

# How to face legal threats

## A RESOURCE KIT FOR ACTIVISTS

*Environment campaigners and community advocates can face legal threats, either real or bluffs. Many people are unaware of steps they can take to defend themselves.*

*This guide shows how to deter or safely handle legal actions.*

### Defend the Defenders resources

The Environment Defenders Office (EDO) Victoria developed the *Defend the Defenders* resources to assist activists who are harassed because of their campaign activities.

*Defend the Defenders* resources may assist you and your group in understanding, preventing or responding to harassment.

They include:

- How to face legal threats
- Dealing with threats
- 10-point plan for handling claims of 'eco-terrorism'.
- Hassle free non-violent action
- Reporting on 'eco-terrorism', sabotage and vandalism
- Responding to claims of 'eco-terrorism': a compilation of source documents

They are available at the Victorian EDO website via [www.edo.org.au](http://www.edo.org.au)

IT IS ALL too common for community groups to receive veiled or actual legal threats. In the US these are called Strategic Lawsuits Against Public Participation (SLAPPs) – legal threats deliberately meant to hinder public campaigning.

The good news is that only a tiny percentage of threats ever proceed beyond a letter.

Legal threats can, however, be a powerful deterrent to people participating in democratic debate on important issues. They can also have a 'chill effect' on potential or existing supporters. So it is important to know how to respond.

### Some reasons why companies take legal action

**To deter activism.** Legal threats might not have much prospect of winning but they can scare people at critical times in a campaign or absorb a lot of time and energy.

**To create publicity.** Occasionally you may hear about a legal threat through a media comment or at a public meeting. These are usually designed to shut you up at a meeting or

## CASE STUDY

### Club Med defamation threat

In 1993 the Byron Environment Centre (BEC) in northern New South Wales commissioned a report on the effects of a proposed Club Med resort at Byron Bay. Club Med obtained a draft copy of the report and threatened legal action unless defamatory material was deleted. BEC representatives met with Club Med who refused to identify the specific points of concern.

BEC then distributed a brochure informing residents of their concerns about the project and denouncing the legal warning. Club Med's solicitors wrote to the BEC claiming the leaflet was defamatory and demanding its withdrawal and an apology within five days.

The BEC sought legal advice, which confirmed they had no reason to worry. The BEC held a media conference where they announced they would not issue any retraction or apology.<sup>1</sup> Nothing more was heard from Club Med on the matter.

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1. Byron Environment Centre, "BEC refutes Club Med's claim of defamation", *Press Release*, 4 June 1993.

to stop journalists from running a story. It is rare that these ever progress any further.

**To distract community groups.** Some legal threats may be targeted to weaken and distract your organisation at a critical time or over an issue on which there is division. Some, such as pressing for legal costs over lost court cases or damages actions, can be an attempt to financially penalise your organisation.

**To respond to your campaign.** Actions such as an injunction might be a response to your launch of a high profile direct action or other activity. A legal counter attack will shift the focus to the court room and, if successful, end

your protest which may have been generating too much good media for their comfort. Other legal threats can be a response to a statement of yours where your opponent feels that no response will ensure that your statement is assumed to be true.

While not common, some legal actions are a countersuit to a legal action you have launched.

**To deter and criminalise direct action.** Some industry groups and governments will press for repressive laws in an attempt to stifle dissent and direct action protests in particular. This can relate to provisions such as trespass laws, damages, inquiries, using regulations to prevent access for protesters or media.

### How to deter legal attacks

There are some steps you can take to deter legal attacks and prepare you to respond effectively if you ever receive one. Remember though that only a tiny percentage of legal threats ever go to court.

**Be aware of your legal rights.** A basic understanding of your rights and the law as it affects your campaigns can help you avoid legal mistakes and recognise common legal threats for what they are. Most legal threats rely on ignorance of the law for their power. If you know the law sufficiently well to spot a bluff you are more likely to be confident enough to go public.

**Be prepared to go public.** The worst effect a legal threat can have is to scare you into silence. The best defence is to go public with as many allies as quickly as you can. Most legal threats evaporate when subjected to publicity and legal scrutiny. Once a legal threat is made public, the news will spread far and wide. Companies know that e-mail stories around the world have the potential to cause problems elsewhere. If a company making legal threats is global, make sure activists groups around the world know about it.

**Establish your profile and access to legal resources.** Legal threats are commonly targeted at individuals and small groups perceived as having few resources and no direct access to legal support. If companies

and other opponents know you have access to good legal advice they will know you will not be a pushover. If your group is regularly in the media or active in the community, potential litigants will also know that they will have to deal with you in the court of public opinion.

**Develop a ‘sin bin’ policy.** Companies and governments often try to ‘divide and conquer’ by developing relationships with some groups while playing tough with others on the same issue. It will help if all groups agree not to work with companies who are in any way associated with legal threats or other forms of harassment against any like-minded group.

**Be ready for court proceedings.** Should the case actually proceed to court both parties are entitled to seek ‘discovery’ – accessing documents relevant to the issues before the court. It is not automatic to gain access to your opponents’ documents, but it is possible. You have to persuade a court as to why particular documents are relevant. You may be able to subpoena company executives as witnesses. You are entitled to cross-examine witnesses your opponent might put forward.

All these factors make most companies wary about proceeding to court, correctly figuring that they have more to lose than you. There are examples of legal action backfiring badly on a company.

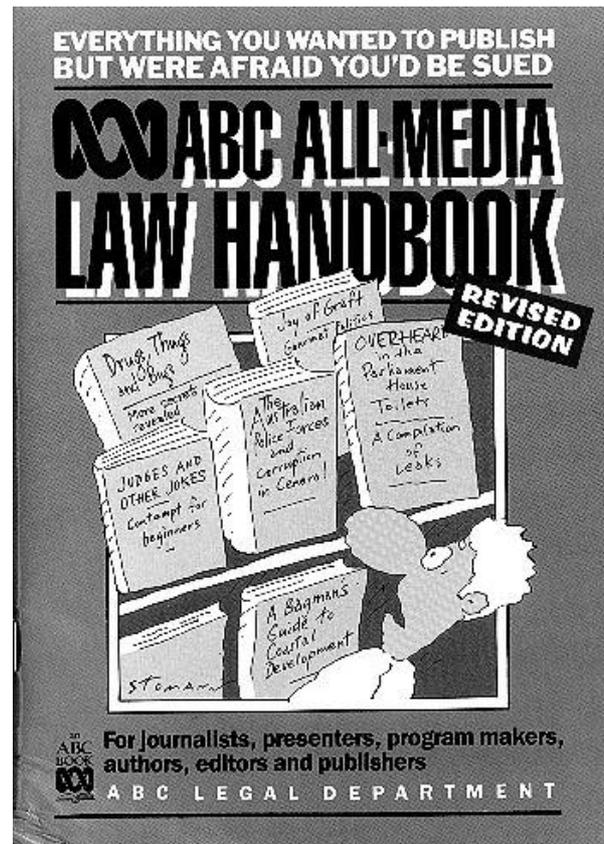
## What is defamation?

Defamation commonly refers to an unjustified and damaging attack on the good reputation of an individual or company.

This section is condensed from a presentation by Bruce Donald “Safe speech and managing the media”. The full text is at [www.edo.org.au/edonsw/publications/safspch2.htm](http://www.edo.org.au/edonsw/publications/safspch2.htm)

The best place to start learning how to speak with safety is the *ABC All-Media Law Handbook*. This booklet explains in the simplest terms the scope for free speech under our media laws. It is important to remember that defamation laws vary from State to State.

There are some simple points about defamation. To begin with, not all criticism of, or disagreement with, people is defamatory. You only defame somebody when you publish



something which lowers their reputation in the minds of ordinary people who hear, read or see the publication. This permits a wide range of ordinary analysis and criticism of what people do in their various pursuits that will not constitute defamation.

The liability is only for publishing to other people. You can write confidential letters of the most severe criticism direct to the person saying what you like, taking care to ensure confidentiality. If they publish such a letter to someone else, you are not liable for that. Obviously you can't leak such a letter!

Next, you only defame when you identify a specific person (and the person has to be alive!). This means that a defamatory attack, for example on the ‘chemical industry’ for poor standards in carcinogenic side-effect research, without naming any company, is not defamation.

*“You only defame somebody when you publish something, which lowers their reputation in the minds of ordinary people who hear, read or see the publication”*

## A checklist to support individuals

If you hear of someone who has received a legal threat there are some simple steps you can take:

- ✓ See whether they have obtained legal advice. If you know a source of good free legal advice, put them in touch as soon as possible. Some people avoid getting legal advice because they fear it will cost them a fortune.
- ✓ Reassure them that only a tiny fraction of threats ever go beyond the first letter.
- ✓ Let them know that they are not alone – many groups have received legal threats and many individuals as well. Let them know that legal threats are a common tactic that can silence critics if recipients think they are isolated.
- ✓ Never dismiss concerns. Do not say ‘it’s nothing to worry about’.
- ✓ Never try to push them to do things they don’t feel comfortable doing. While going to the media might be a good response some will see it simply as another source of stress they don’t need. Respect their judgment.

## Four defamation defences

The law permits defamation in the interests of free speech and the operation of a democratic society when the defamation is:

- true and relates to a matter public importance;
- a fair report of what is said in Parliament or in a Court;
- the honest opinion of the person making the statement; or
- protected by qualified privilege.

### Truth Relating to a Matter of Public Importance

This is hardest to prove, so it is better to use other defences against defamation if possible.

Leaked documents provide a good example of the weaknesses of the ‘truth’ defence against defamation. These documents can provide vital campaign information yet are of no legal value unless it is possible to prove their validity by evidence from a person closely associated with them.

The only documents which stand on their own are official registered documents, title documents and company searches. Even a statutory declaration or an affidavit does not ‘prove itself’ – it does not stand alone. It is only admissible if the person who swore it confirms the truth of its contents in Court.

This is very important in campaigning because documents are often leaked and people can wrongly assume that such documents can be used with absolute safety.

The other important dimension of the truth defence is that it is often a fine line between published material being comment and therefore defensible as honest opinion and on the other hand constituting a statement of fact which can only be supported if it is true.

To say ‘...*John Howard has no commitment to good environmental laws*’ is a statement of fact you couldn’t prove to be true. He will always say he has, of course. On the other hand to say ‘...*if John Howard thinks this package of new environmental laws is the way to go, then I reckon he’s in cloud cuckoo land*’ is a personal opinion, not a statement of fact and therefore, a defensible opinion.

Nonetheless proving the truth of a defamatory statement is difficult.

## Fair and Accurate Report

The law in the interests of an open society permits absolute privilege for politicians to speak within Parliament and for information to be presented in Courts. The law naturally extends this principle to protect a fair and accurate report of this privileged material.

This is a very powerful defence and any review of the daily press will see it constantly used with references such as 'it was revealed in court', 'as said in Parliament today'.

It can be of vital assistance in raising matters of environmental importance where opposition and independent members of Parliament consider that the matter of concern is of sufficient importance that they should use the privilege of Parliament even where something may not be able to be factually proven as true. So a good way of using a document which is hard to prove, but for which there is a basis for supporting its authenticity, is to convince an MP that it should be tabled in Parliament.

Great care is still needed in reporting Court and Parliamentary proceedings because the privilege is 'qualified'. This means that any report must be fair and accurate.

For the environmental campaigner, it means that where you are using Parliamentary or Court sources, you must stick to the material precisely and not depart from it. This of course includes not being selective of the material. The fairness of the report requires that all aspects of it be covered so that for example if the report includes a denial of certain facts you cannot simply quote the facts set out in the parliamentary discussion.

Another crucial element of protected report is that the protection does not permit the person who made the statement in Parliament or Court themselves to come out and repeat that statement outside in the public arena.

## Honest Opinion

The 'honest opinion' defence is more generally called the fair comment defence. This is a misnomer as the strength of this defence is that your comment need not necessarily be fair at all.

The common law of free speech in a diverse society permits people to express their opinions however unreasonable or biased.

So, you can freely say that it is absolutely outrageous and contemptible for ERA to be building a uranium mine in the middle of a World Heritage National Park where the traditional owners disagree.

You can say that the approval by the Minister for the Environment of the Hinchinbrook Project, the biggest coastal resort development on the entire east coast of Australia, in a National Estate area and adjacent to a World Heritage area, is stupid, appalling and wrong.

## CASE STUDY

### Mining company threatens action over thesis

In 1993 an honours thesis by a student at the University of Tasmania, Alexandra de Blas, found high levels of heavy metals in table fish being consumed by residents of Strahan. One possible source of the pollutants was mine tailings from the Mount Lyell copper mine which were dumped into the Queen River which then flowed into Macquarie Harbour.

Plans to publish the first class honours thesis were delayed when the Mt Lyell Mining Company threatened legal action against the university if the thesis was left on the shelves of the library, let alone published.<sup>1</sup>

The upper echelons of the university refused to support its publication. Finally, the thesis was published by the Centre for Independent Journalism at the University of Technology in Sydney with a blaze of publicity about the legal threat by the company.<sup>2</sup>

No legal action was ever taken.

1. Wendy Bacon, Preface in Alexandra De Blas, *The Environmental Effects of Mt Lyell Operations on Macquarie Harbour and Strahan*, Australian Centre for Independent Journalism, May 1994 page i.
2. Bruce Montgomery, "Thesis claims defame: mining company threatens legal action over pollution findings", *The Australian*, 1 June 1994; Moya Fyfe, "Acid water fears loom", *The Sunday Tasmanian*, 29 May 1994, page 1, 6&7; Moya Fyfe, "Concern at uni stand on Mt Lyell thesis", *The Mercury*, 27 May 1994, page 6; "Demand for full study on harbour fish woes", *The Mercury*, 30 May 1994; Editorial: "Making harbour fit state image", *The Sunday Tasmanian*, 29 May 1994.

## Eight tips to avoid defamation

- ✓ Avoidance is the best defence
- ✓ Understand the basics of the law
- ✓ Play the issue not the person
- ✓ Choose your words carefully
- ✓ Act with good intentions
- ✓ Know your facts
- ✓ Think about your audience
- ✓ Create checks and balances

These may be statements of the honestly (even if unreasonably) held opinion of a person and even if they do defame the people identified by the comment, they are completely defensible.

There are two key problems with the 'honest opinion' defence which mean that people should not have a false sense of security about using it.

First it must be a statement of opinion and not in reality a statement of fact defensible only as truth on a matter of public importance.

This is a fine distinction which even has QCs guessing, so be careful.

It is a statement of fact to say 'the Minister is dishonest'. It is a statement of opinion to say, 'It would be very dishonest for the Minister to say the mine will not significantly affect the endangered birds when faced with the evidence before him that they will die in large numbers'.

Secondly, the statement must be based on facts which are either set out in the same publication as contains the comment or else are well known to the audience.

## Qualified Privilege

In the interests of protecting the essential flow of information, a limited or 'qualified privilege' is sometimes allowed by the law. They are circumstances where the publisher or speaker has a duty to provide information on a subject to a person who has an interest in receiving the information. The duty may be a moral or social duty as well as a legal duty. These circumstances can be important in environmental campaigns.

The best cases covered by this are confined communications such as letters where the writer and the recipient are sharing information on a subject of importance for one or other of them.

Examples of this are submissions to Ministers or officials at local councils.

If you send your submission to that person you don't have to be able to prove the precise truth of defamatory material it contains unless perhaps the claims made are wild assertions with no relevance or clearly factually wrong.

Qualified privilege will be defeated as a defence if the publication was malicious, for example, not for the purpose of contributing to the debate on the issue in question.

Another aspect of the qualified privilege defence is the limited so-called public interest qualified privilege defence involving matters of major governmental public importance where the publisher has acted reasonable under quite strict criteria. However the publication must be 'reasonable' and 'not actuated by malice'.

The 'reasonableness' test set out by the High Court is very strict, namely that conduct will not be reasonable unless the publisher had grounds for believing the defamation was true, took steps to verify the accuracy of the material, did not believe the defamation was untrue and sought a response from the person defamed and published any such response.

## Eight tips to avoid defamation

### 1. Avoidance is the best defence

Dealing with any legal threat, no matter how spurious, takes time and causes stress. The best strategy is not to defame people at all. This may mean not publishing something you know to be true or it may mean calling for an

investigation into a critical incident without attributing blame.

It may mean refusing to comment until you are certain of your information or until you get legal advice. If you are worried get a lawyer to check the material.

## 2. Understand the basics of the law

Understanding the basics of defamation and other key laws that could affect your organisation is a good place to start.

Remember these basic things:

- The truth may not be enough.
- Inferring a crime has been committed can be defamatory.
- Repetition is still defamation.
- Public figures can still be defamed.
- Inferences and innuendoes count.

## 3. Play the issue not the person

Avoid abuse and name-calling. Respect the motivation and views of your opponents as being genuinely held and confine your comments to the issue. Imagine you were in their position and how you would feel reading your statement. It can stand you in good stead if you and your group consistently play fair and avoid personalising the issue.

## 4. Choose your words carefully

Most threats of defamation against campaigners originate from media releases, newsletter articles or media interviews. Here are some simple tips.

- **Avoid sensationalism.** Don't overstate your case for the sake of trying to get a headline.
- **Qualify your statement if necessary.** Reflect the evidence you have rather than generalise.
- **Footnote key references.**

## 5. Act with good intentions

Do you dislike the person you are criticising? Are you feeling angry about something they have said or done? Do you wish them ill? Talk the issue over with someone else. Good faith is an important element of the defence and good faith includes not acting out of malice.

## 6. Know your facts

Be confident of the origin of your facts. It is always best to rely on primary sources as far as possible, rather than on someone else's report.

# CASE STUDY

## Forest Friendly Timbers Book

In April 1999, Alan Gray and Anne Hall launched their book *Forest Friendly Building Timbers* which outlines alternatives to native forest timbers.

The National Association of Forest Industries (NAFI) dispatched legal threats to the authors and BBC Hardware, which was selling it. NAFI claimed the book contained false and misleading information and was in breach of the Trade Practices Act.<sup>1</sup>

Following the legal threat, BBC Hardware withdrew the book from sale, which pleased NAFI.<sup>2</sup>

NAFI's success was short-lived. After obtaining quick legal advice, the authors went public. After media coverage of the threats and questions about whether the threats themselves might be in breach of the Trade Practices Act, Australian Competition and Consumer Commission (ACCC) Chairman Professor Alan Fels announced that the ACCC may investigate the legal threats made by NAFI.

Suddenly NAFI was on the defensive. National media coverage focused on the possibility that NAFI might be investigated.

In the weeks of coverage that followed, the book got publicity of which most authors dream.

While the ACCC decided not to pursue a formal investigation of NAFI's legal threats, the small booklet had turned into a bestseller. NAFI has not made legal threats against anyone else in the years since.

1 Dr Robert Bain, "Forest Friendly book untrue and misleading", National Association of Forest Industries, 6 April 1999.

2 Dr Robert Bain, "NAFI welcomes BBC decision to remove book from sale", National Association for Forest Industries, 8 April 1999.

Time spent on research is better than time spent worrying about a legal threat.

### **7. Think about your audience**

Put yourself in the position of a reader of your document or statement – how would they react and what would they make of it? Always try and put yourself in your opponent’s position and ask ‘would I be upset if someone said this about me?’.

### **8. Create checks and balances**

Check everything – twice. A good habit is to get another person to check your material. Invite them to be critical and listen to their criticism. Ask them what they think it means. If in doubt, leave it out.

Establish a procedure for vetting written statements prior to publication. Some organisations have a policy that all media statements are checked by someone else – for content, spelling and legal risks. This doesn’t need to be a time consuming and bureaucratic process.

Some organisations have an arrangement with a lawyer for checking statements that may be cause for concern.

## **What to do if your group receives a legal threat**

When you open the letter threatening legal action against you, you will probably have a sinking feeling in your stomach. Sit down, take a few breaths and remember that the letter in your hand is probably the first and last you will ever hear from the opposing lawyers. Remember only a tiny fraction of threats ever go beyond the first letter, so don’t panic.

The letter will probably refer to a specific action, media release or publication where you are supposed to have defamed the lawyer’s client. Quickly get a copy of this if you can. If it relates to a comment made on radio or TV get a tape of it.

Immediately start a file into which you put all relevant material. Give a copy of the material to your lawyer, not the originals.

Talk to your closest colleagues and let them know about the threat and ask if they know of anyone else who has received one as well. Sometimes a few people will get letters at the

## **CASE STUDY**

### **Defamation threat vaporises with evidence**

In September 1993 the Tasmanian Greens, the Australian Conservation Foundation and The Wilderness Society released a letter from Tasmania Police clearing environmentalists of involvement in the Black River bomb hoax and indicating that there were rumours in the local community that it could have been done to discredit environmentalists.<sup>1</sup>

The Forest Industries Association of Tasmania (FIAT) subsequently threatened defamation action unless an apology was issued.

They claimed that at no time did FIAT “blame any person for the bomb hoax incident”.<sup>2</sup>

However, the Executive Director of FIAT had stated in an interview on ABC TV “that action is entirely consistent with what the Earth First people have indicated they are prepared to do”.<sup>3</sup>

After the groups wrote back to FIAT’s lawyer citing the transcript of the ABC interview, nothing more was heard from FIAT.

1 The Tasmanian Greens, The Wilderness Society, Tasmanian Conservation Trust, “Bomb Hoax revealed in police report: democracy suffered from anti-green stunt”, 9 September 1993.

2 Dobson, Mitchell and Allport, Letter to Tasmanian Greens, The Wilderness Society and Tasmanian Conservation Trust, 17 September 1993.

3 Mark Addis, ABC TV News, Thursday 11 March 1993.

same time. If so, organise one person to contact your legal adviser.

If the threat relates to a statement you made that was published in a media outlet, contact the media organisation and see if they received a threat as well. If a statement was published in a newspaper or on radio or TV, the publisher or broadcaster is also liable for any defamation that occurred.

One of the telltale signs of a legal bluff is where they threaten legal action against the person who made the statement but not the publisher or broadcaster. If this is the case you can relax a bit – it is a signal they want to scare you but don't want to alienate the media organisation. If they proceed, you could push for the media organisation to be included.

*“Remember only a tiny fraction of threats ever go beyond the first letter, so don't panic”*

## A checklist for groups

### Public statements policy

- ✓ Clarify who is authorised to speak publicly for the organisation.
- ✓ Have a procedure to check draft media releases.

### Training

- ✓ Make sure that **all** people who may make public statements – media releases, speaking at public meetings, writing articles, editing magazines – attend training covering defamation law and how to handle legal threats.

### Legal advice

- ✓ Ensure you have someone on the board of your organisation who has legal skills.
- ✓ Develop a good working relationship with one or two individuals who can offer you good and quick legal advice.
- ✓ Threats could come via media release or public statements, so have after hours numbers for your legal advisers. Don't wait to get advice.

### Offer support

- ✓ If you hear of someone from another group who received a legal threat for their public advocacy see what you and your organisation can do to provide moral, legal and financial support.

### Incorporation

- ✓ Become an incorporated organisation. This limits the exposure

of the assets of individual members, not necessarily the directors, to a nominal amount, usually \$20.

### Directors liability insurance

- ✓ Directors liability insurance can protect members of the board or the executive from being personally liable for damages awards against the organisation. These policies don't come cheap and are usually in the range of \$5000 per year.

### Defamation insurance

- ✓ It is possible for individuals and organisations to obtain insurance coverage for defamation actions (either as a separate policy or together with directors liability insurance). This can be expensive.

### Sponsorship issues

- ✓ Will you enter into relationships with companies who make legal threats against other groups? If your group already accepts sponsorship or sits on corporate advisory panels what will you do if the company makes legal threats against other groups or individuals. Will you say nothing, withdraw in protest, make a public statement or keep your comments private? Preferably make an agreement with other groups working on the same issue that you will not work with or accept sponsorship from with companies who harass other like-minded groups.

Organise a meeting with your legal adviser – the sooner the better and that same day if at all possible. The less time you have to worry about the matter, the better. Fax them the letter and any relevant background material.

Investigate whether the person or company making the legal threat has done so before. If they have made a previous threat, find out as much as possible – what the threat was about, when it was made, whether there was media coverage of it, whether they ever went beyond the first letter etc. This will be useful background for your legal adviser and in planning any media exposure on the issue. Check to see whether other legal threats have been made against media outlets, government agencies or public servants.

## CASE STUDY

### Greenpeace sued for damages

In March 1991 Greenpeace attempted to disrupt the seismic testing program being conducted for BHP by the ship *MV Western Odyssey*. The seismic program was being conducted in the Southern right whale calving grounds of the Otway Basin off the Victorian coast.

For several days Greenpeace successfully disrupted part of the program and gained national media attention for the issue of oil exploration around Australia's coast.

BHP then sought an injunction under section 45D of the *Trade Practices Act* preventing Greenpeace, its vessels or employees from approaching the surveying vessels.

BHP subsequently dropped its actions following a public outcry and trade union dissatisfaction with BHP's actions.<sup>1</sup>

1 Greenpeace Australia, "BHP vs Greenpeace – A battle for the future", *Briefing Paper* Number 1, May 1991; Greenpeace Australia, "Section 45D of the Trade Practices Act – its history and the future implications of BHP's attempt to extend its application to environmental groups", *Briefing Paper* Number 2, May 1991.

Courts are increasingly aware of the potential for lawyers to abuse the processes of the courts by initiating legal claims without ever intending to proceed with them. This is an issue that the courts and the Law Society, which regulates the activities of lawyers, takes seriously. If there is evidence of a pattern of legal threats from a particular company through its lawyers you may have grounds for a complaint. This would need careful research and some legal advice.

When you meet with your legal adviser, talk through the process and timing of responding to the threat and your possible media strategy. Keep notes of your meeting. Usually your lawyer will write a letter back disputing that the statements amounted to defamation, declining to offer an apology and sometimes presenting any information that clearly refutes the claims they make. Usually that is the end of the matter.

The media strategy for every situation is different but as a general rule you have little to lose by going public.

Look for opportunity in the threat. With a smart response, you can turn a legal threat to your advantage, allowing you to state your case again, gain public sympathy and deter your opponent and possibly others from resorting to legal threats again.

### Getting legal advice

Try to ensure that you have people with legal skills on your board and if you have a reasonable budget set aside some funds for legal contingencies. For smaller groups, especially those in rural and regional areas, it is harder to gain access to legal advice. Here are some suggested steps.

- **Be as self-reliant as possible.** Increase the basic legal understanding of the key people in your group. This should include some of the basics about possible charges for civil disobedience protests, arrest procedures, gathering evidence and defamation law. You will then have a better understanding of the specific issues on which you may need specific legal advice.
- **Recognise there can be occasions when some things are best done by you.**

If, after getting some advice, you decide to plead guilty to a minor charge and want to make an impassioned plea to the magistrate, you may be better off without a lawyer.

- **Establish contact with your local Environmental Defenders Office.** Some run basic training courses that can be useful. While they have limited resources, often they can give you quick advice over the phone or direct you to someone who may help on a free or reduced rate basis.
- **Legal decision making.** Establish how and who will make decisions about legal cases within your organisation. Legal actions often work to strict deadlines so you won't necessarily have time to wait for the next monthly meeting of your group.
- **Be clear about why you are doing it and when to stop.** If you initiate a legal action it is worth thinking about why you are doing it, what you can (and can't) achieve through legal action and conditions under which you would decide to give up. Never commence a legal action unless you are well prepared. If you are defending a case, it is worth knowing what you can influence and what you can't.
- **Find someone who can give free legal advice.** There are many lawyers who will happily provide advice to environmental groups on a free or reduced rate. If you ask for, and get, free legal advice, make sure you have a good reason if you choose to reject their advice.
- **Think laterally.** For example, if you are in a small rural town and there are no friendly lawyers remember you can often get good legal advice over the phone or via e-mail.
- **Recognise that lawyers are busy people whose time is valuable.** Give them as much advance warning as possible and keep urgent requests for when it is truly urgent.
- **Be up front about money.** Some lawyers will give free legal advice on issues close to their hearts. Others will do work if you cover any specific costs such as copying,

## CASE STUDY

### Wilderness Society invoiced

In September 1992 conservationists were campaigning to stop the blasting of the Exit Cave quarry in the Western Tasmanian World Heritage area. The Federal Government, having announced the closure of the quarry, was about to allow it to reopen with another 'rehabilitation' blast. The holes for the explosive had been drilled ready for the blast which was scheduled to be loaded the next day.

Overnight a small group of Wilderness Society supporters visited the quarry and filled the holes rendering it impossible to load the explosives. This bought vital time in the campaign. Subsequently the Federal Government forced the closure of the quarry without allowing additional blasts.

Two weeks after the holes were filled the solicitor for the quarry operator sent an invoice for \$23,000 to the Wilderness Society along with a letter threatening legal action if it was not paid<sup>1</sup>. The Wilderness Society responded by sending an invoice for a slightly larger amount but offering to call it quits if the quarry operator dropped their demand. The quarry operator took no further action.

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<sup>1</sup> C.A. Johnston, Munnings and Co to The Wilderness Society, 9 October 1992.

filing charges etc. Others will do work on a 'no win-no fee' basis which means that if there is a costs award they get paid for their time if not they don't. Be aware though that this means they are most likely to pursue aspects of your case(s) that have most chance of success. Some will offer discount rates but be aware that cheap rates can mean \$100 per hour. Some offer a first meeting free and then bill for subsequent time.

## RESOURCES

### The Australian network of Environmental Defenders Offices (EDO)

*The website — [www.edo.org.au](http://www.edo.org.au) — has the contact details and the office hours for all the EDOs – there is at least one office in each State and Territory.*

Environmental Defenders Office, **A NSW Guide to Non-violent Action, the Environment and the Law**, 2nd edition, Sydney 1998. \$20

*This excellent reference, while written specifically for NSW, has lots of useful information for campaigners anywhere in Australia. It covers laws relating to non-violent action, the process and aftermath if you get arrested, and the basics of court hearings.*

Environmental Defenders Office, **Defending the Defenders: Protest, the Environment and the Law**, October 1998. \$20

*This covers some of the background issues such as the global threats to environmental advocates and some of the steps that can be taken to prevent or mitigate harassment.*

These publications are available from: Environmental Defenders Office, Level 9, 89 York St Sydney 2000. Fax (02) 9262 6998 or order through [www.edo.org.au](http://www.edo.org.au)

Australian Broadcasting Corporation **All Media Law Handbook: Everything you Wanted to Publish but were Afraid you'd be Sued**, Sydney, 2001.

*This is essential reading. It is the best basic text for beginners on defamation law in Australia. It is readily available from ABC Shops for \$7.95.*

- **Understand legal costs.** Be aware that most lawyers record details on their timesheets of everything from phone calls you make to them to photocopying etc. The more of the basic legwork you can do the better – it means you can use lawyers for legal advice rather than things you could do, such as photocopying.
- **Keep information.** Collect as much evidence or useful information as possible yourself and keep the file in good order. If it is vital information keep back up copies.
- **Identify a lawyer liaison person.** As far as possible try to have one person who does the liaison with the lawyer on the case – or a small, well co-ordinated group. It is frustrating and a waste of time if a lawyer offers free advice only to have to explain much of the same information to a parade of changing faces or get half a dozen phone calls all asking the same questions.
- **Thank your lawyers.** In whatever you think is the most appropriate way.
- **Create a legal budget.** Put aside a legal budget for training and emergency legal advice. If you don't use it that's fine but unless you budget for it you will then simply add financial worries to legal ones at a critical time.

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