

ENVIRONMENTAL DEFENDER'S OFFICE NSW

ANNUAL REPORT 2009/10



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The Environmental Defender's Office (EDO) (NSW) is a community legal centre specialising in public interest environmental law. The EDO provides legal advice and representation in public interest environmental law matters. In addition to the provision of legal services, the Office takes an active role in law reform and the formulation of policy, provides technical scientific advice to help the community understand environmental documents and carries out community programs on environmental law. The EDO has a branch office based in Lismore to service the Northern Rivers area and the Sydney office covers the remainder of the state. The offices are open Monday to Friday during business hours. This report was published on 8th October 2010.

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As the following pages demonstrate, EDO's 25th year has been one of great activity and considerable success. On behalf of the Board, I congratulate our staff on what they have achieved. They work tirelessly, imaginatively and intelligently. We thank them for that.

A highlight of the year was the 25th anniversary Conference. The Conference was supported by the other Australian EDOs and featured contributions from many outstanding people. There were times when so much interesting and important material was being put before us that it was difficult to keep pace.

We were honoured by the presence, at the Conference dinner, of the Chief Justice of Australia, the Honourable Robert French AC, and Mrs French. The Chief Justice made a witty but thoughtful speech in which he reflected on the role of non-governmental organisations in environmental litigation.

I wish particularly to mention the Keynote Address, at the Conference itself, of Professor Ian Lowe AO, Emeritus Professor in Science, Griffith University and current President of the Australian Conservation Foundation. Professor Lowe's address now appears in *IMPACT!* (Issue 89, June 2010).

Professor Lowe commenced by drawing attention to those, relatively few, reports that indicate Australia's environmental progress over the last 25 years: the three State of the Environment Reports (1996, 2001 and 2006), the biennial reports of

the Australian Bureau of Statistics setting out quantitative indicators in respect of economic, social and environmental matters and the Millennium Report of 2000. As the Professor pointed out, the news is bad. Although there is improvement in all the economic indicators, and most of the social indicators, all but one of the environmental indicators deteriorated. The exception is urban air quality, which has benefited from tighter governmental regulation of motor vehicle emissions.

Professor Lowe pointed out that Australia is in a biodiversity crisis: our current extinction rate is between one hundred and one thousand times the historic extinction rate, as revealed by the fossil evidence. Worse, the projected future extinction rate is expected to be ten to one hundred times higher than today. The Millennium assessment suggests that some 30% of all mammal, bird and amphibian species could be lost before 2100.

Professor Lowe identified eight defects of present-day environmental decision-making. He said decisions:

- are weighted to economic development;
- fail to consider cumulative impacts;
- deal poorly with scientific evidence;
- rarely use the precautionary principle;
- cannot handle climate change;
- privilege this generation over future generations;

- do not verify earlier studies and decisions; and
- rarely enforce imposed conditions.

The Professor unveiled a new acronym STOP CRIME, an aid to remembering a clutch of desirable reforms of decision-making practice:

Scientific panels should inform decision-making (as distinct from the present system whereby scientific experts are selected by the parties and operate in an adversarial manner);

Transfer of the burden of proof about environmental consequences of a development from the opponent of development (as now) to its proponent;

Overhaul the standard of proof—the absence of environmental disadvantage should have to be proved beyond reasonable doubt;

Past advice should be evaluated.

Cumulative impacts should be explicitly considered;

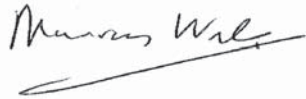
Read consideration of future generations;

Independent assessment of proposals;

Monitoring in the light of claims made;

Enforcement of conditions.

It seems to me it would be desirable for ANEDO, stripping away any repetitions or distortions caused by the nine points having to fit Professor Lowe's acronym, to formulate a set of environmental decision-making principles that could be taken to government, perhaps the Council of Australian Governments, as a template for adoption in all relevant legislation. However, we should be realistic. As Professor Lowe pointed out: "While we esteem economic growth above environmental integrity and social cohesion, so will the law." We must also be in the business of changing values.



**The Hon. Murray Wilcox, AO
QC**
Chair

2010 marked the 25th anniversary of the Environmental Defender's Office in NSW, with the Office officially opening its doors on 30 May 1985. This year was therefore one of both celebration and reflection, as well as, in the main, a redoubtable determination to get on with the job.

In a celebratory vein, an anniversary dinner was hosted at Doltone House to commemorate the work of the EDO and to thank all those who have contributed to making the Office what it is. Our guest of honour was the Honourable Robert French AC, Chief Justice of the High Court of Australia, perhaps a useful signifier of how far we have come.

The twin themes of celebration and reflection were evident in our national conference *Public Interest Environmental Law in Australia: 25 Years On*. Many of the conference speakers were asked to reflect on the past 25 years, as well as the challenges ahead. At the same time, training was held for EDO staff and Board members around Australia as to how we can best meet those challenges.

At a more prosaic level, the EDO reflected on our work through a variety of strategic processes. As we have grown, the EDO has moved from being a law firm that does public interest environmental law work to a multi-disciplinary or even inter-disciplinary legal office that provides a wide-range of services to the community. We felt it was important to bed down exactly how we see ourselves now. Our conclusions revolved around notions

of being independent, accessible, expert-based, and holding decision-makers to account to achieve successful outcomes through the law. I suspect this mirrors the vision of our founders, though expansion has obviously changed the way we work - that is, with a stronger focus on early engagement and a multi-disciplinary approach using policy and law reform, community education and scientific levers where appropriate.

It is also important to reflect on how we are viewed from the outside. In this respect, a conversation I had with an ex-officer at the Department of Planning may be instructive. When I asked him whether we were loved or hated (it wasn't a deep discussion), he replied: 'A bit of both, but always with respect'. In terms of where we want to be, respect is not a bad yardstick.

As for getting on with the job, we once again did it with gusto and panache and professionalism and dedication. There are few environmental indicators pointing - or even turning - in the right direction, yet staff and the Board consistently demonstrate resilience, resolve and results. The latter attribute - results - is no mean feat in an often hostile working environment. However, as this report attests, it is one that is uniformly met. For once, I shall refrain from summarising the vast array of work we do across all our functions and leave that to the body of the report. Suffice to say, I owe a debt of thanks to staff and the Board for what they have again brought to the EDO.

Joining us in our endeavours, and vastly broadening the reach and expertise of the Office, is a bevy of donors, barristers, experts, private firms and volunteers. I thank them all for their assistance, perseverance, support and good work.

Furthermore, I would like to express our gratitude to our major funders, who provide the foundation stone for our work. The EDO receives triennial grants from the Commonwealth and NSW governments, the MacArthur Foundation (for international capacity-building), the Environmental Trust (through the LECG program) and the Public Purpose Fund (PPF). The PPF is our main funder, and once again deserves special mention. Its support has enabled the EDO to pursue our *raison d'être* – to protect the environment through law – through providing a wide-range of high quality services to the community.

Complementing these triennial grants, the EDO has benefitted greatly from a number of important, project specific grants. Our thanks go to the Community Legal Centres NSW, the Environmental Trust, Sydney City Council and the Commonwealth Department of Agriculture, Fisheries and Forestry.

One final note: The report is leaner than those in the past – or at least compared to the Bumper Edition last year. This is deliberate, and can no way be attributed to the EDO taking its foot off the accelerator (as only a cursory look at its substance would attest). Rather, it has been a much more intensive exercise to

make it shorter, as Cicero might have said. Special thanks to Jemilah Hallinan, our Education Director, for delivering on this aim.



Jeff Smith
Director

National EDO Network

Planning and environmental matters have historically been within the purview of the states and territories. However, environmental issues in Australia increasingly have a national or cross-boundary focus, reflecting the truism that the environment does not respect political boundaries.

The Environmental Defender's Office in NSW (EDO NSW) has taken a key role in recent years in both leading and responding to these developments. EDO NSW is one of nine independent EDO offices located across Australia who formally operate together through the Australian Network of Environmental Defender's Offices (ANEDO).

The different offices share information, resources and ideas and meet regularly as a network, either face-to-face or via teleconference. Across Australia, around 50 staff work for the various EDOs, of whom over 30 are solicitors. All EDOs have demonstrated a commitment to a more coordinated approach to national environmental issues and matters of national environmental significance which fall within state and territory boundaries.

Throughout the year, ANEDO received \$22,500 in one-off federal funds for national liaison and co-ordination. A conference to celebrate 25 years of public

interest environmental law was held (see below), together with training for over 40 EDO staff and Board members from across the network. The training modules included Litigation and Advice, Policy and Law Reform, Community Legal Education and Fundraising and Grantmaking. These funds followed on from federal funds provided last year to prepare both a Strategic Plan and a Business Plan to give greater focus to co-ordination and liaison.

A key focus of ANEDO (and thus the EDO in NSW) over the past year has, once again, been in the area of policy and law reform, with a particular emphasis on climate change, renewable energy, water and the (CTH) *Environment Protection and Biodiversity Conservation Act 1999*.

EDO NSW

Introduction

The EDO's mission is to promote the public interest and improve environmental outcomes through the informed use of the law.

The EDO's goals are to:

1. ensure the community receives prompt advice and professional representation in public interest environmental matters
2. identify deficiencies in environmental law and work for their reform.
3. empower the community to participate in environmental decisions and to use the law to protect the environment
4. promote protection of the environment through national and international engagement
5. provide a working environment for EDO staff that encourages excellence
6. provide sound governance and effective and efficient management of the office

This Report has been divided into three main sections, parts A, B and C.

Part A of the Report will outline the functions of the EDO and provide brief updates from each of the core areas of operation, namely:

- litigation and legal advice
- policy and law reform
- scientific and technical advice

- community programs (community legal education, international engagement, indigenous engagement and accessibility)
- media and communications

Part B of the Report will outline the work of the EDO within its identified priority areas, that is, environmental issues that the EDO has identified, in close collaboration with our stakeholders and clients, as requiring particular attention. These priority areas are:

- Climate Change and Energy
- Environmental Planning and Development
- Biodiversity Conservation
- Natural Resource Management
- Environmental Justice
- Corporate Social Responsibility and Governance

This section of the Report will set out how each of the key functions of the EDO contributed to protecting the environment in these areas.

Finally, Part C of this Report will cover the reporting and governance issues involved in the day-to-day running of the Office. The staffing, funding and financial aspects of the EDO are included in this section.

EDO Northern Rivers

The Northern Rivers Office is a branch office of the EDO NSW that operates from Lismore. Details of the work of the Northern Rivers Office have been incorporated in the general work of the EDO throughout this Report.

2009-2010 marks the 4th year of operations for the Northern Rivers Office and the period has been extremely busy and eventful.

Community concern about climate change and renewable energy saw the Northern Rivers Office working with a number of rural and remote communities in the western part of the service area. Through its commitment to early engagement, the EDO Northern Rivers has been providing legal advice and assisting with technical advice to a community concerned about a proposed major development to construct new coal-fired power infrastructure.

The Office has also been assisting a mixed community and interagency network that organised the North Coast Energy Forum in Bellingen and is now developing a north coast sustainable energy strategy.

The litigation and education teams were kept busy responding to the rollout of local environmental plans (LEPs) over the 10 coastal local government areas in the office's service area. Several community

workshops were held to help build the capacity of local residents to engage effectively in the updating of LEPs to the new Standard Instrument. LEPs are a strategic planning document and the Office encouraged public participation in the plan-making process by publishing newspaper articles and devising a checklist for communities to use when reviewing their local plans. The checklist has a focus on biodiversity protection.

The year saw a surge in concern about forestry operations on public land. The EDO Northern Rivers has been acting for the peak regional environment group, in concert with local member groups, who have begun auditing and reporting on public land forestry operations in the upper north east region. With the Regional Forest Agreements being halfway through their 20 year lifespan, the groups have identified that there is evidence of systemic breaches of the environmental protection regulations.

With the phase in of the private native forestry regulatory scheme well underway, there was a plethora of private native forestry approvals in the Northern Rivers region. Many of these approvals are on high conservation value lands in small rural communities. The EDO Northern Rivers has been providing advice to groups and individuals about the laws and regulations that apply to such operations. This year also saw the successful end to proceedings in the Administrative Decisions Tribunal concerning public access to private native forestry logging

approvals. It is hoped that with access to private native forestry approvals, the public can play an effective role in relation to compliance.

The delivery of the Northern Rivers education program continued at a great rate with the delivery of 17 varied education events over the year. Events were held in response to emerging local issues as well as the provision of our core environmental legal education program. The program also included bringing international climate change negotiations to the North Coast through the series *Climate Law after Copenhagen* which featured a firsthand account from an EDO lawyer who attended the negotiations. The EDO Northern Rivers also maintained an informative and topical presence in a number of rural and regional newspapers and participated in community events, including a burgeoning number of sustainability festivals.

While no new litigation was commenced during the reporting period, a number of cases were successfully finalised, including a case that saw the protection of significant koala habitat. That case and other matters dealt with by the Northern Rivers Office is reported on more fully elsewhere in this Report.

EDO: A Green Office

The EDO NSW is committed to operating in an environmentally sustainable way.

This year, the EDO measured its carbon footprint using the methodology outlined in the EDO NSW Technical Factsheet: *Measuring and reducing the greenhouse gas footprint of a small office*. The EDO has devised a GHG calculator with associated procedures for calculating GHG emissions.

In calculating the carbon footprint of the Office, we included:

- All work-related travel (excluding travel to and from work) by EDO NSW employees, but not by contractors
- Emissions associated with office paper use and disposal, and paper used in EDO NSW publications
- Emissions associated with electricity use
- Emissions associated with waste disposal and recycling

Gold standard accredited carbon offsets were purchased to offset work-related travel emissions for 2009-2010, based on the GHG calculations. This amounted to 127 tonnes of offsets.

Emissions associated with car travel were lower than the previous year. However, air travel increased by over 100% in part due to the EDO

national conference which was attended by 18 international delegates from the Pacific and representatives from all the interstate EDOs. Several of the conference speakers were also flown in from interstate.

The emissions associated with EDO publications decreased. However, emissions associated with paper use increased by roughly 20% which may be due to a number of complex cases requiring expert evidence and increased staff and volunteer numbers. Given this result, the EDO will be looking afresh at ways to reduce paper consumption. All EDO paper, including that used in publications, is 100% recycled stock. EDO also recycles all the waste paper produced by the Office.

Electricity usage in the Sydney office decreased by about 1.5 kWhr this year. This is likely to be due to new zoning and extra switches installed for the lights in the Sydney Office which enable the lights in unused rooms to be switched off.

The EDO also sought to manage and reduce its ecological and carbon footprint by:

- encouraging the use of public transport by staff, volunteers and clients;
- purchasing 100% GreenPower for the Office;
- identifying areas where energy efficiency can be improved and incorporating these into operations; and
- purchasing equipment and consumables with waste

avoidance, closing the recycling loop and reduction of environmental impacts in mind.

PART A:

CORE FUNCTIONS OF THE EDO

Litigation and Legal Advice

The EDO represents individuals and community organisations in public interest litigation to protect the environment. In 2009-2010, the EDO litigated a variety of cases involving issues of significant public concern, including climate change, biodiversity issues, mining, Aboriginal cultural heritage, planning, pollution issues and coastal development. Over 20 EDO cases are reported on in this Report, being at various stages of development; some have been determined, others are either awaiting judgement or are still to be heard.

Climate change litigation continues to be a key part of our work. In July 2009, the EDO commenced *Gray & Hodgson v Macquarie Generation* which is the first case in Australia to use pollution laws to argue that the emission of carbon dioxide from a large coal-fired power station constitutes a 'waste' and therefore should be limited. In June 2010, the EDO also commenced *Haughton v Minister for Planning &*

Ors to challenge the approval of two new power stations in NSW that could increase the state's carbon dioxide emissions by 15%.

The EDO has also been involved in a number of high profile planning cases, including *Gwandalan Summerland Point Action Group v Minister for Planning* and *Sweetwater Action Group v Minister for Planning & Ors*. These cases both successfully challenged decisions of the Minister for Planning on major projects involving rezoning for residential development in sensitive environmental areas on the basis of the doctrine of apprehended bias. In both cases deeds of agreement that approved development footprints for these areas had been entered into prior to the environmental assessments being undertaken.

The EDO also successfully obtained the first limited costs order in the Land and Environment Court in *Blue Mountains Conservation Society Inc. v Delta Electricity*, a third party enforcement action about water pollution. The protective costs order awarded by the Court has enabled this important enforcement action to continue on the basis that Blue Mountains Conservation Society Inc.

will only pay a maximum of \$20,000 in costs if the case is unsuccessful. The precedent will hopefully enable many others to take public interest litigation by limiting exposure to adverse costs orders. The protective costs order is on appeal.

The EDO has also been involved in a number of important criminal cases to defend protestors, in particular to ensure that those engaged in protests are not the subject of compensation orders to companies affected by those activities. The EDO was successful in every criminal matter with which it was involved throughout the reporting period, a great result for our clients.

Mining and water disputes have also become an increasingly regular part of our advice and casework throughout the reporting period.

The EDO provides free initial telephone advice and, if necessary, written advice on environmental law and policy.

The EDO's toll-free telephone advice service, the *Environmental Law Line* has been staffed by a duty solicitor between 2:30 and 5:30 pm on Tuesday, Wednesday and Thursday in the Sydney Office and between 9 am and 5 pm Monday to Friday in the Northern Rivers Office. Due to increased demand, the Sydney advice service also recently began operating on Monday afternoons.

In 2009-2010, EDO staff dealt with 1, 157 telephone inquiries on the *Environmental Law Line*. Of these, about 69% came from rural and regional New South Wales, which

is consistent with past years. The subject matter of these inquiries can be varied, but many concern planning and development, tree disputes, zoning, community land, compliance and enforcement, Part 3A developments, freedom of information, Aboriginal cultural heritage, pollution and contamination, endangered ecological communities and species, private conservation, biobanking, defamation and activism including protest issues, community rights, mining, water, forestry, and misleading and deceptive conduct.

194 casework files were opened during the reporting period, representing litigation matters and detailed written advices, many with significant scientific input. 122 casework files were closed. More than 73 minor assistance files were opened and 57 were closed.

Policy and Law Reform

The EDO actively engages in environmental policy and law reform activities in New South Wales, at a Commonwealth level and, where relevant for domestic law and policy, at an international level.

In 2009-2010, the EDO policy team drafted over 30 submissions in response to legislative reviews, government proposals and Parliamentary inquiries. On the basis of our submissions, the EDO is regularly requested to address Parliamentary inquiry hearings, public forums, and meet with government and environmental groups that lobby for environmental law reform.

Our submission work in 2009-2010 was fairly evenly spread between 5 of our priority areas: climate change, biodiversity, natural resource management, planning and development and environmental justice.

The EDO policy team provides law reform advice to environment and community groups on current, proposed and potential environmental legislation. The EDO advises conservation groups and the community 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. In 2009-2010 for example, this included advice on the *Threatened Species Conservation Amendment (Biocertification) Bill 2010*, the *Coastal Protection and Other Legislation Amendment Bill 2010* and the *National Parks and Wildlife (Visitors and Tourists) Bill 2010*.

The EDO is regularly retained to provide policy advice on a particular area of law or to develop law reform proposals on a consultancy basis to environment groups or the Government. This complements proactive policy work on issues identified by the EDO as requiring law reform. Major advice projects in 2009-2010 included: advice to the Department of Environment and Climate Change on how to strengthen the biocertification process, advice for the Humane Society International on domestic regulation of forest carbon credits; and advice to Greenpeace on banning the import of illegal timber. Proactive projects included work on cultural heritage law reform in NSW and a major report for the Total Environment Centre on public participation in the NSW planning system.

In 2009-2010, EDO policy work also involved participation on various stakeholder panels. The input provided at such forums is expertise-based, and is a crucial element of our key stakeholder and law reform role. In 2009-2010, the Office continued to provide detailed feedback to DECCW

as a member of the Ministerial Reference Group on Biobanking, the Planning Implementation Advisory Committee chaired by the Minister, the Beverage Container Deposit Group and the Contaminated Land Management Committee. Advice on law reform issues is provided to environment group committees, for example, in 2009-2010 the EDO continued to be a contributing member of the NCC Water Group.

Often the provision of policy advice is accompanied by the presentation of EDO workshops and appearances as guest speakers at conferences. For example the EDO made a submission to the National Human Rights Consultation and one of the policy team then presented on the points raised in that submission at both the National and NSW Community Legal Centres annual conferences. The policy team has also assisted the education team present law reform workshops on planning law, private land conservation and coastal protection. In this way policy work complements the EDO's Education Program, and increases community capacity to engage in policy and law reform processes.

Scientific and Technical Advice

The role of the Scientific Advisory Service is to provide objective scientific and technical advice to the EDO and its clients on public interest environmental matters. In addition, the last 12 months have continued to see the Scientific Advisory Service make a significant contribution to the EDO's policy and law reform work.

The Scientific Advisory Service comprises:

- Two in-house environmental scientists
- A Technical Advisory Panel, which comprises academic experts who provide strategic advice to the EDO on scientific issues on a pro-bono basis and
- An Expert Register, which comprises over 125 scientific and technical experts in a range of fields who assist the EDO from time to time on a pro bono basis.

Members of the Technical Advisory Panel during the year were:

1. Professor Richard Kingsford, Professor of Environmental Science, University of NSW
2. Dr Iain MacGill, Senior Lecturer in Energy Policy and Technology, University of NSW
3. Dr Chloe Mason, Consultant in Urban Transport and Sustainability

4. Professor Clive Hamilton, Professor of Public Ethics, Centre for Applied Philosophy and Public Ethics
5. Professor Chris Dickman, Professor of Terrestrial Ecology, University of Sydney.

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

- pre-decision and casework
- compliance and monitoring
- policy and law reform
- community legal education

Pre-decision and casework

The Scientific Advisory Service provides advice on proposed developments or actions prior to a decision being made. This mainly involves advice on the impacts of developments and the adequacy of environmental impact assessments and assisting clients in the preparation of submissions to decision-makers. If the matter proceeds to Court, the in-house scientists get involved in aspects of casework, such as briefing and managing expert witnesses.

In the reporting period, the Scientific Advisory Service has been heavily involved in two cases, *No Ship Action Group Inc v Minister for the Environment, Heritage and the Arts & Anor* and *Rivers SOS Inc v Minister for Planning & Helensburgh Coal Pty Ltd*. To assist with their work, the in-house scientists have consulted and worked with over 20 experts, both from the Expert Register, and outside of it.

Compliance and monitoring

The Scientific Advisory Service provides advice on approved developments or actions. This mainly involves advice on the compliance of developments and actions with conditions of approval or regulatory requirements, as well as assisting clients in the preparation of submissions to regulatory authorities. The in-house scientists have reviewed environmental assessment documents, undertaken research and provided advice on specific technical issues for around 20 matters in the reporting period.

Policy and law reform

The Scientific Advisory Service contributes to the EDO's policy and law reform submissions and discussion papers. This involves research and advice on the scientific aspects of government policy proposals and the EDO's priority law reform areas. In 2009-2010 the in-house scientists have assisted with the preparation of six EDO policy submissions.

Community legal education

The Scientific Advisory Service presents at workshops and seminars, provides advice on scientific aspects of plain English legal guides, and prepares fact sheets on scientific issues. In 2009-2010 the in-house scientists have had input to a number of EDO publications, given presentations at conferences and seminars and have continued to lead the Green Office program.

Community Programs

In 2009-2010 the EDO's community programs were:

- Community Legal Education program
- International program
- Indigenous Engagement program
- Accessibility program

I. COMMUNITY LEGAL EDUCATION

The aim of the EDO's Community Legal Education Program (Education Program) is to empower the community to protect the environment through law. The program utilises a range of education tools including publications, workshops, seminars and conferences, to help build community capacity to engage effectively in environmental decision-making and to respond to environmental issues.

Through the Education Program the EDO is able to engage early with the community and help communities to take a more proactive approach to environmental issues.

The Education Program is focused on rural and regional NSW. The Northern Rivers office runs a discrete Education Program in the region with the Sydney office directing its programs to the remainder of the state. The work of both offices is combined in this report.

Workshops

A total of 33 free workshops were held throughout New South Wales, with all but 3 held in rural and regional NSW. Through workshops, the EDO was able to provide relevant legal education to over 1000 people. Workshops covered a range of environmental law issues and were often presented at the request of community groups. A concerted effort has also been made over the past year to proactively engage new communities on particular issues by delivering workshops on current environmental legal concerns. This approach ensures that the services of the EDO are more equitably distributed throughout NSW.

Seminars

Eight free seminars covering a range of topical issues were held in the Sydney metropolitan area and throughout the Northern Rivers region during 2009-2010. These seminars were attended by approximately 300 people. EDO seminars focus on new and emerging environmental law topics and are presented by relevant experts. They provide an opportunity to examine an issue from different perspectives and also to encourage discussion, including of new ideas for law reform.

Conference

2010 marked the 25th anniversary of EDO NSW. To celebrate, EDO NSW convened a national conference to reflect on the evolution of public interest environmental law in that

time and to consider what challenges and opportunities the future might hold. The two-day conference was held in Sydney on 28-29 May 2010. The conference was well attended, which is testament to the quality of the speakers, who included Professor Ian Lowe AO, Dr Nick Wood and The Hon Duncan Kerr SC MP. The conference was formally opened by The Hon Robert McClelland MP, Attorney General of Australia.

Publications

The EDO's range of plain-English publications is an important feature of the Education Program. Publications help the EDO to engage with a broad cross section of the community and to increase the reach of the Office. Publications cover a range of subjects and come in various formats, most of which are available free, as hard copies or online. In 2009-2010 the EDO's publications were:

• **IMPACT!**

This is a bi-annual journal that examines topical environmental law issues from a range of perspectives. EDO NSW produces this publication on behalf of the Australian Network of Environmental Defender's Offices (ANEDO). Issue 88 was entitled 'Native Vegetation Management' and Issue 89 was entitled 'Public Interest Environmental Law in Australia'.

• **A Guide to Private Conservation in NSW**

The EDO published this new publication during the reporting period. The booklet outlines

and critically analyses the various options for private conservation that are available in NSW. The funding for this project came from the NSW Government through its Environmental Trust. 10,000 copies have been printed so far, of which about half have been distributed. Plans are underway to update and reprint the publication in 2010-2011.

• **Major Projects Toolkit**

The *Major Projects Toolkit* was published during the reporting period with funding from the City of Sydney. The Toolkit is a guide to the assessment and approval process for major projects under Part 3A of the (NSW) *Environmental Planning and Assessment Act 1979*. The toolkit was designed to help the community respond to Part 3A applications and advocate for best practice planning outcomes. 1000 copies were printed and most have been distributed.

• **Rural Landholder's Guide to Environmental Law in NSW**

We continued to distribute the updated version of the *Rural Landholder's Guide to Environmental Law in NSW* throughout the reporting period. This publication has been funded by the NSW Government through its Environmental Trust and remains one of the EDO's most popular publications. To date, approximately 39,000 copies have been distributed with plans underway to update and reprint over the coming year. The publication has been well received and also influential. For example, the NSW Farmers

Associations Dairy Committee notified the EDO that they are going to use the information in the guide to prepare a more targeted publication on best practice environmental management for dairy farmers.

- ***Caring for Country: A Guide to Environmental Law for Aboriginal Communities***

The EDO has continued to provide this free publication upon request.

- ***Campaigning and the Law in NSW: A Guide to Your Rights and Responsibilities.***

This publication provides practical information to campaigners about the possible criminal and civil implications of their actions and is used as a reference guide by many of the major campaigning organisations as well as local community groups and individual campaigners. The publication was updated during the reporting period.

- ***Environmental Law Fact Sheets***

The EDO's online environmental law fact sheets are perhaps the most widely distributed service provided by the Education Program. The fact sheet homepage is the second most visited page on the EDO website (after the home page). The fact sheets have been reviewed throughout 2009-2010 and will be updated by October 2010. A small range of Science fact sheets is also available.

- ***e-bulletin***

The EDO's free weekly e-bulletin continues to be a widely distributed resource with a subscriber list of over 1,700. It is the fourth most visited

page on the EDO website, with over 5,000 hits in the reporting period. The e-bulletin updates subscribers on EDO news and events including media coverage, developments in environmental law and policy, opportunities to participate in state and federal environmental decisions and community events with an environmental focus.

- ***Climate Law Bulletin***

The EDO's climate bulletin is a bi-monthly e-bulletin dedicated to climate law and policy. It provides an overview of developments in climate law and policy at both the national and international level. Subscribers have commented that the publication is an "excellent initiative" as well as "well written and timely".

- ***Caring for the Coast: A Guide to Environmental Law for Coastal Communities in NSW***

This publication is still in draft form, with a publication date set down for October 2010. It is a guide to the various laws that address coastal environmental and planning issues. The publication of this booklet has been delayed as a result of significant legislative changes that were introduced throughout the reporting period, and which related directly to the content of the publication. The booklet is funded by the Commonwealth Government's Caring for Our Country Program.

Papers and Presentations

EDO staff members are often invited to provide a public interest

perspective at external forums covering environmental or legal themes. In 2009-2010, EDO staff delivered 37 presentations at conferences, universities and continuing legal education seminars.

EDO staff also published 6 papers in journals, bulletins and books, including:

- Collings N and Evans H (2009) "Access and Benefit Sharing – Protecting Biodiversity and Indigenous Knowledge 7(14) *Indigenous Law Bulletin* at pp 11-15.
- Graham K and Thorpe A (2009) "Community-based Monitoring, Reporting and Verification of REDD Projects" 3 *CCLR* at pp 303-313.
- Hallinan J (2010) "NSW and the Sandon Point Case" in Bonyhady T and Macintosh A (eds) *Mills, Mines and Other Controversies* The Federation Press at pp 188-206.
- Howarth R (2009) "Submission on the Review of Australia's Future Tax System" 2 *National Environmental Law Review* at pp 33-45.
- Ruddock K and Duggin G (2009) "Climate Change, Coal and Human Rights" 18(2) *Human Rights Defender* at p 5
- Ruddock K (2009) "Emerging trends in climate litigation", *Global Climate Change Law Guide Newsletter*, CCH
- Ruddock K (2010) "US Climate Litigation heats up - a review of recent cases on climate change" *Global Climate Change Law Guide Newsletter*, CCH.

Website

The EDO website contains an extensive range of information on the Office's core functions such as information on access to the Office's services, copies of policy submissions, case notes on litigation, information on up-coming workshops and seminars, copies of publications and links to EDO offices in other states.

In 2009-2010, a total of 304, 000 web pages were viewed on the EDO NSW website. This amounts to an average of over 25,000 page downloads per month, an increase of 5% over the previous year.

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

2. INTERNATIONAL PROGRAM

The EDO is committed 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 to build capacity in public interest environmental law in the South Pacific, primarily in Papua New Guinea (PNG), Fiji and the Solomon Islands. The EDO's international work also involves policy development, placing volunteers through AusAID's Australian Youth Ambassadors for Development (AYAD), Volunteering for International Development from Australia (VIDA) and Lawyers Beyond Borders (LBB), and participating in international networks.

Capacity-Building in the South Pacific

The EDO has provided legal assistance to organisations in the South Pacific since 1991, and since 1998 has received funding from the MacArthur Foundation to conduct capacity-building work in the region. In 2009-2010 the EDO provided assistance to organisations in PNG, the Solomon Islands, Fiji, Vanuatu, Samoa, Kiribati and Tonga, as well as South East Asia.

In addition to continuing requests for legal advice, partner organisations are increasingly seeking assistance with policy and scientific matters. Climate change continues to be the main area in which partner organisations are seeking advice, ranging from the developing law on avoided deforestation (REDD) to coastal law and adaptation to sea level rise.

Highlights of the EDO's capacity-building work in 2009-2010 include:

- Hosting 18 lawyers from across the Pacific for a week of training in Sydney in May 2010, helping to foster the development of networks between Pacific countries
- Bringing lawyers from PNG and the Solomon Islands to attend training, watch EDO matters before the Land & Environment Court and meet with judges, barristers, scientists and others practising law in NSW in October and December 2009
- Presenting seminars and training on environmental law in PNG,

the Solomon Islands, Fiji and Samoa on topics including advocacy and litigation skills, climate change, compliance and enforcement, and international law

- Providing legal, scientific and policy advice to groups in PNG, Fiji, the Solomon Islands, Samoa and Vanuatu on issues including development assessment, constitutional law, coastal law, forestry law and compliance with environmental assessments
- The establishment of a buddy system between lawyers at the EDO and lawyers at the Centre for Environmental Law and Community Rights (CELCOR) in PNG and
- Presenting to a delegation of Thai Judges on the work of the EDO and the development and operation of public interest environmental law in Australia.

Volunteer Placements

The EDO is an Australian Partner Organisation for the AYAD, VIDA and LBB programs. These schemes enable the EDO to create AusAID funded placements for Australians with organisations in the Pacific and Asia. EDO engagement with these programs has expanded significantly in the past two years, enabling the placement of record numbers of volunteers to provide much needed support to partner organisations.

The EDO facilitated the creation of 14 new volunteer assignments in 2009-2010. The assignments were in the

areas of climate change law and policy, environmental impact assessment, legal advice and landowner advocacy. Host countries included the Solomon Islands, Vanuatu, Vietnam, Fiji, Tonga, Bangladesh and Kiribati.

The EDO also continued to support AYAD placements with the Centre for Human Rights and Development in Mongolia.

International Policy Engagement

In 2009-2010, the EDO's international policy work focused on climate change and biodiversity.

The EDO attended the 16th Conference of the Parties of the *UN Framework Convention on Climate Change* (UNFCCC) in Copenhagen, Denmark in December 2009. The EDO was admitted as an observer and provided legal advice and support to Australian NGOs and to delegates from the Pacific during the negotiations. EDO also attended meetings of UNFCCC bodies in Bonn, Germany, in May-June 2010 as legal adviser to the Republic of Nauru. The EDO also undertook considerable work on international climate change policy during the year, in particular on avoided deforestation (REDD) in the Pacific.

On biodiversity, the EDO's Aboriginal Solicitor participated in international negotiations concerning the *Convention on Biological Diversity* (CBD) through the International Indigenous Forum on Biodiversity. This included face to face and text-based negotiations for the emerging

protocol on access and benefit sharing of genetic resources scheduled for adoption at the 10th Conference of Parties in Nagoya, Japan.

International Networks

The EDO continued to participate actively in a range of networks in 2009-2010, particularly the Environmental Law Alliance Worldwide (E-Law), an international network of public interest environmental lawyers and scientists, and the International Union for the Conservation of Nature (IUCN), an international network of over 1,000 governments and NGOs and over 11,000 scientists, legal and other experts.

International Advisory Committee

Strategic guidance for the EDO's engagement with Pacific communities is provided by the International Advisory Committee whose members are:

1. Emeritus Professor Ben Boer, University of Sydney
2. Ms Effrey Dademo, Act Now! Papua New Guinea
3. Mr Taholo Kami, IUCN Regional Office for Oceania
4. Mr Kosimili Latu, Secretariat for the Pacific Regional Environment Programme
5. Ms Sarah Tsiamalili, European Union Papua New Guinea

3. INDIGENOUS ENGAGEMENT PROGRAM

A key element of the EDO's indigenous engagement program is the employment of an Aboriginal Solicitor working on litigation, legal advices, policy, international advocacy and community education.

As with the previous period, the EDO has continued to build relationships with existing clients as well as developing relationships with new clients, with increasing requests for legal and policy advices.

The legal advices specific to Aboriginal interests have included negotiating a draft community engagement protocol, assisting with a cultural fishing licence application, as well as Aboriginal cultural heritage protection under the (NSW) *National Parks and Wildlife Act 1974*. Litigation has focussed on an ongoing case in Moree concerning crown land and Aboriginal cultural heritage.

The EDO convened a second Aboriginal Cultural Heritage Roundtable in May 2010. The aim was to facilitate a discussion focussed on Aboriginal cultural heritage law and policy reform in NSW in the context of proposed amendments to the (NSW) *National Parks and Wildlife Act 1974* and Regulations that have since been gazetted. The Roundtable brought together Aboriginal clients, members of the Aboriginal Advisory Committee, Traditional Owners, representatives of the NSW Aboriginal Land Council and Native Title Services. In addition, the EDO

has worked collaboratively with the NSW Aboriginal Land Council and Native Title Services to present submissions to the NSW Government concerning Aboriginal cultural heritage protection and legislative reform.

The Aboriginal Solicitor has participated in international negotiations concerning the Convention on Biological Diversity as detailed above. The international focus has also included providing capacity building training for Aboriginal delegates attending the 9th Permanent Forum on Indigenous Issues in New York and the 15th Conference of Parties in Copenhagen through the UNSW Diplomacy Training Programme and the Australian Human Rights Commission.

Further work of the Aboriginal Solicitor included:

- participation in meetings of the Australian Law Reform Commission as a member of the Aboriginal Advisory Committee
- participation as a Board member of the Forest Stewardship Council (FSC)
- attending quarterly meetings of the Indigenous Peoples Organisations network hosted by the Australian Human Rights Commission

The Aboriginal Advisory Committee has continued to provide invaluable input into the work of EDO on an ad hoc basis, in particular providing guidance on the second Aboriginal Cultural Heritage Roundtable. In

2009-2010, the members of the Aboriginal Advisory Committee were:

1. Tony McAvoy, Barrister, Frederick Jordan Chambers.
2. Gerry Moore, Zone Manager, Aboriginal Legal Service (NSW/ACT) Ltd.
3. Anthony Seiver, Senior Policy Officer, NSW Department of Aboriginal Affairs.
4. Clare McHugh, Director Policy Unit, NSW Aboriginal Land Council.
5. Natalie Rotumah, Executive Services Officer, NSW Native Title Services.
6. Gavin Andrews, Aboriginal Liaison Officer, NSW Department of Environment, Climate Change and Water.
7. Brad Moggeridge, Indigenous Water South East Australia Coordinator, CSIRO.
8. Megan Davis, Director, Indigenous Law Centre.
9. Tabatha Timbery-Cann, Catchment Officer, Sydney Metropolitan Catchment Management Authority.
10. Constance Chatfield, Aboriginal Liaison Officer, Local Government and Shires Association.

The EDO wishes to thank all the members of the Aboriginal Advisory Committee for their input to the work of the Office over the past year.

4. ACCESSIBILITY PROGRAM

The EDO's Community Programs are complemented by an Accessibility Program which aims to extend the reach of the EDO and broaden the Office's constituency.

The EDO's services are available to the entire NSW community. The Accessibility Program seeks to encourage certain underrepresented groups to access our services so as to achieve an equitable distribution of our resources. The Accessibility Program originally targeted people in rural and regional NSW and Aboriginal communities. The EDO has implemented specific programs targeting these groups. For example, the publication *The Rural Landholder's Guide to Environmental Law* is designed to assist people from rural areas to understand and comply with laws relating to natural resource management. Similarly, *Caring for Country: A guide to environmental law for Aboriginal communities* seeks to engage Aboriginal communities by providing them with important legal information about land management and Aboriginal cultural heritage.

Projects targeting these groups have been integrated into the core work of the Office for some time. In recent years, the Accessibility Program has been broadened to encompass two additional groups, people from culturally and linguistically diverse backgrounds, and young people.

In 2009-2010, the EDO has focussed its efforts to engage these target

groups and make its services more visible and relevant to them.

People From Culturally And Linguistically Diverse Backgrounds

The Office seeks to make its services known to and available to people from culturally and linguistically diverse (CALD) backgrounds. Introductory information is available in a range of languages on the EDO homepage which has been expanded to include additional languages, including Solomon Islands pidgin.

The EDO continues to provide advice to people who need an interpreter through the Translation and Interpreting Service (TIS) National. This service allows clients to call the EDO via an interpreter and is available free of charge.

EDO staff met with representatives of *Epoch Times*, an independent Chinese newspaper, to discuss the work of the Office and how it may be relevant to Chinese people living in Australia with a view to promoting the EDO's services through that publication.

The EDO remains committed to improving the accessibility of its services to CALD communities and continues to explore opportunities to partner with other organisations in the delivery of projects to people from CALD backgrounds.

Young People

The EDO engages with young people primarily by providing opportunities for student volunteers

to learn about and apply their skills in environmental law. The EDO has increased its capacity to host student volunteers to six per day. Student volunteers are provided with training and hands on experience in providing legal advice and casework. By providing these opportunities to law students, the EDO hopes to be able to contribute to the careers of young people looking to enter the field of environmental law. As one departing volunteer put it:

"It really has been awesome working here, I don't think that there will be another working environment as good as this and I miss it already. Thanks all of you for being such wonderful friends and also thanks to the vollies who've been fantastic workspace buddies! Over this year and a bit at the EDO I've finished uni, graduated, suffered through college of law, did my PLT, gotten admitted and appeared in court for the first time! It probably will be the most eventful year of my life and I really appreciate all the opportunities and experience that the EDO has given me."

In addition to regular volunteers, the EDO accepts formal student placements from most universities in the region and volunteers completing the Practical Legal Training component of the College of Law.

The EDO has once again partnered with Maddocks, inviting law students to submit an article for publication in the EDO's legal journal, *Impact*. The winner, in addition to being published, is awarded \$500.

Finally, EDO staff members have mentored young law students through the University of Sydney's Women's Mentoring Program.

Media and Communications

The media is important to the EDO as it provides an effective means of highlighting the issues we engage with and promoting the work of the EDO. In 2009-2010, the EDO has received significant media exposure through direct mentions or where the media reported on one of the Office's matters. Coverage during the year included:

Television

The Court decision in the *Catherine Hill Bay* case received extensive television coverage, including on the ABC News and ABC Stateline.

Similarly, the *Caroona Coal* case received sustained media coverage, including on television. The ongoing battle by the EDO's farmer clients to prevent proposed coal mining beneath the Liverpool Plains was the subject of a Four Corners story *The Good Earth* and a story on SBS News *Farmers Take on Miners*.

Other EDO matters that received television coverage include a Four Corners special on the health impacts of coal mining in the Hunter Valley, a Lateline story covering the *Bayswater* case and the action by *No Ship Action Group* to prevent the scuttling of the HMAS Adelaide off Avoca Beach.

Radio

The EDO Northern Rivers utilised local radio to canvass local environmental issues. Staff from that office were interviewed on ABC North Coast radio in relation to a proposed bill to expand hunting into national parks and also to discuss the provisions in the draft Tweed local environmental plan for biodiversity protection.

In other parts of the state, ABC New England Radio reported on a forum to probe coal mine health risks and ABC South East Radio covered the review of Snowy River Water Licences

Newspapers

Articles

In 2009-2010 over 100 articles referred to either the EDO directly or a matter the EDO was involved in. Local newspapers regularly report on the work of Northern Rivers office. Some articles covering EDO work during the year were:

- *ABC Online*: 'Productive' talks over Snowy flows (23 July 2009)
- *Namoi Valley Independent*: Council Forced to Defer on Airstrip (27 July 2009)
- *The Illawarra Mercury*: Killalea – How can you sell what you don't have? (27 July 2009)
- *Sydney Morning Herald*: Power Firm Sued Over Carbon Emissions (28 July 2009)
- *Sydney Morning Herald*: World Rally Leg Threatens NSW Species (6 August 2009)
- *The Land*: Powerline Plan Shocks North (7 August 2009)
- *Newcastle Herald*: \$1m tag for study of health in Upper Hunter (12 August 2009)
- *Sydney Morning Herald*: Too Many Holes in New Indigenous Heritage Laws (13 August 2009)
- *The Australian*: Mining win for farmers in Caroon (1 September 2009)
- *Illawarra Mercury*: Backlash hits Berkeley Park Proposal (9 September 2009)
- *Sydney Morning Herald*: Campers aim to stop coal mine expansion (9 October 2009)
- *Tenterfield Star*: Transgrid Battle in the Far North (14 October 2009)
- *Northern Rivers Echo*: Quarrel continues over Champions Quarry (15 October 2009)
- *The Herald*: Government falls on its sword: consent for Huntlee is void (19 October 2009)
- *Sydney Morning Herald*: Farmers take on BHP (27 October 2009)
- *Moree Champion*: Big W debacle continues (29 October 2009)
- *Sydney Morning Herald*: Victory for residents as range approval "unlawful" (25 November 2009)
- *The Newcastle Herald*: Emission on trial in Hunter Valley power station case (3 December 2009)
- *ABC News*: Powerline plan could endanger wildlife (5 December 2009)

- *Sydney Morning Herald*: Forests NSW accused of breaching licence 50 times (12 January 2010)
- *Sydney Morning Herald*: Environment jobs vital for Aborigines, says UN study (15 January 2010)
- *Sydney Morning Herald*: Standoff over the Snowy (30 January 2010)
- *Solomon Star*: Legal Training here next week (6 February 2010)
- *Sydney Morning Herald*: Another blow to credibility of Tillegra Dam project (5 February 2010)
- *Tweed Shire Echo*: Draft LEP: a backward step for biodiversity? (18 March 2010)
- *The Daily Telegraph*: Protesters want scuttling of HMAS scuttled (19 March 2010)
- *The Macleay Argus*: Minister chose money not Koala (30 March 2010)
- *The Singleton Argus*: Bid to save Common Trust Land at Camberwell (20 April 2010)
- *Sydney Morning Herald*: Plant still polluting river beyond guidelines (20 April 2010)
- *The Northern Star*: Concerns over impact of LEP (27 April 2010)
- *Sydney Morning Herald*: Aboriginal site spared from loggers (29 April 2010)
- *Sydney Morning Herald*: Councils join forces for legal tilt at Barangaroo project (7 May 2010)
- *Ulladulla Times*: NPA to fight Narrawallee subdivision (19 May 2010)

- *The Independent*: Anger at plans for shop on Aboriginal burial site (7 June 2010)

Columns

Through the Northern Rivers Office, the EDO has written regular columns in the *Northern Rivers Echo* and the *Rural Weekly* (Farmers Bulletin). Columns have been written on renewable energy, land clearing, sea level rise, local planning, native vegetation, climate change, shark conservation and the burning of cane.

Online

EDO created a Twitter account and now tweets updates on EDO cases and events. To follow us on Twitter go to <http://twitter.com/edonsw>

PART B:

PRIORITY AREAS

Climate Change and Energy

Casework

Seeking to limit greenhouse gas emissions

Pete Gray and Naomi Hodgson v Macquarie Generation

The EDO commenced Class 4 civil proceedings in the Land and Environment Court on behalf of Peter Gray and Naomi Hodgson against Macquarie Generation. In carrying out its electricity generation activities, Macquarie Generation has been issued with an environment protection licence which licences the company to emit certain waste, but not carbon dioxide. The proceedings seek a declaration that the state-owned company has been wilfully or negligently disposing of waste at their Bayswater Power Station by emitting carbon dioxide into the atmosphere in a manner that has harmed or is likely to harm the environment in contravention of the

(NSW) *Protection of the Environment Operations Act 1997*. Mr Gray and Ms Hodgson also seek an injunction requiring Macquarie Generation to immediately cease disposing of waste through the emission of carbon dioxide into the atmosphere.

Macquarie Generation responded with a motion to have the matter dismissed which was heard in the Land and Environment Court by Justice Pain. Justice Pain found that the Applicants' argument that Macquarie Generation is not authorised to emit any carbon dioxide at all is unlikely to succeed and dismissed that part of their case. Her Honour did not dismiss the Applicants' secondary argument. This was that even if Macquarie Generation has an implied authority to emit some amount of carbon dioxide in generating electricity, that authority is limited to an amount which has reasonable regard and care for people and the environment. Therefore, the Applicants' case as to whether Macquarie Generation is authorised to emit unlimited levels of carbon dioxide can now proceed to trial.

Challenging New Coal-Fired Power Stations

Ned Haughton v Minister for Planning & Ors

The EDO is acting for Ned Haughton in challenging the Minister for Planning's approvals of concept plans for the Bayswater B Power Station and the Mount Piper Power Station extension. The proponents of the new power stations are Macquarie Generation (Bayswater B) and Delta Electricity (Mount Piper) - both of which are state-owned corporations.

Both proposals are classified as critical infrastructure. The concept plans for the two new power stations were approved by the Minister for Planning under the (NSW) *Environmental Planning and Assessment Act 1979*.

The proceedings were commenced in the Land and Environment Court. Mr Haughton seeks a declaration that the concept plan approvals are invalid and of no effect; an order quashing the concept plan approvals; and, an injunction restraining each of the proponents from taking any action in reliance on the concept plan approvals.

If these new power stations are powered by coal, they are likely to increase NSW's carbon dioxide emissions by over 15% and will make NSW's greenhouse targets almost impossible to meet.

Legal and Technical Advice

Climate change encompasses a wide range of issues so advising clients requires expertise in a

variety of different laws. In 2009-2010, the EDO assisted members of the public in a range of matters relating directly or indirectly to climate change. Examples include:

- Advising a client on superannuation and climate risk issues
- Advising a client on a proposed contract with Greenfleet for the use of land for carbon credits
- Advising a client on Australian Coal Association advertising of coal
- Sending a dispute notice to the Australian Energy Regulator regarding the Transgrid proposal for the Dumaresq to Lismore transmission line
- Providing scientific advice on greenhouse gas issues associated with the Timor limestone mine and seeking the assistance of experts to prepare an expert report for the case
- Reviewing assessment documents and calculating the greenhouse gas emissions associated with the Repco Rally at Kyogle to assist the client to prepare submissions.

Policy and Law Reform

The EDO policy team undertook a range of law reform activities on climate change in the past year at a state, national and international level. These ranged from submissions on Government proposals and advice to environment groups on proposed legislation, to attending international climate change negotiations.

State Level

Most of the impetus for reform, at least originally, came at the Federal level. However, the EDO also prepared a submission to the Department of Planning on the draft coastal planning guideline – adapting to sea level rise. The EDO's submission called for all further development to be prohibited by legislation for areas identified as being seaward of an immediate hazard line, that is, areas at imminent risk from sea level rise. Moreover, the EDO called for the introduction of specific coastal protection zones in the Standard LEP to recognise the unique qualities of coastal areas and the specific pressures faced in coastal areas. The NSW Government released the final coastal planning guideline in August 2010 with no significant amendments.

The EDO made a submission to the NSW Office of Fair Trading which recommended improving residential leases in terms of sustainability initiatives and reducing carbon footprints by increasing energy efficiency, by amending the Draft *Residential Tenancies Bill 2010*. The Bill passed through NSW Parliament and was assented to on 17 July 2010. No amendment was made to the bill in light of EDO recommendations.

In April 2008, the EDO released a Model Climate Law Project Discussion Paper. One of the EDO's recommendations was that the government should introduce legislation to implement 'feed-in' laws to allow independent producers of renewable power to feed their

electricity into the grid against a guaranteed payment. On 1 January 2010 a new gross feed-in tariff called the Solar Bonus Scheme commenced in NSW, providing payment to those who produce renewable energy through eligible roof-top solar photovoltaic systems and wind turbines connected to the grid.

National Level

EDO's work at a national level straddled the three main areas of the emissions trading scheme, renewable energy and energy efficiency. This work was done on behalf of ANEDO.

The EDO provided detailed advices to a number of major environment groups on amendments to improve the *Carbon Pollution Reduction Scheme Bill 2009* (CPRS Bill) prior to its deferral. We also provided specific legislative drafting advice to Humane Society International regarding the appropriate use and regulation of forest offsets and carbon credits (such as REDD) for inclusion in the CPRS Bill.

The EDO prepared two submissions to the Federal Government relating to the updated renewable energy legislation. This was a continuation of the previous years' work relating to former versions of the bill. The EDO strongly supported the increase of the renewable energy target to 20% by 2020. The 2009-2010 submissions related to the proposed splitting of the scheme into small-scale and large-scale targets, which we supported, and the treatment of new coal gas waste project credits. The legislation passed through Commonwealth

Parliament in early 2010. Together with other EDO offices, we have been advocating for an increase to the target for many years.

Furthermore, the EDO made a submission to the Prime Minister's Task Group on Energy Efficiency calling for an audit of laws creating barriers to energy efficiency. The Task Group has yet to report on the consultation process.

International Level

The EDO attended the United Nations Framework Convention on Climate Change Conference of the Parties in Copenhagen in December 2009 and the United Nations Framework Convention on Climate Change (UNFCCC) inter-sessional meeting in Bonn, Germany from 31 May - 11 June 2010. We also attended the Transparency International Workshop on Corruption in Climate Change Governance in Berlin, Germany, between 12 -14 June 2010.

The EDO attended the Copenhagen conference to monitor the progress of the UNFCCC for the purpose of advising Australian NGOs on legal issues and to assess implications of the summit for the development of climate law in Australia.

Education

The EDO has been active in delivering a number of workshops, seminars, presentations and papers on climate change related issues.

A series of four seminars entitled 'Climate Law after Copenhagen' were held in the Northern Rivers region.

The EDO also attended Powershift, a youth climate conference and the North Coast Energy Forum to raise awareness of the EDO's services amongst people working in or interested in climate-related fields.

Case Study: Climate Camp

Several EDO staff members attended the second Climate Camp, this time in Helensburgh, to provide support to those seeking action on climate change. The EDO fulfilled many roles at Climate Camp. We assisted with the delivery of workshops by clarifying the law and the possible ramifications of particular actions; we attended meetings with high ranking police officers to discuss strategy, process and arrests; we attended the protest and provided on the spot legal advice to participants and we attended Wollongong police station to assist arrestees and obtain and return detained property.

EDO staff members have also delivered 15 papers and presentations on issues relating to climate change such as the renewable energy target; coastal planning and planned retreat; human rights and climate change; climate litigation; and community-based monitoring and REDD.

Environmental Planning and Development

Casework

Challenging Inappropriate Developments

Hill Top Residents Action Group v Minister for Planning and NSW Sport and Recreation [2009] NSWLEC 185

In this successful case, the Hill Top Residents Action Group Inc (the Group) appealed against the approval by the Minister for Planning of a Regional Shooting Complex at Hill Top, in the Southern Highlands.

The Group successfully challenged the approval on the basis that the shooting range was prohibited under Part 3A of the *Environmental Planning and Assessment Act 1979* and the *State Environmental Planning Policy (Major Projects) 2005* (the SEPP). The Court found that, under the SEPP, the 'range danger area', essentially a designated buffer zone to capture stray bullets, was not permissible in the part of the site zoned as an environmental conservation area. The Court further found that the range danger area was an essential part of the project, and as a result found the entire approval void, and made an order restraining the Department of Sport from doing anything further on the site pursuant to the project approval.

In addition, the Court accepted the Group's submission that the Independent Hearing and Assessment Panel was not properly constituted on the basis that former politician, Ian Armstrong, was not an 'expert'. However, Justice Biscoe found that this did not lead to invalidity because consideration of the expert report was not mandatory.

Hastings Point Progress Association v Tweed Shire Council & Aeklig P/L [2009] NSWCA 285

This matter was part reported in the last annual report. Last year, Hastings Point Progress Association Inc (the Association) appealed to the NSW Court of Appeal a decision of the Land and Environment Court that held that certain provisions of the Tweed Local Environmental Plan (LEP) were inconsistent with the Seniors Living SEPP (as it was then called) and therefore did not need to be considered by Tweed Shire Council when it granted consent to a seniors living development.

In a split decision, the appeal was lost in the Court of Appeal.

Legal and Technical Advice

Requests for advice on planning matters continued to account for a large proportion of the calls to the EDO throughout 2009-2010. As this report shows, the range of issues dealt with by EDO in this time was considerable. Some of the 35 detailed written scientific and legal advices provided to the community in the reporting period include:

- Writing a letter to Taree Council indicating their failure to properly notify a modification application. Council subsequently required re-submission of the application and provided residents with a proper period to make submissions
- Advising a client about potential grounds to challenge a development approval at Sandon Point, including conducting a preliminary review of the hydrological component of the Environmental Assessment and engaging an expert on this issue
- Advising clients in Springwood regarding procedural errors in exhibiting a draft Plan of Management to develop community land as netball courts. As a result, the Council re-exhibited the draft Plan of Management for the required period and provided more time for public submissions
- Advising clients on the Concept Plan approval and project approvals for the Barangaroo development
- Writing to Council about the assessment of a development proposed for a floodplain on the south coast which, if approved, would have resulted in a breach of Council's development control plan. As a result, Council further considered the flood issues associated with the proposal
- Reviewing environmental assessment documents and providing comment on issues associated with the impact on apiaries of the latest Hub waste facility proposal at Orange
- Advising an alliance of local groups over some years resulting in the shelving of a proposed development at Killalea State Park this year
- Advising a local group at Lake Wollumboola last year on a development at Culburra beach in the Shoalhaven area. We gave the client a detailed advice on coastal issues and the development has now been refused by the Council on the basis of insufficient information on impacts on coast, threatened species and other matters.

Policy and Law Reform

Planning in NSW has been subject to almost continual change over the past few years. The EDO has been actively engaged in these processes. This includes involvement in various forums for the discussion of planning reforms, including regular meetings with the Minister for Planning and key stakeholders (on proposed changes to Part 3 of the EP&A Act 1979 and the implementation of Joint Regional Planning Panels) and the Director-General of Planning and Senior Officers to discuss topical developments in planning.

A number of submissions on planning reform proposals put forward by the Department of Planning have also been made. For example, we made submissions on:

- the proposed Sydney Growth Centres Strategic Assessment
- corruption risks and the regulation of lobbying in NSW (ICAC)

- the review of the *National Building and Jobs Plan (State Infrastructure Delivery) Act 2009*
- the Discussion Paper for the Metropolitan Strategy Review - Sydney Towards 2036
- the review of the *State Environmental Planning Policy (Infrastructure) 2007*.

The EDO also made a submission on the Productivity Commission Issues Paper - Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments.

There has been no government response to any of these submission processes at this point.

In 2008-09, the EDO prepared a submission and appeared before the House of Representatives Inquiry into Climate Change and Environmental Impacts on Coastal Communities. The Report on the Inquiry was released in October 2009. The EDO submission and evidence was referred to 13 times, with our summary of coastal governance arrangements across Australia forming part of the Report. The Report noted EDO's overarching recommendation that a federal coastal framework should be established by a COAG agreement. One of the Committee's key recommendations was that the Australian Government develop an Intergovernmental Agreement on the Coastal Zone to be endorsed by COAG.

Education

The (NSW) *Environmental Planning and Assessment Act 1979* was significantly amended in the reporting period so there was considerable scope for community education on planning matters. The amendments dealt with both the content of and the process for making local environmental plans (LEPs). Two new online fact sheets were developed to inform the community about the new process for making LEPs and to highlight some key features of the new Standard Instrument. Workshops on the Standard Instrument and the new process were held in Newcastle, and for the NSW Aboriginal Land Council in Sydney.

The Northern Rivers Office held a series of workshops on LEPs to coincide with the updating of local environmental plans for the Tweed, Port Macquarie, Ballina and Lismore local government areas. These workshops were designed to help the community to respond effectively to the draft plans. The office also prepared a checklist for communities to use when reviewing their LEPs.

The City of Sydney funded the EDO to present a series of seminars exploring the sustainability of Sydney. Each seminar focused on a different measure of sustainability and relevant experts were invited to discuss the progress that Sydney is making towards achieving sustainability in that area. In the reporting period, seminars were held dealing with homes, food and transport. More are planned for the second half of 2010.

EDO staff did two papers/presentations on the assessment process in NSW – one for the Nambucca Local Aboriginal Land Council and the other for the book *Mills, Mines and Other Controversies* published by Federation Press.

Case Study: Reconnecting the Community with the Planning System

A major consultancy project for the Total Environment Centre was undertaken jointly by the EDO policy and education teams. This involved drafting a discussion paper on public participation and then conducting a series of workshops to inform the community about recent changes to the planning system and seeking community feedback on the state of planning in NSW. The discussion paper was available on the EDO website. This was downloaded over 400 times and 36 online surveys completed in the reporting period.

Workshops were held in Wollongong, Newcastle, Sydney, Moruya, Ballina, and Coffs Harbour. Feedback from the community on the workshops was very positive, with one participant commenting "I enjoyed my experience at the workshop, which was both informative and well run".

The information obtained was then collated into a report prepared by the policy team for the Department of Planning with recommendations on how to reconnect the community with the planning system in NSW. The Department is currently considering the report.

Biodiversity Conservation

Casework

Promoting Ecologically Sustainable Development

Sweetwater Action Group v Minister for Planning & Ors

This is the second in a series of successful challenges to land swaps negotiated by the NSW Government, the first being Catherine Hill Bay (reported on last year).

In February 2009, the Minister for Planning approved a Concept Plan for the new Huntlee Town Centre in the Lower Hunter. The Concept Plan approval was to facilitate an area to house over 20,000 people at North Rothbury, despite the site being ranked last under the Department of Planning's assessment of 91 possible development sites in the Lower Hunter Valley.

The EDO acted for the Sweetwater Action Group Inc (the Group), a group of concerned residents who challenged the Concept Plan approval and related rezoning of the site.

A key aspect of the challenge was a Memorandum of Understanding and a Deed of Agreement signed in 2006 by Hardie Holdings Pty Ltd and the Minister for Planning in relation to the Huntlee site, under which the Minister agreed to facilitate development for residential and

commercial purposes. In exchange, Hardie Holdings Pty Ltd was to dedicate over 800 hectares of land for a conservation reserve. The signing of the documents raised issues about apprehended bias in the decision making process and the consideration of irrelevant matters by the Minister.

Further grounds were that North Rothbury is the only place where the critically endangered plant, *Persoonia pauciflora*, is found and that the Minister had not considered the precautionary principle and biodiversity principle in assessing the development. There were also concerns about the appropriateness of locating a large new population in an area that is not well serviced by public transport or other facilities.

The Land and Environment Court approved consent orders declaring the Concept Plan approval and related rezoning of the site to be invalid and of no effect, and ordering that these decisions be quashed.

Protecting Koalas

Nambucca Valley Conservation Association Inc v Nambucca Shire Council & Anor [2010] NSWLEC 38

The EDO acted for the Nambucca Valley Conservation Association Inc (the Association) in proceedings in the Land and Environment Court challenging the decision of Nambucca Shire Council to allow a rural residential development to proceed in core koala habitat.

The Association challenged the decision on a number of grounds, including the significant impact

on threatened species (including the koala) and an endangered ecological community; failure to consider provisions of the Nambucca Local Environmental Plan; failure to properly exhibit the proposal after it was amended; and improper deferral of environmental considerations by the Council.

Justice Biscoe upheld the Association's challenge and the development consent was declared invalid. The Court held that the Council had failed to take into account public submissions made in relation to an earlier version of the development. In addition, the Council failed to advertise the final version of the development, which had changed significantly from the first application in 2003 to the final version in 2008.

The Court also found that, in determining the development application, the Council had failed to consider the provisions of its own local environmental plan dealing with the objectives of the relevant land use zones, as well as general considerations applying to the development.

Obtaining Better Outcomes for Endangered Ecological Communities

Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council and Stoneco Pty Limited [2010] NSWLEC 48; *Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council and Stoneco Pty Limited (No 2)* [2010] NSWLEC 104

The EDO acted for the Newcastle and Hunter Valley Speleological

Society Inc (the Society) in a merits appeal against the Upper Hunter Shire Council's approval of a limestone quarry near Scone in the Hunter Valley. The Society was concerned about the impacts of the quarry on the White Box Yellow Box Blakely's Red Gum Woodland endangered ecological community (the EEC), impacts on caves and cave dwelling fauna, and other broader issues including road, dust and traffic impacts.

In the first judgment, Justice Preston, Chief Judge of the Land and Environment Court held that there was not likely to be a significant impact on the EEC or vulnerable species and, therefore, no Species Impact Statement was required. However, His Honour accepted the Society's argument that lack of full scientific certainty as to the presence of caves, biota and a groundwater dependent ecosystem and the proposal's impact on them should be addressed by applying the precautionary principle. Finding that the threat of environmental damage to biota within the limestone was scientifically likely, the Court considered that the appropriate and proportionate response was to implement a step-wise or adaptive management approach, and the parties were required to provide the Court with appropriate conditions. Justice Preston also required a condition providing for a biodiversity offset for the loss of the EEC.

In the second judgment, Justice Preston upheld the grant of development consent subject to

stringent conditions which significantly improved the environmental outcomes. These include:

- pre-blasting and cave discovery protocols are to be adopted
- monitoring for caves, voids, fissures and other geodiversity of significance, and sampling for underground fauna species on and outside the site must take place for at least one year before the first blast can go ahead
- monitoring the development over the life of the quarry by an independent panel of experts
- requiring the quarry owner to conserve in the long term 60 hectares of land (including the EEC) as a biodiversity offset, in recognition of the value of the biodiversity on the site and the endangered ecological communities that will be affected by the quarrying
- requiring the quarry owner to remediate and conserve the six hectares of land that will be damaged by the quarrying activities.

Protecting Endangered River Red Gums

Red Gum Forest Action Inc v Forests NSW

The EDO commenced proceedings in the Land and Environment Court on behalf of Red Gum Forest Action Inc (the Group) against Forests NSW. The Group was concerned about the impact of the logging operations on the endangered River Red Gum, contending that Forests

NSW was logging the Riverina Forestry Management Area along the Murray and Murrumbidgee Rivers without the requisite legal approval.

Most forestry operations in NSW are excluded from assessment under Part 5 of the (NSW) *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), being subject to a Regional Forestry Agreement (RFA). The Riverina area was not subject to an RFA as the comprehensive assessment required under an RFA had not been undertaken.

In 2005, the Minister ordered that Part 5 activities like those of Forests NSW are projects under Part 3A of the EP&A Act 1979. However, Forests NSW did not have an approval under Part 3A to log in this area, making the existing logging operations at the time unlawful.

As the matter was progressing towards a hearing the NSW Parliament introduced the *National Park Estate (River Red Gum Reservations) Act 2010*. The Act places much of the River Red Gum Forests into State Reserves and the logging that continues outside of those reserves is now subject to an approval under the *Forestry and National Parks Estate Act 1998*. On this basis, the Group discontinued its case in the Land and Environment Court against Forests NSW.

Legal and Technical Advice

The EDO has a key role to play in helping the community to take action to prevent and minimise adverse impacts on biodiversity, which is under significant threat in NSW and Australia. In 2009-2010, the EDO prepared over forty detailed written advices for or on behalf of clients dealing with threatened species, compliance, enforcement and implementation.

State Level

In 2009-2010, the EDO assisted clients to use various laws in NSW to help ensure the protection of threatened species. Some of the assistance provided by the EDO included:

- Writing to Shoalhaven Council about the need for a species impact statement to be prepared for a development application for the expansion of a golf course requiring the clearing of part of an endangered ecological community. As a result, the golf course was required to prepare a species impact statement.
- Advising clients on private conservation, including a proposed trust agreement with the Nature Conservation Trust and the impacts of exploration activities on a wildlife refuge. The trust agreement was subsequently signed by the clients, providing for the ongoing protection of the biodiversity on their land.
- Writing to the Environment Minister about the National Parks and Wildlife Service's plans to demolish a shed in the Kwiambal National Park that is a maternity roost for the vulnerable eastern cave bat. The Department of Environment, Climate Change and Water responded by agreeing not to demolish the shed.
- Writing to Port Macquarie Hastings Council indicating that a development approval for a rugby club which involved the removal of koala habitat trees had not considered the provisions of *State Environmental Planning Policy 44 – Koala Habitat Protection*. Council subsequently withdrew the development application and advised it will be resubmitted with a design that considers koala impacts.
- Advising a client on a new police college at North Head and potential impacts on the Little Penguin and Long-nosed Bandicoot populations. As a result of EDO involvement, the client was provided with an opportunity to comment on the Fauna Management Plan for the site, with these comments being incorporated into the plan. The EDO has remained involved throughout the construction process by representing the client at bi-monthly community-engagement forums. This has been a very positive, open and transparent process whereby the community has received updates and photographs of the process and compliance with conditions, and can ask questions about how the police are protecting habitat and ameliorating impacts.

- Writing to Gunnedah Council outlining deficiencies with the environmental assessment documents associated with a development application for an airstrip, leading to consideration of the development application being deferred by Council pending further investigation of the impacts of aerial spraying on the environment and a koala population.
- Writing to Railcorp about illegal clearing and impacts on threatened species at Duck River near Granville. In response, Railcorp has undertaken to restore the site through a plan of management.

Last year we reported on the successful case of *Conservation of North Ocean Shores Inc v Byron Shire Council & Ors* which involved a challenge to Byron Shire Council's approval of the Splendour in the Grass festival on land containing a regionally significant wildlife corridor. This year, the importance of the corridor was subsequently reflected in the Draft Far North Coast Regional Conservation Plan, an important planning document that supports the Regional Strategy.

National Level

The (CTH) *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act 1999) is the principal piece of federal legislation for the protection of biodiversity. The Federal Environment Minister has the power to assess and approve activities to which the Act applies. There are several ways in which the community can utilise the provisions

of the EPBC Act 1999 to help protect biodiversity in Australia. In 2009-2010, EDO solicitors and scientists assisted the community in its endeavours by:

- Writing to the Federal Minister for the Environment regarding non-action by the Department of Primary Industries (NSW) contrary to recommendations in the Administrative Appeals Tribunal proceedings *NCC v Minister for Environment and Water Resources & Ors* [2007] to implement conditions for the Ocean Trap and Line Fishery relating to fishing closures.
- Advising a client on the development of new Wildlife Trade Operations for the South Eastern Scalefish and Shark Fishery, particularly changes to conditions affecting Australian sea lions.
- Writing to Repco Rally Australia and the Federal Minister for the Environment requesting that a proposed rally be referred to the Minister for assessment as a controlled action under the EPBC Act 1999.
- Writing to the Federal Environment Minister to refer proposed seabed dredging works adjacent to Kingston Pier at Norfolk Island for approval under the EPBC Act 1999, based on comments provided by marine scientists and coastal engineers on the environmental impact statement.

Policy and Law Reform

State Level

In NSW, the law reform focus has been predominantly on the biobanking and biocertification schemes that have been developed under the (NSW) *Threatened Species Conservation Act 1995*. In relation to biobanking, the EDO has continued as a member of the Ministerial Reference Group and provided the Department with legal and technical feedback on the development and first phase of implementation of the scheme. Similarly, for biocertification, the EDO made field trips, engaged ecologists and undertook extensive research to provide the Department with detailed feedback on legislative amendments and the development of an environmental assessment methodology for biocertification. A detailed submission on the proposed Commonwealth strategic assessment of NSW Biocertification regarding the Sydney Growth Centres was also undertaken. No response from the NSW Government has yet been given.

Also at a state level, the policy and science teams provided advice to the North Coast Environment Council on how the (NSW) *Threatened Species Conservation Act 1995* might be amended to insert requirements for the accreditation of consultants undertaking threatened species assessments, as well as providing legal advice to environment groups on safeguards to enhance the (NSW) *National Parks & Wildlife (Visitors & Tourists) Bill 2010*.

National Level

The EDO, through its policy, science and litigation teams, continued to engage actively at a federal level, primarily through the wide-ranging Hawke Review of the EPBC Act 1999 commenced in late 2008. A number of detailed advices and submissions were provided to the independent review committee, the Environment Minister and national environment groups - for example, on the issue of merits appeals, standing and review rights, prioritisation, listing processes, the role of strategic assessments, the objects of the Act, the "maintain and improve" test and bilateral assessments. This work was done on behalf of ANEDO.

The Final Report of the Hawke Review of the EPBC Act 1999 was released in October 2009 and contained over 70 recommendations. The various EDO submissions were referenced on 45 occasions in the Final Report and several key recommendations were adopted. For example, the Report affirmed the primacy of the principles of ecologically sustainable development, recommended a tightening of the objects and a focus on strategic approaches, supports a "maintain and improve" test, seeks to improve public participation and transparency, and makes a raft of positive recommendations on access to justice.

Also at the federal level, the EDO has engaged on the issue of biosecurity, providing advice to the Invasive Species Council on whether there are any impediments in international

law preventing Australia from prohibiting the import of genetic variants of weeds; and meeting with Department of Agriculture, Forestry and Fisheries and other stakeholders regarding the Beale Review process which relates to reforms to Australia's biosecurity and weeds legislation.

International Level

At the international level, EDO participated in a week long workshop with scientists and lawyers from Australia and the USA on improving decision-making for our oceans, including for fisheries and marine parks. Specifically, the workshop looked at historical baselines for species and how this information could be used to improve decision-making. Funding for this work was provided by, amongst others, the Smithsonian Institute and the International Union for the Conservation of Nature (IUCN). It is intended that the work be published in *Science* in 2010.

Education

The EDO has received funding from the NSW Environmental Trust to undertake a Private Conservation Project. The aim of the project is to promote the uptake of private conservation in NSW by providing free legal advice and community education on the various options available. A new publication has been produced entitled *A Guide to Private Conservation in NSW*. The publication is to be complemented by a series of workshops throughout NSW. In the reporting period, workshops on

private conservation were held in Gloucester and Bulahdelah. A briefing session on private conservation mechanisms was held in Sydney for law firms who have agreed to provide pro bono assistance to the community as part of the Private Conservation Project. This element of the Project is being undertaken in partnership with the Public Interest Law Clearing House. A number of referrals have already been made under this arrangement and we expect to see finalised conservation mechanisms as a result of the referral service by 2011.

The EDO convened a public meeting in Lismore to discuss the (NSW) *Game and Feral Animal Control Amendment Bill 2009* which sought to allow hunting of feral and some native species in national parks and the establishment of private game reserves. There was considerable public opposition to the bill and Parliamentary debate has been adjourned.

The EDO also attended a number of events throughout the year to support community action for the protection of biodiversity and to promote the work of the Office. These include the Big Scrub Rainforest Day in Bangalow, the Upper Clarence River Rally in Tabulam and the Great Eastern Ranges Network Day in Mullumbimby.

Natural Resource Management

Casework

Defending Prime Agricultural Land

Caroona Coal Action Group v Minister for Mineral Resources (No 2) [2010] NSWLEC 1

The EDO took proceedings on behalf of the Caroona Coal Action Group Inc (the Group) in the Land and Environment Court challenging the exploration licence and coal authorisation granted to Coal Mines Australia Pty Ltd by the Minister for Mineral Resources.

In the proceedings, the Group argued that the licence was invalid on three grounds. The first ground was that the licence, which was transferred from the Director-General of the Department of Mineral Resources to Coal Mines Australia Pty Ltd, was not properly renewed in the past, so that there was no valid licence in place to transfer. The second ground was that the proper procedure under the (NSW) *Mining Act 1992* was not followed when the licence was transferred because the Minister purported to grant a new licence, rather than transfer an existing one. Finally, the Group argued that the Minister exceeded his power when granting the licence because it was granted for a period exceeding 5

years, the maximum term for an exploration licence under the Act.

The Court rejected all 3 grounds. The Court found that the first ground was not established by the Applicant, finding that the documentary evidence did not show that the Act was not complied with when the licence was renewed prior to its partial transfer to Coal Mines Australia. In relation to the second ground, the Court found that the legislative requirements for a licence transfer were met. The third ground, although established, was not significant enough to render the grant of the licence void.

The Group is appealing the decision.

BHP v Department of Primary Industries

The EDO lodged an FOI request seeking access to BHP's expression of interest for the exploration licence at Caroona. In response, the Department of Primary Industries determined that some documents should be released and others should not. BHP objected to the release of some of these documents and appealed to the Administrative Decisions Tribunal.

On behalf of the Caroona Coal Action Group Inc, the EDO sought to be joined to the proceedings between BHP and the Department. BHP objected to this application but the EDO was ultimately successful in joining the Caroona Coal Action Group.

BHP then withdrew its application to the Administrative Decisions Tribunal challenging the decision of the

Department to release the contested documents. The documents were subsequently released.

Enforcing Water Pollution Laws

Blue Mountains Conservation Society v Delta Electricity

The EDO has commenced civil enforcement proceedings on behalf of Blue Mountains Conservation Society (the Society), in the Land and Environment Court against Delta Electricity under the (NSW) *Protection of the Environment Operations Act 1997*, for causing water pollution. Water quality testing results from upstream and downstream of a discharge point from Wallerawang Power Station, as well as from the discharge point itself, indicate that the power station is introducing salts and metals into a river which runs into Sydney's drinking water supply. The enforcement authorities were advised but failed to act, prompting the Society to utilise the third party civil enforcement provisions under the Act.

The EDO successfully obtained a 'protective costs order' in the amount of \$20,000. The order caps the costs payable on a party/party basis in the proceedings. This is an important access to justice issue as the Society could not afford to continue with the proceedings unless its liability was limited. Delta Electricity has appealed this decision to the Court of Appeal. Judgment has not yet been handed down.

Challenging the Expansion of Gold Mines

Barrick Gold v Neville Chappie Williams [2009] NSWCA 275

As reported last year, the EDO acted for Neville "Chappie" Williams in defending an appeal by mining company Barrick Australia Limited from judgment delivered by Justice Biscoe in the Land and Environment Court.

The case concerned an application by Barrick to significantly expand and intensify its mining operations at Lake Cowal, including an increase in the mine's operational life by 11 years. Mr Williams is a Wiradjuri Traditional Owner, custodian and native title claimant in respect of the land and waters on which the Cowal Gold Mine is located. The mine has been the subject of intense and ongoing community concern since its inception.

In the Land and Environment Court, Justice Biscoe held that Barrick's application to 'modify' the existing mine approval in fact proposed a 'radical transformation' of the Cowal Gold Mine. As such, the Court held that the application did not constitute a modification request for the purposes of Part 3A of the (NSW) *Environmental Planning and Assessment Act 1979*.

This matter was heard by the Court of Appeal which upheld the appeal, overturning Justice Biscoe's orders.

Challenging Coal Mining Under Woronora Reservoir

Rivers SOS Inc v Minister for Planning & Helensburgh Coal Pty Ltd [2009] NSWLEC 213

The EDO commenced proceedings in the Land and Environment Court on behalf of Rivers SOS against the Minister for Planning and Helensburgh Coal Pty Limited. The appeal was against the Minister's decision to approve the Metropolitan Coal Project under Part 3A of the (NSW) *Environmental Planning and Assessment Act 1979*. Rivers SOS was concerned about the potential for mining operations to crack or compromise the stability of the bedrock beneath Woronora Reservoir and threaten the water supply of the Illawarra community.

The Minister had directed the Planning Assessment Commission (the Commission) to consider submissions, hold a public hearing and report on the potential subsidence impacts of the Metropolitan Coal Project on the environment. After the public hearing and submission process, the mining company submitted a significantly different mine plan for consideration. The Commission then considered and reported to the Minister on the revised mine plan, which was ultimately approved by the Minister without further community or agency input.

There were several grounds of appeal in this case, with the arguments centred on the Commission process. Justice Preston upheld the approval, finding that the process was not

flawed, there was no obligation on the Commission to hold a further public hearing on the revised mine plan and there was no breach of natural justice.

The approval allows for an expansion of the coal mine, including extraction of up to 3.2 million tonnes per annum of coal over 23 years using longwall mining techniques directly beneath the Woronora Reservoir.

Protecting Marine Environments

No Ship Action Group Inc v Minister for the Environment, Heritage and the Arts & Anor

The EDO is acting for the No Ship Action Group Inc (the Group) in proceedings in the Commonwealth Administrative Appeals Tribunal (AAT). The Group is challenging the decision of the Minister for the Environment's delegate to grant a permit allowing the scuttling of the ex-HMAS Adelaide off Avoca Beach for the purpose of an artificial reef. The Group's concerns include the likelihood of Polychlorinated Biphenyls leaching into the marine environment.

The permit was granted under the (CTH) *Environment Protection (Sea Dumping) Act 1981*. The decision was made to grant the permit on 22 March 2010. The NSW Department of Lands intended to scuttle the ship on 27 March 2010. At an urgent hearing on 24 March 2010, Justice Downes, President of the AAT, granted a stay on the decision to scuttle the ship until the proceedings are determined.

The proceedings will consider whether the decision of the Minister's

delegate to grant the permit is the correct or preferable one on the basis of expert evidence. Four experts were engaged to provide expert reports, with two of them appearing as expert witnesses at the hearing. This case will also look at the consistency of the proposed scuttling with the 1996 Protocol to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972*. The case is listed for hearing on the 5-8 July 2010.

Fighting for Better Regulation of the Snowy River

Snowy River Alliance v Minister for Water

The EDO is acting for the Snowy River Alliance Inc (the Alliance) in their challenge to the Water Administration Ministerial Corporation's (the Corporation) review of the Snowy Hydro water licence, and a subsequent variation to the licence.

The (CTH) *Snowy Hydro Corporatisation Act 1997* requires the Corporation to conduct a review of the obligations under the licence relating to the "Snowy River Increased Flows" and to exhibit a copy of any state of the environment reports prepared by the Snowy Scientific Committee.

[Postscript: On 23 July 2010, the EDO commenced proceedings in the Supreme Court of NSW on behalf of the Alliance challenging the validity of the review. The Alliance is arguing that the Corporation's review failed to meet the description of "review"

as required by the Act and failed to exhibit any Committee reports prior to the review. If the review is found to be invalid, the variation to the licence may also be invalid].

Legal and Technical Advice

This year the EDO provided 35 detailed written advices to clients relating to the management of natural resource management. The main areas of concern were mining, water, native vegetation and forestry.

Mining

Mining is an ever expanding part of the EDO's practice with a considerable number of inquiries from the community throughout the reporting period. A suite of new mining proposals and exploration licences throughout NSW, as well as the expansion of existing mines and quarries – such as at North Parkes, Cadia, Duralie and Blakewood – were the source of much of this concern. Some of the matters the EDO assisted the community with included:

- Writing to the Minister for Planning about apparent breaches of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* in relation to proposed auger mining in the Lake Macquarie area. As a result, the SEPP was changed to prevent mining in the area.
- Advising a client on petroleum and gas exploration on the Liverpool Plains.
- Assisting a client to challenge a proposed expansion of Duralie

Coal Mine, including providing technical advice on issues relating to irrigation with waste water and facilitating expert advice in relation to water re-use and water quality in Mammy Johnson's River.

- Advising a client on the legality of proposed offsets for the proposed Calga sand quarry.
- Assisting EDO WA on the LNG gas plant proposed for the Kimberley Coast.
- Assisting a client to refer the Gloucester Coal project for assessment under the EPBC Act 1999 which resulted in the Department assessing the project.

Water

Issues relating to water quality and water management accounted for a number of inquiries to the Office over the reporting period. Oftentimes, these issues are related to other areas of natural resource management such as mining – for example, the over-extraction of groundwater by a sand quarry or the impacts on Mammy Johnson's River of the expansion of the Duralie Coal Mine – or logging. Other inquiries included advising on bores for town water and the impacts on water ecology and advising a client on alleged breaches of the Paroo River moratorium and prospects of challenging works to capture water from the Paroo River. The Office is currently working on a policy submission on the Paroo River moratorium.

The EDO assisted clients to obtain information on water licences and

Tillegra Dam under Freedom of Information laws. The information has significantly helped the client's campaign efforts in relation to the Tillegra Dam proposal. The approval for the dam has been delayed while the Minister considers whether independent environmental reports are necessary.

In another Freedom of Information matter, the EDO assisted clients to apply to access a report into water quality management in Sydney. After initially refusing to release the report, the NSW Government did so following the FOI application.

Native Vegetation and Forestry

The management of native vegetation in NSW has been the subject of a number of legal advices over the reporting period, with inquiries about illegal clearing and private native forestry being prominent, particularly in the northern part of NSW. Work in assisting the community on forestry issues included:

- Writing to Forests NSW requesting that they cease logging of a listed Aboriginal Place in breach of the (NSW) *National Parks and Wildlife Act 1974*. As a result, Forests NSW stopped the logging.
- Writing to the Minister for Environment about alleged forestry breaches in Yabbra State Forest. The Department of Environment, Climate Change and Water substantiated a number of the allegations and issued Forests NSW with four Penalty Infringement Notices in relation

to the identification of wetlands, rainforest and yellow-bellied glider sap feed trees. The Department also issued Forests NSW with a formal warning letter in relation to the selection and marking of habitat and recruitment trees, exclusion boundaries and surveys for frogs.

- Providing ongoing advice to a client on breaches of an Integrated Forestry Operations Approval, including the requirement to undertake koala surveying, by logging operations near Bega. As a result of this advice, some stop work orders have been issued.

Advice provided by the EDO relating to forestry also included the interaction between native forest policies and practices and the mandatory renewable energy target legislation; the obligation of Forests NSW to consult, including with the Aboriginal community; the role of nuisance under the common law; the powers of the Minister under the (NSW) *Forestry and National Parks Estate Act 1998* to remedy breaches by Forests NSW of forestry regulations; and potential defences available to logging protestors charged with various offences.

Policy and Law Reform

The EDO policy team has worked across a range of natural resource management areas. Some highlights include:

Water

Much of the focus of water law reform was at the federal level in 2009-2010.

The EDO prepared a submission in partnership with its Victorian colleagues to the Murray Darling Basin Authority on sustainable diversion limits focussing on environmental water and implementing international obligations. The policy team is involved in ongoing liaison with EDO Victoria and conservation groups working on water reforms in relation to the Murray Darling Basin Plan.

At a state level, EDO presented evidence to the Natural Resource Management (Climate Change) Committee - NSW Parliamentary Inquiry into sustainable water management based on its submission on best practice water management with reference to the impacts of climate change. This evidence was backed up by advice provided by the EDO's Scientific Advisory Service on the predicted impacts of climate change on environmental flows and water resource management.

The EDO also provided ongoing legal advice to the Nature Conservation Council Water Group which discusses water policy and legislative processes.

Native Vegetation

The EDO has again been busy in this area with submissions on the review of the (NSW) *Native Vegetation Act 2003* recommending significant changes to enforcement and proposing a new climate change objective as well as the National Framework for Native Vegetation, which outlined the role of best practice native vegetation legislation in underpinning the goals of the framework. The EDO

also provided advice to EDO NT on draft legislation designed to regulate land clearing in the Northern Territory to inform EDO NT submissions to the Northern Territory Government on the issue.

In February 2010, the EDO also prepared a submission to the Senate Finance and Public Administration Reference Committee inquiry into native vegetation laws, greenhouse gas abatement and climate change laws. The inquiry's terms of reference included examining the impact of Australian native vegetation laws and greenhouse gas abatement measures on landholders, including compensation arrangements for the imposition of such laws.

The submission stressed that compensation is only payable under the Australian Constitution for acquisition, not regulation of natural resources, and therefore, no compensation should be payable to landholders for the imposition of laws restricting the clearing of native vegetation. Moreover, there is no right to compensation under state constitutions. The submission also emphasised that there are strong policy reasons for this approach, including that the requirement to pay compensation would stifle environmental protection laws.

The EDO policy team appeared before the Committee via teleconference in April 2010 with the Report of the Inquiry released later that month. The submission was referred to 13 times, including the evidence given before the Committee.

The EDO's participation was significant in two respects. First, the EDO and the Wentworth Group of Concerned Scientists were the only organisations that participated in the Inquiry that represented the interests in the environment and the public interest in protecting native vegetation. Second, the final recommendations of the Committee did not include any recommendations relating to compensation for landholders.

Mining

The EDO made a submission to Industry and Investment NSW commenting on the proposed Mining Regulation. The submission referred to performance record, rehabilitation and environmental management plans, penalty notices, continuing offences and derelict mine sites.

Forestry

The EDO produced a consultancy report for the Murray Lower Darling Rivers Indigenous Nations outlining legal options for the management of the Werai State Forest Block in NSW. Following this work, the Werai Forest is to be declared an Indigenous Protected Area.

The EDO made a submission to the review of the NSW Regional Forest Agreements, and a submission to the NSW Department of Primary Industries with a focus on ensuring best practice standards for plantations under the (NSW) *Plantations and Reafforestation Act 1999*.

We also provided Greenpeace with drafting instructions for a

new federal law to ban the import of illegally sourced timber.

Education

The Education team undertook a range of education projects relating to natural resource management in 2009-2010. Workshops were held in Orange, Griffith and Harden complementing the publication *The Rural Landholder's Guide to Environmental Law in NSW*. Two workshops were also presented on native vegetation law – in Nambucca and Coffs Harbour. The community continued to request information on mining law and we held workshops in Gloucester and Majors Creek dealing with mining, Part 3A and advocacy.

The EDO is currently working on a Coastal Law project with funding from the Commonwealth Government to produce a publication, *Caring for the Coast: A guide to environmental law for coastal communities*. A number of workshops on coastal law and climate change will be presented as part of that project. So far, we have had workshops in Nowra, The Entrance and Merimbula.

Over the past year, EDO staff delivered a number of presentations on issues relating to natural resource management including using the law to protect the land; property rights and regulation; environment protection and natural resource management; and environmental assessment processes for water.

Environmental Justice

Casework

Protecting Aboriginal Cultural Heritage

Munro and Nean v Minister for Planning and Moree Plains Shire Council

The Minister for Planning approved a rezoning application in Moree to facilitate the building of a Big W department store on Taylor Oval. Taylor Oval is the main rugby league and cricket ground in Moree and also a significant site for the local Aboriginal community who believe it is situated near a burial ground for the Gomeroi nation. Bodies of Aboriginal persons were excavated on the site in 1903. The site has also been important for reconciliation in the town as an area where both Aboriginal and non-Aboriginal people have mixed over the generations.

The EDO acted for two elders of the Moree Aboriginal community who challenged the rezoning. The case focused on whether the Planning Minister and Moree Council followed the correct procedure for rezoning land under the (NSW) *Environmental Planning and Assessment Act 1979*.

The Council conceded that they did not follow the correct procedure in exhibiting and approving the draft LEP by which they sought to rezone the land and agreed to the orders to set aside their decisions.

Related proceedings continued in the Supreme Court against the decision by the Minister for Lands to revoke the dedication of Taylor Oval for public purpose recreation. The EDO sought a declaration that the decision of the Minister for Lands to notify the revocation of Crown Reserve at Taylor Oval is void, and related injunctions. The revocation of the dedication is an important step in allowing the Department of Lands to lease or otherwise deal with the land to enable the Big W development to proceed.

The parties agreed to consent orders to restrain the Minister for Lands from taking any steps to revoke the dedication of Taylor Oval for public purpose recreation.

Defending Environmental Protestors

Burke v Director of Public Prosecutions

The EDO acted for environmental activist, Sean Burke, in his criminal appeal against convictions for obstruction and intimidation. Mr Burke participated in a peaceful protest blockade in the Bodalla State Forest and was charged with and convicted of obstructing the path of loggers and intimidation under the (NSW) *Crimes Act 1900*.

The EDO acted for Mr Burke in his appeal against the conviction. The appeal was heard in the District Court. The Court found that there was no evidence which could support a conviction for intimidation. Mr Burke's appeal was allowed and the intimidation conviction was quashed.

Woods & Ors v Director of Public Prosecutions

The EDO acted on behalf of four climate change protestors in a criminal appeal against an order of Raymond Terrace Local Court for the protestors to pay Tomago Aluminium Company Pty Limited \$5000 under the (NSW) *Victims Support and Rehabilitation Act 1996*.

The protestors attached themselves to railings on the premises of Tomago Aluminium Smelter, blocking the passage of trucks. The protestors were charged and convicted with entering inclosed lands and resisting or hindering police. In addition, a victim's compensation order was imposed on them.

The appeal was heard in the District Court. The protestors argued that there was no reliable evidence supporting the alleged loss and there was no link between the offence and the alleged loss to justify the awarding of the compensation order. The protestors also sought to question whether it is appropriate for the (NSW) *Victims Support and Rehabilitation Act 1996* to be invoked by big business to deter or disable peaceful political expression.

In an important decision, the appeal was allowed and the compensation order was quashed.

R v Flint, Daines & McLean

The EDO represented three protestors who were charged with Trespass and Approach under the (NSW) *Forestry Regulation 2009* for blockading forestry operations in the Red Gum State Forest of Millewa, near Deniliquin.

The protestors resorted to direct action to prevent the logging of the iconic forests as they believed the logging was occurring without lawful authority.

Deniliquin Local Court was asked to determine the legality of the logging operations. As there was no approval for the forestry operations, the charges could not be upheld. All three protestors were found not guilty.

Police v Adair & Ors; Adair & Ors v Director of Public Prosecutions

In an action directed at the failure of the Copenhagen climate change talks, 23 protestors from Rising Tide

blocked rail lines and stopped a coal train to the port in Newcastle. Twenty two of the 23 protestors were charged with two offences under the (NSW) *Rail Safety (Offences) Regulation 2008*: one charge for going onto, and a second charge for remaining on, running lines associated with rail infrastructure.

At the hearing, following negotiations with Counsel, police agreed not to pursue the victim's compensation order and agreed to drop one of two charges against the protestors. All were convicted of the remaining charges; those with no prior convictions were each fined \$250 and those with prior convictions were each fined \$750.

The EDO further acted for those protestors with no prior convictions in appealing the severity of the sentence on the basis that the Magistrate ought to have exercised her discretion under s 10 of the (NSW) *Crimes (Sentencing Procedure) Act 1999*. The convictions against the 14 protestors with no prior convictions were dismissed.

Legal and Technical Advice

The EDO's priority area of environmental justice is a broad church, encompassing the protection of Aboriginal cultural heritage, public health issues, access to justice issues and criminal matters. In 2009-2010, EDO solicitors provided 16 detailed written advices for or on behalf of clients on matters relating to Environmental Justice.

Aboriginal Cultural Heritage

In 2009-2010, the EDO assisted in the protection of Aboriginal cultural heritage by:

- Advising a client on cultural heritage law reform, including draft Community Consultation Requirements for NSW Aboriginal Heritage Impact Permits. As a result, the Requirements were improved upon.
- Preparing a submission on behalf of a Land Council on the cultural heritage assessment report for the expansion of Champions quarry.
- Advising a client on a deed of agreement with Lismore City Council to consult on the heritage impacts of development applications in the Lismore Shire.
- Assisting EDO NT with work on Muckaty nuclear waste dump and providing advice on the *National Radioactive Waste Management Bill* for groups working with the Traditional Owners of Muckaty Station.
- Advising a client on issues about accessing Sydney Catchment Area land and damage to Aboriginal cultural heritage from Bulli Coal seam and surrounding projects.

Public Health

Where environmental systems are damaged or contaminated, there is often a corresponding public health issue. The EDO often receives requests for assistance from the community on their options in relation to threats to public health. In the past year, this has included providing ongoing advice to a client about the burning of waste on Norfolk Island; writing to the Minister for Planning on behalf of Ryde residents about the health risks associated with electricity infrastructure and substations; and assisting a client to draft a submission on the health impacts of a local electricity substation.

One significant area of endeavour relates to the Office's work with Singleton Shire Healthy Environment Group on coal and health in the Hunter Valley. This included writing to various Ministers on the issue and the science team undertaking a site visit and working closely with a client to provide assistance on a report on public health in the Lower Hunter in an effort to raise awareness of the health impacts of coal mining. The Government responded by establishing a network to monitor air quality across 14 sites in the Upper Hunter Valley and promising to develop a health risk assessment plan for mining operations.

Policy and Law Reform

Aboriginal Cultural Heritage

The EDO policy team and EDO's Aboriginal Solicitor have invested a good deal of time and energy on the issue of reform of Aboriginal cultural heritage laws. This included convening a second roundtable of Traditional Owners to discuss law reform and specifically the issue of what a new stand alone Cultural Heritage Act should look like. This followed on from a roundtable in May 2009 with Indigenous experts, organisations and Traditional Owners where stand alone laws were sought. A draft report on the outcomes of the Roundtable has been sent to participants for review and a final report will be sent to the Environment Minister and the Aboriginal Cultural Heritage Advisory Committee in due course.

In June 2010, the NSW Government made significant amendments to Indigenous heritage laws, including introducing new strict liability offences, increased penalties and the broadening of general enforcement powers to mirror those in place for polluters. Importantly also, the Government made a commitment at the time of the changes to develop stand alone legislation within two years. The EDO expects to be part of the Working Party of the Environment Minister to progress this work.

The EDO also made a submission to the Department of Environment, Water, Heritage and the Arts on the review of the (CTH) *Aboriginal*

and *Torres Strait Islander Heritage Protection Act 1984*. The submission strongly supported a comprehensive review and amendment of the Act and the proposal to introduce a national scheme for the protection of Indigenous cultural heritage, including a nationally consistent set of best practice standards to be implemented and enforced across all states and territories.

Furthermore, the EDO made a submission to the Department of Foreign Affairs and Trade on the proposed Access and Benefit Sharing protocol under the *Convention on Biological Diversity 1993* to emphasise the importance of protecting Indigenous rights, particularly around protecting the use of traditional knowledge.

Access to Justice

In relation to broader access to justice issues, EDO's law reform work included:

- A submission to the Legal and Constitutional Affairs Legislation Committee on the *Access to Justice (Civil Litigation Reforms) Amendment Bill 2009* emphasising that more focus was needed on removing costs impediments for public interest litigants in the Federal Court. The Committee's report referenced the EDO's submission 11 times and specifically endorsed the recommendation to amend the bill to allow security for costs orders to be appealable. The bill has yet to pass the lower house;
- A submission to the Attorney-General's Department focussing on two areas: public interest costs orders and funding to enhance access to justice in the area of public interest environmental law. The Attorney-General's Department has informed the EDO that there will be no formal government response to submissions but that these have been considered and have informed a number of proposed access to justice measures which are forthcoming;
- A submission to the NSW Law Reform Commission's inquiry into the law and practice relating to security for costs and associated orders. The Law Reform Commission has indicated that it is preparing a consultation paper in response to the submissions received.

New Freedom of Information laws at both at NSW and Commonwealth level have now passed through Parliament. The EDO provided submissions on both these processes in the last financial year, and many of its recommendations were reflected in the final versions of the bills that were passed. The EDO had made a number of key recommendations to achieve a culture of openness, transparency and accountability, including the creation of an independent statutory position of Information Commissioner, which has been adopted.

Education

The EDO presented a comprehensive workshop on defamation, injurious falsehood and potential breaches of the (CTH) *Trade Practices Act 1974* and hosted a seminar on the health impacts of coal. A new online fact sheet was produced to provide guidance on commencing Class 4 proceedings in the Land and Environment Court. The EDO also legal-checked and edited a series of fact sheets prepared by the NSW Aboriginal Land Council on reforms to the planning system.

In addition, EDO staff delivered a number of papers and presentations on using the law to promote sustainability; public participation in the enforcement of environmental laws; Aboriginal culture and heritage; avoiding defamation; and environmental justice.

Corporate Social Responsibility and Governance

Legal and Technical Advice

Environmental law is in a constant state of evolution. New approaches are continually being devised to deal with old and new problems. Clients, particularly the peak groups, are also continually looking to the EDO for different ways of solving environmental problems and the EDO is increasingly asked to assist clients in relation to the activities of corporations or to advise clients on the laws regulating corporations. Strategic action against certain corporate behaviour can have positive environmental outcomes. In 2009-2010, the EDO completed a number of detailed written advices for or on behalf of clients, including:

- Preparation of complaints to the ACCC on behalf of clients about claims made in relation to hunting and conservation in NSW Forests as well as in relation to a planned world rally event in the Northern Rivers
- Advice to a client in relation to alleged misleading and deceptive conduct by Monsanto regarding genetically modified crops
- Advice to a client on a potential breach of food labelling laws relating to genetically modified products

- Writing to the Department of Planning about misleading heritage information in an Environmental Assessment.

Policy and Law Reform

The EDO drafted a submission on the Review of Food Labelling Law and Policy, recommending the need for a mandatory environmental food labelling program. The Office also provided legal advice on law reform relating to the labelling of palm oil in food products.

The Legislative Assembly Committee released a Report on its Inquiry into Environmental Impact Reporting in the NSW Public Sector. The Report contains over 30 references to the EDO's submission and evidence (in 2007-08, the EDO made a submission and appeared before the Committee to give evidence). The Committee adopted several key EDO recommendations, including recommendations that environmental impact reporting be extended to all NSW public sector agencies, that agencies should report to Parliament on their environmental performance in their annual report, that environmental performance of agencies be independently audited and that the NSW Government Sustainability Policy be assessed against the principles in the Global Reporting Initiative. In turn, the Government's response to the Report supported two of the four recommendations above.

Last year, the EDO participated in the Inquiry into Sustainable

Procurement in NSW. The Public Accounts Committee released its report on the Inquiry in March 2010. The Committee noted the EDO's assertion that the NSW Government has an obligation to use its purchasing power wisely by being mindful of the environmental consequences of its purchases. Moreover, it mentioned the EDO's claim that the Government can help create a market in sustainable products by setting a purchasing example for other consumers in NSW. The Committee endorsed this proposal through Recommendation 6 of its report:

"The Committee recommends that the Government establish whole-of-government and departmental leadership on the issue of environmentally sustainable procurement by identifying the persons or bodies that are best placed to promote the Government's goals."

Education

As part of a broad endeavour to rethink the boundaries of environmental law, EDO staff often present on issues outside traditional environmental law. This year, papers and presentations have included corporate social responsibility and environmental law; the law relating to genetically modified organisms; taxation reform and torts and the environment.

PART C:

REPORTING AND GOVERNANCE

EDO Clients

In 2009-2010, the EDO provided legal assistance to hundreds of clients, including a diverse range of individuals and community organisations. Organisations assisted by the EDO during the year include:

- Barrington Gloucester Stroud Preservation Alliance
- Blue Mountains Conservation Society
- Building A Better Kuringai
- Calga Peats Ridge Community Group and the Australia Walkabout Wildlife Park
- Camberwell Common Trust
- Caroon Coal Action Group
- Catherine Hill Bay Progress Association
- Clarence Environment Centre
- Darling River Action Group
- Friends of the Koala
- Gloucester Residents in Partnership
- Greenpeace
- Gwandalan and Summerland Point Action Group Inc
- Hill Top Residents Action Group
- Humane Society International
- Hunter Environment Lobby Inc.
- Nature Conservation Council
- Newcastle & Hunter Valley Speleological Society Inc
- North East Forest Alliance Inc
- Old Bar Beach Sand Replenishment Group Inc
- Redhead Residents' Action Group
- Save Water Alliance
- Snowy River Alliance
- Stringy Bark Creek Residents' Association Inc
- Sydney Coastal Councils Group
- The Wilderness Society
- Total Environment Centre
- Tucki Community Against Mega Quarry
- Tweed Heritage Residents Association
- Valley Watch Inc

Acknowledgements

Volunteers

The Sydney Office has capacity for up to six volunteers per day and the Northern Rivers Office also engages volunteers from time to time. Volunteers assisted with the work of the Office across all functions but primarily with the provision of legal advice and casework services

Volunteers greatly enhance the capacity of the Office to provide accurate and timely assistance to clients. The EDO would like to thank the following volunteers from 2009-2010 for their commitment and hard work:

- Melissa Baker
- Andrea Bassett
- Damian Beaufile
- Dylan Birchall
- Andrew Brickhill
- Ben Buckingham
- Alice Busby-Smith
- Jennifer Butler
- Brendan Cahill
- Oliver Cashman
- Lelien Chua
- Anicia Clarke
- Phillip Divisek
- Fleur Downard
- Blake Dyer
- Bianca Fernandes
- Jennifer Garrick
- Christine Graff
- Evan Vaughan Hamman
- Yvonne Hales
- Sarah Hort
- Elena Kirillova
- Catherine Lancaster
- Gabrielle Lauder
- Vincent Lauvergnier
- Melissa Lee
- Montana Linkio
- Clara MacDermott
- Lisa Maddocks
- Roland Miller McCall
- Julie McElroy
- Emma Ryan McGinn
- Tamina Mistry
- Jaclyn Nelson
- Luke Noonan
- Marguerite Pettit
- Emma Pollard
- Alana Richmond-Rex
- Matt Roberts
- Naivasha Safaya
- Danica Sajn
- Harshini Samarakoon
- Bronwyn Scroope
- Sonali Seneviratne
- Julia Sidnell
- Allison Smith
- Chris Taylor
- Elise Trask

- Etta Watts-Russell
- Elliott Weston
- Kylie Wilson
- John Windschuttle
- Yang Xu
- Alice Chen Yan
- Tom Yeoman
- Daniel Zanello
- Joanna Zhou

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.

Legal Assistance

The EDO would like to thank the following barristers, solicitors and firms who provided their time and assistance with EDO litigation and other matters in 2009-2010:

- Christine Adamson SC
- Peter Brereton SC
- Phil Greenwood SC
- Craig Leggatt SC
- Ian Lloyd QC
- Stephen Lloyd SC
- Bruce McClintock QC
- Tim Robertson SC
- Neil Williams SC
- Ken Averre
- Matthew Baird
- Fenja Berglund
- Blake Dawson
- Chloe Burnett
- DLA Phillips Fox
- Lisa Doust
- Nick Eastman
- Freehills
- Gilbert & Tobin
- Jackie Gleeson
- Henry Davis York
- Tom Howard
- James Johnson
- Geoffrey Kennett
- Patricia Lane
- Patrick Larkin
- Jason Lazarus
- Craig Lenehan
- Sarah Mahmud
- Chris McGrath
- Miranda Nagy
- Chris Norton
- Andrew Pickles
- Sarah Pritchard
- Fleur Ramsay
- Richmond Chambers
- Declan Roche
- Mark Seymour
- Kristina Stern
- Houda Younan

Scientific and Technical Assistance

The EDO would like to thank the following experts, both on and off the Expert Register, who provided assistance during 2009-2010, and all those who provided assistance anonymously:

- Adrian Brown
- Craig Dalton
- Peter deFur
- Dr Mark Diesendorf
- Martin Fallding
- Georgia Garrard
- Ian Goodwin
- Werner Hoyt
- Andy Marr
- Iain McGill
- Wendy Morrison
- Hugh Outhred
- Steve Paulsen
- Andy Pitman
- Martin Predavec
- Debashis Raha
- Brett Stevenson
- Tim Stubbs
- Harley Wright

Donors

As a non-government and non-profit organisation, the EDO gratefully accepts support from a range of sources. The support received helps the Office to achieve its mission

and in no way compromises the independence of the organisation. The EDO would like to acknowledge the following individuals and organisations (as well as those who choose to remain anonymous) for their generous financial and/or in-kind support:

- Geoffrey Ball
- Andrew Chalk
- Peter Cosier
- Community of Congewai Catchment Inc
- DLA Phillips Fox
- Environment and Planning Law Association (NSW) Inc.
- Dr Richard Gates
- Great Lakes Environment Association Ltd
- Sylvia Hale
- Felicity Hall
- Dr Ronnie (Helen) Harding
- Frank Hubbard
- Dr Andrew Kelly
- Michael Kennedy
- Robert Kinnane
- Judy Lambert
- David Lemcke
- Dr Peter Melser
- Tony Moody
- Oatley Flora and Fauna Conservation Association Inc
- Parks and Playground Movement Inc
- Warwick Pearse
- David Pettigrew
- Barbara Richardson

- Patricia Ryan
- James Tedder
- Paul Toni
- Philippa Walsh
- John Weate
- Murray Wilcox AO QC
- Willoughby Environment Protection Association
- Hal Wootten AC QC

EDO People

Staff

At 30 June 2010, the staff of the EDO comprised:

Director

Jeff Smith

Principal Solicitor

Kirsty Ruddock

Senior Solicitors

Ian Ratcliff (Northern Rivers)

Sue Higginson (Northern Rivers)

Jessica Wood (Northern Rivers – currently on leave)

Solicitors

Neva Collings

Melissa Jolley

Beomjin (BJ) Kim

Natasha Hammond-Deakin

Policy Director

Rachel Walmsley

Policy Officers

Robert Ghanem

Richard Howarth (currently on leave)

Gillian Duggin

Scientific Director

Tanya Wansbrough

Scientific Officer

Kristy Graham

Education Director

Jemilah Hallinan

Education Officers

Mark Byrne (Northern Rivers)

Nicholas Angel

Project Officer

Rosemary Bullmore

International Program Director

Amelia Thorpe

Operations Manager

Meredith MacDonald

IT/Administrator

John Scanlan

Receptionist/Administrator

Diana Beaton

Staff Changes

The EDO has experienced quite a few changes during the past year, many of them related to the current baby boom! The Operations Team is the only one that has remained unchanged throughout the year.

In the Policy Team, Rachel Walmsley returned from maternity leave in November 2009 and Robert Ghanem returned to his Policy Officer position after acting as Policy Director during Rachel's absence. Richard Howarth took 12 months leave without pay to gain valuable experience working as an AYAD volunteer in Fiji. Gillian Duggin was promoted to Policy Officer and also assisted with the International Program. Her position will cease after Richard returns to the Office.

Felicity Millner left the Litigation Team but has remained part of the EDO family, having taken up the Principal Solicitor position at EDO Victoria, a role she held briefly at EDO NSW while Kirsty Ruddock was on maternity leave. Natasha Hammond-Deakin commenced as a locum while Kirsty was on leave and she has remained.

In the Northern Rivers, Jessica Wood returned from leave in a part-time capacity, assisting with some of the enquiry load from Sydney as well as in the Northern Rivers; she proceeded on maternity leave in late June 2009. Sue Higginson was promoted to Senior Solicitor and both she and Ian Ratcliff also gained experience as Acting Principal Solicitor while Kirsty was away.

In the Science Team, there were a number of changes. Kristy Graham resigned as Scientific Officer. She was replaced by Tanya Wansbrough. When Tom Holden left the Scientific Director's position, Tanya was promoted into his role. A new Scientific Officer has been recruited and will commence in August 2010. In the meantime, the Science Team relied on interns until Kristy returned in June to support the team for a couple of months.

The Programs area was restructured at the beginning of the year to reflect the growing International Program and other changes. Following her return from maternity leave, Amelia Thorpe took up the new three day per week position of International Program Director. Education is now a separate program area with Jemilah Hallinan promoted to Education Director, Nick Angel taking up a part-time position as Education Officer and Rosemary Bullmore's temporary position as Project Officer was able to be funded for the full year.

The Office was fortunate in being able to employ a number of casual staff for various periods during

the year. Gabrielle Brine provided casual support to the Operations Team; Yvonne Hales worked on updating the EDO's factsheets; Andrew Brickhill and Alexandra Cave worked as Science Interns; Sonali Severatne as a Legal Intern; Emma Pollard as an International Program Intern; Tisha Dejmanee as Education Assistant and Melanie Kuhne as Conference Assistant.

Staff Training and Development

The EDO continues to support the training and development of its staff to enhance their capacity to deliver high quality advice and assistance for its clients. 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 2009-2010, EDO staff attended a total of 112 training sessions.

Board of Management

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

The EDO Patron and members of the Board during 2009 – 2010 comprised:

Patron

Mr Hal Wootten AC QC

Chair

The Hon. Murray Wilcox AO QC

Retired Judge

Attended 8 of 9 meetings

Vice-Chair

Prof. Michael Jeffery QC

Queens Counsel and Professor

(Environmental Law, University of Western Sydney)

Attended 5 of 9 meetings

Secretary (to AGM 2009)

Warwick Pearse

Consultant

Did not re-nominate for election at 2009 AGM

Attended 2 of 3 meetings

Secretary (from AGM 2009)

Mr Andrew Cox

Environmental Consultant

Attended 6 of 9 meetings

Treasurer

Ms Helen Gillam

Lecturer (Accounting, University of Technology, Sydney)

Attended 5 of 9 meetings

Ms Barbara Adams, PSM

Retired Senior Public Servant

Attended 8 of 9 meetings

Mr Andrew Burke

Solicitor

Appointed 23/6/10

Attended 1 of 1 meetings

Ms Louise Byrne

Barrister

Attended 6 of 9 meetings

Cate Faehrmann

Executive Director, Nature
Conservation Council of NSW
Resigned 4/6/10
Attended 3 of 8 meetings

Dr Ronnie Harding

Retired Academic (Environmental
Studies, University of NSW)
Appointed 21/10/09
Attended 4 of 5 meetings

Murray Hogarth

Sustainability Advisor and Writer
Resigned 13/5/10
Attended 7 of 8 meetings

Mr Frank Hubbard

Director, Corporate Responsibility,
InterContinental Hotels Group
(Australasia)
Attended 5 of 9 meetings

Ms Kate Smillie

Regional Manager, Nature
Conservation Trust of NSW
Appointed 2/12/09
Attended 3 of 5 meetings

Funding and Financial Report

Funding from Grants

The EDO is overwhelmingly dependent on grants to fund its operations. The major source of funding for the organisation is the Public Purpose Fund (PPF). This is triennial funding and the current grant is for the period 2009 to 2012. The PPF provided \$1,563,000 or about 65% of the EDO's income in 2009-2010.

Triennial funding is also received from both the Commonwealth Attorney-General's Department and Legal Aid NSW through the Community Legal Services Program (CLSP). The Funding Agreement covering the period 2005-2008 was extended twice for an additional year while the Commonwealth completed a review of the Program. The EDO was pleased to receive another triennial grant for CLSP funding for the period 2010-2013, which will provide a more secure financial base for all the community legal centres that are funded under this Program.

CLSP funds from the NSW Government accounted for \$179,200 or about 7.5% of the EDO's income in 2009-2010; Commonwealth funding amounted to \$92,448 or 3.9% of overall revenue.

The EDO also benefitted from a triennial grant from the

NSW Government through its Environmental Trust under the Lead Environmental Community Groups Grants Program which contributes to the organisation's administrative costs. The EDO was awarded \$180,000 in funding for the period 2009-2012. As this funding was not received until mid-way through the year, only \$36,000 was taken up this year with \$72,000 available in subsequent years.

The John D. and Catherine T. MacArthur Foundation is another major funder of the EDO with triennial funding of \$US250,000 from 1 March 2007 to 28 February 2010. This funding is for legal capacity building work in Papua New Guinea and in the Pacific. The EDO was successful in obtaining another grant of \$US210,000 to continue this work for another three years.

In addition to the triennial grants outlined above, the EDO received a number of smaller grants allocated for a shorter time and for specific projects during 2009-2010. These were:

- Community Legal Centres NSW through the Aboriginal Legal Access Program (with funding provided by the Public Purpose Fund) to improve delivery of environmental law services to Aboriginal clients in NSW
- NSW Government through its Environmental Trust for publication and distribution of a revised edition of the *Rural Landholder's Guide*
- City of Sydney Council for a series of seminars and for development of a *Major Projects Toolkit*

- NSW Government through its Environmental Trust for a Private Conservation Program
- The Commonwealth Department of Agriculture, Fisheries and Forestry under its "Caring for our Country" Program to develop and distribute a publication, *Caring for the Coast: A guide to environmental law for coastal communities in NSW*
- Environment and Planning Law Association (NSW) Inc. for a research fellowship grant.

Income Generation

In addition to the income received from grants, the EDO generated other income from fees charged for its professional services, education activities, memberships, donations and bank interest. This money enables the EDO to undertake work which is strategically important but cannot be done within the terms of funding contracts.

In 2009-2010, the EDO generated other income of \$284,726. This was a substantial increase from the amount received in recent years. Some of this was income from the conference and dinner (\$46,264), which was offset by almost the same amount in costs. However, the major contribution to this income was from fees (\$172,760). The EDO's fees for litigation are usually covered by grants of legal aid or capped at a low rate unless there is a successful costs award in favour of the Office's client. This year, the EDO was successful in recovering costs for clients on some recent matters and eventually recovering costs on

some older matters where it was necessary to resort to applying on behalf of the clients to the Supreme Court to have costs assessed.

Financial Performance

In 2009-2010, the EDO had a surplus of \$134,934. This result is a little higher than the outcome in most years where the surplus/deficit is within 5% of annual revenue. This reflects the greater than expected revenue from legal fees discussed above. As these funds were mostly received in the later half of the year or after the end of the financial year, the Board will have these additional funds available to undertake planned projects during the 2010-2011 financial year.

ENVIRONMENTAL DEFENDER'S OFFICE LIMITED
A.C.N. 002 880 764
DIRECTORS' REPORT
FOR THE YEAR ENDED 30TH JUNE 2010

The Directors present this report on the company for the financial year ended 30th June 2010.

Directors

The following persons held office of director as at balance date.

Murray Wilcox
 Barbara Adams
 Andrew Burke
 Louise Byrne
 Andrew Cox
 Helen Gillam
 Ronnie Harding
 Frank Hubbard
 Michael Jeffery
 Kate Smillie

Net Profit After Income Tax

The net profit of the company for the financial year was \$134,934 (2009 - 46,364).

Review of Operations

A review of the company operations during the financial year and the results of those operations are as follows:

The company's operations during the year performed as expected in the opinion of the directors.

Significant Changes in State of Affairs

There have been no significant changes in the state of the company's affairs during the financial year.

Principal Activities

The principal activities of the company during the course of the year were: Provision of Environmental Law Services

There have been no significant changes in the nature of these activities during the year.

After Balance Date Events

No known matters or circumstances have arisen since the end of the financial year which significantly affected or may significantly affect the company's operations, the results of those operations or the state of affairs of the company in subsequent financial years.

Future Developments

The company expects to maintain the present status and level of operations and hence there are no likely known developments in future financial years.

Environmental Issues

The company's operations are not regulated by any significant environmental regulation under a law of the Commonwealth or of a State or Territory.

Dividends

The Memorandum of Association of the company prohibits the company from paying dividends and, accordingly, no dividends have been declared or paid during the financial year.

Options

No options over issued shares or interests in the company were granted during or since the end of the financial year. Furthermore, there were no options outstanding at the date of this report.

Indemnities Granted

There have been no indemnities granted or insurance premiums paid, during or since the end of the financial year, for any person who is or has been an officer or auditor of the company.

Actions

No person has applied for leave of Court to bring proceedings on behalf of the company or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for all or any part of these proceedings.

The company was not a party to any such proceedings during the year.

A copy of the auditor's independence declaration as required under Section 307C of the Corporations Act 2001 is set out on the next page.

This statement is made in accordance with a resolution of the Board of Directors and is signed for and on behalf of the directors by:

Director
Name: Helen Gillam

Director
Name: Frank Hubbard

Dated this 15th day of
September 2010

BALANCE SHEET AS AT 30 JUNE 2010

	Note	This year (\$)	Last year (\$)
ASSETS			
CURRENT ASSETS			
Cash and Cash Equivalents	5	706,788	735,361
Trade and Other Receivables	6	150,348	171,543
Other Financial Assets	7	52,650	37,132
TOTAL CURRENT ASSETS		909,786	944,036
NON CURRENT ASSETS			
Property, Plant & Equipment	8	56,541	46,750
TOTAL NON CURRENT ASSETS		56,541	46,750
TOTAL ASSETS		966,327	990,786
LIABILITIES			
CURRENT LIABILITIES			
Trade and Other Payables	9	230,711	432,294
Short Term Provisions	10	132,284	125,316
TOTAL CURRENT LIABILITIES		362,995	557,610
NON CURRENT LIABILITIES			
Long Term Provisions	11	35,221	
TOTAL NON CURRENT LIABILITIES		35,221	
TOTAL LIABILITIES		398,216	557,610
NET ASSETS		568,111	433,176
EQUITY			
Retained Earnings		568,111	433,176
TOTAL EQUITY		568,111	433,176

The accompanying notes form part of these financial statements and should be read in conjunction herewith.

Independent Audit Report

We have audited the accompanying financial report of Environmental Defender's Office Limited (the company), which comprises the balance sheet as at 30 June 2010 and the income statement, statement of recognised income and expenditure and cash flow statement for the year ended on that date, a summary of significant accounting policies and other explanatory notes and the directors' declaration.

The Responsibility of the Directors for the Financial Statements

The directors of the company are responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards (including Australian Accounting Interpretations) and the Corporations Act 2001. This responsibility includes designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

Our responsibility is to express an opinion on the financial statements based on our audit. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independence

In conducting our audit, we have complied with the independence requirements of the Corporations Act 2001. We confirm that the independence declaration required by the Corporations Act 2001, provided to the directors of Environmental Defender's Office Limited on 3 September 2010, would be in the same terms if provided to the directors as at the date of this auditor's report.

Auditor's Opinion

In our opinion, the financial statements presents fairly, in all material respects, the financial position of Environmental Defender's Office Limited as of 30 June 2010, and its financial performance and cash flows for the year then ended in accordance with the Corporations Act 2001 and the Australian Accounting Standards (including Australian Accounting Interpretations).

Joe Pien Chartered Accountant

Suite 503, Level 5, 276 Pitt Street, Sydney, NSW, 2000

Dated this 17th day of September 2010

PROFIT AND LOSS STATEMENT FOR THE YEAR ENDED 30 JUNE 2010

	2010 (\$)	2009 (\$)
INCOME		
Grants Received	2,002,165	1,805,823
MacArthur	113,304	86,187
Donations and Memberships	12,453	13,586
Conference, Publications & Workshops	48,027	4,931
Professional Fees	172,760	94,969
Interest Received	51,484	52,861
Other Revenue	2	100
	2,400,195	2,058,457

EXPENDITURE

Auditor's Remuneration - Financial Statements	13,785	9,815
Accountancy and Bookkeeping	34,100	30,403
Bad Debts Written Off	-	6,790
Bank and Government Charges	2,005	5,403
Board Costs	1,189	-
Conferences, Publications & Workshops	109,326	67,339
Depreciation	22,412	18,993
Doubtful Debts	3,856	-
Employees Entitlement Provision	42,189	1,958
Employee Expenses	8,900	1,630
General Expenses	-	826
Insurance	12,560	11,988
Legal Fees	3,698	977
Light & Power	5,804	4,917
Loss on Disposal - Fixed Assets	656	-
MacArthur Expenses	116,406	99,628
Equipment Lease	6,205	6,205

**PROFIT AND LOSS STATEMENT
FOR THE YEAR ENDED 30 JUNE 2010 (Continued)**

	2010 (\$)	2009 (\$)
EXPENDITURE (Continued)		
Office Costs	18,529	15,454
Organisational Development	27,498	22,675
Postage & Couriers	1,115	3,666
Printing & Stationery	23,104	20,092
Rent - Office	117,660	118,004
Repairs & Maintenance - General Repairs & Maintenance	2,766	1,273
Salaries & Wages	1,462,103	1,348,858
Staff Training & Welfare	14,179	20,865
Staff Amenities	3,522	4,378
Staff Recruitment	1,290	890
Subscriptions	22,824	23,862
Superannuation Contributions	127,941	118,350
Telephone & Internet	36,147	30,160
Travelling Expenses	23,492	16,694
	2,265,261	2,012,093
OPERATING PROFIT/(LOSS) BEFORE INCOME TAX	134,934	46,364

[Note – this is an abridged copy of the Financial Report for the year ended 30th June 2010. For a full copy of the Report, please see our website <http://www.edo.org.au/edonsw/site/annualreports.php> or contact the offices of the Environmental Defender's Office Ltd.]

2009/10

**Environmental
Defender's
Office
(NSW)**

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www.edo.org.au/edonsw