

PATRICK PEARLMAN'S ADDRESS to PPG AGM 2014

Patrick Pearlman is the Principal Solicitor at Environmental Defender's Office WA Inc. (EDOWA)

Patrick came to WA in 2013 via Northern Queensland's EDO where he spent nearly 3 years. He explained that Queensland has two EDOs and that in his role he had been instrumental in shifting the organisation's focus towards a greater role in litigation (many planning appeals with some successful outcomes). Prior to that he practised law in his native United States for nearly 22 years and explained the difference in the legal system in America where each litigant pays their own costs (except if it is considered a 'vexatious' litigation) whereas in Australia the winner's 'costs' are often awarded against the loser. Australia's system, he feels, deters many worthy cases from being brought for resolution by the courts for fear of the added expense if judgement goes against them.

Australia's first EDO was established in New South Wales in 1986 and in Western Australia in late 1995. Funding was obtained from the Commonwealth Attorney-General's Department, and the EDO commenced full time operation in March 1996. Unfortunately Commonwealth funding has been withdrawn in 2013 leaving some State funding still in place but EDO is relying heavily on donations and membership this year and going forward to maintain the current level of service in providing staff and operational costs to help protect the environment.

The current EDOWA annual budget of \$300,000 needs to cover the cost of staff (1 full time and 2 part-time solicitors and administrative support) and rent/utilities.

EDOs provide free (or low fee) service to the community across their States in all environmental and related areas, help with community education/research and ideas concerning development proposals, legislation, legal reform, freedom of information and defamation. Support may include legal representation in litigation for especially important issues.

Recent/current cases involving EDOWA in litigation includes -

- LNG Precinct at James Price Point north of Broome (overturned the State's approval of \$45B proposal, now undergoing reassessment).
- Disputing State Government's baited drum lines to cull sharks (unsuccessful on the main action but successful in avoiding an award of costs).
- In the Mining Warden's Court, protecting the unique landforms and biodiversity of Western Australia's banded iron formations in the Helena and Aurora Range Conservation Park in WA's Goldfields region, and opposing a coal mine proposal near the Fitzroy River.
- Representing York residents in the State Administrative Tribunal fighting SITA's proposed municipal waste landfill in the Shire's agricultural and conservation zones.
- Assisting citizens who seek to oppose approval of the Roe 8 Highway extension - Beelihar Wetlands.
- Providing advice for possible action to protect Point Peron.

Patrick also noted that the recent discovery of flawed decisions because of EPA panel members' conflict of interest involving the LNG decision may also affect others (possibly even Point Grey). Many decisions, possibly up to 40, are questionable over the past 10 – 15 years and will need to be reviewed.

Some interesting and challenging questions were asked from those present.

Q. What is the legality and enforceability of 'conditions of approval' set on development approvals?

A. This is complex as it is often a requirement addressing future activities and can be vague! The Buzzacott ruling <http://www.corrs.com.au/publications/corrs-in-brief/buzzacott-v-minister-for-sustainability-environment-water-population-and-communities-2013-fcafc-111> ruled that such 'conditions' are allowable in many instances.

Patrick explained the problem of the cost involved in putting such questions up via litigation. In USA, each party pays their own costs (unless ruled as frivolous) but in the Australian system the loser has to pay his own and the winners' costs. In USA, if a community member mounts a legal challenge on an environmental issue, the Treasury MAY cover the cost. He feels it is a shame that Australia does not have a Bill of Rights. There was a comment from the floor that justice is on the side of the powerful in the Westminster system.

Q. How efficient/effective is the JDAP/SAT system?

A. This is a difficult system that is intended to speed up the process but leaves local government with minimal support. In a current case involving a Local Government entity in WA, the EDO has requested 'leave to intervene' to enable involvement in proceedings as well as giving advice.

Q. What can we do about the Point Grey approval which is abhorrent to most environmentalists?

A. We live in a democracy, so still have the right to lobby.

Patrick Pearlman closed his comments by reminding us that the system of government and environmental approvals still needs to be open and accessible. For more information visit <http://www.edowa.org.au>.