

Environment MATTERS

➤ The not-for-profit Environmental Defender's Offices (EDOs) are free community legal services dedicated to helping ordinary Australians understand and participate effectively in decision-making around planning, heritage and environmental issues.

Like other community legal centres, EDOs focus on assisting the disadvantaged and vulnerable, supporting community organisations and pursuing cases in the public interest.

This brochure highlights some of the Australians that EDOs have worked with, the very different issues they faced, and the many ways that EDOs helped those individuals and communities to have their voices heard, to actively participate in neighbourhood issues, and to contribute to decision-making processes.

These stories demonstrate that people in all parts of the country want to look after their local communities, and have peaceful enjoyment of their homes. From rural landholders wanting to understand the laws affecting their land and livelihoods, to residents seeking accountability over toxic smoke from a mine fire, and locals looking for information about a noise- and air-polluting car rally – it's clear that, for everyone, environment matters.

ACT EDO: Noise pollution and Summernats



PHOTO: GRAHAM TIDY/FAIRFAX SYNDICATION

The annual Street Machine Summernats Car Festival brings more than 1500 'street machine' vehicles and crowds of over 85,000 to Canberra each January. Over three and a half days, the Summernats festival includes street machine judging, a burnout competition and live music.

For many Canberra residents, particularly around Exhibition Park where the festival is based, Summernats brings noise pollution from the vehicles, crowds and live music.

The Environmental Defender's Office in the ACT has produced materials advising ACT residents on what steps they can take if they have an issue with noise from Summernats. Posted prominently on the EDO's website during the summer period, the EDO's *Summernats fact sheet* outlines the conditions and timing of Summernats' Environmental Authorisation – as well as details on who to call to make complaints about noise from motors, music or people. The EDO's Summernats fact sheet complements the EDO's *Noise Pollution in the ACT* booklet.

The ACT EDO's pre-emptive action has seen a reduction in calls to the office during Summernats, as the local community can easily access the information they need on the EDO ACT website. ■



PHOTO: GRAHAM TIDY/FAIRFAX SYNDICATION

TAS EDO: Rural Landholders' Guide to Environmental Law

PHOTO: BRENDAN GOGARTY



Primaries industries – including dairy, meat, wool and vegetables – are important features of Tasmania's economy, representing around 5% of Tasmanian workers.

The activities of farmers and rural landowners are often subject to a wide and confusing array of laws and policies. While rural landholders are keen to understand this complex web of rights and obligations, they are often disadvantaged by limited access to information and advice about resource management and other legal issues.

In collaboration with Tasmania's peak agricultural body, the Tasmanian Farmers and Graziers Association, the Tasmanian Environmental Defender's Office is developing a handbook to provide practical information about issues relevant to people in rural communities, including planning restrictions, irrigation rights, fire management responsibilities, use of pesticides, stock welfare, organic farming, access for mining and available support for carbon farming initiatives.

The Rural Landholders' Guide to Environmental Law will help rural landholders manage their land lawfully, profitably and sustainably, enhancing farmers' understanding of these emerging issues. ■

TAS EDO: *Going It Alone: A Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal*

Tasmania's Resource Management and Planning Appeal Tribunal can be an intimidating and complex place for people appealing against a development in their community. This is particularly the case for individuals and communities who have not engaged with the planning system before and do not have the resources to engage a professional to assist them in presenting their case.

Going It Alone is a concise, plain language guide produced by the Tasmanian Environmental Defender's Office to assist people who cannot afford representation to understand the practice and procedure of the Tribunal and how best to present their case. The book provides simple explanations of common terms and practical tips on drafting grounds of appeal, negotiating with other parties, preparing evidence, cross examination and dealing with applications for costs.

As the inaugural chairperson of the Resource Management and Planning Appeal Tribunal, Stephen Estcourt QC stated in the publication's forward in 2005, "the Guide is an excellent road map through what is essentially a very informal and consumer friendly Tribunal but which for all that, involves complexities due to the very nature of the issues which come before it."

Going It Alone has also been praised by the current registrar of the Tribunal, Mr Jarrod Bryan, as "an extremely useful document ... often referred to persons by Tribunal staff to assist them in understanding Tribunal processes. Its importance in assisting unrepresented persons with access to justice cannot be understated. It is clear, concise, professional and invaluable as a resource." ■

Environmental Defender's Offices providing governance support for local community and voluntary groups

Volunteers make an invaluable contribution to communities around Australia every day. Environmental Defender's Officers in turn support the legal and governance needs of many volunteer and community organisations.

The South Australian Environmental Defender's Office helped to incorporate the Woodcutters Road Environment Protection Association in 2008, and has provided ongoing legal assistance and support since.

The Woodcutters Road Environment Protection Association (WREPA) is a group of 20 landholders owning properties covering 160ha in the Adelaide Hills. Concerned about pressures on the local council from recreational groups seeking to open up the road for multi-use, and the threat this posed to the pristine native vegetation and diverse ecosystems in the area, the landholders in 2008 turned to the South Australian Environmental Defender's Office (SA EDO) to assist with their incorporation.

Using the SA EDO's own constitution as a template, and drawing on their extensive Information Guides on the Incorporation of Community Groups and the Volunteers Protection Act (available on the SA EDO website), the SA EDO helped the group establish itself as WREPA. The SA EDO subsequently helped the group to identify different options to oppose the multi-use proposal, and successfully advocate to the local council to restrict use of the area.

"The EDO very efficiently and succinctly addressed the issues, legal and otherwise, and the local authority made a now very clear legally compliant decision to refuse the proposal. That recreational pursuit is now being enjoyed at much more suitable locations and that threat does not exist in the WREPA project area. The EDO knowledge and efficiency not only was instrumental in getting the right outcome but it was also a great saving to the public and private purses of all the individuals and organisations involved."

— Craig Boulderstone, President, Woodcutters Road Environment Protection Association

In the years since, the SA EDO has provided a range of governance and decision-making advice to the group – and when the WREPA received a funding grant from the SA Government to help support the active management of the area, including restoring and improving the ecological integrity in the local environment, SA EDO assisted the group liaise with relevant government officials. ■



PHOTO: LANDCARE TAS

During its more than 10 years of operation, the Southern Coastcare Association of Tasmania has been supported and advised by the Tasmanian Environmental Defender's Office.

The Southern Coastcare Association of Tasmania (SCAT) supports and represents around 40 community volunteer groups in southern Tasmania that collectively spend thousands of hours every year managing invasive species, stabilising erosion and restoring habitat on public lands. The Coastcare groups also lead coastline clean-up, monitor changing beach profiles and engage local communities in learning about and protecting Tasmania's coastal environment.

Recognising the need for high standards of governance and professionalism in environmental community organisations, SCAT has valued the advice and legal support provided by the Tasmanian EDO, including in the development and review of SCAT's constitution. In addition to providing governance support, the EDO has provided advice to assist individuals and environmental organisations manage their risks when engaging in consultation, appeal processes and general business. ■

"As a community run, not-for-profit association... we have not had a budget to engage commercial legal professionals and it is extremely difficult to recruit in-kind legal services... The importance of practical, professional legal support is vital for community organisations to achieve good governance."

— Chris Johns, President, Southern Coastcare Association of Tasmania

Coal Seam Gas: community guides and workshops to explain landowners' rights and remedies

In recent years coal seam gas (CSG) exploration has become a polarising issue in many communities – with environmental, agricultural and community groups all expressing their concerns about the potential for serious environmental and social impacts.

From zero production in 1995, CSG production and exploration has expanded significantly over the last two decades with regulation struggling to keep up. Today, the complex web of oversight and regulation arrangements and agencies between Commonwealth and State governments has left landholders and communities confused about what their legal rights and remedies are, restricting their ability to effectively engage in the environmental assessment and approval processes.

The proximity of CSG deposits to prime agricultural land such as the Liverpool Plains in New South Wales and the Darling Downs in Queensland has sparked particular concern amongst farming communities.

Environmental Defender's Offices in NSW and Queensland have responded to this need for information by developing clear legal information about the regulation of coal seam gas, through the production of two key publications (see below).

The NSW EDO has further supported communities affected by CSG exploration by conducting regular community environmental law workshops. In 2013, *Mining and the Law: what you need to know and how to have your say* workshops were held in Yeoval, Gundaroo, Mudgee and Dubbo. ■

Mining and Coal Seam Gas Law in Queensland: A Guide for the Community is a 2013 plain English handbook produced by the Queensland EDO to help landholders and residents affected by mining proposals understand not only the relevant laws in Queensland but also their rights and options. Funded by local governments, catchment associations and private donations, the handbook includes detailed information on the types of mining and gas permits and licences, as well as guidance on how to write effective submissions on mining and gas projects and how to run a basic objection hearing in the Land Court.

As Geoff Penton, CEO of the Queensland Murray-Darling Committee, states in the handbook's forward, *"many people cannot afford private legal advice. This guide fills a much needed gap by providing reliable legal material on Queensland mining projects and how they affect existing communities, industries and the natural environment."*

The August 2012 NSW EDO legal guide, *Mining Law in NSW: A guide for the community*, similarly offers landholders a step-by-step legal guide to dealing with mining companies, and understanding their rights and obligations under the law. Produced with funding from the NSW Environmental Trust, the objective of the guide is to help the people of NSW understand their rights and obligations with regards to CSG developments and assist them to use the law to protect their interests and those of the environment.



EDOs: Providing early assistance and keeping matters out of Court

An important feature of EDOs' public interest work involves early engagement – assisting clients to resolve their issues quickly and avoiding tribunal and court processes wherever possible.

Community education is another core function of EDOs. All EDO websites include extensive resources such as plain English factsheets and newsletters – which anyone can access. The NSW EDO website, alone, has over 50 factsheets.

Community workshops, seminars and presentations

are another means for EDOs to explain the laws and processes to people who have never been inside a courtroom or spoken with their local parliamentarian.

Sometimes EDOs simply assist clients with a well crafted letter to a decision-maker, alerting them to an issue and averting the need for more serious action at a later stage. Most commonly, EDOs provide free initial telephone advice to individuals and communities on issues as varied as environmental planning, zoning and pollution – advice which helps people clarify the nature of their problem and whether a remedy is available to them. Initial telephone advice can act as an efficient filter and vetting process, identifying which cases advance further into the 'system'. For issues of greater substance, EDOs can provide advice and representation. ■

VIC EDO: Hazelwood mine fire seriously impacts local Morwell community

In early 2014, the 14,000-strong population of Morwell in eastern Victoria suffered six weeks of toxic smog after a rural bushfire spread to the nearby Hazelwood open-cut mine. With their homes caked in smoke and ash, locals reported their concerns about breathing problems, skin irritations, depression and anxiety and their fears about the long-term impact of the pollution on their health. The conditions were so dangerous that Victoria's Chief Medical Officer advised at-risk residents those over 65, children under school age, pregnant women and anyone with a pre-existing heart or lung condition to temporarily relocate outside the area.

Responding to locals' concerns, Victorian Environmental Defender's Office Principal Solicitor Felicity Millner travelled to Morwell in late February 2014 to speak with locals about their concerns. Visiting residents in Wallace Street, closest to the mine [pictured], where smoke hung heavily in the air, Felicity heard locals' concerns about why there had not been greater regulation of the mine to stop a fire like this occurring.

Given the significant impact of the fire on the Morwell community, and the serious questions raised about the regulation and management of the mine, the Victorian EDO – with local campaign groups – led calls for an independent inquiry into the fires, and welcomed the Victorian Government's recent announcement of a board of inquiry.

While the fire has now abated, the impact on the local community continues: high pressure water hoses and cleaning services have been brought in to clean up homes, but residents remain concerned to ensure this episode is not repeated. The Victorian EDO is planning a return visit to Morwell in the near future, to help residents actively participate in the board of inquiry process. ■



PHOTO: FELICITY MILLNER

NSW EDO: Friends of Turramurra: community opinion counts in development planning

Residents of the Ku-ring-gai council area on Sydney's north shore won a major victory for community consultation in development decisions in July 2011 when the Land and Environment Court ruled that a Government planning instrument was invalid.

The Friends of Turramurra's long battle to protect the heritage character of their local community started with a NSW Government decision, as part of the broader metropolitan strategy, that 10,000 new homes be built in the Ku-ring-gai council area over 25 years from 2004. The subsequent Ku-ring-gai Local Environmental Plan (LEP) rezoned commercial areas near train stations to permit buildings of up to 10 storeys in residential suburbs in the area.

Fearing that high density development would destroy Ku-ring-gai's heritage character, as well as adversely impact on local bushland, the Friends of Turramurra – represented by the NSW Environmental Defender's Office – commenced proceedings in the Land and Environment Court to challenge the LEP.

"The EDO provided ongoing and timely advice on all aspects of the legal process... As a group with no experience in legal processes it was invaluable to have the EDO's guidance..."

– Alan Parr, President, Friends of Turramurra,

The Court found that failures in the public exhibition process, which had limited local residents' ability to be appropriately consulted on substantial changes to the LEP, meant that the LEP had no legal force or effect.

Kirsty Ruddock, the EDO lawyer who ran the case for the residents' group, said the verdict reinforced the importance of proper consultation in planning decisions. "It will give strength to community groups that they have the right to consult on substantial changes [to development controls], especially those which are developer driven, as was the case here," she said.

A new 'town centres' plan was endorsed by Ku-ring-gai council in August 2012 – this time following months of consultation with the community, and a council meeting where about 50 amendments moved by residents were agreed by Council.

The Friends of Turramurra case highlights how many ordinary people can't afford private lawyers, but everyone wants to protect their community and the peaceful enjoyment of their homes. ■

EDOQLD Principal Solicitor Jo-Anne Bragg (2nd from left) with members of the local landholders group



QLD EDO: Application for feedlot – demystifying courts and legal processes

In 2008, a group of local residents turned to the Queensland Environmental Defender's Office to help them halt the opportunistic development proposal for a feedlot on the Condamine floodplain.

Despite strong objections from the local community, concerned with high volumes of toxic wastes contaminating the river and nearby wetlands, the regional council persisted with approving the feedlot for thousands of beef cattle.

Local landholders, which included several third generation primary producers running cattle and sheep in the area, were aghast at the environmental risks and prospect of foul smells so close to their own properties. Amongst them was John, a semi retired grazier, who agreed to coordinate and represent the group. While he turned his dining room into an office for the group, there was still the dilemma: who would represent a group without asking for a hefty fee in return? After all, no one could afford expensive private lawyers and experts to appeal the decision in the Planning and Environment Court. And the developers, who altered their proposal five times as various objections were raised, had the resources to drag out the case.

After contacting the QLD EDO, a specialist community legal centre, the group finally found an organisation that was willing to take on its case. Fighting developers in court is not for the faint hearted, so the group needed the legal support from the EDO to make the court application possible.

By explaining the legal process and assisting with drafting jargon-filled court documents, the EDO empowered this small group of committed residents to

"If we hadn't found EDO, we couldn't have done it. The courts are a foreign place and speak a foreign language."

— John, local landholders coordinator

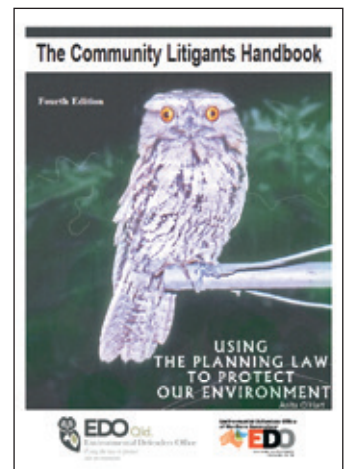
take on the developers, protect themselves against potential bankruptcy, and to recognise that the court was a forum for everyone to access when the need arises.

John and the group made particular use of the EDO QLD's *Community Litigants Handbook*, to guide them through the labyrinth of legal processes, which John said gave the group confidence to tackle the developers.

The EDO knew when to support the group with relevant information and court process, when to stand back and let them take action, and how to assist in negotiating various strategies along the way.

Even with the developers engaging costly private solicitors, the commitment of the group matched with the knowledge and skills of the EDO won out. Prior to the full court hearing, a public servant noticed that the development site included state-owned land for which the developers had no authorisation a detail overlooked until the court case focused government attention on the proposal.

A successful outcome was achieved, with the feedlot application declared invalid, and the water sources saved from contamination by and for the local community, and future generations. ■



TAS EDO: The Ralphs Bay case – threats from Residential Developments



PHOTO: THOMAS MOORE / INSET PHOTO: SAVE RALPHS BAY INC

Ralphs Bay, a 20 minute drive south-east of Hobart in Tasmania, is a declared conservation area recognised for its foreshore and marine habitat values and premier windsurfing conditions.

In 2004 a Sydney-based corporation proposed a \$400 million plan to construct a 460 home, 200 berth canal estate and marina inside the Ralphs Bay Conservation Area. Widespread community opposition to the development proposal led to the formation of a community group, Save Ralphs Bay Inc. (SRB), who turned to the Tasmanian Environmental Defender's Office for help in their long fight against the development.

As Jane MacDonald from SRB acknowledged, "In opposing the development, SRB and the community faced the multi-billion dollar Walker Corporation. The playing field could not have been more uneven!"

In 2008-2010, EDO Tasmania provided extensive assistance to the community group, helping SRB develop

and present the strongest possible case in defence of the environmental and community values of Ralphs Bay – and then represented SRB over four weeks of hearings in the Tasmanian Planning Commission.



PHOTO: SAVE RALPHS BAY INC

"When community members were anxious about how to proceed, EDO Tasmania provided clear explanations about possible legal options and opportunities for community input into the assessment process. EDO Tasmania helped to guide us through the various submission processes, identified key issues and liaised with expert witnesses to address those issues."

– Jane MacDonald, former Communication Coordinator for Save Ralphs Bay Inc

The Planning Commission eventually determined that the proposal was "inherently unsustainable" and recommended that it be refused, with the Tasmanian Premier subsequently refusing to grant a permit for the development. ■



PHOTO: SAVE RALPHS BAY INC

NSW EDO: Legal education and advice for Aboriginal and Torres Strait Islander people and communities

A key focus of the Environmental Defender's Office network is to equip the wider community, including Aboriginal and Torres Strait Islander peoples, to understand the law and participate in decision-making around environmental issues.

The Indigenous Engagement Program at the NSW Environmental Defender's Office employs a dedicated Aboriginal solicitor – Mark Holden, from the Dunghutti peoples – to assist the service engage more effectively with Aboriginal people and communities.

Through regular workshops around NSW, Mark explains traditional owners' legal rights under environmental, planning, heritage and natural resource management laws. By outlining legal principles, interpreting clients' points of view into legal language and arguments, and identifying relevant evidence, Mark helps to ensure that the perspectives of local communities are represented in decision-making forums.

One such example was a workshop Mark led with the Walgett-based Dharriwaa Elders Group, a group of Aboriginal people over 60 who live in Walgett and take an interest in protecting Aboriginal cultural heritage and maintaining Aboriginal Cultural Values in Walgett landscapes.

"Mark helped the Elders understand the legal aspects of the proposed model. The workshop helped the Elders have confidence in the value of their experience and ideas, and highlighted how we could usefully contribute to the reform and consultation processes."

*Wendy Spencer, Project Manager
– Dharriwaa Elders Group*



The NSW government has recently released a model for stand-alone Aboriginal cultural heritage legislation which closely reflects the way that the Dharriwaa Elders Group have managed cultural heritage issues locally. Mark worked with the group on developing a submission to the Government's consultation process, one of the few submitted by locally-based Aboriginal groups in North West NSW.

In addition to Walgett, EDO NSW held workshops in Byron Bay, Lismore, Coffs Harbour and Moree. This education work with communities means that Aboriginal people and communities are better prepared to talk to government bodies, development proponents or other organisations such as their Local Aboriginal Land Council about their interests. The workshops also help communities to resolve issues between parties before they reach more formal legal processes – relieving pressures on the broader legal system.

Mark also provides legal advice and representation for traditional owners in relation to environmental matters and the preservation of Aboriginal cultural heritage. For example, Mark has provided legal advice on behalf of a Hunter Valley Aboriginal community where the activities of a mining company had impacted on their traditional lands. ■



EDONSW Aboriginal solicitor Mark Holden with attendees at one of the EDONSW workshops

PHOTO: EDONSW