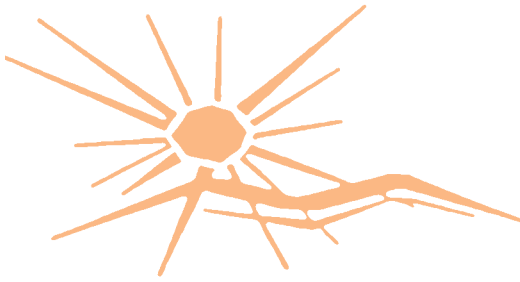
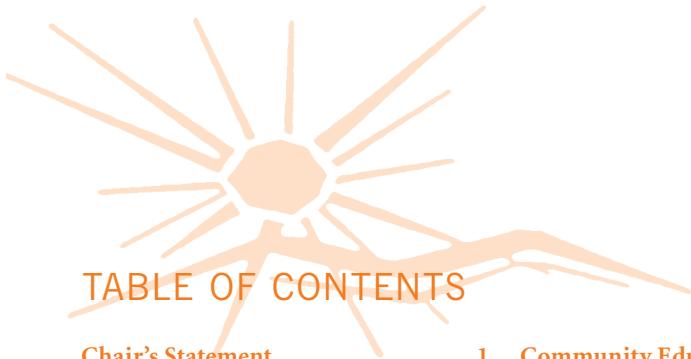


The Environmental Defender's Office (NSW) is a community legal centre that specialises in public interest environmental law. The EDO provides legal and technical advice and representation in public interest environmental law matters, takes an active role in environmental policy and law reform and conducts community education on environmental law.



# edo

ENVIRONMENTAL DEFENDER'S OFFICE (NSW)  
ANNUAL REPORT 2004–2005



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## CHAIR'S STATEMENT

This year marked the twentieth anniversary of the Environmental Defender's Office (EDO). While in terms of our operations the Office has not really stopped to draw breath, there were moments to reflect on where we have come from, what has been achieved and where we are going.

Our annual conference this year, entitled *Public Interest Environmental Law in Australia*, was one such moment. So too was our annual strategic planning workshop and the process of preparing our triennial funding submission to the New South Wales Law Society's Public Purpose Fund.

Possibly the most succinct statement of the Office's major achievements over those twenty years is set out in the opening speech by the Attorney-General, Bob Debus, at our annual conference. The Attorney outlined the EDO's role in legislative reform, litigation, legal education and regional capacity building, and highlighted the diversity of our work, including work relating to: indigenous cultural heritage, climate change, biodiversity conservation, wilderness protection,

*...the first twenty years of the EDO's work 'has been a prodigious and sustained effort and worthy of celebration'.*

water management, forestry, mining, public participation and international trade agreements. The Attorney commented that 'one could feel exhausted just talking about all that, much less making it happen. It has been a prodigious and sustained effort and worthy of celebration'.

While conscious of the risk of both hubris and complacency, it is appropriate to acknowledge that the Office has been a remarkable success, particularly given its limited financial resources. It is equally appropriate, on our twentieth anniversary, to reflect on some of the reasons for that success.

The most obvious reason for the success of the Office must be the quality of the staff which it has been able to attract over the last twenty years. At our annual conference I noted that our first full-time principal lawyer is now a highly respected senior counsel and that our second is a Land and Environment Court Judge. Since then,

the respected senior counsel, Brian Preston, has been appointed Chief Judge of the Land and Environment Court. Through luck, some good management and most particularly the importance of the cause, the EDO has always been fortunate in attracting great lawyers despite the modest pay it has been able to offer.

A second element which has contributed to the success of the Office has been its division of resources between litigation and advice, policy work, and educational work. Without this balance, it is impossible to imagine the office having been as effective as it is.

Aligned with this balance between casework, policy and education is the fact that within the Office, staff expertise has not been segregated, but rather integrated across our key functions. Lawyers responsible for advice and litigation also play a role in the development of policy and participate in our community education programs. By working as generalists within a specialised field, the three aspects of the Office's work are closely integrated. Moreover, I think the three skill sets

produce much better, more rounded professionals. Now that scientists and professionals from other disciplines are joining the staff, the same approach will apply equally to them.

Another factor which has contributed to the Office's success is the balance between new blood and fresh ideas matched with stability and continuity. In this regard, the role of the Board and its relationship with the staff has been important. It has been a privilege working with a Board which contains such a tremendous and diverse range of experience and skills. By and large, Board members, through their length of service, have helped provide continuity and stability to the Office. With a higher rate of turnover amongst staff, one task of the Board has been to encourage and work with the energy and enthusiasm of new lawyers and staff, while at the same time tempering that enthusiasm in the context of the wider strategic goals of the organisation. In this regard, the Director is the pivot and the EDO has been especially fortunate in the quality of persons who have held that position, not least being the current incumbent, Jeff Smith.

There are other important factors in our success which I need to mention. The support of our funders has been essential. The Public Purpose Fund has, in recent years, provided a solid financial basis for our achievements. The MacArthur Foundation, also, has been critical to our important work in Papua New Guinea.

I would also like to very sincerely acknowledge the generosity of the New South Wales Bar. So many outstanding barristers have donated their services over the years in the conduct of particular matters. No small part of our success is due to their skill and generosity. The Office's work is also supported by a dedicated team of volunteers, comprising both law students and admitted practitioners. Increasingly, private law firms are also lending their expertise to assisting the Office on particular issues.

The move to being a genuinely multi-disciplinary office with the creation of the EDO Scientific Advisory Service has also been a milestone. The need for such a service was first identified by Murray Wilcox when advocating for the establishment of the EDO as President of the Environmental Law Association over two decades ago. With the help of

the Public Purpose Fund, the EDO has been able to employ a full-time in-house scientist. The EDO Scientific Advisor fulfils two key functions. The first is to advise EDO legal staff on scientific and technical issues, thus avoiding the need to seek assistance from external experts on an *ad hoc* basis as matters arise. The second, and perhaps more important part of the job, is to establish and coordinate a panel of experts nationwide who are willing to provide advice on a pro-bono or reduced fee basis. In a sense, the EDO has undertaken the role of establishing a clearing house to make expert advice much more accessible both to the EDO network and ultimately to our clients, the public.

***... the EDO's success is a reflection of the commitment and support of its clients ... who have devoted their skill and energy, often at significant personal risk, to the protection of the planet.***

Finally, the EDO's success is a reflection of the commitment and support of its clients – members of the public, small community groups and

larger environmental groups – who have devoted their skill and energy, often at significant personal risk, to the protection of the planet. Their commitment has provided inspiration to the Office and allowed us to stretch our resources that much further.

If, over the next decade, the EDO is to make a difference, it is more likely through the active generation of ideas as to how the environment can be better protected, including through the establishment of fora where those ideas can be tested and critiqued, than through any piece of litigation or submission on proposed legislation. Having a multidisciplinary focus, which the Scientific Advisory Service allows, will be fundamental to this task.

The Attorney-General referred in his speech to the work undertaken by the EDO on the need for water reform in the early 1990's and the subsequent influence that work had on legislative reform. Whether an ideas forum or think tank develops as an extension of our policy and education functions, or as a distinct function of the Office is immaterial. It is the fact that the Office is independent, removed from the day to day pressures of environmental administration, practically focused and highly skilled that gives it a unique opportunity to suggest and advocate regulatory answers to Australia's environmental problems.

**Andrew Chalk**  
Chair, EDO Board of Management

## DIRECTOR'S STATEMENT

**O**n our twentieth anniversary, it is fitting that the EDO continues to adapt constructively to the seemingly ever-changing world of environmental law. The past year has seen the EDO continue to take an increasingly multi-disciplinary approach to environmental issues. This transformation is ongoing.

The EDO will always be a legal office; that is what defines us. However, recently we have been re-defining what a legal office devoted to public interest environmental law can (and should) do. A generous grant from the NSW Law Society's Public Purpose Fund has allowed us to lay the foundations for this new approach.

The starting point for this reappraisal has always been framed by the question: how can we best serve the community, so as to achieve better environmental outcomes? Four operational principles – early engagement, full case management, rural and regional outreach and a merits focus – underpin this revised approach.

Not surprisingly, our community legal education, law reform and – most recently – scientific and technical

functions play a key role in putting these operational principles into practice.

Our community legal education program has continued to flourish. Twenty-eight workshops and seminars have been held in the past twelve months, ranging from generalist workshops for the community to specialist workshops on mining, wetlands, advocacy and civil rights to seminars on climate change, whaling and federal environmental law. A strong rural and regional focus has been maintained.

***Our community legal education program has continued to flourish. Twenty-eight workshops and seminars have been held in the past twelve months...***

This year has also seen the publication of the *Environmental Law Toolkit*, a comprehensive plain language guide to New South Wales and Commonwealth environmental law. Two other publications, the *Rural Landholders' Guide to Environmental Law* and the *Community Protest Handbook* are about to go to press.

Our twentieth anniversary also provided the context for the 2005 EDO National Conference on *Public Interest Environmental Law in Australia*. The conference was extremely well-received, with a distinguished list of speakers and participants contributing to a conference worthy of our birthday celebrations.

Our policy and law reform work remains an active and fruitful area of engagement. Our policy work is varied – ranging from advice on bills and submissions in response to government proposals to more proactive work on behalf of conservation groups. The subject-matter is equally diverse, including: native vegetation reforms, infrastructure and planning, invasive species, water law reform, model local environmental plans, expert evidence, coastal management, incentives and disincentives for sustainable resource management, and threatened species conservation. A smaller, but no less significant, area of policy engagement has been in the Commonwealth arena, with work on genetically modified organisms, national electricity market reforms, the National Packaging Covenant and wild rivers.

The new player on the block in the past two years has been the EDO Scientific Advisory Service, which has quickly established itself as a cornerstone of the EDO's commitment to a multi-disciplinary approach. This service has proven invaluable in assessing the bona fides of particular proposals on behalf of the community, or in informing the legal advice provided by EDO solicitors.

Our commitment to a multi-disciplinary approach should not imply that the traditional forensic skills of EDO lawyers are being underutilized. Rather, given the limited in-house capacity for community legal education and policy, solicitors frequently contribute in these areas (and are required to do so). Moreover, given the commitment to early engagement, there is currently a strong focus on upfront written advice work, with more than 85 detailed advices in the past year.

Litigation continues to be of fundamental importance to the Office. An inter-disciplinary approach can – and does – act as a filter, ensuring that communities are informed, laws are well-made, and that proper information is before decision-makers.



***...there will always be a need to act on behalf of communities to test the proper workings of the law.***

However, there will always be a need to act on behalf of communities and to test the proper workings of the law.

In recent times, the EDO has focused on running merits cases to best achieve substantive, rather than merely procedural, outcomes (as exemplified by our involvement in the *Redbank II* case). This focus has continued, using our scientific and legal team to ensure that decisions will be made on the best available information, as well as administrative legal avenues, to test decisions on the importation of elephants and the fishing of Southern Bluefin Tuna.

Complementing this focus, the Office has continued to identify strategic test cases of importance. In *Humane Society International v Kyodo*, we are seeking to challenge Japanese whaling in Australian waters – a landmark case which has attracted international attention. On behalf of the Nature Conservation Council, the EDO is challenging the validity of the Gwydir

water sharing plan and the operation of the *Water Management Act 2000*. The EDO is currently seeking leave to appeal this matter before the High Court.

Throughout the year, the EDO has also commenced a series of related cases on Aboriginal cultural heritage. A common ground in these cases is an *ultra vires* argument – namely, that the Director General of the Department of Environment and Conservation does not have the power to grant consent to destroy indigenous cultural heritage under the *National Parks and Wildlife Act 1974*, having regard to the objects and management principles of that Act.

Once again, this level of productivity has been made possible by the professionalism, commitment and dedication of staff, who have responded to the challenges of working differently. The support and strategic guidance of the Board has been pivotal in ensuring that we have met, and in many cases pre-empted, these challenges. Moreover, the Board has overseen these changes, whilst ensuring that we remain true to our mission, goals and objectives and are able to work effectively and productively to meet them.

***...this level of productivity has been made possible by the professionalism, commitment and dedication of staff...***

As the Attorney General, the Honourable Bob Debus said at the EDO's twentieth anniversary Conference in May 2005, such accomplishments have been achieved:

on a shoestring budget and relying on an army of enthusiastic volunteers, not to mention lawyers willing to relinquish the world of the corporate law firm for something perhaps more altruistic and lasting.

This army of volunteers has continued to grow, both in depth and breadth. Apart from a constant stream of committed and enthusiastic students, in recent years the EDO has also been able to call upon an increasingly diverse range of legal practitioners willing to support the EDO financially or in kind. Together with the support garnered most recently from the

scientific community, it is clear that the reach of the Office is wide, and the support for its work is inspiring.

The Public Purpose Fund, as our core funder, makes much of our work possible. Broader support, including government funding and specific grant funding from government agencies and other organisations, is also crucial to enabling us to achieve environmental outcomes and further the cause of public interest environmental law in Australia.

***...the reach of the Office is wide, and the support for its work is inspiring.***

Special mention should also be made of the MacArthur Foundation, the Community Legal Centre Funding Program, the Law and Justice Foundation, the Environmental and Planning Law Association, the Department of Environment and Conservation, Sydney City Council and the Department of Infrastructure, Planning and Natural Resources.

**Jeff Smith**  
Director

## INTRODUCTION

The EDO mission is to empower the community to protect the environment through law, by pursuing its four core functions:

- litigation and legal advice
- scientific and technical advice
- policy and law reform
- community legal education.

This report reviews the performance of the office across each of these key functions for the 2004-2005 financial year.

## LITIGATION AND LEGAL ADVICE

### LITIGATION

The EDO represents individuals and community organisations in public interest litigation to protect the environment. In 2004-2005, the EDO was involved in a number of important cases of significant community concern.

#### **Opposing Antarctic Whaling**

*Humane Society International Inc v Kyodo Senpaku Kaisha Ltd [2004] FCA 1510*

The EDO represented the Humane Society International (HSI) in the Federal Court of Australia, seeking a declaration that a Japanese whaling company, Kyodo Senpaku Kaisha, had breached federal environmental law

by whaling in the Australian Whale Sanctuary adjacent to Antarctica.

The Federal Court refused leave to serve the proceedings on the whaling company in Japan. In reaching its judgment, the court took into account submissions by the Commonwealth Attorney-General that the case may have negative implications for Australia's diplomatic relationship with Japan.

Leave has been granted to appeal to the Full Federal Court.

#### **Defending Rivers and Wetlands**

*Nature Conservation Council of NSW Inc v the Minister for Sustainable Natural Resources [2004] NSWLEC 33*

In 2003, the EDO commenced proceedings on behalf of the Nature Conservation Council (NCC) to challenge the validity of the water sharing plan for the Gwydir River. In this case, it was argued that the water sharing plan failed to adequately protect environmental flows, with potentially serious impacts on dependent ecosystems, including the internationally listed Gwydir wetlands.

In February 2004, the Land and Environment Court dismissed the proceedings, finding the plan was validly made. NCC subsequently appealed this decision in the Court of Appeal. In February 2005, the Court of Appeal dismissed this appeal, despite finding that the water sharing plan failed to satisfy key statutory

requirements in relation to the allocation of environmental flows.

The EDO is currently seeking leave to appeal this matter to the High Court of Australia, on advice from Senior Counsel.

### **Monitoring Trade in Endangered Species**

*International Fund for Animal Welfare v Minister for Environment and Heritage*

The EDO is representing the International Fund for Animal Welfare, RSPCA Australia and the Humane Society International in relation to proposed federal government approval for the import of eight Asian elephants from Thailand to Taronga Zoo and Melbourne Zoo.

It is anticipated that proceedings will be commenced in the Administrative Appeals Tribunal in July 2005. The basis for the appeal will be that the federal government approval does not meet the animal welfare and conservation requirements of the *Environment Protection and Biodiversity Conservation Act 1999*.

In particular, it will be argued that: the import will be detrimental to the survival and recovery of the species; the zoos cannot meet the animal welfare needs of elephants; and, the zoos cannot meet the goals and objectives of conservation breeding for elephants.

### **Responding to Climate Change**

*Redbank II v The Minister for Infrastructure, Planning and Natural Resources*

For the last three years, the EDO has acted for peak conservation groups in relation to the proposed Redbank II coal-fired power station in the Hunter Valley. In 2003, the EDO provided legal advice on the environmental impact assessment process and engaged experts on carbon emissions and electricity supply needs to assist with the preparation of submissions to the state government.

In October 2003, the NSW government refused to grant development consent for the power station, on the basis of its projected carbon emissions. This was the first time in Australia that a development proposal had been refused on the basis of its climate change impacts. The proponent subsequently commenced merits review proceedings in the NSW Land and Environment Court.

In preparation for these proceedings, the EDO provided legal and technical support for conservation groups intending to appear as objectors raising public interest environmental issues. However, the proponent ultimately elected to discontinue their legal proceedings. As a result, the Redbank II power station will not be constructed.

## **Protecting Marine Habitat**

*Pindimar Bundabah Community Association v Great Lakes Council*

The EDO is representing the Pindimar Bundabah Community Association in a proposed merits appeal in the Land and Environment Court against development consent granted for a land-based abalone farm adjacent to Port Stephens, contrary to state government fisheries policies.

The potential environmental impacts of the proposal include destruction of sea grass and marine life, impacts on water quality and translocation of disease to wild mollusc populations. Experts on abalone disease, water quality and sea grass ecology have agreed to present evidence to support the appeal.

## **Upholding Coastal Protection Laws**

*Evans v Maclean Shire Council and Anor [2004] NSWLEC 512*

The EDO represented two local residents in relation to a development consent granted by Maclean Shire Council for the expansion of a caravan park and the construction of an on-site sewerage treatment system on Palmers Island on the north coast of New South Wales.

The basis for the challenge was that the local council had no power to grant the consent because, pursuant to *State Environmental Planning Policy No. 71 – Coastal Protection*, developments of this type in the coastal zone may only be approved by the state government.

The court found that the council did not have the power to approve the development, and that the development consent was void. This decision strengthens the operation of the coastal protection policy and clarifies the circumstances in which coastal developments will require state approval.

## **Protecting Coastal Bushland**

*Friends of South West Rocks Inc. v Machro Pty Limited and Ors [2004] NSWLEC 721*

The EDO represented a community group, Friends of South West Rocks, in legal proceedings against two developers, a local council and the National Parks and Wildlife Service to protect an area of coastal bushland threatened by residential development.

The bushland is home to a number of threatened species, including the Squirrel Glider and the Brush-tailed Phascogale, which are likely to be significantly affected by the development.

The basis for the challenge was the failure of the local council to refer the proposed developments to the state government for development consent pursuant to *State Environmental Planning Policy No. 71*. In December 2004, the Land and Environment Court found in favour of our clients, ruling that the council had failed to properly apply the state coastal protection policy.

The case establishes an important precedent for the application of the coastal protection policy and threatened species law.

### **Defending Indigenous Heritage – Lake Cowal Gold Mine**

*Country Energy v Williams & Others*

*Williams v Director-General of the Department of Environment and Conservation & others*

The EDO is acting for Mr Williams, an Aboriginal elder, in proceedings in the NSW Court of Appeal. The proceedings were commenced by Country Energy in response to a finding by the Land and Environment Court that Mr Williams had been denied procedural fairness in relation to cultural heritage surveys along the electricity transmission line route for the Lake Cowal Gold Mine.

The EDO will also represent Mr Williams in related proceedings, in which Mr Williams is challenging a decision of the Land and Environment Court to uphold the grant of a permit to destroy Aboriginal cultural heritage during the construction of the transmission line. Both matters have been adjourned, and will be heard together in August 2005.

These proceedings raise important questions in relation to the power of the state government to authorise the destruction of indigenous cultural heritage for land development purposes.

### **Defending Indigenous Heritage – Angels’ Beach**

*Anderson v Director-General of the Department of Environment and Conservation and Condon*

The EDO is acting for Mr and Mrs Anderson, traditional owners of land at Angels’ Beach, in a challenge to a consent to destroy Aboriginal cultural heritage, issued to a developer by the Director-General of the Department of Environment and Conservation.

In this case, the EDO will challenge the power of the Director-General to authorise the destruction of Aboriginal cultural heritage for development purposes, having regard to the objects and substantive provisions of the *National Parks and Wildlife Act 1974*.

During the case, it will also be argued that the legal framework for the protection of indigenous cultural heritage in New South Wales offers less protection than the protection afforded to non-indigenous cultural heritage, and therefore contravenes the Commonwealth *Racial Discrimination Act*.

Furthermore, it will be argued that the Director-General failed to properly consider the nature of the proposed development and the heritage significance of the site, as the consent was granted before a development application was lodged and prior to a cultural heritage report being submitted.

## **Defending Indigenous Heritage – Sandon Point**

*Kennedy v Director-General of the  
Department of Environment and  
Conservation & Stocklands*

The EDO has commenced a legal challenge in relation to a consent to destroy Aboriginal cultural heritage during the construction of a residential development at Sandon Point. As with the cases discussed above, this challenge raises issues in relation to the powers of the Director-General and the racially discriminatory effect of the current legal framework.

This matter also raises issues about the failure of the Director-General to take into account certain relevant matters. In particular, it will be argued that the Director-General failed to provide relevant archaeological reports to the Aboriginal community for consultation purposes. This matter has been stood over until October 2005, pending the determination of the Angels' Beach case.

## **ADVICE WORK**

The EDO provides individuals and community organisations with free initial telephone advice and written advice on environmental law and policy.

### **Free Telephone Advice**

The EDO runs a popular toll-free telephone advice service, the *Environmental Law Line*. The service is staffed by a duty solicitor on Tuesday, Wednesday and Thursday each week.

In 2004-2005, the EDO dealt with over 2500 telephone inquiries with around 850 of these being legal inquiries dealt with by solicitors. Of these, about 60% came from rural and regional New South Wales. Most of the inquiries concerned planning and development law. Other significant areas of interest included threatened species, land clearing, pollution law and mining issues.

Callers were referred to the EDO from other community legal centres, conservation groups, the Land and Environment Court, members of Parliament and government departments.

In addition to legal inquiries, the EDO also responded to hundreds of other requests for information during the year, such as requests for information about community workshops and publications.

## Written Advice

The EDO provides individuals and organisations with written advice on public interest environmental law matters. More than 85 detailed written advices were prepared during the 2004-2005 period.

These written advices addressed a diverse range of public interest environmental law issues, including:

### *Biodiversity Conservation*

- letters to the Commonwealth Minister for the Environment and Heritage regarding delays in listing processes under federal threatened species law
- advice on the potential for court action to compel the Minister to list nominated ecological communities and key threatening processes in accordance with statutory timeframes
- preparation of two submissions commenting on the draft Kosciusko Alpine Resorts Plan and the draft Plan of Management, including consistency with national park management principles
- submission to council and letter to the Department of the Environment and Heritage regarding the adverse impacts of a proposed road development upon threatened species
- advice regarding a submission made by a regional conservation group objecting to a proposal to tar seal and extend a road through an area of littoral rainforest

- advice on legal avenues for civil prosecution of individuals for harming flying-foxes in nets used on fruit trees under threatened species or animal cruelty laws
- advice on lawfulness of the New South Wales and Queensland governments' shark control programs under federal threatened species law
- advice on grounds for reviewing the decision of the Commonwealth government to approve the Southern Bluefin Tuna Fishery under federal threatened species law
- advice in relation to deaths of endangered and migratory sea birds, such as albatrosses, as a result of long line fishing activities in Australian waters
- advice on options for reviewing a decision of the Commonwealth Minister to issue a permit to Australian zoos allowing the import Asian elephants from Thailand

### *Vegetation Management*

- advice on the failure of the state government to enforce court orders made against a property owner in Hawks Nest to remediate his property after illegally clearing core koala habitat
- brief to counsel in relation to the requirement under the *Native Vegetation Act 2003* that the state government establish a public register of clearing approvals and property vegetation plans



- brief to counsel on the prospects of third party proceedings against landholders near Nyngan who allegedly cleared over 1,900 hectares of native vegetation
- advice on preparation and adoption of a voluntary conservation agreement for land owned by a cooperative on the North Coast of New South Wales
- advice on excluded clearing under the proposed native vegetation laws, including the environmental implications of these exclusions
- brief to counsel on the efficacy of the proposed native vegetation laws, which identified serious flaws with regard to the onus of proof, existing use rights, exemptions and enforcement
- advice on the validity of proposed savings and transitional provisions regarding cultivation permits under the proposed native vegetation laws
- advice on the legal implications of the environmental outcomes test contained in the proposed native vegetation laws with respect to the discretion vested in decision-makers
- advice on consideration of socio-economic factors during the decision-making process under the proposed native vegetation laws
- two detailed submissions in relation to flood plain impacts, threatened species impacts and pesticide use for a proposed development on the Whalan Floodplain
- advice to landholders on legal options for challenging the proposed transfer of water access licences from one watercourse to another
- compensation implications of withholding or suspending the release of water to supplementary water access licence holders to improve the health of the Macquarie Marshes
- letter to Great Lakes Council on behalf of local residents asking council to take action in response to illegal development within a protected coastal wetland
- prospects for judicial review of a decision by the state government to allow the expansion of a prawn farm on Palmers Island

### ***Genetically Modified Organisms***

- advice in relation to labeling requirements for foods containing genetically modified organisms
- advice on prospects for challenging a decision to allow the introduction of a genetically modified maize product contrary to federal food safety assessment procedures

### ***Planning and Development***

- preparation of a submission opposing a proposed residential and tourist development at Blackheath on the grounds that inadequate

### ***Water Management***

- advice on options for legal action under federal environmental law for damage caused to the Gwydir wetlands as a result of providing inadequate environmental flows

provision was made for water and sewerage services

- advice on prospects for challenging the validity of the Sydney Regional Environmental Plan for Cooks Cove
- advice on prospects for challenging a large residential and commercial development on the Newcastle foreshore due to a failure to adequately consider relevant planning instruments
- advice on existing use rights for the extension of a cable car route in the Blue Mountains
- advice on the construction of a swimming pool and car park on land zoned for environmental protection
- advice on the legal relationship between bushfire asset protection zones and land zoned for environmental protection
- advice in relation to a determination by council to subdivide land associated with a sewage treatment plant without development consent
- advice on compensation for rezoning, existing use rights and council powers and responsibilities
- advice on the ability of council to rezone public open space areas such as Bidjigal-Excelsior Reserve as environmental protection zones
- advice on the power of councils to rezone without the consent of the owner
- advice on options available to protect the environmental values of

crown land following proposed sale and rezoning in a highly developed urban area

- advice on options to protect Blue Gum High Forest on land zoned residential
- validity of the Pitt Town Local Environmental Plan, with emphasis on rezoning issues
- advice on the legality of a proposed seniors living, golf course and commercial development on the coast near Port Macquarie
- advice in relation to the failure to require an adequate species impact statement before approving construction of a cycleway near Ballina
- two submissions outlining the inadequacy of environmental impact assessment undertaken for a large dam proposal at Shannon Creek, near Grafton
- advice on prospects for challenging proposed roadworks by Wollongong Council

### ***Cultural Heritage***

- advice on requirements to be met for nomination of an area of land in Yass as an Aboriginal Place
- four advices in related litigation proceedings on the issue of whether permits to destroy indigenous cultural heritage are *ultra vires* under the *National Parks and Wildlife Act 1974*
- three advices on prospects of challenging the grant of permits

to destroy indigenous cultural heritage on the basis that the local community was not properly consulted

### ***Climate Change***

- commissioning of a report on ‘Global Climate Change and the Great Barrier Reef: Australia’s Obligations Under the World Heritage Convention’
- advice using federal environmental law to challenge the federal government’s failure to take action to prevent climate related harm to World Heritage properties in Australia
- advice to a national conservation group regarding potential causes of action regarding fugitive methane emissions from coal mining activities

### ***Mining***

- advice on legal issues arising from an application for modification of consent for a sand mine at Colo Heights, Hawkesbury
- advice on potential avenues for challenging approval of the Lake Cowal goldmine
- advice on prospects of challenging the approval of a ruby mine in the Barrington Tops area

### ***Forestry***

- advice on legal avenues available to protect old growth forest and aboriginal artifacts found on crown leases within a state forest covered by a regional forest agreement
- advice on challenging a decision to

expand licences to harm protected fauna, issued for forestry operations in the Brigalow Belt, to cover multiple non-contiguous areas in the region

- advice on the effect of a voluntary conservation agreement and the ability to negotiate an enforceable prohibition on logging by Forests NSW on the leases
- validity of an application to undertake private native forestry on land, taking into account potential impacts on threatened species

### ***Pollution***

- letters sent to relevant government departments detailing further evidence of breaches of approval conditions for the M5 East tunnel
- validity of an environmental impact statement for a landfill and waste processing facility jointly proposed by Orange and Carbonne councils
- letters to the state government on behalf of a local action group regarding water pollution from coal mining activities
- letter to the state government about the impact of dust emissions from a grain processing facility and requesting that action be taken to remedy breaches of licence conditions
- three detailed advices for a broad conservation alliance on constitutional and trade practices implications of the National Packaging Covenant and extended producer responsibility

- advice on validity of a council decision to rezone contaminated land for residential development at South West Rocks
- advice on requirements for addressing contaminated land issues at Pitt Town during the rezoning process
- advice for residents affected by offensive levels of noise, vibration and subsidence caused by a mine in Broken Hill
- advice on legal requirements for council to assess noise impacts associated with a heliport proposal near Lithgow
- advice to community groups at Botany Bay in relation to the commission of inquiry process
- advice on the process for preparing a draft local environmental plan, including relevant opportunities for public participation and legal avenues for challenging the validity of a plan
- advice on whether the *Residential Tenancies Act 1987* applied to Co-operative Societies and the impact on the ability of the co-operative to enter into a Voluntary Conservation Agreement
- advice to a local conservation group on advertising requirements for threatened species development

### ***Advocates' Rights***

- advice in relation a decision by a federal minister to enter into a contract with South Pacific Petroleum to grant an excise exemption for the Stuart Shale Oil project in Queensland, conditional upon the company suing a major conservation group for obstructing the project
- submissions seeking internal review of decisions in relation to freedom of information laws on public interest grounds and the operation of the exemptions
- advice in relation to objector appeal rights under the *Water Act 1912*

### ***Misleading and Deceptive Conduct***

- advice on legal mechanisms available to address misleading and deceptive labeling for foods containing genetically modified organisms
- advice on whether the use of the label 'EcoSelect Timber' for timber harvested from Victorian old growth forests is misleading and deceptive under fair trading laws
- advice on whether television advertisements about sustainable forestry by 'Ecoselect Timber' breach fair trading laws.

## EDO CLIENTS

In 2004-2005, the EDO provided legal assistance to hundreds of clients, including a diverse range of individuals and community organisations. Organisations assisted by the EDO during the year include:

- Aberdeen Action Group
- Australian Conservation Foundation
- ADI Residents Action Group
- Anvil Hill Project Watch Association
- Australian Speleological Federation
- Bicycle NSW
- Building A Better Ku-ring-gai
- Bungonia Rural Residents Action Group
- Byron Environment Centre
- Catherine Hill Bay Progress Association
- Central Coast Community Environment Network
- Central West Environment Council
- Citizens Against Minimbah Landfill
- Climate Action Network Australia
- Coalcliff Community Association
- Colong Foundation for Wilderness
- Conservation of North Ocean Shores
- Cranky Rock Road Action Group
- Eco Transit Sydney
- EcoNetwork
- Ecos Corporation
- Environment Centre of the Northern Territory
- Federation of Willoughby Progress Associations
- Fishcare
- Friends of South West Rocks
- Friends of the Earth, Sydney
- Friends of Tumblebee
- Gold Coast and Hinterland Environment Council
- Gloucester Environment Group
- Greenpeace Australia Pacific
- Gunning Sustainable Development Association
- Hawkesbury Earth Care Centre
- High Country Conservation Alliance
- Humane Society International
- Illawarra Residents Against a Toxic Environment
- Inland Rivers Network
- Islamic Women's Welfare Association
- Kingsford Legal Centre
- Kooloora Community Centre
- Lake Macquarie Coastal Wetlands Alliance
- Liberty Victoria
- Moorebank Link Road Action Group
- Myall Koala and Environmental Support Group
- Nareena Hills-Figtree Residents Group
- National Parks Association
- Nature Conservation Council
- North Coast Environment Council
- Northern Area Tenants Service
- North Illawarra Residents Action Group
- NSW Greens
- People's Environment Protection Alliance

Pindimar Bundabah Community Association  
Port Macquarie Hastings Ratepayers' Association  
Project Aware  
Redfern Legal Centre  
Redhead Residents Action Group  
Reefcare Volunteers, Long Reef  
Rhodes Community Consultative Committee  
Save Barrington Tops Group  
Shellharbour Village Ratepayers Association  
Sydney Morning Herald

Threatened Species Network  
Total Environment Centre  
Tower Sanity Alliance  
Tweed Heads Environment Group  
United Githabul Tribal Nation  
Valley Watch  
Wagga Wagga Urban Landcare Group  
Wetlands Action Group  
Wildlife Protection Association of Australia  
Wilson Richardson Area Residents' Group

## SCIENCE PROGRAM

The technical and scientific advice work provided by the Scientific Advisory Service can be categorized as follows:

- pre-decision
- monitoring and compliance
- policy and project work
- community education activities.

### PRE-DECISION

The EDO has provided scientific or technical advice in relation to the following matters:

- review and correction of calculations on Redbank II emissions contained in the environmental impact statement
- analysis of mitigation conditions contained in the Redbank II environmental impact statement
- assessment of environmental impacts of a proposed prawn farm
- evaluation of a threatened species assessment for the endangered plant *Cryptandra longistaminea*
- analysis of the environmental impacts of a sewage treatment plant upgrade at Evans Head
- evaluation of environmental assessment documents regarding a proposed cycleway in Ballina
- comments on impacts of tar-sealing a road at Crescent Head
- advice on groundwater impacts of a proposed resource processing and landfill facility near Orange
- advice on noise and amenity impacts of a proposed heliport near Lithgow
- advice on seagrass and water quality impacts of a proposed abalone farm at Port Stephens
- advice on threatened species impacts of proposed private forestry operations on the North Coast
- review of flora, fauna and hydrology issues associated with cotton farm developments near Moree
- advice on amenity and threatened species impacts of a residential development at Lennox Head
- advice on ecological impacts of development of Perisher Village, Kosciusko National Park
- assessment of environmental impacts of a proposed road development in Moorebank
- assessment of environmental impacts of a proposed subdivision at Mt Pleasant, Wollongong
- submission on behalf of peak conservation groups on Caribuckly-Willaroo irrigation development
- assessment of a species impact statement for a proposed road development at Tomalpin
- submissions on adequacy of environmental assessment for the proposed Shannon Creek Dam
- analysis of threatened species impacts of a proposed fire station at Bathurst
- advice on groundwater and threatened species impacts of the proposed Broula King Gold Mine

- advice on potential impacts of dredging and land reclamation in the Hawkesbury River at Brooklyn
- advice on the potential impacts of wind farms on bird and bat species
- advice on groundwater impacts associated with the proposed Wilpinjong Coal Mine, near Mudgee.

## MONITORING AND COMPLIANCE

The Scientific Advisory Service has also played a key role in supplementing the traditional supervisory role of the EDO. Advice has been provided on the following issues:

- assessment of evidence for a potential land clearing case
- advice on technical aspects of a brief to counsel for a potential land clearing case
- evaluation of land clearing compliance statistics under the *Native Vegetation Conservation Act 1997*
- compilation of a list of state and federal threatened species found near Jenolan Caves
- review of flora and fauna reports for a development on Blue Gum High Forest in Wahroonga
- compilation of information on listed critical habitat and relevant legislative provisions
- analysis of documents regarding construction of an access road for proposed Shannon Creek Dam
- analysis of kangaroo culling practices

at Googong Dam and protected fauna permits

- offences and listing of a key threatening process for the impact of bird-netting on flying-foxes
- review of pollution licence limits on methane emissions for various coal mines
- advice on environmental impacts of Buttaba Hills subdivision, near Lake Macquarie
- review of the eligibility of land at Nambucca Heads for declaration as an Aboriginal reserve.

## POLICY AND PROJECT WORK

The Scientific Advisor and members of the Expert Register have provided input into submissions made by the EDO on threatened species reforms, accreditation of consultants, and the concepts of green offsets and biodiversity banking.

The Scientific Advisor was also engaged by the Department of Infrastructure, Planning and Natural Resources to undertake an oversight and peer review function in relation to the draft environmental assessment methodology under the new native vegetation regime. This three month project involved a number of activities including:

- attendance at meetings and workshops regarding the property vegetation plan (PVP) developer
- attendance at PVP field trials in Wellington, McMasters Beach and Goulburn



- attendance at a two-day workshop at Wellington on the outcomes of the PVP field trials
- attendance at NSW Farmers' Association workshops at Cobar and Nyngan on invasive scrub
- detailed review of updated version of draft PVP developer methodology
- background briefing paper on the PVP developer computer system and process
- critique of proposed methodology for assessing groundcover under native vegetation regulations
- proposal of an alternative methodology for assessing groundcover under the regulations
- detailed submission on the PVP developer and environmental assessment methodology.

### COMMUNITY EDUCATION

To date, the community education activities of the Scientific Advisor have been limited, given the overall focus on establishing the Scientific Advisory Service and providing advice work

in the initial phase. Nevertheless, the following work has been done:

- presentation of a session on evidence gathering at an environmental law workshop in Ourimbah
- preparation and presentation of a workshop on *Law, Science and the Environment* in Parramatta
- writing articles on community evidence collection for *Environmental Defender*
- writing an article for a legal centre newsletter about the functions of the scientific advisor position
- presentation of a seminar at UTS on the role of science in environmental law
- presentation of a session on environmental assessment, monitoring and enforcement at an environmental advocacy workshop in Newtown
- presentation of a paper on effective submission writing at the EDO annual conference.

## POLICY AND LAW REFORM

The EDO plays a key role in influencing environmental policy and law reform in New South Wales.

Policy and law reform activities undertaken by the EDO fall into three main areas:

1. submissions on government proposals
2. policy advice to environment groups
3. engagement as a key stakeholder.

### SUBMISSIONS ON GOVERNMENT PROPOSALS

The EDO regularly writes submissions in response to legislative reviews, government proposals and parliamentary inquiries. In 2004-2005, these included:

- submission to the Department of Infrastructure, Planning and Natural Resources on proposed Model Local Environmental Plan provisions
- submission to the Land and Environment Court regarding the *Draft Practice Direction on Expert Evidence*
- submission to the Department of Infrastructure, Planning and Natural Resources on the *Draft Native Vegetation Regulation 2004*
- submission to the Legislative Assembly Natural Resource Management Committee inquiry on disincentives for sustainable land and water use and options for the removal of such disincentives
- submission to the Department of

Environment and Conservation on a proposal to accredit consultants who undertake threatened species assessments

- submission to the Department of Environment and Conservation on proposed changes to the *Protection of the Operations (Clean Air) Regulation 2002*
- submission to the Export Finance and Insurance Corporation on their revised draft environment policy
- submission to the Ministerial Council for Mineral and Petroleum Resources on Draft Principles for Engagement with Communities and Stakeholders
- submission to the Federal Government on behalf of ANEDO recommending new triggers to be included in the *Environment Protection and Biodiversity Conservation Act 1999*
- submission on the NSW Government's *Green Paper on Energy Directions*
- submission on the Department of Infrastructure, Planning and Natural Resources *Discussion Paper: Standard Provisions for local environment plans in NSW*
- submission on the role of the EDO as specialist Community Legal Centre (CLC), as part of Federal and State Government review of CLCs around Australia.

These submissions have resulted in a number of substantial improvements to legislation and policy, at both a Commonwealth and State level.

## PROVISION OF ADVICE TO ENVIRONMENT GROUPS

### Environmental Liaison Office

*A group of environmental organisations jointly fund the Environment Liaison Office (ELO). The ELO monitors Bills that are introduced into the NSW Parliament and coordinates the response of peak environment groups to these Bills. The EDO regularly advises the ELO about the legal implications of Bills introduced into Parliament and whether amendments to a particular Bill should be sought.*

During the last financial year, the EDO – in its capacity as advisor to the ELO –

has been closely involved in examining and proposing amendments to the following Bills in relation to public interest and environmental issues:

- Threatened Species Conservation Amendment Bill 2004
- Redfern-Waterloo Authority Bill 2004
- Noxious Weeds Amendment Bill 2004
- Gene Technology (GM Crop Moratorium) Amendment Bill 2004
- Statute Law (Miscellaneous Provisions) Bills 2004 and 2005
- Crown Lands Amendment Bill 2005
- National Parks (Adjustment of Areas) Bill 2005

### Case Study: Native Vegetation Management Reforms

In 2001–2002, the EDO prepared a submission on behalf of environmental groups, outlining the shortcomings of the Department of Land and Water Conservation in meeting its statutory responsibilities, including its failure to prosecute breaches of the *Native Vegetation Conservation Act*.

The submission was instrumental in leading to an audit of the Department by the Auditor General. The report from the Auditor General's office was handed down in September 2002, and strongly condemned the Department for its lack of action in this area.

In early 2003, the NSW Government announced it would adopt the *Wentworth Model for Landscape*

*Protection*, substantially reforming the framework for native vegetation management in New South Wales.

In late 2004, the EDO, together with the Total Environment Centre and the Nature Conservation Council, conducted ten regional workshops on the proposed regulations and, using feedback collated from these workshops, presented a major submission to the Department of Infrastructure, Planning and Natural Resources.

Throughout 2004 and 2005, the EDO attended Ministerial meetings with the NSW Farmers Association to advise environment groups on negotiating the final details of the regulations.

- Electricity Supply Amendment Bill 2005
- National Parks and Wildlife (Jenolan Caves Reserve trust) Bill 2004 (held over)
- Brigalow and Nandewar Community Conservation Area Bill 2005
- Environmental Planning and Assessment (Infrastructure and Other Reform) Bill 2005
- Environmental Planning and Assessment Amendment (Developer Contributions) Bill 2005.
- review of the operation of the *Gene Technology Act 2000* since its inception
- advice to environment groups on a proposal for strengthening the National Packaging Covenant
- analysis of the operation and effectiveness of *State Environmental Planning Policy 71 – Coastal Protection*
- review of water laws in the Northern Territory
- advice on potential national native vegetation reforms
- audit of noxious weeds laws around Australia.

### **Policy Advice to Environment Organisations**

*The EDO is increasingly retained by environment groups to provide policy advice on a particular area of law or to develop law reform proposals. In 2004-2005, the EDO has provided policy advice in relation to the following issues:*

- environmental matters to be included in the proposed Federal national electricity laws

### **KEY STAKEHOLDER ROLE**

The EDO also stands alongside the peak conservation groups as a key stakeholder in environmental law and policy debates, providing an independent policy voice and specialist legal input.

In 2004, the EDO Director was appointed to an expert panel to review the planning reform process

### **Case Study: Initiating Law Reform**

In addition to policy work undertaken by the EDO on behalf of clients, the EDO initiates policy reform in its own right. For example, in 2002, the EDO drew the NSW Government's attention to the problem with fertiliser waste – namely, the failure of competing statutory frameworks to regulate the rebranding of waste products as fertiliser in a sustainable manner.

The NSW Government subsequently introduced a Discussion Paper on land protection and a regulation to protect land, food and the environment from contamination by the inappropriate application of wastes to land under the guise of fertiliser: the *Protection of the Environment Operations (Waste) Amendment (Residue Wastes) Regulation 2005*.

in New South Wales. This panel is currently analysing a number of taskforce reviews undertaken in the areas of planning, local development assessment, developer contributions, major assessments and infrastructure, state environmental planning policies, Ministerial consent and master planning. The EDO Policy Officer has also been participating in the National Chemicals Risk Management Framework forum and the Stakeholder Advisory Committee for the Infrastructure Planning Reforms.

By virtue of its legal policy expertise, the EDO also regularly provides advice on Bills to members of parliament, the public and other bodies. For example, the EDO has conducted cross-bench briefings on Bills such as the *Redfern-Waterloo Authority Bill 2004* and the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005*, as well as providing information to the community on the implications of these Bills.

## COMMUNITY EDUCATION

The EDO Education Program seeks to empower people and community groups to participate in environmental decisions and inspire them to use the law to protect the environment.

The EDO Education Program provides the following services to the community:

- community workshops to enable practical participation in environmental decisions;
- seminars and conferences on key issues to promote law reform and the implementation of new laws; and
- plain language educational materials in a range of formats, explaining environmental law and policy.

## COMMUNITY WORKSHOPS

During 2004-2005, the EDO has conducted a regular series of community environmental law workshops. These workshops have been conducted both in Sydney and in rural and regional areas around New South Wales.

In the last year, the EDO has hosted workshops in Parramatta, Randwick, Newtown, Bellingen, West Ryde, Wybong, Nambucca Heads, Shortland, Coffs Harbour, Grafton, Tamworth, Coonabarabran, Orange, the Blue Mountains, Albury, Wollongong, Bateman's Bay and Newcastle.

More than 350 people participated in the workshops, including

## *Workshop Testimonial*

It was an excellent course - very valuable, informative, pitched at right level. The speakers ... were impressively knowledgeable and are very good presenters.

Workshop Participant,  
Bellingen Environmental  
Law Workshop

conservationists, landholders, local and state government employees, students, legal practitioners and consultants. During visits to rural areas, EDO staff took the opportunity to meet with clients and conduct site visits.

Topics covered in the workshops included planning and development law, threatened species law, native vegetation law, pollution law, access to information, writing effective submissions, reviewing environmental assessment reports, gathering evidence, rights of appeal and activists' rights.

Evaluation responses from the workshops have been very positive, with participants providing constructive feedback for the ongoing improvement of the workshop program.

## EDO NATIONAL CONFERENCE

On 13-14 May 2005, the EDO held a two day conference to celebrate the twentieth anniversary of the Environmental Defender's Office Network.

The conference reflected on the important role that public interest environmental law has played in Australia over the last twenty years, and explored future directions in environmental law and policy.

More than fifty speakers appeared at the conference, including the Hon. Bob Debus, NSW Attorney General and Minister for the Environment, and Justice McClellan, Chief Judge of the NSW Land and Environment Court. The conference program also featured international guests, including public interest environmental lawyers from Papua New Guinea and the Solomon Islands.

The conference addressed key environmental issues like climate change, land clearing, water management and protection of the marine environment, as well as practical workshops on community campaigning, media skills, defamation law and environmental protest.

## PUBLICATIONS

In addition to its regular publications (see text box), the EDO published a new edition of the popular Environmental Law Toolkit in June 2005.

This well established book, written primarily for community groups, covers the following topics:

- environmental planning and assessment
- natural resource management;
- pollution management;

- biodiversity conservation; and
- natural and cultural heritage.

The guide also includes a chapter on environmental advocacy, covering the following topics:

- submissions, letters and petitions
- access to information
- defamation law and safe speech
- incorporating an environmental group

## *EDO Legal Resources*

The EDO Education Program publishes a range of easily understood and accessible legal resources:

- **EDO eBulletin:** a free weekly listing of news, events, public notices, development applications and opportunities for public comment.
- **Environmental Defender Newsletter:** a quarterly update on selected developments in environmental law in New South Wales.
- **Impact Public Interest Environmental Law Journal:** a quarterly review of key developments in public interest environmental law in Australia.
- **EDO Environmental Law Fact Sheets:** a concise and accessible introduction to a wide range of environmental law issues.

- corporations and environmental advocacy
- environmental protest and criminal law
- seeking legal advice and representation.

## **WEBSITE**

The EDO website contains free resource materials on a wide range of environmental law issues, including a comprehensive set of environmental law fact sheets and copies of recent law reform submissions. Our website is accessible via the national EDO network website at [www.edo.org.au](http://www.edo.org.au).



## NATIONAL EDO NETWORK

The Environmental Defender's Office (NSW) is one of nine EDO offices located Australia. The different offices share resources and ideas and meet for an annual EDO national network meeting. All members of the EDO network also contribute to the production of the quarterly environment law magazine, *Impact*.

## EDO INTERNATIONAL PROGRAM

The EDO International Program currently extends to countries in Asia, the Pacific and South America, including:

### PAPUA NEW GUINEA

Since 1999, the EDO has received funding from the MacArthur Foundation to provide capacity-building support for the Environmental Law Centre (ELC) in Papua New Guinea. The EDO provides legal advice and training, and facilitates lawyer exchanges and external training.

The EDO also works with the Centre for Environmental Law and Community Rights (CELCOR), providing staff training and technical assistance.

### SOLOMON ISLANDS

In previous years, the EDO has undertaken community training and legislative drafting for the Solomon Islands government. More recently, the EDO has received a request to host a lawyer from the Solomon Islands'

Public Solicitor's Office (PSO) to provide training in relation to public interest environmental litigation and community legal education.

### VANUATU

In 2005, the EDO co-presented an environmental advocacy training program for women and youth in Vanuatu, in partnership with the Pacific Concerns Resource Centre (PCRC) and the UNSW Diplomacy Training Program (DTP).

### CAMBODIA

The EDO has acted as the Australian Partner Organisation for three consecutive AusAID funded placements of environmental lawyers with the Community Legal Education Centre (CLEC) in Cambodia.

### ARGENTINA

In 2004-2005, the EDO recruited two full-time interns for the position of Human Rights and Environment Intern with the Center for Human Rights and Environment (CEDHA), a public interest organisation in Argentina. For more information about CEDHA, please visit: [www.cedha.org.ar](http://www.cedha.org.ar).

### ENVIRONMENTAL LAW ALLIANCE WORLDWIDE

EDO lawyers are active members of the Environmental Law Alliance Worldwide (E-LAW), an international network of public interest environmental lawyers. For more information, see [www.elaw.org](http://www.elaw.org).

## STAFF TRAINING AND DEVELOPMENT

The EDO continues to support the training and development of its staff, to enhance their capacity to deliver high quality advice and assistance for our clients. In recent years, the office has worked to broaden the skill base of legal staff to facilitate the development of cases under laws of general application, such as consumer protection law.

The office consistently allocates funds for external staff training and development, and undertakes internal legal education sessions on specific topics with special relevance for the EDO's work. Examples of external training sessions attended by EDO staff include: an environment and economics workshop; a forum on the implications of free trade agreements; a seminar on corporate reporting mechanisms; a presentation on effective pollution regulation; and, an industry workshop on sustainable development in the mining sector.

## ACKNOWLEDGEMENTS

### VOLUNTEERS

Every year, volunteers dedicate their personal time and resources to support the work of the EDO. In 2004-2005, our volunteer team generously contributed almost three thousand hours of voluntary assistance, greatly enhancing the capacity of the office to provide accurate and timely legal assistance.

Most of our volunteer team are students or recent graduates, who obtain valuable legal research experience, as well as opportunities to attend court hearings, law reform briefings and community education events.

The EDO would like to thank the following volunteers from 2004-2005 for their commitment and hard work:

Alexandra Evans  
Alison Haines  
Ana Coculescu  
Anuradha Nayak  
April Morley  
Belinda Rayment  
Brett Prado  
Brooke Newell  
Caroline Martin  
Celine Lherminier  
Courtenay Mitchell  
Edwina Dunn  
Erina Murphy  
Fay Frischer  
Gareth Birch  
Georgina Lloyd  
Helen Gardner

Herina Lee  
Kane Glanville  
Kitty Dong  
Matthew Dank  
Matthew Doherty  
Melinda McCleary  
Natasha Williams  
Peter Holt  
Ralph Kaye  
Remali Vilathgamuna  
Robert Ghanem  
Samantha Flack  
Thorsten Deppner  
Valerie Insall

### **PRO BONO ASSISTANCE**

The legal and scientific community also lend invaluable support to the work of the EDO, providing legal and advisory services for a reduced fee or, in many cases, for no charge. The EDO is deeply grateful to the many barristers, solicitors, scientists and experts for their ongoing commitment to the provision of pro bono assistance in public interest matters.

### **DONORS**

The EDO gratefully acknowledges the following donors for their generous financial and in-kind support:

Allens Arthur Robinson  
Australian Agency for International  
Development  
Baker & McKenzie  
Commonwealth Community Legal  
Centre Funding Program

Department of Environment and  
Conservation  
Department of Infrastructure,  
Planning and Natural Resources  
Environmental and Planning Law  
Association  
Gilbert+Tobin  
Macarthur Foundation  
NSW Law and Justice Foundation  
NSW Legal Aid Commission  
Sydney City Council  
Total Computer Services  
Dr Paul Adam  
Geoffrey Ball  
Susan Caffin  
Andrew Cox & Pip Walsh  
Nancy Deans  
F & P Edwards  
The Fathom Group  
David Galpin  
Kylie L Gauvin  
Phyllis Mary Hulse  
Dr A Kelly  
Judith Lambert  
Judith Mather & Hugh Wilson  
Mary Newlinds  
Sue Salmon  
Maralyn Tannous  
Margaret Thorsborne  
Bob Warren

## STAFF

As at 30 June 2005, the EDO staffing was:

**Director**

Jeff Smith

**Principal Solicitor**

Ilona Millar

**Solicitors**

Jessica Simpson

David Jeffery

Chris Nunn

**Policy Officer**

Rachel Walmsley

**Policy Intern**

Matt Dank

**Scientific Advisor**

Tom Holden

**Programs Manager**

Pepe Clarke

**Education Assistant**

Vacant

**Administration Team**

Matt Ridley (Manager)

John Scanlan

Julie Stokes

**Book Keeper**

Margaret Jones

There were minimal staffing changes through the year:

- Solicitor Elisa Nichols returned to Queensland and her position was filled by Chris Nunn;
- Tom Holden replaced Dr Scott King as Scientific Advisor; and
- Christine Palomo resigned as Education Assistant.

## BOARD OF MANAGEMENT

The EDO is a non-profit company limited by guarantee and its Board provides strategic direction and assistance to staff. The Board is elected at each annual general meeting. Board members all work on a voluntary basis. They attend six-weekly meetings, annual policy days and some community education events, and make a major contribution to the work of the Office, guiding its strategic development and devoting considerable time and expertise to the work.

At the 2004 annual general meeting, Jeff Angel (CEO of the Total Environment Centre) stepped down as a Board member after many years' service. In January 2005, the Board appointed Ms Cate Faehrmann, to fill the casual vacancy which then existed. Mr Hal Wootten AC QC continued as patron beyond 30 June 2004.

We thank all on the Board members for their ongoing contribution and commitment.

At 30 June 2005, the EDO Board comprised:

***Patron***

**Mr Hal Wootten AC QC**

***Chair***

**Andrew Chalk**

Partner, Chalk & Fitzgerald Associates

***Vice-Chair***

**Bruce Woolf**

Partner, Woolf & Associates

*Secretary*

**Barbara Adams**

Former Executive Director,  
Environment Protection Authority

*Treasurer*

**Ralph Scott**

Finance Manager, Sydney Regional  
Aboriginal Corporation Legal Service

**Andrew Cox**

Chief Executive, National Parks  
Association of NSW

**Cate Faerhmann**

Chief Executive, Nature Conservation  
Council of NSW

**Katherine Gardner**

Solicitor, Minter Ellison

**Murray Hogarth**

Consultant, ECOS Corporation

**Frank Hubbard**

Managing Director,  
Worthwhile Projects

**Professor Michael Jeffery QC**

Director, Centre for Environmental  
Law, Macquarie University

**Warwick Pearse**

Assistant Director, NSW Department  
of Community Services

## FUNDING AND FINANCIAL REPORT

### FUNDING

A continuation of the increased funding by the Law Society of NSW's Public Purpose Fund meant the Office had the financial capacity to build upon the progress of 2003-04 and continue its widened range of operational strategies.

Now in the second of three years of funding under this grant, the PPF provided almost \$462,000, or 41.9% of total EDO revenue. In 2005-06, this figure will rise slightly.

During the year under review, funding under the second MacArthur Foundation grant was completed. The initial funds under a third grant (Grant 04-79801) had been received during 2003-04 and a second instalment was received in April 2005. Gross funding under this grant will be \$US225,000 over three years, of which approximately \$US50,000 is provided directly to the EDO for its service provision and expenses.

Overall funding, including Commonwealth and NSW governments, MacArthur Foundation and the PPF, amounted to \$865,595 in 2004-05 and represented 78.4% of total revenue.

The proportion of its income generated by the EDO rose to 21.6% compared to 15.6% in the previous year. Much of this is attributable to increased

professional fees which, including recoveries, amounted to \$152,476, or \$64,161 more than in 2003-04.

### LITIGATION RESTRICTION

As is the case for all the EDOs in Australia, the funding received from the Commonwealth Government continues to be the subject of a "no-litigation" condition, namely, that it is not to be used to undertake litigation or litigation-related activities. The Office takes care to ensure that such funding is allocated to Education and Administrative activities. In the year under review, Commonwealth funding amounted to \$83,407 or 7.55% of overall revenues.

For several years now, Commonwealth and NSW Government funding has remained almost static, and there is no indication that this will change in the foreseeable future.

### FINANCIAL PERFORMANCE

The mid-year budget review, now an established part of the EDO governance process, again meant a closer scrutiny of expenditures in particular, as well as improved financial reporting: the Board received financial reports at each meeting, which included comparisons of actual performance against budget.

A final result of a small surplus was consistent with budget expectations.

## STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2005

	2005 (\$)	2004 (\$)
<b>CURRENT ASSETS</b>		
Cash	139,871	284,378
Receivables	426,410	349,932
Other	10,058	8,893
<b>TOTAL CURRENT ASSETS</b>	<b>576,339</b>	<b>643,203</b>
<b>NON CURRENT ASSETS</b>		
Property, Plant and Equipment	-	3,482
<b>TOTAL NON-CURRENT ASSETS</b>	<b>-</b>	<b>3,482</b>
<b>TOTAL ASSETS</b>	<b>-</b>	<b>646,685</b>
<b>CURRENT LIABILITIES</b>		
Payables	83,102	179,864
Provisions	64,205	44,436
Other		-
<b>TOTAL CURRENT LIABILITIES</b>	<b>147,307</b>	<b>224,300</b>
<b>TOTAL LIABILITIES</b>	<b>147,307</b>	<b>224,300</b>
<b>NET ASSETS</b>	<b>429,032</b>	<b>422,385</b>
<b>EQUITY</b>		
Reserves	110,000	110,000
Retained Profits	329,032	312,385
<b>TOTAL EQUITY</b>	<b>429,032</b>	<b>422,385</b>

## SUMMARISED PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 30 JUNE 2005

	2005 (\$)	2004 (\$)
<b>OPERATING REVENUE</b>		
Conference and Publications	61,605	48,387
Fees	135,122	69,658
Grants	699,818	745,187
Interest	15,403	8,492
Donations	3,103	28,636
Other Income	23,303	24,022
MacArthur Income	165,777	206,285
<b>TOTAL REVENUE</b>	<b>1,104,131</b>	<b>1,130,667</b>
<b>OPERATING EXPENDITURES</b>		
Salaries and Superannuation	680,136	637,727
Overheads, including Rent, Insurance and Depreciation	86,351	88,265
General Expenses, incl Accountancy	37,183	20,475
Daily Expenses, including Post, Courier, Phone, Stationery	51,397	39,668
Other, including Training, Practising Certificates, Bad Debts	32,582	33,490
Conferences and Publications	49,815	24,122
Foreign Currency Loss	8,123	4,831
MacArthur Expenses	151,897	78,356
<b>TOTAL EXPENDITURES</b>	<b>1,097,484</b>	<b>926,934</b>
<b>OPERATING PROFIT/(LOSS) AFTER TAX</b>	<b>6,647</b>	<b>203,733</b>



# INDEPENDENT AUDIT REPORT

## SCOPE

We have audited the financial statements, being the Directors' Declaration, Statement of Financial Performance, Statement of Financial Position, Statement of Cash Flows and Notes to and forming part of the financial statements of Environmental Defender's Office Limited for the year ended 30th June, 2005. The company's directors are responsible for the financial report. We have conducted an independent audit of this financial report in order to express an opinion on it to the members of the company.

Our audit has been conducted in accordance with Australian Auditing Standards to provide reasonable assurance whether the financial report is free of material misstatement. Our procedures included the evaluation of accounting policies and significant accounting estimates and examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial report presents fairly, in accordance with Accounting Standards and other mandatory

professional reporting requirements, so as to present a view which is consistent with our understanding of the company's financial position, the results of its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

## AUDIT OPINION

In our opinion

- (a) the financial report presents truly and fairly in accordance with the Corporations Act 2001, applicable Australian Accounting Standards and other mandatory professional reporting requirements the financial position of the company as at 30th June 2005, and the results of its operations and cash flows for the year then ended.
- (b) the financial statements also give a true and fair view of the financial result of fundraising appeals for the financial year ended 30th June 2005;
- (c) the financial statement and associated records have been properly kept in accordance with

the NSW Charitable Fundraising Act 1991 (the “Act”) and the NSW Charitable Fundraising Regulations 1993 (the “Regulations”) during the financial year ended 30th June 2005;

- (d) money received as a result of fundraising appeals conducted during the financial year ended 30th June 2005 has been properly accounted for and applied in accordance with the Act and the Regulations; and
- (e) nothing has come to our attention that causes us to believe that the Environmental Defender’s Office will not be able to pay its debts as and when they fall due.

## **LITTLEWOODS**

Chartered Accountants  
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