

Environmental Protection and Community rights:

***Public participation in
environmental decision-making
– a national overview***

Presenters:

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Outline of Presentation

- **Introduction**
 - What is an EDO?
 - Who do the EDO's help?
- **EDO Climate change casework & law reform**
 - Qld – Jo-Anne Bragg
 - ANEDO and NSW – Rachel Walmsley
 - NSW – Jessica Wood
- **EDO Pollution and health impact casework**
 - SA – Ruth Beach
 - VIC and WA – Annette Jones
- **Conclusion and questions**



What is an EDO?

- National EDO Network (ANEDO) was established in 1996.
- Comprises nine independent community environmental legal centres across Australia.
- Each EDO is dedicated to protecting the environment in the public interest.
- EDO's provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

What is an EDO?

- The National EDO Network has a core of common objectives, including:
 - Protecting the environment through law.
 - Ensuring that the community receives prompt advice and professional legal representation in public interest environmental matters.
 - Identifying deficiencies in the law and working for reform of these areas.
 - Empowering the wider community, including indigenous peoples, to understand the law and to participate in environmental decision-making.



Who does the EDO help?

The EDO aims to provide legal advice and assistance to community groups and individuals who wish to protect the environment.

The EDO enables individuals and community groups to pursue public interest conservation issues through the legal and planning systems.

Most appeals by applicants for development approval fall outside our practice area and are referred to private lawyers. Neighbourhood disputes are also referred to other services.



*Environmental Protection and Community rights:
Public participation in environmental decision-making – a national overview*

Climate change casework & law reform

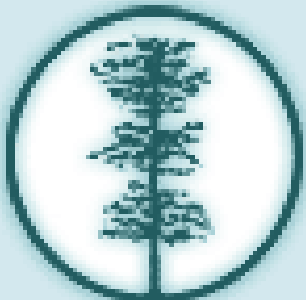
EDO Queensland litigation.

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EDO

Climate change law reform projects

Rachel Walmsley, Policy Director, EDO NSW

5 areas:

1. Impacts of climate change on vulnerable areas
2. Emissions trading
3. Emissions reporting
4. Model climate change legislation
5. Assisting public participation



1. Impacts of climate change on vulnerable areas

- World heritage
- Low lying coastal areas
- Indigenous impacts
- Biodiversity



2. Emissions trading

- Submission regarding the Possible Design for a National Greenhouse Gas Emissions Trading Scheme - 22 December 2006
- Submission on Prime Minister's Task Group on Emissions Trading - Issues Paper - 7 March 2007

3. Emissions reporting

- Submission on the *National Greenhouse and Energy Reporting Bill 2007*
- Senate Committee Hearing



4. Model climate change legislation

- Objects
- Emissions reduction targets
- Renewable energy targets
- Comprehensive coverage
- Emissions trading
- Compliance and enforcement
- Independent advisory body
- Broader law reform – EPBC triggers

5. Assisting public participation

- EDO seminar series on climate change
- Legal Advisors to CANA at the next meeting of the Conference of the parties to the UNFCCC – Bali, December 2007



Climate change casework

EDO New South Wales litigation.

Jessica Wood

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Anvil Hill Project Watch Association v Minister for the Environment and Centennial Hunter Pty Ltd



Drake Brockman

v

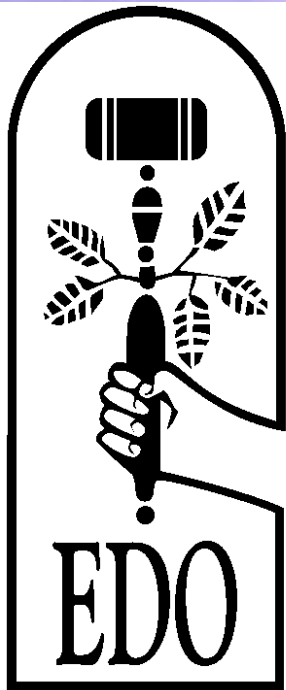
Minister for Planning

“On the day that Justice Jagot found for the developer in the Carlton United Breweries (CUB) Case she highlighted the fact that courts do not make merit decisions, they simply uphold the law. Whether or not that law is a donkey’s bottom is irrelevant, it’s the law.”

Chris Harris, Deputy Lord Mayor, City of Sydney.

Humane Society International v Kyodo Senpaku Kaisha





ENVIRONMENTAL
DEFENDERS
OFFICE (SA) INC

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

Case Study:

OneSteel

Manufacturing Pty Ltd

v

**Whyalla Red Dust
Action Group Inc**

Ruth Beach, Solicitor

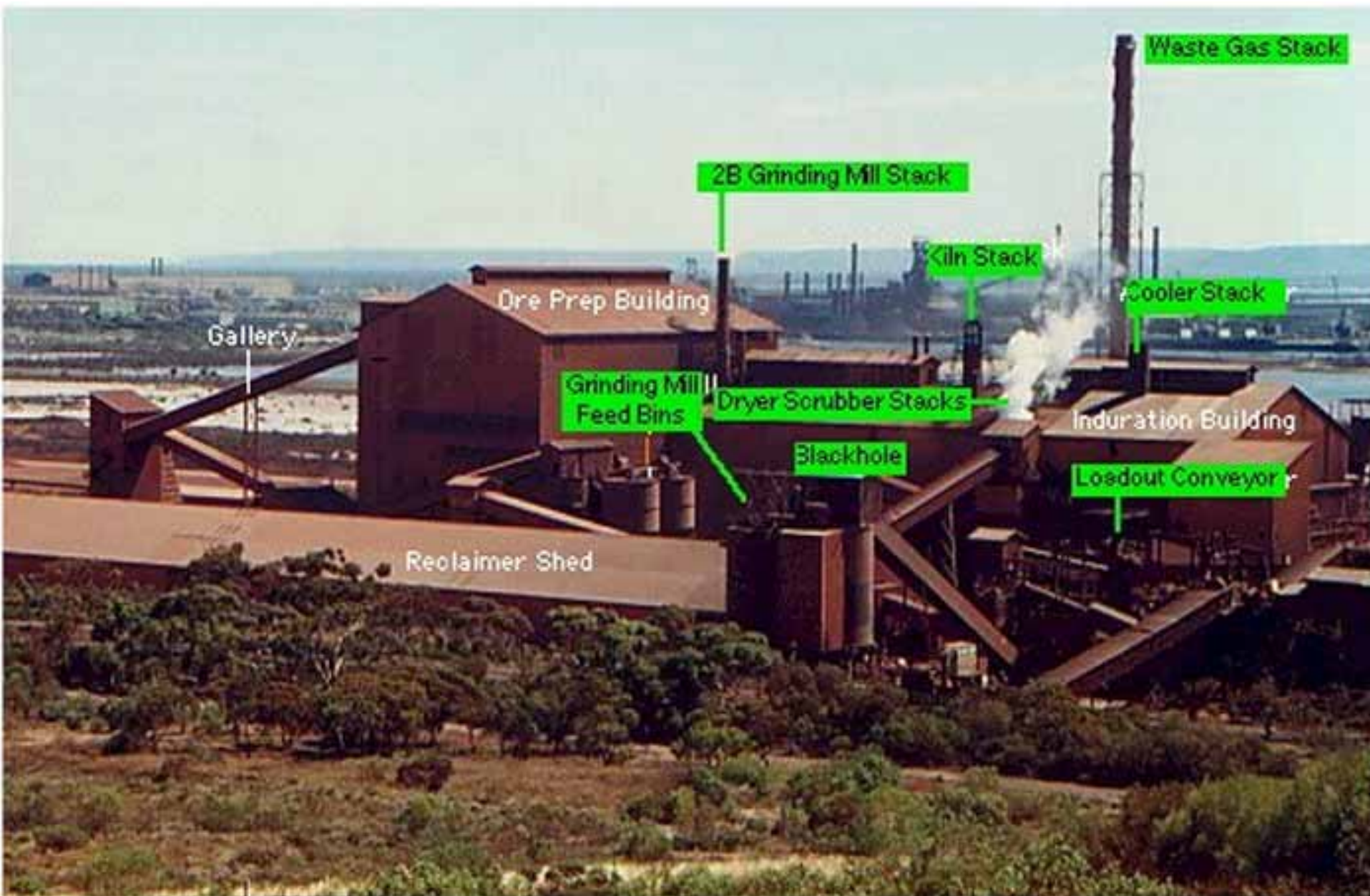


Dust

onesteel



- | | |
|-------------|--------------------|
| Blue Area | - Whyalla Township |
| Red Area | - Some Effect |
| Yellow Area | - More Effect |



Gallery

Dre Prep Building

Grinding Mill
Feed Bins

2B Grinding Mill Stack

Blackhole

Dryer Scrubber Stacks

Kiln Stack

Waste Gas Stack

Cooler Stack

Induration Building

Loadout Conveyor

Reclaimer Shed













**Driveaway
Clearance**

PRE 2000- UNLIMITED POLLUTION

- **1958 Indenture Act protected former operator BHP**
- **Authorised virtually unlimited pollution**

2000 – FIRST EPA LICENCE

- New owner – Onesteel
- 1958 Indenture Act lifted- Environment Protection Act applies
- 10 year licence granted to Onesteel but says little about fugitive dust emissions

PRE 2000- UNLIMITED POLLUTION

- 1958 Indenture Act protected former operator BHP
- Authorised virtually unlimited pollution

RESIDENTS' CIVIL ENFORCEMENT ACTION

- Sec 104 of the Environment Protection Act
- Sought compensation for damage to property & health together with additional monitoring

JANUARY 2005 – SECOND EPA LICENCE

- Dust control measures for the first time
- Onesteel appealed against the licence – claimed requirements too harsh
- Residents' bid to become a party rejected

OCT 2005 – INDENTURE ACT

- Indenture Act passed & operates from 3 Nov 2005
- Replaces the EPA with the mining minister
- Replaces new EPA licence with a licence written by the Minister - minimal dust standards

OCT 2005 TO JULY 2006 – FURTHER LEGAL ACTION

- April 2006 – Judge of Supreme Court overturns ERD Court - says residents do not have “standing”
- July 2006 – Full Court refuses residents appeal. Does not comment on standing.

STANDING

104(7) An application under this section may be made:

- by the Authority or another administering agency; or
- by any person whose ***interests are affected by the subject matter of the application***; or
- by any other person with the permission of the Court.

JUDGEMENT

Interest:

- Greater than general public
- Not determined by outcome
- Examine each case on its merits
- Link the interest with the orders sought
- Need not be proprietary

Judgement (cont)

s104: “*Applicant’s interests are affected by **subject matter of application***”

Red Dust Action Group objects:

- Protect and enhance Whyalla environment
- Campaign against industrial pollution in Whyalla
- Undertake community education etc

DeBelle J:

these objects not linked to subject matter of action –
controlling dust emissions

Judgement (cont)

- Incorporated body does not suffer environmental harm – its members do
- The Group's interest is an intellectual or emotional concern (*ACF v Commonwealth* (1980) 146 CLR 493) must be more than that.

MEDIATION

- Some remediation to homes and properties
- Independent assessment
- Confidential
- Does not prevent claim by non Red Dust person

EDO litigation - Pollution and community health

Annette Jones, Solicitor, EDO Vic

**WA case
study:
Alcoa
Wagerup**

**Nicola Rivers,
Solicitor, EDO WA**



3 Alcoa refineries WA supply
15% of the world's aluminium.



WA case study — Alcoa Wagerup

- Controversial project since 1996.
- Complaints regarding health impacts from plant emissions by community and workers.
- EDO WA has advised on various issues for a number of years.
- Alcoa plan to double operations from 2.4 to 4.7 million tonnes per annum.



WA case study — Alcoa Wagerup



Environmental concerns:

- Increased emissions resulting in environmental impacts and health problems
- Increased rate of forest clearing from the site where the bauxite is mined.

Pollution and Health impacts:

- Residents and workers complain of health effects including nosebleeds, headaches, skin rashes, and respiratory and gastrointestinal problems.



WA case study — Alcoa Wagerup



- In 2005 EDO WA was approached by a resident with multiple chemical sensitivity syndrome.
- Impacts: face and throat swelling, headaches and lethargy.
- Cause identified as the liquor burner which releases toxic chemicals into the atmosphere.

Alcoa and the Government:

- No clear link between emissions and impacts.
- Emission levels within internationally accepted environmental and health guidelines.



WA case study — Alcoa Wagerup

- In 2005 EPA recommended expansion go ahead, with conditions.
- No third party appeal for environment or planning decisions, only an internal review by the Minister.
- 49 local residents and groups made submissions
- In 2006 the Minister gave formal approval for the expansion.
- Condition of approval provides for relocation of affected persons.



EDO Vic case study: Shell Geelong Oil Refinery

Annette Jones, Solicitor, EDO Vic



Geelong Community for Good Life Inc v EPA and Shell

- In 2004 community group involved in development of Shell Environment Improvement Plan (“EIP”).
- Licence to emit waste amended by EPA in June 06 without adequate community consultation.
- Three-part litigation strategy:
 - Access to documentation sought under Freedom of Information Act 1982.
 - Review lodged in VCAT under Environment Protection Act 1970.
 - Judicial review under the Administrative Law Act 1978 in the Supreme Court of Victoria.

Geelong Community for Good Life Inc v EPA and Shell

- **Environment Protection Act**
 - Review of EPA's decision to approve amendment
 - Right of review required proof that a works approval was required instead of a licence.
 - Dismissed on technical grounds.

Geelong Community for Good Life Inc v Environment Protection Authority and Shell Refining (Australia) Pty Ltd [2007] VCAT 601

Geelong Community for Good Life Inc v EPA and Shell

- **Freedom of Information Act**
 - Access to some documents provided
 - Documents in dispute regarding exemptions claimed:
 - Trade secrets, section 34 FOI Act
 - Personal information, section 33 FOI Act
 - Law enforcement, section 31 FOI Act
 - National security, section 29A FOI Act
- Shell joined as a party last Friday.

Geelong Community for Good Life Inc v EPA and Shell

- **Administrative Law Act**

- Review of EPA's decision to grant a licence amendment:

- Community group has standing as a result of previous involvement.

- Decision resulted in a denial of natural justice to the community group.

- The decision made was beyond the power of the EPA as it does not comply with requirements of the EP Act and regulations including the State Environment Protection Policy (Air Quality Management).

Further information

EDO Email Bulletins and Newsletters

Each of the EDO's offer a regular email bulletin or newsletter to provide current and relevant information about environmental and planning law, developments impacting upon the environment and events. Email your EDO to register.

EDO Publications

The EDO's publish guides to public participation in environmental decision-making. See your EDO website for publications.

EDO Workshops, Seminars and Lectures

The EDO's run community workshops to promote active and informed use of the legal system to protect the environment. Contact your EDO for further information.



For further information,
or to contact your EDO....

Go to: www.edo.org.au



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