it is claimed Boral has continued to clear the area and extract sand without development consent, and without having prepared an Environmental Impact Statement (EIS). The local

Port Stephens Council has turned a blind eye to the illegal activities by giving the company a 12 month "moratorium" in which to apply for the development consent. In the meantime, without a court injunction, there is no way to prevent Boral from continuing to clear the bushland. But going to court would require legal aid.

Doug Lithgow describes the sand dune system as a 'miniature Fraser Island'. The 240 ha mixed angophora and heathland is part of a much larger strip of dune ecosystem which stretches behind the 30km long Stockton beach, south of Newcastle. A local attraction is the shipwrecked Signa, which has rested just off shore for many years. Beneath the dunes is a vast natural freshwater aquifer which forms part of Newcastle's water supply.

Once cleared, Doug predicts the area will be opened up to uncontrolled b development could which potentiallý contaminate the groundwater. But he can no longer afford to continue financing the fight. **EDO** solicitor Maria Comino says: "We believe that Boral has carried out illegal activities. and that there would

be a case to stop further sand extraction on this important natural site. But without legal aid, there is no way of enforcing the law". Φ

Bushfire Inquiry to hear green viewpoint

The EDO will represent the Nature Conservation Council of NSW and the National Parks Association of NSW at the upcoming Coronial Inquiry into the NSW bushfires.

EDO solicitor David Mossop said it was essential to defend the interests of the conservation movement at the Inquiry.

"During the January bushfires, there was much harsh comment made about environmental management and bushfire control," David said. "Much of this was unfounded and motivated by a desire to achieve political aims unrelated to sound fire management." He said such comment has created an atmosphere in which radical changes to environmental management laws may be recommended. "Certainly, the bushfires and the criticism of the green movement in their wake has obstructed fair public debate on the declaration of wilderness areas."

It is likely the Inquiry will deal with the adequacy of the administrative and management practices associated with the control of bushfires. Although the National Parks and Wildlife Service is expected to appear at the inquiry, much of its efforts will be directed to defending its own position. "There is a strong need for the views of conservationists to be represented at the inquiry, independent of the NPWS," David said. Φ



Media enquiry? 261 3599

Report's claims could 'mislead' United Nations

A draft report to a United Nations commission gives a false impression of Australia's environmental track record, according to Environmental Defender's Office director James Johnson.

Mr Johnson said certain parts of the draft report, prepared for the UN Commission on Sustainable Development by the Federal Department of Environment, Sport and Territories, grossly overstated Australia's efforts towards a sustainable society. For example, the report tells the Commission that Australia 'has taken action to phase out or ban chemicals of high concern, such as organochlorines, lead, cadmium, mercury and methyl bromide'.

Yet the latest available figures from the US Bureau of Mines indicate that Australia is the greatest producer of lead concentrate in the world. Mr Johnson said he would be pleased to see any concrete action to phase out these chemicals.

The report also claims that most major proposals for industrial developments are 'potentially' subject to some form of environmental impact assessment. "Yet," Mr Johnson said, "the experience of the EDO has been that many major proposals go through with inadequate environmental impact assessment at best, and sometimes none at all."

For example, the zinc smelting company Pasminco dumps 240,000 tonnes of jarocite waste off the coast of Tasmania every year. Jarocite is a toxic mixture of

Is Australia's EIA process good enough?

Major developments throughout Australia are going ahead with little or no scientific assessment of how they might affect the environment, according to Environmental Defender's Office Director James Johnson.

"Many people think that because the Commonwealth government has an environmental impact assessment process in place, then developments will be scrutinised. But the process has many shortcomings which allow major developments to go ahead completely unchecked." He said one developer was given approval to log 13,000 square kilometres south of Darwin in 1991, without being required to do an Environmental Impact Statement (EIS). The area was habitat for the endangered Spectacled Hare Wallaby.

STOP PRESS

THE EDO HAS ADVISED THE COLONG FOUNDATION THAT THE GOVERNMENT'S PROPOSAL TO REDUCE THE SIZE OF WILDERNESS AREAS IS ILLEGAL.

cadmium, iron, mercury and arsenic. "No Environmental Impact Statement has ever been prepared to assess this activity,", Mr Johnson said. (see EIA review, this page) He said the report also reassured the Commission that conservation and development organisations could participate in monitoring government implementation of Agenda 21 (the global blueprint for sustainable development which emerged from the United Nations Conference on Environment and Development in 1992). "Yet with the recent abolition of legal aid for environmental matters in NSW, and no EDO's in most states, environment groups have been all but stripped of this important means of participation."

Australia and other countries which signed Agenda 21 must report back to the Commission each year on a range of issues, including changes in consumption patterns, protecting human health, and freshwater supplies, and hazardous waste. The Commission will review all the global implementations of Agenda 21 in 1997. Φ

In another instance, the Australian International Development Assistance Bureau (AIDAB) has funded a friendship bridge between Vietnam and Cambodia. Despite the enormous potential social, economic and environmental impacts, no EIS was conducted.

The EDO recently made a submission to a review of the Environmental Impact Assessment process, being conducted by the Commonwealth Environment Protection Authority

"One of the major shortcomings of the EIA process is who gets to initiate it," Mr Johnson said. As the process currently stands, the Minister responsible for the development (called the Action minister) has the power to decide if the potential development will have a significant effect on the environment. There is a clear conflict of interest here, because the same Minister is also often responsible for the success of the proposed activity, and usually has little environmental expertise."

He said the EDO knew of several potentially damaging developments which the Department of Environment had wanted to examine, but couldn't because the Action minister had decided the proposal would not have a significant effect on the environment.

The guidelines for preparing Environmental Impact Assessments also need a major overhaul, according to Mr Johnson. For example, all activities should be sympathetic with the principles of Ecologically Sustainable Development. Environmental resources such as air and water should also be adequately 'priced' in the EIA process, along with the resource being developed. The impact of the government's own policies and programs on the environment should also be considered," he said. Φ

Corkboard

Campaign launch

The Environmental Defender's Office has launched a national campaign to reinstate legal ald for environmental matters. See story p.7.

Environmental Law conference

A public interest Environmental Law Conference will be held in Adelaide from May 7-8. Papers are invited, and topics may cover Mabo, teaching environmental law, EDO's, green politics, alternate dispute resolution and enforcing environmental law.

Contact the Australian Centre for Environmental Law, Law School, University of Adelaide, SA, 5005, phone (08) 303 5582.

Australia wasted

Australia ranked a paltry 18th out of 21 developed nations in a recent environmental survey. The International Green League of Nations survey by the London-based New Economics Foundation found that Australians generate 776 kilograms of municipal solid waste per head per year,

making it the most wasteful country by 55 kilograms, ahead of the US on 721 kg.

The survey also reported that only Canada and the United States contribute more carbon dioxide emissions per capita than Australia, and criticised our Federal Government for failing to make environmental data freely available – apparently in contravention of a 1991 OECD agreement. (taken from Sydney Morning Herald, Feb 2, 1994).

UNCED Mark II

Global Forum '94, the follow-on from the United nations Conference on Environment and Development (UNCED) will be held in Manchester from June 24 to July 3. There will be a strong emphasis on Cities and Sustainable Development. Contact: Global Forum '94, PO Box 532 Town Hall, Manchester, M60 2LA England, fax 44 61 234 3743.



Law students and EDO volunteers Ranjith Powell and Georgina Higinbotham try out the new EDO t-shirts. See t-shirt offer, page 5.

Serbs new green fight

Young Serbians have established a network of environmental camps.

The Association of Ecological Camps is based in Belgrade with the aim of identifying, publicising and dealing with ecological problems. Suggestions and involvement from overseas is welcome. Write to Zeljko Sevic, Secretary General, Association of Ecological Camps of Serbia, 11070 Novi Beograd, Lenjinov Bulevar 171/XIV, Yugoslavia.

The burning question

Environmental groups have been heavily criticized since massive bushfires destroyed 800,000 ha of NSW bushland and 188 homes from December 27 to January 16.

Now the National Parks Association (NPA) has produced a brochure, called "Are the 'greenies' really to blame for the fire?".

NPA points out that at least 90 per cent

of fires which burnt in national parks were caused by arson or negligence. NPA also says that many fires which burn national parks originate from neighbouring lands, and that only seven per cent of all fires which originate in national parks escape from the park boundaries. For a copy of the brochure (donations welcome), send a stamped, self addressed envelope to:

NPA, PO Box A96, Sydney South NSW 2000.

Legal services conference

An International Conference on Public Legal Services will be held in Canterbury, England from

June 27–30 this year. Keynote speaker is Hayward Burns (Dean of City University of New York Law School). Topics include the role of lawyers in society, starting a law centre, organising legal services, and international issues such as environment, racism, asylum and migration. Write to the organisers: Law Centres Federation, Duchess House, 18–19 Warren St, London WIP 5DB, fax (UK) 071 387 8368. Ф

IN PROFILE



Aden Ridgeway, Land Policy Manager, NSW Aboriginal Land Council.

" I would like the EDO to

look at indigenous rights in

relation to hunting and

gathering of resources."

This month, the Board of the EDO welcomes a new member, who is well qualified to provide a perspective on indigenous people's issues.

Aden Ridgeway is Land Policy Manager with the NSW Aboriginal Land Council, and originally comes from the Gumbayyngirr tribe in northern NSW. He

became involved with the EDO last year on a steering committee organising "People, Place, Law", a conference on Aboriginal Culture and Heritage, co-

sponsored by the EDO, the Australian Museum and the NSW Aboriginal Lands Council. (see end of story)

Aden, 31, has been active for many years in the areas of Aboriginal policy, land management and common law Aboriginal "native" title. He grew up on Bellwood Reserve near Nambucca Heads, went to a Catholic boys school and eventually moved to Sydney. He has two boys, aged 12 and 10.

Aden's work in Sydney has included being an Aboriginal Assessor to the NSW Land and Environment Court. Currently, he is developing a Regional Plan for the socioeconomic conditions of Aboriginal people in the Sydney region.

He says some government authorities do not always fulfil their legislative responsibilities with respect to the protection of aboriginal sites, and that there is opportunity here for the EDO to become more involved. "The NSW National Parks and Wildlife Service, for example, has always had legal responsibility for protection of sites, but it's not always the

case that they will perform those responsibilities."

One recent example occurred at Rouse Hill, in Western Sydney. In this instance, the NPWS issued a consent to destroy a site of Aboriginal significance one week after the developer had already moved in and done the damage. "The EDO could have, in this instance, got some sort of injunction

to stop the developer, then put up a challenge to the NPWS through the courts for failing to fulfil its responsibilities in terms of a consent order being given, and (to find out) what sort of assessment criteria is

used before they (the NPWS) come to the decision to give a consent."

There is scope, he says, for the EDO to set certain standards with similar strategic test cases, and to help establish procedures and policies to facilitate aboriginal involvement. But he is also interested in the overlaps and conflicts between what environmentalists desire, and what Aboriginal groups are trying to achieve.

"I would like the EDO to look at indigenous rights in relation to hunting and gathering of resources." He cites a Queensland example, where indigenous people are entitled to take a certain number of turtles per year.

"The fat from the turtle is used for traditional ceremonies – if you were denied an opportunity of doing that, in effect you stop the ceremonies from being performed."

"It comes back to the issue of being able to manage the resources in conjunction with aboriginal people, rather than government authorities assuming that not only do they have the legal ability to do it, but that they are the only ones which have this exclusive knowledge of managing the environment."

He says the EDO can help resolve such issues by facilitating forums to bring government, environment and Aboriginal groups together. "Environment groups have to recognise there other rights in relation to land – I think the EDO recognises that it is something that has to be attended to, to gain a greater understanding of the issues, and pursue them in a constructive way."

"When I talk about environmental issues and aboriginal issues – they are not necessarily separate things – they are both intertwined, if you like." Φ

Eight excellent tapes and notes from the EDO conference on Aboriginal Culture and Heritage "People, Place, Law" are now available for \$45. Order by phoning 261 3599.

NEW STAFF



The EDO welcomes two new staff members, Kylie Bower (right) and Robyn Murphy (left). Kylie is our new administrative assistant, while Robyn is in charge of the EDO library.

Kylie says the EDO is necessary: "There are people out there protesting, and other people who make the decisions. And the EDO is a really important mediator between the two groups." She hopes to organise more EDO conferences and workshops.

Meanwhile, Robyn is bringing order into chaos in the library, and comments that the collection has a lot of good information, especially on toxic chemicals

Environmental Defender March 1994

EDO T-SHIRTS ARRIVE!

Don't get mad, get dressed.

The all new EDO t-shirt has arrived, sporting an exclusive design by Patrick Cook on the front, with the EDO's name on the back. Thick, comfy off-white with a bottle green design, printed on **unbleached** cotton. Slip into one, and keep the future of the EDO covered.

ORDER FORM



PLEASE SEND ME:
EDO t-shirts at \$20 each
Please indicate sizes (M.L.XL)
Name:
Address:
Phone: ()

LETTERS TO THE EDITOR

Dear editor

Our Group (No-LEAD) would like to draw your attention to the expansion of Pasminco Metals Sulphide, a lead zinc smelter in Boolaroo on Lake Macquarie near Newcastle.

No-LEAD was formed in 1991 after a Public Health unit survey found levels of lead in local children's blood were higher than the NH&MRC level of concern: 84% of children tested in the Boolaroo area have a blood level higher than the NH&MRC's acceptable level. Only in the latest round of tests have blood levels dropped (by 3ug/dl), coinciding with the closure of the smelter prior to the tests.

When the issue first arose, air-born lead in Boolaroo was 6.0 ug/m3, when the NH&MRC goal for acceptable ambient lead levels is 1.5 ug/m3. The company responded to the controversy with a two stage upgrade of the plant, with production to increase 30 per cent and \$24 million to be spent on environmental improvements. We

were refused access to the company's Feasibility Study of this upgrade, even after EDO representation.

A buffer zone of houses around the smelter was marked out by Pasminco for resumption. These homes are now being purchased and then re-rented to either employees or families. Pasminco has now completed the first stage of the upgrade and will release an EIS in March. They intend to lodge the EIS along with the original development application with the Department of Planning and plan to take the unusual step of calling for a Commission of Inquiry into the expansion.

I believe our story highlights the shame of this State Government's rapid move towards a situation where local communities have no rights or say in the future direction of their area, or in the health and safety of their families and environment. What we are aiming for is tight consent conditions on the development approval, such as daily

Editorial

The EDO's campaign to bring back legal aid for environmental matters is reaching the Legal Aid Commission. Commission Managing Director Colin Neave has been flooded with letters in the past few weeks, after brochures explaining the situation were distributed through the Wilderness Society's magazine.

While Mr Neave won't let on how many letters he has received, the EDO has confirmed at least 40, including letters from MLC Dr Meredith Burgmann, and Shadow Minister for Family, community and Disabiliy Services Ron Dyer. Mr Neave says a review of legal aid – and the Commission – is currently under way, and is "an ongoing matter for the Commissioners". Let's hope it doesn't go on too long.

Legal aid for all civil matters was dropped last year, but later reinstated for most matters except environmental. Yet it costs the taxpayer very little: the Commission is reimbursed if the case is successful, and through the EDO they usually have been.

Add your voice to the growing roar to get back legal aid for environmental matters.

Write to: Colin Neave, Managing Director, Legal Aid Commission of NSW, PO Box 47, Railway Square, Sydney NSW 2000.

monitoring. It is not good enough that a hazardous industry of this nature practices 'Self Monitoring', and it is especially unjust in a system that does not support Community Right-to-Know principles.

Theresa Gordon Vice-president, No-LEAD

> Please send your letters to: Editor, Environmental Detender Level 8, 280 Pitt St Sydney 2000 Please limit to 300 words and include a phone number.

Environmental Defender March 1994

Reviews Reviews Reviews Reviews Reviews

Thicker than a Canberra phone book, the very first NSW State of the Environment report 1993, published by the NSW Environment Protection Authority, is now bending bookshelves around the state. But has anybody read it? EDO Board secretary Dr Chloe Mason did, and gave this rundown.

Is NSW a safe place to live? Can we drink the water and breathe the air? This report gives the 'big picture' of environmental issues, both green and

brown. Under the Protection of the Environment Administration Act 1991, the EPA must prepare a State of the Environment (SOE) report every two years.

The report is divided into: 'current state of the environment'; 'environmental impacts and management responses'; and 'towards sustainability'. The first section include ozone depletion and global warming, climate, air quality, surface and ground waters, coasts, land, biological diversity and heritage. And the report tells it like it is, for example: "depletion of the total column of ozone over Australia and New Zealand is statistically significant for the period November 1978 to March 1991."

The chapter on air quality has better news: levels of certain pollutants in the Sydney CBD have come down since the early 1980's, for example carbon monoxide (slightly), air-born lead, and lower atmosphere ozone (a significant urban air pollutant). However, in other areas, such as Boolaroo in Newcastle (see

State of the Environment Report 1993

Environment Protection Authority Letters, this issue), and Port Kembla, ambient levels of lead still exceed the NH&MRC air quality goal.

Section two includes the location and content of contaminated sites in NSW. Complaints about aircraft noise to the Civil Aviation Authority are also reproduced. But mysteriously, no complaints of helicopternoise to the EPA's own Pollution Line (ph 325 5555), of which there have been many, are included in the report. The extensive and useful information which is collected through Pollution Line should be

included in the 1995 report. A bonus at the back of the book are color maps of NSW, showing land use, soil erosion, original and present vegetation cover, and forest types.

One puzzling aspect is the absence of discussion on what makes useful baseline data, and where it could be obtained. For example, the Australian and NSW governments have a goal to reduce waste production by 50 per cent per capita by the year 2000. But reduce it from how much? Many councils are still unaware of how much waste they collect, so how will they know by how much it is decreasing?

The report is the first of its kind to be produced since a similar attempt by the State Pollution Control Commission in the late 1970's. It is mainly aimed at decision makers, but will also be of interest to teachers, lawyers, activists and the general public. The EPA is to be commended for inviting reader feedback through a survey included in the report. We hope this information will make the next report, due in 1995, even more useful. Φ

URBANISATION

Of all the chapters in the EPA State of the Environment report 1993, policy analyst Madi Maclean says urbanisation is one of the least satisfactory. Here she explains why.

The relentless progress of urbanisation, particularly in the Greater Metropolitan Region (GMR) is probably the biggest single cause of environmental degradation in New South Wales [1]. An estimated 4.5 million people will be housed in that region by 2011. To its credit, the EPA's State of the

Environment Report has given urbanisation a separate chapter, but it is one of the least developed and researched in the report. While it acknowledges urbanisation affects 'the whole gamut of environment issues', it does not cross-reference to these issues [2]. Only population trends and sewage infrastructure are discussed in any detail. Compared with other chapters, the quantitative data is sparse and too general to allow useful comparisons in subsequent reports.

Process missing

Missing is an appreciation of the process of urban development over time as, typically, small rural holdings are changed into suburbs. Many studies have charted the problems faced by

residents of relatively isolated new suburbs. However, to my knowledge, no one has comprehensively charted the magnitude and nature of the resulting environmental impacts of urbanisation. As a regulator but not a service provider, the EPA is well placed to undertake this work.

Natural environment.

The impact of urbanisation on the natural environment needs extensive recording down to the local level. Local councils could be useful informants, particularly once they have prepared their own SOE reports (which is required under the new Local Government Act 1993, s. 428 (c)).

(continued next page)

Reviews Reviews Reviews Reviews



White Bay, Sydney

Urbanisation – continued from page 6.

The greater metropolitan region (GMR), where most urban development is found, also contains a 'particularly high diversity of species' [3].

Indicators

Some indicators which could be used to determine the impact of urbanisation on the environment are: biodiversity; native vegetation or reserves per capita (the indicator in the SOE report of open space and recreation per capita is inaccurate [4]); urban bushland; and quality of runoff.

Vulnerable areas

These should be identified and monitored closely, for example, the Blue Mountains. Another might be the Central Coast region, the fastest growing area between southern Sydney and Wollongong [5]. It is unfortunate that the timeframe set for this report prevented the EPA from reviewing government and private related programs sector environmental protection, and recommending future legislative and other action [6].

THE CHALLENGE OF RESOURCE SECURITY – LAW AND POLICY

Edited by Alex Gardner
Reviewed by EDO director James Johnson

"The Challenge of Resource Security" is a collection of essays about resource security. It's not light reading, but will be a useful reference when RS rears its ugly head again. The book is grouped into four parts; part one provides a perspective from the National Association of Forest Industries and one from Gerry Bates Green Independent in the Tasmanian Legislative Assembly. Part two deals with legal ways to implement resource security, discussing the mechanisms for the Government to bind itself in future decisions.

Part three deals with specific issues such as native title, access for mining and land reserved for conservation purposes. Part four looks at what has happened in Canada and New Zealand.

A large part of the book deals with resource security for the mining industry. However current public concern centres around resource security for forestry after the introduction of the Forest Conservation and Development Bill 1991 by the Commonwealth government.

The conclusion drawn by the legal commentators is that there can be no absolute security. Government cannot fetter its future discretion in making decisions. It can however put in mechanisms which make it hard to revoke resource security and possibly to require compensation.

Fowler hints at some of the reasons that resource security is hated by conservationists. It's aim is to stifle future conservation initiatives; it is dependent upon a one off assessment, not a long term evaluation.

Public opinion and values change, tending toward greater recognition of the value of our true natural resources; forests, wilderness and biodiversity. Resource Security seeks to broker a deal in favour of industry now in the hope of withstanding the tide of public opinion in the future. It entrenches protectionism and subsidies. I think Ted Mack was right in debate on the bill when he said:

"The only real security for the forest industry is provided by plantations." Φ

Some suggestions for future actions on urbanisation for the EPA are:

- * Tracking the environmental impacts over the life of a new development area:
- *Working with the Government Pricing Tribunal and Treasury to try to cost these impacts;
- * Making mandatory measures to monitor newly exposed soil washing into creeks from building activity.

References

- 1. The GMR covers the Sydney Newcastle Melbourne conurbation. Sydney's Future: Department of Planning, 1993.
- 2. NSW State of the Environment. 1993. p. 93
- 3. Sydney's Future, p. 34
- 4. State of the Environment, p. 93
- 5. This danger is acknowledged but not addressed in Sydney's Future.
- 6. This is required under the POEA Act, sections 10 (3) (c) & (e). State of the Environment, p.p. 190 and 200.

Madi Maclean is a policy analyst on planning and urban development issues, and was director for four years of the Western Sydney Regional Organisation of Councils (WSROC).



Environmental Defender March 1994

Want to protect the Environment? Leave it to us!

Our natural world can't stand up for itself against illegal development, forest destruction and pollution. It needs someone to speak up for it. That's why the Environmental Defender's Office exists. The EDO is there to help the public enforce the laws which are meant to protect our environment, and to ensure those laws become even stronger.

But we don't pretend to be able to do it alone. You can ensure that the EDO's work continues by including us in your will. The money will be kept in the Environmental Defence Fund, which has been set up by the EDO Board.

The interest earned will be used to fund the EDO's activities into the future. So why not be a part of that future? For free advice on preparing your will, or for more information, please contact James Johnson at the EDO on 261 3599.

A suggested wording for your will is:

"I bequeath the sum of \$ ____ (you can also include part or all of any property you own), to the Environmental Defender's Office Ltd for its general purposes, and declare that the receipt of the Treasurer of the time being of the Environmental Defender's Office Ltd shall be complete discharge to my executors in respect of any sum paid to the Environmental Defender's Office Ltd."

EDO victories during 1993:

- * protecting endangered species habitat in the Shoalhaven area and the South East forests.
- * saving part of a Wyong beach from development for a convention centre
- * designing a major overhaul of state water laws to stop blue green algae and pollution.
- * drawing national media attention to a licence to allow pollution of the Shoalhaven River
- * supporting Byron Bay residents protesting the expansion of Club Med against claims of defamation.

Environmental
Defender is
published
quarterly by the
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8th floor, 280
Pitt St, Sydney
2000
Ph 261 3599.

Contributions of photographs, articles, letters and illustrations are welcome!

Deadlines for submissions are as follows: June 1994 issue-May 18 September 1994 issue -August 15 December 1994 issue -November 14

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enclose cheque/postal note/credit car BankcardVisaMastercard	l details:	Phone FAX
Number Expiry date	· · · · ·	Please return form to Environmental Defenders Office Suite 82, 280 Pitt St, Sydney NSW 2000 (DX722 Sydney)
Signature		

611

LEGAL AID COMMISSION OF NSW

OUR REF:

CN: RAH: NS

94/0097

YOUR REF:

TEL: 2195 931



April 1994

Mr James L O Tedder
Hon Secretary
North Coast Environment Council
Pavans Road
GRASSY HEAD VIA STUARTS POINT NSW 2441

Dear Mr Tedder

Legal Aid for Public Interest Environment Matters

You recently wrote expressing concern about the unavailability of legal aid for environmental law matters.

I am pleased to now advise you that as part of its ongoing commitment to reviewing its Civil and Environment Law policies the Commission, at its meeting of 24 March 1994, resolved to reinstate legal aid for public interest environment matters.

Legal aid may now be granted for public interest and test cases for environment matters where there is a substantial public concern about the environment. Such applications for legal aid will be considered having regard to the Commission's means and merit tests and policy guidelines.

The new policy applies to applications determined on or after 25 March 1994. Copies of the revised policy can be obtained by writing to the Manager, Policy and Education, PO Box K847, Haymarket 2000.

Yours faithfully

Cots Whene

COLIN NEAVE MANAGING DIRECTOR

LEGAL AID COMMISSION OF NSW

OUR REF:

CN: RAH: NS

94/0097

YOUR REF:

TEL: 2195 931



March 1994

Mr James L O Tedder
Hon Secretary
North Coast Environment Council
Pavans Road
GRASSY HEAD VIA STUARTS POINT NSW 2441

Dear Mr Tedder

Legal Aid for Environmental Law Matters

I am writing in response to your recent letter expressing concern about the unavailability of legal aid for environmental law matters.

When the Commission made its decision in late 1992 to restrict the availability of legal aid for a wide range of civil matters, including environmental matters, it did so reluctantly and only in response to very real concerns about its financial position.

Since that decision was taken, considerable effort and resources have been directed to reviewing the operation of the civil law program. Because of this ongoing review, the Commission has been able to reinstate legal aid for some matters, including high priority areas such as victims' compensation.

Like all government agencies, the Commission must provide its services within a defined budget. It does its best to ensure that those people most disadvantaged in the community have access to legal help. You will appreciate that it is extremely difficult to determine priorities for the allocation of legal aid when there are so many people in need of assistance.

The Commission is mindful that there are still many matters that fall outside its policies. It is closely monitoring the impact of the civil law policies, and will continue to give careful consideration to the reinstatement of other matters, including environmental matters, to its civil law program.

It should be noted that although legal aid is, at present, not available for environmental matters, the Commission has continued to provide considerable financial support to the Environmental Defenders Office through the annual allocation of funds from the State/Commonwealth Community Legal Centres Funding Program. The allocation for 1993/94 is approximately \$94,000.

I appreciate the time you have taken to write to me about this matter. The concerns that you and others have expressed will be brought to the attention of Commissioners.

Yours faithfully

Cul Alune

COLIN NEAVE

MANAGING DIRECTOR

6/1

Mr J Tedder North Coast Environment Council Pavans Road Grassy Head via STUARTS POINT NSW 2441

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney

Peg: EDO

TEL: (02) 261 3599

FAX: (02) 267 7548

15 March 1994

Dear Jim

Many thanks for writing to Mr Neave calling for legal aid to be restored in environmental matters. Your letter, together with the more than 100 other letters received already, will be crucial in convincing the Commission of the need and support for legal aid in environmental matters in the community.

We believe the Commission will make a decision towards the end of March; we hope it will be the right decision.

Mr Neave's reply to those who have written speaks of financial support of \$94,000 provided to the Environmental Defender's Office for 1993/94. That was money to assist the EDO to carry out a wide range of activities. These include:

- 1. Free telephone advice. During 1992/93 we answered 1545 requests for information and assistance from the public.
- Community education. During 1992/93 we conducted workshops in Dubbo, Forbes, Nowra, Wagga, Katoomba, bathurst and Orange. We provided speakers for numerous conferences and seminars and produced publication such as "Environment and The Law", a Higher School Certificate text, launched by the Attorney General in July 1992.
- 3. We respond to government discussion papers and provided input to draft legislation and policy initiatives.

\$94 000 does not enable us to do all this and conduct litigation. The cost of experts, barristers, filing and other fees would put us at risk of disappearing as an office if we used this money to pay for litigation expenses. Indeed it would be contrary to the terms on which the money is allocated to us!

Thank you again for your response. Please find enclosed a complimentary copy of our newsletter, Environmental Defender.

Yours faithfully Environmental Defender's Office Ltd

James

James Johnson Director

Encl.



Our Ref: Your Ref: Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney Peg: EDO

> TEL: (02) 261 3599 FAX: (02) 267 7548

1 February 1994

Jim Tedder North Coast Environment Council "Paven's Access" via STUART'S POINT NSW 2441

Dear Jim

Re: Advice on Pacific Oysters

We note we have received no further instructions from you regarding this matter. Accordingly, we enclose a cheque for \$175.00 being the balance monies left in trust after payment of the account rendered in respect of the advice provided to you in this matter.

We thank you for your instructions.

Yours faithfully Environmental Defender's Office Ltd

Maria Comino Solicitor

Enc.

EDO

From NCEC

Date 6 March 94

Following two pages 20 copy of letter tosted To day 90 hegal And Commona from this Council.

File No. Q91/00150

Submissions to:

Commonwealth Environmental Protection Agency Tourism and Natural Resources Section

20.5.93

\$10.00

\$2 postage

ALSO ON EXHIBITION

* Environmental impact report for the subdivision into two residential allotments of Portion 80, Mutton Bird Drive, Lord Howe Island by N.H. Woolnough.

Lord Howe Island Board '

proposal for forest management, including logging, control burning, construction of access roads and reservation of some forest areas within 58,000 hectares of State Forests and 6,000 hectares of Crown timber lands in the Wingham Management Area by the Forestry Commission of NSW. (Ten year approval and various environmental conditions placed on the proposal exhibited 7/9/92 - 9/11/92. An environmental impact assessment report and a supplementary director's report produced by the Department of Planning are also on display).

Determination by the Minister for Planning of a

Minister for Planning - Timber Industry (Interim Protection) Act.

\$/3/94

Managinf Sirector, Legal Aid Commission, P.O.Box 47, Railway Square, 2000

Dear Mr Neave,

This Council represents 43 Conservation Organisations between the Tweed and the Great Lakes and from the New England Highway eastwards to the coast. The afea of the Council is one of enormous population growth both residential and tourist. It is also the second highest biologically diverse area in this continent with many rare and engangered fauna and flora. Over 50% of the rare and endangered flora of the North coast are outside reverves and protected areas.

Over the past few years individuals and organisations connected with this Council have had to resort to legal actions to seek protection for valuable natural areas threatened with destruction. In almost all the cases the Courts have made decisions in favour of the environment and supporting the legal framework set in place to do just that. If these organisations or individuals had not taken such action further destruction would have resulted and the laws would have been flouted by the inaction of Government. In some cases Legal Aid was obtained and because of success costs were recevered in full by the Commission from the losing party. However in recent years most cases have had to be conducted on the very limited resources available as legal aid was denjied.

NSW environmental laws allow any person to bring proceedings to prevent breaches of the law.
Why should they then be denied legal aid to thus bring proceedings?
Does the Commission consider it has not the powers to ensure that frivilous cases are not taken?
One of the objects of the EP & A Act is to encourage public participation to ensure that better decisions are made. How can this occur if individuals are constrained by the lack of financial resources? In most cases which are the subject of litigation the organisation or individual finds himself arraigned against either a government instrumentality or a large company with access to competent legal advatce and financial resources. Was not the object of legal aid designed to level the scales of justice?

In all cases that organisations and individuals have mounted or wished to have taken on the north coast, all were for the benefit of the environment or the community. They were in the public interest. Why then should the Commission deny funds for Legal Aid in such cases where the benefit is for the public good?

We await your answers to these questions with interest particularly as the system now being applied appears to be against upholding environmental laws and protecting the general community.

Yours faithfully,

James L.O.Tedder, Hon.Sec.

Copy faxed to EDO 2020 hrs 6 Mench

In all cases, that organisations and individuals have mounted or wished to have taken on the north coast, all were for the benefit of the environment or the community. They were om the public interest. Why then should the Commission deny funds for legal aid in such cases where the benefit is for the public good?

We await your answers to these questions with interest particularly as the system now being applied appears to be "loaded" against environmental protection and the general community

Yours faithfully,

James L.O.Tedder, Hon.Sec.

Our Ref:

3 March 1994

Suite 82, Lincoln House -280 Plft Street Sydney 2000 Australia

DX: 722 Sydney Peg: EDO

TEL: (02) 261 3599

FAX: (02) 267 7548

Jim Tedder "Pavans Access" Grassy Head

via STUARTS POINT NSW 2441

Dear Jim

Letters to the Legal Aid Commission Concerning the Reinstatement of Environmental Legal Aid.

We are writing to seek your assistance in our efforts to ensure that the NSW Legal Aid Commission restores environmental legal aid.

As you are probably aware, legal aid for environmental matters was abolished in January 1993. This occurred when the Legal Aid Commission abolished most legal aid for civil (ie noncriminal) matters. When legal aid for most other civil matters was reintroduced in October 1993, legal aid for environmental matters was not.

We are now seeking your assistance in lobbying the Commission to reinstate legal aid for environmental matters.

We have enclosed a copy of a brochure that we have distributed asking people to write letters to the Director of the Legal Aid Commission, Colin Neave. It would assist us greatly in our efforts to have legal aid restored if you were able to write letters to Mr Neave as outlined in that brochure.

As you will appreciate, the restoration of environmental legal aid is extremely important for all 'those wanting to be able to exercise the rights granted to them by the State's environmental laws. It is often only through the exercise of those rights that environmental laws are enforced.

We thank you in anticipation of your assistance in helping to ensure environmental legal aid is restored.

Yours faithfully

Environmental Defender's Office Ltd

Maria Comino Solicitor

Encl.



Bring back environmental legal aid!

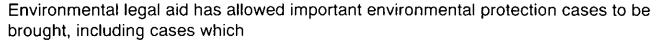
Environmental legal aid has been available in NSW since 1979. Special provision is made for it in the Legal Aid Commission Act.

Environmental legal aid provides funding to run important environmental court cases.

In January 1993 the NSW Legal Aid Commission abolished environmental legal aid along with a number of other areas of civil legal aid.

In October 1993 when legal aid was restored for other areas, *legal aid for environmental matters was not restored*. No adequate reason was provided for the failure to restore environmental legal aid.

This affects your rights and the rights of anybody wanting to protect the environment.



- forced the NSW Forestry Commission to comply with environmental impact assessment laws in the South East Forests
- allowed local residents to stop the construction of an illegal waste dump at Newcastle
- prevented quarrying that would destroy the Yessabah Caves and an important bat habitat
- prevented the illegal use of a road in Yuragir National Park

These and many other cases could not have been brought without legal aid.

Without legal aid government and industry can continue to cause environmental damage knowing that their actions cannot be reviewed by the courts.

What can you do to help bring back environmental legal aid? See over ...



Your letter to the NSW Legal Aid Commission is essential if environmental legal aid is to be restored.

Please write urgently to

Colin Neave
Managing Director
Legal Aid Commission of New South Wales
PO Box 47
Railway Square NSW 2000

Facsimile (02) 219 5935

Demand that legal aid for environmental matters be restored immediately. Be sure to ask him to reply to your letter.

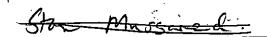
Some points to mention ...

- The cost of environmental legal aid to the Legal Aid Commission is minimal. Because there is strict scrutiny of the cases that are granted legal aid nearly all are successful. This means that the Commission will recover its costs from the losing party.
- NSW environmental laws allow any person to bring proceedings to prevent breaches of the law. These include laws relating to national parks, wilderness, heritage and toxic chemicals. Without legal aid ordinary people cannot afford to stop the law being broken. If they do bring proceedings without legal aid they run the risk of bankruptcy if they lose. Most people are unwilling to run this risk when they are acting for the public good.
- One of the objects of the Environmental Planning and Assessment Act is to encourage public participation so that better decisions are made. Legal aid is essential for public participation; without it you cannot afford to exercise your rights in relation to environmentally significant development.
- Unless legal aid is restored, legal centres such as the Environmental Defender's Office will have to further cut back the services that they provide.
- Given the minimal cost of legal aid there is no reason that the Commission should not restore it immediately.

If possible please also send a copy of your letter to

Environmental Defender's Office 82/280 Pitt Street Sydney NSW 2000

Authorised by James Johnson, Director, Environmental Defender's Office Ltd A community legal centre specialising in public interest environmental law – tel (02) 261 3599.





Attorney General's Department

07 DEC 1953

Ms Anne Reeves
National Parks Association of NSW
PO Box A96
SYDNEY SOUTH 2000

Goodsell Building 8-12 Chiffey Square, Sydney Box 6, G.P.O., Sydney, N.S.W. 2001

DX No.: 1227 Fax: 233 1860 Telegram: "Crownlaw"

93/3842

Our reference:

P3907 H Richards

Your reference:

Telephone: 228 7777

Extension: 7676

Dear Ms Reeves

- 3 NEC mya

The Attorney General has asked me to respond to your letter seeking advice in relation to the Legal Aid Commission's decision to revise the types of matters for which legal aid is available, and your particular concerns about environmental matters.

As the Commission is expected to operate within the budget which is provided to it jointly by the Commonwealth and NSW Governments, the Commission has a responsibility to ensure that tax-payers' funds are utilised in the most appropriate and efficient way, and therefore has revised the types of matters for which legal aid is available. The Commission makes determinations in relation to the types of matters for which legal aid is available pursuant to the provisions of the Legal Aid Commission Act 1979 and the Attorney General has no role in such decisions.

However, the Commission established a task force to review the impact of these revised policies, and to examine the viability of restoring access to legal aid for civil matters. As a result of the review, the Commissioners resolved to re-instate legal aid to applicants and appellants in victims compensation matters which were submitted on or after 1 August 1993; and from 1 November 1993 to:

- * matters where civil liberties are raised (eg. assault, wrongful arrest, false imprisonment, malicious prosecution, by a person in a special position of authority);
- * inquests into deaths (where representation is a preliminary step to civil proceedings for which aid is available, or where the public interest would be advanced by representation of the applicant);
- * consumer protection matters (that is, guarantees, product liability, wrongful exercise of power by government departments or instrumentalities, certain tenancy issues, and to proceedings under specified consumer protection legislation).

In recognition of the support required by the community, in January this year the NSW Government announced that an additional \$1.8 million, which the Commission requested, would be provided to enable it to carry out the NSW Government's court delay reduction program. This funding is in addition to a further \$3.211 million which was provided to the Commission last year (that is, \$1.8 million in the last budget and \$1.411 million in December). The Government has also granted a pay-roll tax exemption to the Legal Aid Commission which is estimated to result in savings of between \$1.2 million and \$1.4 million per annum.

As legal aid is a finite resource, its funds are directed to those most genuinely in need. Although legal aid will be granted to an individual if the Legal Aid Commission is satisfied that its requirements have been met in relation to the means test, the merit test and its policy guidelines, if the Commission believes that exceptional circumstances exist, the Commission may consider providing aid to an applicant whose case is not within its policy guidelines.

The former NSW Auditor General, Mr Ken Robson, and the Solicitor for Public Prosecutions, Mr Steve O'Connor, have completed a review of the operations of the Commission and prepared a report entitled "Report into certain issues relating to the Legal Aid The Report indicates that the financial Commission of NSW". problems faced by the Commission cannot be resolved by merely funds, providing additional as there are structural management problems Commission which be within the addressed.

The recommendations made in the Report are being considered by the Government, which will then be in a position to gauge and determine the appropriate future funding levels for the Commission based on the reforms implemented by the Commission following the Report, and the demand for its services.

I have enclosed a copy of the Legal Aid Commission's "Legal Aid Policies" booklet for your information. Please note the guidelines (pages 5 - 8) which relate to public interest and test cases and environmental matters.

Yours faithfully

for Director General

Legal Aid Commission of New South Wales

LEGAL AID POLICIES

OCTOBER 1993

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INFORMATION ABOUT THE LEGAL AID COMMISSION

Advice

The Commission provides general advice to the public at Commission offices, on all matters. Advice is provided free of charge, without application of the means test or ment test. People seeking advice should contact the closest Commission office. A list of the locations of Commission offices appears at p.28.

The Means Test

In most cases, the Commission applies a means test which takes into account an applicant's income and assets. Full details of the Commission's means test, and exempt cases are contained in a separate booklet called "Means Test Guidelines".

The Merit Test

The Commission applies a 'merit test' in most non-criminal matters and in criminal appeals (for further details see policies relating to the relevant area of law, following).

The merit test addresses whether it is reasonable in all the circumstances to grant legal aid. Matters which the Commission takes into account include, but are not limited to,

- (i) the nature and extent of any benefit that may accrue to the applicant by providing legal assistance or of any detriment that the applicant may suffer if legal assistance is refused; and
- (ii) whether the applicant has reasonable prospects of success in the proceedings.

Compulsory and initial Contributions

In most ongoing cases the Commission requires a contribution of \$40 from a person granted legal aid. Certain cases are exempt. A person granted legal aid may also have to make a further contribution, based on income and assets. Full details of contributions and exempt cases are contained in the separate booklet, "Means Test Guidelines".

Final Contributions

The Commission's policy is that, at the conclusion of the case or the legal aid grant, where possible, the total costs of the matter should be recovered from the person granted legal aid, depending on the person's financial situation.

Legal Aid Policies

1. CIVIL LAW MATTERS

(Not including Family Law - see p. 14, Administrative Law - see p. 9, Veterans' Pension Matters - see p. 13, Prisoners' Matters - see p. 22, Mental Health Matters - see p.24.)

For applications for legal aid determined on or after 1 November 1993.

1.1 Matters for which legal aid is available

Legal aid is available for the following matters subject to the means test, ment test, exclusions and guidelines

.A. All Applicants

- (a) court or tribunal proceedings at first instance or on appeal
 - (i) where there is a likelihood of loss of the applicant's dwelling
 - (ii) where questions of civil liberties are raised e.g. assault, wrongful arrest, false imprisonment and malicious prosecution, by a person in a special position of authority
 - (iii) under the Protected Estates Act 1983
 - (iv) under the Victims Compensation Act 1987 for applicants
- (b) proceedings before the Equal Opportunity Tribunal and Human Rights and Equal Opportunity Commission and on appeal therefrom
- (c) inquests into deaths where representation is a preliminary step to civil proceedings for which aid is available or where the public interest would be advanced by representation of the applicant
- (d) consumer protection matters for consumers including proceedings
 - (i) relating to guarantees, product liability, wrongful exercise of power by government departments or instrumentalities and tenancy issues (except applications to determine fair rental where no point of law is involved) but not including proceedings for professional negligence
 - (ii) under consumer protection legislation being the
 - Credit Act 1984
 - Fair Trading Act 1987
 - Contracts Review Act 1980
 - Retirement Villages Act 1989
 - Trade Practices Act 1974
 - Insurance Contracts Act 1984 for contracts of insurance relating to home owners, home contents, motor vehicle property, personal accident/illness and loan protection.

B. Applicants at Special Disadvantage

...

Where proceedings are taken by or for the benefit of

- a child or
- a person having difficulty in dealing with the legal system by reason of a psychiatric condition, developmental disability, intellectual impairment or a physical disability

Legal aid is also available for proceedings in

- (a) the Supreme Court of New South Wales including all proceedings in the Court of Appeal, and the District Court of New South Wales except for non contentious proceedings in the probate jurisdiction of the Supreme Court.
 - (i) in relation to appeals to the Supreme Court from decisions of the Guardianship Board, see Mental Health Matters p.22.
 - (ii) in relation to applications for adoption proceedings, custody and access disputes, state law affiliation and maintenance proceedings and property disputes between former de facto partners, see Family Law Policies p.14;
- (b) the Local Court:
- (c) the Federal Court of Australia (see also Administrative Law Policies, p.11 and Veterans' Pensions Policies, p.13);
- (d) the High Court of Australia in its original jurisdiction and appeals to the High Court (see also Administrative Law Policies, p.11 and Veterans' Pensions Policies, p.13);
- (e) the Land and Environment Court in relation to proceedings before a judge;
- (f) the Industrial Commission of New South Wales in relation to proceedings pursuant to section 88F of the Industrial Arbitration Act 1940 [ss275-278 Industrial Relations Act 1991]. Grants of aid in these matters are closely monitored and solicitors are required to report at reasonable stages on the progress of the matter;
- (g) the Industrial Magistrate's Court [Local Court] for recovery of payments owing under section 92D of the Industrial Arbitration Act 1940 [s163 Industrial Relations Act 1991] (where possible these matters are dealt with on an inhouse basis);
- (h) Arbitration in respect of:
 - (i) contracts of insurance; and
 - (ii) contracts of construction, maintenance or repair of a structure used or intended to be used entirely as a dwelling house;

Legal Aid Policies

- (i) the Commercial Tribunal;
- (i) the Guardianship Board (see Mental Health Policies, p.24); and for
- (k) application for Waiver of Escheat in respect of the estate of deceased persons.

1.2 Exclusions

Except as noted below legal aid is not available for

- (a) disputes arising from commercial or investment transactions conducted by the applicant;
- (b) building disputes;
- (c) assault matters other than those where questions of civil liberties are raised and claims under the Victims Compensation Act;
- (d) disputes arising from the relationship of the parties as neighbours;
- (e) bankruptcy matters being debtors' petitions, deeds of arrangement, creditors' meetings, public examinations;
- (f) defamation proceedings;
- (g) disputes between family members and former family members over property and money. "Family" includes family resulting from a de factor relationship. This exclusion does not apply to
 - proceedings under the De Facto Relationship Act 1984 or the Family Provision Act 1982; or a second second
 - proceedings where there is a likelihood of loss of the applicant's dwelling arising from an arrangement where by the applicant made a financial contribution to the cost of the dwelling.

The Commission will consider the suitability of family disputes for referral to a Community Justice Centre;

- (h) intra association disputes, for example, between members of unions or clubs;
- (i) proceedings in a Local Court where the amount in issue is \$3,000 or less;
- (j) proceedings to be taken in a Local Court which fall within the jurisdication of the Consumer Claims Tribunal;
- (k) matters concerning damage to any property by a motor vehicle;
- (I) proceedings under the Proceeds of Crimes Act 1981, Crimes (Confiscation of Profits) Act 1990, Drug Trafficking (Civil Proceedings) Act 1990 and other legislation relating to tainted moneys/property.

Note:

Legal aid may be granted in matters (a) - (j) where the applicant is a person at special disadvantage as described in 1.1B and where

- there are exceptional circumstances and
- the applicant would suffer undue hardship if legal aid were refused.

For the purposes of exclusion (a) exceptional circumstances shall be considered to exist where proceedings are being taken against a solicitor alleging professional negligence arising in the course of a commercial or investment transaction.

1.3 Guidelines

(a) Loss of Dwelling

Legal aid is only available where the loss of the applicant's dwelling is a likely direct result of the proceedings for which aid is sought e.g. ejectment proceedings or where it is considered necessary to take proceedings to protect the applicant's interest in the dwelling.

Aid is not available for other matters e.g. claims for debts due where there is a likelihood that the applicant's dwelling may have to be sold to meet a judgment or adverse costs order.

(b) inquests

In all matters regard will be had to the prospects of the applicant being granted leave to be represented at the inquest.

Where the death to which the inquest relates occurred in the custody of the police, or in a prison, mental health, child care centre, community welfare facility or juvenile detention centre questions of public interest will generally be considered to have ansen.

In considering the benefit/detriment aspects of the ment test and the reasonableness of granting legal aid consideration will be given to the applicant's relationship to the decreased and the likelihood of the interests of the deceased's family being represented at the inquest if legal aid were not granted.

(c) Test cases and public interest cases

Legal aid maybe granted for test cases and public interest cases in any of the classes of matters for which legal aid is available.

(d) Motor vehicle accident claims

In respect of matters under the Motor Accidents Act 1988 legal aid is not available by way of grant of aid, section 33 authorisation or minor assistance for the purpose of preparation of a Notice of Claim form. Applications for legal aid will only be considered once entitlement to commence court proceedings arises under section 43 of the Act.

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(e) Representation

An application may be determined

- by granting legal aid on condition that a Commission salaried solicitor, a community legal centre or private practitioner conduct the matter - regardless of the source of the application or
- by refusing the application on the basis that representation is available by a community legal centre

if the Commission is satisfied that legal aid will be delivered in the most cost effective manner due to the expertise of Commission salaried solicitors, the community legal centre or the other practitioner in conducting the type of matter to which the application relates.

(f) Lump sum grants

Where appropriate legal aid will be provided on the basis of a lump sum grant to cover professional costs and/or disbursements.

(g) Alternative dispute resolution

Applicants for legal aid and persons to whom legal aid has been granted may be requested or required to participate in alternative dispute resolution under section 33 of the Act or as a condition of the grant of legal aid.

(h) Environmental Matters

(i) Definition of environmental matters

Environmental matters include but are not limited to any activity which could significantly:

- diminish the visual, recreational, scientific or other quality of the environment;
- endanger any species of fauna or flora;
- cause risk to the health and safety of the environment;
- cause pollution to the environment;
- cause any environmental problems associated with the disposal of waste.

(ii) Guidelines

- Legal aid is available for environmental matters in the Land and Environment Court and on appeal therefrom subject to the merit test, means test and the following guidelines:
 - Legal aid is only available for matters coming within Class 1 and Class 4 of the Land and Environment Court Act 1979.

- Legal aid is not available for proceedings coming within Class 2,
 3, and 5 of that Act.
- Legal aid is only available for proceedings proposed to be conducted in the Land and Environment Court before a Judge.
- Legal aid is available for environmental matters where there is a substantial public interest at stake meriting assistance.
- In deciding whether there is a substantial public interest at stake, regard will be had to at least the following:
 - Whether or not the activity, or proposed undertaking is likely to have significant impact on the environment in NSW or to substantially affect public use, or enjoyment of that environment.
 - The scarcity of the particular attribute(s) of that environment.
 - The value of that environment to the community of NSW.
 - Community interests that may be affected including the impact on the social and cultural needs of the community.
 - The projected public economic benefit of the activity or proposed undertaking.
 - The overall benefits which may flow to the community including employment, community services and social infrastructure.
- (iii) In deciding whether or not to grant legal aid consideration must be had to the likely cost to the Commission of the proceedings.
- (iv) Applicants for legal aid and legally assisted persons or groups should, in appropriate cases, be required to pursue settlement of the matter by mediation or negotiation.
- (v) Where the application for legal assistance concerns environmental matters which fall within Guidelines 20-24 inclusive, set forth in the guidelines for the provision of legal or financial assistance by the Commonwealth other than under the Conciliation and Arbitration Act (published by the Attorney General's Department in 1989), then the application should be referred to the Commonwealth Attorney General for determination in accordance with the Commonwealth's guidelines for legal aid in environmental matters.

(vi) Means Test Guidelines

- The Means Test to be applied to an individual applicant seeking legal aid for an environmental matter is Means Test A.
- Where the applicant seeking legal aid for an environmental matter is a group then the means to be considered are the means of the group.

In considering the means of the applicant/group, regard should be had to the financial support that would be available from those members of

the community who would be likely to support the aims of the group in the matter for which aid is sought.

- In considering the means of the applicant/group regard should also be had to the applicant's ability to afford the cost of the legal proceedings having regard to his/her assets or the general assets of the applicant/group.
- Contributions are to be assessed having regard to the available financial resources of the applicant/group.

(vii) In appropriate cases, lump sum grants should be considered.

2. ADMINISTRATIVE LAW MATTERS

(Not including Veterans' Pension Matters, see p. 13)

Legal aid is available for the matters listed in 2.1, subject to the means test and merit test, and subject to the guidelines and exceptions listed below.

These matters are to be conducted by salaried solicitors of the Legal Aid Commission unless a salaried solicitor is unable to act or unless exceptional circumstances exist.

2.1 Matters for which legal aid is available

(a) Court or Tribunal proceedings

Legal aid is available for Court or Tribunal proceedings

- in migration matters involving refugee status, physical danger or gross injustice; or
- for review of a criminal deportation order, or
- pursuant to the Social Security Act 1991.

(b) Applications under the Migration Act 1958

Legal Aid is available for assistance with making the following types of applications and for any consequential review

- application for refugee status or associated entry permit; or
- application for entry permit relating to physical danger or gross injustice.

2.2 Guidelines

- (a) Migration Act applications and Social Security Appeals Tribunal proceedings where legal aid is granted, the grant should normally be limited to the giving of advice, preparation of written material and cost of expert reports. Where in the opinion of the Commission the applicant is unable to properly represent him/herself, the grant may extend to attendance with the applicant at any interview.
- (b) Social Security Appeals Tribunal proceedings legal aid is available only where
 - the case relates to a large over-payment; or
 - there is significant risk that the applicant will incriminate him/herself; or
 - the applicant is unable, by reason of disability, to communicate with the Tribunal; or
 - the appeal raises a complex or novel question of law; or ...
 - the applicant cannot afford the cost of medical reports and the applicant's state of health is at issue.

Legal Aid Policies

2.3 Exceptions - People eligible to be considered under former policies

Legal aid is available, in accordance with the policies relating to administrative law matters that were in force immediately before 1 January 1993, (see p. 11) where the applicant

- · is a child; or
- has a psychiatric condition, developmental disability or intellectual impairment; or
- has a physical disability which creates difficulty in dealing with the legal system.

- 3. ADMINISTRATIVE LAW MATTERS policies in force before 1 January 1993 and applicable to applicants falling within exceptions (see p. 10)
- 3.1 Legal aid is available subject to a means test and merit test for proceedings in:
 - (a) The Administrative Appeals Tribunal for proceedings under the:
 - (i) Social Security Act 1991, Student Assistance Act 1973, National Health Act 1953 and Health Insurance Act 1973;
 - (ii) Migration Act 1958, Passports Act 1938, Australian Citizenship Act 1948 and Regulations;
 - (iii) Veterans' Entitlements Act 1986, Seamen's War Pensions and Allowances Act 1940, Defence Force Retirement and Death Benefits Act 1973 and Defence Service Homes Act 1978;
 - (iv) Commonwealth Employees' Rehabilitation and Compensation Act 1988 and Superannuation Act 1976; and
 - (v) Freedom of Information Act 1981 and Archives Act 1983.
 - (b) The Federal Court being:
 - (i) Proceedings under Section 39B of the Judiciary Act 1903;
 - (ii) Proceedings under the Administrative Decisions (Judicial Review) Act 1977; and
 - (iii) Appeals from decisions of the Administrative Appeals Tribunal.
 - (c) The High Court being appeals arising from proceedings referred to in (a) and (b).
 - (d) Legal aid is available for proceedings before the Social Security Appeals Tribunal subject to the means test the merit test, and where:
 - (i) the case relates to a large over-payment, or
 - (ii) there is a significant risk that the applicant will incriminate him/herself; or
 - (iii) the applicant is unable, by reason of disability, to communicate with the Tribunal; or
 - (iv) the appeal raises complex or novel question of law; or
 - (v) the applicant cannot afford the cost of medical reports and the success of the appeal depends on the state of health of the applicant.

Where legal aid is granted it should normally be limited to the giving of advice, the preparation of written submissions and the cost of any necessary medical reports.

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Where possible these matters are to be dealt with on an in-house basis. Matters will only be assigned to a private legal practitioner where a Commission salaried solicitor is unable to conduct the matter or where there are exceptional circumstances.

Legal aid is available subject to the means test and merit test for the purpose of:

- (e) Making application to the Department of Immigration, Local Government and Ethnic Affairs for:
 - (i) refugee status and permanent residence consequent to the grant of refugee status;
 - (ii) permanent residence on strong humanitarian grounds;
 - (iii) permanent residence on strong compassionate grounds; and
 - (iv) permanent residence on any other grounds provided the application is also on strong humanitarian grounds or strong compassionate grounds.
- (f) Seeking reconsideration by any committee, panel or tribunal established to review Departmental decisions to reject any application referred to in (e).

Legal aid will normally be limited to the giving of advice, the preparation of the application and the preparation of written submissions. Where, in the opinion of the Commission, the applicant is unable to properly represent himself/herself, legal aid may extend to attendance with the applicant at interviews with migration officers.

Where possible these matters are dealt with on an in-house basis. Matters will only be assigned to a private legal practitioner where a Commission salaried solicitor is unable to conduct the matter or where there are exceptional circumstances.

Where an application for legal aid is received in relation to a matter that is not specified in 3.1(a) to (f) but it is considered that the application warrants consideration, the matter will be referred to the General Manager, Legal Services or the Managing Director.

4. VETERANS' PENSION MATTERS

- 4.1 Legal aid is available to ex service personnel and their dependants for matters under the Veterans' Entitlements Act 1986 and Seamen's War Pensions and Allowances Act 1940 subject to a merit test. No means test applies except in war service pension matters.
 - Payments under section 33(f) of the Legal Aid Commission Act 1979 (except as may arise by operation of paragraph 4.2(b) below) and payments under section 46 of the Act are not levied in matters where the means test is not applied.
 - Compulsory contributions and other contributions under section 36 of the Act are not levied in matters where the means test is not applied.

4.2 Legal aid is not available:

- (a) until there has been an adverse determination, in the matter for which legal aid is sought, by the Repatriation Commission or the Pensions Committee, as the case may be; or
- (b) in non-psychiatric claims where a finding of no incapacity has been made, unless the applicant furnishes at his or her own expense a medical opinion verifying the existence of the condition alleged; or
- (c) in entitlement matters where the applicant is already in receipt of 100% of the general rate of pension except where the claim is a means to achieving an additional financial benefit.

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5. FAMILY LAW MATTERS

(Not including Child Support Scheme Matters - see p. 26)

Legal aid is available for the matters listed in 5.1, subject to the means test and merit test (except where otherwise stated) and the guidelines listed below.

5.1 (a) Family Law Act 1975, Regulations and Rules

- (i) applications for stay and transfer of proceedings;
- (ii) dissolution and nullity of marriage proceedings;
- (iii) custody, guardianship and access proceedings;
- (iv) maintenance proceedings and property proceedings;
- (v) intervention applications;
- (vi) appeals and applications to state a case;
- (vii) contempt proceedings;
- (viii) declarations and injunctions;
- (ix) change of venue applications;
- (x) applications for expedition of proceedings;
- (xi) applications for review of Registrar's decision;
- (xii) Family Court enforcement of maintenance proceedings under Order 33 of the Family Law Rules;
- (xiii) proceedings pursuant to section 111 of the Family Law Act 1975 and under Part IV of the Family Law Regulations to confirm and/or enforce maintenance orders for overseas residents;
- (xiv) preliminary advice to needy persons in remote localities in respect of dissolution proceedings. (The Commission will pay private solicitors to give this advice provided the applicant is more than 50 kilometres from a Family Law Registry, a Commission Branch Office or an advice centre attended by a Commission solicitor. The fee payable is limited to one half hour of professional time at Legal Aid Commission rates.)

(b) Other

- (i) adoption proceedings;
- (ii) conveyancing costs for transfer of proprietary interests in houses pursuant to family law orders and approved agreements between spouses;
- (iii) costs of travel to take delivery of child pursuant to a court order in respect of custody where assistance is not available from another scheme;
- (iv) domestic violence when these proceedings are incidental to family law proceedings;
- (v) proceedings pursuant to the De Facto Relationship Act 1984.
- (c) Separate representation and applications under the United Nations Conventions for Recovery Abroad of Maintenance (UNCRAM)
 - (i) Separate Representation

Orders that children be separately represented under the Family Law Act 1975 do not require the submission of an application for legal aid. No means or merit test is applied. The Commission will pay costs and disbursements however, as if the matter were one for which aid has been granted.

(ii) UNCRAM

The Managing Director is the delegate of the Collector of Overseas Maintenance and in this capacity acts to recover maintenance from a person or secure variation of an order made by a convention country for payment of maintenance by a person.

In these matters the means and merit tests are not applied and no application for aid is required. The Commission will pay costs and disbursements however, as if the matter were one for which aid has been granted.

5.2 Guidelines

The following guidelines are applied in family law matters:

(a) Dissolution of Marriage

Legal aid is available in respect of applications for dissolution of marriage only where it is imperative that the marriage be dissolved and where the applicant is in a position of special hardship.

(b) Enforcement Proceedings

Legal aid is not available to enforce maintenance orders in the Local Court. Legal aid is available for other types of enforcement proceedings, for example, to enforce the terms of a property settlement order. Where enforcement proceedings involve Family or Supreme Court deliberation, legal aid may be available if it is shown that it is impractical or inappropriate for proceedings to be taken in a Local Court.

(c) Proceedings Pursuant to Part IV of the Family Law Regulations

The Commission co-operates with the Commonwealth in the provision of assistance pursuant to the United Nations Convention on the Recovery Abroad of Maintenance (UNCRAM).

(d) Six Week Separation Guideline (See also 5.2(g)(iii))

Legal assistance for the institution of family law proceedings is generally not available unless or until the parties have been separated for six weeks. However assistance may be available:

- (i) where, in the opinion of the Commission, there are special circumstances in the particular case by reason of which it would be proper to grant such assistance notwithstanding the general policy; or
- (ii) where proceedings within or prior to six weeks of separation are necessary because:
 - there is a real need to obtain injunctive relief;
 - urgent action is required to protect the interests of children;
 - urgent action is required to protect property interests; or
 - urgent maintenance proceedings are required.

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(e) Mediation V 8.3

- (i) Applicants for legal aid will be required to participate in mediation prior to grants of legal aid being made, subject to the suitability of the applicant or the dispute for mediation. This requirement is to be in the form of an authorisation under s33 for referral to mediation.
- (ii) It is not considered appropriate to refer the following matters for mediation:
 - where there is an allegation of sexual abuse of a child or other abuse
 of a child;
 - where DOCS is involved in some other allegation of neglect against a child;
 - where there is a history, which is current, of domestic violence;
 - where the application relates to pending proceedings and the next return date is before mediation can be arranged, and an adjournment is unlikely to be granted;
 - where the matter is urgent and it is necessary to approach a court on an interim relief basis;
 - where recently, but prior to making the application for aid, the parties unsuccessfully attempted mediation or family counselling;
 - where there is documentary or other clear evidence establishing the refusal or unwillingness of the other party to attend mediation; or

• 1 • where there is a denial of patemity.

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(f) Custody and Access

(i) In the case of custody and access disputes, legal aid is usually limited to negotiations with a view to settlement of the dispute. If the negotiations are unsuccessful, a request for further assistance should be made. Such further assistance should be granted if there has been a genuine attempt to settle the matter by agreement.

(g) Property

- (i) Legal aid will not be provided for a property dispute (unless exceptional circumstances exist) where it is likely that:
 - there will be a sale of the matrimonial property; or

* - . .

- the other party will purchase the applicant's interest in the matrimonial property; or
- the applicant will receive a cash settlement;

resulting in the applicant receiving sufficient funds to pay the anticipated legal costs of the proceedings; or where it is likely that

- the applicant will be in a position to borrow funds sufficient to purchase the other party's interest in the property and pay the anticipated legal costs of the proceedings.
- (ii) In the case of family law property disputes legal aid will not be available until the parties have been separated continuously for a period exceeding three months, except in urgent cases.
- (iii) in determining applications for legal aid in property proceedings, the Commission will weigh the anticipated benefit to the legally assisted person against the likely cost of the proceedings and in doing so shall bear in mind the Commission's policy relating to the application of s46 of the Act (see "Final Contributions", p.1).

(h) Maintenance Proceedings

- (i) In the case of family law maintenance proceedings legal aid is usually limited to negotiations with a view to settlement of the dispute. If the negotiations are successful, a request for further assistance should be made. Such further assistance should be granted if there has been a genuine attempt to settle the matter by agreement.
- (ii) Legal aid is available to commence maintenance proceedings in the Local Court only, unless exceptional circumstances exist.
- (iii) Legal aid is available for a review by the court pursuant to the Child Support (Registration and Collection) Act 1988.

(i) Injunctions

Legal aid is not available where the purpose of the injunctive relief sought is to allow overseas travel or holidays, unless there are cogent reasons for a grant of legal aid and there would be undue hardship to the applicant if legal aid were refused.

(i) Forum for De Facto relationship Act proceedings

De Facto Relationships Act matters should proceed in the Family Court where appropriate, for example, where there are other proceedings in the Family Court relating to children.

5.3 Duty Solicitor Service

The duty solicitor service provided by Commission salaried solicitors in Family Law Act and associated matters at Local Courts and Family Courts is subject to the means test, except where the applicant is in custody, but not the ment test and is limited to:

- (a) legal advice in respect of a first appearance; and/or
- (b) a first appearance on behalf of the client, ordinarily involving an application for an adjournment.

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6. CRIMINAL LAW MATTERS

- 6.1 Legal aid is available for criminal law proceedings as follows:
- (a) In the Local Court (subject to the means test but not the merit test) for:
 - (i) bail applications (for persons in custody on the first appearance the means test is not applied);
 - (ii) mentions and adjournments;
 - (iii) pleas of guilty in summary charge matters;
 - (iv) defended summary charge matters;
 - (v) defended indictable charge matters which may be dealt with summarily;
 - (vi) coronial inquests where the applicant for legal aid is summonsed to appear but not charged by the police, if he/she is at risk of being charged with a serious criminal offence;
 - (vii) committal proceedings where the applicant is charged with murder or where exceptional circumstances exist;
 - (viii) domestic violence proceedings whether commenced by private information or police charge being proceedings under Part 15A of the Crimes Act 1900 (Apprehended Violence Orders),
 - to complainants and informants where the complainant/informant
 - ▶ is or has been married to the defendant;
 - is living or has lived with the defendant on a bona fide domestic basis although not married;
 - is living with or has lived ordinarily in the same household as the defendant (otherwise than merely as a tenant or boarder);
 - is or has been a relative (within the meaning of s4(6) of the Crimes Act 1900) of the defendant;
 - has or has had an intimate personal relationship with the defendant.
 - to defendants only where exceptional circumstances exist. Exceptional
 circumstances may include, but are not limited to matters in which it is likely
 that a gaol sentence will be imposed or where it is likely the matter could be
 resolved by negotiation.

Legal aid is available to defendants for bail applications in the course of apprehended violence proceedings.

(ix) summons matters (other than domestic violence proceedings) only in the following circumstances:

- for defendants where
 - there is a real possibility of a gaol sentence being imposed; or.
 - the matter would ordinarily have proceeded by way of a charge; or
 - exceptional circumstances exist.
- for informants where
 - there is a real or anticipated danger to his/her person or kin; or
 - exceptional circumstances exist.
- (x) extradition proceedings. Where the proceedings are defended, consideration will be given as to whether it is reasonable in all the circumstances to grant legal aid.
- (xi) offences under s4E, s4F and s5 of the Motor Traffic Act 1909, (PCA, DUI, Refuse/Hinder Breath Test etc) and concurrent traffic offences, only where there is a real possibility of a gaol sentence being imposed, if the applicant were convicted. This policy applies to all such proceedings, whether commenced by charge or summons.
- (b) Indictable Matters in the District and Supreme Courts
 - (i) are subject to the means test but not the merit test for:
 - bail applications (except Supreme Court bail applications see (ii) below)
 - mentions and adjournments;
 - sentence matters including breaches of recognisance;
 - related summary matters dealt with under Pt-10, Criminal Procedure Act
 1986; and
 - trials:
 - (ii) are subject to the means and the ment test for:
 - Supreme Court bail applications.
- (c) Appeals, subject to the means test and the merit test, to the:
 - (i) District Court sitting in its criminal jurisdiction and Supreme Court, from decisions of Magistrates in Local Courts, other than appeals in matters where legal aid would not have been available for the Local Court proceedings (see 6.1(a));
 - (ii) Court of Criminal Appeal; and
 - (iii) High Court.

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(d) Respondents - Victims Compensation

Legal aid is not available to respondents in the Local, District, or Supreme Court, or the Victims Compensation Tribunal.

- (e) Public Health (Proclaimed Diseases) Amendment Act 1989 for persons subject to Public Health Orders in:
 - (i) Local Court and Supreme Court applications subject to the means and merit test and having regard to the nature of the order sought; and
 - (ii) Appeals to the Supreme Court and Court of Appeal from decisions of the Local Court or Supreme Court concerning Public Health Orders under the Act.
- Legal Aid is not available in proceedings under the Proceeds of Crime Act 1981, Crimes (Confiscation of Profits) Act 1990, Drug Trafficking (Civil proceedings) Act 1990 and other legislation related to tainted monies/property.

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7. CHILDREN'S COURT MATTERS

- 7.1 Legal aid is available in relation to Children's Court matters as follows:
 - (a) in the Children's Court to:
 - (i) children, not subject to a merit test or means test; and
 - (ii) parents, guardians or people with a special interest in the welfare of the child, subject to the means test. The merit test is also applied in respect of:
 - proceedings concerning irretrievable breakdown between a parent and a child; and
 - applications for variation or recission of orders made under the Children (Care and Protection) Act 1987.
 - (b) for Appeals to the District Court from a Magistrate's decision
 - (i) for children, subject to a merit test, and in criminal matters, subject also to a means test
 - (ii) for parents, guardians or people with a special interest in the child subject to a means and merit test
 - (c) for committal proceedings subject to a means test, a ment test is not applied;
 - (d) for sentence matters and trials in the District Court and Supreme Court subject to a means test but not subject to a merit test;
 - (e) for Court of Criminal Appeal and High Court matters subject to a means and merit test.
 - (f) in the Community Welfare Appeals Tribunal for proceedings relating to wardship or custody of a ward and for proceedings relating to applications by individuals to be foster parents to:
 - (i) adults, subject to a means and merit test; and
 - (ii) children, where an order for separate representation has been made, subject to a merit test but not a means test.
 - Representation in the Community Welfare Appeals Tribunal should be by salaried staff of the Commission's Family Law Litigation Section, unless exceptional circumstances exist.
- (g) in the Supreme Court (including proceedings in the Court of Appeal) for appeals from decisions of the Community Welfare Appeals Tribunal relating to wardship or custody of a ward or relating to applications by individuals to be foster parents, to:
 - (i) adults, subject to a means and merit test; and
 - (ii) children subject to a merit test.

8. PRISONERS' MATTERS

8.1 Since February 1986, the Commission has provided services to prisoners through the Prisoners' Legal Service (PLS) which is located on Level 6, Daking House, Telephone no. (02) 219 5888. The Solicitor in Charge's telephone no. is (02) 219 5924. The PLS provides legal advice and assistance to prisoners as follows:

(a) Legal Advice and Minor Assistance

General legal advice and minor assistance is provided free of charge and not subject to a means test or merit test to prisoners at selected gaols.

- (i) The general advice given covers many areas of law including crime, bail, family law, estate law and civil law, especially compensation for injuries resulting from accident or attacks in the gaol.
- (ii) Minor assistance is regarded as follow up action to advice which is not complex and involves work of less than one hour. It includes, but it is not limited to, assistance for:
 - classification, administrative and transfer problems;
 - complaints to the Department of Corrective Services, police or Ombudsman's Office;
 - issuing and serving subpoena where there has been no grant of legal aid (on a discretionary basis); and
 - simple wills and simple estate matters.

Minor assistance does not include obtaining transcripts for prisoners except where the PLS acts for a prisoner in a particular matter pursuant to a grant of legal aid.

- (iii) More complicated matters arising from all gaols are referred by telephone to Solicitor in Charge for advice.
- (iv) Where assistance is required beyond minor assistance the Commission's policies and eligibility criteria for the relevant area of law apply. The PLS assists prisoners to complete legal aid applications and forwards the applications to the relevant section/office. Generally the PLS is unable to take detailed instructions from a prisoner except in exceptional circumstances. However, the PLS will pass on messages from Commission staff to prisoners. Contact the Solicitor in Charge on 219 5924 or the Senior Clerk on (02) 219 5888 regarding messages for prisoners.
- (v) The gaols where advice and minor assistance is provided are:
 - Bathurst and East Maitland. (Staff from the Orange and Newcastle Legal Aid Offices respectively, attend these goals.)
 - Cessnock, Cooma, Goulburn and Grafton. (Private solicitors on a rostered basis attend these gaols - the PLS attends to the payment of their costs.)

Most gaols are attended on a weekly basis. Some of the smaller institutions are attended on a fortnightly basis. The actual days of attendance vary. The section should be contacted to ascertain actual attendance days.

Enquiries concerning the PLS's current attendance roster for advisings should be made to the Senior Clerk on (02) 219 5888.

(b) Visiting Justice Proceedings, Offender's Review Board Hearings, Serious Offenders' Review Board Applications

The PLS provides representation for prisoners:

- at selected gaols for proceedings conducted by Visiting Justices. For information regarding location and frequency of Visiting Justices contact the PLS on (02) 219 5888;
- (ii) at review hearings conducted before the Offenders' Review Board (solicitors from PLS appear at the hearings); and
- (iii) for resentencing matters referred by the Serious Offenders' Review Board to the Supreme Court (solicitors from PLS act in these matters, private solicitors to be assigned matters only in case of conflict or exceptional circumstances).

Representation in these matters is subject to the means test applied in the Commission's duty solicitor scheme matters. The Commission has determined, pursuant to section 34(3)(b) of the Act, that for these matters there is no right of appeal to a Legal Aid Review Committee for a legal aid application refused wholly or partly on the grounds of means.

Legal Aid Policles

9. MENTAL HEALTH MATTERS

- 9.1 The Commission operates a Mental Health Advocacy Service at Level 4, 74-76 Burwood Road, Burwood NSW 2134, telephone no. (02) 745 4277.
- 9.2 The Commission's policy on representation in Mental Health matters is that matters should be conducted by salaried Commission solicitors unless a salaried solicitor is unable to conduct the matter or exceptional circumstances exist.
- 9.3 Legal aid is available in relation to Mental Health Act matters as follows:
 - (a) not subject to the means and not subject to the merit test to:
 - (i) patients or persons appearing in Magistrate inquiries under the Mental Health Act 1990;
 - (ii) forensic patients appearing before the Mental Health Review Tribunal under the Mental Health Act 1990;
 - (iii) persons subject to the Mental Health (Criminal Procedure) Act 1990, except non-forensic patients appearing before the Mental Health Review Tribunal in proceedings under the Mental Health (Criminal Procedure) Act 1990 who have not been granted legal aid for their trial or special hearing, or who do not meet means test C guidelines;
 - (iv) patients appearing before the Psychosurgery Review Board in relation to proceedings under the Mental Health Act 1990; or
 - (v) patients appearing before the Mental Health Review Tribunal on a hearing to determine the question of the making of a continued detention order or a continued treatment patient order, or order pursuant to s19 of the Protected Estates Act 1983.
 - (b) subject to the ment test, but not subject to the means test to patients:
 - (i) appealing to the Mental Health Review Tribunal against the decision of a Medical Superintendent not to discharge a temporary or continued treatment patient;
 - (ii) appealing to the Supreme Court against decisions of the Mental Health Review Tribunal or continued detention in hospital.
 - (c) subject to means test A and the merit test to:
 - (i) persons other than patients appealing against decisions of magistrates or the Mental Health Review Tribunal or continued detention in hospital.
- 9.4 Legal aid is available to affected persons (other than witnesses) for Disability Services and Guardianship Act 1987 matters.
 - (a) before the Guardianship Board, where the Board has granted leave for the person to be represented. Means Test A and the merit test apply to applicants, except to 'disabled' persons (as defined by the Act). Neither the means test nor the merit test applies to 'disabled' persons in matters before the Guardianship Board.

- (b) on appeal to the Supreme Court from decisions of the Guardianship Board. Means Test A and the merit test apply to all applicants except to 'disabled' persons (as defined by the Act). The merit test only applies to disabled persons for appeals to the Supreme Court from decisions of the Guardianship Board.
- 9.5 The Mental Health Advocacy Service administers and co-ordinates legal aid grants and representation for proceedings before the Guardianship Board under the Disability Service & Guardianship Act 1987, and for appeals to the Supreme Court from decisions of the Board. Representation in these matters is provided by Commission solicitors and private practitioners. Wherever possible Commission staff appear for disabled persons. Other affected persons are represented by private solicitors on a referral basis, except where no conflict exists (between the disabled person and the other affected person) and the Service can therefore appear for both persons.

The Mental Health Advocacy Service has social workers who can advise solicitors on a person's ability to manage himself/herself or handle his or her day to day affairs and on possible alternatives to hospitalisation. The Senior Social Worker may be contracted on (02) 745 4277. The Commission's Education and Information Section provides educational material for staff, interested community groups, health workers, families and friends of clients. The Education and Information Section can be contacted on (02) 560 4933.

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Legal Aid Policies 25

10. CHILD SUPPORT MATTERS

- 10.1 The Child Support Service assists sole parent pensioners residing in the Sydney metropolitan area who are the subject of the review of Stage 1 pensioners by the Department of Social Security (DSS). A parent comes within the terms of the DSS Stage 1 Review if:
 - (a) the parent was granted a Sole Parent's Pension (SPP) between 1 June 1988 and 30 September 1989;
 - (b) the parent is currently receiving SPP;
 - (c) the parent has not yet satisfied DSS that the parent has taken reasonable action for maintenance and/or should be granted an exemption from taking maintenance action; and
 - (d) the parent has received a letter from DSS requiring reasonable action to be taken or an exemption to be granted within 3 months and directing the parent to approach a legal aid agency if assistance is required to take action for maintenance.
 - 10.2 The Child Support Service is located at:

Level 4, 74-76 Burwood Road Burwood NSW 2134

Telephone:

(02) 744 3833

(008) 45 1784

for callers outside Sydney area

- 10.3 The Service provides the following services to persons meeting the requirements set out in 10.1 and to others:
 - (a) general legal advice, not subject to a means or merit test, on the viability of child maintenance proceedings and on the conduct of child maintenance proceedings;
 - (b) minor assistance, in particular letters to non-custodial parents attempting to settle the question of child maintenance by negotiation and letters to DSS advising DSS that maintenance action is not viable;
 - (c) legal representation in child maintenance proceedings under the Family Law Act and in proceedings under the Child Support (Assessment) Act, subject to a means and ment test;
 - (d) assistance in negotiating and registering formal agreements for child maintenance under the Family Law Act and under the Child Support (Assessment) Act, subject to means test and a merit test;
 - (e) telephone information (by way of a 008 number) for sole parents outside the Sydney metropolitan area on maintenance proceedings and on obtaining legal aid for maintenance proceedings.

10.4 Solicitors from the Child Support Service provide advice and assistance at the Burwood office and also at other metropolitan offices of the Legal Aid Commission in child maintenance proceedings. Solicitors from the Service also provide representation at

Legal Ald Policies

1

LOCATION OF LEGAL AID COMMISSION OFFICES

HEAD OFFICE
Daking House
11-23 Rawson Place,
SYDNEY NSW 2000
DX 5 SYDNEY
Telephone: (02) 219 5711
Fax: (02) 219 5935

BANKSTOWN
Civic Tower
Suite 9, Level 4
Cnr Rickard Rd & Jacobs
Street
BANKSTOWN 2200
Telephone: (02) 707 4555

Telephone: (02) 707 4555 Fax: (02) 708 6505

BLACKTOWN
Level 3
85 Flushcombe Road
BLACKTOWN 2148
DX 8111 BLACKTOWN
Telephone: (02) 621 4800
Fax: (02) 831 5597

BONDI JUNCTION
1 Newland Street
BONDI JUNCTION 2022
DX 12018 BONDI
Telephone: (02) 387 3800
Fax: (02) 389 6553

BURWOOD Level 4 74-76 Burwood Road BURWOOD 2134 DX 8541 BURWOOD Telephone: (02) 747 6155 Fax: (02) 744 6936

CAMPBELLTOWN
Level 3
121 Queen Street
CAMPBELLTOWN 2560
DX 5119
CAMPBELLTOWN
Telephone: (046) 28 2922
Fax: (046) 28 1192

FAIRFIELD
Suite 5, Level 2
25 Smart Street
FAIRFIELD 2165
DX 5068 FAIRFIELD
Telephone: (02) 727 3777
Fax: (02) 724 7605

GOSFORD 207 Albany Street NORTH GOSFORD 2250 DX 7222 GOSFORD Telephone: (043) 24 5611 Fax: (043) 24 3503

HURSTVILLE
Ground Floor
12-14 Ormonde Pde
HURSTVILLE 2220
DX 11328 HURSTVILLE
Telephone: (02) 570 4055
Fax: (02) 580 9676

LISMORE
Suite 6, Level 4
29 Molesworth Street
LISMORE 2480
DX 7740 LISMORE
Telephone: (066) 21 2082
Fax: (066) 21 9874

LIVERPOOL
Suite 3, Level 3
Interdell Centre
Cnr George & Scott Sts
LIVERPOOL 2170
DX 5045 LIVERPOOL
Telephone: (02) 601 1200
Fax: (02) 601 2249
(Liverpool office is a referral centre)

MANLY
Suite 6, Level 4
39 East Esplanade
MANLY 2095
DX 9207 MANLY
Telephone: (02) 977 1479
Fax: (02) 977 3357

NEWCASTLE Level 1 51-57 Bolton Street NEWCASTLE 2300 DX 7911 NEWCASTLE Telephone: (049) 29 5482 Fax: (049) 29 3347

241 Lords Place ORANGE 2800 DX 3040 ORANGE Telephone: (063) 62 8022 Fax: (063) 61 3983

ORANGE

PARRAMATTA
91 Phillip Street
PARRAMATTA 2150
DX 8293 PARRAMATTA
Telephone: (02) 891 1600
Fax: (02) 689 1082
(Parramatta office is a referral centre)

PENRITH
76 Henry Street
PENRITH 2750
DX 8038 PENRITH
Telephone: (047) 32 3077
Fax: (047) 21 0572

RYDE 787 Victoria Road RYDE 2112 DX 8405 RYDE Telephone: (02) 807 3044 Fax: (02) 809 6739

TAMWORTH
3 Fitzroy Street
TAMWORTH 2340
DX 6110 TAMWORTH
Telephone: (067) 66 6322
Fax: (067) 66 8303

WAGGA WAGGA
2nd Floor
Dept of Housing Building
Cnr Baylis & Morgan Sts
WAGGA WAGGA 2650
DX 5424 WAGGA
Telephone: (069) 21 6588
Fax: (069) 21 7106

WOLLONGONG
1st Floor
73 Church Street
WOLLONGONG 2500
DX 5167 WOLLONGONG
Telephone: (042) 28 8299
Fax: (042) 29 4027
(Wollongong office deats with inhouse matters, referral matters and client interviews).

SPECIALIST SERVICES

CHILDREN'S LEGAL SERVICE Shop 2, 287 Beames Avenue MT DRUITT 2770 PO Box V139 MT DRUITT VILLAGE

Telephone: (02) 625 5155 Fax: (02) 675 3738

MENTAL HEALTH
ADVOCACY SERVICE
Level 4, 74-76 Burwood
Road
BURWOOD 2134
DX 8541 BURWOOD
Telephone: (02) 745

Fax:

(02) 744 6936

4277

PRISONERS' LEGAL SERVICE (based at Head Office) Telephone: (02) 219 5888 Fax: (02) 219 5916

CHILD SUPPORT SERVICE Level 4, 74-76 Burwood Road BURWOOD 2134 DX 8541 BURWOOD Telephone: (02) 744 3833 (008) 45 1784 Fax: (02) 744 6936 VETERANS' ADVOCACY SERVICE Level 5 1 Francis Street DARLINGHURST 2010 Telephone: (02) 339 7677 Fax: (02) 360 4204 Legal Ard Commissioners

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Advancement.

STATE COUNCIL MEETING, 6 - 7 NOVEMBER 1993 The November State Council Meeting will be hosted by Central West Branch at the Yetholme Community Hall, near Bathurst. Lunch on Saturday and breakfast and lunch on Sunday will be provided by the Branch. A barbecue is ulso planned at the hall for Saturday evening. A walk is planned at Mt Airly on Sunday, easy and energetic versions available! Transport For those without cars - the train/bus combination to Yetholme leaves Sydney at 2.30pm on Friday, arriving Yetholme 5.50pm. - if sufficient interest, a minibus is a possibility. Please let us know EARLY if you are interested. If you are intending to drive, we would appreciate any offers of car spaces available. Accomodation The hall is large enough to accomodate all those who wish to bring a sleeping bag etc. Campers are welcome to pitch their tents on Joyce Moffit's property near Yetholme (Camping grounds with ammenities are available in Lithgow or Bathurst.) Some billets available at Yetholme, Wallerawang and Bathurst. State councillors are requested to fill in the slip below and return it with any agenda items to Philippa Walsh, NPA State Council, PO Box A96, Sydney Sth 2000 before 18th October

V	Please circle	
Yes	No -	
Yes	No	
Yes	No	
Yes	No	
Yes	Nổ	
Yes	No	
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Yes	No	
	Yes Yes Yes Yes Yes Yes	

The Commission

THE COMMISSION IS AN INDEPENDENT statutory corporation comprising 9 parttime members and one full-time member who is the Commission's Director.

Subsequent to publication of the Commission's 1990-91 Annual Report, Mr Brian Rayment, QC was appointed Chairman following the retirement of the Ion Mr Justice M B Grove and Mr Mark Richardson resigned as Director to take up appointment as Deputy Chief Executive Officer of the Law Society of New South Wales. Mr Terry Murphy was Acting Director of the Commission at time of publication of the 1991-92 Annual Report.

Meetings of the Commission

Twelve ordinary meetings of the Commission were held during the year. Commission meetings are usually held on the fourth Thursday of each month.

> Pictured from laft to right: James Dwyer, Oliver Winder, Stephen Norelsh QC, Paul Webb QC, Brian Rayment QC, Richard Gulley, Kevin Scott, Simon Rice, Robyn Senton, Terry Murphy.



Attention: Mills Healy

F JORDAN CHAMBERS L2

02 2216944 26-08-93 03:24PM

[51] #1

COFFS HARBOUR ENVIRONMENT CENTRE INC V. MINISTER FOR PLANNING AND COFFS HARBOUR CITY COUNCIL

MEMORANDUM OF ADVICE

- I am asked to advise on prospects for success of any appeal from the decision of Pearlman J delivered today dismissing the application by the Coffs Harbour Environment Centre Inc in this matter.
- All disputed questions of fact in this matter were resolved favourably to the Coffs
 Harbour Environment Centre Inc. All disputed questions of law bar one were also
 resolved in favour of the Environment Centre.
- 3. The Court made findings that the Coffs Harbour LEP21 was made in breach of numerous provisions of the North Coast Regional Environmental Plan, all of which related to the environmental or heritage significance of Look-At-Me-Now Headland. In reaching these findings of breach, the Court concluded (contrary to the submissions of the Minister and the Local Council):
 - a. that Look-At-Me-Now Headland was a significant area of natural vegetation for the whole of the north coast of New South Wales;
 - that the Council and Minister did not zone the Headland for environmental protection but for development;
 - that the Headland had scenic and visual qualities which made it a significant topographic feature of the coastline;
 - d. that LEP21 did not protect and preserve those significant features and that therefore the Council and the Minister had ignored them in rezoning it;
 - e. that the Headland was an item of natural, ecological and aesthetic significance to Coffs Harbour and was therefore part of the environmental heritage of the north coast;
 - f. that LEP21 diminished and downgraded the protection of the Headland;
 - g. that LEP21 did not restrict development to minimise environmental risks or the visual impacts on the Headland; and
 - h. that each of these failures was a breach of the Government's p... uning law for the north coast contained in the North Coast REP.

4. In all, the Court found that the Council's LEP for the Headland breached five provisions



26 August 1993

- 5. None of the breaches are technical: each goes to the environmental significance of the Headland and is based upon the expert evidence of the Headland's natural, scientific and visual significance which the Court accepted.
- 6. Having found these breaches, the Court concluded that they were of no legal consequence because the Minister was free to depart from the REP in making the LEP and the LEP was not inconsistent with the North Coast REP. On the contrary, the Court held that the REP's planning controls which required certain actions to be taken in the preparation of the LEP was not a case of inconsistency but one of "non-compliance". There was no provision, the Court said, in the one instrument to which there was a contradictory counterpart in the other instrument. The Court justified this interesting analysis by reference to the cases concerning inconsistency of two laws under s.109 of the Constitution, which provides that Federal laws prevail over inconsistent State laws. This constitutional provision is of course mirrored in the North Coast REP so that decisions on its application in analogous cases would be relevant to the issue of inconsistency in this case.
- 7. The Court's finding that a breach of an REP by a Minister is of no legal consequence is plainly incorrect. The REP binds the Minister, it is a document expressing legal obligations and the Minister is not above the law. This finding is contrary to the fundamental legal principle of the rule of law and if followed would render nugatory the system of environmental and heritage protection for the coast and hinterland of NSW.
- 8. In my opinion, the Court was also in error in finding that the two plans were not inconsistent. It was in error for two reasons. First of all, the characterisation of the REP obligations as merely requiring certain actions to be taken in the preparation of a local plan was incorrect. Some of the provisions of the REP are of this character but the obligation in cl.83(h) (which requires local plans to embody the environmental policies contained in the regional plan) is not. Plainly enough, it sets up a provision of the Regional Plan, that is, a policy to protect areas of environmental significance, in direct conflict with local plans which do not embody that policy. In other words, on the Court's own test, the finding of a breach of s.83(h) amounts to such an inconsistency.
- 9. The Court's test is, however, wrong. Only last year, the High Court decided that a provision of a Federal law which expressly excluded a State law similar to a regional plan which prohibits the making of a local plan of a certain nature, was relevantly inconsistent with the State law and prevailed to the extent of that inconsistency: Botany Municipal Councit v. Federal Airports Authority (1992) 175 CLR 453. It is difficult to find a starker example of an inconsistency than a direct collision between two laws, in this case, a regional plan prohibiting action and a local plan permitting it or, at the very least, being made in breach of the prohibition: Clyde Engineering Co Ltd v. Cowburn (1926) 37 CLR 466. Indeed, it was the basis for the most famous decision of the High Court in Mabo (1992) 175 CLR 1 that a Federal law which required certain actions to be taken under State law struck down a State law which had failed to take that action: Mabo [No.1] (1988) 166 CLR 186, even though the two laws were merely "non-compliant".
 - 10. I am of the opinion that the Court has fundamentally misunderstood the nature of the legal obligations created by the Regional Plan and the test for inconsistency and, in any

6 Jul 93

Attorney General Parliament House Canberra

Dear Minister,

Is it correct that the Commonwealth provides some of the funds for State legal aid services ?

If so does the Commonwealth have any input in to how these funds are to be spent ?

Are you aware that the NSW Legal Aid Commission has decided that there will be no legal aid provided for civil cases ? And this includes civil cases of issues of public concern ?

Are you aware that most if not all environmental cases which have been taken with legal aid have been decided in favour of the group receiving legal aid and therefore has not cost legal aid any funds?

Are you aware that the environmental cases accepted by the Commission before aid was refused concerned matters of public and community concern ?

What is your Governments policy to this States treatment of legal aid for civil cases?

Yours sincerely

M

James L.O. Tedder Hon. Sec.

PRESS RELEASE

As featured on the ABC's "Holiday" programme on Monday 12th April, Centrepoint Touring Company presents exciting Behind The Scenes Tours of four fabulous Sydney landmarks:

~ THE STATE THEATRE

See a prize winning Dobell, Australia's grandest 'loo', and the Great Koh-I-Nor (the world's second largest cut crystal chandelier). Find out exactly what the Butterfly Room, the Pompadour Room, and the Pioneer Room are, and what is so special about the great dome ceiling.



~ THE TOWN HALL ~

Hear about the ghosts who walk, see the Winking Lion, and the magnificent Mayoress and Public Rooms. Explore the vestibule originally designed to be the Town Hall itself and now restored to its former glory, revealing 43 different colours. Visit the Centennial Hall and view the commemorative shields and the grand organ with its unique 64 foot pedal stop!!



Hear how the monorail track was built while the city slept, and ride in a driverless train. Experience the sights of Sydney and wonder at the separating track on the Pyrmont Bridge. A seven minute guided walk via the Darling Harbour Convention Centre and the historic Woolsheds is included.



THE POWERHOUSE MUSEUM ~



Stories of success and innovation! Have an in depth look at Australia's greatest achievements as well as a nostalgic view of "the way we were". Visit the beautiful art deco Kings Cinema and view a silent movie. Take a fresh look at Australia in the 1950's, welcoming you back to the living rooms, kitchens and backyards where the baby boomers grew up.

Each guided tour includes a morning tea and delicious lunch in either the Centrepoint Tavern Restaurant or the Award Winning Revolving Restaurant in Sydney Tower.

> Special group rates available. For more information call Rom Grindley on (02) 231 4629 or fax (02) 231 5650.

To: EDO

From: NCEC c/- J. Tedder Phaneffax 065
Pavam Azc Phaneffax 065
690802

Date 15 June 1993

There are 3 pages including this one

Grateful if you would indicate whether the attached draft might be libellous If So what sections

MINDING MISTRALIA

ACF's councillors represent members in each state and territory, spearheading policy development and actively working to keep ACF members and the community informed about environment issues. It is the responsibility of councillors to develop the policies and goals which come together to achieve our successes and underwrite our future. "We assure you that your donation will be used effectively to mind Australia's environment."



SIMON NEVILLE, WA

Simon Neville has been involved in environmental activism since 1977, concentrating on Western Australian forestry issues relating to the woodchip industry, and the South Coast. As an active councillor for six years and Vice President for the last two, Simon tries to bring a national perspective to Western Australian campaigns and a WA perspective to ACF nationally.



JIM DOWNEY, QLD

Jim Downey is an active member of the environmental movement, working from Cairns with the ACF's Queensland office on issues surrounding energy policy, rainforest and coastal development, land clearing and sustainable agriculture. Queensland's rainforests and the Great Barrier Reef are still under threat from industry and require an ongoing commitment from ACF and its members.



ANNE-MARIE DELAHUNT, ACT

Anne-Marie Delahunt has been involved with ACF since 1987 and has a long standing commitment to issues such as forestry, Antarctica, tourism, the nuclear industry and the environmental impact of mining. These issues require constant vigilance by councillors and members in our national capital as well as throughout Australia.



ROB GELL, VIC

Rob Gell is a life member of ACF and has been an active and popular salesperson on environmental issues since the early '70s. He is particularly concerned with promoting Ecologically Sustainable Development to the business community and issues relating to coastal land use, planning and biodiversity. These issues remain vitally important for Victoria, requiring continued support from ACF.



PENNY FIGGIS, NSW

Penny Figgis has been an active environmentalist for over fifteen years, contributing over a broad area – particularly to the movement's political skills. Lobbying for strong environmental policies and laws remains vital in NSW. Currently water, with its vast implications for our cities, coasts and inland rivers is our major priority. A continued commitment from all members is vital to our success.



NELE FINDLAY, SA

Nele Findlay has been associated with the Adelaide branch of ACF since its beginning. Nele is working with the ACF's Adelaide office on a "greening local government campaign" and is also supporting ACF's work on issues such as arid zone catchment management, including World Heritage listing of the Lake Eyre region.



SUE JACKSON, NT

As a Vice President and ACF councillor, Sue Jackson has worked on a range of NT nature conservation issues such as the protection of National Parks and the prevention of species extinction in the arid zone. Sue has tried to ensure that issues in the more remote parts of Australia are brought to the attention of and acted upon by ACF staff, members, politicians, business leaders, unions and the broader public.



GEOFF LAW, TAS

Geoff Law was the ACF's State Co-ordinator in Tasmania for eight years, playing a major part in successful campaigns to protect major forest and wilderness areas and to stop the Wesley Vale pulp mill. Tasmania's wilderness and biodiversity are still under assault from the logging and mining industries and require ACF's ongoing commitment.

M/s Pam Allan MP Shadow Minister for Planning and Environment Parliament House Sydney

Dear M/s Allan,

Dogina

PRIVATE AND CONFIDENTIAL

On 31 January 1992 a delegation from this Council was received by you and Mr.Carr in your Parliamentary offices in Macquarie Street. We felt it was a productive meeting and you offered to bring your Environment Committee to the North Coast to view a number of issues and discuss with people working on the problems some of the issues.

This Council followed up with a letter on 3 February 1992 thanking you for seeing us and confirming the arrangements for a visit. On 4 April 1992 we sent a further letter reminding you of our interest in your suggestion but that also has not produced a reply.

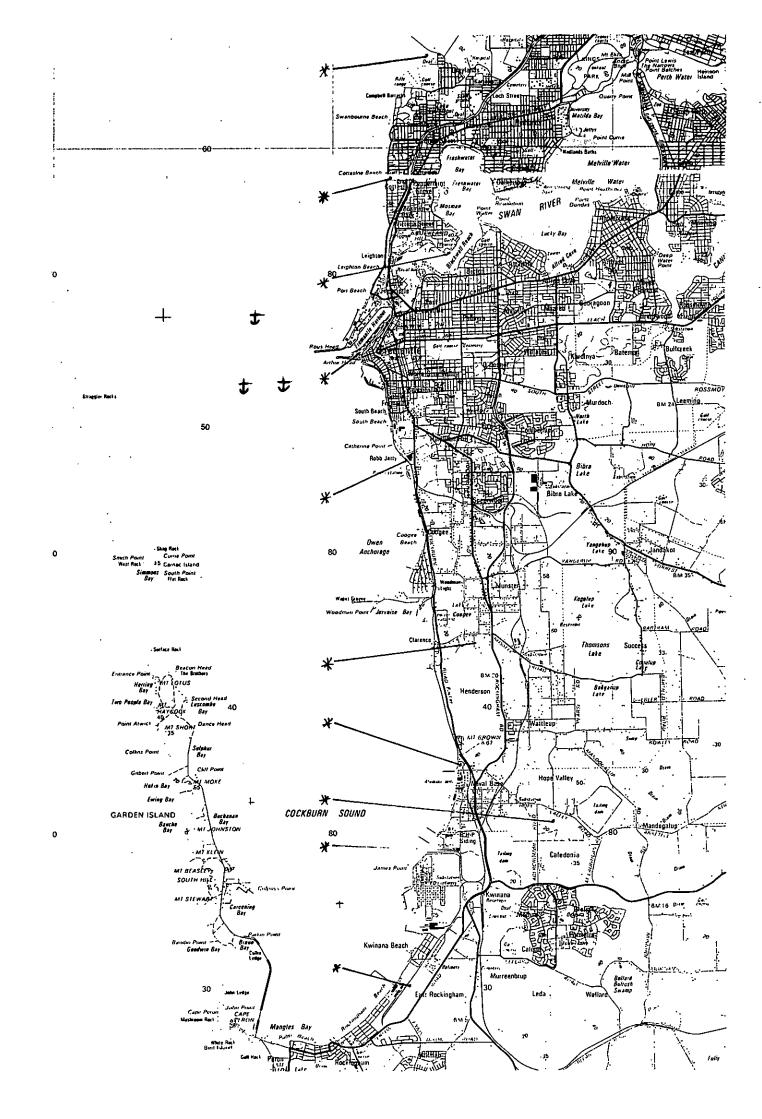
So it was with some surprise that the Council became aware of the news release issued by you on 18 May 1993 entitled OPM Inquiry Targets Green Public Servant. Our Council would be very interested from whence came the information on which your statement was based.

Over a period of four or more years this Council has been very concerned about the apparent mismanagement of Commonwealth funds made available through the National Rainforest Conservation Program initiated by Barry Cohen and Bob Carr then Ministers for the Environment in their respective Governments. Since early in 1988 it became obvious that National Rainforest Program funds were being misspent, some were being used without the necessary documentation, and many were being applied without regard to plans of management.

The Council attempted during 1988 to alert the Director of the Service to our concerns and have investigations made. We did not wish to go public on the matter as it would have damaged the public imagine of the Service already under attacks from a number of groups. Publicity of a scandal of mis-spent environmental funds would also have reflected badly on Ministers Cohen and Carr.

Eventually after insistence by this Council in February 1991 the Director of the Service requested an examination of our charges by the Audit Bureau of the State Treasury. That report indicated that our concerns were well founded and subsequently the Government appointed Deloitte Ross Tohmatsu to do a further investigation. This investigation revealed approval - the projects "blew out" by \$3.6 million - programs breached the joint Ministerial agreement on many occasions

- no financial audit was conducted on a yearly quarterly or monthly basis



- that several projects have little or no documentation Though there were serious errors, ommissions, and evidence of incompetence and mal administration in the NSW National Park Service handling of the NRFCP the Service decided that there was insufficent evidence to lay charges against any one officer. The person who was administering the Program for the whole State was the Northern Region Manager Mr. Martin and the reports reveal, in our opinion, dereliction of duties of most serious nature.

As another indication of why we consider your news release was inaccurate was in reference to the role played by Mr. Martin in the 1982 rainforest decision .We cannot of course who was with Mr.Martin when the Wran decision was announced for the rainforests, that Mr. Martin reacted with dismay. That hardly amounts to playing an important role in the decision. It was Mr.Peter Hitchcock who achieved so much in those early days ,often in the face of opposition and non cooperation from conservative officers in the Service.

The RAC Coastal Inquiry had an officer from the Northern Region on a committee to prepare a case study of three North Coast shires. This study omitted from the maps any reference to the World Heritage Site at Iluka which is a Nature Reserve in the Northern Region The implications of Commonwealth treaty obligations, such as the World Heritage Convention, for coastal zone management were not discussed and the experience of the Service in implementing this important treaty on the coast was completely overlooked. This is just another example of the apparent incompetence of the Northern Region .

In July 1992 our Council which you will recall has a membership of forty conservation bodies between the Tweed and the Great Lakes decided it could not stand by and see the passed the following resolution. It therefore unanimously that this Council has no confidence in the present Manager Mr.Martin is in our assessment (based on first hand experience and the reports of others experience) anti wilderness participation. He has proven himself to be predisposed to Relations between this Council and Mr Martin as the Regional development rather than conservation on many occasions. Manager had reached such a low point by early 1992 that we relations between the Northern Region and ourselves. With the personal attendance of the Director in order to "normalise" personal attendance of the Director (at the first meeting) resumed dialogue with the Region. The last two meetings held concern and issues which Mr.Martin had refused to acknowledge let alone address during the past three years.

Do you consider, that in light of the above that some of your

Do you consider, that in light of the above, that some of your information may have been wide of the mark?

Further any can be provided later

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EMERGENCY PLANNING ZONES

(REFERENCE: OPSMAN 1)

- 1. Emergency Planning Zones (EPZs) are designated around NPW berths and anchorages for planning purposes to assist in the identification of areas where hazards might arise and to ensure that appropriate protective actions can be taken promptly and effectively in the event of an accident:
- a. Zone 1 is an area close to the NPW within which protective measures will be implemented automatically upon notification of a reactor accident.
- b. Zone 2 represents the area at risk from inhalation hazards and includes Zone 1. The Zone boundary represents the limit at which it may be necessary to implement protective measures to prevent radiation doses from inhalation from exceeding the individual dose criteria.
- c. Zone 3 represents the area at risk with respect to ingestion hazards, ie foodstuffs, milk, water and agricultural contamination, and includes Zones 1 and 2.
- 2. The boundaries of Zones 2 and 3 will vary according to the severity of the accident and the prevailing meteorological conditions, and in practice will be determined by measurements of radiation and contamination levels.
- 3. Based upon the Reference Accident, the estimated maximum EPZ boundaries of berths and anchorages when used by NPWs up to 100 MW reactor power rating are:
- a. **Zone 1 600** metres,
- b. Zone 2 2.2 km.
- c. Zone 3 several kilometres.



Mr J Tedder Hon. Secretary North Coast Environment Council Pavans Road, Grassy Head via STUARTS POINT NSW 2441

1 0 MAR 1993

Dear Mr Tedder

LEGAL AID COMMISSION

I refer to your recent letter concerning funding of the Legal Aid Commission and the Commission's decision to revise the types of matters for which it will make legal aid available.

I am pleased to be able to inform you that in January of this year the NSW Government announced that the additional \$1.8 million requested by the Commission will be provided. This is further to an additional \$3.211 million which was provided to the Commission last year; \$1.8 million in the last budget and \$1.411 million in December. The most recently announced funding increase of \$1.8 million was required by the Commission to enable it to carry out the NSW Government's court delay reduction program.

The Government has also recently announced that the Legal Aid Commission has been granted a pay-roll tax exemption which will result in savings of between \$1.2 million and \$1.4 million per annum. The Commission will be expected to operate within the budget which is provided to it jointly by the Commonwealth and NSW Governments and as has now been supplemented.

However, as you are no doubt aware the former NSW Auditor General Mr Ken Robson and the Solicitor for Public Prosecutions Mr Steve O'Connor have recently completed a review of the operations of the Commission and prepared a report entitled "Report into certain issues relating to the Legal Aid Commission of NSW". The recommendations arising out of that review are currently being considered by the Government.

The Report has been widely distributed for comment. If you would like to receive a copy of the Report please contact Mr Ross Drinnan of my office on 228 8188. Your comments on the Report are welcome. The Government will announce its proposal for implementation of the recommendations following detailed consideration of submissions.

1 Copyrite

In the Report Messrs Robson and O'Connor say that the financial problems faced by the Commission can not be resolved by simply providing additional funding to the Commission. There are structural and management problems within Commission which must also be addressed.

Future funding of the Commission will be examined by Government having regard to demand for services and the reforms which are to be made to the Commission following the Report.

As to the Commission's decision to revise the types of matters for which legal aid will be available I note that pursuant to the Legal Aid Commission Act 1979 it is a function of the Commission to make such determinations. I have no power to direct the Commission how it will carry out its functions. The Commission's decision to revise the types of matters for which legal aid will be available was made in recognition of responsibility to use taxpayers funds in the appropriate and efficient way. The Commission has informed me that it has established a task force to review the impact of the revised policies and to examine the re-establishment of legal aid for civil matters. Consultation with interested persons and organisations will occur as part of the review.

Enclosed is a copy of my press release dated 2nd March 1993 which might be of interest to you.

Thank you for expressing your concerns in relation to this important issue. Please be assured that the Government maintains its commitment to the provision of legal aid to the community and your comments will be borne in mind during the consideration of the issues presently relevant Commission's operations.

Yours faithfully

The Hon John P Hannaford MLC

Attorney General



93/017

2 March 1993

ATTORNEY GENERAL WELCOMES LEGAL AID COMMISSION'S DECISION TO EXAMINE RE-ESTABLISHMENT OF LEGAL AID FOR CIVIL MATTERS

NSW Attorney General, John Hannaford, today welcomed the NSW Legal Aid Commission's decision to examine the re-establishment of legal aid for civil matters.

"I welcome the Commission's decision to create a task force to review the impact of their decision in December to curtail the availability of legal aid for civil matters," Mr Hannaford said.

"The Government is keen to work with the task force which will examine any options available to re-establish a Commission involvement in civil matters.

"The Commission has also informed me they will be seeking advice from a large accounting firm regarding the adequacy of their existing financial management and budgeting systems, and how any identified deficiencies can be expeditiously addressed.

"The Commission has also had its funding enhanced by between \$1.2M and \$1.4M per annum which has come the Commission's way through the Minister for Finance's decision to grant an exemption to the Commission for pay-roll tax.

"I was notified of this by the Finance Minister, George Souris, following representations I made to him on the Commission's behalf.

"This is a considerable funding windfall for the Commission.

"The Commission has also agreed to consider participating in a pilot project to be carried out at Bankstown Local Court.

"The pilot project is a serious attempt by the Government to expedite criminal hearings, thereby reducing its costliness and increasing accessibility to it.

"The pilot project will make legal aid available, to all applicants satisfying the Commission's means test, for all committal hearings listed at the Court.

"It is the Government's desire that legal aid will be extended to all committal hearings throughout the State.

"The Commission will be liaising with the Director of Public Prosecutions and the Solicitor for Public Prosecutions about arrangements for the Commission's participation.

"Unfortunately, the Government is not a bottomless well and financial restraint is a reality of these depressed times.

"I am pleased the Commission has adopted such a positive approach to its concerns.

"The Government is keen to co-operate with the Commission in order to improve accessibility to the law and to further the benefits of the Commission."

Enquiries: Robyn Ronai ph (02) 228 8188

TOTAL ENVIRONMENT CENTRE INC.

SHOP 1, GLOUCESTER WALK, 88 CUMBERLAND STREET, SYDNEY, N.S.W. 2000 Phones (02) 247 4714 - (02) 247 8476 Fax (02) 247 7118



18 January 1993

Dear friends,

No legal aid for environment court cases

Fundamental civil rights and environment protection are under attack. The Legal Aid Commission has cut funding for virtually all civil cases, because of a crisis brought about by the NSW Government which has starved the Commission of funds.

This means that you or your group, (unless you are very rich), will no longer be able to use your legal rights to protect yourself and the community in the areas of:

- civil liberties matters such as false imprisonment, assaults by police officers;
- environmental matters, planning, toxic and hazardous chemical and health issues;
- product liability cases, for example the Dalkon Shield.

The environmental movement has won important public interest cases in the Land and Environment Court ensuring that environment protection laws are followed; the rights to public involvement in decisions are enforced and injunctions obtained stopping environmental damage.

This will no longer be possible as the vast bulk of community groups and their members do not have the extensive funds that developers and government agencies have, to go to court:

The decision to cut funds is also economic nonsense as the vast majority of environmental cases have been won by community groups and the Legal Aid Commission gets its money back from the losing side.

The Environmental Defenders Officers may also be crippled as it too depends on legal aid with which to prosecute public interest cases.

This attack on legal aid is consistent with the NSW Government's attempt to remove environment protection and third party rights; and override the results of successful green court actions in its recent Natural Resources Package.

We must act to protect legal aid, civil rights and environment protection.

Please send an urgent letter to the:

Hon John Hannaford, Attorney-General, Parliament House, Macquarie St, Sydney 2000

objecting to the Government's moves and urging restitution of funds owing to the Legal Aid Commission. Further there needs to be an increase in its budget to meet the extra needs imposed by stricter environment protection laws and enhanced third party rights enacted by Parliament over recent years.

Yours faithfully,

Jeff Angel

CoDirector

Hon. John Hannaford Attorney General Parliament House Macquarie St. Sydney 2000

Dear Minister,

Legal Aid Funding for Civil Actions

Our Council is very concerned that funds for nearly all civil actions have been cut by the Legal Aid Commission due to a funding crisis.

We believe that this funding crisis has been brought about by the Government.

The matter is extremely serious as legal aid is the only way the small person or organisation has to challenge the might of large business or governments because the cost of redress in the Courts has been permitted by Governments to esculate beyond the average citizen. If the Government does not wish to interfer with the self regulating and pricing policy of the legal profession and temper Court costs there must be legal aid.

Much political talk centres on the environmental organisations receiving legal aid to stop developments but the truth is that most of the cases taken under legal aid are won by the environment group and costs are recovered by legal aid.

But many of the other cases taken under legal aid are very important cases of community concern eg., product liability cases, matters of civil liberty, public health issues. It should not be the role of one small section of the community to not only take the case to court but also to raise funds to meet the legal costs when the outcome is of much wider community concern.

Will you argue for a restitution of funds to the Legal Aid Commission and seek an increase as there are extra needs imposed by stricter environmental laws enacted by your Government ?

Yours faithfully

James E.O. Tedder Hon. Sec.

1 Feb 93

TOTAL ENVIRONMENT CENTRE INC.

18 ARGYLE STREET, SYDNEY N.S.W. 2000 Phones (02) 247 4714 — 241 2523 Fax (02) 247 7118



4th June, 1991.

Mr James Tedder Hon Secretary North Coast Environment Council Pavans Road GRASSY HEAD, via STUARTS POINT, 2441

Dear Jim,

TEC has been running a series of one day seminar/workshops on winning local government elections. They followed our three successful conferences for environmental campaigners.

We were surprised to uncover a ground swell of conservation groups attempting to elect a majority of pro-conservation councillors. They see this as the only way to control many development decisions particularly under a NSW Government which says local government is to make all its own planning decisions (except those decisions with which the National Party disagrees).

We have had an enthusiastic response from those attending these seminars. In most cases they have substantially amended their proposed strategies as a result.

So far seminars have been held in -

Sydney
Blue mountains
Moruya (for Bega Queanbeyan, Shoalhaven, Eurobodalla)
Kiama

Speakers have usually included:

Ros Baxter (Alderman and former Mayor, Lane Cove)

Mark Baxter (from Residents & Friends of Manly, perhaps the most successful group yet electorally)

Herbert Beauchamp (from TEC's Management Committee)

Judy Messer, NCC Chairperson

Local conservationists and sometimes myself.

As you know, local government elections are to take place in mid-September this year.

If your local groups would like us to put on one of these seminars, then Sunday the 14th or 7th of July would suit TEC. There would have



C/- J. TEDDER
PAVANS RD., GRASSY HEAD,
via STUARTS POINT. 2441
(065) 69 .0802

13 January 1993

10 Tim Robertson.
02 2216036 Fax

From Janes Tedder

Thought the attached letter from EPA to Nambucca Shire may help indicate an attitude to environmental protection which board prove useful in any court action.

No. of pages including this one - 3

9 Apr 92

Bruce Woolf & Associates 10th floor 82 Elizabeth St. SYDNEY 2000

Dear Sirs

Some little time ago this Council addressed the Government over the issue of legal aid following advice received from the Environmental Defenders Office about September 1991.

Copies of the correspondence which resulted are attached. We had another letter recently from the Attorney Generals Department which is also enclosed.

We understand that the guidelines for the grant of legal aid difficult to meet the conditions.

You will note that the questions we asked in our letter of 2 September were never answered.

Would your office be prepared to take up this matter of lega aid with the Law Society?

Yours sincerely

James L.O.Tedder Hon.Sec.

M/s N.Paine Environmental Defenders Office Suite 82 280 Pitt St SYDNEY 2000

Dear Nicola,

Some little time ago this Council addressed the Government over the issue of legal aid following advice received from your office about September 1991.

Copies of the correspondence which resulted are attached. We have had another letter recently from the Attorney Generals Department which is also enclosed.

We understand that the guidelines for the grant of legal aid have been substantially changed and that it will be more difficult to meet the conditions.

You will note that the questions we asked in our letter of 23 September were never answered.

Would your office be prepared to take up this matter of legal aid with the Law Society?

Yours sincerely

James J.O. Tedder Hon. Sec.



C/- J. TEDDER
PAVANS RD., GRASSY HEAD,
via STUARTS POINT. 2441
(065),69 0802

5 April 1997

Dear Member

BEFORE

20 APRIL

The difficulties that the steering committee have had in organising the Vision or Search Conference for 22-25 April were discussed at the Council meeting held at Bundagen on 4 April.

Lack of papers and ideas from Members, pressure of work arising from the Timber Industry (Interim Protection) Act, new work loads for other members and personal reasons severely constrained the planning process. Rather than go off in a half baked manner the Council decided to try a different approach.

There will be a one day workshop at Bundagen on 25 April commencing at 1000 hours and finishing at 1800 hours after which there will be a social gathering with bring your own. If people wish to camp overnight that will be possible

The theme of the workshop will be to draw up a policy framework and strategy for writing policies, deciding what policies we need and designing the main Vision Conference which will be held at a later date. This workshop will be the base for the main conference and it is essential that we have a full attendance with active participation to ensure that our time is used productively

Bundagen people have agreed to provide lunch and an evening meal for a small charge. It is possible there will be some music from local bands and this may involve a small charge.

See you there on 25th and please return the tear off or phone

James L.O. Tedder Hon. Sec.

Name Organisation Phone
Lunch Yes/No Evening Meal Yes/No Social Yes/No
Return to: L.Orrego or phone:

Macksville Rd
BOWRAVILLE 2449 065 647 478



Attorney General's Department

Mr J L O Tedder Hon Secretary North Coast Environment Council Pavans Road **Grassy Head** via STUART'S POINT NSW Goodsell Building 8-12 Chifley Square, Sydney Box 6, G.P.O., Sydney, N.S.W. 2001 DX No.: 1227

Fax: 233 1860 91/5060
Telegram: "Crownlaw A McConnachie

Our reference:

Your reference:

Telephone: 228 7777

Extension:

87594

26 FEB 1992

Dear Mr Tedder

The Attorney General has asked me to reply to your letter concerning the availability of legal aid in environmental matters.

Contrary to the Council's understanding, the Legal Aid Commission has not been directed to cut legal aid funding in environmental matters. The Legal Aid Commission has been asked to make savings in line with budget measures being taken across the entire public The Commission is expected to achieve savings of \$2.9 million. However, discussions have been held with the Law Society to ensure that any shortfall in funds for legal aid will be met from the Statutory Interest Account which comprises interest from solicitors' trust account moneys deposited with the The net effect will be that the current level of funding for legal aid will remain unchanged.

this year a Ministerial Advisory Committee was established to investigate the use of legal aid in environmental matters. The Committee has now examined the maximum use that can be made of the limited legal aid money available in order to ensure the fair allocation of aid resources between competing areas of demand for legal aid services, and has recommended that there be no change in present levels of funding in environmental matters. I support the Committee's decision.

also note that the Commission has reviewed its policies relating to the availability of legal aid for environmental matters and adopted comprehensive new policies which have applied `since 1 July 1991.

The new policies ensure the continued availability of legal aid for environmental matters subject to the Commission's merit test, means test and certain guidelines. The guidelines include factors that are taken into account in determining whether or not legal aid should be made available such as the existence of a substantial public interest, the likely cost to the Commission of the proceedings and the availability of financial support from those members of the community who would be likely to support the aims of a group seeking a grant of aid.

Yours faithfully

for Director General

Bruce

In reply please quote: 52847/pcr

Mr J L O Tedder Hon Secretary North Coast Environment Council Inc Pavans Road GRASSY HEAD via STUARTS POINT NSW 2441



25 SEP 1991

Dear Mr Tedder,

I refer to your letter of 23 September 1991 regarding the Ministerial Committee on legal aid guidelines.

The Ministerial Committee has been formed to review the legal aid guidelines. If the North Coast Environment Council would like to make a submission to the Committee on the use of legal aid, then I would be happy to refer that submission to the Committee.

The Committee has not met to date but I would be happy to put to the Committee your request that they meet with the NCEC.

Yours sincerely,

TIM MOORE, MP

Minister for the Environment

Fax fa. S. CORKILL

INC

23/9/91.

Hon. J.P. Hannaford, Minister for Health & Community Services, North Sydney. 2062:

Dear Sir.

Legal Aid Commission

We address you in your capacity as a member of the Attorney General's Ministerial Advisory Council on the issue of legal aid for matters before the Land & Environment Court.

This Council understands that Government is asking the Commission to cut \$500,000 from the budget of the Commission on issues brought before the Land & Environment Court.

If this direction is correct why is this ressure necessary?

How many cases receiving local aid been taken before the L.& R. Court in the past three years?

Of these cases how many have resulted in damages being avarded against the recipient of legal aid?

What was the total of these costs?

Of those cases where the decision was in favour of the recipient of legal aid, how many were lost by

Government departments
Local Councils
Developers?

What were the total costs awarded against each of these categories?

We believe that legal aid is granted only in cases where

a) there is a significant, public interest at stake

b) there is likely to be a significant impact upon the environment

c) where there is a strong cuso

d) where applicants make a contribution.

Your Government espouses honest economical government with the best possible result for the people. Do you not consider Legal Aid applied in the method at present in use ensures these principles?

For John Corkill

fax 247 5945

27 NOV 91

From James Tedder

Questions sent to Hannaford and Moore re Legal Aid

"This Council understands that Government is asking the Commission to cut \$500,000 from the budget of the Commission on issues brought before the Land and Environment Court

If this is correct why is this measure necessary

How many cases receiving legal aid have been taken before the L & E Court in the past three years?

Of these cases how many have resulted in damages being awarded against the recipient of legal aid ?

What was the total of these costs

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- Local Councils

- developers ?
What were the total costs awarded against each of these categories ?

We believe that legal aid is granted only in cases where a) there is a significant public interest at stake b) there is likely to be a significant impact upon the environment

c) where there is a strong cased) where applicants make a contribution

Your Government espouses honest economical government with the best possible result for the people. Do you not consider Legal Aid applied in the method at present in use ensures these principles ?

Moore replied that he would be happy to put a submission from the Council to the Cttee. I replied that we would like answers to the questions before we could make a submission. No reply to date. Hannaford forwarded our letter to the AG

Regards

Mauri Grocery Pty. Limited

15 Grand Avenue Camellia, N.S.W. 2142 P.O. Box 22, Granville N.S.W. 2142 Australia Telephone: (021 684 4000 Fax. (02) 638 2421 Telex: 120326 MFDHO

Our Ref: ML:ce/239

11th November '91

Mr. J.L.O. Tedder,
"Wainoni"

Pavans Road, Grassy Head,

Via STUARTS POINT

I.S.W. _2441

Dear Mr. Tedder.

Thank you for your letter of October 30, regarding the replacement of This Dribarm with Winn Easybake.

-184 - 1 4

I was gratified to learn that you have used Dribarm with success for some 40 years.

Both Dribarm and Easybake are mixes of yeast and bread improvers. The difference being that Easybake contains more yeast and a different type of bread improver. However, in both cases the improver contains sugar, malt, flour and natural enzymes. It is the relative proportion of these components that is different.

I understand your reluctance to buy the new product, but it became un-vectonomical for us to produce two products when one would do the job. We chose Easybake because it is superior.

They say the proof of the pudding is in the eating and I'm sure the same goes for bread. Please accept the enclosed tin of Winn Easybake so that you may try it for yourself.

Wishing you success with your bread making activities.

Yours sincerely,

MARTIN LANCASTER PRODUCT MANAGER

Encl:

2 Oct 91

Hon.T.Moore Minister for the Environment Sydney.

Dear Minister,

LEGAL AID COMMISSION

Thank you for your reply 52847/pcr of 25 September on the question of legal aid.

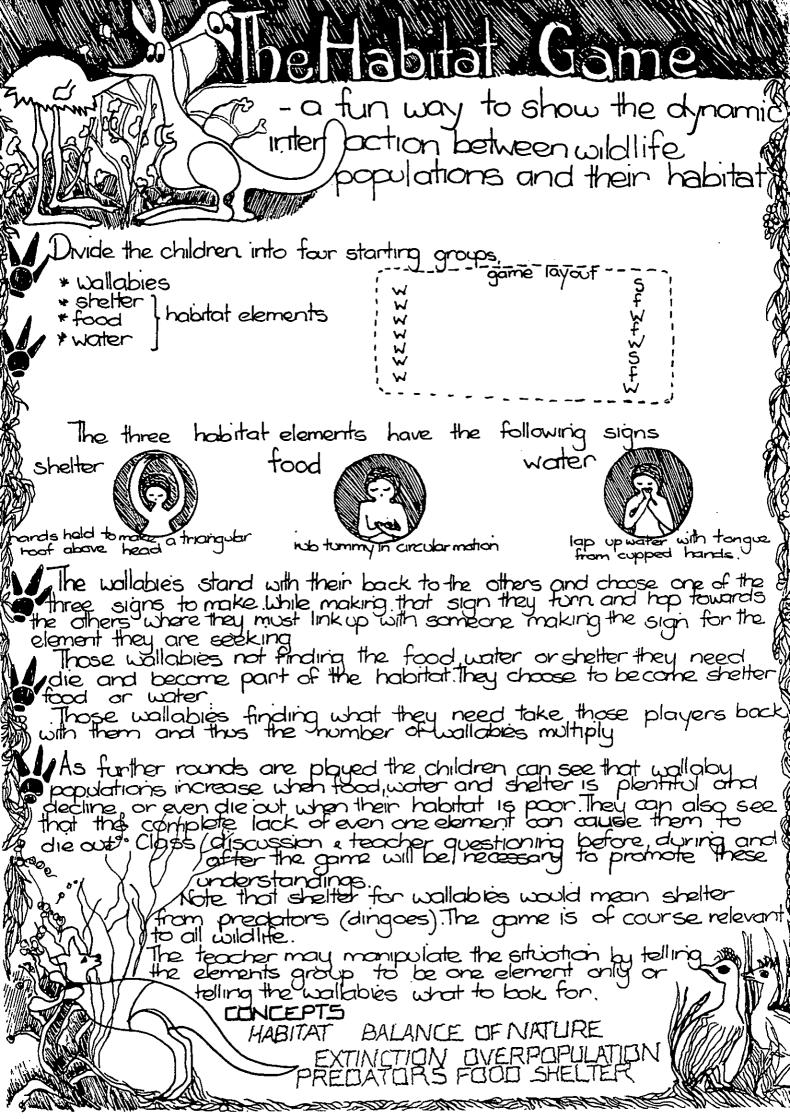
This Council would be pleased to make a submission to the Ministerial Committee but it would appreciate receiving the statistics requested in our letter of 23 September in order to make the submission relevant.

We have made this request direct to you as we understand the Legal Aid Commission has refused to release such information.

Yours sincerely

James L.O.Tedder Hon.Sec.

Monday of the STAN





26 September 1991

Mr J Tedder Pavans Road Grassy Head VIA STUARTS POINT NSW 2441

Dear Mr Tedder,

Mr Hannaford has asked me to acknowledge your unsigned letter concerning the Legal Aid Commission.

Your correspondence has been forwarded to the Attorney-General who is responsible for the Legal Aid Commission.

Yours sincerely,

Catherine Carter

Assistant Private Secretary

Environmental Defender's Office Ltd

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney

TEL: (02) 261 3599 N

FAX: (02) 267 7548

Jim Tedder

North Coast Environment Council,

Pavans Rd

Grassy Head 2441

Dear Jim.

Sust a note to led you know we are both in Sydney after a great series of meetings and to thank you for lunch. We look forward to bette communications with North loosed groups and invite your suggestions about the mechanism for a relunch. It seems like it might be a lase burden to place on the NCEC to soutail all North loosed groups; herbaks we should send maleial diest to some regional centres; for example Big Scrub, Caldera, Coffo Habour Enwonment Centres?

Do drop in it you has though Sydney.

James

OPPOSE CUTS TO LEGAL AID FOR THE ENVIRONMENT

The government has directed the Legal Aid Commission to cut \$500,000.00 from legal aid available to people bringing matters before the Land & Environment Court of NSW.

The Environmental Defender's Office relies directly and indirectly on funding from the NSW Legal Aid Commission to provide:

- free legal advice to groups, individuals, the community and government(?)
- research
- education
- low cost legal representation for public interest matters.

The following is some background information to assist you in preparing any submissions you may wish to make to the Attorney-General, Peter Collins MP, the members of his Ministerial Advisory Council (Moore, Hannaford, Webster) and the media.

Legal Framework

There are two types of cases where legal aid can be granted to bring cases to the Land & Environment Court.

1. Designated development

Developments are designated because they involve industries such as chemical factories and mining or places like rainforest where there will be major impacts on the environment. Onlythe most major developments with the highest likelihood of impact on the environment are subject to decision by the court.

2. Judicial review

The Land & Environment Court is the court with jurisdiction to hear appeals against breaches of environmental laws. These are often challenges to local government or government departments for failure to comply with the law.

Legal aid

Legal aid is only available for environmental matters where there is a significant public interest at stake meriting assistance. The Commission has established an Environmental Consultative Sub-committee of experts on environmental law and the environment to decide when to grant aid. The Committee considers the impact on the environment, the scarcity of the particular environment, its value to the community, community interests that may be affected and theprojected public economic benefit ofthe activity. Committee also considers the likely cost to the Commission and whether mediation is appropriate. There is a means test and contributions are regularly required from applicants.

Legal Aid in Practice

In practice it is very hard to satisfy the criteria in the grant of legal aid for environmental matters. Some examples where legal aid has been granted include:

- 1. Lump sum grant of \$6,000 to the Myall Koala & Environmental Support Group. This challenge was to a council's decision to allow a boat ramp in area of designated wetland. The Court roundly criticised the council's original decision on the basis of failure to demonstrate need, environmental effect and environmental consequences. The Department of Planning had failed to exercise a proper supervisory role. This is but one example of the type of cases that Mr Collins says "should have been settled at local government level". The fact is local government sometimes needs supervisory proceedings in the Land & Environment Court to ensure that the public interest is taken account of and given weight alongside local council interest.
- 2. Legal aid was granted to Wendy Jarasius to challenge a decision by the Forestry Commission that logging in the south-east forest was not "an activity likely to have a significant effect on the environment". The Court held that this decision was so unreasonable that no reasonable authority could have made it. It is most important that breaches of the law be subjected to challenge even though this might be unpalatable to some government departments. Government is not above the law. Principles established by cases like this have helped to ensure better government.

The planning system in New South Wales was endorsed by a report prepared for the Commonwealth Department of Industry Technology & Commerce in 1990. It can only be effective where resources are provided in appropriate cases to bring such actions.

These are some common questions:

Q: Does the Legal Aid Commission fund any conservation group?.

A: The Legal Aid Commission only funds those cases which have a major public interest where an important environment is being affected and where there are prospects for success of a challenge. Many applications are rejected.

Q: Don't you only have to get a pensioner to apply to get around the means test?

A: A means test is only one arm of a test to obtain legal aid. Public interest criteria has to be met first. Substantial contributions of \$1,000 - \$2,000 can be requested by the Commission from an applicant, depending on their income.

Q: What about protesters defending their criminal charges?

A: These are not environmental matters. These are criminal matters dealt with by a different section of the Legal Aid Commission. Legal aid in environmental matters enables actions to be brought where no one person will benefit.

Action If you want:

- inappropriate development modified or stopped
- environmental laws of NSW upheld
- proper decision-making processes to be followed by government
- 1. Write and urge that the provision of legal aid in Land & Environment Court matters be increased not cut.
- 2. Send a copy to Environmental Defender's Office, 280 Pitt Street, SYDNEY NSW 2000 Tel: 02/261 3599 Fax: 02/267 7548

Environmental Defender's Office Ltd

Our Ref: JJ

Suite 82, Lincoln House 280 Pitt Street Sydney 2000 Australia DX: 722 Sydney

3 June 1991

TEL: (02) 261 3599

FAX: (02) 267 7548

Dear Colleague

Just a short note to let you know a little about the Environmental Defender's Office and to ask how we could help your group to address environmental issues in your area.

The Environmental Defender's Office is a non-profit community legal centre which specialises in environmental law. It gives advice to individuals and groups wishing to conserve, protect, enhance or promote the built or natural environment and in a small number of cases conducts litigation on environmental issues.

The office is a non-profit organisation and currently employs four solicitors full-time, a conference organiser part-time, an administrator and some part-time secretarial assistance. It also relies on many hours of volunteer work from law students and practitioners who research and prepare cases for the office.

The office is the only one of its kind in New South Wales and until recently was the only office of its kind in Australia. EDOs have recently been set up in Melbourne and funding is being sought for an office in Brisbane. We are hoping that other States will follow.

Unfortunately, because we are based in Sydney and because of the sheer number of inquiries (currently running at about 120 per month) we have been unable to get around and see first hand the major environmental issues in each region and meet the people who are battling to deal with them.

We would like to visit your region in the next few months and would appreciate some feedback from your group and/or any interested individuals to help us identify the various environmental issues and associated legal problems which arise in each area. We would be pleased to hear from you if you consider it would be beneficial for members of our office to visit your area to address interested groups and to discuss legal aspects of the major areas of concern.

We have set out below some questions which might help guide your response:

- 1. What are the major local environmental issues?
- What legal problems have arisen in trying to deal with these issues?
- 3. What sources of help do you have in the area? Please give us some idea of legal help, for example local solicitors sympathetic to environmental matters and other support provided by local environmental organisations.
- 4. Have you heard of the EDO before? If so have you contacted the EDO for advice? Were you happy with the response?
- 5. What would you like the EDO to do, if anything, in a visit to your area? Suggestions include addressing the public and conservation groups on
- * environmental law,
- * the role of the Environmental Defender's Office,
- * the Legal Aid Commission and the criteria for obtaining legal aid in public interest environmental matters
- * the Land and Environment Court and the various types of actions that can be brought,
- * evidence and how to gather it,
- * recent developments in the law,
- * the law as it affects land-holders and
- * the pros and cons of mediation.

Please raise this for discussion at your next group meeting. We hope to have all responses in by the end of June and to hit the road sometime in July. This will be a "no frills" tour and we hope that your group, if you see some benefit in having someone from our office come, could arrange somewhere to sleep, organise a venue for any meeting and notify the people of your area that a visit will take place.

We look forward to hearing from you.

Yours faithfully Environmental Defender's Office Ltd

James Johnson

James Johnson

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And the state of t

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C/- J. TEDDER
PAVANS RD., GRASSY HEAD,
via STUARTS POINT. 2441
(005) 69 0002

6 hard 91

Letter to Editor

Sir,

Recent media reports claim that the Premier would wish to see the powers of the Land and Environment Court constrained .He is reported as claiming that the Judges have too much power and the Court is making decisions which should be the province of the Government.To what is the Premier referring?

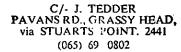
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A conservation organisation recently successfully challenged the Great Lakes Council, following a decision by the Council to permit the building of a car park and boat ramp-within a wetland. The Court found that such a decision would damage the wetlands. There is a Government policy (State Environmental Planning Policy No.14 for the protection of wetlands) that wetlands should be protected for their value as fish habitat, and that alternatives to the proposed action had not been seriously considered by the Council and that the Director of Planning was at fault in approving the development contrary to Government policy.

The Land and Environment Court is there to uphold the law and it is within the power of any person to take an action within this Court if they consider that the law is being held in contempt. It is a valuable tool for democratic government and should be protected by all who support our democracy.

Yours faithfully

James L.O. Tedder Hon. Sec.





Letter to Editor

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•OUNCIL

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Groups	\$100 per annum
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Environmental	Defender's Office
3rd floor	
142 Clarence St	•
Sydney NSV	
Telephone 29	8154
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Hawthorn, 3122	•
"I prefer that the	his donation be spent for the
purposes of the	
Signed	
Name	
Address	·
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The EDO is managed by a Board of Management Environmental which includes practising and academic lawyers, Defender's Office a town planner and architect, a forester and an economist/environmental consultant. 3rd Floor 142 Clarence Street Sydney NSW 2000 Ph: (02) 29-8154 261 3599

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Law 6972241 Cl 4d 579.1636 Enclosed Lands Act may have defence under that legislation breaking locks breach commal act attention to the lock no - no problem of climb over gate - no beal mean to face amil to copat and. - Crown Lands - Defr & L. G. - presoure. - Tolice & press Here When. freak lock - bry prosure and

Environmental Defender's Office, Sydney.

Dear Defenders,

Our Council has been approached about a problem of locked gates on what is apparently a council road. As this road is a way into the wilderness areas of New England National Park we are concerned to see that legal access does remain and that such roads if public, are not locked.

Ataached are a number of documents

- situation of the road
- Lands Office letter 6 May to Kempsey Council
- Lands Office letter 8 May to Kempsey Council
- map showing Crown road and ac65al road
- map of Villiers property
- map cadastgml of Villiers land
- map cadastral of other owners
- Lands Office letter 19 May to Kempsey Council with map
- -Inclosed Lands Protection Act 1901

According to Council information the Fige Day Creek Road ends at Five Day Lodge.

The road upstgram was made by the sawmill and consequently maintained by Council to a point 34 km from TR 75 (Armidale/Kempsey) road intersection.

Whites purchased their property and locked the gate 22 km

from TR75.

White only permits people of his own choosing to travel north of this gate. Others living upstream have allowed him to be the gatekeeper.

Villiers property has only Crown Reserve Roads and according to Lands Department should not deny access.

Can the Inclosed Lands Protection Act be used to cross Whites land to link with Villiers? The paper road on Whites block cannot be travelled by vehicle.

We believe that Whites reason for locking the gate was to prevent marihuana growers from carrying out their illegal activities further up.

How much will this query cost?

Yours sincerely,

J.L.O.Tedder, Hon.Sec.

1B Short Street
WEST KEMPSEY NSW 2440

27th August 1987

Mr J Tedder Pavans Road GRASSY HEADS NSW 2440

Dear Jim

INCLOSED LANDS PROTECTION ACT, 1901

Attached are copies of maps, legislation and opinions.

In brief:- Five Day Creek Road ends at Five Day Lodge - Miriwinni Gardens on the 1:25000.

The road upstream from that point was made by the Mill and subsequently maintained by Council to a point 34 kilometres from TR75 intersection.

Mr White purchased his property and has locked the gate at a point 22 kilometres from TR75.

Mr White only permits travel to people of his choosing from the gate upstream. Others who live upstream let him be the gatekeeper.

Mr Villiers' property according to Lands has only Crown Reserve Roads and he should not deny access.

Question: - Can the Inclosed Lands Protection Act be used to get across Mr White's property to link with Mr Villier's?

The Paper Road on Mr White's block cannot be travelled by vehicle.

Should you need any more details don't hesitate to ask.

Yours faithfully

Mr T I Hannam

Noke: Council does not seem keen to passe the matter, but in the Public Interest it would be nice to know how for Mr. While can go with his control over access.

Environmental Defender's Office Ltd.

Your Ref.:

Our Ref.:

Date: 8-12-86

3rd'Floor 142'Clarence St, SYDNEY'NSW'2000 Ph.'(02)292869 298154 Dx 722 Sydney''

Bear Friend

I'd like to draw your attention to a couple of matters in the enclosed December edition of our newsletter, IMPACT.

Firstly, the E.D.O. is holding its Christmas function next Sunday 14th December. (See page 6 for further details) This is a chance for staff, Friends and others involved with the E.D.O. (and their friends and families) to come together in the relaxed atmosphere of part of the natural environment near Sydney. I hope you are able to join us.

Secondly, you will notice that on the back page (under the ominous title "SUBSCRIPTION TIME") there is a piea for all Friends of the E.D.O. to renew your membership for 1987. He don't like continually asking for money but unfortunately, as we are an underfunded community organisation, we must do so if we are to keep on providing our service to you and other concerned members of the public. Our workload has increased dramatically over the past year, as more and more people are finding out about the E.D.O. Correspondingly, our running costs have skyrocketed. He now employ two fulltime solicitors (see page 6) and the more enquiries we handle, the more Telecom, flustralia Post, and the suppliers of our photocopying paper and other office necessities love to send us bills. So please, think of the E.D.O. while you're doing your Christmas shopping and send us your subscription as a Friend of the E.D.O. for 1987.

With best wishes for Christmas and the New Year,

Andrew Large

Andrew Langley, Principal Solicitor

I wish to:	X	
(a) become a Friend of the EDO		
Name	The EDO is managed by a Board of Management which includes practising and academic lawyers,	Environmental
Name	a town planner and architect, a forester and an	
Address	economist/environmental consultant.	Defender's
ni .	3rd Floor	Office
Phone	142 Clarence Street	
Regular \$ 30 per annum	Sydney NSW 2000	
Concession S 15 per annum Groups S 100 per annum	Ph: (02) 29 8154	
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Donation \$100 \$200		
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3rd floor 142 Clarence Street		Long
Sydney NSW 2000		
Telephone 29 8154		
		
(b) make a Tax Deductable Donation		
through the ACF		
Please make your cheque payable to the		
Australian Conservation Foundation, sign the		
statement of preferance below and post this form to the Australian Conservation		
Foundation, 672b Glenferrie Road,		
Hawthorn, 3122.		
"I prefer that this donation be spent for the		
purposes of the EDO."		
Signed		
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The environment needs friends to defend it... Why not join us now and become a Friend of the EDO

Environmental Defender's Office Ltd.

Your Ref.:

Our Ref.:

Date: 30 July 1986

3rd Floor 142 Clarence St. Sydney NSW 2000 Ph. (02) 292869

North Coast Environment Council Pavans Road Grassy Head via Stuarts Point.

Dear Members of Environment Council,

Thank you for becoming a Friend of the EDO.

The EDO is young, enthusiastic and ready to help the community in defending the environment, but we need the support of the community. By becoming a Friend of the EDO you have given us that much needed support for which we are extremely grateful.

I enclose a copy of our current quarterly newsletter Impact and will be forwarding our future newsletters and also our Annual Report when they become available.

The EDO appreciates your support and we ask you to talk to your friends and acquaintances and urge them to become a Friend of the EDO. Please find enclosed some extra membership forms for your use.

Thank you for your support.

J. PRESTON

Fincipal Solicitor.

enc:

Environmental Defender's Office Ltd.

Your Ref.:

Our Ref.:

Date: 19 November 1985.

3rd Floor 142 Clarence St., SYDNEY N S.W.2000 Telephone (02)298154.

Dear North Coart Environ med Council:

Please find enclosed a number of leaflets about the Environmental Defender's Office.

The EDO has only recently been established and public awareness of the Office is still growing. Therefore, we would be grateful if you would consider either joining as a group member or encourage some of your members to join individually.

I have enclosed additional copies for display or distribution. Please contact the Office if you require further brochures.

I am sure you will consider becoming a Friend of the EDO and we look forward to hearing from you. Please complete the membership form, attached to the brochure and return to the EDO.

Yours sincerely,

Maske Taylor

KATE TAYLOR

Co-ordinator.

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	Friend of the EDO
Name	
Address	
	Phone
Regular Concession Groups	\$ 30 per annum \$ 15 per annum \$100 per annum
Donation	\$100 \$200 \$500 \$1,000
Cheque enclos Please forward	
Sydney NS Telephone 29	9 8154
	ax Deductable Donation the ACF
Australian Co statement of p form to the Au	our cheque payable to the nservation Foundation, sign the referance below and post this ustralian Conservation 72b Glenferrie Road, 22.
"I prefer that purposes of th	this donation be spent for the ne EDO."
Signed	
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Sydney NSW 2000
Ph: (02) 29 8154

Environmental Defender's Office Ltd.

Your Ref.:

Our Ref.:

Date:

11 March, 1985

2nd Floor 245 Castlereagh Street Sydney N.S.W. 2000 Telephone: (02) 264 6122 (02) 264 6937

Mr James L O Tedder Hon. Secretary North Coast Environment Council Pavans Road Grassy Head Via Stuarts Point NSW

Dear Sir

Thank you for your letter enquiring about the Environmental Defender's Office (EDO). The EDO is a non-profit organisation which was recently incorporated as a Company Limited by Guarantee.

The aim of the EDO is to provide professional advice and representation to members of the public who seek assistance in conserving or protecting any aspect of the natural or built environment or promoting the responsible planning and management of Australia's limited resources.

It is proposed that the EDO will limit its services to matters where there is a substantial public interest at stake. Guidelines are currently being formulated, but for the present, the criteria used to determine whether there is a substantial public interest is the likelihood of significant impact on the physical environment or substantial effect on public perception, benefit, use or enjoyment of the environment.

The EDO will act primarily for individuals and groups whose instructions fall within the above criteria, and who lack the knowledge and resources to cope in the traditional way.

We will write to you again when more detailed guidelines have been prepared. In the meantime if you have any further queries please contact the EDO.

Yours sincerely

Preston

SOLICITOR

Pavans Road,
Grassy Head,
Via Stuarts Point, 2441.
11th February, 1985.

Environmental Defenders Office, 2nd Floor, 245 Castlereagh Street, SYDNEY.

Dear Sir,

Our Council has recently learned of the establishment of your office.

We would welcome material on how the office can aid members of our Council in protecting the environment.

The North Coast Environment Council is composed of conservation bodies from the Tweed to the Hunter and west to the tablelands.

Yours faithfully,

James L.O. Tedder. Hon. Secretary.

COMMONWEALTH OF AUSTRALIA

REQUEST UNDER THE FREEDOM OF INFORMATION ACT 1982

AGENCY USE ONLY\
REF NO.

(Please read the notes on the back before completing this Form)

(3)	MY NAME IS: Mr Mrs	N ACT 1982 FOR ACCESS TO THE DOCUMENT/S DESCRIBED BELOW. (4) MY ADDRESS IN AUSTRALIA TO WHICH A REPLY MAY BE SENT IS:	
1 1 1	Mr Mrs	(4) MY ADDRESS IN AUSTRALIA TO WHICH A REPLY MAY BE SENT IS:	
	Miss	(4) MY ADDRESS IN AUSTRALIA TO WHICH A REPLY MAY BE SENT IS:	
	Ms Company	Postcode Phone	
(5)	I WOULD LIKE TO SEE THE FOLLOWING DOCUMENT/S		
	•		
		(If insufficient space attach a separate sheet)	
(6) (7) (8) Y	PLEASE SEND A COPY OF THE DOCUMENT/S TO MY AS PLEASE MAKE ARRANGEMENTS FOR ME TO INSPECT TO YOU MAY BE LIABLE TO PAY A CHARGE. See Note No. (8) on the control of the con	(Please tick (✓) appropriate box) HE DOCUMENT/S.	
	GN HERE	DATE / /19	
RECE	•	NCY USE ONLY) N INSTRUCTIONS TO:(Office/Division/Branch/Section/Officer)	
	(TEAR OFF AND R	ETURN TO THE APPLICANT)	
TO:		· 	
Your I	request under the Freedom of Information Act addressed to was received	<u> </u>	

NOTES

- If you post or deliver this Request Form to an agency or Minister at an address under the Freedom of Information (Addresses) Regulations, the agency or Minister must take all reasonable steps to notify you of a decision on your request as soon as practicable but in any case not later than the 60 day time limit specified in the Freedom of Information Act. A copy of the Addresses Regulations may be available for inspection at the place where you obtained this Form or you may buy the Addresses Regulations from the AGPS Bookshop in your State Capital City.
- (2) The term 'document' includes such items as a file, a report, a computer printout, a map, a plan, a photograph, a tape recording, a film or a videotape.
- (3) & (4) It is not essential that you give a telephone number but it would help the agency get in touch with you if further details, or consultations, concerning your request are required. NOTE: If you are seeking documents relating to your personal affairs, you should give your full name (and if applicable, former name) and be prepared to provide some proof of your identity. The agency will tell you what is required.
- You may ask for a number of documents. Please give whatever information you have about the documents you seek which will help identify them (e.g. give a file number or a reference to a press report on the subject, or describe the subject matter in which you are interested). Officers in the agency to which you are addressing this Form are available to help to give a description of the documents you seek. A complete description will assist us to make a decision on your request.
- (6) & (7) Sometimes an agency or Minister may not be able to give you access in the way that you asked for it. For example, if you are not able to inspect original documents because they are required for every day use in an agency, you may be given access to copies of the document.

(8) CHARGES

In most cases there will be no charge for access to documents relating to your personal affairs.

You are entitled to ask that a charge not be made in your case or that any charge be reduced. In deciding whether or not to make, or to reduce, a charge the agency or Minister will take into account anything you say about —

- payment of the charge causing you financial hardship;
- the document relating to your personal affairs; and
- access to the document you seek being in the public interest or in the interest of a substantial section of the public.

If you are liable to pay a charge, you will be sent a notice. That notice will tell you how much you will have to pay.