

## Emissions data not available under Freedom of Information

**The Freedom of Information Commissioner recently decided that emissions data from Cockburn Cement Limited's cement lime manufacturing plant at Munster was commercially valuable and therefore could not be released to the public under the *Freedom of Information Act 1992 (WA)*.** The case is *Cockburn Cement Limited v Department of Environment, Water and Catchment Protection and Kwinana Progress Association Inc*, (2003) WAICmr 23.

The case commenced when Mr Steve Hesse, on behalf of the Kwinana Progress Association Inc, submitted a freedom of information request to the Department of Environmental Protection for the results of stack testing which Cockburn Cement Limited had commissioned at its Munster plant. The Department decided to release the information, but Cockburn Cement Limited objected on the basis that the results were commercially valuable and should not be released. Cockburn Cement Limited appealed to the Freedom of Information Commissioner, who agreed with Cockburn Cement and decided that the emissions data from the stack testing could not be released.

The Commissioner specifically decided that the emissions data was exempt from disclosure by virtue of schedule 1, clause 4(2) of the *Freedom of Information Act 1992 (WA)*.

That clause provides that:

*Matter is exempt matter if its disclosure -*

*(a) would reveal information that has a commercial value to a person; and*  
*(b) could reasonably be expected to destroy or diminish that commercial value*

The exemption in clause 4(2) only applies to commercial information that has a commercial value to a person if its disclosure could reasonably be expected to destroy or diminish the commercial value of that information.

During the case, Cockburn Cement Limited argued that the emissions data which Mr Hesse sought could be used by its trade competitors to obtain information about the quantities of raw materials it used in the production of lime and cement products. It then submitted that, by making back calculations from the data and using other information that is publicly available, such as its pricing forecasts, it would be possible for commercial competitors to calculate the cost of raw materials which it uses in the production of cement and lime products. It also submitted that detailed information about its kiln operations at Munster had never previously been compiled or published and that the data was so unique that it would be of considerable commercial interest to its competitors.

In support of his application for access to the emissions data, Mr Hesse submitted evidence from two professionals (with qualifications in the fields of science and chemistry) which disputed the correctness of Cockburn Cement Limited's claim about back calculations. The evidence stated that because there are many other unknown parameters in the operating conditions of the kilns, the information about emissions data had limited commercial value and could not be used by competitors to determine or calculate critical kiln operating conditions with any degree of accuracy.

The Commissioner accepted the Cockburn Cement Limited's claim that the mass emissions data could be used by competitors and did not accept the claims made by the two professionals to the contrary. She therefore decided that the emissions data could not be released. Unfortunately, submissions about the fact that there is a significant public interest in the public having access to emissions data were not considered by the Commissioner because the public interest is not relevant to the exemption in clause 4 (2).

This case highlights the importance of ensuring that industries are specifically required by law to publicly release their emissions data. This could currently be achieved in a number of ways. For example, those industries which require a licence under the *Environmental Protection Act 1986 (WA)* could be required by the conditions of their licences to publicly release emissions data. The case also highlights the importance of raising issues such as public access to emissions data in the review of the *Environmental Protection Act 1986 (WA)* which is due to be announced by the Minister for Environment shortly.

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## Environmental law in the Courts

### When is agricultural subdivision allowed?

The Supreme Court of WA recently examined the issue of how to interpret agricultural land use policies. In the case of *Ingram v Western Australian Planning Commission* (2003) WASCA 77 (8 April 2003), Barker J was asked to decide whether the Town Planning Appeals Tribunal had properly considered various agricultural land use policies when it refused subdivision approval for a particular parcel of agricultural land.

The case was concerned with land in Serpentine. The owners of the land applied to the Western Australian Planning Commission to subdivide it into two approximately 20 ha lots. They proposed to use one lot for a beef cattle enterprise and the other lot as an olive grove. The Western Australian Planning Commission refused the application for subdivision. The owners then appealed to the Town Planning and Appeals Tribunal, who also refused the subdivision application.

The land was zoned rural under the Metropolitan Region Scheme and the Shire of Serpentine-Jarrahdale Town Planning Scheme No 2. The land was also the subject of the following policies:

- Metropolitan Rural Policy;
- Rural Land Use Planning Policy;
- Draft (as it then was) Agricultural and Rural Land Use State Planning Policy; and
- Shire of Serpentine-Jarrahdale Rural Strategy.

Each of these rural policies sets out its own specific objectives and planning tools, but the overarching purpose of all the strategies is to protect the capacity of land for agricultural production by restricting adverse effects (such as fragmentation and subdivision) on the viability of agricultural industries. Both the Commission and the Tribunal were bound to, and did, consider these policies in deciding whether to grant approval. Specifically, they considered whether the subdivision would result in the maintenance or loss of the land having productive capacity for agricultural production. However, in considering this issue, the Supreme Court held that the Tribunal had also improperly considered another issue, being the economic viability of the specific proposed new land uses.

It is well established in town planning law that factors such as possible profit to a landowner and viability of a particular project are not relevant town planning considerations. However, in this case, the Tribunal believed it could consider evidence of the viability of the specific proposed beef enterprise and olive farm because the agricultural land use policies required it to consider whether the subdivision would result in the loss of the land having productive capacity for viable industries. Barker J, however, held that while the policies required consideration of the land's general productive capacity for viable agriculture, the viability of specific land uses was not relevant. Barker J therefore

decided that the policies had not been properly considered, and ordered that the Tribunal re-consider its decision.

A copy of the decision is available at [www.austlii.edu.au](http://www.austlii.edu.au), or contact the EDO for more information.

### Adequacy of Commonwealth EIA

As reported in our June 2003 newsletter, the Federal Court recently found that the Victorian government had provided the Commonwealth Minister for the Environment with misleading statements about the long-term environmental impact of Scoresby freeway when it referred the matter for environmental impact assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). However, despite the court's criticism of the environmental impact submission, the Commonwealth Environment Minister, Dr Kemp, decided to grant environmental approval for the freeway subject to an environmental management plan. Dr Mees, who started the original Federal Court proceedings, is now taking action in the Federal Court against Dr Kemp's decision. The case is scheduled to be heard in the Federal Court in October.

The case will be one of the first which deals with the quality of environmental impact assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). A similar case has been initiated over approval for the Nathan Dam in northern Queensland, with opponents claiming the federal government failed to consider the adverse impact on the salinity. Watch this space for the outcomes of these cases.....

### Urgent injunction issued to prevent clearing

The Commonwealth Minister for the Environment successfully obtained an interim injunction in the Federal Court to prevent clearing of the Ramsar listed Gwydir Wetlands near Moree in New South Wales. In the case of *Minister for the Environment & Heritage v Greentree & Ors* [2003] FCA 857 (8 August 2003), the Court was concerned with an allegation that the owners and managers of part of the Gwydir Wetlands deliberately cleared and ploughed about 99 ha of those wetlands without approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The Court was asked to issue an injunction to prohibit further land clearing.

The owners and managers of the land submitted that, due to the clearing, the area was effectively dead with no real prospect of rehabilitation, and therefore there was no point in granting an injunction to prevent further clearing. The Court, however, rejected this submission and found that there was a reasonable possibility of a substantial degree of remediation on the site. The Court then found that although preventing further clearing would have an adverse economic impact on the owners and managers, further clearing should be stopped so that there was an opportunity to rehabilitate the wetlands.

A copy of the case is available at [www.austlii.edu.au](http://www.austlii.edu.au)

## GMO Free Zones in WA?

The *Genetically Modified Crops Free Areas Bill 2003* (WA) was introduced into State Parliament on 7 May 2003. The Bill will enable a Minister (we presume it will be the Minister for Agriculture) to declare an area of the State (or the whole State) to be a “designated area” in which it is an offence to cultivate a GMO food crop. The explanatory memorandum for the Bill states that:

*“The intention is that an order will be made if this is believed to be necessary to protect the State’s markets for non-GM crops and to protect the State’s reputation as a “clean, green” source of agricultural products. The State’s markets and its good reputation could be seriously damaged if the introduction of GM crops is allowed before adequate segregation and identity preservation systems are in place.”*

The Bill proposes that the Minister’s designation be gazetted and then laid before Parliament. The designation will then become law unless it is specifically disallowed by a motion of disallowance passed by either House of Parliament within 14 days of the designation being tabled.

The maximum offence for knowingly cultivating a GMO food crop in a designated area will be \$200,000. The Chief Executive Officer of the Department assisting the relevant Minister will have the power to order the destruction of a GMO food crop which is cultivated in a designated area, and to pay compensation to innocent people whose crops are destroyed because they are contaminated with GMO food crops.

### Potential problems with the Bill include:

- The Minister is not required to carry out any public consultation in making a designation. There is no process for anyone to nominate an area for designation. There is no provision or facility for the Minister to get expert advice about a designation. In fact, the only “check and balance” on the Minister’s power is the parliamentary disallowance process.
- The Minister can only designate an area to be free from GMO food crops. However, there could be other crops, for example, cotton, which should be prohibited in the State.
- The Bill only deals with cultivation of GMO food crops – it does not deal with the movement of, storage of, research into or any other dealings with GMO food crops .
- It is an offence to cultivate a GMO food crop in a GMO free crop designated area only if the person *knows or is reckless* as to whether the crop is a GMO food crop. This means that to successfully prosecute anyone under the Bill, there must be proof that the offender actually knew the crop was GMO or was reckless about it. It will, however, be difficult in most cases to prove that a person had actual knowledge of the fact that a food crop was GMO or was reckless

about this. It will therefore be difficult to successfully prosecute most cases. It should instead be an offence under the Bill if a person could be *reasonably imputed* to have knowledge that the food crop was GMO.

- While not explicit in the Bill, it is possible that the State expects that the Bill will only operate in accordance with the Commonwealth *Gene Technology (Recognition of Designated Areas) Principle 2003*. This means that the Bill will not actually prevent the Commonwealth Gene Technology Regulator from issuing licences in a designated area unless the Regulator has clear evidence to show that the activities authorised by the licence will be inconsistent with the purpose of the designated area.
- The Bill adopts the position in the Commonwealth *Gene Technology Act 2000* that the Minister cannot designate a GMO free zone for any purpose other than a “marketing purpose”. There may, however, be many reasons other than “marketing purposes” for which the State wishes to designate GMO Free Zones. For example, the State may wish to designate a GMO Free Zone to protect a particularly important established crop, or to protect biodiversity in a particularly sensitive area.



## How do you want your EDO news?

If you would like to receive your EDO News via email instead of hard copy, please email Marilyn, [mashton.edowa@edo.org.au](mailto:mashton.edowa@edo.org.au).

And remember, current and past EDO News are published on our internet site – just go to [www.edo.org.au/edowa](http://www.edo.org.au/edowa)

## State Administrative Tribunal

The State government is proposing to create a new State Administrative Tribunal (SAT) to hear a range of administrative appeals against government decisions. The *State Administrative Tribunal Bill 2003* proposes to set up the SAT, and the *State Administration Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2002* will amend existing legislation so that appeals will be directed to the SAT. The Bills are currently before the Legislative Assembly.

When the Bills come into force (which the government hopes will be on 1 January 2004), the following environmental appeals will be affected:

- Appeals which are currently made to the Town Planning Appeals Tribunal (including development and subdivision decisions) will be made to the SAT.
- Appeals under the *Fish Resources Management Act 1994* which are currently made to a specific tribunal set up by the Minister for Fisheries will be made to the SAT.
- Appeals under the *Aboriginal Heritage Act 1972* which are usually made to the Local Court will be made to the SAT.
- Appeals under the *Heritage of Western Australia Act 1990* which are usually made to the Town Planning and Appeals Tribunal will be made to the SAT.
- Appeals under the *Aerial Spraying Control Act 1966* will be made to the SAT.
- Appeals under the *Agricultural Produce (Chemical Residues) Act 1983* which are currently made to the Minister for Agriculture will be made to the SAT.
- All appeals under the *Agriculture and Related Resource Protection Act 1976* to the Local Court will be made to the SAT.
- All appeals under the *Rights in Water and Irrigation Act 1914*, including those to a specialist tribunal set up by the Minister for Environment, and those to the Land Valuation Tribunal, will be made to the SAT.
- All appeals under the *Pearling Act 1990* to the Minister for Fisheries will be made to the SAT.
- All appeals under the *Soil and Land Conservation Act 1945* to the Minister for Agriculture will be made to the SAT.

However, the jurisdiction for some environmental appeals will remain unchanged. For example, all appeals under the *Environmental Protection Act 1986* will remain with the Minister for the Environment. That is, you will still have to appeal to the Minister for the Environment if you disagree with the EPA's decisions on environmental impact assessment or if you disagree with the conditions of a works approval or licence. And all objections to mining tenements under the *Mining Act 1978* will remain the same - meaning people will still have to object to the Mining Warden about mining leases and exploration licences.

The Bills unfortunately will not create a general right of appeal for any citizen who wishes to appeal a government environmental, planning or development decision. Indeed,

the Bills do not create any new rights of appeal, and therefore only the people who currently have a legal right to appeal decisions will have a legal right to appeal those decisions to the SAT. This means, for example, a continuation of the fact that only developers are able to appeal town planning and subdivision decisions.

The SAT will comprise members from a range of professions and will be headed by a Supreme Court Judge. It will not be bound by formal rules of evidence or legal technicalities, but will instead be guided by general principles of natural justice. It will largely be a "no costs" jurisdiction – meaning that those who appear before the SAT will not usually have to pay anyone else's legal costs (even if they lose the case). Any person who has a right to commence proceedings in the SAT will be able to request written reasons for the decision they wish to review, which will greatly assist people to determine whether or not they have a good case for review.

### Open for public comment

#### Management of the Swan River

The *Environmental Protection (Swan and Canning Rivers) Policy 1998* required the EPA to prepare a Comprehensive Management Plan by 1 December 1999. While this plan was apparently prepared, it was never released for public comment. However, the Minister for the Environment has recently publicly released "Riverplan" for public comment and announced that it will be the new Comprehensive Management Plan under the Policy. Riverplan is available for public comment until the 24th October 2003. See [www.environ.wa.gov.au](http://www.environ.wa.gov.au) for a copy of the draft plan and public submission template.

Also note that.....the *Swan River Trust Act 1988* (WA) required the Swan River Trust to prepare a management programme for the Swan River Management Area as soon as it was practical to do so after 1 March 1989. However, no such plan has ever been prepared.....

#### Indigenous Ownership and Joint Management of Conservation Lands and Waters in Western Australia

A consultation paper on Indigenous ownership and joint management of the State's conservation lands and waters has been released for public comment. Submissions are due by 10 October 2003. The paper is available at : <http://www.naturebase.net>

#### EPBC Act Administrative Guidelines

The Commonwealth Department of the Environment and Heritage (formerly Environment Australia) is reviewing a range of administrative guidelines made under the EPBC Act, including the Administrative Guidelines on Significance. The Department seeks public comment by 30 September 2003. See <http://www.ea.gov.au/epbc/index.html> for more information.

## Environmental issues and the Mining Warden

As reported in our September 2002 newsletter, the State government commissioned a review of the State project development approvals system. The findings of the review, (known as the “the Keating Report”) recommended, among other things, the abolition of the Mining Warden’s jurisdiction to hear environmental objections. The EDO is concerned about the recommendation because it would limit public participation in the environmental impact assessment of mining proposals. The State government has released its response to the Keating Report – but has not yet made a decision about the Mining Warden’s Court.

The recommendation to abolish the Mining Warden’s jurisdiction to hear environmental objections was made partly on the basis that there is currently opportunity for an overlap of assessment of mining proposals by the Mining Warden and the EPA. However the opportunity for overlap is only slight due to the fact that, of all the mining projects which are referred to the EPA, relatively few are actually formally assessed by the EPA. For example, of the 249 mining proposals approved in 2000-2001, only three were formally assessed by the EPA.

The EDO is concerned about the recommendation because it would limit public participation in the environmental impact assessment of mining proposals to those few proposals assessed by the EPA. If, as in most cases, the EPA does not assess the environmental impacts of mining proposals, the environmental assessment of those proposals will simply be carried out by the State Mining Engineer or District Mining Engineer on the basis of information provided in a Notice of Intent prepared by a miner before commencement of mining. There is no opportunity for members of the public to be notified about, or comment on, a Notice of Intent. Therefore, if the recommendation goes ahead, there would be no real opportunity for the public to be involved in the environmental assessment of most mining proposals in WA.

The EDO believes that the limited potential for the EPA and the Mining Warden to duplicate consideration of environmental issues can be addressed without having a deleterious impact on public involvement in the assessment process if the following process is followed:

- All Notices of Intent should be referred to the EPA before any Warden’s Court hearing;
- If the EPA assesses the environmental impacts of the proposal based on the Notice of Intent, the Warden should decline to assess those impacts;
- If the EPA does not assess the environmental impacts of the proposal, then the Warden should (subject to the normal factors governing a Warden’s discretion) hear objections raising environmental issues.

However, if the Warden’s jurisdiction to hear public interest objections is to be removed then the *Mining Act 1978* (WA) should be amended to require that the Notice of Intent be advertised, and that any person may make a submission on the Notice of Intent. Further, it should be made clear that if significant environmental issues are raised, the Notice of Intent must be referred to the EPA for a decision on whether it should be formally assessed.

## Protection for Whistleblowers

On 1 July 2003 new laws commenced in WA to protect government employees who make a report about a government agency which they believe has been involved in environmental harm.

The *Public Interest Disclosure Act 2003* (WA) provides that any person can make a disclosure about environmental harm which they believe a government employee or agency has been, or intends to be, involved in. The disclosure can be made to:

- the Commissioner for Public Sector Standards; or
- the CEO of the relevant government department.

Provided the person making the complaint believes that the information they are reporting is true and has no reasonable grounds for believing it isn’t true, that person cannot be sued or prosecuted for making the disclosure, and neither can their employment be affected. In addition, the identity of any person who makes a complaint will be kept confidential unless it is necessary to disclose that person’s name to investigate the matter properly or to provide natural justice to whomever the disclosure is about.

Once a matter is reported, the Commissioner for Public Sector Standards or the CEO of the relevant government department must investigate the report and take appropriate disciplinary action. They must also take action to ensure that the problem does not occur again.

## Used Packaging Materials

The National Environmental Protection Council recently released the National Environmental Protection Measure (NEPM) on Used Packaging Material. The goal of this NEPM is to reduce environmental degradation arising from the disposal of used packaging, and to conserve virgin materials through the encouragement of re-use and recycling of used packaging materials. The NEPM has been given force in WA by the *Environmental Protection (NEPM-UPM) Regulations 2003*.

The Regulations require people who own trademarks of local products, the importers of overseas products and people who supply packaging material, to provide and comply with an action plan which sets out how they will recover, recycle and reuse packaging material and how they will inform the public about recovery of used packaging materials. These people must also keep records of used packaging material. The Regulations also require operators of kerbside recycling services to provide information about those services.

## Stay tuned.....

There is set to be a substantial amount of reform to current State and Federal environmental law. There are several bills currently before State and Federal Parliament which, if passed, will change important aspects of environmental law. So stay tuned for amendments to:

### Environmental Protection Act 1986 (WA)

The *Environmental Protection Act Amendment Bill 2002* which is currently before the Legislative Council will substantially amend the current law relating to many aspects of environmental protection in WA. Specifically, the Bill proposes to:

- Regulate land clearing
- Create an offence of “environmental harm”
- Amend the law relating to environmental impact assessment
- Create new enforcement powers
- Expand the scope of licences and works approvals
- Allow the Minister or CEO to require people to give bonds to protect against environmental damage
- Make directors liable for the actions of their corporations
- Provide protection to whistleblowers

### Contaminated Sites

The *Contaminated Sites Bill 2002* which is currently before the WA Legislative Council requires people to report known and suspected contaminated sites, establishes a public database of contaminated sites and sets out a hierarchy for the remediation of contaminated sites.

### Dangerous Goods

The *Dangerous Goods Safety Bill 2002* which is currently before the WA Legislative Council will impose a general duty on people who store, handle and transport dangerous goods to take all reasonably practicable measures to minimise risks to people, property and the environment. It will also require people dealing with dangerous goods to have appropriate licences and to report incidents.

### Environmental Protection and Biodiversity Conservation Act 1999 (Cth)

The *Environmental and Heritage Legislation Amendment Act 2003* and associated amendment Acts have recently passed the Senate and are now awaiting assent before they come into force. The amendments will:

- Replace the Australian Heritage Commission with the Australian Heritage Council;
- Create a new National Heritage List, which will consist of places or groups that are of outstanding significance to the nation;
- Create a Commonwealth Heritage List, which will consist of heritage places owned or controlled by the Commonwealth; and
- Introduce two new triggers for environmental impact assessment under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), being those places which are listed on the National Heritage List and the Commonwealth Heritage List.

A fact sheet on the amendment Bills is available at [www.wwf.org.au](http://www.wwf.org.au)

### Ozone and greenhouse

The *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003* (Cth) seeks to extend existing legislation relating to the licensing of import, export and manufacture of ozone depleting substances to include synthetic greenhouse gas replacements. The Bill will also facilitate a uniform national approach to control of ozone depleting substances.

## New State Planning Policies

State Planning Policies (SPPs) are made by the Western Australian Planning Commission under section 5AA of the *Town Planning and Development Act 1928* (WA). They must have the approval of the Minister for Planning and are usually published in the Government Gazette. However, even though SPPs are made under a statute, they do not have the force of a statute. This means that they are not specifically binding on any person or decision maker, and that any person who breaches an SPP or any decision maker who does not apply an SPP may not necessarily be in breach of the law.

SPPs are the highest level of planning policy in WA and should therefore carry significant weight with planning decision makers such as the Western Australian Planning Commission, local governments and the Town Planning Appeals Tribunal. These decision makers should give weight to SPPs by considering the following principles:

- The publication and use of SPPs serves to promote consistent and rational planning decision making;
- People have a reasonable expectation that an SPP will be regarded by a planning decision maker when an application for planning approval is considered. If the SPP is not regarded, this may be a breach of natural justice which the Court considers unlawful; and
- If a planning decision maker misconstrues or misinterprets an SPP, this may constitute a failure to consider a relevant factor or a breach of natural justice, both of which the Court may consider unlawful; but
- SPPs should not be applied so inflexibly that the circumstances of a case which suggest that variance from a policy may be appropriate on a particular occasion are ignored.

(These principles are taken from the decision of Barker J in the recent case of *Ingram v Western Australian Planning Commission* (2003) WASCA 77 (8 April 2003)).

The following State Planning Policies have recently come into force:

- *Environmental and Natural Resources Policy – State Planning Policy No 2*
- *State Coastal Planning Policy – State Planning Policy No 2.6*
- *Public Drinking Water Source Policy – State Planning Policy No 2.7*

Copies of these new policies are available at [www.planning.wa.gov.au](http://www.planning.wa.gov.au)

## New EDO NRM and EMS Projects

The EDO's two new solicitors, Vivian Markovich and Kirstine Forestier, commenced work in August to work on the Natural Resource Management (NRM) and Environmental Management Systems (EMS) legal service projects.

### NRM project

Natural Resource Management (NRM) is the term given to the coordinated approach to environmental management between government agencies in partnership with the community. In WA, the State and Commonwealth governments have recognised six state regional NRM groups who are responsible to prepare and implement natural resource management plans for their regions. Those groups are the Avon Catchment Council, the South Coast Regional Initiative Planning Team, the South West Catchments Council, the Swan Catchment Council, the Northern Agricultural Catchments Council and the Rangelands NRM Coordinating Group.

The EDO's NRM legal service project will involve the EDO solicitors providing:

- Legal advice as to the constraints and opportunities for development and implementation of NRM plans;
- Legal education as to the effect and significance of NRM plans;
- Advice as to law reform options to better facilitate the development and implementation of NRM plans;
- Direct assistance to NRM groups in the development of NRM plans; and
- **A system to update and monitor the NRM plans to reflect any changes in the law.**

There is a great deal of work to do, as WA has a great deal of legislation dealing with environment and natural resource management issues, and these laws are always in the process of being amended. Kirstine and Vivian have therefore already held meetings with various stakeholders, and will soon be holding legal education and legal advice days on NRM issues – see "EDO Coming Events" in this newsletter for more details.

The EDO's NRM legal service project is funded by the Natural Heritage Trust and will run until 30 June 2004.



Kirstine Forestier (left) and Vivian Markovich

### EMS project

The EDO's EMS legal service project will involve the EDO solicitors in a research project exploring which environmental laws and regulations promote the adoption and effectiveness of EMS in the agricultural context, and which laws and regulations hinder that process.

EMSs in the agricultural context are systems which are designed to assist landholders in the sustainable management of natural resources on their properties and to help them identify cost-effective opportunities for environmental performance improvement. In order to determine the management required, landholders must first conduct an environmental review consisting of simple assessment of environmental issues and a review of farm activities and environmental impacts. EMSs then help landholders to record the key environmental issues that need addressing, and then outline what will be done to deal with these issues.

EMSs, such as the International Standard Organisation's (ISO's) Specification for EMSs (ISO14001), require landholders to comply with applicable legislation and regulations. Therefore a practical starting point for landholders wanting to implement EMSs is to identify legal obligations using key legal documents such as environmental laws, codes of practice, and other specific industry or catchment guidelines or standards. That is where the EDO's project comes in. The EDO will research the environmental laws which apply to EMSs and compile a current register of relevant laws and regulations which will help enable landholders to achieve and maintain regulatory compliance with existing environmental laws. The EDO will then prepare a research paper on how those environmental laws actually help or hinder, adoption of EMSs in the agricultural context.

The EDO's EMS project is funded by Rural Industries Research and Development Corporation and will run until 30 September 2004.



Natural Heritage Trust

*Helping Communities Helping Australia*

A Commonwealth Government Initiative



RURAL INDUSTRIES RESEARCH  
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## 44 EDO WA Fact Sheets now on-line!

The EDO WA has now prepared a series of environmental law fact sheets. The fact sheets are a basic guide to environmental law in Western Australia and will be useful to anyone interested in using the law to protect the environment. You can choose a fact sheet from any one of the following environmental law subjects:

- Introduction to environmental law
- Planning and development controls
- Biodiversity, heritage and public lands
- Coastal and marine areas
- Water, rivers and wetlands
- Atmosphere and air
- Pollution and waste management
- Land degradation
- Mining and energy
- Guide to taking action

The fact sheets are available on our internet site:

[www.edo.org.au/edowa](http://www.edo.org.au/edowa)

And while you're there, check out our revised internet site. The new site includes information about EDO highlights, all our publications, past newsletters and annual reports and much more.....

We are grateful to the following organisations for funding the production of the fact sheets:



## Conservation Council Road Show

In August the Conservation Council of Western Australia (CCWA) organised a series of seminar and discussion forums in locations along the South Coast. New EDO solicitors Kirstine Forestier and Vivian Markovich together with Jean-Pierre Clement (former Fact Sheet Project solicitor) and coordinator Linda Schur accompanied the Road Show to Denmark and Albany.

The trip provided valuable opportunities to inspect and assess the environmental impact of deep drains; salinity in rural towns and agricultural areas; and land clearing. The new solicitors networked with CCWA members and benefited from the content of their presentations; visited the Department of Agriculture and the Centre of Excellence in Natural Resource Management (NRM) in Albany and met with various NRM and Environmental Resource Management stakeholders. They also heard community members in Denmark give presentations on local biodiversity issues and a proposed site for an alternative energy wind farm.

## Coast Law Book Review

*Coast Law in Western Australia*, the EDO's most recent publication, was recently given a glowing review by Greg McIntyre SC. We thank Greg for the valuable time and effort he expended on this task.

Greg's review was published in *Brief*, the monthly publication of the WA Law Society, and we provide an extract here:

"This publication is an edited version of the papers presented at the 'Lines in the Sand' conference organised by the Environmental Defender's Office and held on 15 May 2002 in Fremantle.

It provides a very comprehensive account of the law relating to the coast, which will be of interest to and provides a valuable source of information for readers ranging from those with a general interest in the area to those with some expertise in the topics it canvasses.

It contains contributions from a broad range of experts, and so provides for those seeking expert information. However, one of its great strengths is the significant contribution which the Editor has made in making what might otherwise be language comprehensible only to a particular field of expertise accessible to persons not embroiled in that discipline. The editor has prepared a Glossary of Terms at the beginning of the book which define a range of terms which are used in certain scientific, government and legal circles, and which appear in the papers, but would not be commonly understood by the general public or by the ordinary individual who may be expert in a particular field.....

This book contributes to both the capacity of the interested citizen and also the expert lawyer or scientist to understand the framework and intricate detail of the law which governs our coast. As someone with an intimate acquaintance with some aspects of the law discussed in the publication, I found it to be accurate in the areas I know and to introduce me to a broader perspective than I could claim familiarity with. It is a publication which anyone with an interest in the area would do well to buy, read and retain as a reference book."

The book costs \$55 – please contact the EDO if you would like to buy a copy.



From left: Kirstine Forestier, Vivian Markovich and JP Clement on the road with the Conservation Council Roadshow

## EDO WA Annual General Meeting

Tuesday, 14 October, at the Constitutional Centre in the Hale Meeting Room.

Please arrive at 6.15pm for a prompt start at 6.30pm

Followed by our

### Fact Sheet Launch

Immediately after the AGM at 7.30pm in the Centre's Main Hall

Light refreshments will follow

(The Constitutional Centre is located on the corner of Havelock Street & Parliament Place, West Perth.

Parking is available at the Centre or in Dumas House car park)

Please **RSVP** asap for catering purposes. Proxy votes can be made in accordance with EDO Rules

T: 9221 3030, e-mail [mashton.edowa@edo.org.au](mailto:mashton.edowa@edo.org.au)

### Environmental legal advice & education

#### Katanning

Kirstine Forestier and Vivian Markovich will attend the 2003 State Landcare Conference. While in Katanning, they will present:

##### **Environmental legal advice (individual basis)**

DATE: Tuesday 7 October TIME: 1pm - 4pm

PLACE: Katanning Leisure Centre, Pemble Street,

##### **Environmental legal education seminar on Natural Resource Management issues**

DATE: Friday 10 October TIME: 2pm - 4pm

PLACE: Pioneer Room, Katanning Leisure Centre

#### Geraldton

Vivian Markovich will attend the 2003 State Coastal Conference. While in Geraldton, she will present:

##### **Environmental legal advice (individual basis)**

DATE: Wednesday 19 November TIME: 10am - 1pm

PLACE: Queen's Park Theatre

##### **Environmental legal education seminar on Natural Resource Management issues**

DATE: Wednesday 19 November TIME: 4pm - 6pm

PLACE: Queens Park Theatre

Phone the EDO for bookings on 1800 175 542 or 9221 3030

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### LUNCHTIME LAW

Principal Solicitor Lee McIntosh will present a seminar and discussion forum on

#### **Access to Environmental Justice:**

#### **Using the New State Administrative Tribunal**

DATE : Wednesday 15 October 2003, TIME : 1-2PM

PLACE : EDO, Level 2, King's New Office Tower, 533 Hay Street, Perth 6000

This is the second in the series of seminars on the "Access to Environmental Justice" theme for anyone wishing to expand their knowledge of environmental law and related issues.

RSVP to Linda or Marilyn on 9221 3030 or email: [Ischur.edowa@edo.org.au](mailto:Ischur.edowa@edo.org.au)

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### Early Diary Entry for the EDO's Christmas Party

All members, friends, volunteers, clients, management committee members and pro-bono solicitors are invited to attend the EDO Christmas party.

DATE: Wednesday 17 December

TIME: From 5pm (Volunteer Awards will be presented at 6pm)

PLACE: EDO, Level 2, 533 Hay Street, Perth (corner of Pier Street and Hay Street)

Please bring your own choice of festive liquid refreshment & we will supply the festive fare

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## Donors

Many generous donors have contributed towards the EDO's success. We acknowledge and thank the following donors to the launch of *Coast Law in Western Australia* at the Ocean Beach Hotel (OBH) on 26<sup>th</sup> June as well as the fund raising film night:

- Mr Quinlan, owner of the *OBH*, donated the use of the *Chandelier Room* for the book launch. He also provided a gift voucher for the *C-Blu restaurant* as our book launch competition prize which was won by Ruth MacAdam of Claremont.
- The *Cullen* family donated cases of wine and Terry Hogan of *Xabregas Winery* is thanked for delivering wine to us at a greatly reduced price.
- Food items were supplied by *Bagels on Beaufort*, *Woolworths*, *Peters* and *Brownes*. Raffle prizes were supplied by Garry Johnson of the *Black Cockatoo Traveller's Retreat* in Nannup and more wine was donated by management committee members Janice Dudley and James Duggie.

Sandy Davis is sincerely thanked for donating the "gift membership" prize of accommodation for two nights for two people at *Cellos Lodge*.

Other cash donations which are increasingly being relied upon to keep the EDO running have been graciously provided by:

Dorothy Perrett	Judith Durnin
June Lowe	Betty Murphy
Mark Hingston	Bjoern Reitz
Susan Cutter	Lee McIntosh
John Beattie	Victor Beacham
Lisa Loggie	Graeme Morgan
Barbara & Bert Main	Lynn MacLaren
Julian Fletcher	Alfred & Eileen Boase
Mike Tucak	Carolyn Tan
Kim Stanton	Chris Shanahan
Brian Dibble & Barbara Milech	
Eastern Hills Wildflower Society	
Peel Preservation Group	
Hazelmere Progress Association	

## Volunteers

The EDO continues to benefit from the legal research work undertaken by our valued volunteers:

Chris Bailey	Christian Philogene
Golna Nabizedah	Jess Paneygres
Lara Norman	Nina Calogero
Claire Whinnen	Ken Passlow
James Kirton	Adam Barolsky
Heidi Nore	Marina de Kwant
JP Clement	Netta Goussac
Lindsey Pheloung-Beck	

## Donors-in-kind

We extend sincere thanks to the following people who donated their legal expertise and time to the EDO:

John Hockley	Peter Rattigan
Greg McIntyre SC	Richard McCormack
Henry Litton	

## Thanks to LotteryWest!

New office equipment and furniture funded by the Lotteries Commission of Western Australia, has made a huge difference to the EDO's working environment.

In preparation for the arrival of our two new solicitors, the office was altered to provide new work areas. The open plan gives the impression of spaciousness and provides discrete library and archive areas. Pop in and visit us and have a look for yourself!

We would like to take this opportunity to thank the Lotteries Commission for its ongoing support.

## Members Matter

### Profile of the WA Speleological Group Inc

In 2001 the EDO represented the Australian Speleological Federation (ASF) in their successful hearing before the Mining Warden to prevent mining in part of the Cape Range karst (a special type of limestone landscape), located 35 kilometres south of Exmouth. Since then, the West Australian Speleological Group (WASG) has remained actively involved with the EDO.

Speleology is the scientific study of caves. Many aspects of interest are investigated such as geomorphology, geology, hydrology, chemistry, biology, archaeology and paleontology. The ASF aims to safeguard the karst and cave heritage of Australia, viewing it as a limited and delicate resource that needs protection so that future generations may enjoy the "cave experience"; contribute to the sustainable use of such resources; foster speleology in all its aspects; and bring together persons interested in caves and karst landscapes.

Working with other stakeholders, using funds from membership and donations, the ASF objectives are fulfilled by gathering and recording data to support environmental arguments; making submissions on karst land management; organising seminars and conferences; lobbying stakeholders; and informing private cave managers, communities and the public on its conservation and minimal impact codes.

People with a common interest in caves, from recreational cavers to scientists, often join a local caving club such as WASG. The group embarks upon trips and projects to Yanchep, Margaret River and further afield. Should you wish to get involved or find out more please contact Jay Anderson (ASF Snr. Vice President) on [rossjay@iinet.net.au](mailto:rossjay@iinet.net.au) or 0407 473 539.

## Farewell to Sandy and JP.....

### Sandy Boulter

The EDO farewells Sandy Boulter after three and a half years dedicated service as its project solicitor. In 2000 and 2001, Sandy filled the role of the EDO's "Bushlawyer" – a service that provided environmental legal advice to rural and remote communities throughout the State. From 2002 to July 2003, Sandy was employed as the Coast Law project solicitor. In that role, Sandy helped raise awareness of the laws about a part of the State's environment which is under growing pressure from tourist and residential development and over-exploitation of marine species.

In her time with the EDO, Sandy showed a tireless commitment to her work and clients. Sandy was a key element in many EDO's successes, including:

- a win in the Mining Warden's Court in relation to the proposal to conduct limestone mining in Cape Range;
- successfully arguing in the Supreme Court that the approval of a coastal development at Gnarabup was unlawful; and
- compiling, proof-reading, editing the EDO's newest publication, *Coast Law in Western Australia*.

Sandy has been involved with the EDO since 1996 when she began doing voluntary legal research as part of the EDO's volunteer program. She was elected to EDO Management Committee in 1997 and remained a member until commencing employment in 2000.

Sandy has taken up a new position as the Director of Statutory Planning and Development at the Shire of Augusta Margaret River. The EDO thanks Sandy for her hard work at the EDO, and wishes her every success in her future career.

### JP Clement

We also say goodbye to JP Clement, who was employed by the EDO from December 2002 to June 2003 to carry out our fact sheet project. JP reviewed our existing fact sheets, researched and prepared our new fact sheets, and re-published all of the fact sheets (which are now available on our updated website!!) Our extensive list of fact sheets covers a wide range of environmental law topics from biodiversity protection to protests and rallies. JP's work on the fact sheets continues his long association with the EDO, which includes being the principal author of both editions of the *Law of Landcare in Western Australia* and volunteer since 1996.

JP has now returned to his position as Legal Officer at the Department of Agriculture. We are grateful for the assistance provided by JP and also thank the Department of Agriculture for making his time available. JP will not be lost to the EDO totally however – he will be involved in our new EMS project as part of the Department of Agriculture's contribution to the project.

## And hello to Kirstine and Vivian...

Kirstine Forestier and Vivian Markovich commenced working at the EDO in August 2003 as solicitors for the EDO's new Natural Resource Management and Environmental Management Systems Legal Services Project.

### Kirstine Forestier

Before becoming a lawyer in 1996, Kirstine was a journalist with a special interest in environmental reporting. Working for the Community News Group, she worked on breaking environmental stories like the campaign to save Hepburn Heights bushland and the Beenyup waste water treatment plant development. Since becoming a lawyer, Kirstine has worked for a number of public interest legal roles including Legal Aid in the Pilbara and Perth, the Equal Opportunity Commission, Mental Health Law Centre and Aboriginal communities in the western desert region.

### Vivian Markovich

Vivian completed her law degree at Murdoch University in 2000. After graduation, she spent a year as a judge's associate in the Federal Court before commencing work in the Property, Planning and Environment section of law firm Clayton Utz. She has previous degrees in Linguistic and Cultural Anthropology from the University of Toronto and her main areas of interest are environmental planning and native title law.

Give the ideal gift!

### EDO WA GIFT MEMBERSHIP

Giving gift membership to the EDO will entitle both you and the gift recipient to enter our gift membership prize draw. The prize, which will be drawn at the Christmas party, is two nights for two people at Cellos Lodge near Denmark. A bottle of wine and chocolates are included for an extra special treat! (Prize very generously donated by Sandy Davis). Please use the gift membership form on the back page.

### Position Vacant:

#### Northern Territory EDO Solicitor

The EDO(NT) is an independent non-profit community legal service practising public interest environmental law. The Office provides legal advice and representation, carries out educational activities, and promotes policy and law reform in environmental law.

The Office seeks a lawyer to undertake the work of the Office and to supervise its administration.

Applicants should be eligible to obtain an unrestricted practising certificate in the Northern Territory and have a commitment to the protection of the environment.

Salary package for 30 hours per week including super and six weeks annual leave.

For position description, selection criteria and enquiries please telephone (08) 8982 1182 or email [edont@edo.org.au](mailto:edont@edo.org.au)

The EDO thanks all our sponsors for their support



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EDO

Core funding for the EDO WA (Inc) is provided by the Commonwealth Attorney General's Department

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\$15 Unwaged or concession

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\$40 Non-profit organisation

\$65 Corporate

Enclosed is a cheque/money order for \$ \_\_\_\_\_

Or, please debit my credit card the amount of \$ \_\_\_\_\_

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\* Please note: memberships are subject to approval by the EDO Management Committee. Members must agree to abide by the EDO's Rules.