



# edotasmania

using the law to protect the natural and built environment

---

131 Macquarie Street  
Hobart TAS 7000

tel: (03) 6223 2770

fax: (03) 6223 2074

[email: edotas@edo.org.au](mailto:edotas@edo.org.au)

20 January 2012

The Secretary  
Department of Treasury and Finance  
ATTN: Emma Sward  
GPO Box 147  
Hobart TAS 7001

**By email:** [emma.sward@treasury.tas.gov.au](mailto:emma.sward@treasury.tas.gov.au)

Dear Ms Sward,

## **BUDGET SUBMISSION: Environmental Defenders Office**

Please find enclosed our budget priority submission for the 2012-2015 budget period. The submission outlines our request for recurrent funding of **\$40,600** p.a for three years to enable us to engage a second part-time solicitor (and meet associated on-costs).

This funding will significantly increase our capacity to act in a public interest environmental advocacy role, and to assist in the efficient operation of the resource management and planning system.

Please do not hesitate to contact me on **6223 2770** if require any further information in respect of this submission.

Kind regards,

A handwritten signature in grey ink, appearing to read 'Jess Feehely'.

Jess Feehely  
Principal Lawyer



**edotasmania**

using the law to protect the natural and built environment

## **BUDGET PRIORITY SUBMISSION 2012-2015**

### ***CAPACITY BUILDING FOR PUBLIC INTEREST ENVIRONMENTAL ADVOCACY***

#### **RESPONSIBLE AGENCIES:**

- Attorney-General
- Primary Industries, Parks, Water and Environment

The Environmental Defenders Office (**EDO Tasmania**) provides an invaluable service to the Tasmanian community, as the only free legal service dealing with planning and environmental law issues. We play a significant role in assisting the community to participate in decisions which affect them and advocating for law reform to improve natural resource management. Current funding levels are not sufficient to meet the existing demand for our services.

Tasmania lags behind other states in terms of the support provided for planning and environmental law services at a state level. There is no justification for this discrepancy, particularly in a state which actively promotes its natural beauty and sustainable management of its resources. Our service is of considerable public benefit. Our activities also directly benefit the government by improving the administration of the resource management and planning system.

EDO Tasmania seeks recurrent funding of **\$40,500** pa (a total of **\$121,500** over three years) to enable us to continue to act as a public interest advocate in respect of planning and environmental law issues in Tasmania.

## ENVIRONMENTAL DEFENDERS OFFICE

EDO Tasmania is a not-for-profit, public interest community legal service for environmental and planning matters. As Legal Aid is not available for civil litigation in Tasmania, EDO Tasmania is currently the only service providing free specialised planning and environmental law advice.

The objectives of EDO Tasmania include:

- Providing legal advice and assisting with access to legal services on environmental and planning law matters;
- Encouraging sustainable development;
- Increasing community awareness and understanding of environmental law;
- Advocating for law reform for the purposes of protecting, conserving and enhancing the environment;
- Ensuring effective public participation in decision making processes regarding natural resource management.

EDO Tasmania provides legal information and advice to over 150 individuals and groups throughout Tasmania each year. Our advice covers a wide range of issues including forestry operations, development activities, coastal protection, water management, climate change adaptation, conservation of threatened species and reserve areas and protection of cultural heritage.

Our assistance to clients extends from general information or referral, to providing detailed advice, to representation in actions in the Resource Management and Planning Appeal Tribunal and the Tasmanian Planning Commission.

EDO Tasmania regularly makes detailed submissions to government agencies on relevant law reform issues. For example, in 2011 we made submissions in relation to the proposed Charter of Human Rights, amendments to the *Environmental Management and Pollution Control Act 1994*, the proposed ban on canal estate developments, the review of agricultural chemical spraying, the draft Statewide planning codes and regional land use strategies and amendments to the *Marine Farming Planning Act 1995*.

EDO Tasmania has conducted a number of public conferences dealing with significant law reform issues, such as forest practices, water management and access to information. In March 2012, we will be hosting a conference exploring whether the regulatory framework for marine farming in Tasmania achieves sustainable outcomes from the perspectives of industry, community and the environment.

EDO Tasmania is also actively involved in community legal education, conducting workshops in relation to various issues and publishing a number of practical resources:

- ***Going It Alone: A Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal***
- ***Environmental Law Handbook*** – a comprehensive online guide to environmental and planning law in Tasmania ([www.edohandbook.org](http://www.edohandbook.org))
- ***RMPAT Bulletin*** – a monthly bulletin providing case summaries of Tribunal decisions and articles on threshold planning issues
- ***EDO Bulletin*** – a general newsletter updating members on the activities of EDO Tasmania, opportunities for public input into resource management decisions and articles addressing topical issues.

## WHY SUPPORT EDO TASMANIA?

### EFFECTIVE PUBLIC PARTICIPATION

The Tasmania Together goals include:

- **Goal 5:** Vibrant inclusive and growing communities where people feel valued and connected
- **Goal 8.1:** Provide an opportunity for all Tasmanians to participate in decisions that affect their lives.

These goals recognise that participating in decision-making processes “*should give people a better understanding of the issues involved and provide an incentive for people to help determine the future of their communities and contribute to realising that future.*”

Encouraging public participation is also one of the key objectives of the Resource Management and Planning System which is central to environmental and planning regulation in Tasmania. Consistent with this objective, all members of the community should have access to legal resources and, where appropriate, representation in cases involving litigation. The lack of affordable legal representation for many individuals and community groups presents a formidable barrier to public involvement in environmental and planning litigation in Tasmania.

EDO Tasmania plays a vital role in improving access to justice and ensuring that all Tasmanians have the opportunity to protect their rights and participate in decisions that affect their lives. Through its range of services, EDO Tasmania assists community members to understand Tasmania's planning and environment laws and to determine the best course of action to achieve more sustainable outcomes in their community.

In the 2005 *Better Planning Outcomes* report, the Tasmanian Government acknowledged the importance of equitable access to legal support for planning and environmental issues. The report recommended an annual contribution to EDO Tasmania to act as an advocate for public interest environmental matters, however no action has been taken towards that end to date.

### MORE SUSTAINABLE COMMUNITIES

Tasmania Together goals 11 and 12, and the objectives of the Resource Management and Planning System, encourage sustainable and appropriate land use and protection of built and natural heritage.

The planning system is the centrepiece of natural resource management in Tasmania, providing links between development proposals and social and environmental constraints. Therefore, a robust, transparent and understandable planning system is extremely important to achieving sustainable communities.

The activities of EDO Tasmania are explicitly directed at achieving these objectives. We play a significant role in improving community awareness of environmental issues, improving the effectiveness of public participation and advocating for law reform to further the goals of sustainable development. Our assistance directly helps to:

- strengthen the capacity of community groups and individuals in their dealings with government agencies, industry groups and other community organisations; and
- improve long-term social and environmental outcomes in communities, by encouraging proactive and strategic participation in resource management decisions.

## **IMPROVING ADMINISTRATION OF THE RMPS**

The resource management and planning system is increasingly complex, and overwhelming for many people in the community. Several impending changes, including the introduction of interim planning schemes (which will take effect *prior* to any assessment by the Tasmanian Planning Commission that the interim scheme satisfactorily meets the RMPS objectives) and a revision of the coastal management framework, are likely to cause additional confusion.

Lack of understanding of the planning system can lead to ineffective public participation, unnecessary conflict and a sense of frustration amongst community members. EDO Tasmania plays a significant role in assisting community members to navigate the RMPS and engage more effectively with decision-making that affects them and their environment.

The work of EDO Tasmania in assisting self-represented litigants, liaising with government, providing appropriate referrals, advice and legal education represent major cost savings to the State. For example:

- Clients are frequently referred to us by government agencies, Legal Aid, local governments, politicians and the Tribunal. Our involvement in providing independent advice, explaining government responsibilities and what information clients need to provide, and making enquiries on behalf of clients can significantly improve the efficacy of communication with government agencies.
- Our publications, particularly the *Environmental Law Handbook* and the *RMPAT Bulletin* are regularly referred to by government and council officers as a source of clear information regarding planning and environmental law in Tasmania.
- Of the more than 300 appeals received by the Resource Management and Planning Appeal Tribunal annually, over half involve unrepresented litigants. The lack of information and resources experienced by many of these litigants places a considerable burden on the Tribunal. By improving understanding of the process, representing people in litigation, providing support to unrepresented litigants or advising against the pursuit of unmeritorious appeals, EDO Tasmania plays a significant role in improving the efficiency of the Tribunal.

## **ENCOURAGING VOLUNTEER INVOLVEMENT**

Tasmania Together goal 5.3 recognises the value of volunteer contributions to the community. The Law Society has recently emphasised the importance of providing opportunities for university students to gain practical voluntary work experience as a way of encouraging young practitioners to remain in Tasmania.

EDO Tasmania operates a successful volunteer programme, principally directed at university students, involving an average of 10 students per year. Past volunteers with EDO Tasmania have gone on to varied careers, including as lawyers with community legal centres and law firms, policy advisors to local members of parliament and the Local Government Association of Tasmania and legal officers within councils.

In early 2011, EDO Tasmania initiated a summer internship programme, offering short-term placements for six law students to gain practical experience in planning and environmental law. The programme received excellent feedback from the participants and is being run again in January – February 2012.

## FUNDING NEEDS

Our capacity to achieve our service objectives is limited by current funding levels. EDO Tasmania receives approximately **\$100,000** annually in government funding, primarily from the Commonwealth. This level of funding, which has remained largely unchanged in recent years despite increasing operating costs and service demand, only allows EDO Tasmania to employ one full-time solicitor and one part-time administrative officer.

Such low staff numbers compromise our ability to meet demand for our services. Lack of resources has forced us to prioritise between activities, leading to a reduction either in public interest litigation work or community education activities and having to turn away potential clients. As the only community environmental law service in Tasmania, this leads to a regrettable gap in access to justice. Many community members are left to fend for themselves in an increasingly complex area of law, frequently against well-resourced opponents.

Despite its explicit promotion of natural resource management, Tasmania continues to lag behind other states in terms of the support provided to environmental law services:

**Table 1: State government contributions to EDO offices 2010-2011**

EDO Office	State government funding	Law Society Funds
ACT	\$ 0	\$ 27,000
North Qld	\$ 125,233 (CLSP) \$ 7,000 (Dept of Env)	*incorporated into state funding
Qld	\$ 96,216 (CLSP) \$ 13,000 (Dept of Env)	
SA	\$ 15,000	\$ 0
NSW	\$ 183,681 (CLSP) \$ 60,000 (Environment Trust)	\$ 1,602,075
<b>Tas</b>	<b>\$ 8,750 (AG &amp; DPIPWE)</b>	<b>\$ 5,000*</b>
Victoria	\$ 135,729 (CLSP) \$ 67,000 (Dept of Planning)	\$ 293,450
WA	\$ 99,496	\$ 0

**Notes:** Table includes only recurrent funding. Many EDO offices also receive one-off grants for specific projects. All figures are in addition to funding received from the Commonwealth Government. All figures are exclusive of GST.

\* EDO Tasmania received a small, one-off grant from the Solicitors Guarantee Fund to assist with the cost of replacing two computers.

In the 2008-2009 Budget, the Tasmanian government acknowledged that funding for community legal centres had *"not kept pace with the cost of running centres and meeting the increasing demands for services"*. To ensure that some CLCs did not have to scale down services, the government allocated additional funding to the Hobart Community Legal Service and the North West Community Legal Centre. Additional funding has also been allocated to the Women's Legal Service and Launceston Community Legal Centre to address rising costs and increasing demands.

We strongly support the funding directed at these community legal centres, and note only that EDO Tasmania remains subject to similar funding pressures but has not received any additional funding in recent budget allocations. Furthermore, will all other Tasmanian CLCs received additional funding through the Solicitors Guarantee Fund in 2011, EDO Tasmania received only a small capital upgrade grant.

As outlined below, we request additional recurrent funding to enable us to engage a second solicitor (part-time). Engaging a second solicitor would significantly improve our service capacity. In particular, additional staff would enable us to:

- Increase the level of public interest environmental litigation<sup>1</sup>;
- Increase the support we can offer to community members seeking advice and to unrepresented litigants;
- Establish more regular outreach services to regional Tasmania;
- Carry out more community education activities;
- Undertake more pro-active law reform work;
- Strengthen and expand our volunteer programme; and
- Strengthen our strategic planning capacity, including developing effective fundraising initiatives to support our core activities and ensure the long-term sustainability of the organisation.

### FUNDING REQUEST

We are seeking funding for a solicitor to be engaged three days per week, and additional hours for the administrative officer to manage the increase in work undertaken. Wages and oncosts have been calculated on the basis of the current Social, Community, Home Care and Disability Services Industry Award, with a 10% buffer to cover anticipated increases in award wages.

Funding is sought on a recurrent basis over three years to allow us to engage in effective longer term planning and sustainable programme delivery.

Expense	Unit Cost	Details	Total
<b>Salaries (in accordance with SCHADS Award)</b>			<b>\$33,564.33</b>
Solicitor (Level 5.2)	\$23.91 / hr	0.6 FTE (45.6 hrs / fn)	\$28,952.35
Administrator (Level 4.3) *additional hours	\$23.34 / hr	0.1 FTE (7.6 hrs / fn)	\$4,611.98
<b>On-costs</b>			<b>\$3,332.94</b>
Superannuation		9% of salary	\$3,020.79
Workers compensation		0.93% of salary	\$312.15
<b>SUBTOTAL</b>			<b>\$36,897.27</b>
<b>ALLOWANCE FOR 10% INCREASE</b>			<b>\$40,587.00</b>
<b>SALARIES &amp; RELATED EXPENSES OVER 3 YEARS</b>			<b>\$121,761.00</b>

<sup>1</sup> All litigation assistance is subject to EDO Tasmania Casework guidelines. An applicant for assistance must demonstrate that the case has strong merit, involves issues of wide public interest and/ or with the opportunity to establish important legal precedent and that the client is unable to obtain legal representation from another source.