



ENVIRONMENTAL DEFENDER'S OFFICE NSW

ANNUAL REPORT – 2005/06

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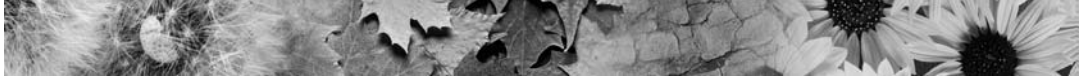
The Environmental Defender's Office (NSW) is a community legal centre that specialises in public interest environmental law. The EDO provides legal and technical advice and representation in public interest environmental law matters, takes an active role in environmental policy and law reform and conducts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

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When it comes to environmental regulation, NSW can be a funny place.

If you live in Sydney, you need a development application to install a rainwater tank but not an air-conditioner. Meanwhile, the government contemplates a massive water desalination plant to address the effects of too few rainwater tanks, as well as two new coal fired power stations, to feed our unregulated desire for climatic comfort.

Our regulatory system obsesses about issues of transitory amenity - the protection of views and neighbour's overshadowing - but so often appears blind to impacts having a fundamental bearing on our planet's sustainability.

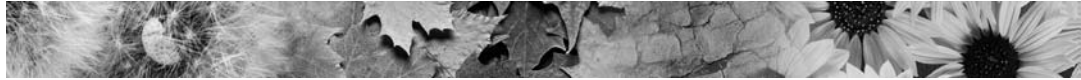
Yet many of the basic legal tools to achieve greater protection of our environment are already in place, if the will were there to use them. But so often the big and obvious questions seem to be the ones that our bureaucrats, politicians and judges find most difficult to face. How else is it that in 2006 major coal mine developments need not address climate change impacts as part of their approval process?

The problem is not simply that short-term economic expediency is being preferred

to longer term environmental sustainability - balancing our economic and environmental needs is understandably complex and difficult. But the dilemma is made worse by a system that so conveniently ignores or sidelines the real considerations and that avoids the real debate, precisely because it is seen as too difficult.

The government agencies charged with protecting the environment develop ever inventive reasons why serious environmental impacts, including on threatened species, should be accommodated, especially where the project is large enough. Courts uphold the decisions of Planning Ministers who don't bother to read the detail on such projects before giving their approval. The public is given a right to comment but the decision-maker need not trouble themselves with reading those comments, or even a summary of them, before making a decision.

The year saw the commencement of Part 3A of the *Environmental Planning & Assessment Act*. That Part contains measures which significantly curtail public participation and judicial scrutiny in the assessment and approval of major projects. It marks a major retreat in regulatory accountability and carries the risk that developers and government, shielded with this greater immunity,



“...so often the big and obvious questions seem to be the ones that our bureaucrats, politicians and judges find most difficult to face.”

will feel at liberty to treat principles of ecologically sustainable development as platitudes that are not meant to seriously intrude on the real considerations driving the decision on whether to approve large projects.

This is unfortunately the regulatory environment in which the EDO operates.

“The breadth of work undertaken by the Office is evident in the following pages.”

The Office exists to support the public in its endeavours to have governments properly address the major environmental issues facing our communities. As this annual report highlights, 2005/06 has seen the EDO continue its efforts towards this objective. The breadth of work undertaken by the Office is evident in the following pages. Great credit goes to the Director, Jeff Smith, and all of the staff for their diligence and skill. The report speaks of efforts to make sure that the big and obvious questions are not ignored by our decision makers.

A matter of particular note in this annual report is the very generous increase in funding from the Public Purpose Fund which was approved this year and will commence as a triennial grant from 1 July 2006. These additional funds will enable the EDO to deepen its multidisciplinary capability, as well as provide for the establishment of a pilot office on the North Coast. Above all, these funds will help preserve the EDO's independence.

Andrew Chalk
Chair, EDO Board of Management



From a personal perspective, the past year has been one where two particular challenges loomed large.

The first challenge was welcomed with open arms. It derived from the news – in October 2005 - that the Public Purpose Fund was prepared to fund a significant enhancement in the activities of the EDO over the next three years. From 1 July 2006, the EDO will expand its policy, community legal education and scientific functions. Three new positions – one working within each function – will be created, making us a truly multi-disciplinary office. A fully fledged three-year rural and regional program will also be rolled out, comprising workshops, advice clinics, early engagement work and promotional activities.

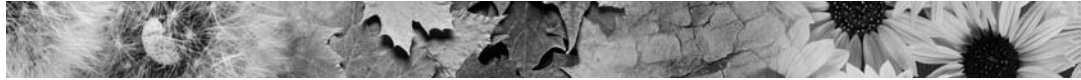
In a further exciting development, the Public Purpose Fund will also fund the piloting of a Northern Rivers branch office, operating out of Lismore. The Northern Rives Office will be staffed by two solicitors, with the Sydney office providing support services. The focus of the Northern Rivers Office will be on advice work and community legal education.

These changes will not take place until the next financial year but planning for them began in October 2005. The task of turning these

ideas into practice has already been considerable, with much more to be done. The Public Purpose Fund, once again, has shown tremendous faith in the EDO and we are determined to justify their faith in us. I look forward to being able to report fully on our progress in these areas in the next Annual Report.

“...a more rounded office allows us to better meet the needs of our clients.”

The second challenge was externally imposed and long dreaded. In 2005, the NSW Government passed the *Environmental Planning and Assessment (Infrastructure and Other Planning Reform) Act 2005*. The reforms introduce a new Part 3A to the planning system and seek to streamline the approval process regarding major developments, with the public being the big losers. Gone are the rules and procedures that the community has learned to work with. Gone also is the role of the community as a partner in the planning system. In its place is a much more discretionary regime where power is concentrated in the Minister and the Department. The community has been marginalised and, in the case of critical infrastructure projects, sidelined



“...our cases show an ongoing commitment to taking on cutting-edge matters.”

completely. Part 3A is being used frequently and poses serious questions for good environmental outcomes and the practice of public interest environmental law in NSW.

Against this backdrop, there was, of course, the usual work to be done. Litigation has been a strong focus over the course of the year. There has certainly been a fear, expressed by some, that the move to a multi-disciplinary office was a reflection of a desire to move away from litigation. This is not the case. As noted previously, a more rounded office allows us to better meet the needs of our clients. It helps to ensure that communities know their rights, and that decision-makers are properly informed. In this sense, a multi-disciplinary approach acts as a filter, ensuring that cases – when litigated – have a more strategic flavour.

In 2005-2006, the Office has again focused on a combination of judicial review and merit-based matters. These cases highlight the diverse range of matters that the EDO has been involved in over the past year. A number of other themes also emerge.

First, our casework highlights the links between strategic litigation and law reform. During the year, a number of cases on Aboriginal cultural heritage were run by the Office. These cases raised questions about the practices and procedures associated with the destruction of Aboriginal cultural heritage. In *Anderson v Director General*, for example, the Court held that a consent to destroy Aboriginal objects was invalid on administrative law grounds, as well as finding that the Director General failed to adequately apply the principles of ecologically sustainable development and the principle of intergenerational equity. It is hoped that strategic litigation on these issues will lead to broader reforms vis-à-vis the approach to Aboriginal cultural heritage in NSW.

Second, the cases also highlight the difficulties of litigating in a changing political and legal environment, where community rights are being eroded (particularly in NSW). For example, in *Nature Conservation Council v Minister*, the EDO was granted special leave to appeal to the High Court about the

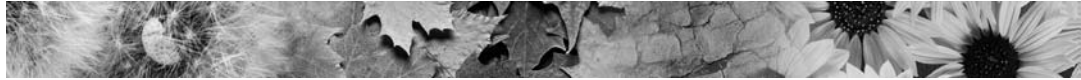
validity of water sharing plans in NSW – a rarity in the history of the Office. Unfortunately, in a metaphorical stroke of a pen, the NSW Government passed special legislation to retrospectively validate all water sharing plans and the appeal had to be abandoned. Likewise, in *Tugun Cobaki Alliance v the Minister*, the EDO has taken on the formidable task of challenging the decision of the Minister to approve a 7km bypass at Tugun on the far North Coast under new laws pertaining to major developments. The proceedings are among the first to test the new laws which seek to “streamline planning processes and cut red tape”. A decision is pending.

Third, our casework demonstrates the need for an organisation which plays an oversight role. In *Cranky Rock Road Action Group v Cowra Shire Council*, the EDO is challenging a Council decision to approve a residential subdivision without requiring a Statement of Environmental Effects. The challenge was dismissed by the Land and Environment Court and is currently on appeal (with the Department of Planning joining the proceedings due to the strong public interest environmental law nature of the proceedings). Cases such as this are a prime example of how the EDO promotes government

accountability in an effort to achieve positive environmental outcomes.

Fourth, our cases show an ongoing commitment to taking on cutting-edge matters. On the federal front, the case against a Japanese whaling company continues (*HSI v Kyodo Senpaku Kaisha*). In this matter, Humane Society International is seeking a declaration that whaling in the Australian Whale Sanctuary is illegal and an injunction to stop the practice. The matter is currently awaiting a judgment from a full bench of the Federal Court (on appeal from Justice Allsop’s decision not to grant leave to serve the proceedings on the company).

Finally, our caseload highlights our ongoing commitment to seeking good environmental outcomes, as an adjunct to judicial review. Two merits matters were also commenced in the federal jurisdiction in the past year. In *IFAW and Others v Minister*, a merits review of the decision to allow the importation of elephants from Thailand was sought on conservation and welfare grounds. In *HSI v Minister (Southern Bluefin Tuna case)* a merits challenge was launched in relation to a decision that allows fishing and export levels to remain unchanged for this highly endangered species.



“Our policy work remains a fundamentally important aspect of our work, with the EDO being – in the Attorney General’s words – the ‘canary in the coalmine.’”

I turn now to community legal education, an aspect of the EDO’s work that the Attorney General has described as “seminal”. The active litigation program of the Office has not seen a diminution in productivity or quality across this program, notwithstanding the contribution that solicitors make in this area. Indeed, it is true to say that the community legal education program has been expansive, with 17 generalist and specialist workshops, and around 25 seminars and presentations throughout the year. The focus of the program has traditionally been on both providing legal information and building the capacity of the community to understand their rights and work with the system. A diverse range of people usually attend these forums, including conservationists, landholders, students, planners and local and state government employees. More recently, however, a greater emphasis has also been placed on using forums and seminars to set the agenda for discussion and debate about the environment and the law.

Our annual conference on *Making Law Work – Improving Environmental Compliance and Enforcement in Australia* is but one example of this resolve. The past year also saw the production of the *Rural Landholder’s Guide to Environmental Law*, a reflection of our commitment to working with rural communities on environmental issues.

One area of evident expansion in the last 12 months is in the range of work undertaken as part of the International program. Apart from our capacity-building work in Papua New Guinea, initiatives have been undertaken in Fiji, Vanuatu, the Solomon Islands and Argentina. This is a fertile area for engagement and we hope to build substantially on the foundational work already done over the next few years.

Our policy work remains a fundamentally important aspect of our work, with the EDO being – in the Attorney General’s words – the “canary in the coalmine”. Policy work allows considerable scope for early engagement, with the real possibility of gains for the environment being made in a cost-effective and bipartisan way. Policy

work also adds to the rigour of the decision-making process, and reflects a desire that litigation be used as a last resort. As the Attorney General also went on to say at our 20th anniversary conference:

“[the EDOs] have made strong contributions to the open participation that we have worked to provide. They have also had a significant positive effect on the final form of the legislation.”

This work has been intensive throughout the year, with much of it undertaken by one dedicated policy officer. It has also been varied, reflecting a deliberate strategy to cover a diverse range of issues. It is self-evident that advances in our field of practice will increasingly require reforms in areas outside of traditional environmental law. Put another way, if real progress is to be made, laws in relation to the environment should have no centre – we should actively move away from thinking of core and non-core environmental laws. Submissions on gene technology, mining laws, corporate social responsibility, “regulatory burdens” and sentencing reflect this broadened focus.

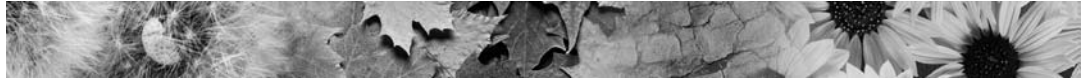
Complementing this work, the Office has also provided input into pollution reforms, biodiversity certification and biobanking, national

water management reforms, planning instruments and reforms, protected areas, and environmental levies, as well as working closely with the peak environment groups in responding to a host of bills before Parliament.

Finally, there is our Scientific Advisory Service. Over the past 12 months, the Service has gone from strength to strength, with a great deal of effort going into the pre-decision phase, thus helping to ensure better decisions and, hopefully, better outcomes. Demand and expectations currently remain high, with the community clearly seeing the value in the provision of technical and scientific advice in the context of their particular dispute. As Justice Wilcox has observed, the establishment of the Scientific Advisory Service:

“underlines the willingness of the EDO to base its work (submissions and advocacy) upon demonstrable facts rather than supposition.”

As this report demonstrates, the past 12 months has also seen a greater emphasis on building the work of the Scientific Advisory Service into our other functions, such as policy and community legal education. This is helping to ensure that we are a multi-functional office in a properly integrated



sense, rather than simply being so through the sum of our parts.

The throughput of the Office, and dealing properly with the challenges outlined above, would simply not be possible unless the fundamentals were in place. In this respect, the Board deserves special mention. The Board possesses a good deal of expertise across the fields of law, public policy, environment protection, industry, private practice, financial management, marketing and community justice and has remained unchanged over the past 12 months, which has provided stability. Importantly also, the Board – and, in particular, the Chair, Andrew Chalk - has an unerring sense of purpose and an understanding of how to best help the Office - a “know when to hold them and when to fold them” approach that has proved invaluable. The Board’s guidance, support, and commitment to public interest environmental law has been inspiring and underpin the healthy state of the Office.

“The dedication, enthusiasm and commitment of staff shines through our everyday work...”

Staff have, once again, been remarkable. It is often a source of astonishment from clients and the

wider community that the quantity and quality of the work of the EDO is generated by a small core of professional staff. The dedication, enthusiasm and commitment of staff shines through our everyday work - as a recent client said:

“We have the highest regard for the Office of the Environmental Defender in its work to protect the environment. In our dealings with this office we were extremely impressed with the promptness of their response and the professional manner in which our concerns were handled. When others were bound and gagged by bureaucracy and lethargy, the support we received from the Environmental Defender’s Office was inspiring.”

The support of the broader community also helps enormously. Volunteers perform an invaluable role, expanding the capacity of the Office through research and support work across all EDO functions, and keeping us on our toes. Barristers and scientific experts continue to provide their services at pro bono or reduced fee rates, extending the reach of the Office and providing external justification for the importance of our work. Of course, all this makes for good morale and results in the EDO being a wonderful and engaging place to work.



“...the tremendous financial support of the Public Purpose Fund has been crucial in enabling us to achieve a critical mass of staff, so that we can deliver top quality and effective services to our clients.”

Goodwill cannot an organisation make, however. In recent years, the tremendous financial support of the Public Purpose Fund has been crucial in enabling us to achieve a critical mass of staff, so that we can deliver top quality and effective services to our clients. As noted above, from 1st July 2006 we are set for a further period of expansion, courtesy of the Fund. Complementing the support of the Public Purpose Fund, State and Federal Governments provide triennial funding through the Community Legal Centre Funding Program. Throughout the year as well, the Environmental Planning and Law Association, the Department of Environment and Conservation, Thomson Legal and the Hunter-Central Rivers Catchment Management Authority have provided specific project funding to undertake work on public interest environmental law.

I trust that this report does justice to the good works of a truly remarkable organisation.

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 2005-2006 financial year.

Litigation and Legal Advice

The EDO represents individuals and community organisations in public interest litigation to protect the environment. In 2005-2006, the EDO once again litigated a variety of cases involving issues of significant public concern.

Key Litigation

Fighting whaling in the Antarctic
Humane Society International Inc v Kyodo Senpaku Kaisha Ltd (2004) FCA 1510

The EDO is acting for the Humane Society International Inc (HSI) against Japanese whaling company, Kyodo Senpaku Kaisha.

HSI is seeking a declaration that Kyodo has breached the *Environment Protection and Biodiversity Conservation Act 1999* by whaling in the Australian Whale Sanctuary adjacent to Antarctica and an injunction to prevent them from continuing to kill whales there.

In early 2005, Justice Allsop of the Federal Court declined to grant leave to HSI to serve the proceedings on the whaling company in Japan. The judge was swayed by submissions made by

the Commonwealth Attorney-General that the case may give rise to an international diplomatic incident with Japan and would not be in Australia's national interests.

HSI appealed the decision of Justice Allsop and on 18 November 2005 the appeal was heard before Chief Justice Black, Justice Finkelstein and Justice Moore. As at 30 June 2006, the Court had not handed down its decision.

Upholding the integrity of environmental assessment

Cranky Rock Road Action Group Inc v Cowra Shire Council and Ors (2005) NSWLEC 674

The EDO acted for the Cranky Rock Road Action Group in proceedings challenging the failure of Cowra Council to require a Statement of Environmental Effects when approving a residential subdivision.

Justice Bignold dismissed the challenge in the Land and Environment Court. The matter is currently being appealed to the Court of Appeal. The Department of Planning has been granted leave to join the appeal proceedings because the case raises significant and novel issues concerning the nature and scope of environmental assessment requirements in NSW. The matter will be heard in October 2006.

Defending rivers and wetlands

Nature Conservation Council of NSW Inc v the Minister for Sustainable Natural Resources (2004) NSWLEC 33

In this long-running matter, the EDO represented the NSW Nature Conservation Council (NCC) in a case that argued that the water-sharing plan for the Gwydir Regulated River Water Source was invalid, because it failed to address environmental necessities as required under the *Water Management Act 2000*. In particular, it was argued that the plan failed to specify performance indicators or establish environmental water rules in respect to both environmental-health water and supplementary environmental water.

In early 2004, Justice Talbot of the Land and Environment Court dismissed the appeal, finding the plan was validly made. The Court of Appeal also decided not to declare the water sharing plan invalid.

In the current year, the EDO was granted special leave to appeal to the High Court.

Unfortunately, the NSW Government passed legislation to retrospectively validate all water sharing plans made under the Act, including plans that may have been invalidly made. As a result, NCC was forced to abandon



its High Court challenge to the Gwydir water sharing plan.

Defending Aboriginal cultural heritage

Anderson & Anor v Director General of the Department of Environment and Conservation & Ors (2006) NSWLEC 12

The EDO represented Douglas and Susan Anderson, traditional owners of land at Angels Beach, East Ballina, challenging the validity of a consent issued by the Director General of the Department of Environment and Conservation, allowing the destruction of Aboriginal cultural heritage for a residential subdivision.

Justice Pain of the Land and Environment Court ruled that the consent was invalid, due to a failure to take into account certain relevant matters, particularly a supplementary report in relation to the heritage significance of the subdivision site.

Justice Pain also found that the Director General failed to adequately apply the principles of ecologically sustainable development, and in particular the principle of intergenerational equity.

Country Energy v Williams; Williams v Director-General National Parks and Wildlife [2005] NSWCA 318

The EDO acted 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 Justice Lloyd in 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 also represented Mr Williams in related proceedings, in which Mr Williams challenged a decision of Justice Bignold in the Land and Environment Court to uphold the grant of a permit to destroy Aboriginal cultural heritage during the construction of the transmission line.

The appeal against the decision of Justice Lloyd was upheld while the appeal against Justice Bignold was dismissed.

The second case in particular raised important questions in relation to the power of the State Government to authorise the destruction of indigenous cultural heritage for land development purposes. Although the court ultimately found that such destruction was permissible in the circumstances, it did make some very strong findings criticising the conduct of the National Parks and Wildlife Service in assessing the application to destroy cultural heritage.

Kennedy v Director-General & Stocklands

This matter related to a decision to allow the destruction of objects with cultural heritage significance at Sandon Point. It raised issues relating to the failure of the local council to take into account relevant matters when assessing the application to destroy cultural heritage, particularly the fact that the council, in reaching its decision, relied on archaeological reports that were prepared in relation to previous applications and did not undertake fresh consultation with the Aboriginal community on the issue. Due to a review of prospects of success after the findings in the *Williams* case above, the EDO ceased to act in this matter.

Challenging the importation of Elephants

The International Fund for Animal Welfare (Australia) Pty Ltd and Ors and Minister for Environment and Heritage and Ors [2005] AATA 1210 (7 December 2005)

The International Fund for Animal Welfare (Australia) Pty Ltd and Ors and Minister for Environment and Heritage and Ors [2006] AATA 94 (6 February 2006)

The EDO filed proceedings in the Administrative Appeals Tribunal on behalf of the

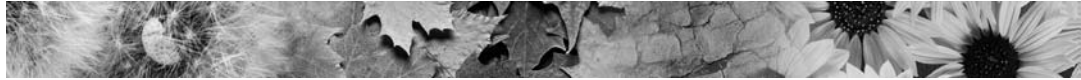
International Fund for Animal Welfare (Australia) Pty Ltd, the Humane Society International Inc and the RSPCA Australia seeking review of a decision made by the Commonwealth Environment Minister to allow the importation of eight Asian elephants from Thailand to Taronga and Melbourne Zoos. The basis of the appeal was that the Minister's decision did not meet the conservation and animal welfare requirements of the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Administrative Appeals Tribunal upheld the Minister's decision but decided that the permits to import Asian elephants should be granted subject to a far more stringent set of conditions than those originally imposed by the Minister. These conditions – which primarily relate to welfare – will go a long way towards providing a more comfortable environment for these elephants, which will spend up to 60-70 years in urban zoos.

Defending Southern Bluefin Tuna

Humane Society International v Minister for the Environment and Heritage [2006] AATA 298

The EDO represented The Humane Society International Inc in the Administrative Appeals Tribunal



in a case challenging a decision of the Minister for Environment and Heritage to declare fishing operations in the Southern Bluefin Tuna (SBT) fishery to be an approved wildlife trade operation under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The SBT is a highly endangered species, whose numbers have been severely depleted due to over fishing. The approval of the Minister will see fishing and export levels remain unchanged.

One of the central bases of the challenge was that the Minister did not provide for quota reductions as a condition of approval. This is despite independent and expert advice that the overall catch for the SBT should immediately be reduced.

The Tribunal found that the approval of the SBT fishery would not be detrimental to the survival and conservation of the species and upheld the decision of the Minister to approve the SBT fishery as a wildlife trade operation.

Fighting for Biodiversity

Tugun Cobaki Alliance Inc. v Minister for Planning and Roads and Traffic Authority; Land and Environment Court Proceedings No. 40227 of 2006

On 22 March 2006 the EDO commenced proceedings in the Land

and Environment Court on behalf of a community group, the Tugun Cobaki Alliance Inc. The proceedings challenged the decision by the Minister for Planning to approve the construction of the Tugun Bypass between Currumbin and Tweed Heads as a major project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This case was one of the first challenges to an approval made under Part 3A of the EP&A Act. The appeal dealt with a number of issues relating to the interpretation of Part 3A and the transitional regulations relating to major activities. However, one of the most important issues in the case related to the question of what material the Minister was required to consider before approving the project, particularly whether the Minister was required to consider Environmental Impact Statement and Species Impact Statement documents.

As at 30 June 2006, judgment had not been delivered.

Protecting local amenity

Project Venture Management v Warringah Council 11361 of 2005

The EDO is acting for the Duffys Forest Resident's Association in this matter. The proceedings relate to a subdivision on land that has a very high bush fire hazard and threatened

species habitat values. As the Council has not pursued the bush fire issue, the EDO has applied to the Land and Environment Court to be heard as intervenors in the merit proceedings between the developer, Project Venture Management Ltd, and Warringah Council.

The matter will be heard in August 2006.

Bungendore Residents Group Inc v Palerang Council and Navaroo Constructions P/L

The EDO is acting for a community group challenging a decision of Palerang Council to grant consent to a series of Development Applications for an approximate 50 lot residential subdivision in Bungendore. The community group claims that the subdivision constitutes inappropriate development given the small size of the town. There is also concern that the development will place undue pressure on the town's water resources.

The matter is to be heard in August 2006.

Enforcing the Law

The Wilderness Society (Sydney) Inc. v Holmes

The EDO acted for the Wilderness Society in this matter. The Department of Infrastructure,

Planning & Natural Resources had previously issued a remediation direction to a landowner in relation to the clearing of 1900 hectares of native vegetation in central NSW apparently in breach of the NSW *Native Vegetation Conservation Act 1997*. The direction was appealed by the landowner and found to be invalid by the Land & Environment Court. No further enforcement action was taken by the Department.

Due to the severity of the apparent breach, The Wilderness Society sought to take civil enforcement action under the *Native Vegetation Conservation Act*, seeking a declaration and orders that the land be remediated. The matter was ultimately withdrawn.

Legal Advice

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 2005-2006, the EDO dealt with over 2,500 telephone inquiries with around 750 of these being legal inquiries dealt with by solicitors. Of these, about 59% came from rural and regional New South Wales. Many of the inquiries concerned planning and development law, with other significant areas of interest including land clearing, threatened species, pollution law and water management 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. A number of detailed written advices were prepared during the 2005-2006 period. These written advices addressed a diverse range of public interest environmental law issues, including:

Biodiversity Conservation

- advice as to whether a proposed equestrian centre should be accompanied by a Species Impact Statement due to the proposed removal of trees forming part of the Sydney Turpentine-Ironbark Forest endangered ecological community
- advice on the prospects of appealing the decision of the Environment Minister to accredit the Ocean Trap and Line fishery on an interim basis
- advice on avenues for appeal of the federal Minister's decision to export koalas to a safari park in China
- advice on seeking a declaration that the NSW Department of Primary Industries breached the *Environment Protection and Biodiversity Conservation Act* (EPBC Act) in failing to obtain

an approval for its shark control program on NSW beaches and an injunction to prevent the continued operation of the program

- advice about the process for requesting the Federal Minister for the Environment to call in an action under the EPBC Act involving the clearing of flying fox habitat and roost sites in close proximity to the Central Eastern Rainforest Reserve (a listed World Heritage Property)
- advice on the conversion of Crown leases, and the Minister's discretion to withhold areas from sale for conservation purposes

Vegetation Management

- letter and advice on the proposed hazard reduction burn of littoral rainforest in the Broadwater National Park
- letter to Council raising concerns about the impact of a proposed residential development on grassy white box woodland in the Tamworth area

Water Management

- advice to local landholders in the Moree area about the process for appearing at a local land board hearing in objection to the grant of a water licence
- advice on relevant considerations for water licensing decisions


- letter to the Snowy Hydro Corporation Inc. in relation to the re-commissioning of Mowamba Aqueduct, raising issues such as the inconsistency with environmental objectives of the Snowy Licence and the failure to obtain advice from the Snowy Scientific Committee before re-commissioning Mowamba Aqueduct
- advice as to whether the Snowy Hydro Corporation could be made to re-open the Mowamba and Cobbon Creek Aqueduct so as to allow environmental flows to flow straight down Cobbon Creek rather than being diverted via Jindabyne Dam

Genetically Modified Organisms

- advice on whether a decision by Food Standards Australia and New Zealand to allow the importation of genetically modified corn contrary to the prescribed procedures for risk assessment under the relevant laws and without amending the appropriate food standards for GMOs could be challenged

Planning and Development

- advice on the prospects of challenging a seniors living development in the coastal zone at Carnegie Cove
- advice on the rights of appeal for the Minister's pending decision to



grant approval to the Tugun bypass between NSW and Queensland

- letter to Council raising concerns about a proposed quarry in Forbes, including the inadequacy of environmental assessment for the development, the need for an Environmental Impact Statement, and Council's ability to consent to the development in the absence of proper plans and reports
- advice on legal requirements regarding access ways for fire emergency vehicles to housing developments
- letters to Council regarding the Council's failure to consider the Koala Plan of Management in granting consent to a residential subdivision on land containing core koala habitat at Coffs Harbour, as well as non-compliance by the Council General Manager with the Council's delegated authority
- brief to counsel seeking advice on possible challenges to the proposed desalination plant at Kurnell
- letter to Council on options for rezoning and compensation issues in the Ku-ring-gai area
- advice on whether the processing of logs on a property amounted to "rural industry" and whether consent would be valid, given the failure to provide and/or the

insufficiency of the Statement of Environmental Effects

- advice on the potential to challenge an approval of a cemetery in Crotty's Lane, Kempsey
- advice on rezoning and the options to challenge a draft Local Environment Plan (LEP) and Development Control Plan (DCP) for a residential subdivision in an environment protection escarpment zone at Mt Kembla
- advice as to whether there are reasonable prospects of challenging a potential consent to the Perisher Blue Stage 1 development which involves subdivision and approval of development envelopes at an existing car park and the expansion of Kosciuszko Road
- omnibus advice about the expansion of a marina at Gladesville bridge and the role of NSW Maritime; the validity of the land owner's consent; the enforcement of the lease; breaches of the development consent and possible challenges
- advice to a landholder about the expansion of a neighbouring quarry and whether that extension (entailing clearing of glossy black cockatoo habitat) meant it should be treated as designated development
- advice about the potential options to challenge a

subdivision at Panorama Rd and the procedures involved

- advice on the alienation of public land
- advice on prospects for success and the process for appealing the extension of a marina on the Tweed River at Chinderah.
- advice about the grounds for seeking review of a Council's decision to grant consent to a mixed commercial/residential development that fell within the coastal zone in the Eurobodalla Shire

Climate Change

- advice on whether the Federal Minister has the power to assess applications for windfarms where there are no matters of national environmental significance triggered under the EPBC Act
- letters to the Department of Environment and Conservation and major coal mining companies advising of the risk of pollution offences as a result of failing to implement best practice measures to abate methane emissions from underground coal mining

Aboriginal Cultural Heritage

- advice on clearing for an asset protection zone in lieu of such clearing leaving a sacred site

for Aboriginal women exposed to the community nearby

- advice regarding the listing of a site as an Aboriginal place

Aquaculture

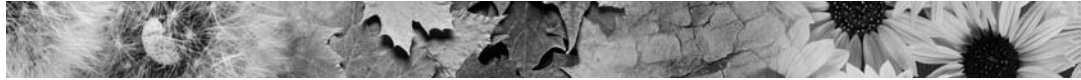
- brief to counsel and ongoing assistance regarding a prospective merits appeal in the Land and Environment Court against a consent to the development of a land-based abalone farm, raising issues regarding seagrass and marine life destruction, water quality and translocation of disease to wild mollusc populations.

Threatened Species

- advice as to the legal issues that may arise if the NSW Government were to cease the practice of "shark meshing" along the coast of NSW
- letter to the Department of Environment and Conservation requesting action on the alleged destruction of koala habitat on private land on the NSW north coast

Crown land

- advice on the Minister's discretion to exclude Crown lease land from conversion to freehold
- advice about the legality of camping activities on a Crown Reserve at Diggers headland



- advice on the status of a prescribed easement right over Crown land, as an alternative to building a road through high conservation value wetlands

Mining

- advice on prospects regarding a proposed Broula King Gold Mine at Bumbaldry
- advice on the legal options for challenging a mining proposal to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*
- advice on the implications of open cut mining on flora and fauna

Forestry

- advice on the possibility of bringing an action under the EPBC Act for logging in the Ourimbah State forest in breach of the integrated forestry operations approval for the area
- ongoing advice concerning forestry operational rules and the processes associated with investigating, documenting and reporting breaches
- brief to counsel on the prospects of obtaining declarations and orders in relation to Forests NSW's logging of forests in the Riverina region without

obtaining an Environmental Impact Statement (EIS)

- assistance with Freedom of Information applications to State Forests to obtain unit prices for hardwoods

Advocates' Rights

- advice on the public participation processes and appeal rights resulting from the declaration of the Shannon Creek Dam project as a controlled action under the EPBC Act
- advice on the shareholding requirements to make a presentation at an Annual General Meeting and the capacity of proxies to make a presentation
- advice in relation to the options to join or give submissions at a merits appeal for a cattle feedlot at Cootamundra
- advice on whether administrative grounds exist to appeal to the Court of Appeal from a decision of the Land and Environment Court
- advice reviewing the application of exemptions under the Commonwealth Freedom of Information laws in respect of commercial-in-confidence material and prejudice to agencies in obtaining information.
- advice about the process of seeking review in the

Administrative Appeals Tribunal of Freedom of Information exemptions claimed by the Australian Agriculture and Resource Economics and the Department of Agriculture, Fisheries and Forestry for survey material about farm productivity in northern NSW

- advice on the procedures relating to merit appeals for designated developments in relation to a large scale marina at Careel Bay

Misleading and Deceptive Conduct

- letter of demand to a company that they stop using the name and logo of the National Parks Association on an advertisement that advocated activities inconsistent with the NPA's objects and aims
- letter to the Commonwealth Department of Environment and Heritage asking whether an offence of providing false or misleading information in an application for a major infrastructure proposal had been committed under the EPBC Act
- advice on copyright issues associated with debates on "Greenwashing"



EDO Clients

In 2005-2006, the EDO continued to provide legal assistance to the State's peak environment groups such as Humane Society International, The Wilderness Society, Greenpeace, World Wildlife Fund, Total Environment Centre and Nature Conservation Council of NSW. In addition, the EDO responded to requests for legal assistance from hundreds of new clients, including a diverse range of individuals and community organisations. Organisations assisted by the EDO during the year include:

- Coastwatchers Inc
- Culgoa Balonne-Minor Water Users Association
- Drummoyne Foreshore Committee Inc
- Environmental Law Centre Ltd
- Friends of Birchgrove Oval
- HIV/AIDS Legal Centre
- Hunter Community Environment Centre
- Hyden Karlgarin Landcare
- Lake Wollumboola Protection Association
- Legal Aid Parramatta

- Leura Campaign Residents Committee
- Murdoch University
- No Industry for My View Road Group
- NSW Greens
- NSW Tenants Union
- Ocean Watch Australia Ltd
- ORAO (Oatley Residents Against Overdevelopment)
- Ourimbah Community Incorporated
- Parks and Playgrounds Movement Inc
- RAID
- Rates Levies Development Assoc
- Save our Lakes and Environment Heritage
- Shoalcoast Community Legal Centre
- Strathfield Municipal Council
- Tugun-Cobaki Alliance Inc
- Wildlife Assistance Foundation Inc

Science Program

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

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

I. Pre-decision and Casework

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

- advice on environmental impacts and adequacy of the Environmental Impact Statement in relation to a proposed marina at Careel Bay
 - advice on environmental and public health issues associated with the Mount Hagen Sewerage Treatment Plant, Papua New Guinea
 - review of environmental assessment documents and a submission to the Department of Natural Resources on the adequacy of the supplementary assessments in relation to the Carbuyky-Willaroo irrigation development
 - review of environmental assessment documents, advice to client and submissions to Council on water quality and the adequacy of the monitoring program
- regarding proposed sewerage treatment plants in the Bega Valley
 - review of a Statement of Environmental Effects and advice on a submission to Council in relation to a church at Penrith
 - advice on the adequacy of the groundwater assessment report and environmental impacts in relation to the proposed Wilpinjong Coal Mine, Mudgee
 - review of a Statement of Environmental Effects in relation to threatened species issues for a proposed development at the Hawkesbury River
 - review of environmental assessment documents and approval documents and submissions to Council and the Department of Environment and Heritage on the potential impacts of a proposed dam at Shannon Creek
 - advice on the adequacy of an eight-part test and whether a Species Impact Statement is required for a proposed sports facility development at Galston
 - review of a Statement of Environmental Effects for a proposed subdivision at Cranky Rock Road
 - advice on the adequacy of a Statement of Environmental Effects and the potential impacts



of a proposed wind turbine on birds and bats at Myocum

- review of groundwater assessment reports and advice on their adequacy and potential impacts of the proposed Broula King Gold Mine at Bumbaldry.
- submissions to the Department of Planning and the Department of Environment and Heritage on the adequacy of the environmental assessment document and environmental impacts of the proposed Sydney desalination plant
- advice on the potential impacts of a proposed residential subdivision on koalas and koala movements at Coffs Harbour
- review of development approval documents and advice on a submission to Council in relation to the impacts of a proposed subdivision on an endangered ecological community at Coronation Bay
- advice on the impacts of a proposed cycleway on threatened species at Angels Beach
- advice on potential health and noise impacts of a proposed 132KV substation in Sydney
- review of a Statement of Environmental Effects and advice on its adequacy in relation to a rural subdivision in the lower Hunter

- review of flora and fauna assessments and advice on their adequacy in relation to a proposed caravan park at Arrawarra
- review of environmental assessment documents and approval documents and advice on their adequacy in relation to the proposed Tugun Bypass, Tweed Heads
- review of environmental assessment documents and advice on the adequacy of a Species Impact Statement and the socio-economic impact assessment in relation to the potential impacts of the Ocean Trap and Line Fishery on the Grey Nurse Shark
- review of environmental assessment documents regarding impacts of proposed floodlighting on bats at Birchgrove Oval, Leichhardt
- review of environmental assessment documents and advice on their adequacy and the impacts on threatened species of the proposed redevelopment of Perisher Village, Kosciuszko National Park
- review of a Review of Environmental Factors and the flora and fauna assessment document for a proposed opal mining release area at Lightning Ridge.

2. Monitoring and Compliance

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

- review of and advice on the adequacy of the conditions of approval for the Broula King Gold Mine, Bumbaldry
- review of the conditions of approval for a proposed dam at Shannon Creek
- review of monitoring and compliance conditions in relation to forestry operations in Cathcart State Forest.


3. Policy and Project Work

The Scientific Advisor and members of the Expert Register have provided input into submissions made by the EDO on a wide range of issues, including:

- assistance in the preparation of a submission to the Department of Environment and Conservation on the concept paper for biodiversity certification and BioBanking
- preparation of submission to the Department of Environment and Heritage on the draft 'Principal Significant Impact Guidelines on Matters of National Environmental Significance'
- assistance in the preparation of a submission to the Department of

Environment and Conservation on the working paper for BioBanking

- participation in meetings of the Rule Based Assessment focus group, the Legal Agreements focus group, and the BioBanking review group, established by the Department of Environment and Conservation in relation to BioBanking
- assistance in the preparation of a submission to the Department of Environment and Conservation on the draft Threatened Species Regulations
- assistance in the preparation of a submission to the World Heritage Committee on the protection and management of the Great Barrier Reef in relation to the impacts of climate change
- preparation of a submission to the Department of Environment and Conservation on the draft document 'How to Consider Environmental Values of Water When Issuing Prevention Notices Concerning Water Pollution: Guidance for Appropriate Regulatory Authorities under the POEO Act'
- preparation of a submission to the Department of Environment and Conservation on the draft 'Accreditation Scheme for Individuals Involved in Threatened Species and Biodiversity Survey and Assessment'
- undertaking of a literature review and preparation of draft



reports on the health effects of lead and lead compounds used in surface coatings and inks for the National Industrial Chemicals Notification and Assessment Scheme (Australian Government Department of Health and Aging).

4. Community Education

The Scientific Advisor has been involved in a number of education activities in collaboration with the Education program, including:

- organisation of an EDO Law, Science, and Environment seminar titled 'Current issues in biodiversity conservation and threatened species assessment', Sydney
- preparation and presentation of a workshop session on using technical information in submissions on Environmental Impact Assessment reports for a community group at Gloucester
- presentation on the Scientific Advisory Service to Indonesian judges and Court officials, Sydney
- assistance in the preparation of a guide for community groups on breaches of forestry operations
- preparation and presentation of a workshop session on air quality and monitoring in relation to coal mining for a community group in the lower Hunter
- preparation and presentation of a lecture at UNSW law

school on biodiversity and key ecological concepts

- preparation and presentation of a lecture at UNSW law school on threatened species assessment in NSW
- preparation of a fact sheet on air quality issues in relation to mining and air quality monitoring
- preparation of an article on joint management of conservation areas in Australia for *Impact*, the EDO's quarterly national magazine
- preparation of article on the Ecological Society of Australia 2005 conference for Environmental Defender, the EDO's quarterly NSW newsletter
- preparation of editions of *Naturalis*, the EDO quarterly news bulletin for the Expert Register.

Policy & 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:

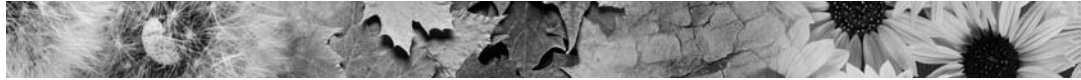
- submissions on government proposals;
- policy advice to environment groups; and

- engagement as a key stakeholder.

I. Submissions on Government Proposals

The EDO regularly writes submissions in response to legislative reviews, government proposals and parliamentary inquiries. In 2005-2006, these included:

- comment on the proposed *National Parks and Wildlife Amendment (Threatened Species Regulation 2005, Threatened Species Conservation Amendment (Listing Criteria) Regulation 2005, and the Threatened Species Conservation (Savings and Transitional) Amendment (Significant Effect) Regulation 2005* (13 July 2005)
- review of the *Gene Technology Act 2000* (15 July 2005)
- submission on the Consultation Draft of the *Protection of the Environment Operations Amendment Bill 2005* (22nd July 2005)
- submission to the Department of Primary Industries on the Discussion Paper: Proposals for Amendment to the Mining Act 1992 (7 September 2005)
- submission to the Department of Environment and Conservation on Biodiversity Certification and Banking in Coastal and Growth Areas (13 September 2005)
- submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Social Responsibility (28 September 2005)
- submission to the National Water Commission: Water Reform Assessment Framework 2005 (29 September 2005)
- submission on the Draft Standard Instrument (Local Environmental Plans) Order 2005 (4 November 2005)
- submission to the Independent Pricing and Regulatory Tribunal (IPART) regarding the "Investigation into the burden of regulation in NSW and improving regulatory efficiency" (24 February 2006)
- submission on behalf of the EDO network (ANEDO) to the Senate Inquiry into Australia's National Parks, Conservation Reserves and Marine Protected Areas (1 March 2006)
- submission to the Department of Environment and Conservation on "BioBanking – A Biodiversity Offsets and Banking Scheme" Working Paper (5 March 2006)
- submission to the Department of Environment and Conservation regarding the "Accreditation Scheme for Individuals Involved in Threatened Species and Biodiversity Survey and Assessment – Draft for Comment" (7 June 2006)
- submission to the NSW Sentencing Council on Court



Imposed Fines and their Enforcement (8 June 2006)

These submissions have resulted in a number of substantial improvements to legislation and policy, at both a Commonwealth and State level. On the basis of our submissions, we are regularly requested to address inquiry hearings to provide further detail concerning recommendations made in our submissions. For example, in 2005-2006, we addressed:

- the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Social Responsibility Hearing in Sydney;
- the Office of the Gene Technology Regulator Hearings on the Review of the *Gene Technology Act 2000* in Brisbane and Sydney;
- the Senate Inquiry into Australia's National Parks, Conservation Reserves and Marine Protected Areas in Sydney, and
- the Independent Pricing and Regulatory Tribunal regarding the "Investigation into the burden of regulation in NSW and improving regulatory efficiency" in Sydney

2. Provision of Advice to Environment Groups

(i) Environment Liaison Office

The Environment Liaison Office (ELO) is a coalition of peak

environment groups active in NSW. The ELO monitors legislation that is introduced into the NSW Parliament and coordinates the response of peak environment groups to these Bills. The EDO regularly advises the ELO group regarding the legal implications of Bills introduced into Parliament and whether amendments to a particular Bill should be sought. As part of this service, the EDO also provides legal and policy advice on potential amendments to members of the cross-bench and government during formal briefing sessions and meetings.

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:

- *Local Government Amendment (Storm Water) Bill 2005*
- *Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2005*
- *Infrastructure Implementation Corporation Bill 2006*
- *National Parks and Wildlife Amendment (Jenolan Caves Reserves) Bill 2005*
- *National Parks Estate (Reservations) Bill 2005*

- *Protection of the Environment Operations Amendment Bill 2005*
- *Water Management Amendment Bill 2005*
- *Environmental Planning and Assessment Amendment Bill 2006*
- *National Parks and Wildlife (Adjustment of Areas) Bill 2006*
- *Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006*
- *Fisheries Management Amendment Bill 2006*
- *Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006*
- *Statute Law (Miscellaneous Provisions) Bill 2006*
- *Threatened Species Conservation Amendment (Biodiversity Banking) Bill* (advice ongoing)

(ii) Policy Advice to Environmental Organisations

The EDO is regularly retained by environment groups on a consultancy basis to provide policy advice on a particular area of law or to develop law reform proposals. In the last financial year, the EDO has provided policy advice in relation to the following issues:

- Native vegetation compliance and the implementation of the new regime under the *Native Vegetation Act 2003* and *Native Vegetation*

Regulation 2005; including for example, advice on specific clauses

- Planning reforms, involving in particular, advice on the new Part 3A of the *Environmental Planning and Assessment Act 1979*
- Biodiversity banking as proposed by the Department of Environment and Conservation
- Plastic bag levies
- Regulation of invasive plant species in different Australian jurisdictions
- Wilderness assessment processes (including consultation processes);
- Fisheries advice; and
- The proposed sale of the Snowy Hydroelectric Scheme.

Often the provision of policy advice is accompanied by the presentation of EDO workshops on specific topics. In the last financial year, the EDO conducted policy workshops on native vegetation reforms, planning, and weeds regulation. In this way the policy work complemented the EDO Education program, and increased community capacity to engage in policy and law reform processes.

3. Key Stakeholder Role

In 2005-2006, EDO policy work also involved participation on various stakeholder panels. The input provided at such forums



was not on behalf of environment groups, but rather as a crucial element of our key stakeholder role. In the last financial year, the EDO participated in:

- the Planning Reference Group convened by the Department of Planning to discuss various planning reforms. The EDO made submissions to this group regarding, for example, the efficacy of Independent Hearing and Assessment Panels.
- Biobanking Focus Groups established by the Department of Environment and Conservation to examine aspects of the proposed Biobanking scheme including the necessary legal agreements and scientific assessment methodology. This role is ongoing and has involved both EDO scientific and policy officers.
- the Land Use Expert Panel convened by the Sydney Metropolitan Catchment Management Authority to assist in the development of the Catchment Action Plan.

EDO policy work also extended its reach in 2005 as a stakeholder in regional and international forums, with preliminary participation in the Partnership for Principle 10 (www.pp10.org) and The Access Initiative (www.accessinitiative.org). This role was in conjunction with the EDO international program.

The value of a multi-disciplinary approach: community education, law and policy

The EDO's involvement in mining in the Hunter Valley exemplifies the cyclical nature of much of the Office's work and the complementary nature of its functions.

In 2004, the EDO was invited on a Hunter Valley Mines Tour by MineWatch. EDO solicitors spoke about the services provided by the Office, offered to hold a community workshop in the area and held a brief advice clinic after the tour.

The EDO returned to the Hunter to give a workshop on strategic legal issues and a more specialised workshop on mining followed in March 2005. The EDO also provided ongoing advice to existing and new clients on issues arising out of the 2004 tour.

As a result of this multi-layered engagement, the EDO was in a position to contribute constructively to the review of the *Mining Act 1992* which took place in September 2005. The EDO solicitor involved in the specialist workshops worked with the EDO Policy Officer on a submission, and prepared a presentation at a briefing session at Parliament on the reforms in August 2005.

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.

In 2005-2006, the EDO continued to diversify its community education programs, with an emphasis on developing tailored education programs for a variety of audiences.

I. Community Workshops

In 2005-2006, the EDO conducted community workshops on a variety of topics. These workshops were conducted in Sydney and in rural and regional

areas around New South Wales. During the year, the EDO hosted the following workshops:

- Environmental Law – Byron Bay
- Environmental Law – Gloucester
- Effective Environmental Advocacy – Sydney
- Environmental Law – Batemans Bay
- Community Forestry Monitoring – Millewa State Forest
- Community Protest and the Law – Sydney
- Community Protest and the Law – Newcastle
- Native Vegetation Law – Raymond Terrace
- Native Vegetation Law – Albury
- Native Vegetation Law – Grafton
- Native Vegetation Law – Coonabarabran
- Water Law and Management – Sydney
- Water Law and Management – Orange
- Water Law and Management – Bermagui
- Water Law and Management – Maclean
- Weed Management Law – Lithgow
- Planning Reforms – Sydney



A diverse range of participants attended these workshops, including conservationists, landholders, local and state government employees, students, legal practitioners, and consultants. During visits to rural and regional areas, EDO staff took the opportunity to meet with clients and conduct site visits.

2. Seminars

The EDO seeks to promote informed debate about environmental law and policy via its public seminar program. This year, the EDO hosted a variety of seminars, including:

- *Climate Change Policy – Post-2012*

Julianne Richards, Coordinator,
Climate Action Network Australia

- *Land is Life: Human rights, resources and land rights in Papua New Guinea*

Annie Kajir, Director, Environmental
Law Centre, Port Moresby

Yat Paol, Bismarck Ramu
Group, Madang

- *Current Issues in Biodiversity Conservation and Threatened Species Assessment*

Associate Professor Paul Adam,
University of New South Wales

Dr Lesley Hughes, Senior
Lecturer, Macquarie University

- *Climate Change and Biodiversity Hot Spots*

Professor Norman Myers,
Oxford University

- *Climate Change and International Biodiversity Law*

Ilona Millar, Principal Solicitor,
Environmental Defender's Office

- *International Civil Society Legal Advocacy – Case Study: Uruguayan Pulp Mills*

Sue Mahony, Senior Legal Officer,
Department of Environment
and Conservation

David Barnden, Intern, Center
for Human Rights and the
Environment, Argentina

- *Gunns 20 Litigation Training Session*

Jeff Smith, Director, Environmental
Defender's Office

Chris Nunn, Solicitor, Environmental
Defender's Office

- *Water Management Seminar for Chinese Officials*

Ilona Millar, Principal Solicitor,
Environmental Defender's Office

- *Climate Change Law and Policy*

Julianne Richards, Coordinator,
Climate Action Network Australia

3. Annual Conference

On 26 May 2006, the EDO hosted a one-day conference on environmental enforcement, entitled *Making Law Work – Improving Environmental Compliance and Enforcement in Australia*.

The conference considered key challenges in the field of environmental compliance and enforcement, and explored opportunities for enhancing environmental outcomes through improved compliance and enforcement programs. Various issues relating to compliance were discussed, including monitoring, penalties, prosecutions, market-based instruments and community-based monitoring and enforcement.

A wide variety of speakers appeared at the conference, including the Hon. Bob Debus, NSW Attorney General and Minister for the Environment; the Hon. Justice Preston, Chief Judge of the NSW Land and Environment Court; and Mr Bob Sendt, NSW Auditor General.

International guests also appeared at the conference, including Sarah Tsiamalili and Nelson Kopunye, public interest environmental lawyers from Papua New Guinea, and Nilesh Goundar, an environmental campaigner from Fiji.

The EDO gratefully acknowledges the generous financial and in-kind support of our conference sponsor, the NSW Department of Environment and Conservation.

4. Presentations

In 2005-2006, EDO staff made public presentations at a range of external events, including:

- *Defamation and Environmental Advocacy*

Greens Local Government Forum

Jeff Smith, EDO Director

- *International Law and the Protection of Whales*

NSW Young Lawyers Annual Assembly Forum

Jessica Simpson, EDO Solicitor

- *Shark Netting and Threatened Species Law*

Turning the Tide Exhibition Launch

Jessica Simpson, EDO Solicitor

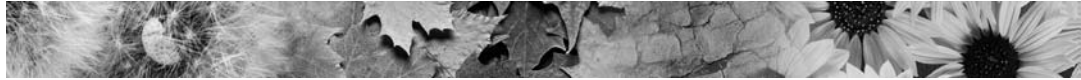
- *Human Rights and the Environment in Australia*

Law Students for a Just Community Conference

Pepe Clarke, EDO Programs Manager

- *Testing the Waters: Legal Challenges to NSW Water Sharing Plans*

NCC Annual Conference



Ilona Millar, EDO Principal Solicitor

- *Objector Participation in Development Appeals*

NSW Young Lawyers CLE Session

Ilona Millar, EDO Principal Solicitor

- *Strengthening Civil Society Legal Strategies in the South Pacific*

IUCN Academy of Environmental Law Colloquium

Pepe Clarke, EDO Programs Manager

- *Protection of Marine Biodiversity in Australia*

IUCN Academy of Environmental Law Colloquium

Ilona Millar, EDO Principal Solicitor

Jessica Simpson, EDO Solicitor

- *Turning Up the Heat: International Climate Change Litigation*

Power Plant Festival

Pepe Clarke, EDO Programs Manager

- *Community Advocacy and the Law*

Newtown Festival

Pepe Clarke, EDO Programs Manager

- *Environmental Activism and the Law*

Great Escape Festival

Pepe Clarke, EDO Programs Manager

- *Effective Non-Profit Governance*

Jeff Smith, EDO Director

Steven Rice, Senior Solicitor, Australian Securities and Investment Commission.

- *What Public? What Interest?*

National Association of Community Legal Centres Conference

Jeff Smith, EDO Director

- *Environmental Jurisprudence and the Land and Environment Court*

Environmental Planning and Law Association Conference

Jeff Smith, EDO Director

- *Air Quality and Dust Monitoring*

Minewatch Annual General Meeting

Tom Holden, EDO Scientific Advisor

- *Longwall Coal Mining*

Community forum in Campbelltown

Chris Nunn, EDO Solicitor

Tom Holden, EDO Scientific Advisor

- *Overview of the EDO*

Inter- Pacific Bar Association

Jeff Smith, EDO Director

Ilona Millar, EDO Principal Solicitor

5. Publications

In 2005-2006, the EDO published the *Rural Landholder's Guide to Environmental Law*, a 40 page booklet designed to help

landholders understand their legal rights and manage their land in accordance with environmental and natural resource management law.

Topics covered in the booklet include: vegetation management; protected plants and animals; bushfire management; water management; development consent; pollution; agricultural chemicals; crops and stock; mining and quarrying; heritage protection; and, voluntary conservation.

The booklet was published with the assistance of Hunter-Central Rivers Catchment Management Authority and the Natural Heritage Trust and joins a growing list of EDO publications which cover a wide range of topics.

6. 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.

In the 2005-2006 period, the EDO recorded an average of 5,000 downloads per month from the NSW site.

The address of the EDO website is www.edo.org.au/edonsw

National EDO Network

The Environmental Defender's Office (NSW) is one of nine EDO offices located across 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 has a commitment to improving the effectiveness of environmental law as a tool for defending the environment internationally. For a number of years, the EDO has worked with partner organisations in Asia and the Pacific, including Papua New Guinea, Vanuatu, the Solomon Islands and Cambodia.

In 2005-2006, the EDO worked on a number of projects in the Pacific and South America, including:

Papua New Guinea

Since 1998, the EDO has received funding from the US-based MacArthur Foundation to provide capacity-building support for the Environmental Law Centre (ELC) in Papua New Guinea. The EDO provides legal advice and training, facilitates lawyer exchanges and external training, and provides governance support as required.

In 2005-2006, the EDO international program provided extensive assistance to ELC with regards to governance issues and organised an exchange visit to Australia for Sarah Tsiamalili, a new lawyer with ELC. During her visit, Sarah presented

a paper on illegal logging in Papua New Guinea at the EDO Annual Conference and met with EDO staff to discuss ELC litigation and community education projects.

EDO Partner Wins Prestigious Goldman Prize

Ms Annie Kajir was one of six outstanding environmental advocates to receive the 2006 Goldman Environmental Prize, the world's largest award for grassroots environmentalists.

Annie is the CEO of the Environmental Law Centre (ELC), a public interest environmental law centre based in Port Moresby, Papua New Guinea. Annie has worked tirelessly, often at great personal risk, to draw attention to widespread corruption and complicity in the Papua New Guinea government that has allowed rampant, illegal logging that is destroying the largest remaining intact block of tropical forest in the Asia Pacific region. In 1997, her first year practicing law, Annie successfully went to the Supreme Court of Papua New Guinea to force the logging interests to pay damages to indigenous land owners.

For more information about the award, see www.goldmanprize.org.

Fiji

In 2006, the EDO prepared a successful proposal for an AusAID-funded volunteer placement for an environmental lawyer with the recently established regional office of the World Conservation Union (IUCN) in Suva, Fiji. The volunteer will work closely with the EDO and the IUCN Environmental Law Centre located in Bonn, Germany to establish a regional environmental law capacity-building project for the South Pacific. The placement is supported by AusAID's Volunteers for International Development Australia (VIDA) program.

Connecting Environmental Lawyers in the South Pacific

In 2005-2006, the EDO collaborated actively with the IUCN Commission on Environmental Law (CEL) to promote regional cooperation in the field of environmental law.

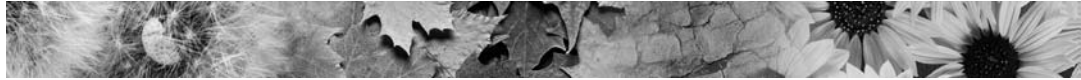
In March 2006, a regional email discussion group was launched for IUCN CEL members in the Pacific— a first for the Commission. This listserv is one small step in a series of initiatives being promoted by the EDO and IUCN CEL in Oceania, in close collaboration with other organisations, to help build environmental law capacity

and networks within the region for the conservation of biodiversity and sustainable development. The listserv project is sponsored by the Young Lawyers Committee of the New South Wales Law Society.

Vanuatu

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

In 2006, the EDO coordinated the recruitment of an Australian lawyer to work for twelve months with the Wantok Environment Centre, a ni-Vanuatu community-based organisation, providing legal advice and community legal education for communities working to protect their local environment. The lawyer, Jessica Feehely, is on twelve months leave from her position as Principal Solicitor for EDO Tasmania. Her position is funded by the AusAID Australian Youth Ambassadors for Development (AYAD) program. For more information about the Wantok Environment Centre, visit: www.positiveearth.org.



Solomon Islands

In 2006, the EDO provided comment on a proposal to establish a major forestry and conservation project in the Solomon Islands, including a community legal support service. In the event that this proposal is successful, the EDO hopes to play a key supporting role for the project.

Argentina

In 2005-2006, the EDO continued to facilitate the placement of Australian interns with the Center for Human Rights and Environment (CEDHA), a public interest organisation based in Cordoba, Argentina. In 2006, two of the interns, David Barnden and Sue Mahony, presented a public seminar in Sydney, reporting on their work with CEDHA, which involved using international advocacy mechanisms to respond to polluting pulp mill proposals in Uruguay. For more information about CEDHA, please visit: 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 about E-LAW, see www.elaw.org.

Staff Training & 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 criminal and civil law.

The office is committed to allocating funds for external staff training and development, in addition to undertaking internal legal education sessions on specific topics with special relevance for the EDO's work. In 2005-2006, EDO staff attended a total of 38 external training sessions. These included numerous community legal education seminars; a training session on the Gunns 20 litigation; a Quark Express course; a seminar entitled 'Skillpath: Excelling as a first time manager'; a two-day DEC Youth and Environment forum; a law, science and environment seminar; a two-day community education training course and the PIAC Introduction to Advocacy course.

EDO Principal Solicitor Undertakes IUCN Fellowship

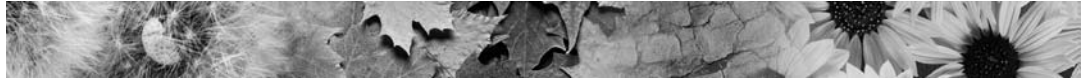
From January – March 2006, EDO Principal Solicitor, Ilona Millar spent 3 months at the IUCN Environmental Law Centre (ELC) in Bonn, Germany. The ELC forms a fundamental component of the IUCN's Environmental Law Program, which is an integrated program of activities that assists environmental decision makers with information, legal analysis, advisory services, legislative drafting, mentoring and capacity building at national, regional and global levels. The Program also provides the opportunity and the forum for governments, non-government organisations and others to network and to share information and discuss ideas.

Ilona worked on research relating to the development of best practice protected areas legislation and was also involved in other ongoing projects that the Centre co-ordinates relating to water policy and climate change.

Additionally, Ilona represented the EDO, the Climate Action Network

Australia and Greenpeace Asia Pacific at the first ever expert meeting of the UNESCO World Heritage Committee to assess the impacts of climate change on World Heritage Areas. Ilona presented two reports at meeting which was held in Paris on March 16 and 17. The first was entitled 'Change and the Great Barrier Reef World Heritage Area: The failure of Australia to meet its obligations under the World Heritage Convention, and the case for danger-listing' while the second was entitled 'The duty to transmit World Heritage Properties under threat from climate change to future generations: The World Heritage Convention and supporting obligations under International law.'

By attending the meeting, Ilona had the opportunity to provide legal commentary on Australia's obligations under the World Heritage Convention and highlight the need for urgent action to be taken to ensure these obligations are met so that World Heritage Areas such as the Great Barrier Reef are afforded adequate protection from environmentally harmful practices.



Acknowledgements

Volunteers

Every year, volunteers dedicate their personal time and resources to support the work of the EDO. In 2005-2006, our volunteer team generously contributed just over three 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 2005-2006 for their commitment and hard work:

- Abbie Clarke
- Alex Pui
- Amelia Dixon
- Ana Coculescu
- Annalise Meurant
- Annie Huang
- Clara MacDermott
- David Randle
- Dhayani Yogesvaran
- Emma Bull
- Eric Bateman
- Georgina Lloyd
- Graham King
- Hope Brett-Bowen
- James Huggett

- Jillian Kral
- John Fitzgerald
- Julia Mayo-Ramsay
- Kaspar Sollberger
- Kathleen O'Neill
- Katie Miller
- Kylie Wilson
- Lachlan Nguyen
- Mariko Ralph
- Nathalie Johnson
- Patricia Lenehan
- Ralph Kaye
- Rob Bruce
- Sam Flack
- Sheree Sharma
- Taylor Gillespie
- Tess Fitzgerald
- Therese Tran
- Tom Slocum

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/or in-kind support:

Alice Beauchamp
Adam Titterton
Andrew Cox
Ann Smith
Baker & McKenzie
C Chiem
Charlotte Sykes
Deacons
Dr Andrew Kelly
Duffy's Forest Residents Association
E-Law Australia
Emeritus Professor Patricia Ryan
Fathom Group Pty Ltd
F J and P G Edwards
Genny Chambers
Geoff Ball
Gilbert & Tobin
Gillian Dravitzki
Great Lakes Environment Association Inc.
I'in Ong
Jane Whitehouse
Katharine M O'Bryan
Lisa Ogle

Louise Arena
Mallesons Stephen Jaques
M H Baird
Moody and Doyle Town Planners
Nancy C Deans
Natalie Ashwood
Natalie Vella
Oatley Flora and Fauna Conservation Society Inc.
Paul Adam
Professor Norman Myers
Richard Smyth
S F Salmon
Step Inc.
Steven Miles
Susan Robertson
Sydney Centre for International and Global Law
Sydney University
Sylvia Hale
Thomson Legal and Regulatory Group
Tim Stephens
Total Computer Solutions
Tricia Waters
Westpac
Wilson Richardson Area Residents' Group

EDO People

Staff

At 30 June 2006, the staff of the EDO comprised:

Director

Jeff Smith

Principal Solicitor

Ilona Millar

Solicitors

Jessica Simpson
Jacquie Svenson
Ian Ratcliff

Policy Officer

Rachel Walmsley

Scientific Advisor

Tom Holden

Programs Manager

Pepe Clarke

Education Assistant

Tisha Dejmanee

Administration Team

Matt Ridley (Manager)
John Scanlan
Julie Stokes

Book Keeper

Margaret Jones

There was not a great deal of staff turnover during the year.

Solicitors David Jeffrey (July) and Chris Nunn (Sept) left in the second half of 2005, and new solicitors

Jacquie Svenson and Ian Ratcliff joined the EDO. In the Education area, Lyndall Bell left the Education Assistant position and was replaced by Tisha Dejmanee. Evelene Dening-Franklin, Tom Slocum, Kasper Sollberger and Alex Pui were with the office as legal interns for periods ranging from two to three months.

Board of Management

The EDO is a non-profit company limited by guarantee and its volunteer Board provides strategic direction and assistance to staff. The Board is elected at each annual general meeting. Board members 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.

2005-2006 saw the Board unchanged from the previous year, and this ongoing stability is a great advantage to the Office. We thank all on the Board for their ongoing contribution and commitment.

At 30 June 2006, the EDO Board comprised:

Patron

**Emeritus Professor Hal
Wootten AC QC**

Chair

Andrew Chalk

Partner
Chalk & Fitzgerald Lawyers

Vice-Chair

Bruce Woolf

Principal
Woolf Associates Solicitors

Secretary

Barbara Adams

Planner
Woollahra Council

Treasurer

Ralph Scott

Finance Manager
Sydney Regional Aboriginal
Corporation Legal Service

Andrew Cox

Executive Officer
National Parks Association of NSW

Cate Faerhmann

Director
Nature Conservation
Council of NSW

Katherine Gardner

Senior Lawyer
Gilbert and Tobin

Murray Hogarth

Strategy Project Leader
ECOS Corporation

Frank Hubbard

Director
Worthwhile Projects

Professor Michael Jeffery QC

Professor of Law
Director, Environmental Law
Head of Department,
Macquarie University

Warwick Pearse

Assistant Director
Complaints and
Information Exchange

Funding & Financial Report

Funding

Overall grants funding in 2005-06 increased by a little over \$29,000 (or 4.2%) over the previous period.

In October 2005, the Public Purpose Fund (PPF) approved a wide-ranging submission by the EDO for substantially increased funding for the period 2006-2009. This submission sought to provide the financial resources for the Office to:

- continue its core activities; and
- expand its range of services so as to become a genuinely multi-disciplinary Office; and
- expand its activities in rural and regional areas, including the establishment of an office in the Northern Rivers region (at Lismore), initially for an 18-month period commencing 1 July 2006.

This funding will total almost \$3.36million over the three years from 1 July 2006.

Once this approval was received, the Board agreed to use existing resources to establish the infrastructure required to enable these activities to be undertaken

without delay. It was acknowledged that this would lead to an operating deficit in 2005-06, but it was seen as critical to operations in the coming years that people, structures and facilities should be in place for 1 July 2006. As part of the mid-year budget review, therefore, it was determined to make expenditures in the areas of:

- recruitment;
- new office space, facilities and equipment in Sydney to provide for expanded staff levels; and
- establishment of the Lismore office, with appropriate communications and facilities so as to be in place for 1 July 2006

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.

Generated Income

Income from operating activities, including education and legal operations as well as interest, donations and sundries, amounted to \$196,924 in 2005-06, compared to \$230,423 the previous year.

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 great care to ensure that such funding is allocated to Education and Administrative activities. In the year under review, Commonwealth funding amounted to \$85,240 or 8.4% of overall revenues.

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 the budget. This tight control on expenditure saw total operating expenditures fall by \$31,110 (or 2.8%) compared to 2004-05.

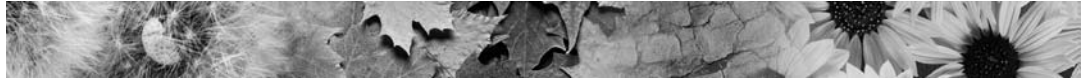
A final result of a deficit of \$51,731 was consistent with budget expectations, and was achieved after \$70,304 had been expended on new office fittings, facilities and equipment. This latter amount will be written down over five years, being the term of the new lease entered into from 1 May 2006 for expanded office space on level 1 of 89 York Street.

BALANCE SHEET AS AT 30 JUNE 2006

	2006 (\$)	2005 (\$)
CURRENT ASSETS		
Cash and Cash Equivalents	61,553	119,509
Trade and Other Receivables	270,546	446,772
Other Current Assets	55,988	10,058
TOTAL CURRENT ASSETS	388,087	576,339
NON CURRENT ASSETS		
Property, Plant & Equipment	69,619	–
TOTAL NON CURRENT ASSETS	69,619	–
TOTAL ASSETS	457,706	576,339
CURRENT LIABILITIES		
Trade and Other Payables	13,268	83,102
Short Term Provisions	67,137	64,205
TOTAL CURRENT LIABILITIES	80,405	147,307
TOTAL LIABILITIES	80,405	147,307
NET ASSETS	377,301	429,032
EQUITY		
Reserves	110,000	110,000
Retained Earnings	267,301	319,032
TOTAL EQUITY	377,301	429,032

**SUMMARISED PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED 30 JUNE 2006**

	2006 (\$)	2005 (\$)
OPERATING REVENUE		
Conference and Publications	29,048	61,605
Fees	112,632	135,122
Grants	728,862	699,818
Interest	19,066	15,403
Donations	6,536	3,103
Other Income	28,908	23,303
MacArthur Income	88,857	165,777
Foreign Currency Gain	734	—
TOTAL REVENUE	1,014,643	1,104,131
OPERATING EXPENDITURES		
Salaries and Superannuation	694,226	680,136
Overheads, including Rent, Insurance and Depreciation	83,827	86,351
General Expenses, including Accountancy	50,236	37,183
Daily Expenses, including Post, Courier, Phone, Stationery	62,273	51,397
Other, including Training, Practicing Certificates, Bad Debts	56,098	32,582
Conferences and Publications	24,745	49,815
Foreign Currency Loss	—	8,123
MacArthur Expenses	94,969	151,897
TOTAL EXPENDITURES	1,066,374	1,097,484
OPERATING PROFIT/(LOSS) AFTER INCOME TAX	(51,731)	6,647



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, 2006. 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 2006, 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 2006;
- (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 2006;

(d) money received as a result of fundraising appeals conducted during the financial year ended 30th June 2006 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



Environmental Defender's Office (NSW)

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