

CABINET - SUBJECTS FOR CONSIDERATION, 26 APRIL 2005 11:00 AM

Not Relevant

201

ATTG0073/05CS

Changes to the Sentencing Powers of the
Environment, Resources and Development Court
APPROVED AS AMENDED

201

CABINET COVER SHEET

- 1. **TITLE:** Changes to the sentencing powers of the E.R.D. Court
- 2. **MINISTER:** **MICHAEL ATKINSON M.P.**
ATTORNEY-GENERAL
- 3. **PURPOSE:** To seek Cabinet approval for the drafting of a Bill to change the sentencing powers of the Environment, Resources and Development Court (the E.R.D. Court) and to change trial procedures for indictable environmental offences
- 4. **IDENTIFY THE RELEVANT GOVERNMENT POLICY OR TARGET IN SOUTH AUSTRALIA'S STRATEGIC PLAN OR BOTH**
The proposal does not contribute to a target or priority action of South Australia's Strategic Plan.
It will meet, to the extent possible, a Government election promise 'to extend the powers of the [E.R.D. Court] to allow it to impose the full range of penalties provided by the *Environment Protection Act*'.
- 5. **RESOURCES REQUIRED FOR FULFILMENT:** I do not expect that any additional resources will be required to fulfil this proposal.

Treasury and Finance agrees with the basis of the assessment of costs contained in this submission.
- 6. **PUBLIC AND ENVIRONMENTAL EFFECT** By changing sentencing procedures for serious environmental offences the proposal provides the level of environmental protection that Parliament sought to secure in setting high maximum penalties for those offences. The proposal also ensures that a person charged with such an offence is given the same entitlements to trial by jury and to sentence by an experienced criminal court as a person charged with a comparable non-environmental offence.
- 7. **RISKS** There is little risk with this proposal.
- 8. **CONSULTATION** I consulted
 - Business, Manufacturing and Trade
 - The Office of Regional Affairs
 - The Department of Human Services

- The Department of Environment and Heritage
- The Environmental Protection Authority
- The Courts Administration Authority
- The Chief Justice, the Chief Judge of the District Court, the Chief Magistrate and the Senior Judge of the E.R.D. Court on an earlier model. This proposal overcomes differences of opinion between the Judges of the Supreme and District courts, on one side, and the Senior Judge of the E.R.D. Court on the other side.

9. **COMMUNICATION STRATEGY**

The proposal will be communicated through the legislative process.

10. **URGENCY**

The proposal is not urgent.

11. **RECOMMENDATION**

I recommend that Cabinet:

4.1 approve the drafting of a Bill to change the sentencing powers of the Environment, Resources and Development Court (the E.R.D. Court) and to change trial procedures for indictable environmental offences; and

4.2 approve that I consult the Chief Justice, the Chief Judge of the District Court and the Senior Judge of the E.R.D. Court on the draft Bill before seeking Cabinet's approval to introduce it to Parliament.


I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

MICHAEL ATKINSON M.P.

PORTFOLIO:

DATE:

Contact officer

(signature) 
ATTORNEY-GENERAL

8 April, 2005

Helen Wighton
 Policy and Legislation, Attorney-General's Department
 8207 1849

TO: THE HON. THE PREMIER FOR CABINET

RE: Changes to the sentencing powers of the E.R.D. Court

1. PROPOSAL

1.1 That Cabinet approve the drafting of a Bill to change the sentencing powers of the Environment, Resources and Development Court (the E.R.D. Court) and to change trial procedures for indictable environmental offences.

2. BACKGROUND

2.1 One of the Government's election promises was 'to extend the powers of the [E.R.D. Court] to allow it to impose the full range of penalties provided by the *Environment Protection Act*'.

2.2 The E.R.D. Court is primarily a civil regulatory court. It is by reliance on civil and administrative remedies, rather than on criminal sanctions, that the aims of the *Environment Protection Act 1993* are achieved. The E.R.D. Court has a minor, incidental summary criminal jurisdiction like that of a Magistrates Court. In its criminal jurisdiction, the court may try and sentence summary or minor indictable environmental offences, and it shares this jurisdiction with the Magistrates Court. Environmental offences may be set down for hearing in the E.R.D. Court or in the Magistrates Court.

2.3 For present purposes, offences are classified as summary or minor indictable offences in this way:

2.3.1 Summary offences are those that have a maximum fine of no more than twice a Division 1 fine (i.e. no more than \$120,000), and, if they have a penalty of imprisonment, it is for a maximum of two years or less.

2.3.2 Minor indictable offences are those that are not punishable by imprisonment but have a maximum fine of more than twice a Division 1 fine (i.e. more than \$120,000), or those for which the maximum term of imprisonment is no more than five years. A person charged with a minor indictable offence may elect to be tried by jury in the District Court, but will otherwise be tried summarily.

2.4 Summary criminal courts, such as the Magistrates Court and the E.R.D. Court, must sentence minor indictable offences as if they were summary offences. Limits are set for the sentence a summary court may impose for a minor indictable offence:

2.4.1 The Magistrates Court may not sentence a person convicted of a minor indictable offence to more than two years imprisonment, or impose a fine of more than \$150,000.

2.4.2 The E.R.D. Court, like the Magistrates Court, may not sentence a person convicted of a minor indictable offence to more than two years

imprisonment. However, the maximum fine it may impose (\$120,000) is slightly less than for the Magistrates Court¹.

2.5 Sometimes the maximum penalty prescribed for a minor indictable offence may be greater than the sentence limit of the summary court. At present, only the Magistrates Court, and not the E.R.D. Court, can do anything about this.

2.5.1 If a magistrate thinks the offending merits a penalty that is higher than the Magistrates Court's sentence limit, he or she may remand the offender to the District Court for sentence. The District Court may then sentence the offender within the prescribed maximum penalty.

2.5.2 The E.R.D. Court, by contrast, has no authority to remand the offender for sentence in the District Court². This means that people do not face the kinds of penalties Parliament intended if they are prosecuted in the E.R.D. Court.

2.6 Aside from the E.R.D. Court having a lower sentence limit than the Magistrates Court, and not having the Magistrates Court's ability to remand an offender for sentence in the District Court, there is another anomaly in the present system. It is that a defendant to a minor indictable environmental charge that is brought in the E.R.D. Court has no option of trial by jury, as would a defendant to any minor indictable charge brought in the Magistrates Court. In other words, a defendant to a minor indictable charge brought in the E.R.D. Court is deprived, by the prosecutor's choice of forum, and for no reason of legal principle, of the right to choose to be tried by a jury and, in that case, to have the prosecution make a case to answer before the court decides whether to commit the case to the superior court for trial.

3. DISCUSSION

3.1 The E.R.D. Court does not have the powers of a superior criminal court because it deals only with summary and minor indictable offences and hears very few minor indictable offences. The court has not conducted a criminal trial for a minor indictable offence for at least six years³. The bulk of its work is civil and its judges are expert in civil environmental, not criminal, law.

3.2 A table of convictions and sentences in the E.R.D. Court in the five years from 2000 to 2004 is in *Attachment 1*. It shows that:

¹ The reason for the lesser fine limit in the E.R.D. Court is this. In 1996 the Government began to revise legislation to replace references to divisional fines in prescribed maximum penalties with set monetary amounts. In doing so it increased the fines to reflect the change in monetary value since the introduction of divisional penalties many years earlier. Where the reference was to a Division 1 fine, formerly a maximum of \$60,000, the reference would be to a fine not exceeding \$75,000. Section 19(3) of the *Criminal Law (Sentencing) Act 1988*, which sets the sentencing limits for the Magistrates Court, was one of the provisions amended in this way. Instead of setting that limit by reference to an amount not exceeding 'twice the Division 1 fine', it did it by reference to a monetary amount of \$150,000 (i.e. twice \$75,000). No such change was made to the corresponding provision in the *Environment, Resources and Development Court Act 1993*, (s7), which sets the sentencing limits of the E.R.D. Court.

² The sentencing limits of the E.R.D. Court are set by the *Environment, Resources and Development Court Act 1993*, and not, like the Magistrates Court, with which its criminal jurisdiction is intended to correspond, by the *Criminal Law (Sentencing) Act 1988*. The *Environment, Resources and Development Court Act 1993* contains no equivalent to the sentencing remand provision for the Magistrates Court (s19(5) of the *Criminal Law Sentencing Act 1988*).

³ Information is not readily available for the years 1993 to 1998, and is of little relevance to the present situation anyway.

- 3.2.1 The court does very little criminal work. For three years in a row, no minor indictable offences came before the court⁴, and in each of the two other years the court heard a plea to only one such offence⁵. The greatest number of cases in a year was nine (in 2004), and that included eight summary offences. However, an increase in workload in one year does not necessarily indicate that the court's criminal workload will stay at that level or continue to increase. Indeed, it may drop back to previous levels.
- 3.2.2 Almost all the court's criminal work is in sentencing, not trials. In five years the court heard a total of 19 criminal cases, of which 18 were guilty pleas.
- 3.2.3 The court's trial experience is in summary offences only. In five years there has been one short trial of a regulatory offence for breach of a condition under the *Development Act 1993*⁶.
- 3.2.4 The court has dealt with only two minor indictable offences, by way of guilty plea, in the past five years, one in 2004 and one in 2000. Both offences had a maximum penalty of \$2m, and in each case the defendant was a body corporate. For the 2000 offence, the court imposed a fine of \$40,000, well below the prescribed maximum and the court's sentence limits. For the 2004 offence, it imposed a fine of \$120,000, the sentencing judge stating that the offending deserved a much higher penalty than the court could impose and regretting that it could not remand the defendant to a superior court so that it could impose a higher sentence⁷.
- 3.3 The problem the Government sought to remedy in its election promise arose because, over time, the maximum penalties prescribed for the most serious minor indictable environmental offences have been increased to a level far greater than can be imposed by any summary court, including the E.R.D. Court.
- 3.4 The most serious environmental offence in South Australia⁸ has a maximum penalty, for a corporate offender, of a fine of \$2m, and, for a natural person, a fine of \$500,000 or imprisonment for up to four years, or both. It is a minor indictable offence because it carries a maximum penalty of imprisonment that is less than five years. But by any other standard it is an extremely serious offence and a person convicted of it becomes liable to civil orders to
- make good the damage;
 - restore the environment;

⁴ In 2001, 2002, and 2003.

⁵ In 2000 and 2004.

⁶ The breach was to change the use of land from parkland to carpark: *Adelaide City Council v Lester & Park Fast (Aust) Pty Ltd* [2004] S.A.E.R.D.C. 35. A fine of \$11,000 was imposed.

⁷ Senior Judge Trenorden of the E.R.D. Court in her sentencing remarks in *Director of Public Prosecutions v TransAdelaide*, 15 November, 2004, spelt out the limited role of the court thus: '... the role of this Court when considering the appropriate penalty for an indictable offence is to determine where the offence falls in the spectrum, having regard to the maximum penalty that may be imposed, and if upon that consideration the Court would have imposed a penalty greater than the maximum to which it is limited, it must impose that maximum, namely twice the Division 1 fine.'

⁸ The offence of 'causing serious environmental harm by polluting the environment intentionally or recklessly and with the knowledge that environmental harm will or might result', *Environment Protection Act 1993*, s79(1).

- pay the costs incurred by public authorities in preventing or mitigating the environmental harm caused or making good any resulting damage;
 - compensate for injury, loss or damage; or
 - pay an amount equivalent to the economic benefit gained by the commission of the offence;
- or any combination of these orders.

3.5 It is therefore particularly important that people accused of serious environmental offences should be given the standard procedural and evidential safeguards afforded to defendants to non-environmental criminal charges of equivalent seriousness. The Chief Justice has expressed his concern about this. A defendant to a serious minor indictable environmental offence should have, at *the very least*, these standard entitlements:

- to be tried by a court that routinely tries criminal cases and is experienced in applying the rules of evidence and criminal procedure;
- to have the opportunity to be tried by a judge and jury;
- to be able to know the case against them before trial;
- to be able to ask the court to assess the strength of that case and say whether it should be answered; and
- to have the opportunity to be sentenced by a court that imposes sentences for a wide range of criminal conduct, including comparable criminal conduct.

3.6 The problem in fulfilling the Government's election promise has been in giving greater sentencing powers to the E.R.D. Court without radically and inappropriately augmenting its criminal trial jurisdiction. It is not appropriate to give the E.R.D. Court the powers and functions of a superior criminal trial court, because they are not necessary for a court that does not try major indictable offences and has such a negligible criminal workload.

3.7 I have worked through several different models with the Minister for the Environment and Conservation, and consulted, in the early stages, with the Chief Justice and the Chief Judge of the District Court. The Minister and I have agreed on this model:

3.7.1 *Summary and minor indictable environmental offences are to be brought in the E.R.D. Court only.* At present, the E.R.D. Court has jurisdiction to try a charge of an offence conferred on it by the *E.R.D. Court Act 1993* or any other Act, but the law allows those charges to be brought in either the Magistrates Court or the E.R.D. Court. I propose that the *Summary Procedure Act 1921* be amended to provide that a charge of an environmental offence is to be set down for hearing before a judge of the E.R.D. Court⁹. An environmental offence will be a summary offence or a minor indictable offence for which jurisdiction has been conferred on the E.R.D. Court by any Act¹⁰.

3.7.2 *The E.R.D. Court is to continue to try offences summarily, as if a Magistrates Court.* This means that:

- in its criminal jurisdiction, the E.R.D. Court will continue to operate at the level of a Magistrates Court;

⁹ Note that the practice is for an E.R.D. Court judge, not a magistrate, to hear both summary and minor indictable environmental offences that are brought in that court. E.R.D. Court Practice Direction 7(2) says: 'Generally, the hearing of a complaint or an information which alleges one or more breaches of the *Environment Protection Act* or the *Development Act* will be assigned to a judge of this Court.'

¹⁰ For example, offences constituted by the *Environment Protection Act 1993*, the *River Murray Act 2003*, or by the sections of the *Natural Resources Management Act 2004* referred to in s216 of that Act.

- the E.R.D. Court's criminal jurisdiction is to continue to be limited to summary and minor indictable environmental offences;
- trials of these offences in the E.R.D. Court will continue to be by an E.R.D. Court judge¹¹;
- as now, the E.R.D. Court may not empanel a jury;
- the procedures and evidentiary rules that apply to a summary criminal trial in the Magistrates Court will also apply to a summary criminal trial in the E.R.D. Court¹².

3.7.3 *A defendant to a charge of a minor indictable environmental offence may elect, before the E.R.D. Court, for trial by jury in the District Court. The options for such a defendant are therefore (a) trial by judge alone in the E.R.D. Court or (b) trial by jury in the District Court. In this way the defendants to minor indictable environmental offences will have the same entitlements as defendants to any other kind of minor indictable offence. The Environment, Development and Resources Court Act 1993 will be amended to require the court to give such defendants the opportunity to elect for trial by jury in the District Court and to hear submissions on a case to answer before committing them for trial in the District Court. Consequential amendments would need to be made to the Rules of the E.R.D. Court.*

3.7.4 *The E.R.D. Court's power to impose a sentence for an environmental offence will remain the same as that of the Magistrates Court except that the fine limit is to be raised to \$300,000. The E.R.D. Court will continue to be restricted, like the Magistrates Court, to sentences of imprisonment of no more than two years, but may impose a greater fine than the present limit of \$120,000. This change may be opposed by the Magistrates and the District and Supreme Court judges, because it is inconsistent with the penalty structure of the criminal courts and with the principle that high penalties should be imposed by experienced criminal courts only.*

3.7.5 *The E.R.D. Court may remand a defendant for sentence in the District Court if of the opinion that the sentence should be greater than its sentence limit permits. This means that the E.R.D. Court may remand a defendant to a minor indictable offence to the District Court for sentence if it thinks the offending so serious that the offender should receive a greater penalty than two years imprisonment or \$300,000 and the maximum penalty prescribed for the offence makes this possible. This gives the E.R.D. Court a similar discretion to that of the Magistrates Court, albeit that its sentence limit will be higher (see 3.7.4). It allows appropriate penalties to be given by an appropriate court for serious environmental offending.*

3.7.6 *An appeal from a conviction or sentence for a minor indictable environmental offence by the E.R.D. Court (where the defendant is tried summarily by a judge) will continue to lie to a single judge of the Supreme Court, and from a conviction or sentence for a minor indictable environmental offence by the District Court (where the defendant is tried*

¹¹ See note 9.

¹² This is already the case. E.R.D. Court Rule 16.1 says: 'The Magistrates Court Rules 1992 (Criminal Jurisdiction) apply generally, mutatis mutandis, to the practice and procedure of the Court in the exercise of its jurisdiction over offences'.

by a jury) will continue to lie to the Full Court of the Supreme Court. This is the appeal structure for all minor indictable offences.

3.8 A chart showing this model is in *Attachment 2* and instructions to Parliamentary Counsel are in *Attachment 3*.

3.9 By increasing the sentencing capacity of the E.R.D. court and allowing it to remand defendants to the District Court for higher sentences, this model will further deter potential environmental offenders and punish appropriately those who do offend, and in the way that Parliament intended when setting high maximum penalties for the most serious minor indictable environmental offences. It will ensure that those charged with these serious offences have the same quality of justice as defendants to non-environmental offences.

3.10 Other implications and Impacts

3.10.1 Economic, Financial and Budget Implications

The proposal may have slight budget implications for the District, E.R.D. and Magistrates courts, and for the Crown Solicitor's Office and the Director of Public Prosecutions, because it is possible, although unlikely, that the District Court may try and sentence more minor indictable environmental offences, and that the Magistrates Court will no longer hear environmental offences.

There is unlikely to be an increase in trials of environmental offences by election in the District Court because there have been no trials of minor indictable offences in the E.R.D. Court in the past six years; indeed the only two defendants to minor indictable offences to be sentenced by the court were bodies corporate, for whom an election for trial by jury would be unusual. In the unlikely event of defendants to serious minor indictable environmental offences electing for trial in the District Court, the Crown Solicitor's Office, the Director of Public Prosecutions and the District Court will have a corresponding increase in workload and the E.R.D. Court a correspondingly lower one, although it will be obliged to conduct committal hearings for such defendants. The D.P.P. has so far had very little involvement in environmental prosecutions¹³, but because a defendant may not be put on trial before the District Court unless on an information laid by the D.P.P., its involvement has the potential to increase under this proposal.

Most defendants to minor indictable environmental offences are expected to choose trial in the E.R.D. Court under this proposal, but again, the experience of the court is that these defendants plead guilty rather than go to trial.

I note that the Magistrates Court has not committed any defendants to minor indictable environmental offences to the District Court for trial. It has remanded only one defendant to an environmental offence to the District Court for sentence.¹⁴

¹³ The D.P.P. has so far been involved in proceedings before the E.R.D. Court only where there has been a conflict of interest for the Crown Solicitor. The cases were *D.P.P. v TransAdelaide* [2004] S.A.E.R.D.C. 92 (a minor indictable offence) and *D.P.P v S.A. Water Corporation* [2004] S.A.E.R.D.C. 36 (a summary offence). Both were dealt with by guilty plea.

¹⁴ *Dridan v Brinkworth* [2003] S.A.D.C. 179.

3.10.2 Required Resources

I understand that the environmental offences covered by this proposal have been prosecuted exclusively in the E.R.D. Court to date, and that the proposal is therefore unlikely to create extra demands on the court for extra hearings. Extra resources may be required for the E.R.D. Court for conducting committal hearings when a defendant elects for trial by jury in the District Court (although, as explained, such elections are unlikely).

3.10.3 Staffing implications

There are no staffing implications.

3.11 Effects on the community (including family, small business, regional and regulatory effects) and the environment

As mentioned in paragraph 3.9, the prospect of higher criminal penalties should further deter people and corporations from committing serious environmental harm, and provide the level of environmental protection that Parliament sought to secure in setting high maximum penalties for the most serious kinds of environmental offences.

The proposal has no effect on small businesses, and has no regional or regulatory effect. It will do no harm to families and regional communities.

As mentioned in 3.10, the proposal is likely to have a negligible effect on the workloads of the E.R.D., Magistrates or District courts.

3.12 Risk Management Strategy

No risk management strategy is required.

3.13 Consultation

These agencies have been consulted in developing this proposal:

3.13.1 Business, Manufacturing and Trade have been consulted about small business effects; the Office of Regional Affairs about regional effects; the Department of Human Services about family effects; the Department of Water, Land and Biodiversity Conservation, the Department of Environment and Heritage and the Environmental Protection Authority about environmental effects; and the Courts Administration Authority about the effect on courts administration.

3.13.2 Treasury and Finance has been consulted on project/implementation costs and is of the view that the proposal has no significant financial implications.

3.13.3 The Chief Justice, the Chief Judge of the District Court, the Chief Magistrate and the Senior Judge of the E.R.D. Court were consulted on earlier models, and their views have informed the development of the model now being proposed. They have not yet been consulted on this model. In summary, their views were these:

- The Chief Justice and the Chief Judge of the District Court thought the E.R.D. Court should not have the powers of a superior criminal

court. They thought care should be taken to ensure that the new model did not infringe the principles or convention that a person charged with an indictable offence should have the right to be tried before a jury. Also, the Chief Judge said that "as a general proposition I think it is preferable for jury trials to be conducted by judges that sit regularly in the criminal jurisdiction across a wide range of matters. I mean no disrespect to the judges in the E.R.D. Court, but jury trials can raise quite complex evidentiary and procedural matters that can be tricky enough for judges who have regular contact with juries. However, I see no difficulty with the judges of that court sitting as a judge alone in criminal matters." He thought it important that, for environmental offences, there not be a right to a trial by judge alone in the District Court as well as in the E.R.D. Court because this might encourage "judge shopping".

- The Senior Judge of the E.R.D. Court preferred a model that would continue to allow environmental prosecutions to be brought in either the Magistrates or E.R.D. Courts but would let the case proceed in the District or E.R.D. Court, at the instance of the prosecutor. If heard in the E.R.D. Court, it would be tried summarily by a judge of that court. If heard by the District Court, it would be a jury trial. Appeal from an E.R.D. Court decision would lie, as it does now, to a single judge of the Supreme Court. Appeals from the District Court lie to the Full Court of the Supreme Court.

3.14 I propose that I consult with the Chief Justice, the Chief Judge and the Senior Judge on the draft Bill before seeking Cabinet's approval to introduce it, so that Cabinet can be assured that their suggestions or objections have been taken into account before the Bill is introduced.

3.15 Fulfilment Plan

There is no need for a plan to put this proposal in place.

3.16 Communication Strategy

Routine circulation for comment of the Bill as introduced is all that is required initially.

If the Bill is passed, these changes to the law should be communicated clearly to lawyers who represent people charged with environmental offences, to the Chief Justice, the Chief Judge of the District Court, the Chief Magistrate and the Senior Judge of the E.R.D. Court and to prosecuting authorities. Letters from the Attorney-General to the Law Society Bulletin, to the judges and magistrates, and minutes from the relevant Ministers to prosecuting authorities should suffice. Information can be provided to the public by press release.

3.17 Executive Council

This is not a matter for Executive Council.

4. RECOMMENDATION

I recommend that Cabinet:

4.1 approve the drafting of a Bill to change the sentencing powers of the Environment, Resources and Development Court (the E.R.D. Court) and to change trial procedures for indictable environmental offences; and

4.2 approve that I consult the Chief Justice, the Chief Judge of the District Court and the Senior Judge of the E.R.D. Court on the draft Bill before seeking Cabinet's approval to introduce it to Parliament.

4.3 agree that any costs of the proposed changes be absorbed by the agencies concerned on a cost neutral basis
I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

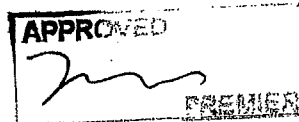
MICHAEL ATKINSON M.P.
ATTORNEY-GENERAL

8 April, 2005



In Cabinet

26 APR 2005



Attachment 1
AGO0073/05CS Changes to the sentencing powers of the E.R.D. Court

Convictions and sentences in the ERD Court, 2000 to 2004* (see notes on next page and detail of each case on following page)										
Year	Type of offence	Number of cases	Number of cases dealt with by guilty plea	Number of cases dealt with by trial	Number of offences sentenced ¹	Total fines imposed ²	Highest fine	Lowest fine	Average fine	
2004	Summary	8	7	1	11 ³	\$172,796 ⁴	\$34,000 ⁵	\$1,100	\$14,400	
	Minor indictable	1	1	0	1	\$120,000	\$120,000 ⁶	\$120,000 ⁷	\$120,000 ⁸	
	All types 2004	9	8	1	12	\$292,796	\$120,000	\$1,100	\$22,523	
2003	Summary	3	3	0	6 ⁹	\$99,300 ¹⁰	\$33,600	\$700	\$16,550	
	Minor indictable	0	0	0	0	0	N/A	N/A	N/A	
	All types 2003	3	3	0	6	\$99,300	\$33,600	\$700	\$16,550	
2002	Summary	3	3	0	4	\$14,150 ¹¹	\$13,650	\$500	\$7,075	
	Minor indictable	0	0	0	0	0	N/A	N/A	N/A	
	All types 2002	3	3	0	4	\$14,150	\$13,650	\$500	\$7,075	
2001	Summary	2 ¹²	2	0	6 ¹³	\$24,800	\$10,000	\$400	\$3,543	
	Minor indictable	0	0	0	0	0	N/A	N/A	N/A	
	All types 2001	2	2	0	6	\$24,800	\$10,000	\$400	\$3,543	
2000	Summary	1 ¹⁴	1	0	2	\$78,000 ¹⁵	\$66,000	\$12,000	\$39,000	
	Minor indictable	Offence heard in same case as 2 summary offences, noted above	Plea of guilty in same case as 2 summary offences, noted above	0	1	\$40,000 ¹⁶	\$40,000	\$40,000	\$40,000	
	All types 2000	1	1	0	3	\$118,000	\$66,000	\$12,000	\$39,333	
2000-2004	Summary	17	17	1	29	\$389,046	\$66,000	\$400	\$24,375.20	
	Minor indictable	1/2 ¹⁷	1	0	2	\$160,000	\$120,000	\$40,000	\$53,333	
	All types 2000-2004	15/19 ¹⁸	18	1	31	\$549,046	\$120,000	\$400	\$34,367	

* These statistics were prepared from information about judgments and sentencing remarks of the E.R.D. Court for the years 2003 and 2004 posted on the website of the S.A. Courts Administration Authority (<http://www.courts.sa.gov.au/courts/environment>) and from the Australasian Legal Information Institute (<http://www.austlii.edu.au>) for the years 2000-2004 inclusive.

Notes

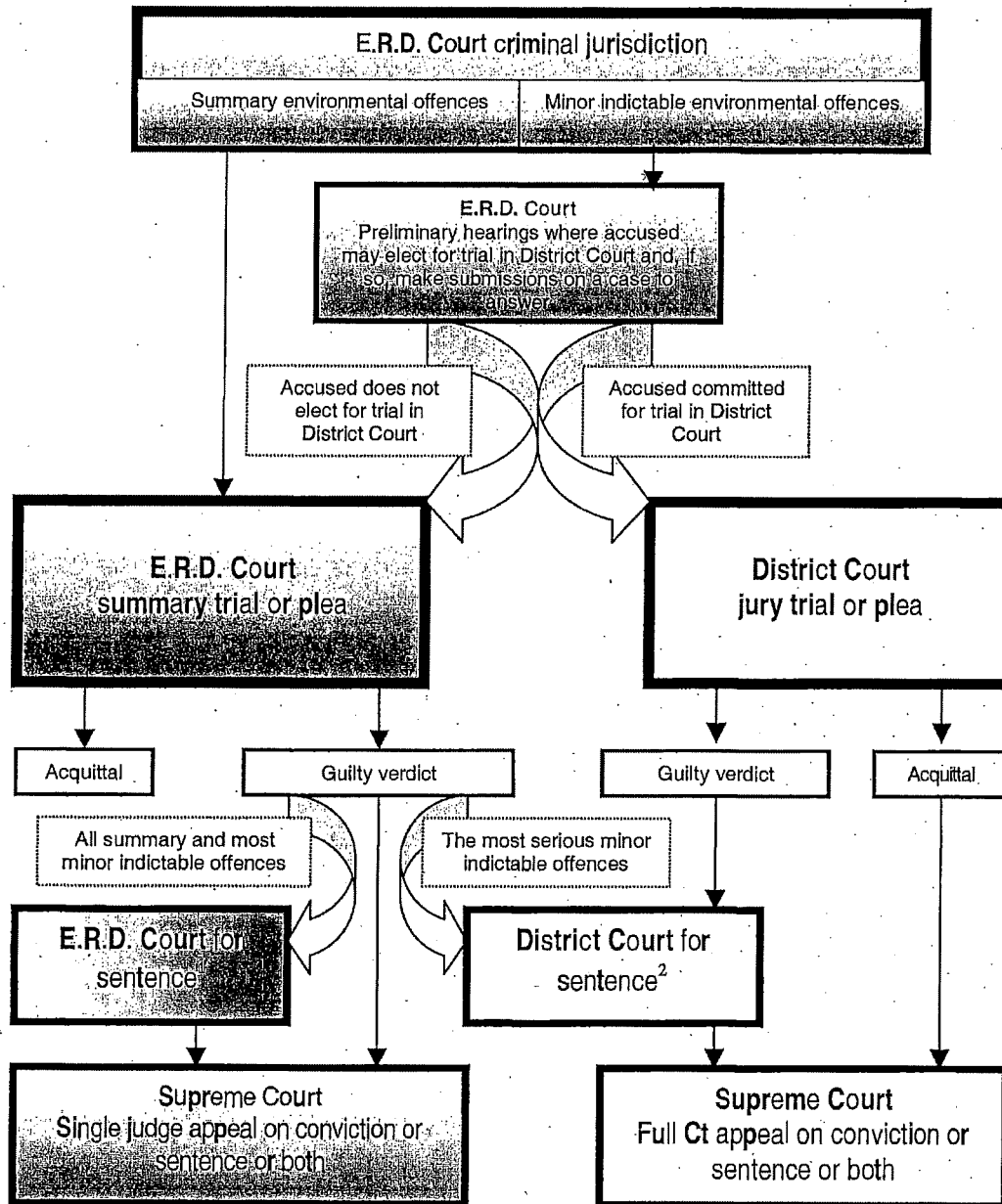
- 1 Each offence was the subject of a separate case, unless noted.
- 2 No penalties of imprisonment were imposed in the five years from 2000-2004.
- 3 One case involved seven counts of four kinds of summary offence. The sentence comprised one fine for 3 counts of one offence, one fine for two counts of another offence, and one fine each for two other different offences. For present purposes, I am treating this case as comprising four offences with four fines.
- 4 The fines for summary offences in 2004 were, respectively, \$1,100; \$1,200; \$5,000; \$11,000; \$13,500; \$31,996; \$34,000; and \$75,000. The \$75,000 fine effectively comprised four separate fines of \$28,000, \$20,000, \$17,000, and \$10,000 (as to this, see notes 3 and 5).
- 5 For the purpose of providing highest, lowest and average fines I have converted the global fine of \$75,000 in the case involving multiple counts (see note 2) to four separate fines of \$28,000, \$20,000, \$17,000, and \$10,000 respectively, based on the remarks of the sentencing judge.
- 6,7,8 There was only one fine for one minor indictable offence in 2004. It was well below the maximum penalty prescribed for the offence (\$2m), but at the limit that the court could impose (\$120,000). The court thought the offending serious enough to warrant a much greater penalty, but was prevented from imposing that penalty by the court's sentence limit and inability to remand the defendant to a higher court for sentence.
- 9 Of these, 4 were dealt with in the same case. There were only 3 criminal cases sentenced in the ERD Court in 2003.
- 10 The fines for summary offences in 2003 were, respectively, \$700, \$1,000; \$16,000; \$24,000; \$24,000; and \$33,600.
- 11 The fines for summary offences in 2002 were, respectively, \$13, 650 and \$500. In the third case, the defendant was released on a bond to be of good behaviour, with no fine.
- 12 Two cases came before the court in 2001. Each involved a corporate defendant and two natural defendants pleading to multiple summary charges. The incidents out of which the charges arose in each case were similar; hence the similarity in sentence.
- 13 In 2001, one case involved 7 counts for one offence, four counts for another, and four for another. The other case involved four counts for each of three offences. For present purposes, I am treating each case as comprising three offences with three fines.
- 14 Only one case came before the court in 2000. It comprised charges for 2 summary offences and one minor indictable offence.
- 15 The fines for summary offences in 2000 were, respectively, \$12,000 and \$66,000.
- 16 The maximum penalty for this minor indictable offence, the defendant being a body corporate, was \$2m.
- 17 The figure is two if one double-counts the one case involving both summary and minor indictable offences in 2000, which is noted as a case involving summary offences under the heading 'Number of Cases'. As mentioned in note 12, this case involved a mix of 2 summary and 1 minor indictable offences.
- 18 The figure is 19 if one double-counts the one case involving both summary and minor indictable offences in 2000.

2000-2004 E.R.D. COURT CRIMINAL CASES BY OFFENCE, PROCEEDINGS AND SENTENCE

Year	Case name	SUMMARY			MINOR INDICTABLE		
		Number of offences	Plea or trial	Sentence	Number of offences	Plea or trial	Sentence
2004	DPP v TransAdelaide	1	Plea	\$13,500	1	Plea	\$120,000
	DPP v SA Water	1	Trial	\$11,000			
	Adelaide City Council v Lester & Park Fast (Aust) Pty Ltd	1	Plea	\$1,100			
	City of Holdfast Bay v Margrant Pty Ltd	1	Plea	\$1,200			
	Freeman v Riverside Golf Club	1	Plea	\$34,000			
	Harvey v Chiltern Woods Pty Ltd & Anor.	1 (7 counts)	Plea	\$75,000			
	Harvey v Kangaroo Island Council	1	Plea	\$5,000			
	Harvey v Kernick	1	Plea	\$31,996			
	Harvey v The Rural City of Murray Bridge	1	Plea	\$16,000			
	Harvey v BRL Hardy	1	Plea	\$24,000			
2003		1	Plea	\$24,000			
		1	Plea	\$33,600			
		1	Plea	\$700			
	Harvey v Pacitti	1	Plea	\$1,000			
	Light Regional Council v Brady	1	Plea	\$13,650			
	Harvey v Gogel	1	Plea	\$500			
2002	City of Mitcham v Flynn	1	Plea	No penalty			
	Carlin	1	Plea	Bond			
		1	Plea	\$10,000			
2001	Holland-Booker v Blaslov Fishing P/L & Orsnam	1 (7 counts)	Plea	\$2,000			
		1 (4 counts)	Plea	\$400			
		1 (4 counts)	Plea	\$10,000			
	Holland-Booker v Australian Tuna Fisheries Pty Ltd & Stehr.	1 (4 counts)	Plea	\$2,000			
		1 (4 counts)	Plea	\$400			
2000	Circelli v Southcorp Wines Ltd	1	Plea	\$66,000	1	Plea	\$40,000
		1	Plea	\$12,000			
Total all years		26	All but one were pleas	\$389,046	2	All pleas	\$160,000

Model of proposed criminal jurisdiction of E.R.D. Court

In this model, environmental offences over which the E.R.D. Court has jurisdiction are to be set down for hearing exclusively in the E.R.D. Court, and not in the Magistrates Court.



- 1 The court may impose a sentence of up to \$300,000 or up to 2 years imprisonment for a minor indictable offence.
- 2 The court may impose a sentence of more than \$300,000 or more than 2 years imprisonment for a minor indictable offence.

Clause 10(1) Legal Professional Privilege