

## New Book

### Law of Landcare - 2nd edition Out Now!

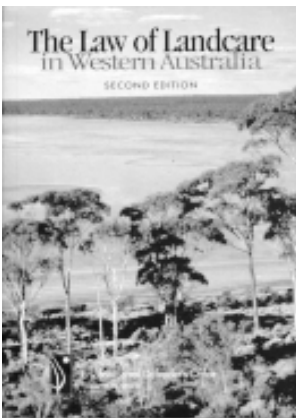
We are pleased to announce that the Second Edition of the Law of Landcare is now available.

The second edition has been substantially revised in response to a number of changes in the law since the first edition was published in 1998. These changes include:

- substantial water law reforms
- the introduction of the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999
- new laws regulating genetically modified organisms.

A number of people assisted in producing the second edition, but thanks are due to Jean-Pierre Clement in particular for donating a great deal of time to the research, writing and printing of the new book.

The Law of Landcare (2nd edition) can be purchased from the EDO for \$40 including postage, handling and GST.



### Help the EDO uphold environmental justice in WA DONATIONS TO THE EDO - TAX DEDUCTIBLE FOR YOU - GST FREE FOR US

Name: \_\_\_\_\_ Address: \_\_\_\_\_

PC: \_\_\_\_\_

I attach a cheque/money order, or please bill my Mastercard/Bankcard/Visa for \$ \_\_\_\_\_ Expiry Date: \_\_\_\_\_

Cardholder's name: \_\_\_\_\_ Cardholder's signature: \_\_\_\_\_

Card #

Please make your donation payable to the EDO at the address below. The EDO thanks you for your generosity.



If undeliverable return to:  
Environmental Defender's Office (WA) Inc.  
1st Floor, Law Society House  
33 Barrack Street  
Perth WA 6000

Print Post Approved  
PP641772/0036

**SURFACE  
MAIL**

**POSTAGE  
PAID  
AUSTRALIA**

# edo news

Newsletter of the Environmental Defender's Office WA

Vol 7 No. 3 January 2002

## Gnarabup litigation: the first hurdle cleared

The EDO has cleared the first hurdle in the application to the Supreme Court to overturn a decision by the Western Australian Planning Commission to grant a subdivision of private land on the west side of Wallcliffe Road at Gnarabup, on the coast near Margaret River.

The Leeuwin Conservation Group Inc ("LCG") is challenging the subdivision decision on a number of grounds. These include the power of the Commission to alter a plan of subdivision submitted for approval, and the power of a delegate (a Ministry officer), to depart from the requirements of the Leeuwin Naturaliste Ridge Statement of Planning Policy, by making a decision in the absence of or inconsistent with an approved structure plan.

This is of significance because the Shire of Augusta Margaret River has recommended that the Commission amend the developer's draft Structure Plan to show that no development occur in the area over which the subdivision has been granted. Unfortunately, the Commission granted the disputed subdivision before receiving the recommendation of the Shire, and before making a decision on that recommendation. On 22 October 2001, the EDO commenced proceedings in the Supreme Court on behalf of the LCG for an Order Nisi. This order would mean that the LCG had an arguable case and that the Commission would have to show



Gnarabup: land in question lies between the beach and current housing development

cause to the Full Court why the subdivision decision should not be quashed. The Commission and the owner of the land, Gnarabup Beach Pty Ltd ("GBPL"), sought and were granted leave to intervene in the LCG's application for the Order Nisi. The Commission then indicated that it did not wish to be heard at this first hearing but that it would want to be heard at a hearing before the Full Court.

On 30 November 2001, his Honour Justice Templeman found that the LCG has an arguable case to put before the Full Court.

In an application such as this, the Court has a discretion to refuse an application. The grounds include prejudice to any person relying on the decision sought to be overturned. GBPL argued:

- that that it would suffer prejudice by the 8 month delay between the subdivision decision and the commencement of proceedings;
- the prejudice outweighs any technical breach of the law (without conceding that such a breach had occurred); and
- against the standing (the right to be

heard) of the LCG to bring the application.

The Court found that:

- the standing of the LCG was a matter for the Full Court;
- the delay by the Applicant had been satisfactorily explained;
- the prejudice to GBPL did not appear to merit denial of the

continued page 5

### CONTENTS

Giving Evidence in Broome	2
EDO Coast Law Seminar 2002	2
Coastcare Grant Win	2
State Coastal Conference 2001	2
Illegal Land Clearing	3
Mining Law Reform	3
Inquiry into Planning Appeals	3
Inquiry into Bellvue Fire	3
Industry Licensing	3
Enforcing Protection of Species	4
Sustainability Seminar	6
Qld Flying Fox Protected	6
Sustainability Paper Released	6
NSW Public Good Conservation	6
EDO People	7
Biodiversity Health and Justice	7

Law Society House  
Level 1, 33 Barrack Street, Perth WA  
Website: [www.edo.org.au/edowa/](http://www.edo.org.au/edowa/)

Ph (08) 9221 3030  
Fax (08) 9221 3070  
Email: [edowa@edo.org.au](mailto:edowa@edo.org.au)

## Legal Education

### Bushlawyer gives 'evidence' at Broome Cotton Trial

The historic Broome Court House was the venue for a mock 'cotton trial' on 27 October 2001, at which the Bushlawyer, Sandy Boulter, gave 'evidence'.

The trial, organised by Environs Kimberley Inc, (EK), examined the issues of a cotton industry proposed for the West Kimberley. Other evidence was given by the Karajini traditional owners, local growers, local government, Department of Agriculture, Water and Rivers Commission, Environs Kimberley, Department of State Development, and various scientists. The proponent, Western Agricultural Industries P/L ("WAI"), did not attend.

A number of environmental concerns have been raised by the cotton proposal, including widespread clearing, loss of biodiversity, use of water from the La Grange groundwater mound and the use of genetically modified cotton crops.

While in Broome, Sandy took the opportunity to:

- attend a meeting of the La Grange Groundwater Allocation Committee Meeting 26 October 2001;
- undertake a site visit to Thangoo Station. The EDO is acting on behalf of Environs Kimberley in the Mining Warden's Court in the matter of the objection of EK to the grant of a mining lease adjacent to the Ramsar wetlands of Roebuck Bay;
- undertake a site visit to Ecobeach. The EDO is providing legal advice to EK relating to the removal of the primary sand dune by the lessee of the land during the cleanup of the site (necessitated by the destruction of the Ecobeach buildings by Cyclone Rosita); and to
- meet with Carol Palmer, Coordinator of the Kimberley Regional Fire Management Project, to discuss environmental law relating to this project.

**EDO thanks to the Myer Foundation for assisting with funds for this trip.**

### EDO Wins Coastcare Grant

The first week in December brought some very good news - Hon Alannah McTiernan, Minister for Planning and Infrastructure, advised the EDO that an application for a CoastCare grant, under the National Heritage Trust, was successful.

The grant totals \$43,269.00 and will be used to provide seminars, workshops and advice on the complex laws relating to land use in coastal areas.

One of the first major activities that will take place with the assistance of this grant is our Coast Law Seminar in May 2002.



### EDO Seminar on 'Coast Law'

EDO's major legal education focus for 2002 will be laws affecting WA's coast.

The coastal zone of Western Australia is emerging as an area of intense environmental conflict. There is an urgent need for community legal education on the legal framework regulating the coast and coastal waters in WA.

The seminar - planned for 16 May, to co-incide with Law Week - will provide much needed tools for groups and individuals engaged in marine and coastal conservation issues.

Topics will include: native title, protecting marine species and ecosystems; fisheries management; offshore mining; controlling pollution; development and subdivision of coastal land; and community initiated conservation projects.

A book on "Coast Law in Western Australia" will be published based on the papers presented at the seminar.

Further information about the seminar will be circulated as details are finalised.

### State Coastal Conference - Esperance 2001

EDO's Sandy Boulter, together with Lyn Serventy of the Leeuwin Conservation Group, presented a workshop at the WA State Coastal Conference, held in Esperance in November 2001.



Geoff Evans of Denmark Environment Centre by the EDO display (which includes his photo) at the Coastal Conference

Their presentation, a case study on the development of Gnarabup, highlighted concerns about the coastal planning process, in particular the lack of

- a) public participation in the process of the subdivision, and
- b) third party appeal rights against development.

The "On the Edge" conference was organised by the South Coast Management Group. The conference saw the launch of "Southern Shores", a strategy to guide coastal and marine planning and management in the South Coast Region of Western Australia. This four year community based project provides for 76 strategic objectives and 446 actions involving the co-operation of key parties including the local government, CALM, the Water and Rivers Commission and the community.

## EDO People

### Thanks to Volunteers

We thank the following law students & graduates who have worked as legal researchers at the EDO during September to December 2001

Rick Fletcher	Katherine Navarro
Katherine Eyres	Dane Chandler
JP Clement	Alison Aldrich
Yvette Elliott	Kate McConigley
Chris Bailey	Fiona Tremlett

### Thank you to our donors ...

We are very grateful to the following donors for their generous support over the period September to December 2001

Elizabeth Buters	Angas Hopkins
Scott Ludlam	Wendy Blake
Maisie Heath	Melanie Dybala
Dorothy Perrett	John Vukovich
Allen & Glenys Clabaugh	Sandy Boulter
Steve Kean	Julia Bligh
Hannes Schoombee	John Koeys
Iain Roberts	Jo Vallentine
Bruce & Trish Bennett	Robyn Ellison
Greg & Bronwyn Keighery	
Hazelmere Progress Association	
Linda Siddall & Henry Litton	

### Film night

Friends and supporters of the EDO enjoyed a fun night out at the EDO film night fundraiser on 4 November 2001. The Billy Connelly film *The Man Who Sued God*, proved a great hit with the audience, as well as raising a healthy \$1700 for EDO coffers!

Our sincere thanks to FrEDO volunteers Judith Durnin, Winnie Owen and Patsy Molloy for helping behind the bar and thanks to everyone for a fantastic effort in selling so many tickets!

### New Management Committee

**EDO warmly welcomes our new Management Committee for 2001-2002, elected at our AGM.**

The new Committee consists of: Hannes Schoombee (Convenor), Andrew Roberts (Deputy Convenor), Hylton Quail (Secretary), Margaret Robertson (Treasurer), with Committee Members: Michal Lewi, Nic Dunlop, Janice Dudley, Katherine Navarro, David Ritter, Charmian Barton, Angas Hopkins, Harriet Ketley, and Rick Fletcher.

Special thanks to outgoing Committee members, Stephen Walker and Sharon Mascher, for their generous and valuable contributions to the Management Committee over the past few years.

## AGM 2001

### Biodiversity, health & justice: exploring the links

The EDO's fifth Annual General Meeting was held at West Perth Lotteries House on 30<sup>th</sup> October 2001.

Our guest speaker, Dr Pierre Horwitz, an environmental scientist from Edith Cowan University, gave a thought provoking talk, exploring the links between biodiversity, health and justice. Pierre crosses the boundaries between different disciplines, heading a research consortium "Ecosystem Health" that involves health and environmental science faculties. Following is a précis of Dr Horwitz's presentation.

If our lives are impoverished when biodiversity declines, how do we make the connections between the two *tangible* to the general public?

So far, we have done a pretty rotten job of describing biodiversity: it is usually portrayed as a number of species, rather than a holistic concept.

On the other hand, the holistic notion of health – including well-ness, quality, happiness – is immediately accessible to everyone. To be healthy is to be surrounded by health: how you are is where you are. This spatial nature of health can be explored as a way of making biodiversity explicit in our consciousness.

Biodiversity is more than just components – these components define a place, making surroundings familiar and reflecting vitality or impoverishment. The common and rare elements give us a sense of place, which also includes the people who live here and their activities.



Dr Pierre Horwitz

Diseases are also geographical – epidemiology maps the geographical nature of illness. Our place defines our health. Some diseases are widespread and common, some are endemic, embedded within a locality – some are recent arrivals and some arise from a local exposure to an illness agent.

The connections between the local nature of biodiversity, our sense of place identity and attachment to local places, differential exposure of health effects and availability to healthcare services in difference places (health, equity and justice) can be illustrated by this example:

The Dawseville Channel was constructed in the early 1990's to flush the Peel Harvey Estuary. This large scale action was designed to change the nature of water flows in the estuary. This, in turn, led to a change in the ecology (and therefore biodiversity) of the estuary in that it now provides more extensive breeding grounds for mosquitoes. There has been a change in people's perception of their place by the drama of being bitten and in making it less secure from disease. These issues are particularly relevant to SOME local residents as an unintended consequence of that initial drastic action. The fact that it affects some people more than others highlights an inequality about the geographic nature of health matters.

Depending on where you are, you can be exposed differently to toxicants, to stresses, to illness of one type or another, and have different access to health care services as well. This inequality often has a socio-economic nature – greater risks to health and lower availability of health care services are related to lower prices for land, although in the case of the canal development in Mandurah this was reversed.

Biodiversity changes invariably have flow-on health effects in the human population. Negative health effects are often more severe in areas poorly served by health services, thus compounding the social injustice of an impoverished environment. **Contact the EDO for full version of this talk.**

### 'Opportunities for Sustainability'

Dr Brendan Mackey, associate professor at Australian National University and Chair of the Australia Earth Charter Network, presented information on the Earth Charter at a seminar at the Alexander Library on 5 October 2001.

The Earth Charter is a declaration for a sustainable future. Proponents are seeking the endorsement of the Earth Charter by the United Nations world summit in Johannesburg in 2002. The UN Charter does not include a right of ecological well being. The Earth Charter represents the convergence of a set of values developed over five years by representatives from approximately 45 countries. The Charter is organized around 16 main principals supporting four themes: (1) respect and care for the community of life; (2) ecological integrity; (3) social and economic justice; and (4) democracy, nonviolence, and peace. Dr Mackey emphasized the actions of individuals and broad local support for the principals in the Earth Charter are more meaningful than token national support. Australia has yet to endorse the Earth Charter.

Information regarding the Earth Charter may be found at [www.earthcharter.org](http://www.earthcharter.org)

### Sustainability Paper released

The Premier has released a consultation paper which invites public submissions to assist in the development of a Sustainability Strategy for Western Australia.

The report, entitled Focus on the Future: Opportunities for Sustainability in Western Australia, can be downloaded from [www.sustainability.dpc.wa.gov.au](http://www.sustainability.dpc.wa.gov.au).

### Threatened Birds have win in New South Wales

Urgent action in the New South Wales Land and Environment Court has resulted in the withdrawal of a proposal to conduct a carnival at the Entrance that may have adversely impacted on threatened species of waterbirds, including Little Terns.

Pavier Amusements Pty Ltd had applied to Wyong Shire Council to hold the carnival, including sideshows, motorised rides and power generators, on a grassy area of land on the shores of Tuggerah Lake in early January 2002. The site provided potential nesting habitat for a number of threatened waterbird species, which frequented the site and surrounds. No species impact statement was prepared. On 28 November 2001, the Council resolved to grant approval to the development.

### Queensland flying foxes protected by Federal Court injunction

A Queensland conservationist, represented by EDO Queensland, has obtained an injunction from the Federal Court to stop the mass culling of Spectacled Flying Foxes.

The flying foxes were being killed by a large aerial electric grid on a lychee farm adjacent to the Wet Tropic World Heritage area.

Justice Branson, who heard the case, found that the operation of the electric grid killed approximately 18,000 Spectacled Flying Foxes in the 2000-2001 lychee season, out of a total population of less than 100,000.

Justice Branson found that the ongoing operation of the grid would have, or was likely to have, a significant impact on the world heritage values of the Wet Tropics World Heritage Area. It was contrary to the Environment Protection and Biodiversity Conservation Act 1999 (Cth) to take such action without approval from the Commonwealth Minister for the Environment, and an injunction was issued in this basis.



Spectacled Flying Fox

The case demonstrates the value of the relatively generous standing provisions in the Environment Protection and Biodiversity Conservation Act. No action had been taken by State or Commonwealth authorities to prevent the grid from operating, and the operation of the grid would no doubt have continued in the absence of this legal action.

*Booth v Bosworth* [2001] FCA 1453 (19 October 2001).

WATCH Committee for Enviro Care Inc, a local environmental organisation, instructed EDO NSW to challenge the Council's resolution on a number of grounds, including the failure to prepare a species impact statement, which is required under New South Wales law. The matter was set down for an urgent hearing in the Land and Environment Court on 18 December 2001. However, on 12 December, Pavier informed the Council it was withdrawing its development application.

On 18 December, the Council gave an undertaking to the Court not to issue a notice of determination of the development application. The carnival will now not go ahead on that site and the Council has indicated that it intends to prepare a species impact statement for any further proposed use of this land for such purposes.

### Illegal land clearing prompts calls for law reform

The widely publicised clearing of bushland at The Lakes, 50km east of Perth, in December 2001, has renewed calls for reform of the law in this area.

The clearing took place without first being notified to the Soil and Land Commissioner, as was required under the Soil and Land Conservation Regulations.

The clearing was particularly blatant because it continued even after an officer of the Department of Agriculture requested that it stop, with the result that the officer was hit in the head by a falling tree.

The clearing was stopped after the Commissioner for Soil and Land Conservation obtained an injunction in the Supreme Court. However, some 80 hectares had already been cleared by this stage.

This incident exposes flaws in the laws used to regulate agricultural clearing, which the EDO has been raising for a number of years. For example, the current penalty of a maximum fine of \$2000 for illegal land clearing is clearly inadequate.

The EDO has produced a position paper on land clearing in Australia, which analyses existing land clearing laws throughout Western Australia and makes suggestions for reform.

### EDO puts case for reform of mining laws

The EDO has put forward a case for improvement of the system for assessing the environmental impacts of mining proposals.

The key elements of the reform proposal are the simple suggestions that:

- mining companies should not apply for a mining lease until they are ready to undertake productive mining; and
- a Notice of Intent outlining the nature of the mining proposal should be lodged with any application for a mining lease.

It is hoped that these reforms would lead to a more rational and certain system for assessing the environmental impacts of mining proposals, with benefits for the environment, community and industry.

More details in the proposal can be found in the paper presented by Michael Bennett to the Australian Mining and Petroleum Law Association on 9 November 2001.

For further information on these law reform proposals, see the EDO website at [www.edo.org.au/edowa](http://www.edo.org.au/edowa) - or contact Michael Bennett at the EDO.

### Inquiry into planning appeals

In November 2001, the EDO put a law reform submission to a Parliamentary inquiry, calling for the planning appeals system to be opened up to "third parties".

Presently, developers can appeal against the refusal of planning consent or subdivision approval but community members cannot appeal against the grant of such consents or approvals.

The Government has introduced the Planning Appeals Amendment Bill 2001 to abolish Ministerial appeals in favour of a Tribunal system. However, the Bill does not give appeal rights to community members.

The EDO's submission to the Parliamentary inquiry suggested that the Victorian model should be considered for adoption in Western Australia. Under this model, any person who has objected to an application may appeal, and in addition, leave may be granted to any affected person to appeal.

### Inquiry into Bellevue fire

On 10 August 2001, the EDO presented a written and oral submission to the Bellevue Hazardous Fire Inquiry.

The submission contained a number of suggestions as to law reforms that could help prevent any future occurrences of hazardous fires such as the one that occurred in Bellevue on 15 February 2001.

The suggested reforms included:

- making directors and managers liable for breaches of the dangerous goods legislation, where those breaches occurred as a result of their consent, connivance or neglect; and
- introducing a requirement for operators of hazardous waste facilities to provide security for compliance with their obligations.

The Economics and Industry Standing Committee, which is conducting the Inquiry, will report on the approval, operation and regulation of the Bellevue site, as well as a range of systemic issues relating to hazardous waste management.

### Industry licensing under scrutiny

On 26 October 2001, EDO Convener, Dr Hannes Schoombee, spoke at a forum on environmental regulation organised by the State Government. Hannes's short paper dealt with industry licensing, and in particular these three topics:

- the continuing role for public regulators, as contrasted with private regulators such as auditors;
- community involvement in the licensing process; and
- proposals to require financial assurances as part of the licensing process.

Steven Siegel is an attorney with the United States Department of the Interior. He spent 4 weeks as a volunteer with the EDO during October 2001. Steve has been an attorney with the U.S. government since 1989 and has worked on endangered species issues since 1995. The opinions in this article are those of the author and do not necessarily represent the views of the United States Government.

## Enforcement: A critical legal tool in achieving consensus in the protection of species

The United States Supreme Court has described the U.S. Endangered Species Act (ESA or "Act") as "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."

The Act applies throughout the United States. Implementation of the enforcement provisions in the ESA, however, have had mixed results. Experiences enforcing the ESA may provide valuable information to policy makers revising Western Australia's Wildlife Conservation Act 1950. In particular, policy makers may wish to consider providing for the use of injunctive relief to prevent destructive projects from proceeding at the expense of threatened species, authorizing third parties to enforce the WCA, providing adequate penalty provisions, and the applicability of the WCA to the government.

Enforcement is often viewed as a forum with winners and losers. In America's Pacific Northwest and Pacific Islands region, however, the most significant benefit from increased enforcement is arguably the impact a lawsuit may have on numerous projects not subject to the legal action. An increased enforcement presence has brought people to the negotiating table and led to agreements between the U.S. Fish and Wildlife Service, project proponents, and interested third parties.

The ESA's most effective enforcement tool has been the ability to stop projects before they damage wildlife by seeking an injunction in court. The ESA prohibits "take" or harm to a species through modification of its habitat when the modification actually kills or injures wildlife by significant impairing essential behavior patterns, including breeding, feeding, and sheltering. One exception to this prohibition is when a project proponent obtains a permit from the federal government. A permit applicant must demonstrate that its actions will not jeopardize the continued existence of a protected species and will, "to the maximum extent practicable, minimize the impacts of such taking."

Developing plans to mitigate and minimize the impacts of

a proposed project takes both time and money. Without a credible enforcement program, some applicants will not incur this expense. Federal biologists offering technical assistance to applicants and their consultants were often frustrated by the unwillingness of the applicants to consider mitigation options. Some federal biologists unofficially considered the "maximum extent practicable" mitigation standard the equivalent of whatever a landowner was willing to offer, since failure to reach agreement was likely to result in habitat loss without any mitigation measures. Examples abound. In one instance, the largest private logging association in a state urged the state government not to enter into a conservation agreement necessary to obtain a federal permit. The logging association bluntly told the state there was no incentive to limit logging when there was no enforcement of the ESA.

In the past five years, the federal government in the Pacific northwestern United States has increased its efforts to enforce provisions of the ESA protecting habitat of threatened

species. Third parties, including environmental groups, have standing to seek injunctive relief under the ESA, provided they can demonstrate an "injury in fact" to a judicially recognized interest, there is a link between the injury and the action complained of, and it is likely the party will succeed in the litigation. Court actions are the obvious result of the increased efforts to enforce the Act. However, increased awareness of ESA enforcement has reaped benefits without ever needing to go to court. Examples of agreements reached without entering into litigation include:

- A state government agreed to suspend certain logging operations harming the northern spotted owl, a threatened species. The state also agreed to substantially increase standards protecting the species.

- A local government halted plans to bulldoze trails to the nest trees of a highly endangered, deep forest bird sensitive to human disturbance. The trails were for the benefit of participants in a conference on eco-tourism. Agreement was reached only after legal action seeking injunctive relief was threatened. There is no known, reliable method to restore the needed habitat once it is lost.

*Court actions are the obvious result of the increased efforts to enforce the Act. However, increased awareness of ESA enforcement has reaped benefits without ever needing to go to court.*

- Three irrigation districts representing 40% of the water use in a river basin agreed to significantly modify their practices after annually draining the river dry for 97 years. In 1998 a species of fish in the river was classified as a federal threatened species. A coalition of environmental groups prepared to litigate to enforce the ESA. The potential for litigation empowered federal biologists to negotiate an agreement with the irrigators. The agreement was endorsed by the environmental groups and native Americans. Perhaps more importantly, the irrigators took ownership of the agreement and it is now used as a model in other areas.

The ESA provides for civil penalties of up to US\$12,000 per violation when there is take of a threatened species. Endangered species receive a higher level of protection. Penalties of up to US\$25,000 per violation are incurred when there is take of an endangered species.

The penalty provisions do not consider the cost of replacing habitat lost or the financial gain of destroying habitat. Habitat lost to the northern spotted owl exemplifies both of these inadequacies.

The spotted owl (pictured right) relies upon old forest habitat. Logging companies gross millions of U.S. dollars logging these older forests and may consider ESA penalties a very small cost of doing business. When habitat is hundreds of years old, penalties are simply inadequate in restoring what was lost to the species.



Even if the ESA provided substantial penalties, injunctive relief preventing the harm from occurring may be the only effective means to provide certain project proponents with an incentive to cooperate in mitigating the harm a proposed project may cause. Substantial penalties would be appropriate when an action harming a protected species proceeds.

Implementation of the ESA in America suggests that threatened species benefit from the use of injunctive remedies to prevent harm from occurring, legal requirements applicable to both government and non-government entities, and the ability of third parties to enforce the law. The ESA would be strengthened by minimum penalties capturing the economic value gained from

violating the law and, to the extent possible, penalties sufficient to repair ecological damage incurred by the violation.

Experiences in the United States may be useful as Western Australia considers revising its Wildlife Conservation Act. Important tools in species protection include:

- providing for injunctive relief to prevent the loss of habitat and other violations of the law;
- statutory authorization for third parties to enforce the law;
- penalties which reflect the cost of replacing lost habitat and the economic benefits of violating the law; and
- application of the law to all persons, including government entities.

The increase in ESA enforcement in the last five years has resulted in an increased willingness of landowners and other project proponents to plan projects in a manner mitigating and minimizing project impact on protected species. Enforcement of laws protecting threatened species is a critical legal tool in achieving consensus between project proponents, environmental groups, and the government.

### from front page

relief sought; and

- just because a breach of the law is a technical breach, this does not mean that there is not a serious question to be answered by the Full Court.

There are important matters of public interest raised by the ICG application. We look forward to the matter appearing before the Full Court in February or March 2002.

Before the commencement of proceedings, inspection of documents obtained under the Freedom of Information Act revealed that the subdivision decision had been made by a delegate (or delegates) of the Commission. This information placed the Leewin Conservation Group in a position to challenge the legality of the decision making process.

Senior Counsel Mr Michael Barker QC and Junior Counsel Dr John Hockley, instructed by the EDO, made the application on 30 November 2001 before His Honour Justice Templeman.

### Endnote:

*It is interesting to note that the environmental impact of coastal development led to the formation of the Coastal Planning Coalition (an environmental coalition of groups interested in various specific disputes relating to coastal planning in Western Australia). Pressure from this group led to the formation of the Ministerial Taskforce on Coastal Planning which is reviewing coastal planning and is due to hand down its report in March 2002.*

For further information, contact Sandy Boulter at the EDO.