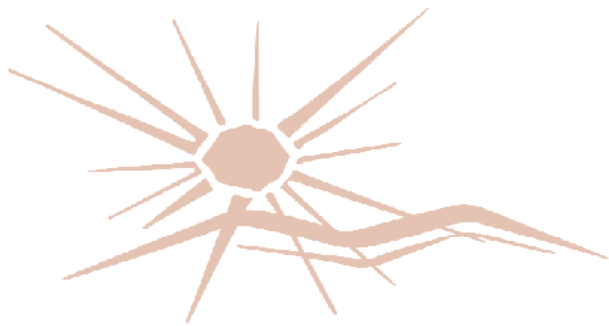


The Environmental Defender's Office (NSW) is a community legal centre that specialises in public interest environmental law. The EDO provides legal advice and representation in public interest environmental law cases, takes an active role in environmental policy and law reform and conducts community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



annual report  
2002 – 2003

edo



## From the Chair

This was to have been a year of consolidation following the ‘generational’ change to staffing that occurred in 2001-2002. Instead, it proved to be something of a milestone in the development both of the Office and the opportunities for effective public participation in environmental decision making in NSW.

During the course of the year, the Public Purpose Fund of the NSW Law Society, one of the EDO’s key backers, agreed to a generous increase in its grant to the EDO. The additional funds will support a full time solicitor dedicated to rural and regional work, a scientific advisor, a policy officer and a public affairs officer.

The submission to the Public Purpose Fund emphasised the shifting directions in environmental law over the years. It recognised in particular that improvements in procedural compliance by both developers and decision-makers were not necessarily translating into better environmental outcomes because the public rarely has access to scientific and expert advice.

Thanks to the Public Purpose Fund, the EDO is now positioned to employ its first

full-time scientist. In addition to advising the lawyers on technical issues, the position will guide the development of a wide ranging panel of senior experts willing to advise the EDO on a pro-bono or reduced fee basis. It is also hoped that the scientific officer, as an in-house expert, will contribute significantly to the lawyers’ own understanding of issues and that the quality of submissions and strategies will improve through the ability to take a multi-disciplinary approach from the outset. This development will enable the EDO to scrutinise the environmental merits of proposals, not merely their procedural compliance, to a level not

Additional funds from the Public Purpose Fund will support a full time solicitor dedicated to rural and regional work, a scientific advisor, a policy officer and a public affairs officer.

## 2002-2003

### NSW Environmental Defender's Office Annual Report



previously possible. For an office which has had to compete with vastly better resourced opponents, the scientific advisor position marks a major development in the EDO's capability.

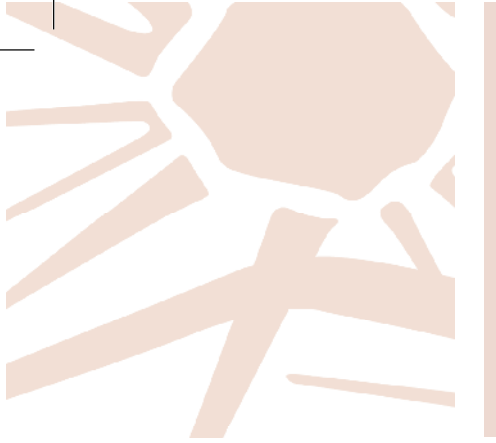
If a single word could sum up the state in which the Office finds itself at the end of 2002-2003 it might be 'balance'. The work is perhaps now more evenly balanced between litigation/advising, policy and education than it has ever been. Our funding sources are balanced. The skills of our staff complement one another and the Board also enjoys an excellent mix of skills and backgrounds. It is therefore regrettable that our accounts are not reflecting the same degree of balance as other facets of our operations. We have again returned a deficit.

Our financial performance was not entirely unexpected given the impact of staff changes from the previous year. Significant belt tightening and delays in implementing the uptake of some positions have reduced the size of the deficit this year and should hopefully see the Office return to a positive position in 2003-2004. The budgeting process has also been overhauled. A committee

2002-2003 was something of a milestone in the development both of the Office and the opportunities for effective public participation in environmental decision making in NSW.

comprising Board delegates and senior staff now oversees the preparation of the draft budget. The Office is also committed to requesting greater assistance and financial commitment from the community groups that it assists. So far it has found the response from its clients heartening.

The leadership of Jeff Smith, as Director, over the course of the year must be noted. His patience and equanimity have won him the trust of the staff. He has had to



## From the Chair

make difficult decisions in the overall interests of the objectives which the Office was established to serve and has done so in a fair manner. His policy skills were also evident in preparing the Public Purpose Fund submission and the work he has done during the year in advising the Wentworth Group on their proposed reforms. As principal solicitor, Paul Toni combined well with Jeff and colleagues and clients alike appreciated his considerable legal skills. I wish to thank all of the staff for their commitment to the Office throughout the year. The Board has great confidence in their judgment and professionalism, which makes its own role relatively easy.

I also acknowledge the individuals who give their time to support the Office, both on the Board and as volunteers. The value of the Office to the community and the environment is evidenced in their contributions. It would be wrong not to expressly mention Bruce Donald and Ray Janz, who retired from the Board this year. Both have given enormously of their time over many years and the strength and direction of the Office owes much to their contribution.

2003-2004 promises to be an important year for the EDO. Our past successes have been the justification for the resources and capabilities that we now enjoy. Rightly, eyes will again be on us to see what we can do with those resources.

### Andrew Chalk

Chair, EDO Board of Management



## From the Director

In 2001-2002, the Chair, Andrew Chalk, and I commented upon the dynamic nature of environmental law and the challenges this provided for a community legal centre specialising in the field. The past year has seen the Office working hard to strategically and operationally deal with these changes.

Under the direction of the Board, the Office reflected on its role to date and devised a program to meet its changed operating environment. This program is based on the desire to more actively engage in ensuring improved environmental outcomes. In this respect, it is my belief – shared by many others – that the EDO has, to date, played a formative role in the development of public interest environmental law in New South Wales.

In particular, the EDO has focused on ensuring that the public has the right to pursue environmental matters through the planning system and the courts, and the capacity to do so (which, of course, are two different things). Put another way, procedural rights have been given substance. This has resulted in strong environmental laws and entrenched rights to public participation.

Given this participatory framework, we now firmly believe that the best way to serve the community and further develop public interest environmental law is to shift our operational emphasis and adopt an outcomes-based approach.

A number of interrelated elements underpin this approach.

First, we are seeking to provide more systematic service and case management for our clients. Community and resident action groups and conservation groups frequently find it difficult to garner the resources to mount legal challenges. Long-running disputes and campaigns

...we now firmly believe that the best way to serve the community and further develop public interest environmental law is to shift our operational emphasis and adopt an outcomes-based approach.



## From the Director

often raise a myriad of legal, policy and organisational issues. During the course of a matter, groups may require legal advice on incorporation, defamation, the planning system and their civil and political rights. Many environmental issues are, of course, only partly legal.

An in-house scientific advisor will enable us to provide – or broker in – a suite of services to allow under-resourced and over-committed communities and organisations to focus their efforts on the ground.

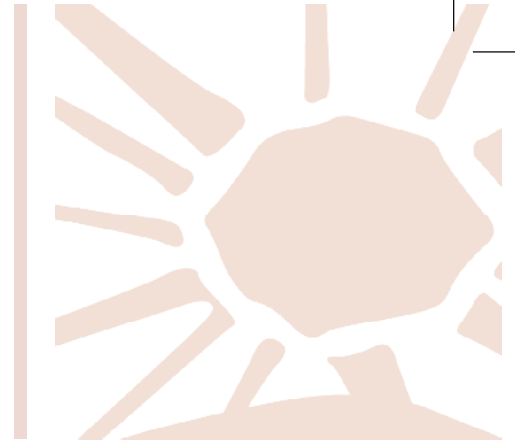
Once the legal and procedural issues have been determined, there remains the question of environmental impact (the discretionary part of proceedings). This is where experts play a key role. The Office is committed to employing an in-house scientific advisor to facilitate advice on such issues. This will enable us to provide- or broker in- a suite of services

to allow under-resourced and over-committed communities and organisations to focus their resources on the ground.

Second, we have embarked on a process of actively engaging with rural and regional communities. In recent times, the EDO has done a lot of work in this area within its existing resources. During the year, the EDO received Law and Justice Foundation funding to further develop our outreach activities. At present, the rural and regional program has a strong community education component. The Office will now build rural and regional services into all our other functions such as providing face-to-face legal advice in conjunction with our workshops.

Third, the EDO is striving to engage with communities as early as possible over environmental issues. To be effective, early engagement requires close links with clients and awareness of EDO services. The EDO is now seeking to build on its existing client base to provide its services more systematically across New South Wales. Even in its early stages, the rural and regional program is providing the Office with the community links and information needed to allow us to engage early in the development of community environmental

## 2002-2003 NSW Environmental Defender's Office Annual Report



issues and so ensure that the planning system works as it should. This, in turn, helps to ensure best possible outcomes.

Fourth, we have placed a greater emphasis on merit-based approaches. This is, of course, an obvious way of ensuring sound environmental outcomes. We have pursued two broad strategies here. The first is to explore laws of general application in our advice and casework, allowing us to move beyond the procedural focus of many environmental laws. Corporations law and trade practices legislation provide obvious examples. The second strategy is to pursue merit-based avenues available under existing environmental laws. While such challenges have no precedent value as such, they clearly have the potential to provide a template for best practice.

The merits case of Beemery – discussed in our 2001-02 report – typifies this approach, attracting attention from the former Chief Judge of the Land and Environment Court for its role in developing environmental jurisprudence in NSW. It is also possible to build strategic considerations into merit-based challenges. The approach adopted in Mogo – a successful merit challenge to a proposed charcoal smelter, whereby the EDO only took instructions in relation to

“wood as waste” issues – is evidence of this approach.

These new operational priorities do not mean that the EDO has not provided such services in the past or is abandoning its traditional supervisory role. Rather, the program reflects a change in emphasis. It is an exciting development and we hope to be able to continue to deliver on it over the next few years.

During 2002-2003, the new vision was put to the Trustees of the Public Purpose Fund as part of their triennial grants cycle. The Trustees endorsed it fully with additional funding being provided from 2003-2004 until 2006. The support of the Public Purpose Fund is a terrific boon to the Office and provides us with an ideal opportunity and indeed, obligation, to put our vision into practice.

All this, of course, would be merely an aspiration without having a number of key building blocks firmly in place. The Office has a remarkable team of experienced and professional staff who work tirelessly on behalf of our clients and to protect the environment, and have acknowledged and enthusiastically embraced the challenges ahead.



## From the Director

The EDO Board has, once again, been instrumental in guiding the Office through the changes, both big and small, that we have experienced of late. The Board brings to the Office a great deal of experience, dedication and sound judgment drawn from many walks of life. I am extremely grateful to have the benefit of such expertise close by. Particular thanks must go to our Chair, Andrew Chalk, who combines a demanding private practice with his duties as Chair, yet always finds the time to offer insight and guidance.

Volunteers also continue to play an invaluable role in doing research, reviewing documents, helping around the office and generally keeping us all sane. Without our steady stream of volunteers, the EDO would simply not be able to do what it does. We can only hope that we also meet their expectations and contribute to their education and professional development. The support of our members and the community, financially and in kind, has again been inspirational.

We have also received important support from a variety of sources outside the office. Special thanks go to the Public

Purpose Fund for their show of faith in us, the MacArthur Foundation, who fund our outreach work in Papua New Guinea, and the Community Legal Centre Funding Program, without whose support the Office could not provide its services to the level and quality that it does.

The Environmental Planning and Law Association (**EPLA**) has again funded a Policy Intern position within the Office and supported our Annual Conference. We also thank the Law and Justice Foundation, whose provided \$15,000 to allow us to better serve rural and regional communities. The National Parks and Wildlife Service, Department of Infrastructure, Planning and Natural Resources and the Environment Protection Authority were instrumental in helping to make our 2003 Elements Conference a great success.

It is an honour to be associated with the EDO. The support from others also makes it a privilege.

**Jeff Smith**

Director





## Litigation

This year again saw the EDO involved in a number of important conservation cases and matters of significant community concern.

### **Nature Conservation Council v Minister**

The EDO commenced proceedings on behalf of the Nature Conservation Council against the Minister administering the *Water Management Act 2000* on the grounds that the Gwydir Water Sharing Plan was invalid insofar as it failed to adequately provide for the environment under the terms of Act. The Gwydir wetlands have been listed as a wetland of international importance under the Ramsar Convention. They represent an area of ecological importance to many native and migratory bird species.

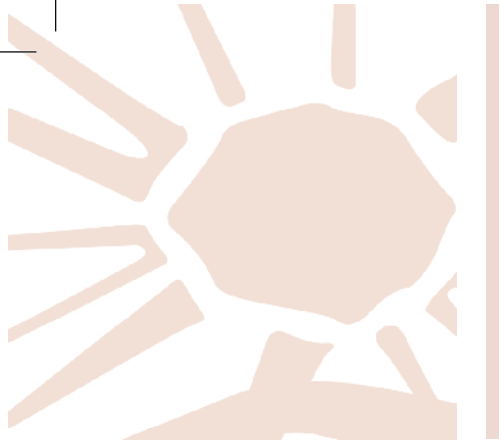
Specifically, the EDO is arguing that the water sharing plan is invalid on the following grounds: (a) failure to specify performance indicators; (b) failure to establish an environmental water rule in respect of environmental health water; and (c) failure to establish an environmental water rule in respect of supplementary environmental water. The

Legal Aid Commission granted legal aid for this matter, subject to mediation with the Minister.

The case is the only challenge to a Water Sharing Plan being bought by environmentalists to highlight the deficiencies in environmental flow rules and allocations under the new NSW water management regime.

### **Central West Environment Council Inc v Orange City Council & Kinross Wolaroi School**

The EDO acted for the Central West Environment Council in relation to a decision to allow Kinross Wolaroi School to use Spring Creek Reservoir for rowing training. The reservoir is frequented by two threatened species of waterbird. The case raised questions about the adequacy of the environmental assessment process, the preparation of misleading reports and the appropriate test of significant effect where migratory species are concerned. The court found against our client, dismissing the challenge.



## Litigation

### Ensuring sound environmental outcomes

#### **The Wilderness Society v Minister for Planning & Australian Silicon Operations (“Mogo”)**

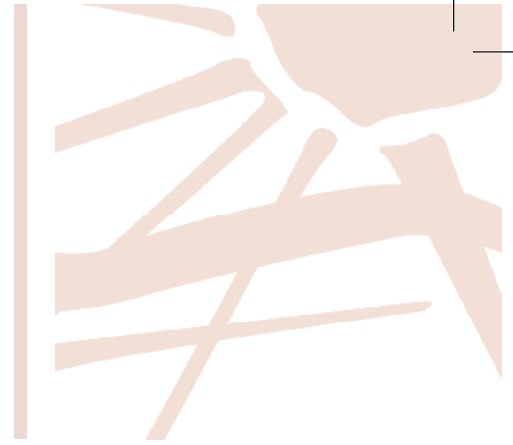
The EDO acted for the Wilderness Society to stop the construction of a charcoal smelter at Mogo on the South Coast. The appeal was on the basis that the environmental impact assessment for the project did not take into account the impact of taking timber from native forests to make the charcoal. Before the matter went to hearing, Australian Silicon announced that it did not intend to defend the case and the matter was finalised. As a result, the charcoal smelter will not go ahead at Mogo.

#### **Ku-ring-gai Ryde Reserve and Bushland Association v Ku-ring-gai City Council and University of Technology, Sydney**

The EDO acted for the Ku-ring-gai Ryde Reserve and Bushland Association to stop the University of Technology from clearing up to 10,000 square metres of urban bushland for road construction. The purported extension to a development consent was in breach of the *Environmental Planning and Assessment Act 1979*, and the consent had lapsed.

Both respondents agreed to settle this case on the basis that the university undertook not to act on the development consent, and that each party bears its own costs.

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### EDO Rural and Regional Program

The capacity of rural and regional communities to address environmental and planning issues within their communities is often limited. However by working with individuals, groups and organisations to reinforce their legal rights and responsibilities, better environmental outcomes can be negotiated between stakeholders.

Some of the strategic issues that have been identified as being important to rural and regional communities include: land management and the clearing of native vegetation, water management, pollution, pesticides, genetically modified crops, large-scale development for mining, industry and agriculture, land-use conflicts, forestry management, coastal and estuarine development and local town planning.

The Rural and Regional Program seeks to:

- identify the specific needs of defined rural and regional communities for the provision of environmental legal services;
- develop and institutionalise links into rural and regional communities;
- assist in empowering the community to understand the law and to participate in environmental decision-making;
- provide an easily accessible presence for obtaining advice (telephone, clinics) both through the EDO office and on the ground; and
- provide efficient and accurate environmental legal services to each community in a manner that is relevant and meaningful for their areas of interest and needs.

The EDO has begun workshops, seminars, advice clinics and information sessions around NSW aimed at empowering communities to negotiate effectively with all levels of government. The EDO will also provide additional legal services, such as representation in litigation matters and advice on specific aspects of environmental law. The development of our rural and regional program has been made possible through generous funding from the Law and Justice Foundation and support from the Legal Information Access Centre.



## Legal Advice

**A**s part of its role as a public interest law office, the EDO provides the public 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 afternoons each week.

In 2002-2003, the EDO dealt with over 1250 telephone inquiries, including over 850 requests for legal advice. Of these, more than 50% came from rural and regional New South Wales.

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

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 also provides individuals and organisations with written advice on public interest environmental law matters. More than sixty detailed written advices were prepared during the 2002-2003 period.

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

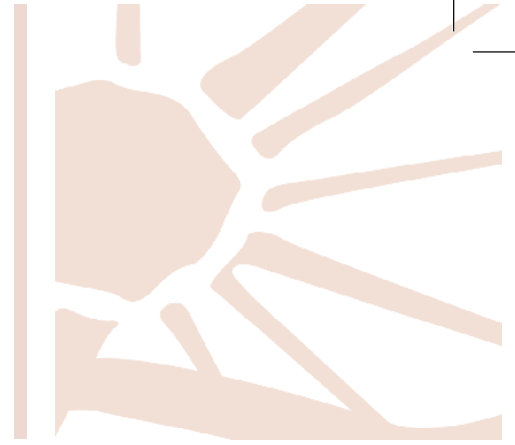
#### Land Clearing

- implementation of major vegetation management reforms for NSW
- access to statistical material in relation to landclearing levels in NSW
- options for strategic land clearing litigation
- validity of Regional Vegetation Management Plans

#### Biodiversity Conservation

- threatened species protection and re-nomination of species for listing
- regulation of genetically modified organisms
- declaration of critical habitat for the Grey Nurse Shark

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- listing of long line fishing as a key threatening process
- validity of the NSW Kangaroo Management Plan
- validity of administrative guidelines for flying foxes

### Water Management

- treatment of tributary flows in water sharing plans
- options for legal challenges to water sharing plans
- access to ecological reports and environmental flow data
- recognition of Lowbidgee floodplains as a dependent ecosystem of the Murrumbidgee
- property rights in water and compensation
- water quality impacts associated with aquaculture development
- environmental impact assessment and compliance issues associated with a major dam project
- adequacy of draft regulations for water access licences and approvals
- lapsed water licences and environmental protection issues at Lake Cowal

### Mining

- environmental impact assessment requirements for coal seam methane exploration
- options for restraining environmental harm caused by a major longwall mine
- threatened species and other impacts of a coal mine extension
- environmental impacts of a number of major quarry proposals
- contaminated land issues associated with mining operations
- water contamination issues resulting from inadequate rehabilitation of a former mine site
- environmental impacts of proposed sand-mining project

### Pollution

- contamination of former railway land in inner-city Sydney
- health and environmental impacts of aerial pesticide spraying
- options for legal action against a council and a developer for water pollution incident
- adequacy of environmental impact

## Legal Advice

assessment for construction of a sewage pump station

- options for strategic water pollution litigation

### Climate Change

- validity of environmental impact assessment for a major coal fired power project
- options for strategic climate change litigation

### Planning and Development

- validity of a council decision to rezone bushland for industrial purposes
- validity of a development consent for an industrial estate
- enforcement of consent conditions relating to a marina and other developments
- validity of a development consent for major redevelopment of heritage property
- potential impacts of residential subdevelopment near protected coastal wetlands
- adequacy of the process adopted by a

local council in preparing a draft Local Environment Plan


- approval requirements for 'low impact facilities' under federal telecommunications law

### Corporate Responsibility

- misleading and deceptive environmental impact statements
- enforcement of environmental remediation orders against an insolvent corporation
- environmentally harmful anti-competitive conduct exemptions

### Advocates' Rights

- court procedure for self-represented litigants in the Land and Environment Court
- recovery of legal costs following successful public interest litigation
- response to threatened defamation proceedings by an industry body
- confidentiality of environmental impact assessment procedures
- public access to documents and copyright issues

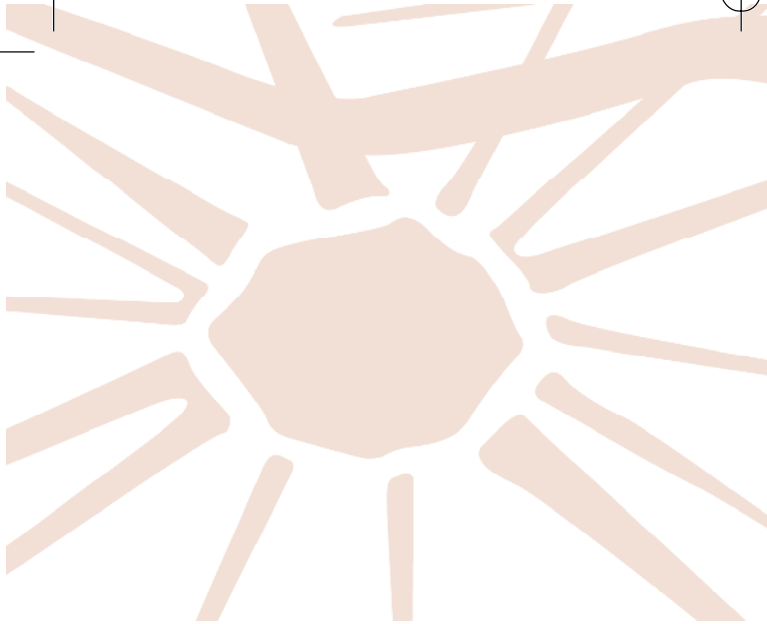


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### Early Engagement at Work

Early engagement in environmental issues is a key plank in the EDO's approach and often delivers improved environmental outcomes.

- The EDO provided legal advice to the Lake Wollombulla Progress Association regarding the lapsing of a development consent for a caravan park on land adjoining coastal wetlands. That advice was forwarded to Shoalhaven City Council who agreed that the consent had lapsed and advised the applicant that the application could not be acted upon. At the close of the year, the applicant has brought proceedings against Council seeking a declaration that the development consent is valid.
- The EDO wrote letters to Scone Shire Council and the Environment Protection Authority advising that any approval of a proposed development application to irrigate effluent from a tannery would be unlawful on the basis that part of the development was prohibited, the remainder of the development was designated and that no EIS had been prepared. The Council requested that the applicant withdraw the application.
- The EDO provided ongoing advice and letters in relation to three proposed developments in the Kempsey Shire, raising issues about whether State Environment Planning Policy 71 – Coastal Development, applied to the developments and public access to documents. As a result of the EDO's work, the developments were readvertised twice. These actions ensure higher standards of consideration of matters by authorities when examining whether to grant consent to development applications within the coastal zone.



## Policy and Law Reform

The EDO's policy and law reform activities fall into three key areas:

- submissions on government proposals;
- policy advice to environment groups; and
- engagement as a key stakeholder.

### 1 Submissions on Government Proposals

An important part of the EDO's policy work is writing submissions in relation to government proposals and parliamentary inquiries. In the past year, these have included submissions:

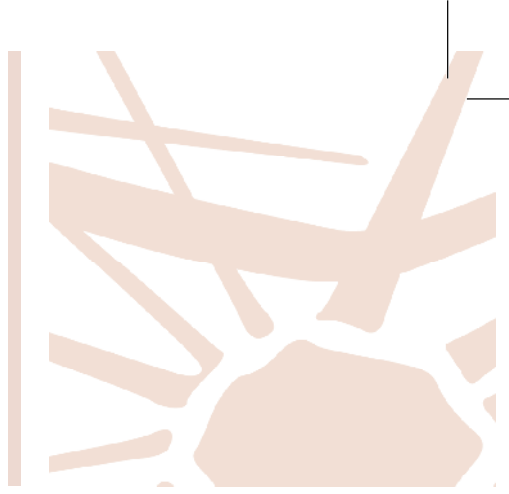
- to the CEO Group on Water of the Natural Resource Management Ministerial Council.
- to the National Competition Council on the 2003 Water Reform Assessment Framework.
- to the *Water Management Act* Implementation Division regarding

certain aspects of the draft Water Management (Access Licences and Approvals) Regulation

- as part of the review of the *Protection of the Environment Operations Act 1997*.
- regarding the current mandatory renewable energy target and the operation of the *Commonwealth Renewable Energy (Electricity) Act 2000*.
- regarding removal of environmental reporting requirements and shareholder resolution provisions from the *Corporations Act 2001*.
- to the Productivity Commission Inquiry into native vegetation and biodiversity regulations.
- to the Ministerial Inquiry into public passenger transport.
- on Guidelines for Former Gasworks in Contaminated Sites for EPA.

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





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## **Mandatory Renewable Energy Target (MRET) Review**

In early 2003, the Commonwealth Government appointed an independent panel to review the Mandatory Renewable Energy Target (**MRET**). This target is one of the main features of the *Commonwealth Renewable Energy Act 2000*, which aims to generate an additional 9,500 GWh of electricity from renewable sources. The main points raised in the EDO's submission were: the need for the MRET to be increased from 9,500GWH (representing a less than 2% increase in renewable energy) to a 10% target for increasing renewable energy by 2010; the need for an increase in penalties for non-compliance with the *Renewable Energy Act* to reflect the true cost of electricity and to link those changes to the consumer price index; the need to review the list of eligible renewable energy sources to ensure that all sources are ecologically sustainable; and the need to introduce mechanisms to increase levels of public participation and accountability under the Act. For a copy of our submission please visit [www.edo.org.au](http://www.edo.org.au).

## **Protection of the Environment Operations Act 1997 (POEO) Review**

In February 2003, the EDO made a submission on the terms of reference of the 5 year review of the Protection of Environmental Operations Act 1997. The submission commented on a range of issues, including:

- Ways of improving the current licensing regime
- The role of other agencies- such as councils- in enforcing the legislation
- Mechanisms to strengthen public participation rights
- The need for innovative court orders and other measures to ensure proper compliance and enforcement.

For a copy of our submission visit [www.edo.org.au](http://www.edo.org.au).



## Policy and Law Reform

### 2 Policy Advice

The EDO frequently provides advice on policy and law reform issues to environment and community groups, or independently as part of identified legal and policy issues of concern.

#### a) Environmental Liaison Office

The Environmental Liaison Officer (**ELO**) is a position jointly funded by a number of key environmental organisations. 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.

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

- Threatened Species Conservation Amendment Bill 2002.
- Coastal Protection Amendment Bill 2002.

- Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Bill 2002.
- Water Management Amendment Bill 2002.
- Defamation Amendment Bill 2002.
- Heritage Amendment Bill 2001.

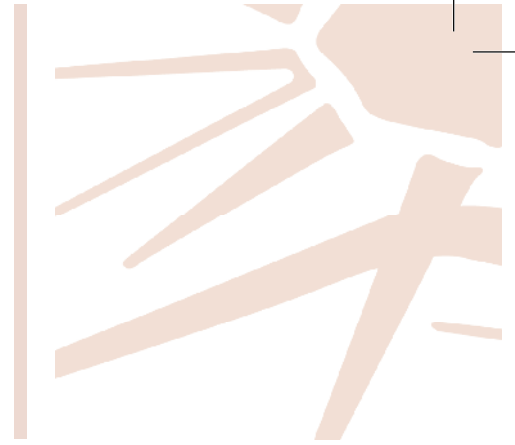
A number of these amendments were accepted by the Government, greatly improving the environmental and participatory aspects of the proposed laws.

#### b) Policy Advice to Environment Organisations

From time to time, the EDO is retained by environment groups to provide policy advice on a particular area of law or to develop law reform proposals. For example:

- On behalf of Greenpeace, the EDO prepared a Bill requiring disclosure of certain greenhouse gas emissions by public companies and large proprietary companies.
- The EDO was retained by the Australian Conservation Foundation to prepare a brief review of the operation of the EPBC Act in its first three years.

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### Threatened Species Conservation Amendment Bill 2002

EDO involvement in these laws has been long-standing. As part of the review of these laws in 1997, the EDO prepared a detailed submission, making twenty recommendations.

In 2002, the EDO worked with other peak environment groups to preserve the integrity of the Act, improve its efficacy and promote public participation mechanisms. These included resisting moves to establish a socio-economic committee to oversee listings of threatened species and calls for compensation because of increased regulatory standards.

A number of ELO and EDO amendments were adopted in the Bill, which the Total Environment Centre and the Nature Conservation Council described as 'a victory in the battle to protect the State's threatened species'.

### Coastal Protection Amendment Bill 2002

A number of amendments proposed by the EDO were accepted, including:

- The principles of ecologically sustainable development were strengthened and rationalised.
- Objects were inserted into the Act, recognising, amongst other things, the need to protect the coastal environment, to promote public access and to recognise the importance of the community.
- Public access to coastal areas was improved, with the Minister or a local council now able to order a person to refrain from building a structure on or near the boundary of their land and the beach.
- A specific commencement date was inserted, providing certainty and minimising the number of fences constructed by private landowners impeding public access to coastal areas.



## Policy and Law Reform

- The EDO was commissioned by the Australian Conservation Foundation to assess the effect of proposed amendments to the Commonwealth heritage protection scheme.
- The EDO, in collaboration with the NSW National Parks and Wildlife Service, prepared a letter to Planning NSW to express concern about the assessment of threatened species by local government and requesting that Planning NSW issue a directive to councils detailing their obligations in relation to the 'eight-part test'. This is a list of eight questions that are to be addressed when considering whether a development or activity will have a significant effect upon a threatened species.
- The EDO wrote letters to the Minister for Planning, Agriculture, Rural Services and Local Government requesting that they consider a proposed amendment to section 149 of the *Environmental Planning and Assessment Act 1979* to require the presence of categories of noxious weeds in a local government area to be notified on 149 certificates. These are planning certificates issued by Councils to the public notifying them of applicable planning controls and matters affecting the land.
- The EDO provided advice on amendments to the *Parliamentary Electorates and Elections Act 1912* to enable non-aligned green groups to distribute election material at the next state election.

### 3 Key Stakeholder Role

The EDO stands alongside the peak conservation groups at many Government fora. The Office provides an independent policy voice and legal advice in peak fora such as Chemicals Taskforce meetings and quarterly meetings between the Environment Protection Authority, the National Parks and Wildlife Service and the peak environmental groups.

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### Wentworth Model Reforms on Land Clearing

In late 2002, due to concerns about the environmental and social consequences of our natural resource use, the Premier commissioned the Wentworth Group of Concerned Scientists to prepare a report on landscape conservation. Their report was presented to the Premier in February 2003 and quickly endorsed. The Wentworth Model advocated the end of broadscale clearing by strengthening and simplifying native vegetation laws; setting environmental standards and clarifying responsibilities; restructuring institutions; and providing financial support and a workable system of property management plans to farmers to encourage private conservation.

The EDO was retained in late 2002 by the Worldwide Fund for Nature (WWF) to give legal and policy advice to the environmental representatives sitting on the Native Vegetation Reform Implementation Group. Much of the work centred on making the Wentworth Model practical. The EDO advised on problems under the existing regime, how to strengthen and simplify the new laws and how property vegetation plans would work on the ground.

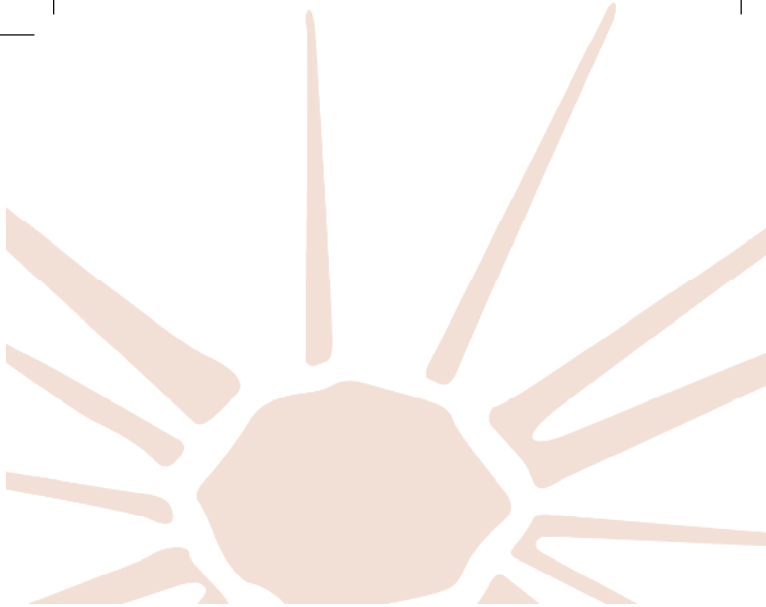
### Water and Property Rights

The EDO has been active in providing independent advice on the issue of water, property rights and compensation. This is a specialist area where there has been a great deal of confusion and obfuscation. The issues are complex but a distinction has long been drawn between compensating where property is acquired, but not where mere restrictions on use are imposed. The EDO supports this distinction, and believes compensation should not be paid where restrictions are imposed on use under a statutory regime.

The EDO's combination of legal and policy expertise makes it ideally placed to contribute to the debate on this important issue and set the discussion on an informed basis.

### Fertiliser Waste

In mid-2002, the recycling of industrial waste as fertiliser was exposed in the media. Under instructions from the Total Environment Centre, the EDO was instrumental in highlighting the failure of the regulatory regime in this area and the need for structural reform. The NSW Government is currently proposing a total overhaul of the relevant laws.



# Community Education

**T**he 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:

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

## What people say

Well done! Keep this type of activity for rural/regional Australia. It's much appreciated. **– Grafton, May 2003**

It was very good, it's obvious that you guys really know what you're talking about and are able to communicate it in a way that the layman can understand. **– Manly, May 2003**

Very useful on working the system **– Batemans Bay, Nov 2002**

## Community Workshops

Community environmental law workshops are tailored to meet the needs of the workshop participants, with an emphasis on practical application of the information provided.

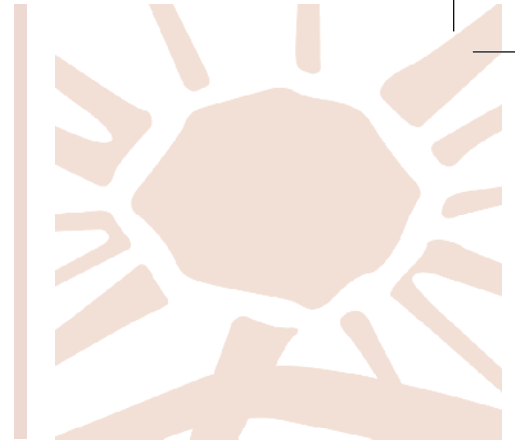
In 2002-2003, workshops were run in the Blue Mountains, Bateman's Bay, Manly and Grafton. Topics covered included: the planning and development system; threatened species law; pollution law; access to information; effective submission writing; rights of appeal; taking a case to court; and, activists' rights.

## Annual Conference

The EDO Elements Conference was held on 27 May 2003. The conference explored challenges and opportunities for reform in relation to law and policy governing the four elements – earth, air, fire and water.

Conference speakers included: the Honourable QC AM Paul Stein, Peter Cosier (Convenor of the Wentworth Group of Concerned Scientists), Rick Farley (Farley Consulting Group), Rosemary Lyster (Australian Centre for

## 2002-2003 NSW Environmental Defender's Office Annual Report



Environmental Law), Danny Kennedy (Climate Action Network Australia), Stuart Little (Planning NSW), Grahame Douglas (Rural Fire Service), Mick Keogh (NSW Farmers' Association) and EDO solicitors.

Around one hundred and ten people attended the conference, including government employees, consultants, conservationists, legal practitioners, students and academics.

CDs of the conference proceedings are available from the EDO.

We need to promote and engender a stronger notion of stewardship of the land, the notion of duty of care of all land owners, and a more powerful ideal of the public trust with regard to public land, waterways and our natural resources.

The Hon. Paul Stein QC AM, opening the EDO Elements Conference, 27 May 2003

## Publications

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

- The EDO eBulletin : a 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.
- EDO books and conference proceedings: a more detailed analysis of key areas of law, including important reforms in environmental law.

In 2002-2003, the EDO published *Planting the Seed: Public Participation and the Environment Protection and*



## Community Education

*Biodiversity Conservation Act*. This guide provides an accessible overview of Commonwealth environmental legislation, emphasising opportunities for the community to use the legislation to protect the environment. The publication was produced with financial support from Environment Australia and the Conservation Alliance.

EDO's new publication...  
'Planting the Seed' marries a simple explanation of the Act with the practical issues for individuals and community groups enforcing compliance with it.

**Chris McGrath – Barrister who successfully ran the first case under the EPBC Act – the Flying Fox case in Queensland**

## 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 in Australia. The different offices share resources and ideas and meet regularly for EDO national network meetings. All members of the EDO network also contribute to the production of the quarterly environment law magazine, *Impact*.



## International Program



In 2002-2003, the EDO continued to work with its international colleagues in public interest environmental law. A highlight for the year saw new links developing in Cambodia with the Cambodian Legal Education Centre.

The EDO continued to work closely with its project partners, the Environmental Law Centre (ELC) and Greenpeace Australia Pacific in Papua New Guinea. In November, we hosted a visit from ELC lawyer Effrey Dademo. The EDO assisted Effrey to develop legal arguments in relation to a potential constitutional challenge. We also continued to assist ELC and Greenpeace in relation to litigation and public campaigns on illegal forestry, which is a major environmental and social problem in PNG. This ongoing project is generously funded by the MacArthur Foundation, a United States philanthropic trust. Information about the MacArthur Foundation can be found at [www.macfound.org](http://www.macfound.org).

In October 2002, the EDO hosted visiting Indonesian judges as a part of a training project undertaken by the Australian Centre for Environmental Law on Environmental Law Enforcement in

Australia. Jeff Smith, Lucy Sharman, Justine de Torres, Elisa Nichols and Paul Toni discussed public interest environmental law in Australia, the role of the EDO and significant cases undertaken by the EDO with the judges.

The Environmental Defender's Office is an invaluable partner to the Environmental Law Centre in our efforts to stem corruption and protect the environment in Papua New Guinea through legal means.

**Martin Maden, Executive Director,  
Environmental Law Centre (PNG)**

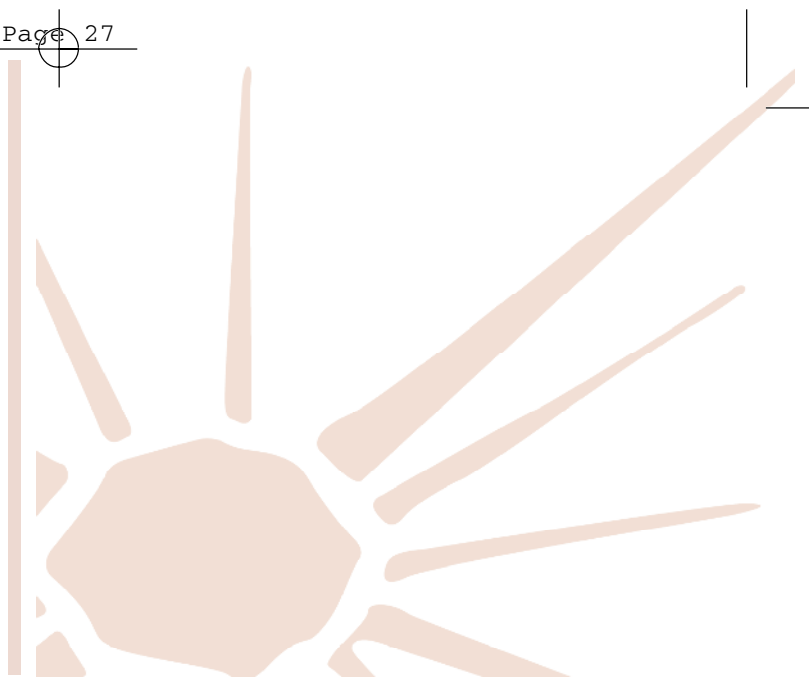
EDO has continued its relationship with the Environmental Law Alliance Worldwide (E-LAW). E-LAW is a network of public interest environmental lawyers from around the world. In September 2002, Elisa Nichols attended



## International Program

E-LAW's annual meeting in Guadalajara, Mexico, where she participated in a Colloquium on Environmental Law on Public Policy and Sustainable Development. Elisa also attended the 2003 annual E-LAW meeting in Yachats, Oregon, and participated in a panel at the Public Interest Environmental Law Conference in Eugene, Oregon on Citizen and Community Enforcement of Environmental Laws.

For the first time this year, the EDO has developed links with public interest lawyers in Cambodia. The Cambodian Legal Education Center (**CLEC**) is developing an environmental law programme in response to the increasing threats to the environment and the rights of Cambodians to a healthy environment. The EDO is pleased to announce the appointment of Susan Brown, who is the chairperson of the EDO ACT as an Australian youth ambassador, to be attached to CLEC. Susan took up the placement in September, to continue the work of former youth ambassador, Nick Menzies.



## Acknowledgements

### Volunteers

Every year, volunteers dedicate their time and resources to support the work of the EDO. In 2002-2003, our volunteer team generously contributed almost two thousand hours of voluntary assistance, greatly enhancing the capacity of the office to provide accurate and timely legal assistance. The EDO would like to thank the following volunteers from 2002-2003 for their commitment and hard work:

Sandra Brown, Emma Carmody, Luke Fomiatti, Shabnam Gill, Shelley Greer, Andrea Hadaway, Peter Holt, Tara Jain, Elaine Johnson, Leslie Leung, Justin Lodge, Sarah Morley, Mary Nagle, Todd Neal, Sam Robinson, Cray Rowan, Tamira Steinesen, Remali Vilathgamuwa, Josie Walker and Rachel Webb.

### 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:

Associate Professor Paul Adam

Geoffrey Ball

Susan Caffin

Martin Conboy

Andrew Cox

L J Dennis

Judge Ian Dodd

T B Gates

P R Fairlie

J H Gallo

E A Gerrard

Pamela Gilbert

F W Hamilton

Leon Hill

Julie Ho

Bok Ho



## Acknowledgements

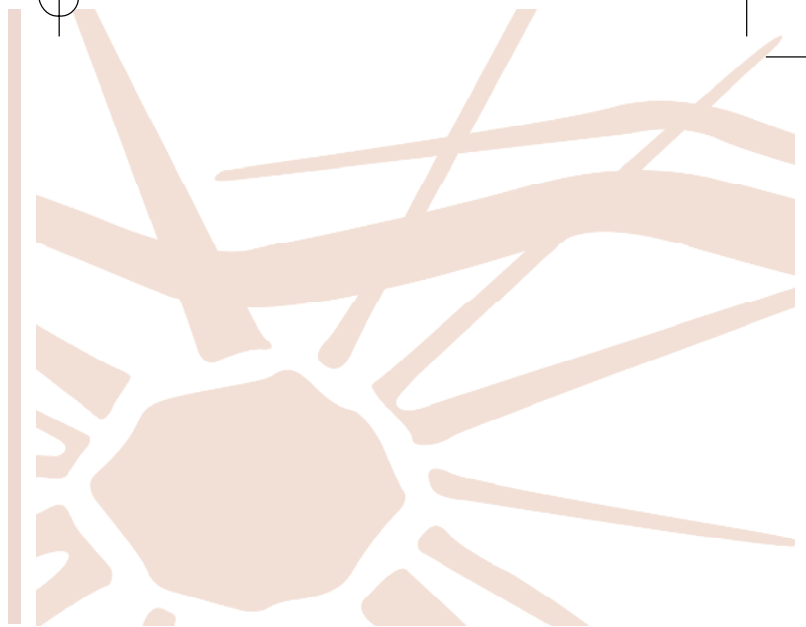
Andrew Kelly  
Judy Lambert  
R W Lane  
J L & A Ledger  
Craig Leggat  
Angela Lim  
Betty S Lloyd  
Loreto Normanhurst School  
Rosemary Lyster  
Keith Maher  
Jonathon S Milford  
Stuart Newell  
Angus Northey  
Jill Pain  
Paul Parramore  
M J & J I Perry  
F R Pettit  
Jamie Pittock  
F R Rae  
M A Reidy  
Susan Robertson  
Patricia Ryan  
Sue Salmon  
Ralph Scott

Richard Smythe  
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PJ Walsh  
L Williams  
J M Wolfers  
Wright Financial Advice Pty Ltd

### Sponsors

Mac Arthur Foundation  
Department of Infrastructure, Planning  
and Natural Resources  
National Parks and Wildlife Service  
Environment and Planning Law  
Association  
Law & Justice Foundation  
Environment Australia  
Conservation Alliance  
and special thanks to Jacki Stone

# EDO People



## Staff

As at 30 June 2003, the EDO staffing was:

### Director

Jeff Smith

### Principal Solicitor

Paul Toni

### Solicitors

Ilona Millar

Elisa Nichols

Justine de Torres (maternity leave)

### Policy Officer

Rachel Walmsley

### Policy Intern

Todd Neal

### Education Coordinator

Pepe Clarke

Lucy Sharman (maternity leave)

### Education Assistant

Christine Palomo

### Administration Team

Matt Ridley (Manager)

John Scanlan

Robert Sinafea

### Book Keeper

Margaret Jones

### Librarian

Richard Ross

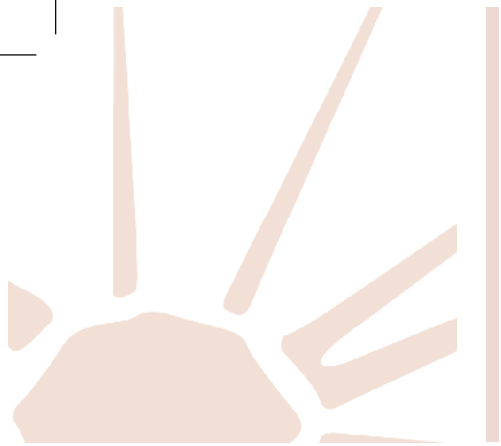
Throughout the year a number of other people also worked at the office. They have either moved on, were here on fixed contract or were helping out when other people were on leave. They are Marc Allas, Emma Carmody, Warren Kalinko, Michelle Seaton, Anne Walker, Poppy Warr and Leah Warwick.

The EDO would like to thank them for their efforts and the contribution they have made to the office.

## Board of Management

The EDO is a non-profit company limited by guarantee. The EDO Board of Management provides strategic direction and assistance to staff. The Board is elected at the annual general meeting held each year.

Board members all work on a voluntary basis. They attend six-weekly meetings and annual policy days. They make an



## EDO People

important contribution to the work of the Office, guiding its strategic development and devoting considerable time and expertise to the work. We thank them for their ongoing contribution and commitment.

The EDO has been most fortunate in being able to attract talented and committed people to its Board. The past year saw Bruce Donald, Ray Janz, Kathy Ridge and Justin Murphy stepping aside after many years of voluntary service. Barbara Adams, Ralph Scott, Warwick Pearse, Michael Jeffery and Katherine Gardner came onto the Board, ensuring that the Board retains a wide skill base across law, public policy, environment protection, industry, private practice, financial management, media, marketing, science and community justice.

Andrew Chalk and Bruce Woolf continued as Chairman and Vice-Chairman respectively. Frank Hubbard remained as Secretary, and Ralph Scott moved into the Treasurer's role vacated by Ray Janz. Hal Wooten remains as patron.

After being involved with the EDO since inception, and after almost a decade on the Board, including four years as

Chairman, Bruce Donald ended his formal connection with the organisation. A dinner in March provided the opportunity for Board, staff and friends to formally thank Bruce for his innovation and enthusiasm.

### Patron

Mr Hal Wooten AC QC

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**Defender's Office**  
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The EDO Board at 30 June 2003  
comprised:

**Chair**

**Andrew Chalk,**  
Partner, Chalk & Fitzgerald Associated

**Vice-Chair**

**Bruce Woolf,**  
Partner, Woolf & Associates

**Secretary**

**Frank Hubbard,**  
Managing Director, Worthwhile Projects

**Treasurer**

**Ralph Scott,**  
Finance Manager, Sydney Regional  
Aboriginal Corporation Legal Service

**Barbara Adams,**

Former Executive Director, Environment  
Protection Authority

**Jeff Angel,**

Director, Total Environment Centre

**Katherine Gardner,**

Solicitor, Minter Ellison

**Murray Hogarth,**

Consultant, ECOS Corporation

**Professor Michael Jeffery,**

Director, Division of Law, Macquarie  
University

**Judy Lambert,**

Consultant, Community Solutions

**Warwick Pearse,**

Senior Executive, Roads and Transport  
Authority



## Funding And Financial Report

For the 2002-03 financial year, the EDO recorded a deficit of \$43,490, compared to a \$48,023 deficit for the previous 12 months. The result reflected another difficult year in financial terms.

Some items of note in the accounts:

- Total Income rose by over \$32,500 (or 4.6%) over the previous year, while Total Expenditure rose by almost \$28,000 (or 3.7%). Salaries and wages rose (see below), but other costs were generally held in check: expenditure on office overheads was reduced through improved procedures and control measures.
- Salaries and Wages and the related Superannuation Contributions rose from \$518,958 in total in 2001-02 to \$549,159 in the year under review, or almost 6%.
- Education activities overall in 2002-03 are shown as a surplus of \$10,228 compared to \$40,991 a year earlier. It should be noted that this arose mainly because of an accounting change in re-allocating grants from Education to Donations Received, that latter figure rising by almost \$30,000.

It has been an objective of the EDO for some years now to diversify its funding base. To some extent, this was achieved during 2002-03 with increased specific purpose grants, membership fee income, donations and a more active and profitable education focus.

The main achievement of 2002-03, however, lies in the financial foundation laid for the next three years through increased funding by way of The Law Society of New South Wales's Public Purpose Fund. Not only did the successful PPF submission greatly expand funding for the period June 2003 to June 2006, but it also delineated new strategies and directions for the EDO.

This funding also provides resources for the Office to actively pursue alternative funding sources, and this will be reflected in the accounts for coming years.

In 2002-03, the PPF provided \$260,000, or 35.6% of all income. Commonwealth and State funding accounted for a further 32.4% of income. As for all EDO's around Australia, the funding received from the Commonwealth continues to be subject to a "no litigation" condition, namely, that it



## 2002-2003 NSW Environmental Defender's Office Annual Report



not be used for litigation or litigation-related activities.

So the EDO generated 32% of its own income, almost exactly the proportion of recent years. This income came mainly from legal fees received for advice, litigation and policy work as well as education programs such as conferences, workshops and publications.

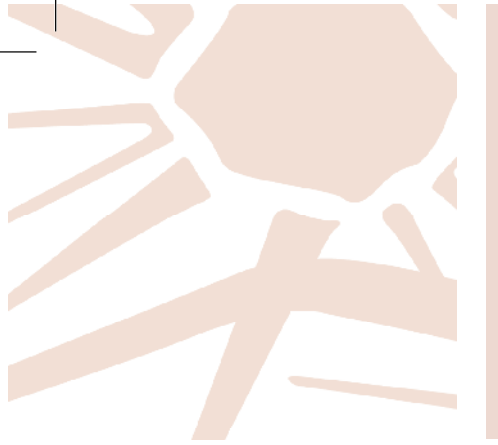
Income from specific purpose grants during 2002-2003 rose considerably, enhancing the EDO's service delivery, particularly in the policy and education areas. During the year, these grants were received from:

- the MacArthur Foundation, for the second phase of a legal education project in Papua New Guinea;
- the Department of Infrastructure, Planning and Natural Resources, National Parks and Wildlife Service and the Environment and Planning Law Association, for the 2003 EDO Annual Conference;
- the Environment and Planning Law Association, for a policy intern position;
- the Law and Justice Foundation, for a

rural and regional workshop series; and

- Environment Australia and the Conservation Alliance, for '*Planting the Seed*', a guide to public participation and the Environment and Biodiversity Conservation Act.

A copy of the complete audited financial accounts is available to members from the Environmental Defender's Office Ltd.



## Funding and Financial Report

### Statement Of Financial Position

as at 30th June, 2003

	2003 (\$)	2002 (\$)
<b>Current Assets</b>		
Cash	271,690	279,045
Receivables	109,797	91,794
Current tax assets	–	28
Other	6,195	27,175
<b>Total Current Assets</b>	<b>387,682</b>	<b>398,042</b>
<b>Non Current Assets</b>		
Property, Plant and Equipment	11,976	22,255
<b>Total Non Current Assets</b>	<b>11,976</b>	<b>22,255</b>
<b>TOTAL ASSETS</b>	<b>399,658</b>	<b>420,297</b>
<b>Current Liabilities</b>		
Payables	11,076	–
Provisions	26,764	9,614
Other	143,166	148,541
<b>Total Current liabilities</b>	<b>181,006</b>	<b>158,155</b>
<b>TOTAL LIABILITIES</b>	<b>181,006</b>	<b>158,155</b>
<b>NET ASSETS</b>	<b>218,652</b>	<b>262,142</b>
<b>Equity</b>		
Reserves	110,000	110,000
Retained Profits	108,652	152,142
<b>TOTAL EQUITY</b>	<b>218,652</b>	<b>262,142</b>

## 2002-2003 NSW Environmental Defender's Office Annual Report

### Summarised Profit And Loss Statement

For the Year Ended 30th June, 2003

	2003 (\$)	2002 (\$)
<b>Operating Revenue</b>		
Conference and Publications	42,977	64,739
Fees	136,189	144,769
Grants	497,326	475,808
Interest	4,529	5,482
Donations	33,810	4,095
Other Income	17,507	4,929
<b>TOTAL REVENUE</b>	<b>732,338</b>	<b>699,822</b>
<b>Operating Expenditures</b>		
Salaries and Superannuation	566,309	533,569
Overheads, including Rent, Insurance and Depreciation	77,786	86,857
General Expenses, including Accountancy	17,766	21,764
Daily Expenses, including Post, Courier, Phone, Stationery	53,498	50,092
Other, including Training, Practicing Certificates, Bad Debts	27,720	31,815
Conferences and Publications	32,749	23,748
<b>TOTAL EXPENDITURES</b>	<b>775,828</b>	<b>747,845</b>
<b>OPERATING PROFIT/(LOSS) AFTER INCOME TAX</b>	<b>(43,490)</b>	<b>(48,023)</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, 2003. 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.

## Qualification

As is common for organisations of this type, it is not practicable for the Environmental Defender's Office to maintain an effective system of internal control over donations, subscriptions and other fundraising receipts until their entry into the accounting records. Accordingly, our audit in relation to fundraising and the accounting for and application of money received as a result of fundraising appeals was limited to amounts recorded.



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## Qualified Audit Opinion

In our opinion, except for the possible effects of the limitations discussed in the qualification paragraph,

- a) the financial report presents truly and fairly in accordance with applicable Australian Accounting Standards and other mandatory professional reporting requirements the financial position of the company as at 30th June 2003, 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 2003;
- 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 2003;
- d) money received as a result of fundraising appeals conducted during the financial year ended 30th June 2003 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

Aubrey Reisen C.A.

Registered Company Auditor

Level 2, 89 York Street, Sydney NSW 2000