

## **Productivity Commission Draft Report into Access to Justice Arrangements – EDO SA response**

The Environmental Defenders Office (SA) Inc. (“EDO”) is the only not for profit, non government community legal centre providing services in the area of public interest environmental and planning law in South Australia. There is no overlap with services provided by other government or non-government organisations. Importantly, legal aid is not available for environmental and planning law matters.

The EDO assists communities across the state to understand their responsibilities and rights and to exercise these rights to protect their environment - urban and rural, natural and built. The EDO provides access to justice, particularly for those in regional areas who are often affected by major environmental and pollution issues, and through working with indigenous Australians on environmental law issues.

The EDO provides its services to the community at a very low cost to government and provides exceptional value to the community and government for the funding dollars invested. The EDO harnesses significant unpaid support for its activities from the legal profession, academia, students and the general community. The EDO in fact started as an organisation entirely reliant on volunteers but for nearly twenty years has been funded through a variety of government and private sources including until recently the Commonwealth Attorney-General’s Department.

In December 2013, our office along with other EDOs received notification from the Commonwealth Attorney-General’s Department that their funding for our service would end on the 30 June 2014. We were advised that this decision was made on the basis that government resources would instead focus on “frontline legal services to disadvantaged members of the community.” As a result of this decision we do not have a long-term secure source of income. We appreciate the acknowledgment in the Draft Report that

“there are grounds for the government to play a role in helping to meet legal costs in environmental disputes involving matters of substantial public interest”.

and that funding to Environmental Defenders Offices (*EDOs*)

“is warranted where the expected returns to the community exceed the opportunity cost to the community of the funding.”

Given the Draft Report’s recognition of the value of our work and the conclusion that funding for this work was warranted, it is clear that the funding cuts will create a barrier to access to environmental justice.

The EDO welcomes the opportunity to respond to certain issues in the Draft Report.

### **Chapter 14 – Self Represented litigants**

Information request 14.1 – What is the most effective and efficient way of assisting self-represented litigants to understand their rights and obligations at law? How can the growing complexity in the law best be addressed?

The EDO's operations include the provision of legal assistance to the community. There is high unmet legal need for environmental and planning law assistance in South Australia. We estimate that 60% of callers to our office require more legal assistance than the basic services that we can provide. Legal advice from the EDO assists in many ways including helping clients to understand the law and its application to their circumstances. Clients are advised whether they have any legal avenues and what those avenues entail.

We assist many people to self represent particularly in the South Australian Environment, Resources and Development Court. This court deals with a high number of self represented litigants (SLRs) . The EDO and the court have a collaborative working relationship with the Court referring many SLRs to the EDO.

We run a Thursday night advisory service staffed by volunteer legal advisors. These advisors together with our paid staff have assisted many SLRs to understand and resolve environmental and planning issues, often at an early stage. EDO clients are able to obtain prompt and early advice about options for resolution of issues and prospects of success. The provision of such advice significantly reduces the expenditure of community and government resources on litigation related activity. Non-meritorious claims and frivolous litigation are avoided and court resources are conserved. Often the involvement of the EDO has resulted in cases settling without going to Court or settling at the conciliation stage of the court process. We are of the view that the EDO provides an efficient and effective service to SLRs in an increasingly complex area of the law.

### **Public Interest Litigation Fund**

Information Request 13.2;

The Commission invites comment on the most appropriate arrangements for the governance and funding of a Public Interest Litigation Fund (PILF) including;

- Appropriate mechanisms and criteria to govern access to the Fund
- Whether the PILF should be established as a new entity or integrated into existing legal assistance funds or bodies.

It is well known that the costs of engaging in civil court proceedings are a barrier to access to justice. In environmental matters particularly, the cost of engaging lawyers and a range of experts put litigation out of the reach of most concerned individuals and community groups. We support the idea of a well-resourced public interest litigation fund to assist parties to meet these costs. South Australia has a Litigation Assistance Fund but it does not fund public interest environmental matters. Such matters could be funded within the existing Litigation Assistance Fund, with applications assessed by an expert panel. There is the potential for costs awards from private matters currently funded by the Litigation Assistance fund to subsidise the cost of public interest matters.

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