

EDO NSW

Annual Report

11/12



NSW

EDO

DEFENDING THE ENVIRONMENT
ADVANCING THE LAW

EDO NSW

Annual Report

2011/12

EDO NSW is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law

With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise

EDO NSW is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services

As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

EDO NSW has an 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.

Any questions or concerns about the content of this report should be addressed to the Executive Director. EDO NSW also has a process for handling complaints. Any complaints should be directed to the Executive Director on (02) 9262 6989.

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This Annual Report has been printed on 100% recycled paper.

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Executive Director's report

This report demonstrates the tremendous value that EDO NSW offers to the community in NSW, and our unstinting efforts to protect the environment in the public interest.

The work of EDO NSW has again been varied in terms of the issues we have engaged with and the approach we have taken to addressing those issues on behalf of our clients. It would not be possible in this report to do justice to the sheer volume of work undertaken by the organisation over the past year. However, a number of themes have emerged that are worth highlighting.

Firstly, planning law has once again taken centre stage for our work over the past year. Previously EDO NSW has assisted communities to engage with the planning system through community legal education, legal advice and, occasionally, litigation to challenge and test controversial planning decisions. There was, in our opinion, strong community opposition to certain aspects of the planning framework and a clear need for law reform in order to help the community re-engage with the planning system. EDO NSW therefore welcomed the NSW Government's announcement in 2011 that it would undertake a comprehensive review of the NSW planning system. EDO NSW has actively participated in the review as a key stakeholder and worked with the Government to identify areas most in need of reform from the perspective of the community. We look forward to continuing this work as the review progresses and helping the community to participate effectively in the public consultation process now underway.

Secondly, mining and coal seam gas have emerged as significant issues affecting our clients. EDO NSW has been inundated with requests for assistance from the community which is struggling to come to grips with the legal regime applying to minerals and petroleum. We have responded to this need by conducting information workshops throughout NSW to explain the law and the opportunities that exist for the public to have a say. These workshops have helped the NSW community to understand their rights and obligations when dealing with proposed and existing mining developments and it is hoped that this will, in turn, lead to better decision-making and better outcomes for communities and the environment. Throughout the year, we have also been preparing a plain-English guide to mining law in NSW which was funded by the NSW Government through its Environmental Trust. This booklet is due for release late in 2012 and is intended to complement the information currently provided through workshops. A large number of legal advices were also provided by EDO NSW lawyers to help clients deal with specific issues relating to mining and CSG developments. A small number of these progressed to litigation, with EDO NSW representing several clients in merits appeal proceedings which have resulted in development consents with significantly improved environmental outcomes. Throughout the year, the NSW Government has sought to address strong community concern regarding mining and CSG activities by conducting a number of reviews and announcing

a number of policy changes. EDO NSW has participated in these processes and will continue to work with Government and the community to help achieve a legal framework that balances economic development with strong community engagement and environmental protection.

Thirdly, this report reveals a trend to resolving disputes through alternative dispute resolution processes. A number of cases EDO NSW acted in throughout the year were successfully resolved through mediation, including some mining matters. Where they can be achieved, mediated outcomes have a number of advantages over Court proceedings and EDO NSW is committed to helping our clients achieve their objectives without the need for litigation wherever possible.

Finally, as touched on in last year's annual report, EDO NSW is now trading under its new name, and is no longer the Environmental Defender's Office. This change came about following a re-branding exercise undertaken last year. In addition to the name change we also have a new look which is intended to help the organisation to better communicate what it is and what it does. This is particularly important given recent events where the role of EDO NSW and some of its activities have been questioned in some quarters which has, in turn, placed in doubt our most important funding source. While we do not shy away from the work that we do on behalf of the NSW public, we recognise the need to be clear about our role. In this respect, it is worth reiterating that EDO NSW is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on successful environmental outcomes using the law, broad environmental expertise and independent and accessible services. We are the only organisation providing accessible environmental legal services to the people of NSW.

Our work would not be possible without the support of our funders. EDO NSW 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 latter being our major funder. The PPF funding in particular allows us to realise our goal of being independent, accessible and to hold others to account through high quality legal services. We are extremely grateful to all of our funders for their ongoing commitment to our work. We hope to continue these successful relationships in the next financial year and build upon them in the future.

The environment we operate in is a difficult one, and it is a tribute to staff that they continue to fearlessly do the work they do, as well as the Board who continue to support us in our endeavours. I am, as always, privileged to work with such a committed group of people. I trust this report does justice to their efforts over the past year.



Jeff Smith
Executive Director

EDO NSW: introduction

The mission of EDO NSW is to promote the public interest and improve environmental outcomes through the informed use of the law. EDO NSW has four core areas of operation, with staff working together in a multi-disciplinary way to achieve that mission.

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

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

- Legal advice and litigation;
- Policy and law reform;
- Scientific and technical advice;
- Community programs (legal outreach, international and Indigenous engagement); and
- Media and communications.

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

- Environmental planning and development;
- Biodiversity conservation;
- Natural resource management;
- Climate change and energy; and
- Environmental justice.

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

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

CORE FUNCTIONS OF EDO NSW

Legal advice and litigation

EDO NSW provides free initial telephone advice and, if appropriate, written advice on environmental law and policy. Our toll-free telephone advice service, the *Environmental Law Line* is staffed by a duty solicitor between 2pm-5pm Monday-Thursday in Sydney and 9am-5pm Monday to Friday in the Northern Rivers.

In 2011-2012, EDO NSW staff provided 1428 telephone advices. Of these about 63% were to clients in rural and regional New South Wales, which is consistent with past years. The subject matter of these advices is varied, but common issues include planning and development, tree disputes, zoning, public land management, compliance and enforcement, major projects and State significant developments, access to government information, Aboriginal cultural heritage, pollution and contamination, threatened species, private conservation, biobanking, defamation, community rights, mining, water, marine biodiversity, forestry and misleading and deceptive conduct. 285 casework files were opened during the reporting period, representing matters involving litigation and legal advice and assistance, many with significant scientific input. 448 casework files were closed, of which 125 were minor assistance files.

EDO NSW also represents individuals and community organisations in public interest litigation to protect the environment. In the past year there has been a substantial increase in calls for assistance, particularly in the areas of mining and pollution/enforcement. As well as running test cases, we have been involved in providing expert advice and assistance in a range of matters, and assisted in obtaining significant outcomes for local communities. For example, in *Blue Mountains Conservation Society v Delta Electricity*, EDO NSW obtained a satisfactory resolution of a water pollution issue through voluntary mediation. Delta admitted it had discharged waste waters into the Cocks River in breach of pollution laws and agreed to undertake work to stop the pollution. On this basis, proceedings were discontinued. Often a letter from EDO NSW will also result in better legal processes, including better community engagement and better analysis of the potential environmental impacts of a project.

In 2011-2012, EDO NSW pursued a number of cases involving issues of significant public concern including planning, pollution, mining, biodiversity issues, Aboriginal cultural heritage and climate change. The cases featured in this report are at various stages of development - some being determined, others are either awaiting judgment or are still to be heard.

EDO NSW continues to be involved in planning matters to improve biodiversity outcomes and public participation in the planning system. In *South East Forest Rescue v Bega Council & Ors*, our client was successful in invalidating a decision that failed to consider the objectives of the zoning, submissions of the public and the concept of ecologically sustainable development. In *Western Sydney Conservation Alliance v Penrith City Council & Ors*, the argument related to the consideration of the Recovery Plan for the critically endangered Cumberland Plain Woodland. Although our client's argument that the decision must be consistent with the Recovery Plan was unsuccessful, the Court found the Plan must still be considered. EDO NSW is now focusing its efforts on ensuring that our clients' experiences with protecting biodiversity are considered as part of law reform for the ongoing review of the NSW planning system.

EDO NSW was also able to engage in alternative dispute resolution in two other planning matters. In *Yass Environmental Responsibility Network v Yass Council*, our client challenged the Council's decision to approve a new subdivision on the grounds that the Council failed to consider threatened species which existed on the site. EDO NSW mediated on behalf of our client with the developer and Council to ensure the new subdivision was built in a way that protected the striped legless lizard.

In *Catherine Hill Bay Progress Association v Minister for Planning & Ors*, the parties (including the developer) all agreed to mediate the proceedings. After lengthy discussions, the proceedings were discontinued on the basis that the Department of Planning and Infrastructure recommended to the Minister for Planning an amendment to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to remove the area from the application of that Code. A revised Development Control Plan for the site was also to be placed on exhibition.

Issues stemming from the regulation of mining have also been a feature of the work of EDO NSW in the past year. EDO NSW has been involved in three merits appeals challenging mining projects to achieve better environmental outcomes - *Hunter Environment Lobby v Minister for Planning & Ors*, *Ironstone Community Action Group v Minister for Planning & Ors*, and *Coastwatchers Inc. & South East Regional Conservation Alliance v Minister for Planning*. In all of these cases, the merits appeal resulted in significantly strengthened conditions attached to the approval of the mine, including for monitoring, public information, transparency and better wildlife corridors. For example, in *Ironstone Community Action Group*, Preston CJ granted the approval subject to substantially revised conditions. His Honour required the mine to make public all management plans, studies and

reports on its website to increase transparency and accountability. The mine was also required to protect a biodiversity offset in perpetuity by either entering into a Conservation Agreement under the *National Parks and Wildlife Act 1974* (NSW) or creating a public positive covenant over the land. The Court also imposed a 'no direct discharge' condition for water, and stronger monitoring requirements for the endangered Giant Barred Frog. There are also a number of conditions that deal with dust and noise, which was a response to evidence submitted by residents during the hearing.

EDO NSW was also involved in assisting communities with coal seam gas (CSG) activities in NSW. In *Barrington Gloucester Stroud Preservation Alliance v Minister for Planning*, EDO NSW is involved in the first case in the Land and Environment Court to test the consideration of environmental impacts from CSG mining. The case was heard in October 2011 and judgment is reserved.

Policy and law reform

EDO NSW engaged in a range of environmental policy and law reform activities in 2011-2012, at both the State and Federal level. Activities included drafting submissions, proactive law reform projects, providing advice on proposed legislation and preparing consultancy reports for environment and community groups, and engaging constructively with governments on environmental law reform.

Submissions

EDO NSW drafted 40 submissions in response to legislative reviews, government reform processes and parliamentary inquiries on environment and planning law. Many submissions were written with extensive input from the EDO NSW science team and members of the expert scientific register. EDO NSW made detailed submissions on various issues across all five of our priority areas - climate change and energy, biodiversity conservation, natural resource management, planning and development, and environmental justice.

On the basis of our submission work, EDO NSW was invited to address parliamentary inquiries (for example on the impacts of coal seam gas at NSW Parliament), speak at public forums, present conference papers, write law reform articles, and attend a range of meetings with government agencies.

Another important aspect of our submission work is providing advice and support for members of the community who wish to make their own submissions. To help enhance the capacity of the community to engage constructively in environmental law reform, EDO NSW produced briefing notes on various legislation and reform processes. This included briefing notes on the Federal carbon pricing scheme, the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW), and the NSW Planning Review.

Proactive policy and law reform projects

Our major law reform discussion paper completed in 2011-2012 focussed on the issue of pollution. The report, *Clearing the Air: Opportunities for improved regulation of pollution in New South Wales* was prepared by EDO NSW at the request of the Nature Conservation Council of NSW to inform the future direction of pollution regulation and the NSW Environment Protection Authority. The paper describes the regulatory framework for the management of pollution in NSW, outlines significant shortcomings of the current system in protecting human health and the environment, and makes recommendations for reform.

Policy and law reform advices

In 2011-12, EDO NSW continued to provide detailed and timely law reform advice to environmental and community groups on current, proposed and potential environmental laws and policies. For example, we provided advice to the Environment Liaison Office (a coalition of nine NSW environmental groups), the NCC Mining Group and the NCC Water Group. EDO NSW also provided legal and policy advice and briefings on proposed legislative amendments to members of the cross-bench (for example on marine pollution and on uranium exploration), the Opposition and Government as requested.

In 2011-2012, advice on proposed legislation involved analysing the:

- *Carbon Pricing (Clean Energy Future) Bills* (Cth);
- *Illegal Logging Prohibition Bill 2011* (Cth);
- *EPBC Amendment (Protecting Australia's Water Resources) Bill 2011* (Cth);
- *Marine Pollution Bill* (NSW);
- *Mining Legislation Amendment (Uranium Exploration) Bill* (NSW);
- *National Parks (Adjustment of Areas) Bill* (NSW); and
- *Game and Feral Animal Control Bill* (NSW).

Law reform consultancies included:

- analysis, research and advice on the Planning Review for the Nature Conservation Council of NSW and the Total Environment Centre, funded by the Department of Planning and Infrastructure;
- a Biobanking Evaluation Framework Project for the NSW Aboriginal Land Council; and
- preparation of a fact sheet on Biobanking and cultural heritage protection for the NSW Aboriginal Land Council.

Expert stakeholder role

In 2011-2012, EDO NSW also participated on various expert stakeholder panels. For example, we provided law reform advice based on our extensive experience to the following Office of Environment and Heritage committees:

- the Ministerial Reference Group on Biobanking;
- the Cultural Heritage Working Group; and
- the Contaminated Land Management Committee.

EDO NSW was also consulted directly by the Federal Department of Sustainability, Environment, Water, Population and Communities through key stakeholder roundtables on biodiversity offset policies, and implementing reforms to the Federal *Environment Protection and Biodiversity Conservation Act 1999*.

Scientific and technical advice

The role of the Scientific Advisory Service is to provide objective scientific advice to EDO NSW and its clients on public interest environmental matters. This advice contributes to the range of work undertaken by EDO NSW.

The Scientific Advisory Service comprises:

- two in-house environmental scientists;
- a Technical Advisory Panel, which comprises academic experts who provide strategic advice to EDO NSW on scientific issues on a pro-bono basis; and
- an Expert Register, which comprises over 130 scientific experts in a range of fields who assist EDO NSW from time to time on a pro bono basis.

Members of the Technical Advisory Panel during the year were:

- Professor Chris Dickman, Professor of Terrestrial Ecology, University of Sydney;
- Associate Professor Nicole Gurrán, Urban and Regional Planning, Faculty of Architecture, Design and Planning, University of Sydney;
- Professor Richard Kingsford, Professor of Environmental Science, University of NSW;
- Dr Iain MacGill, Senior Lecturer in Energy Policy and Technology, University of NSW; and
- Professor John Quiggin, Risk and Sustainable Management Group, University of Queensland.

In 2011-12, 47 experts, including both members of the Expert Register and external experts, assisted EDO NSW and our clients in 51 matters. Expert advice included:

- Providing advice on proposed developments or actions prior to a decision being made. For example, the Scientific Advisory Service assisted the Upper Dumaresq Action Group to source ecological and sustainable energy expertise to assist the community in making a submission to the Far North NSW (Dumaresq – Lismore 330kV Transmission Line) Project.
- Advising on the compliance of facilities with regulatory requirements, and assisting clients to prepare submissions to authorities. For example, the Scientific Advisory Service assisted in the fieldwork and briefing of experts for the case *Blue Mountains Conservation Society v Delta Electricity* and subsequent follow up with the community.
- Acting as expert witnesses in litigation. For example, in *Coastwatchers Association Inc & South East Region Conservation Alliance (SERCA) v Minister for Planning & Anor*, the Scientific Advisory Service sourced and assisted with briefing expert witnesses in the areas of groundwater, groundwater dependent ecosystems, ecotoxicology, threatened species and endangered ecological communities and economics.
- Informing EDO NSW's position on policy matters, including participation in the development of recommendations on reducing pollution impacts through the report *Clearing the Air: Opportunities for improved regulation of pollution in New South Wales*.
- Providing input into EDO NSW publications which in the last financial year included the release of a groundwater fact sheet.
- Supporting the International Engagement Program, including advising clients on scientific standards for investigating pollution matters.

Community programs

In 2011-2012, EDO NSW's community programs were:

- Legal Outreach Program
- International Program
- Indigenous Engagement Program

1. LEGAL OUTREACH PROGRAM

The key objective of the Legal Outreach Program is to empower the community to protect the environment through law. This is achieved through a range of education tools, specifically community workshops, seminars and plain English publications. Through the Legal Outreach Program, the capacity of the community to engage effectively in environmental decision-making and to respond to environmental issues is developed and enhanced.

The Legal Outreach Program promotes early engagement in issues, which is vital

to achieving successful outcomes. Timely information and expert assistance helps communities to take a more proactive approach to the environmental issues they face.

The Legal Outreach Program is focused on rural and regional NSW. This allows EDO NSW to stay abreast of the environmental issues facing rural and regional communities and to ensure its services are directed to where they are most needed.

Workshops

A total of 24 free community legal education workshops were held throughout rural and regional New South Wales during the reporting period. As with previous years, workshops covered a range of environmental law issues, including planning, coastal law and climate change, and the Murray Darling Basin Plan, together with a large number of workshops focused on mining and coal seam gas regulation and landholder rights. This was in response to overwhelming community demand for information on these issues. Through workshops, EDO NSW was able to provide timely legal education to over 1200 people throughout NSW.

One workshop participant had this to say:

Thank you for providing this invaluable education. The EDO does a wonderful job providing access to information for the residents of NSW.

Seminars

4 free seminars covering topical issues on environmental law and policy were held throughout NSW in 2011-2012. These seminars were attended by over 150 people. EDO NSW seminars focus on new and emerging environmental law issues and are presented by relevant experts. They provide an opportunity to examine the issue from different perspectives and also encourage discussion, including of new ideas for law reform. Seminars addressed mining and rights and responsibilities under the law.

Publications

Plain-English publications are an important feature of the Legal Outreach Program. Publications help EDO NSW to provide in-depth information on topical issues and increase the reach of the offices. Publications cover a wide range of subjects and come in various formats, all of which are available free to the community, either as hard copies or online. In 2011-2012, the EDO NSW publications were:

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

Caring for the Coast is a guide to the various laws that address coastal

environmental and planning issues in NSW. It aims to assist coastal communities to engage in decisions that affect coastal environments. The booklet was funded by the Federal Government's Caring for Our Country Program. To date, more than 6000 copies have been distributed and EDO NSW continued to distribute free copies throughout the reporting period.

- *A Guide to Private Conservation in NSW*

This 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. To date, more than 10,000 copies have been distributed and EDO NSW continued to distribute free copies throughout the reporting period.

This publication raises awareness of private conservation as a land management option and supports the various providers of the private conservation mechanisms to promote their options to landholders. One provider, Humane Society International, implements the Wildlife Land Trust. They had this to say about the publication:

I've just taken the first call from someone interested in the WLT who has found out about it through your guide, a good sign!

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

This is a guide to the range of natural resource management laws applying to rural landholders in NSW. It was funded by the NSW Government through its Environmental Trust. To date, more than 50,000 copies of this free publication have been distributed and EDO NSW continued to distribute copies throughout the reporting period.

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

The purpose of this guide is to assist Aboriginal people to understand their legal rights and obligations under environmental, planning, heritage and natural resource management law. EDO NSW has continued to provide this free publication upon request. The publication was updated during the reporting period and the updated version is available on the EDO NSW website.

- *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. It is available online only.

- *Environmental Law Fact Sheets*

EDO NSW's online environmental law fact sheets are perhaps the most popular service provided by the Legal Outreach Program. They cover a broad range of environmental law topics including NSW planning laws, Commonwealth environmental laws, pollution, natural resource management, biodiversity management, heritage, Aboriginal law, government accountability and advocacy. The fact sheets are regularly reviewed and updated to ensure their currency. A small range of science fact sheets is also available covering topics such as water quality assessments, dust monitoring and biodiversity assessments.

- *IMPACT!*

This is a bi-annual journal that examines topical environmental law issues. EDO NSW produces this publication on behalf of the Australian Network of Environmental Defender's Offices (ANEDO). In 2011-2012, a decision was made to transform the journal to a more general publication. It is therefore no longer thematic, but contains articles on a range of issues, depending on what is topical at the time.

- *e-bulletin*

EDO NSW's free weekly e-bulletin continues to be a popular resource with a subscriber list of over 2,000. The e-bulletin updates subscribers on EDO NSW news and events, as well as developments in environmental law and policy, opportunities to participate in State and Federal environmental decisions and community events with an environmental focus.

EDO NSW regularly receives positive feedback on the bulletin. One of the members of our Expert Register commented:

Congrats to whoever produces your weekly bulletin – it is compulsory reading!

- *Climate Law Bulletin*

The climate law bulletin is a bi-monthly e-bulletin dedicated to climate change law and policy. It provides an overview of developments in climate law and policy at both the national and international level.

- *Mining and the Law: A guide for the community*

EDO NSW has received funding from the NSW Environmental Trust to produce a new booklet on mining law in NSW. The booklet aims to educate the public about the assessment and approval processes applying to mining and CSG activities in NSW and how to engage effectively in those processes. Work on this publication began in May 2011 and it is due for release in October 2012.

Website

The EDO NSW website contains an extensive range of information on EDO NSW's core functions such as information on access to EDO NSW services, copies of policy submissions, case notes on litigation, information on up-coming workshops and seminars, information and resources on environmental law for the community and links to EDO offices in other States.

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

2. INTERNATIONAL PROGRAM

EDO NSW is committed to improving the effectiveness of environmental law as a tool for defending the environment internationally. For a number of years, EDO NSW 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. EDO NSW's international work also involves placing volunteers through AusAID's Australian Volunteers for International Development program, and participating in international networks.

EDO NSW is a signatory to the Australian Council for International Development (ACFID) Code of Conduct. EDO NSW is committed to full adherence with the Code. For further information on the Code please refer to the ACFID Code of Conduct Implementation Guidance available at www.acfid.asn.au. This site also includes information about how to make a complaint in relation to any breach of the Code by EDO NSW.

EDO NSW 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 2011-2012, this included legal, scientific and policy advice; negotiations and technical skills training; and/or assistance with legal outreach to organisations in PNG, the Solomon Islands, Fiji, Vanuatu, Kiribati, Samoa and Timor-Leste, particularly on forestry, mining and climate change.

EDO NSW is also an Australian Partner Organisation for the Australian Volunteers for International Development (AVID) programs. The AVID schemes enable EDO NSW to create AusAID funded-placements for Australians with organisations in the Pacific and Asia. In 2011-2012, there were 12 volunteers on assignments right across the Pacific and beyond. The assignments were in the areas of climate change, biodiversity, environmental impact assessment, natural resource management, land owner advocacy, human rights and environmental management. Roles ranged from legal advisory roles, through to policy, education and advocacy positions. Host countries included Fiji, PNG, Tonga, Samoa, the Solomon Islands, Vanuatu, Kiribati, and Timor Leste.

Furthermore, EDO NSW and its staff continued to participate in a range of networks in 2011-2012, particularly the Environmental Law Alliance Worldwide

(E-Law), an online 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.

3. INDIGENOUS ENGAGEMENT PROGRAM

The EDO's Indigenous Engagement Program provides for the employment of an Aboriginal solicitor to work on legal issues and matters that affect the heritage of Indigenous communities. This includes engaging in litigation, providing legal advice, working on law reform projects and providing community legal education.

The Indigenous Engagement Program strengthens EDO NSW's relationship with existing Indigenous clients and facilitates the creation of new relationships by promoting the office's range of services to Indigenous communities throughout NSW.

In 2011-2012, EDO NSW has continued to respond to requests for advice and representation in matters affecting Indigenous clients. Examples of this include:

- legal advice on and applying for the protection of Indigenous heritage sites under the *Heritage Act 1977* (NSW), and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);
- ongoing assistance to protect Taylors Oval in Moree from future development;
- ongoing assistance to a Local Aboriginal Land Council to pursue an action for the damage of a registered Aboriginal site within the Eora Nation; and
- the pursuit of Court proceedings on behalf of an Aboriginal elder in the NSW Land and Environment Court against a mining company operating in the Hunter Valley for harming Aboriginal cultural heritage.

Our Aboriginal solicitor is also an active participant at a number of meetings on Indigenous issues. In the reporting period, this has involved:

- providing advice to the Australian Law Reform Commission in his capacity as a member of the Aboriginal Advisory Committee;
- providing advice to the NSW Law Society as a member of their Indigenous Legal Issues Committee; and
- participating in quarterly meetings as part of the Indigenous Peoples Organisations Network, hosted by the Australian Human Rights Commission.

EDO NSW also enjoyed the continuing success of our 'Caring for Country' booklet. This booklet provides a snapshot of Indigenous rights with regards to land and cultural heritage and information on how Aboriginal communities can use the law to pursue their rights. The booklet was updated in the reporting period and we continue to explore opportunities to provide further community legal education to Indigenous communities.

Media and communications

The media is important to EDO NSW as it provides an effective means of highlighting the issues we engage with and promoting our work.

In 2011-2012, EDO NSW has received significant media exposure, either through direct mentions, or through its clients where the media reported on one of the matters we assisted with. The majority of media exposure comes from newspapers, including many regional newspapers and online newspapers. EDO NSW staff members also occasionally participate in radio interviews to discuss the environmental issues the offices engage with. From time to time, EDO NSW cases will also be covered on television.

EDO NSW or matters it engaged with received over 100 media mentions in 2011-2012. Media coverage centred around several high-profile cases that were conducted during the reporting period, including the challenge to the Dargues Reef Gold Mine near Majors Creek, the challenge to the Gloucester Gas Project, the enforcement proceedings against Delta Electricity for water pollution and the challenge to the expansion of the Ulan Coal Mine near Mudgee, particularly the consideration the Court gave to imposing a carbon offset condition.

National EDO network

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. 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.

A key focus of ANEDO (and thus EDO NSW) over the past year has been in the area of policy and law reform, with work done on the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), the Murray Darling Basin, renewable energy, marine protected areas and illegal logging.

PRIORITY AREAS

Environmental planning and development

Casework

Negotiating better planning outcomes

Catherine Hill Bay Progress Association & Dunecare Inc. v Minister for Planning & Ors

EDO NSW commenced judicial review proceedings in the Land and Environment Court on behalf of the Catherine Hill Bay Progress Association challenging a major project approval for a staged residential subdivision to create up to 600 residential lots, bulk earthworks, and infrastructure at Catherine Hill Bay.

The parties agreed to attempt to mediate the matter which resulted in an agreement acceptable to all parties being reached. A joint statement from EDO NSW and the Department of Planning and Infrastructure was released to assist public understanding of the outcome. The Department agreed to recommendations to the Minister that Catherine Hill Bay be excluded from complying development provisions and also prepared a revised Development Control Plan for public comment to guide future development applications. This meant the Land and Environment Court proceedings were discontinued.

Promoting sound strategic planning

South East Forest Rescue v Bega Valley Shire Council

EDO NSW acted for South East Forest Rescue (SEFR) in seeking judicial review of a development approved by the Bega Valley Shire Council for a pilot wood pellet manufacturing plant at the Eden woodchip mill. SEFR argued that the Council failed to consider zoning objectives, public submissions and ecologically sustainable development (ESD) as required by the *Environmental Planning and Assessment Act 1979* (NSW) and were successful on these grounds. As a result, the Court invalidated the development consent.

Friends of Turramurra Inc. v Minister for Planning

EDO NSW acted for Friends of Turramurra Inc. who challenged the decision of the Minister for Planning to gazette the Ku-ring-gai Local Environmental Plan (Town Centres) 2010 (LEP). The grounds of the challenge were that due process was not followed, the public exhibition process was misleading, the impact of the LEP on bushland and the environment was not properly considered, and the Planning Minister and Planning Panel made too many changes to the LEP after it was exhibited. Friends of Turramurra also argued that, when preparing the LEP, the Planning Panel failed to consider State Environmental Planning Policy No 19 relating to Bushland in Urban Areas.

The Land and Environment Court found that the LEP had been made contrary to the provisions of the *Environmental Planning and Assessment Act 1979* (NSW) and was therefore of no legal force or effect. In particular, the Court agreed that the changes made to the LEP after public exhibition had significant impacts on the community and the environment and the LEP should have been re-exhibited.

Seeking sustainable residential developments

Sweetwater Action Group Inc. v Minister for Planning and Huntlee Holdings Pty Ltd

As reported in previous annual reports, EDO NSW acted on behalf of the Sweetwater Action Group Inc. (SWAG) who challenged a decision of the (then) Minister for Planning to rezone a large area of land in the Hunter Valley to allow for development of the Huntlee New Town for some 20,000 residents. The area contains one of the last remaining habitats of the *Persoonia pauciflora*, a critically endangered native shrub, and is also highly contaminated.

The Land and Environment Court found in favour of SWAG declaring that the decision of the Minister to recommend the making of an Amending SEPP to give effect to the rezoning, and the Amending SEPP itself, were invalid.

The developer and the Minister both filed separate appeals against the decision in the NSW Court of Appeal. The Court of Appeal overturned the decision made by the Land and Environment Court, finding that a decision to make a State Environmental Planning Policy is an executive decision not reviewable by a Court.

Ensuring proper decision-making in planning matters

Hunter Community Environment Centre Inc. v Minister for Planning and Delta Electricity

EDO NSW acted for the Hunter Community Environment Centre (HCEC) in seeking judicial review of the planning approval for the rehabilitation of the Munmorah Power Station. HCEC argued that the approval did not comply with the

legal process under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) in two respects:

Firstly, the Director-General of the Department of Planning failed to provide the Minister with a statement of compliance with the environmental assessment requirements, and as a result, the Minister did not consider a statement of compliance as he was required to do.

Secondly, even if it could be said that there was a statement of compliance within the meaning of the Act, it was erroneous and misleading insofar as it advised the Minister that the Environmental Assessment had met the environmental assessment requirements, when in fact Delta had failed to comply with the requirements, particularly in relation to waste management (specifically coal ash), and the identification of measures for its management and disposal.

The case has been heard and is awaiting judgment.

Legal and technical advice

In 2011-2012, EDO NSW provided over 60 detailed legal advices for clients on matters relating to environmental planning and development.

We received a number of calls from members of the community who were concerned about developments occurring under the exempt and complying development codes. In one case, we assisted a Sydney residential group to identify that particular works did not come within the Code. They were able to write a letter to Council to this effect and, as a result, the Council issued a stop work order for the works and undertook enforcement action.

EDO NSW acted for residents of Springwood in bringing to Council's attention some irregularities in the way a draft Plan of Management for the local tennis courts had been notified and exhibited. As a result, the Council agreed to re-exhibit the draft Plan of Management and give the community further opportunity to have its say.

We advised the Ballina Environment Society on the proposed Ballina bypass exit and the implications this would have for floodplain management. This information was used by the Society to help them write their submission on the proposal.

As usual, we appreciate your speedy responses to our queries and the quality of the advice that you give us. It makes our job as a volunteer organisation defending significant environmental issues easier and more effective. We could not have done the submission without you.

We provided ongoing advice to the Clifton Preservation Group on the proposed redevelopment of the Clifton Hotel. The advice focused on the lack of prospects of challenging the decision to approve the redevelopment.

On behalf of the Clifton Preservation Group, I want to say how much we appreciated your hard work and dedication to making sure the concerns of 'unimportant' people are heard and assessed. Although we are disappointed with the outcome, it is important to us to know that a challenge in the Land and Environment Court is not the way to go forward.

We prepared an advice for an approved high rise development at Ku-ring-gai and prospects of challenging the decision. Although EDO NSW advised there were no prospects for successfully challenging the decision, the client was grateful for the expert advice provided.

Thank you again for your wonderful assistance in providing us legal advice to give us at least the opportunity of examining our options for challenging the decision on this site.

We advised a North Sydney resident of her rights in relation to an application to re-zone land and, in particular, s. 117 directions.

Tonight, Council decided not to proceed with the application as there was no public benefit – and although the owner may come back with another version - it feels like a win and I would like to thank you very much for the advice that you gave me.

I felt very overwhelmed by the planning process when I first rang and it was really good to have somebody simplify things, show me where to go and have the patience to repeat things that I had not understood.

I want to acknowledge the important role that the EDO plays. If I had remained overwhelmed and without clarity I think I would have stayed stuck in place and not been as effective. So thank you for your clarity and help.

Policy and law reform

Consistent with previous years, EDO NSW undertook a range of law reform activities in relation to environmental planning and development in NSW. This work centred on the comprehensive Review of the NSW Planning System announced by the Government in July 2011, including the repeal and transition from Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW).

Review of the NSW planning system

In the initial stages of the NSW Planning Review, EDO NSW prepared a briefing note on *Key principles for the new planning system* to assist community involvement in the review. EDO NSW also prepared a detailed initial submission to the Review of the NSW Planning System outlining our vision for a new planning system in NSW, and 10 guiding principles to achieve that vision.

EDO NSW's vision for a NSW planning system is one that:

- places sustainability at the centre of planning and development decisions;
- ensures early, high and sustained levels of public engagement on decision-making;
- mandates engaging and effective processes for sustainable strategic land use planning – coordinated and translatable across State, regional and local levels;
- improves the liveability of NSW communities – including a healthy environment; good public health; fair choices for transport, work and lifestyle; affordability; and a sense of community;
- protects and enhances ecological integrity and services for public benefit, now and in the future;
- requires accountability, integrity and transparency of all participants – including decision-makers, government agencies, development proponents and objectors; and
- provides for certainty of outcomes in a way that meets and manages diverse community expectations.

Our vision is based on strategic planning that:

- gives appropriate weight to environmental, social and economic factors; and
- gives effect to those considerations at the State, regional and local level in accordance with the principles of ecologically sustainable development.

EDO NSW then prepared a joint submission with the Nature Conservation Council of NSW (NCC) and Total Environment Centre (TEC) to the Independent Planning Review Panel's Issues Paper. That submission identified the fundamental elements for the new planning system as:

1. A commitment to ecologically sustainable development.
2. Legislative mechanisms for achieving environmental outcomes.
3. Mandatory requirements for genuine and meaningful public participation in decision-making throughout the system.
4. A framework for effective strategic planning across State, regional and local levels that includes:
 - i. strategic environmental assessment, and
 - ii. assessment of cumulative impacts.
5. Mechanisms for ensuring the integrity of environmental impact assessment including:
 - i. independent appointment of environmental consultants;
 - ii. robust offences for providing false and misleading information (recklessly or intentionally) and for deceptive conduct; and
 - iii. comprehensive assessment and scrutiny that reflects the scale of impacts.

6. Mechanisms for managing climate change by building in mitigation and adaptation requirements throughout the system.
7. Mechanisms for ensuring accountability, including third party appeal rights and open standing for breaches of the legislation, and better enforcement by way of robust tools, penalties, resources and monitoring.

Furthermore, to assist members of the community to prepare a submission to the NSW Planning Review, the NCC, in collaboration with EDO NSW and TEC, developed a brief submission guide outlining the key issues for the environment.

Other planning submissions in 2011-2012 included:

- a submission to the NSW Department of Planning and Infrastructure on the Draft State Environmental Planning Policy on State significant and regional development;
- a submission to the Department of Planning and Infrastructure commenting on proposed changes to the way Local Environmental Plans are made – highlighting concerns about abrogating Ministerial oversight for some changes; and
- a submission to the NSW Government on a vision for Sydney over the next 20 years (revised Metro Strategy).

Legal outreach

Compared with previous years, there was less demand for information on environmental planning in 2011-2012. However, this is expected to change in the coming year, with the NSW Government undertaking a comprehensive review of the planning system with a view to introducing a new Act in 2013.

In 2011-2012, EDO NSW presented a workshop in Capertee on the Draft Land Use Strategy for the Lithgow local government area. This workshop aimed to increase the capacity of the local community to respond to the draft land use strategy – an important opportunity for communities to shape future development in their area.

EDO NSW was also requested to participate in a number of forums. For example, EDO staff undertook the following:

- a presentation on accountability and transparency to the Ministerial Planning Forum in Sydney;
- a presentation on planning law reform to the Northbridge Progress Association; and
- a lecture on planning law in NSW to students at the University of Newcastle.

Biodiversity conservation

Casework

Protecting endangered fauna and flora

Yass Environmental Responsibility Network Inc. v Yass Shire Council & Anor

EDO NSW acted for the Yass Environmental Responsibility Network Inc. in seeking judicial review in the Land and Environment Court of a decision to grant development consent to a 175-lot subdivision at Yass. The primary issue was the impact that the development would have on a listed threatened species - the striped legless lizard - and the fact that the developer did not prepare a species impact statement to accompany the application as required by the *Environmental Planning and Assessment Act 1979* (NSW).

The parties agreed to attempt to settle the matter through mediation and were able to come to an acceptable agreement. This included the finalisation of a conservation management plan for striped legless lizards on the site and the imposition of restrictive and public positive covenants on the portion of land comprising lizard habitat.

Western Sydney Conservation Alliance Inc. v Penrith City Council and Maryland Development Company Pty Ltd and St Marys Land Limited

These judicial review proceedings were brought on behalf of the Western Sydney Conservation Alliance Inc. who challenged an approval by the Penrith City Council for four residential subdivisions on land containing the critically endangered ecological community Cumberland Plain Woodland. The case was brought on the basis that Council had failed to take into account the Cumberland Plain Recovery Plan, as required by the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) and the *Threatened Species Conservation Act 1995* (NSW) (TSC Act).

The Land and Environment Court held that the Council had failed to consider the Recovery Plan as required under the EP&A Act. However, they found it was not necessary for the Council to act consistently with the Recovery Plan and the TSC Act. The Court ordered that the development consents be suspended and that the consents be validated upon the Council reconsidering the development applications, having regard to the details of the Recovery Plan.

Legal and technical advice

In 2011-2012, EDO NSW provided over 65 detailed legal advices to the community on matters relating to biodiversity conservation.

EDO NSW assisted a client in seeking to protect an area of bushland adjacent to the Georges River in South Western Sydney. The local council was considering an amendment to the local environmental plan to allow industrial development on the site. As a result of our client's efforts, the Council agreed to protect half of the site for conservation purposes.

Thanks for your help in the campaign to save Cooper's Paddock. Thank you so much for being available to me all those times when I needed a quick reply. Your help was crucial in enabling me to act confidently and precisely. Because I was clear on the law, I was several steps in front of the Council all the time. Being able to know the legal implications of my actions also enabled me to feel confident in my choices. I could not have done it without you.

EDO NSW advised a client who wanted to ensure that a subdivision adequately protected an endangered ecological community (EEC) on the site. In approving the subdivision, the local council adopted conditions to ensure the EEC was protected.

EDO NSW was successful in helping Lakes Beach Landcare protect their dunecare site from an eco-village development near Wyong.

We are grateful for your help and valuable assistance with regard to the eco-village proposal which got voted down in the council meeting 9 to 1 last night. Without your help this would not have been possible.

EDO NSW, with significant input from the science team, assisted the Inland Waterways Rejuvenation Association in Dubbo in gaining expert opinion on whether a proposed pipeline to supply water from Dubbo to Orange would have a significant impact on threatened fish species. As a result of this work, the proposal was found to trigger the Federal legislation and require assessment by the Federal Government. The project has now been referred to the Federal Environment Minister for assessment.

With the help of EDO NSW, residents of Bunbury were able to raise concerns with their local council about the potential impacts of a proposed motorbike park on threatened species. The council voted 9-0 against the development due to unacceptable impacts on biodiversity.

Policy and law reform

In 2011-2012, EDO NSW continued to engage with the Australian Government on proposed reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). This work included:

- Supplementary submissions requested by the Department of Sustainability, Environment, Water, Populations and Community (SEWPaC) in relation to key elements of the Government response to the Hawke Review. These issues included environmental impact assessment processes; accrediting State processes; strategic approaches – strategic assessments and regional environmental plans; Ecosystems of National Significance; emergency listings; compliance and enforcement; transparency and accountability.
- Contributing to the ANEDO Biodiversity & Climate Change submission to the Australian Parliamentary Inquiry regarding the inadequacy of Federal laws to protect biodiversity from the threats posed by climate change. This submission drew on the EDO NSW report, *Climate change and the legal framework for biodiversity protection in Australia: a legal and scientific analysis* (2009).
- Attending an expert roundtable convened by the Department of SEWPaC on a draft offsets policy under the EPBC Act. Our feedback at the workshop and subsequent submission outlined the need to ensure that a biodiversity offsets strategy is contextualised within a broader strategy of environmental conservation; the need for appropriate implementation of an avoidance and mitigation hierarchy (to avoid excessive reliance on offsets); the problems inherent in the use of indirect offsetting (e.g. not 'like-for-like', outcomes less certain, risks may be higher); and the need for a strong enforcement and compliance mechanism for approved offsets, with adequate resourcing established from the outset.
- Preparing a submission on behalf of ANEDO to the National Draft Wildlife Corridors Advisory Group and Department of SEWPaC commenting on the proposed plan for recognition of wildlife corridors, supporting a new Act or incorporation of corridors into the EPBC Act as a matter of national environmental significance.

Our biodiversity law reform work in 2011-2012 also had a marine focus. At a State level we made a submission to the NSW Department of Primary Industries on Grey Nurse Shark protection – recommending the creation of appropriate protected areas for Grey Nurse Sharks; elevating protection status of critical habitat areas; reinstating fishing closures at key aggregation areas, finalising and implementing a Recovery Plan; and improving monitoring and enforcement provisions.

We also made a submission to the Secretariat of the Independent Scientific Audit of Marine Parks in NSW following the passage of the *Marine Parks Amendment (Moratorium) Act 2011* (NSW). At a national level we made detailed submissions to the Department of SEWPaC on the Commonwealth marine reserves network proposal and draft Marine Bioregional Plan for the Temperate East Region, and the Coral Sea Commonwealth Marine Reserve proposal.

Legal outreach

In 2011-2012, EDO NSW continued to present community workshops on private conservation. These workshops outline for landholders the range of private conservation options available to them and discuss some of the legal issues associated with those options. We conducted this workshop in Grafton in partnership with Clarence Landcare and in Wollombi where the workshop focused on the ability of mining and coal seam gas development to take place on privately conserved land.

EDO NSW staff also attended the Nature Conservation Council regional conference and gave a presentation on koalas and SEPP 44. Staff also attended the National Environmental Law Association and Young Lawyers World Oceans Day conference and presented a paper entitled 'Does marine legislation actually protect the marine environment?'

A presentation on statements of reasons under the EPBC Act, the decision in the Bat Advocacy case and privative clauses since the *Kirk* judgment was delivered to the State Legal Conference Administrative Law session.

Natural resource management

Casework

Enforcing water pollution laws

Delta Electricity v Blue Mountains Conservation Society Inc.

In this long-running case, EDO NSW acted for the Blue Mountains Conservation Society Inc. in civil enforcement proceedings in the NSW Land and Environment Court against Delta Electricity. The Society alleged Delta Electricity was breaching the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act) by emitting pollutants into the Coxs River which is part of Sydney's drinking water supply. The litigation ran for over two and a half years, and was finally settled out of Court by the parties in October 2011.

There were a number of judgments on various aspects of the case in that time. For example:

1. EDO NSW successfully obtained a maximum costs order in the amount of \$20,000, limiting the Society's liability to pay Delta's costs if unsuccessful. The Court also ordered the Society to provide security for Delta's costs in the amount of \$20,000.
2. The Court of Appeal dismissed Delta's appeal against the maximum costs order, confirming that the litigation may be characterised as being in the public interest.

3. The Land and Environment Court dismissed Delta's application to have the Society's case struck out of Court, on the grounds that the Society had the right to bring civil enforcement proceedings for a breach of the POEO Act, and that stopping the continuation of the pollution would be a practical remedy that could be imposed in respect of the past breaches.

Following the Court's rejection of Delta's strike-out motion, the parties agreed to resolve the issues through voluntary mediation. Delta admitted it discharged waste waters containing pollutants and that it polluted without authorisation under its licence.

Delta has agreed that it will do the works necessary to stop the pollution, and that in the interim, it will apply for limits to be set on those pollutants. What those limits will be is a matter to be determined by the Environment Protection Authority, and must include input from the community. On this basis, the Society agreed to discontinue the proceedings.

Improving environmental outcomes

Bulga Milbrodale Progress Association Inc. v Minister for Planning & Rio Tinto

EDO NSW is acting for the Bulga Milbrodale Progress Association Inc. in a merits appeal before the Land and Environment Court. The proceedings challenge the decision of the Planning Assessment Commission, under delegation from the Minister for Planning, to approve an extension to the Warkworth mine in the Hunter Valley. The approval permits an additional 18 million tonnes of coal to be mined per year. Controversially, it also allows the mining of part of a biodiversity offset that was required to be protected as a condition of a previous approval in 2003. The biodiversity offset, as well as providing habitat for threatened flora and fauna, also acts as a buffer between the village of Bulga and the mine.

The Association is seeking Court refusal of the mine extension on the basis that the mining of the biodiversity offset is contrary to the public interest and ecologically sustainable development, and that the expansion will result in detrimental economic and social impacts on the Bulga community that are contrary to the principles of ecologically sustainable development.

Hunter Environment Lobby v Minister for Planning & Ors

EDO NSW acted for the Hunter Environment Lobby in a merits appeal that challenged the Minister for Planning's approval of a proposed expansion of Ulan Coal Mine's underground mining operations and a new open cut mining operation.

The Lobby raised a number of concerns about the impacts of the mine on the environment. For example, the mine expansion was predicted to have a significant impact on groundwater. It involved the clearing of over 400 hectares of vegetation,

including over 60 hectares of endangered ecological communities, 150 specimens of a threatened flora species and habitat for several threatened fauna species. The greenhouse gas (GHG) emissions from the mine were also of concern to the Lobby as the mine was expected to add approximately 12.7 million tonnes of carbon dioxide per year to the atmosphere.

The Court upheld the appeal but held that approval should be granted subject to specific conditions in relation to groundwater, biodiversity offsets and the offsetting of Ulan's scope 1 GHG emissions. The imposed conditions for biodiversity and groundwater will substantially reduce the impact of the mine on the environment.

This was a landmark case in that the GHG condition sought was the first of its kind to be considered by the Land and Environment Court. The Court originally expressed an intention to impose the GHG condition pending consideration of the implication of the Federal Government's proposed Clean Energy legislation. The Court found there was a need to encourage reduced emissions from the mine and the power to impose such conditions was wide. The Court found it should impose a condition to offset emissions even though there was no government policy to do so. The judgment stated that, in a merits context, the Court should do all possible to ameliorate the impact of a mine on GHG emissions. This sets a precedent which may prove useful in other contexts. However, the Court ultimately declined to impose the GHG condition because it found that the Commonwealth *Clean Energy Act 2011* and related legislation would cover most of the mine's activities which result in scope 1 emissions and therefore the purpose of the condition would be met by the legislation.

The Land and Environment Court rejected Ulan Coal Mine's application for the costs incurred in relation to the GHG emissions issue, and also ordered that Ulan pay the Lobby's costs of the costs hearing. This is a strong judgment in favour of public interest litigation.

Ironstone Community Action Group v Minister for Planning & Ors

EDO NSW acted for the Ironstone Community Action Group in a merits appeal in the Land and Environment Court challenging the Minister for Planning's approval of Duralie Coal's proposal for an open cut coal mine between Stroud and Stratford in the Barrington Tops area. ICAG was concerned about the impact of the mine on water quality in the Mammy Johnsons River, the endangered Giant Barred Frog, dust impacts from the mine on human health, and impacts on biodiversity in the region.

The Court upheld ICAG's appeal, but granted approval for the open cut coal mine, with substantially improved conditions.

With regards to dust, the Court declined to impose any specific criteria for fine particulate matter (PM2.5), but required Duralie to make public all management plans, studies and reports on its website to increase transparency and

accountability. The conditions require Duralie to protect biodiversity offset areas in perpetuity. The Court also imposed a “no direct discharge” condition for water, and stronger monitoring requirements for the Giant Barred Frog. There are also a number of additional conditions that deal with dust and noise and making information publicly available, which was a response to evidence submitted by residents during the hearing.

The client had this to say about the case:

ICAG Inc. believes that the Court case was worth pursuing and would like to thank...our legal team of EDO solicitors, our barrister Ashley Stafford and all our experts. Without these peoples' assistance, help and support, including other groups and individuals, this court case 'putting a human face on behalf of the environment and giving people in this valley and down the river a voice' could not have happened.

Coastwatchers Association Inc. & South East Region Conservation Alliance (SERCA) v Minister for Planning & Anor

EDO NSW acted for the Coastwatchers Association and South East Region Conservation Alliance (SERCA), in their appeal against the Planning Assessment Commission's decision to approve an application by Big Island Mining Pty Ltd to establish and operate a gold mine near Majors Creek.

The mine was ultimately approved following mediation between the parties that led to a better environmental outcome than the original approval.

The new safeguards include an improved design for the tailings dam which addressed concerns that high rainfall events would cause the dam to overflow.

In addition, the conditions require biannual monitoring of stream health and channel stability in Spring Creek and Majors Creek; publication of monitoring and major incident reports within 28 days; measures to prevent birds and animals from entering the tailings dam; and safeguards to make sure that any water released from the old workings will not have a negative impact on the water quality of Majors Creek. The conditions also provide for a biodiversity offset of the Tablelands Basalt Forest endangered ecological community and further consultation with Indigenous stakeholders.

Water users downstream of the project can now register to be informed of the results of monitoring, or of any major incidents on the site.

Our clients had this to say about the case:

Your professional and supportive responses to our queries and concerns have been very much appreciated.

We have always thought very highly of the quality of work carried out by the EDO. This has once again been reflected in achievement of the best possible outcomes in this case.

Ensuring proper decision-making in coal seam gas developments

Barrington-Gloucester-Stroud Preservation Alliance Inc. v the Minister for Planning and Infrastructure and AGL Upstream Infrastructure Investments Pty Limited

EDO NSW, on behalf of Barrington-Gloucester-Stroud Preservation Alliance Inc. commenced judicial review proceedings in the Land and Environment Court against two decisions of the Planning Assessment Commission (PAC), under delegation from the Minister for Planning and Infrastructure, to approve parts of the Gloucester Gas Project.

The Gloucester Gas Project involves over 100 coal seam gas wells within a 200km area between Barrington and Great Lakes, a 100 km pipeline traversing several local government areas, and a gas delivery station at Hexham. The Alliance is concerned about the risks of surface and groundwater contamination and the lack of data about groundwater impacts.

The key issue raised by the Alliance in the hearing is that the PAC failed to properly apply the precautionary principle in approving the development on the basis of only preliminary groundwater investigations, and in delegating certain decisions about groundwater to the Director-General at a future time when more studies have been completed. The Court has reserved its decision.

Ensuring compliance with the law

Illawarra Residents for Responsible Mining Inc. v Gujarat NRE Coking Coal Ltd

EDO NSW is acting for Illawarra Residents for Responsible Mining Inc. (IRRM) in a civil enforcement case to test the legality of a mining company's longwall mining operations in a section of its Russell Vale colliery. The mining company holds an approval under the *Environmental Planning and Assessment Act 1979* (NSW) for certain "preliminary works" at the colliery, but IRRM is arguing that the approval does not include the longwall mining currently being undertaken.

Legal and technical advice

In 2011-2012, EDO NSW provided over 90 detailed legal advices to clients on matters relating to natural resource management. Key issues raised by our clients included coal and coal seam gas exploration and mining, forestry and water management.

We provided Barraba Landcare with advice on the environmental assessment for the use of bore water, particularly with regards to the impacts on the Manilla River. As a result of the client's campaign, a decision was made to fund a pipeline to avoid the continued use of the bores and reduce the environmental impacts on the river.

There was an announcement made yesterday by Simon Crean and Tony Windsor that the Federal funding for the Split Rock Dam Pipeline to Barraba will happen. The funding is not only a win for Barraba, it is a win for our river environment. I would like to say thank you to you and your team for the help and guidance you have given me. I am positive that the EDO involvement had an impact on the funding decision.

EDO NSW wrote a letter to the Department of Planning on behalf of the community requesting the Department refuse an application by Duralie Coal Mine to modify a Court-made approval because the community and affected residents hadn't been properly consulted. As a result of this letter, the Department agreed to defer their decision and exhibited the modification for public comment.

EDO NSW provided advice to the Long Beach Residents Association on the approval process applying to the proposed dredging of the Clyde River, near Batemans Bay. EDO NSW also wrote to the Minister for Primary Industries about concerns over whether the Review of Environmental Factors (REF) they prepared complied with the requirements of the *Environmental Planning and Assessment Act 1979* (NSW). As a result, the Department of Primary Industries completed a supplementary REF to address omissions in the original REF.

EDO NSW provided ongoing legal and scientific advice to groups on a range of issues associated with coal seam gas exploration in the Pilliga State Forest, near Narrabri in western NSW. The key concerns relate to pollution incidents that have occurred as a result of the exploration and the company's compliance with a range of laws. Work on the site has now ceased until leaking ponds have been fixed.

Policy and law reform

Mining and coal seam gas was a key focus of our law reform work in 2011-2012. For example, we prepared a submission to, and gave evidence before, the NSW Parliament Legislative Council Committee on the impacts of CSG in NSW. The submission assessed the environmental, social, economic and health impacts of CSG activities; the interaction of the *Petroleum (Onshore) Act 1991* (NSW) with other legislation (such as planning laws); and the impact of similar industries in other jurisdictions. We noted the need for greater application of ecologically sustainable development; better baseline studies and data; better environmental impact assessment; agency concurrence powers; better information rights and community participation; and better compliance and enforcement tools.

The Committee's May 2012 report made 23 references to EDO NSW's submissions, spanning 13 issues and corresponding to Committee recommendations. Those recommendations included improving data gathering, monitoring and rehabilitation pre- and post-mining; stronger scrutiny of chemical usage; greater involvement of the Office of Environment and Heritage in environmental impact assessments; strengthening landholder rights relative to CSG operators regarding land access; requiring access arrangements at the

production stage as well as for exploration; and the development of a 'template' access arrangement that protects landholder rights.

At a Federal level we made a submission to the Senate Standing Committee on Environment and Communications on the proposed CSG Scientific Committee under the EPBC Act.

Other mining law reform work included:

- a submission to the NSW Department of Trade, Investment, Regional Infrastructure & Services (DTIRIS) on draft Environmental Impact Assessment Guidelines – for prospecting, mining and petroleum production activities subject to Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW);
- advice to members of the cross-bench of the NSW Parliament on the *Mining Legislation Amendment (Uranium Exploration) Bill* (NSW);
- a submission to the Department of Planning and Infrastructure on the proposed Strategic Regional Land Use Plans for the Hunter & New England/ North West regions;
- a submission to the Department of Planning and Infrastructure and DTIRIS on the proposed CSG Code of Practice – highlighting concerns about inconsistencies with the proposed Code of Practice and what the legal requirements are regarding CSG exploration on private land; and
- a CSG case study paper, *Ticking the Box: Flaws in the Environmental Assessment of Coal Seam Gas Exploration Activities* (November 2011).

Throughout 2011-2012, EDO NSW continued to work on water law reform. At a State level we made a submission to the NSW Office of Water on draft Water Management Regulations and an accompanying Regulatory Impact Statement (RIS) that supported additional licensing and narrowing of exemptions; and a submission on the Draft NSW Aquifer Interference Policy. EDO NSW also provided advice on the potential to challenge water sharing plans and on seeking information regarding water sharing plans.

At the national level, we continued to work with EDO Victoria on the Murray Darling Basin Plan reforms (providing both formal submissions and written advices to NGOs), and with our ANEDO partners on a submission to the Senate Rural Affairs and Transport Committee Inquiry on a Private Members Bill – the *EPBC Amendment (Protecting Australia's Water Resources) Bill 2011*.

Similarly, we continued our law reform work on forestry. At a State level we provided advice to the Opposition on suggested amendments to improve forestry compliance and implement recommendations of our report *If a Tree Falls*. At a Federal level we continued to work with environment groups and members of Parliament on a revised *Illegal Logging Prohibition Bill 2011* by making a submission to the Senate Rural Affairs and Transport Committee Inquiry. The revised Bill included some positive amendments, reflecting recommendations made by ANEDO.

Legal outreach

Legal outreach work in 2011-2012 was heavily focused on natural resource management and, in particular, mining and coal seam gas.

We prepared and presented 20 community legal education workshops on mining and/or coal seam gas throughout NSW in response to overwhelming community demand. In general, the community was looking for reliable information about how mining and CSG activities are regulated in NSW and especially the rights of landholders to participate in decision-making processes. Coal mining was the primary concern of our workshop attendees, but information on gold and antimony mining was also requested.

Thank you for the workshop... The feedback I have from two different property owners who have the threat of CSG wells going on their land was VERY positive. They said that the whole evening put a lot of things in perspective for them and gave them a more comprehensive understanding of the whole legislative framework.

Another key focus of the Legal Outreach Program was the draft Murray Darling Basin Plan. This initiative represents a significant change to the way water is managed in NSW and there was an obvious need in the community for assistance in understanding the proposed changes and responding to them. We devised a workshop that outlined the key environmental aspects of the draft Plan and provided useful tips on how to write an effective submission. The workshop drew heavily on EDO NSW's policy and scientific work and of other NGOs with expertise in the field. The workshops were presented in Dubbo, Broken Hill and Wanaaring.

EDO NSW staff members were also invited to present on a range of topics relevant to natural resource management. These included:

- a presentation on the *Native Vegetation Act 2003* (NSW) to the Environment Liaison Office;
- an update on forestry law to the Forestry Forum at the Australian National University in Canberra;
- an overview of planning and mining/coal seam gas law to the Rivers SOS Regional Conference;
- a presentation on community engagement in developing coastal land to a public meeting in Lakes Beach;
- presentations on coal seam gas developments and the law to the Hawkesbury Environment Network, the University Centre for Rural Health in Lismore; the Clarence Environment Centre and CLC NSW;
- presentations on assisting communities affected by mining and ESD to the Australian Youth Climate Coalition Repower Launch and the Australian National University Environmental Law Symposium.

The following papers were also published by EDO NSW staff throughout the year:

- Richard Howarth & Nari Sahukar (2011) "Improving mining law in New South Wales", *Australian Environment Review*, 26(9) at pp. 241-246.
- Ruddock K (2012) "Community backlash to CSG and the law", *Australian Environment Review*, 27(3) at pp. 91-93.

Climate change and energy

Casework

Testing the regulation of greenhouse gas emissions

Pete Gray and Naomi Hodgson v Macquarie Generation

EDO NSW represented Pete Gray and Naomi Hodgson in seeking a declaration from the Land and Environment Court that Macquarie Generation had been wilfully or negligently disposing of waste at their Bayswater Power Station by emitting carbon dioxide into the atmosphere in a manner that harmed or was likely to harm the environment. The Applicants argued that Macquarie Generation was not authorised to emit carbon dioxide under its Environment Protection Licence and was therefore in breach of the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act). It was the first case to consider the application of existing pollution law to greenhouse gas emissions.

Macquarie Generation sought to have the matter summarily dismissed. The Land and Environment Court found that Macquarie Generation's licence should be construed to allow them to emit CO₂. However, the Court found that it was reasonably arguable that there was a limit to the CO₂ that could be emitted based on reasonable regard and care for the interests of other people and the environment.

Macquarie Generation appealed this decision to the NSW Court of Appeal. The Court of Appeal held that Macquarie Generation's licence to pollute was a complete defence to the alleged breach of the POEO Act.

Testing infrastructure projects

Ned Haughton v Minister for Planning & Ors

EDO NSW acted for Ned Haughton in two sets of Land and Environment Court proceedings in which he challenged the Minister for Planning's approvals of two new coal or gas fired power stations – Bayswater B Power Station and the Mount Piper Power Station extension.

Mr Haughton challenged the validity of the approvals on several grounds but, most significantly, on the ground that the Minister failed to consider the impact of the projects (both alone and together) on climate change. Mr Haughton argued that the Minister was required to consider climate change as part of his duty to consider the public interest. Similarly, Mr Haughton sought to establish that the Minister failed to consider the principles of ecologically sustainable development (ESD), particularly the precautionary principle and the principle of intergenerational equity, as part of his duty to consider the public interest.

Mr Haughton also challenged the privative clause in the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) which sought to prevent judicial review of breaches of the Act in respect of critical infrastructure projects. On this issue, Mr Haughton was successful. The Court found that the privative clause in the EP&A Act could not remove the jurisdiction of the Court and that any person can bring proceedings to address alleged breaches of the Act.

However, Mr Haughton was unsuccessful on the remaining grounds. The Court found that, although the Minister is required to consider the public interest, that requirement is general in terms of what it encompasses. Therefore, the Minister was not bound to consider any specific element of the public interest such as the principles of ESD or the impacts of the development on climate change. Rather, these are issues that can be balanced with other issues relevant to the public interest, including the need to secure the supply of electricity for the State. A failure to consider any one of these issues will not invalidate the decision.

Legal and technical advice

Inquiries regarding climate change and energy were down on previous years, but were picking up towards June 2012 as a result of the impending implementation of the Federal Government's Clean Energy Legislation package, including the carbon tax. EDO NSW provided advice to several groups on some of the implications of the legislation, including complaints about misleading conduct where companies inaccurately attribute price rises to the carbon tax.

The provision of energy infrastructure has been an ongoing issue in the Northern Rivers region. EDO NSW conducted an advice clinic and brokered independent scientific advice for the Northern Rivers community regarding a TransGrid proposal for electricity transmission lines which were being assessed under State and Federal approval processes. The community was particularly concerned about the potential impact of the proposal on the critically endangered Grassy Box Woodland and also that the data relied upon to justify the need for the project did not factor in reduced demands in growth. Following sustained community advocacy, TransGrid announced that it is delaying the project into the 2020s.

In the area of renewable energy, EDO NSW provided detailed advice to a prospective wind farm venture on the legalities of undertaking the venture as a cooperative.

Policy and law reform

Our climate change law reform work was predominantly at the Federal level in 2011-2012. For example, in relation to the Clean Energy Legislative package (including the *Carbon Pricing (Clean Energy Future) Bill*), EDO NSW prepared a public briefing paper outlining the main aspects of the Government's carbon pricing announcement; a joint briefing note with EDO Victoria that outlined 10 areas in need of reform; a detailed submission on what was included and what was left out of the legislative package; and a legal advice for NGOs on the reforms.

Other Federal law reform work included the following on behalf of ANEDO:

- A submission to the Department of Infrastructure and Transport on the development of light vehicle CO₂ emissions standards to reduce the carbon intensity of Australia's transport sector, and complement the national carbon price.
- A submission to the Department of Climate Change and Energy Efficiency strongly supporting the introduction of a National Energy Savings Incentive.
- A submission to the Productivity Commission identifying current barriers to effective climate change adaptation.
- A submission to the Department of Resources, Energy and Tourism on the Draft Energy White Paper arguing that:
 - the externalities of non-renewable generation must be properly accounted for;
 - mandatory emissions standards should be imposed on all new power generation in Australia;
 - the electricity transmission and distribution network must be reformed in order to encourage renewable energy investment;
 - the mandate of the Independent Expert Scientific Committee on CSG should be expanded to consider environmental impacts beyond water;
 - the Government should take a leadership role and encourage the reduction or removal of regulatory barriers to the establishment of renewable generational sources (especially wind power), as compared to mining and CSG; and
 - the White Paper should avoid prioritising carbon capture and storage (CCS) technology at the expense of more renewable energy generation.

At a State level, EDO NSW made a submission on the Draft Planning Guidelines for Wind Farms to the Department of Planning and Infrastructure arguing that any standards for wind farm developments should enable the industry to compete on a level playing field. We also submitted that the level of assessment should reflect the potential environmental and social impacts of the particular development.

Legal outreach

EDO NSW undertook a range of legal outreach on climate change in 2011-2012.

A workshop on coastal law and climate change was held at Lennox Head which dealt with issues such as the ability of coastal planning to account for rising sea levels and the role the community can play in ensuring mitigation and adaptation mechanisms are implemented.

EDO NSW staff also presented on the topic of climate change at universities and events throughout the State, including:

- chairing a session on opportunities stemming from climate change and presenting a paper on Commonwealth environmental law at the Environment and Planning Law Association Conference;
- a presentation on climate justice to the Macquarie University Coastal Law Symposium;
- presenting a lecture on climate litigation to University of NSW law students; and
- a presentation on climate law and policy to the Climate Action Network Australia Conference.

EDO NSW staff also wrote the following papers dealing with issues related to climate change:

- Rachel Walmsley & Anna Lashko (2011) "Are our marine biodiversity laws climate ready?", *NELR 2* at pp. 37-45.
- Kirsty Ruddock and Dr Donna Green (2011) "What legal recourse do non-state islands have to obtain resources to adapt to climate change?", *Macquarie Journal of International and Comparative Environmental Law*, Vol. 7, no. 2.

Environmental justice

Casework

Facilitating access to justice for public interest litigants

Olofsson v Minister for Primary Industries & Ors

Mrs Olofsson is the secretary of the Camberwell Common Trust, which has held the Camberwell Common on trust for use by the commoners in Camberwell Village since 1876. Mrs Olofsson challenged decisions of the (then) Minister for Lands to revoke the Camberwell Common, reserve it as a Crown reserve, and grant a licence to Ashton Coal to facilitate its plans for an open cut coal mine over

the Common. She also sought an order from the Land and Environment Court that the Trust be classified as a 'landholder' under the *Mining Act 1992* (NSW) and served with notice of a mining lease application. Such notification gives landholders the right to object to mining leases under certain circumstances.

The Court found that the revocation and subsequent reservation of the Common was valid, and that therefore so too was the licence issued to Ashton Coal. The Court made no finding on whether the Trust was a landholder, as once a common is revoked the Trust that manages the common is automatically dissolved.

An important element of this case was that the Court made a maximum costs order limiting the liability of Mrs Olofsson in the proceedings to \$10,000 which allowed Mrs Olofsson to continue with her case. The Court recognised that Mrs Olofsson was bringing the case in the public interest by representing the common.

Seeking access to information on public interest grounds

Nature Conservation Council of NSW v Department of Trade & Investment, Regional Infrastructure & Services and Anor

EDO NSW is acting for the Nature Conservation Council of NSW (NCC) in seeking access under the *Government Information (Public Access) Act 2009* (NSW) to a range of documents held by Forests NSW. The documents being sought include the contracts between Forests NSW and sawmill companies for the supply of timber. The Department of Trade and Investment, Regional Infrastructure and Services agreed to release the contracts, but with relevant information removed, including the resource allocation and/or description, the resource price and terms of the agreements.

The reasons given for refusing access to this information related to the commercial nature of the information.

This matter is being heard by the Administrative Decisions Tribunal which will decide whether the public interest considerations in favour of release outweigh the factors against release.

Seeking to protect Aboriginal cultural heritage

Robert Lester v Ashton Coal Operations Pty Limited and Anor

In this case, Mr Lester, a Traditional Owner of the lands of the Wonnarua people in the Hunter Valley, brought civil proceedings arguing that Ashton Coal Operations Pty Limited breached the *National Parks and Wildlife Act 1974* (NSW) by harming Aboriginal objects through subsidence at two locations and the construction of an access road by another mining company over a Pleistocene site that was subject to Ashton Coal's Aboriginal Heritage Impact Permit.

The land in question is located near Camberwell in the Hunter Valley and the objects included artefact sites, archaeological deposits and grinding grooves. For this damage, Mr Lester sought a declaration from the Land and Environment Court that Ashton Coal breached the Act and an order for the objects to be stored in a keeping place to be managed by the Wonnarua people. The Court dismissed the case, finding that there was insufficient evidence that Ashton Coal was in breach of the Act.

Briggs-Smith v Moree Plains Shire Council

EDO NSW represented Aunty Noeline Briggs-Smith in the Federal Magistrates Court seeking protection of the Dhiyaan Indigenous Centre (DIC), an Aboriginal keeping place in Moree.

The DIC is a collection of Aboriginal library resources, genealogies and artefacts that took 16 years to accumulate. The DIC played an essential role in the preservation of cultural heritage for Aboriginal people in and around Moree until its closure and the redistribution of the majority of the collection to regional libraries. Ms Briggs-Smith sought orders for the Moree Plains Shire Council to return the items and restore the DIC for the benefit of the Aboriginal community.

Ms Briggs-Smith was unsuccessful in her application for a maximum costs order to cap her liability for costs in the proceedings at \$5,000. As a result, she was unable to continue with her case. The proceedings were discontinued but EDO NSW is continuing to assist Aunty Noeline in trying to protect and restore the DIC.

Kennedy v Stockland Developments Pty Limited (No 3)

This case concerned earthworks undertaken by Stockland on land known as “Wilkie’s Walk”, being land of significance to Aboriginal people, and protests by Aboriginal people who sought to prevent the works from taking place. The Land and Environment Court had granted an injunction restraining unauthorised members of the public from entering upon any part of the land specified in the orders. EDO NSW, on behalf of Mr Kennedy, sought that the injunction be dissolved on the basis that it was made on an ex parte basis without affording Mr Kennedy an opportunity to be heard; its terms were too wide, and that it impermissibly infringed a common law right of free speech or a common law right to protest.

The Court dismissed the application, holding that the ex parte order was justified in circumstances where the protest on the development site appeared to be ongoing and Mr Kennedy’s representative could have requested an opportunity to be heard in relation to the injunction. The Court was satisfied that the terms of the injunction were not too wide. In relation to common law rights of free speech and to protest, the Court held that the cases cited did not stand as authority for the proposition that there exists at common law in Australia a right to free speech or a right to protest, and that the injunction did not prevent protests taking place on public

lands (only on Stockland's lands). Mr Kennedy was ordered to pay Stockland's costs of the motion.

Legal support to environmental activists

Throughout the year, EDO NSW assisted in a small number of matters – generally with pleas and facilitating representation - involving environmental protest action. An area of particular concern has been in relation to the use of compensation orders against protestors.

Legal and technical advice

In 2011-2012, EDO NSW provided over 60 detailed legal advices to the community on issues relating to environmental justice.

EDO NSW provided advice on the legality of the development approval for a refractory at Port Kembla granted by the Joint Regional Planning Panel. The client had concerns about possible pollution from the refractory and impacts on health.

I, along with several other parents and residents, cannot thank you and your team enough for your support and guidance. The letter you have forwarded us has given some confidence but furthermore, direction of where to from here. We are going to insist that the Council or the company install an air monitor so that we can be certain that our children are safe and maintain higher levels of accountability from the company/council.

EDO NSW acted for neighbours of a building site in which asbestos removal works were being carried out without prior notification to neighbours as required by the *Work Health and Safety Regulation 2012* (NSW). As a result of the EDO NSW complaint, WorkCover agreed to investigate the matter.

Policy and law reform

Consistent with previous years, EDO NSW's law reform work in the area of environmental justice was divided between Indigenous issues, reforms concerning access to justice in court and pollution.

A key focus at the State level was the Aboriginal Culture and Heritage – Legislative Review and Reform process initiated by the former NSW Government. EDO NSW made a submission to the Aboriginal Culture and Heritage Reform Working Party recommending that independent legislation be enacted for the protection of Aboriginal culture and heritage in NSW and that it be administered by an independent commission, and governed by representatives of NSW Aboriginal communities.

EDO NSW also undertook two paid consultancies for the NSW Aboriginal Land Council in relation to Biobanking and cultural heritage protection.

At the Federal level, we prepared an ANEDO submission to the Expert Panel

on the Recognition of Aboriginal and Torres Strait Islander (ATSI) People in the Australian Constitution. The submission supported constitutional recognition of ATSI/First Peoples, consistent with the Declaration on the Rights of Indigenous Peoples and to assist with wider acknowledgement of ATSI peoples' contribution to environmental management, culture and society in Australia. We also made a submission to the Commonwealth Government on the Heritage Strategy Review focusing on Indigenous heritage and recognising the right to protect Indigenous heritage.

In relation to broader access to justice reforms, we made the following submissions:

- ANEDO submission to the Administrative Review Council on Judicial Review in Australia;
- submission to NSW Law Reform Commission Consultation Paper 13 on security for costs and associated costs orders;
- submission to the Review of Delivery of Legal Assistance Services to the NSW Community; and
- submission to the NSW Office of the Information Commissioner on the GIPA Fees and Charges review.

Pollution paper

Our major law reform discussion paper in 2011-2012 was *Clearing the Air - Opportunities for improved regulation of pollution in New South Wales*. This report was commissioned by the Nature Conservation Council of NSW in the wake of the Orica pollution incidents. The discussion paper describes the regulatory framework for the management of pollution in NSW and outlines significant shortcomings of the current system in protecting human health and the environment. The paper examines existing pollution regulation; the need for an integrated inter-agency approach; key elements of an effective pollution management system; opportunities for enhancing community engagement; and priorities for effective compliance and enforcement. The paper proposes an enhanced approach to managing pollution in NSW that:

- places duties on regulators and polluters to minimise and, where possible, eliminate pollutants from entering our environment;
- sets pollution management on an objective, scientifically based foundation;
- strengthens the role of the EPA in strategic planning and decision making;
- strengthens the pollution licensing system and increases transparency around information relating to polluting activities;
- enhances and broadens the use of existing tools to minimise pollution loads and drive continual improvement;
- strengthens community engagement in pollution management decisions; and
- enhances the EPA's role as an independent regulator.

Other pollution law reform work included a submission to the NSW Environment Protection Authority in response to changes to the *Protection of the Environment Operations Act 1997* (NSW) that require the holders of environment protection licences to publish certain pollution monitoring data; a submission to the NSW Joint Standing Committee Inquiry into the Kooragang Island Orica chemical leak; and assistance to members of the cross-bench of the NSW Parliament on the *Marine Pollution Bill 2011*.

Legal outreach

In the area of environmental justice, EDO NSW conducted two workshops on community rights and responsibilities to do with campaigning – one in Kyogle, and the other in Grafton. These workshops aim to assist participants to make informed decisions when engaging in a range of campaigning activities.

EDO NSW staff members were also invited to provide expertise on a range of issues relevant to environmental justice. This included:

- a presentation on cultural heritage law reform to the National Indigenous Law Conference;
- a presentation on the EDO NSW Scientific Advisory Service to the Young Lawyers Environment and Planning Law Committee
Many of the meeting attendees commented that your talk opened their eyes to new issues. This will no doubt translate into better understanding, communication and working relationships between scientists and lawyers in the future.
- a lecture to the University of Western Sydney Advanced Torts class on torts and the environment;
- a briefing to a delegation of Chinese judges on environmental law in Australia;
- a presentation on the role of EDO NSW to the Food Security Forum in Gunnedah;
- a presentation on the Orica pollution incidents and reporting requirements to Sustainable Business Australia's Briefing Forum; and
- chairing a session on contaminated land management guidelines for a community legal education event run by the Environment and Planning Law Association.

REPORTING AND GOVERNANCE

EDO NSW clients

In 2011-2012, EDO NSW provided legal assistance to hundreds of clients, including a diverse range of individuals and community organisations. Organisations assisted by EDO NSW during the year include:

4 Nature	Bonny Hills Progress Association
Anna Bay Community Action Group	Brunswick Foreshore Protection Group
Armidale Local Aboriginal Land Council	Byron Saving Australia's Natural Environment
Association for Berowra Creek	Bulga Milbrodale Progress Association
Australian Marine Conservation Society	Caldera Environment Centre
Australian Youth Climate Coalition	Caroona Coal Action Group Inc.
Australians for Sustainable Development Inc.	Casino Group Against Gas
Ballina and District Citizens and Rate Payers Association	Community Environment Network
Ballina Environment Society	Citizens Against Fluoridation Mid North Coast
Bangalow Community Alliance	Clarence Environment Centre
Barrington Gloucester Stroud Preservation Alliance	Clarence Valley Against Coal Seam Gas
Bat Advocacy - Batwatch Australia	Climate Action Network Australia
Beecroft Action Group	Coastwatchers Inc.
Bellata Gurley Action Group Against Gas	Colong Foundation for Wilderness Conservation of North Ocean Shores
Bellingen Environment Centre	Cringella Community Action Group
Bellinger Estuarine Protection Association	Croydon Residents Action Group
Blue Mountains Conservation Society	Dorrigo Environment Watch
	Duffys Forest Residents Association

Fingal Head Community Association Inc.
 Friends of Quarantine Station
 Friends of South West Rocks
 Friends of the Glade
 Friends of the Koala Inc.
 Friends of Turrumurra Inc.
 Georges River Environmental Action Team
 Glenrac Inc.
 Green Roofs Australasia
 Hastings Point Progress Association
 Humane Society International Inc.
 Hunter Environment Lobby Inc.
 Jerrinja Local Aboriginal Land Council
 Lakes Beach Landcare - Hargraves Beach Dunecare
 Lennox Head Landcare Inc.
 Lithgow Environment Group
 Lock the Gates Alliance
 Maules Creek Community Council
 Mosman Parks
 Mullaley Gas and Pipeline Accord Inc.
 Murong Gialinga
 National Parks Association
 Nature Conservation Council
 Nimbin Environment Centre
 North East Forest Alliance Inc.
 Northern Illawarra Sustainability Alliance
 Northern Inland Council for the Environment
 NSW Aboriginal Land Council
 NSW Wildlife Council
 Old Bar Beach Sand Replenishment Group Inc.
 Camberwell Common Inc.
 Parks and Playgrounds Movement Inc.
 Pelican and Seabird Rescue
 Queanbeyan Landcare Inc.
 Rising Tide
 Ryde Environment Group
 SHAFTED Inc.
 Snowy River Alliance
 SOS Liverpool Plains
 South East Forest Rescue
 South East Region Conservation Alliance
 Southern Highlands Coal Action Group
 Starfish Enterprises Network
 Stockton Community Action Group
 Stringy Bark Creek Residents' Association Inc.
 Suffolk Park Progress Association Inc.
 Sutherland Shire Environment Centre
 Sweetwater Action Group Inc.
 Tarmac Sawmilling
 The Climate Institute (Australia) Ltd
 The Gosford Alliance
 The Wilderness Society
 Total Environment Centre
 Tweed Laboratory Centre
 Valley Watch Inc.
 Western Sydney Conservation Alliance
 Wollumboola Protection Association

Acknowledgements

Volunteers

The Sydney office has capacity for up to ten volunteers per day and the Northern Rivers office has one to two volunteers a day. Volunteers assisted across all functions of EDO NSW but primarily with the provision of legal advice and casework services. They greatly enhance the capacity of the organisation to provide timely assistance to clients. EDO NSW would like to thank the following volunteers from 2011-2012 for their commitment and hard work:

Kristina Bacak	Ebony Holland	Karen Raubenheimer
Andrea Bassett	Lucy Howard	Louise Rigozzi
Alex Beale	Peter Hutchison	Emily Ryan
Eleonora Bergamachini	Kathy Keat	James Ryan
Michelle Bragg	Shannon Kelly	Jamie Sawyer
Isabelle Braly	Maryan Lee	Oksana Shashko
Evan Brandes	Soo-Jae Lee	Babette Tachibana-Brophy
Ned Brooks	Keda Ley	Anne Thomas
Ana Carneiro	Juliana Liskov	Steve Tree
Bobby Chen	Ed Lui	Katherine Tu
Chris Chie	Joelene Luu	Arie van der Ley
Sharon Cooper	Tracy Lynch	Alex Vaughn
Anna Corbett	Dominique Maingot	Pavithra Vigneswaran
Kiera Crosariol	Hannah Mangnall	Denise Wilson
Dileepa Dayananda	Nick Markov	Sarah Wilson
Saul Deane	Alex McDonald	Ben Winsor
Lily Dempster	Emily McQueen	Andrew Wu
Phillip Divisek	Richard Murphy	
Don Do	Harkiran Narulla	
Giselle Firme	Samuel Nowland	
Eliana Fischman	Warren Oaks	
Maddison Griffith	Gabrielle O'Shannessy	
Clare Guilfoyle	Adam Palmisano	
Adam Guise	Rachel Pascall	
Melissa Harvey	Katherine Pearson	
Sophie Herrmann	Shanu Rana	

Pro bono assistance

The legal and scientific community also lend invaluable support to the work of EDO NSW, providing legal and advisory services for a reduced fee or, in many cases, for no charge. EDO NSW 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

EDO NSW would like to thank the following barristers, solicitors and firms who provided their time and assistance with EDO litigation and other matters in 2011-2012:

Christine Adamson SC	Clifford Ireland
Robert Beech-Jones SC	James Johnson
Phillip Clay SC	Daniel Joyce
Sandra Duggan SC	James King
Geoffrey Kennett SC	Jason Lazarus
Jeremy Kirk SC	Craig Lenehan
Richard Lancaster SC	Verity McWilliam
Dr Mark Leeming SC	Scott Nash
Ian Lloyd QC	Bridie Nolan
Dr Melissa Perry SC	Chris Norton
Dr James Renwick SC	Andrew Pickles
Tim Robertson SC	Sarah Pritchard
Bret Walker SC	Deone Provera
Neil Williams SC	Fleur Ramsay
Charles Alexander	Leigh Sanderson
Ken Averre	Mark Seymour
Victoria Brigden	Ashley Stafford
Chloe Burnett	Desmond Sweeney
Louise Byrne	Brenda Tronson
Nick Eastman	Robert White
Stephen Free	Michael Wright
Reg Graycar	Houda Younan
Anne Hemmings	
Tom Howard	
James Hutton	

Firms

DLA Piper
Gadens Lawyers
Gilbert & Tobin

Scientific and technical assistance

EDO NSW would like to thank the following experts, both on and off the Expert Register, who provided assistance during 2011-2012, and all those who provided assistance anonymously:

Stephen Balcombe	Andy Pitman
Andrew Brooks	Steve Phillips
Rob Clemens	Anthony Powe
Nick Coleman	Graham Pyke
Paul Cooper	Scott Rayburg
Ana Corpuz	Elizabeth Roberts
Matthew Currell	Mick Roderick
Neil Davis	Jay Rutovitz (Institute for Sustainable Futures)
Stephen Debus	Brendan Ryan
Claire DeLacey	David Shearman
Chris Dey	Mary Jean Sutton
Don Driscoll	Mauricio Taulis
Robert Eastment	Scott Wilson
Martin Fallding	Ian Wright
Warwick Giblin	
Donna Green	
Christopher Hallem	
John Harris	
Wendy Hawes	
Nigel Holmes	
Grant Hose	
John Hunter	
Nasim Jafaril	
Teresa James	
Tristan Knowles (Economists @ Large)	
Ian Lambert	
Andrew Merchant	
David Milledge	
William Milne-Home	
Hugh Outhred	
Ken Page	

Donors

As a non-government and non-profit organisation, EDO NSW gratefully accepts support from a range of sources and, during this year, received donations of almost \$20,000. The support received helps the organisation to achieve its mission and in no way compromises its independence. EDO NSW would like to acknowledge the following individuals and organisations (as well as those who chose to remain anonymous) for their generous financial and/or in-kind support:

Barbara Adams

Lee Andresen

Geoffrey Ball

Ballina Environment Society

Pepe Clarke

Richard Docking

Bruce Donald

Dexter Dunphy

Cate Faehrman

Luke Foley

Richard Gates

Bernard Griffi

Sylvia Hale

Ronnie Harding

Murray Hogarth

Carol Isaacs

Michele Kearns

Andrew Kelly

Michael Kennedy

Yanan Kim

Robert Kinnane

Judy Lambert

David Lemcke

George Lewin Foundation

Richard Merzian

Ilona Millar

Parks and Playground Movement

Patricia Ryan

Richard Smyth

Paul Stein

Sutherland Shire Environment Centre

James Tedder

Lyn Walker

Philippa Walsh

John Weate

Don White

Willoughby Environment Protection
Association

Hal Wootten

EDO NSW people

Staff

At 30 June 2012, the staff of EDO NSW comprised:

Executive Director

Jeff Smith

Principal Solicitor

Kirsty Ruddock

Senior Solicitors

Ian Ratcliff (Northern Rivers)

Sue Higginson (Northern Rivers)

Natasha Hammond-Deakin

Solicitors

Elaine Johnson

Corrina Novak

Mark Holden (Aboriginal Solicitor)

Julia Green (on secondment from

Gadens Lawyers)

Policy and Law Reform Director

Rachel Walmsley

Policy and Law Reform Solicitors

Nari Sahukar

Emma Carmody

Scientific Director

Megan Kessler

Scientific Officer

Christine Ball

Outreach Director

Jemilah Hallinan

Outreach Solicitors

Emma Cocks (Northern Rivers)

Emily Ryan

International Programs Officer

BJ Kim

Operations Manager

Meredith MacDonald

Administrative Officers

Jo Groves (Northern Rivers)

Ana Carolina Napoli Carneiro

Roslyn Blake

Kirsty Jordan

Staff changes

EDO NSW has experienced quite a few changes during the past year and, as in previous years, some of the changes have been related to the continuing baby boom.

In the Policy and Law Reform Team, Nari Sahukar was Acting Director for much of the year while Rachel Walmsley was on maternity leave, and has returned to his Policy and Law Reform Solicitor position since Rachel returned to work. Zsafia Korosy provided back-up to the team during this time as a Policy and Law Reform Solicitor. Richard Howarth left his Policy and Law Reform Solicitor position and was replaced by Emma Carmody.

Anna Lashko was Acting Scientific Director while Tanya Wansbrough was on maternity leave. Tanya decided she did not want to return to the position and, as Anna was unable to extend her temporary appointment, Megan Kessler was recruited to fill the Director's role.

Neva Collings left the Aboriginal Solicitor position after five years and has been replaced by Mark Holden. Belinda Rayment was in the position of

Locum Solicitor for about six months, providing relief to the Litigation Team while various solicitors took leave.

In the Outreach Team, Mark Byrne left the Northern Rivers office and Nick Angel left the Sydney office. They have been replaced by Emma Cocks and Emily Ryan respectively. The temporary Project Officer position which was funded by a project grant and filled by Sahil Prasad ended in December 2011.

The Administration Team in the Sydney office underwent major change with the departure of John Scanlan after more than twelve years and the retirement of Diana Beaton after five years. Ana Carolina Napoli Carneiro, who had been working as a volunteer and then a casual, has been retained and Roslyn Blake and Kirsty Jordan have joined the team.

Staff training and development

EDO NSW continues to support the training and development of its staff to enhance their capacity to deliver high quality services. It is committed to allocating funds for external staff training and development, in addition to undertaking internal education sessions on specific topics with special relevance for EDO NSW's operations.

Board of management

EDO NSW is a non-profit company limited by guarantee and its volunteer Board provides strategic direction and governance to the organisation. The Board is elected at each annual general meeting. Board members attend six-weekly meetings, planning days and

ad hoc committees. They make a major contribution to the work of EDO NSW, guiding its development and devoting considerable time and expertise to the work.

The EDO Patron and members of the Board during 2011 – 2012 comprised:

Mr Hal Wootten AC QC, Patron

The Hon. Murray Wilcox AO QC, Chair

Ms Barbara Adams PSM, Vice-Chair

Mr Andrew Burke, Secretary

Ms Helen Gillam, Treasurer

Mr John Connor

Dr Ronnie Harding

Mr Frank Hubbard

Prof. Michael Jeffery QC

Mr Michael Kennedy

The Hon. Kevin Rozzoli AM

Ms Kate Smillie

EDO NSW: a green office

Throughout 2011-2012, EDO NSW continued its commitment to operating in an environmentally sustainable way.

As in previous years, EDO NSW measured its carbon footprint using the greenhouse gas calculator (available on the website) and offset emissions using Climate Friendly certified Gold Standard carbon offsets. This amounted to 58 tonnes of carbon dioxide equivalent offsets. In calculating the carbon footprint of the offices, we include:

- 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 (although we offset these by purchasing 100% green power from our provider); and
- emissions associated with waste disposal and recycling.

Compared with the previous reporting period, EDO NSW reduced total carbon emissions by 22%. Reductions were achieved through substantially less car and plane travel, and reduced paper use (from office printing and publications). The Northern Rivers office also achieved a reduction in electricity consumption, but the Sydney office increased electricity consumption by nearly 50% due to moving to a much larger office space, and increasing the number of operating workstations.

In the past year we also sought to reduce our ecological and carbon footprint by:

- Undertaking an upgrade of the lighting system in the Sydney office to reduce energy consumption. We look forward to seeing the impacts from this upgrade in the next reporting period.
- Becoming a “City Cousin” in the Food Connect program. Food Connect delivers seasonal boxes of sustainable produce from local farmers to the Sydney office for collection by office staff and neighbours. Food Connect pays farmers a fair price, builds community and makes real food available to city folk.
- Completing an office Climate Challenge. The Nature Conservation Council of NSW developed the Community Climate Challenge in 2006 to inspire household and community action, facilitate ongoing behavioural change and promote more sustainable communities. EDO NSW staff took the challenge to help reduce their office and home climate footprint.
- Continuing to purchase 100% GreenPower for both Sydney and Lismore offices.

Funding and financial report

Funding from grants

EDO NSW is overwhelmingly dependent on grants to fund its operations at their current level. The major source of funding for the organisation is the Public Purpose Fund (PPF). This has been triennial funding and the current grant is for the period 2009 to 2012. The PPF provided \$1,642,127 or about 72% of EDO NSW's income in 2011-2012.

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 current Funding Agreement covers 2010–2013. CLSP funds from the NSW Government accounted for \$188,824 or about 8.3% of the income of EDO NSW in 2011-2012; Commonwealth funding amounted to \$93,928 or 4.2% of overall revenue.

EDO NSW 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. EDO NSW was awarded \$180,000 in funding for the period 2009–2012. As only \$36,000 of this grant was taken up in the first year, \$72,000 was available last year and this year.

The John D. and Catherine T. MacArthur Foundation is another major funder of EDO NSW with triennial funding of \$US210,000 from 1 July 2010 to 30 June 2013. This funding is for legal capacity building work in Papua New Guinea and the Pacific.

In addition to the triennial grants outlined above, EDO NSW received a number of smaller grants allocated for a shorter time and for specific projects during 2011-2012. These were:

- NSW Government through its Environmental Trust for *Mining and the Law: A Guide for the Community*;
- NSW Government through its Environmental Trust for *Influencing Environmental Outcomes: A guide to having your say*;
- the Commonwealth Government through AusAID's Australian Leadership Awards Fellowship Program; and
- the Environment and Planning Law Association (NSW) Inc. for an annual research fellowship grant.

Income generation

In addition to the income received from grants, EDO NSW generated other income from a range of sources. In 2011-2012, EDO NSW received other income of \$173,866. A proportion of this was income from professional fees (\$78,321). EDO NSW'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 EDO NSW's client. Fees may also be received for legal advice, consultancies or presentations. Other income came from memberships and donations; income from bank interest; sale of publications and copyright licensing. This money enables EDO NSW to undertake work which is strategically important but cannot be done within the terms of funding contracts.

Financial performance

In 2011-2012, EDO NSW achieved a surplus of \$34,098. This is consistent with the outcomes achieved in most years where the surplus/deficit is within 5% of annual revenue. The Board had planned on a deficit result for this financial year, however, given the uncertainty regarding future funding from the Public Purpose Fund, a more conservative approach to expenditure was adopted which largely involved deferral of discretionary projects such as developing a more effective website and systems, better suited to the expanded and more complex organisation that EDO NSW has become.

ENVIRONMENTAL DEFENDERS OFFICE LIMITED
ABN 72 002 880 864

DIRECTORS' REPORT

FOR THE YEAR ENDED 30th JUNE 2012

The Directors present this report on the company for the financial year ended 30th June 2012.

Directors

The following persons held office of director during the year and up to report date:

The Hon. Murray Wilcox AO QC,

Chairperson
Appointed 24/10/2007
Retired Judge
Attended 8 of 9 meetings

Ms Barbara Adams, PSM, Vice-Chair

Appointed 29/10/2002
Retired Senior Public Servant
Attended 8 of 9 meetings

Mr Andrew Burke, Secretary

Appointed 23/6/2010
Solicitor
Attended 8 of 9 meetings

Ms Helen Gillam, Treasurer

Appointed 28/10/2008
Lecturer (Accounting, University of
Technology, Sydney)
Attended 4 of 9 meetings

Mr John Connor

Appointed 1/12/2010
Chief Executive Officer,
The Climate Institute
Attended 5 of 9 meetings

Dr Ronnie Harding

Appointed 21/10/2009
Retired Academic (Environmental
Studies, University of NSW)
Attended 6 of 9 meetings

Mr Frank Hubbard

Appointed 30/01/1996
Principal, Worthwhile Projects Pty Ltd
Attended 6 of 9 meetings

Prof. Michael Jeffery QC

Appointed 26/11/2002
Queens Counsel and Professor
(Environmental Law, University of
Western Sydney)
Attended 6 of 9 meetings

Mr Michael Kennedy

Appointed 24/1/2011
Campaign Director, Humane Society
International (Australia)
Attended 5 of 9 meetings

The Hon. Kevin Rozzoli AM

Appointed 2/5/2012
Consultant
Attended 1 of 2 meetings

Ms Kate Smillie

Appointed 2/12/2009
Manager Revolving Funds, Nature
Conservation Trust of NSW
Attended 7 of 9 meetings

Net profit after income tax

The net profit of the company for the financial year was \$34,098 (2011 – \$9,916).

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.

Short-term and long-term objectives

The company's long-term objective is to contribute to a sustainable environment protected through the rule of law.

The short-term objectives are:

- Effective legal protection of the environment
- Empowered community
- Leadership & influence
- Dynamic sustainable organisation

Strategies

The company's strategies are:

- Public interest lawyering
- Policy and law reform
- Community legal education
- Multi-disciplinary approach supported by sound science
- Communications and media

Key performance measures

The company measures its performance through the use of both qualitative and quantitative indicators which are identified in the Strategic and Operational Plans of the organisation. These are approved and monitored through written reports to the Board of Directors. Copies of the Plans are available to members on request.

After balance date events

As at the date of this report, EDO NSW has confirmation of the continuation of funding from the Public Purpose Fund, the major source of income for EDO NSW, until 31 December 2012 and it is not known if funding will continue beyond that date. Other grants for core operations are confirmed to the end of the financial year and EDO NSW will continue to derive income from other sources such as fees and fundraising.

Future developments

If funding from the Public Purpose Fund does not continue beyond 31 December 2012, EDO NSW will continue to operate but will reduce the level of staff, outgoings and service provision to meet the available income.

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.

Liability of members

The company is incorporated under the Corporations Act 2011 and is a company limited by guarantee. If the company is wound up, the Articles state that each member may be required to contribute a maximum of \$10.00 towards meeting any obligations of the company. At 30th June 2012, the total amount that members of the company are liable to contribute if the company winds up is \$560.00.

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.

A Notice of Motion was filed in the Federal Magistrates Court seeking costs against the Principal Solicitor of EDO NSW but the action was discontinued.

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 an on behalf of the directors by:

Directors

Barbara Adams
Andrew Burke

Dated this 29th day of September 2012

**STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2012**

	2012	2011
	\$	\$
ASSETS		
CURRENT ASSETS		
Cash and Cash Equivalents	796,035	873,872
Trade and Other Receivables	59,748	135,017
Other Financial Assets	80,379	87,063
TOTAL CURRENT ASSETS	936,162	1,095,952
NON CURRENT ASSETS		
Property Plant & Equipment	74,783	64,003
TOTAL NON CURRENT ASSETS	74,783	64,003
TOTAL ASSETS	1,010,945	1,159,955
LIABILITIES		
CURRENT LIABILITIES		
Trade and Other Payables	250,333	400,658
Short Term Provisions	148,487	122,182
TOTAL CURRENT LIABILITIES	398,820	522,840
NON CURRENT LIABILITIES		
Long Term Provisions	-	59,088
TOTAL NON CURRENT LIABILITIES	-	59,088
TOTAL LIABILITIES	398,820	581,928
NET ASSETS	612,125	578,027
EQUITY		
Retained Earnings	612,125	578,027
TOTAL EQUITY	612,125	578,027

Independent audit report

Auditor's opinion

In my opinion:

- a. the financial report of Environmental Defenders Office Ltd is in accordance with the *Corporations Act 2001*, including:
 - i. Giving a true and fair view of the company's financial position as at 30 June 2012 and of its performance for the year ended on that date; and
 - ii. complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the *Corporations Regulations 2001*; and
- b. the financial report also complies with International Financial Reporting Standards as disclosed in Note 1.

Emphasis of matter

I draw attention to Note 15 to the financial statements, Future Developments, which describes the uncertainty relating to future Public Purpose Fund grants for the company beyond 31 December 2012. My opinion is not modified in respect of this matter.

Joe Pien
Chartered Accountant
Suite 503, Level 5, 276 Pitt Street, Sydney, NSW, 2000

Dated this 29th day of September, 2012

PROFIT AND LOSS STATEMENT FOR THE YEAR ENDED 30 JUNE 2012

	2012	2011
	\$	\$
INCOME		
Grants Received	1,992,560	1,956,684
MacArthur	38,390	69,505
Donations and Memberships	20,900	64,825
Conferences, Publications & Workshops	86,999	82,999
Professional Fees	78,321	95,469
Interest Received	69,523	74,569
	2,286,693	2,344,051
EXPENDITURE		
Auditor's Remuneration - Financial Statements	8,628	12,420
Accountancy and Bookkeeping	37,442	31,938
Bad Debts Written Off	-	3
Bank and Government Charges	4,276	3,029
Board Costs	1,917	1,495
Casual Staff	1,348	7,514
Conferences, Publications & Workshops	55,609	93,952
Consultants Fees	500	12,107
Depreciation	22,563	25,707
Disbursements - non recoverable	2,448	-
Doubtful Debts	1,095	986
Employees Entitlement Provision	-32,784	13,765
Employee Expenses	10,747	10,117
Insurance	13,525	12,583
Legal Fees	-	6,938
Light & Power	13,066	7,863
Loss on Disposal - Fixed Assets	-	664
MacArthur Expenses	30,032	57,103
Equipment Lease	-	8,791
Office Costs	17,729	26,442
	188,141	333,417
Carried Forward	188,141	333,417

	2012	2011
	\$	\$
EXPENDITURE (Continued)		
Brought Forward	188,141	333,417
Organisational Development	45,681	79,853
Postage & Couriers	5,699	3,955
Printing & Stationery	18,640	17,714
Rent - Office	153,618	133,964
Repairs & Maintenance - General Repairs & Maintenance	4,215	45,833
Salaries & Wages	1,596,480	1,483,316
Staff Training & Welfare	14,105	14,942
Staff Amenities	8,258	6,314
Staff Recruitment	2,084	3,129
Subscriptions	24,669	22,851
Superannuation Contributions	135,955	129,706
Telephone & Internet	33,891	31,862
Travelling Expenses	21,159	27,279
	2,252,595	2,334,135
OPERATING PROFIT BEFORE INCOME TAX	34,098	9,916

INTERNATIONAL AID AND DEVELOPMENT INCOME STATEMENT

	Note	2012 \$
REVENUE		
Donations and gifts		
Monetary	1	30,000
Non-monetary	2	40,825
Grants - AusAid		28,453
- Overseas		38,390
Other income	3	10,000
TOTAL REVENUE		147,668
 EXPENDITURE		
International Programs		147,831
Community Education		-
Fundraising Costs		-
Accountability and Administration		-
TOTAL EXPENSES		147,831
(SHORTFALL) OF REVENUE OVER EXPENDITURE		163

Notes

- 1 Funds allocated from unrestricted donations to the Environmental Defender's Fund operated by EDO NSW
- 2 This includes volunteers services valued at \$13,455 and pro bono services valued at \$27,370
- 3 Balance of funding for International Program taken from investment income of EDO NSW

Declaration

EDO NSW is a signatory to the Australian Council for International Development (ACFID) Code of Conduct (the Code). This International Aid & Development Income Statement has been prepared in accordance with the requirements set out in the ACFID Code of Conduct. For further information on the Code, please refer to the ACFID Code of Conduct Implementation Guidance available www.acfid.asn.au.

Abridged report

This is an abridged copy of the Financial Report for the year ended 30 June 2012. For a full copy of the Report, please see our website www.edo.org.au/edonsw/site/annualreports.php or contact the offices of EDO NSW.



NSW



**DEFENDING THE ENVIRONMENT
ADVANCING THE LAW**

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