




ENVIRONMENTAL DEFENDER'S OFFICE NSW

ANNUAL REPORT – 2008/09



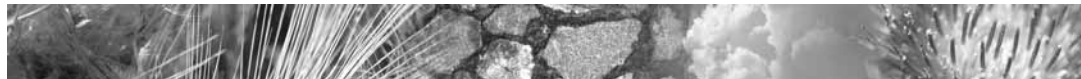
The Environmental Defender's Office (NSW) is a community legal centre specialising in public interest environmental law. The EDO provides legal advice and representation in public interest environmental law matters. In addition to the provision of legal services, the Office takes an active role in law reform and the formulation of policy, provides technical scientific advice to help the community understand environmental documents and carries out community programs on environmental law. The EDO has 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. This report was published on 14th October 2009.

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New South Wales has now had statutory town-planning for over 63 years. I believe that, during all that time, there has never been more dissatisfaction with it than at present. Many factors contribute to this unhappiness. However, one important factor is the Minister's power, under Part 3A of the *Environmental Planning and Assessment Act 1979*, (EP&A Act 1979) to call in, and personally determine, any substantial development application, bypassing the local council. This power is now frequently used. The power is made more significant by the circumstance that decision-makers now usually possess discretion to override the development standards prescribed in the relevant local environment plan. So people often find themselves faced with a Ministerial approval for a development that fails to comply with the published requirements, against which they have no right of merits review. Add to that combination the constant media reports of developer donations to political parties and it is no wonder that members of the public are upset and cynical about the whole process.

Ministers are wont to assert their decisions are unaffected by political donations. That may be true; it would usually be impossible to prove otherwise. However, fact is one thing; perception another. Planning decisions always affect people other than the applicant for consent, sometimes extremely seriously. It is, therefore, a

matter of high public importance that those decisions are seen to be the product of unbiased consideration of the factors that the decision-maker is required by law to consider; and only those factors.

During the year under report EDO was involved in two high profile challenges to the legal validity of a Minister's development approval, on the ground of bias or consideration of irrelevant circumstances. The complaint was not that the Minister had been influenced by a political donation—there was no evidence of that—but, rather, that the Minister took into account an agreement by the developer to dedicate to the public some nearby non-residential land. One of these cases was heard before 30 June 2009; the other was then still pending. Subsequently, in the first case, the Land and Environment Court ruled in favour of the challengers to the Ministerial decision. In the controversy that followed the Court's decision, some people sought to defend the Minister's decision on the basis that the dedication resulted in a "good deal", from the public's point of view. The Court had not been concerned to determine whether or not that was so; it was concerned only to determine whether the Minister, as decision-maker, was biased or took into account irrelevant circumstances.

Some people might see these cases as lawyers' obsession with process. However, in a country governed by the rule of law, public confidence

in decision-making depends on adherence to legal rules. Where there is a question about that, lawyers and the courts have a role to play in ascertaining the facts and enforcing those rules.

Another important EDO case decided this year was *Walker v Minister for Planning*. This case was not about process. It concerned an important question of substance: whether a person determining an application for a development that would be potentially affected by climate change was bound to take that potential into consideration. Given the now widely accepted reality of climate change, and our increasing awareness of its potential devastating effects, it might seem the question must be answered affirmatively. The primary judge thought so, but he was overruled on appeal. The appeal court held the legislation did not require this factor to be considered. The result is obviously unsatisfactory and EDO (NSW) has sought an amendment to the legislation.

These are but two of the myriad issues with which the Office has been busy this year. All the cases, and all the advices, are important to the clients, and often to the wider community. They are so treated, by a highly competent legal team. We are also fortunate in the quality of our other staff, the policy, education, scientific and administrative officers. As this report demonstrates, under the able leadership of Jeff Smith, they

have been involved in a wide range of activities, here and in the Pacific, with significant success.

Next May will mark the 25th anniversary of the date upon which EDO (NSW) commenced operations. In conjunction with the Chairs of the eight other EDOs, our Board has decided to mark the occasion by holding a National Conference in Sydney on 28-29 May. The conference will be preceded by a one-day training workshop for EDO staff from around Australia.

The conference program is not yet settled but it will include discussion about issues likely to develop over the next 25 years, and responses to them: living under an emissions trading scheme; corporate governance and the environment; and the role of Australian EDOs in helping Pacific countries. We are lining up an impressive range of speakers to address these, and other, topics. The guest speaker at the conference dinner, on the evening of Friday 28 May, will be the Chief Justice of Australia, the Hon. Robert French. I hope you will come.



The Hon. Murray Wilcox, QC
Chair

In a past Director's report, I described an exchange which I felt exemplified – at least from a litigation standpoint – what the EDO is about. One farmer, seeking advice, asked a neighbour what he thought of the Office. "I hate them", the neighbour said, "they fight like cornered cats". The EDO was duly instructed to act.

This year, via the ongoing evaluation of our services, we have another example which is equally instructive. In answer to a question about what aspect of an EDO advice the client liked, the answer was simple: frankness. From my point of view, praise does not come much higher than that. In all aspects of our work, it is important for the EDO to tell it like it is and to provide frank and fearless advice. Such an approach is consistent with our professional obligations and an ongoing reputation for being an honest broker. It allows us to filter unmeritorious claims, to properly inform the community and clients and to focus our efforts where they are needed most. It also means that the presentation of our work to decision-makers – be it a letter, a submission, or a legal challenge – is treated with a studied seriousness.

This report details the tremendous work that has been achieved by the Office in the last 12 months, and the increasingly sophisticated multi-disciplinary approach we bring to complex issues. I cannot hope to do justice to the scope and efficacy of our achievements in a few words.

These are captured in the report proper and a mere schematic outline appears here.

Our policy and law reform program remains a crucial area of engagement. Policy work allows considerable scope for getting involved early and setting down sound decision-making frameworks to protect the environment, thus obviating the need for more adversarial approaches. Policy work this year has increasingly called upon, for example, the scientific and Indigenous expertise within the Office. Major and ongoing work this year, with many positive developments, has been in the areas of climate change (particularly the Carbon Pollution Reduction Scheme), biodiversity conservation, NSW planning laws, Aboriginal cultural heritage and the *Environment Protection and Biodiversity Conservation Act (CTH) 1999 (EPBC Act 1999)* (currently under review).

The Scientific Advisory Service continues to grow from strength to strength. It now comprises two in-house scientists, 120 experts, and a panel of eminent scientists who assist us strategically and proactively. More to the point, however, is the evident value that the Service adds to our work. It is increasingly enmeshed in our policy, community programs, legal advice and litigation work. The Scientific Advisory Service was established over five years ago, and it is difficult to imagine how we functioned without it.

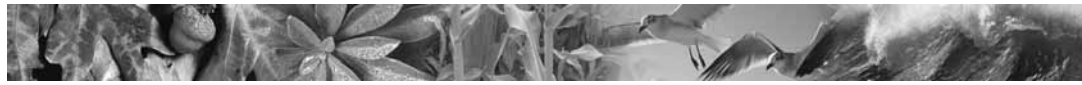
Our programs work is a broad church, including community legal education, targeted programs directed at specific sections of the community, and international capacity-building. An extensive range of workshops, seminars and publications highlights not only our resolve to inform the community of developments in environmental law but also an enhanced capacity to do this work, by having an Education Officer in the Northern Rivers. The Office is also expanding its reach throughout NSW, with over 30,000 copies of the Rural Landholder's Guide distributed this year. The International Program has successfully broadened its reach in the Pacific and, crucially, laid the foundations for ongoing engagement in the region. The International Program is primarily funded through the MacArthur Foundation but is also increasingly using cost-effective mechanisms, such as volunteer placements, to excellent effect.

Our litigation team continued to hold decision-makers to account throughout the year. A commitment to early engagement – letters and advocacy on behalf of clients – was backed up by litigation where necessary. A significant degree of success was achieved through these strategies, while other test cases drew attention to deficiencies in the legal framework. For the first time, the Northern Rivers Office ran an active litigation program in

conjunction with its advice work, and met with immediate success in a number of matters.

Of the victories before the Courts, the landmark judgment on land swaps delivered in the Catherine Hill Bay case is worthy of special mention. The Court overturned two Ministerial approvals, holding that they were void on the grounds of a reasonable apprehension of bias and for taking into account irrelevant considerations. Unfortunately, in a long-running matter, the Court of Appeal reversed the Land and Environment Court decision in *Walker v Minister for Planning*, one of the first cases to consider the impacts of climate change on a development, and a special leave application to the High Court narrowly failed. Even more difficult to swallow was the use of special legislation to make futile proceedings seeking to test the operationalisation of biocertification in NSW.

As the above can only begin to hint at, the challenges of working at the EDO are great, our adversaries formidable and the workflows relentless. This report is testament to the professionalism, judgment and dedication of staff in meeting the substantial demands placed upon them, as well as the growing influence we have in the world in which we work. After nearly eight years at the EDO, the sterling efforts of staff have never failed to inspire me and this year is no exception. My sincere



Director's Report

thanks go to all staff for doing what they do and for making my job an easy one.

I also owe a debt of gratitude to the Board and, in particular, the Chair, the Honourable Murray Wilcox QC, for the guidance and oversight they provide for our everyday operations. The Board has continued to set a high standard of governance and professionalism, and rightly expect this of the Office itself.

Thanks are also due, as ever, to the vast array of people who continue to support our work in a variety of ways - donors, barristers, experts, private firms and volunteers. The EDO would not be able to achieve the results we do without this assistance, and we are deeply appreciative.

Last, but not least, I would like to thank our funders. The EDO receives triennial grants from the Commonwealth and State governments, the MacArthur Foundation (for international capacity-building), the Environmental Trust (through the LECG program) and the Public Purpose Fund. During a time of enormous global financial uncertainty, these grants provide the stability for the EDO to concentrate on what it is set up to do – empower the community to protect the environment through law. Importantly, after being in place since the mid-1990s, the new Federal Government lifted the litigation restriction for Commonwealth

monies. This has long hindered some of the smaller EDO offices around Australia, limiting the provision of a full set of services to clients where alternative funds were not available.

The Public Purpose Fund is our major funder, and it deserves special mention. Its support has enabled the EDO to become a multi-disciplinary legal office, ably equipped to assist the community to achieve positive environmental outcomes through a wide range of services. The PPF has committed to provide an enhanced level of funding to the EDO over the next three years.

Complementing these triennial grants, the EDO has been the fortunate beneficiary of a number of important, project specific grants. Our thanks go to the Community Legal Centres Combined Group (NSW), the Environmental Trust (for funding both the *Rural Landholders Guide* and the Private Conservation Program), Sydney City Council and the Commonwealth Department of Agriculture, Fisheries and Forestry.

For a full exposition of these matters and more, I commend this Annual Report to you.

Jeff Smith
Director



National EDO Network

The Environmental Defender's Office (NSW) is one of nine EDO offices located across Australia, collectively known as the Australian Network of EDOs (ANEDO). The different offices share information, resources and ideas and meet biannually as a network. Across Australia, around 50 staff work for the various EDOs, of whom over 30 are solicitors.

Environmental issues in Australia increasingly have a national or cross-boundary focus. All EDOs are committed to a more coordinated approach to national environmental issues and matters of national environmental significance which fall within State and Territory boundaries. Throughout the year, ANEDO prepared both a Strategic Plan and a Business Plan to give greater focus to these efforts. EDO NSW provided significant input into these processes. ANEDO also welcomed the lifting of the restriction on litigation for Commonwealth funding, which EDOs have been advocating for many years.

A key focus of ANEDO over the past year has, once again, been in the area of policy and law reform, with a particular emphasis on climate change and the *EPBC Act 1999*. The EDO in NSW has taken the lead in much of this policy work, where the

matter pertains to the environment in NSW and Australia. EDO Victoria has recently been granted additional funds to do law reform and policy work, and their work in this area has significantly increased.

EDO NSW Introduction

The EDO's mission is to promote the public interest and improve environmental outcomes through the informed use of the law. The EDO has five 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 of the report will outline the functions of the EDO and provide brief updates from each of these core areas of operation – namely:

- litigation and legal advice
- policy and law reform
- scientific and technical advice
- community programs (community legal education, international and Indigenous engagement)
- media and communications

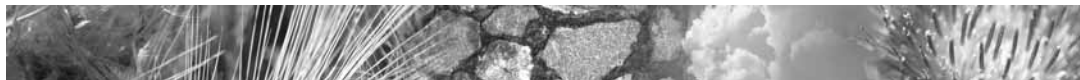
Part B of the Report will outline the work of the EDO within its identified 'priority areas', that is, environmental

issues that the EDO has identified, in close collaboration with our stakeholders and clients, as requiring particular attention. These priority areas are:

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

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

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



EDO Northern Rivers

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

The Northern Rivers Office considerably expanded its litigation workload this year, appearing on behalf of several environmental and community groups in the Administrative Decisions Tribunal, the Land and Environment Court and the NSW Court of Appeal. A number of cases were under way or still awaiting outcomes at the end of the financial year.

Looking back on the work and outcomes of the Northern Rivers Office in 2008-2009, a focal point of the Office has been biodiversity conservation and the protection of native vegetation. Four Court cases, a great deal of advice work and a range of seminars and workshops emphasised that these topics remain at the forefront of community concerns throughout the Northern Rivers area. In particular, the pressures on koala habitat have arisen in much of the Office's work.

Advice work was once again assisted by solicitors attending key meetings of clients. In this way, the Office was able to provide strategic legal advice at an early stage of several campaigns.

On the education front, the Northern Rivers Office temporarily escaped its bounds with a successful series of seminars on Human Rights and the Environment which canvassed the international scene. This was balanced by continuing on-the-ground interaction with the community through stalls at a number of community events including NAIDOC Day celebrations, the PACTEC River Rally and the Big Scrub Environment Day.

The value of having an Education Officer as part of the Northern Rivers team was evident in the increased capacity to organise an expanded range of topical workshops and seminars, often in direct response to requests from the local and/or regional community groups. In addition, the Education Officer maintained a varied and topical output in local and regional newspaper columns throughout the year, as well as speaking at a variety of conferences around the area. The Education Program has oftentimes engendered lively discussion and debate.

Through its on-the-ground presence in the region, EDO Northern Rivers is uniquely placed to operate as a genuine community-based legal centre specialising in public interest environmental law. This has allowed for intensive engagement with the local community, including visits to a local school, guest lectures at Southern Cross University, sponsoring a prize for

students of Environmental Law at the University, speaking at events such as the Northern Rivers Sustainable Living Expo and engaging in a Moot on the issues surrounding agriculture and Ecologically Sustainable Development at the University of New England.

The continuing success of the Northern Rivers Office is demonstrated by the fact that the Office's litigation/advice work and education work stretched throughout its service area from Port Macquarie to the Tweed and inland to New England. Helped by the work of the Education Officer, as well as regular appearances in the media, knowledge of the EDO and its services in the region continues to expand. The Northern Rivers Office anticipates another busy year in 2009-2010, in its efforts to protect the unique environment of the area and meet the diverse legal service needs of its rural and regional client base.

The Northern Rivers Office would also like to record its thanks to all the experts, barristers and volunteers who have helped to provide on-ground services to the Northern Rivers community.



EDO: A Green Office

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

This year, the EDO measured its carbon footprint using the methodology outlined in the EDO NSW Technical Factsheet: Measuring and reducing the greenhouse gas footprint of a small office. As part of this, the EDO developed a GHG calculator with associated procedures for calculating GHG emissions of a small office for use at the EDO and distribution to other interested CLCs.

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

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

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

- Encouraging the use of public transport by staff and clients and

offsetting travel emissions from 100% of office travel using car, taxi, long distance trains or planes. Offsets sourced will be accredited under the Voluntary Carbon Standard, or Gold Standard to ensure additionality, permanency and effectiveness.

- Purchasing 100% GreenPower for the Office.
- Identifying areas where energy efficiency can be improved and incorporating these into operations.
- Purchasing equipment and consumables with waste avoidance, closing the recycling loop and reduction of environmental impacts in mind.
- Education of staff on how to reduce their ecological and carbon footprint in their homes and in the Office.

Offsets were purchased for 2008-2009 based on the GHG calculations. In this respect, the EDO Scientific Officer met with Climate Friendly (EDO's carbon offset provider) to discuss certification standards used for offsets purchased.

More broadly, the EDO has reconfigured its lighting system so that each area of the Sydney Office operates on individual switches allowing for lights to be switched off in rooms that are not in use. Directions are posted on the website to assist people to access the Sydney Office by public transport or cycling. The Office also prepared a Green Office case study for a publication by Climate Friendly.

PART A:

CORE FUNCTIONS OF THE EDO

Litigation and Legal Advice

The EDO represents individuals and community organisations in public interest litigation to protect the environment. In 2008-2009, the EDO litigated a variety of cases involving issues of significant public concern including climate change, biodiversity issues, Aboriginal cultural heritage, planning and coastal development. Over 20 EDO cases are reported on in this Report, being at various stages of development: some having being determined, others either awaiting judgement or still to be heard.

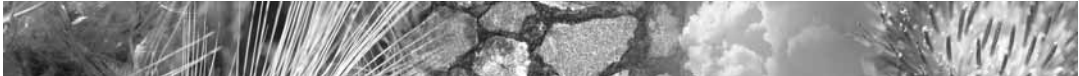
Climate change litigation has been a key part of EDO casework and advice work for some time. A recent paper delivered by the Chief Judge of the Land and Environment Court entitled *Climate Change Litigation in the Land and Environment Court of New South Wales and Other Courts* mentioned nine EDO NSW cases.¹ *The Walker v Minister for Planning* proceedings resulted in a significant decision on Ecologically Sustainable Development and climate change in the Court of

Appeal and resulted in a special leave application to the High Court.

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

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

In 2008-2009, EDO staff dealt with over 1000 telephone inquiries on the Environmental Law Line. Of these, about 65% came from rural and regional New South Wales, which is consistent with past years. The subject-matter of these inquiries can be varied, but many concern planning and development, zoning, community land, compliance and enforcement, Part 3A developments, freedom of information, Aboriginal cultural heritage, pollution and contamination, endangered ecological communities and species, private conservation,



biobanking, community rights, mining, water, forestry, and misleading and deceptive conduct.

Regarding casework by the EDO, 190 case files were opened during the reporting period and around 150 files were closed. More than 180 detailed written advices, many with significant scientific input, were prepared during the 2008-2009 reporting period.

¹ Available at [http://www.lawlink.nsw.gov.au/lawlink/lec/ll Lec.nsf/vwFiles/Paper_20Aug09_PrestonCJ_NZ.pdf/\\$file/Paper_20Aug09_PrestonCJ_NZ.pdf](http://www.lawlink.nsw.gov.au/lawlink/lec/ll Lec.nsf/vwFiles/Paper_20Aug09_PrestonCJ_NZ.pdf/$file/Paper_20Aug09_PrestonCJ_NZ.pdf)

Policy and Law Reform

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

In 2008-2009, the EDO policy team drafted over 42 submissions in response to legislative reviews, government proposals and parliamentary inquiries. On the basis of our submissions, the EDO is regularly requested to address parliamentary inquiry hearings, public forums, and meet with government and environmental groups that lobby for environmental law reform.

In 2008-2009 the number of submissions on climate change issues remained high, constituting approximately one third of submissions. 2008-2009 also saw the emergence of environmental justice as a key focus area, with a significant increase to 25% of total submissions.

The EDO policy team provides law reform advice to environment and community groups on current, proposed and potential environmental legislation. The EDO advises conservation groups and the community regarding the legal implications of Bills introduced into Parliament and whether amendments to a particular Bill should be sought. As part of this service, the EDO also

provides legal and policy advice on potential amendments to members of the cross-bench and Government during formal briefing sessions and meetings. In 2008-2009, this included advice on the Carbon Pollution Reduction Scheme Bill, significant amendments to the *EP&A Act 1979* and the federal renewable energy target legislation.

The EDO is regularly retained to provide policy advice on a particular area of law or to develop law reform proposals on a consultancy basis to environment groups or the Government. This complements proactive policy work on issues identified by the EDO as requiring law reform. Major advice projects in 2008-2009 included advice to the Department of Environment and Climate Change on how to strengthen the biocertification process and a series of projects for the Murray Lower Darling Indigenous Nations on Indigenous participation in the management of natural resources.

Proactive projects included an extensive report presented to both the NSW and Commonwealth Governments on how biodiversity management must adapt in light of climate change, the identification of the elements of best practice planning laws and a project on Aboriginal cultural heritage reforms in NSW.

In 2008-2009, EDO policy work also involved participation on various stakeholder panels. The input provided

at such forums is expertise-based, and is a crucial element of our key stakeholder and law reform role. In 2008-2009 the EDO held positions on the Biobanking Ministerial Reference Group, the Planning Implementation Advisory Committee chaired by the Minister, the Beverage Container Deposit Group and the Contaminated Land Management Committee.

Often the provision of policy advice is accompanied by the presentation of EDO workshops and appearances as guest speakers at conferences (such as the National Coastal Conference in August 2008). In this way policy work complements the EDO's Education Program, and increases community capacity to engage in policy and law reform processes.



Scientific and Technical Advice

In 2003, the EDO established a Scientific Advisory Service with the role of providing objective scientific and technical advice to the EDO and our clients on public interest environmental matters. In addition to providing scientific and technical advice to EDO solicitors and our clients, the last 12 months has continued to see the Scientific Advisory Service make a significant contribution to the EDO's policy and law reform work.

The Scientific Advisory Service comprises:

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

Members of the Technical Advisory Panel during the year were:

1. Professor Richard Kingsford, Professor of Environmental Science, University of NSW.

2. Dr Iain MacGill, Senior Lecturer in Energy Systems, University of NSW.
3. Dr Chloe Mason, Consultant in Urban Transport and Sustainability,
4. Professor Clive Hamilton, Professor of Public Ethics, Centre for Applied Philosophy and Public Ethics (joint initiative of ANU, CSU, and the University of Melbourne).
5. Professor Chris Dickman, Professor of Terrestrial Ecology, University of Sydney.

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

- pre-decision and casework
- compliance and monitoring work

Pre-decision and Casework

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

Compliance and Monitoring

The Scientific Advisory Service provides advice on approved developments or actions. This mainly involves advice on the compliance

of developments and actions with conditions of approval or regulatory requirements, as well as assisting clients in the preparation of submissions to regulatory authorities.

Throughout the year, the Scientific Advisory Service has reviewed environmental assessment documents for about 20 matters, undertaken research and provided advice on specific technical issues for around 30 matters, and prepared or assisted with preparing about 20 EDO policy submissions. The in-house scientists have also had significant involvement in two consultancies, prepared three scientific fact sheets, given a number of presentations at various conferences and seminars, prepared one EDO discussion paper and have led the Green Office program.

To assist with their work, the in-house scientists have also consulted and worked with around 40 experts, both on and outside the Expert Register, in the past 12 months.

Community Programs

In 2008-2009 the EDO's community engagement programs were:

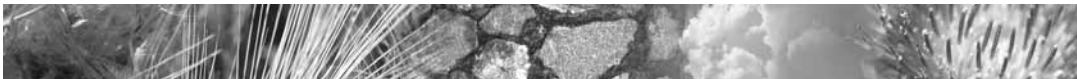
- Community Legal Education program
- International program
- Indigenous Engagement program
- Accessibility program

I. COMMUNITY LEGAL EDUCATION

The EDO's Community Legal Education Program (Education Program) is a multi-faceted program which seeks to empower the community to protect the environment through law. It does this by providing free legal information on a range of environmental law topics and in a variety of formats. A focus of the Education Program is to help the community gain the knowledge and skills necessary to engage effectively in environmental decision-making.

In 2008-2009, the EDO maintained an active Education Program with a primary focus being to complement the work of the Office's other functions, particularly policy and litigation.

The Northern Rivers Office runs a discrete Education Program in the region with the Sydney Office



directing its programs to the remainder of the State. The work of both Offices is combined in this report.

Workshops

A total of 21 free rural and regional workshops were held throughout New South Wales, with over 400 people attending. Workshops covered a range of environmental law topics and were often presented at the request of community groups.

Seminars

Sixteen free topical seminars covering a range of issues were held in the Sydney metro area and throughout the Northern Rivers region during 2008-2009. Over 500 people attended EDO seminars throughout this time. EDO seminars focus on new and emerging environmental law issues and are presented by relevant experts. They provide an opportunity to examine a legal environmental issue from different perspectives and encourage discussion of new ideas for law reform.

Publications

The EDO continues to expand its range of plain-language publications and update existing publications.

- **IMPACT!**

The EDO's national environmental law journal *IMPACT!* entered its second year of publication in its new format. The publication is released bi-annually and covers a topical environmental

law issue from a multidisciplinary perspective. EDO NSW produces this publication on behalf of the Australian Network of Environmental Defender's Offices (ANEDO).

IMPACT! is available to subscribers only and work is underway to increase the subscriber list over the coming years.

- **Rural Landholder's Guide To Environmental Law In NSW**

The Rural Landholder's Guide to Environmental Law in NSW was updated throughout the last financial year and was launched in October 2008. The production of the new guide was funded by a grant from the NSW Environmental Trust which also funds complementary workshops. Throughout the reporting period the EDO has distributed approximately 30,000 free copies of the guide to landholders throughout NSW. Plans are underway to update the guide again and distribute a further 50,000 copies over the coming years using the remainder of the funds from the Environmental Trust. As the Glen Innes Natural Resources Advisory Committee said:

The Guide was popular with [the 120] participants, many of whom commented that they found the publication easy to read and understand, and that it answered their questions regarding the complex and diverse array of legislation now governing land management in New South Wales. Glenrac staff find the Guide to

be an excellent resource for new residents, particularly those who are taking to farming for the first time.

- ***Caring For Country: A Guide To Environmental Law For Aboriginal Communities***

This free publication remains a popular resource for Aboriginal communities, with over 1000 copies distributed during the last year. The EDO has continued to provide it upon request and it is available online.

- ***Campaigning And The Law In NSW: A Guide To Your Rights And Responsibilities.***

The EDO produced this resource in February 2007. The publication is now available free on the EDO website. It provides useful and 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.

- ***Environmental Law Fact Sheets***

Throughout 2008-2009, the EDO updated its comprehensive list of environmental law fact sheets. Some of the fact sheets were amalgamated and a number of new fact sheets were created. The EDO's fact sheets are available on the website; they are a widely used resource and continue to be our most popular publications.

- ***Scientific Fact Sheets***

A new science fact sheet on evidence collecting was added to the website to complement the existing science fact sheets.

- ***e-bulletin***

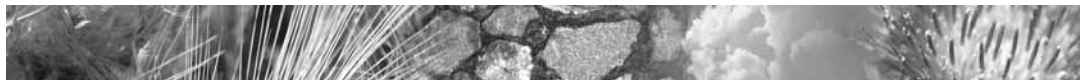
The EDO's free weekly e-bulletin continues to be a popular resource with a subscriber list of over 1,500. The e-bulletin updates subscribers on EDO news and events including media coverage, developments in environmental law and policy, opportunities to participate in State and Federal Government environmental decisions and community events with an environmental focus. The EDO has worked hard over the past year to improve the coverage of the bulletin.

- ***Climate Law Bulletin***

The EDO has produced a new e-bulletin covering climate law and policy. The new bulletin is released every two months and has a rapidly growing subscriber list. It covers developments in climate law and policy in Australia and overseas and is used by a range of stakeholders to keep abreast of this rapidly expanding area of law.

- ***Private Conservation: A Guide For NSW Landholders***

The EDO has received funding from the NSW Environmental Trust to produce a free booklet outlining the various options for conserving biodiversity values on



private land. The booklet will provide comprehensive analysis of each option and is intended to help landholders choose the option that is right for them. The booklet is currently in draft form and will be released early in 2010.

- ***Caring For The Coast: A Guide To Environmental Law For Coastal Communities In NSW***

This publication has been funded through the Commonwealth Government's Caring for Our Country Program. It will be a free guide to the various laws that address coastal environmental and planning issues. It is intended to help coastal communities understand the laws and policies in place to protect the coast and thus improve community engagement in managing coastal ecosystems. The booklet is currently in draft form and will be released early in 2010.

- ***Major Projects Toolkit***

The EDO has received funding from the City of Sydney to produce a free community guide to project assessment under Part 3A of the *EP&A Act 1979*. The toolkit outlines the Part 3A assessment process with a focus on opportunities for public participation and examples of best practice. The toolkit is currently in draft form and is due for release in October 2009. It will be a free resource for city residents.

Papers and Presentations

Over the past 12 months, the EDO has continued to place particular emphasis on presenting a public interest perspective on environmental law matters in a range of external forums. In 2008-2009, EDO staff delivered over 40 external presentations at conferences, universities and CLE seminars, and published 19 papers in journals, bulletins and books. Following one of our presentations, the EDO received the following feedback:

Thank you for making such a worthwhile contribution to our Landcare Adventure on 25th March. Your talk was a bit of an eye opener to many of us. You are aware of how many people tend to "run a mile" when lawyers are mentioned, so your calm presentation really helped put some logic and commonsense into the environment in which we work. We can feel more confidence in what we do now we know that your organisation is there to help and work out problems for the best solution.

The [Rural Landholder's Guide] you left us (which we put in each delegate's bag) is a wonderful reference. It is very clear, listing the problems we often worry about. In addition, the tabulation of useful organisations and their contact details is invaluable.

Website

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

In 2008-2009, the EDO recorded an average of 24,017 downloads per month from the NSW site, an increase of 40% over the previous year.

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

2. INTERNATIONAL PROGRAM

The EDO is committed to improving the effectiveness of environmental law as a tool for defending the environment internationally. For a number of years, the EDO has worked with partner organisations to build capacity in public interest environmental law in Asia and the Pacific, primarily in Papua New Guinea (PNG), Fiji and the Solomon Islands. Increasingly, the EDO's international work also involves policy development and participation in international networks.

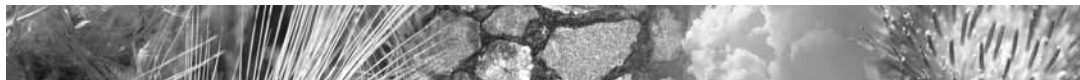
Legal Capacity-Building In The South Pacific

The EDO has been funded since 1998 by the US MacArthur Foundation to

conduct capacity-building work in the Pacific, with a focus upon providing support to the Environmental Law Centre and other organisations working in public interest environmental law in PNG. The scope of work has been extended and diversified under the current grant, so that the EDO now works to build capacity in public interest environmental law more broadly across the Pacific, encompassing organisations in several countries and the full range of the EDO's expertise.

Highlights of the EDO's capacity-building work in 2008-09 include:

- Bringing lawyers from PNG and the Solomon Islands to attend training, watch EDO matters before the Land & Environment Court and meet with judges, barristers, scientists and others practising law in NSW in May 2009
- Presenting seminars and training on environmental law in Samoa, the Solomon Islands and Fiji on topics including advocacy and litigation skills, and climate change litigation
- In July 2008, involvement in environmental law training in Indonesia (Surabaya and Makassar) for judges, prosecutors and community advocates as part of the Australian Marine Science and Technology Ltd team who were funded by AusAid to conduct the training as part of the Indonesia Australia Specialist Training Program



- Providing support and assistance to the Public Solicitor's Office in the Solomon Islands in establishing their Landowners Unit that will support communities affected by logging in the Solomon Islands. Ongoing support in 2009-2010 will be provided to the Unit through the placement of Elaine Johnson as an Australian Youth Ambassador for Development (AYAD) in this office
- Providing legal, scientific and policy advice to groups in PNG, Fiji, the Solomon Islands and the Cook Islands on issues including forestry, trespass, mining, marine law including protecting marine species, assessment of damages, anti-corruption measures, contract law and legal professional privilege and seabed mining. It is worth noting that the committee reviewing the Draft Seabed Minerals Bill for the Cook Islands was directed to make the EDO submission available to the Legal Drafter in London

The EDO is also working to improve the effectiveness of our capacity building activities. In February 2009, we received conditional acceptance to become a signatory to the Australia Council for International Development Assistance Code of Conduct, and we are in the process of establishing an International Advisory Committee. The Committee will consist of senior advocates, scholars and members of local, regional and international organisations active in environmental protection in the Asia-

Pacific region, predominantly from the South Pacific, who will provide advice and strategic guidance for the EDO's capacity-building activities.

Volunteer Placements

The EDO is an Australian Partner Organisation for both the Australian Youth Ambassadors for Development (AYAD) and Volunteering for International Development from Australia (VIDA) programs. These schemes enable the EDO to create AusAID funded-placements for Australians with organisations in Asia and the Pacific, providing an effective way of building environmental legal capacity in host organisations while developing the skills and understanding of Australian lawyers, scientists and policy officers. The EDO has also become one of the first partners of Lawyers Beyond Borders, an initiative launched in May 2009.

The EDO created a record number of assignments in 2008-2009, particularly in the area of climate change. In September 2008, Justine Conaty commenced as a Legal Officer with the Ministry of Natural Resources and Environment in Samoa. In March 2009, Elizabeth Caldwell commenced with the Centre for Environmental Law and Community Rights (CELCOR) in PNG and Emma de Campo commenced with the United Nations Industrial Development (UNIDO) Regional Office in Beijing, China. In July 2009, nine volunteers will commence assignments with government and

non-government organisations working on climate change education and policy in Fiji, the Solomon Islands, Tonga, Vietnam and Vanuatu. These assignments were inspired by the international youth delegation at the *United Nations Framework Convention on Climate Change* (UNFCCC) in Poznan, Poland, and the EDO worked with the Australian Youth Climate Coalition in developing the proposals.

The EDO also continued to support AYAD placements with the Centre for Human Rights and Development in Mongolia (currently being undertaken by Melody Coutman).

International Policy Engagement

In 2008-2009, the EDO's international policy work focused on climate change and Indigenous issues.

The EDO attended the Conference of the Parties of the UNFCCC in Poznan, Poland in December 2008. The EDO was part of the Climate Action Network Australia (CANA) delegation and provided legal advice and support to Australian NGOs and to delegates from the Pacific during the negotiations. In June 2009, the EDO received provisional accreditation as an observer to the UNFCCC.

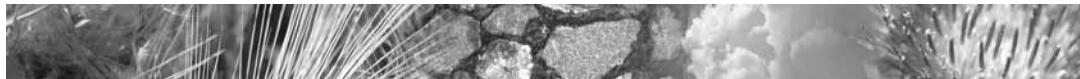
The EDO made submissions to the Royal Society on Geo-engineering the Earth's Climate, in partnership with Professor Rosemary Rayfuse of UNSW, and to the UN Human Rights Council on Human Rights and

Climate Change, in partnership with the Foundation for Aboriginal and Islander Research Action. The EDO also undertook considerable work on climate change and forestry issues, in particular on 'reducing emissions from deforestation and forest degradation' (REDD) to support partner organisations in the Pacific. The EDO also attended the 8th meeting of the Asia Forest Partnership and AFP Dialogue, on REDD and Combating Illegal Logging in Bali, Indonesia, in May 2009.

Through our Indigenous Solicitor, the EDO also participated in meetings of the working group on Access and Benefit Sharing under the *Convention on Biological Diversity* in Vienna, Austria in December 2008 and in Paris, France in March 2009.

International Networks

ANEDO was confirmed as a member of the International Union for the Conservation of Nature (IUCN) at the IUCN World Conservation Congress in Barcelona, Spain in October 2008. The EDO is working with the Oceania Secretariat, based in Suva, Fiji, to build environmental legal capacity in the region. The EDO visited the Secretariat in March 2009, and attended IUCN meetings in Canberra and Sydney as well as the IUCN Congress.



Environmental Law Alliance Worldwide

EDO staff are active members of the Environmental Law Alliance Worldwide (E-Law), an international network of public interest environmental lawyers and scientists. The EDO attended E-Law's 2008 annual meeting in Mobassa, Kenya with Anne Kajir, Director of the PNG Environmental Law Centre, thanks to a grant from the Christensen Fund.

For more information about E-LAW, see www.elaw.org

Assisting Environmental Lawyers From Overseas

The EDO hosted a public interest environmental lawyer from Scotland who was on an information gathering trip to Australia. Frances McCartney is the Director of Environmental Law Centre, Scotland and she spent a week observing the work of the office in order to learn more about practising in the public interest.

3. INDIGENOUS ENGAGEMENT PROGRAM

During 2008-2009 the role of the Aboriginal Liaison Officer (ALO) increased to a full time position working 3 days per week on litigation and two days a week coordinating the Caring for Country Project. The ALO was also renamed the Indigenous Solicitor to better reflect the nature of the work undertaken. Within the Office, the Indigenous Solicitor

position is multi-disciplinary and provides input into policy submissions and international programs as they relate to Indigenous peoples.

The Indigenous Solicitor has continued to build relationships with existing clients as well as developing relationships with new clients over the year; with increasing requests for legal and policy advices.

There has been ongoing demand for the publication *Caring for Country: A Guide to Environmental Law for Aboriginal Communities in NSW*. The EDO funded a second print run to meet demand.

The Aboriginal Advisory Committee continues to provide invaluable advice and input into EDO Caring for Country initiatives. Two additional members were appointed to the Committee during the 2008 -2009 year – Constance Chatfield and Tabitha Timbery-Beller.

On 28 May 2009, the EDO convened an Aboriginal Cultural Heritage Roundtable at Gilbert and Tobin in Sydney to facilitate discussion about Aboriginal cultural heritage law and policy in NSW. The Roundtable brought together Aboriginal clients of the EDO and members of the EDO Aboriginal Advisory Committee, including Traditional Owners, as well as representatives of the NSW Aboriginal Land Council, Native Title Services, and Murray Lower Darling Rivers Indigenous Nations. The Roundtable discussion enabled

participants to voice their concerns with the current system and discuss options for reform, including proposed changes in NSW. The EDO will continue to work for law and policy reforms in this area.

The Indigenous Solicitor has participated in international negotiations concerning the Convention on Biological Diversity and the programme of action for the protection, and promotion of traditional knowledge pursuant to article 8(j) of the Convention on Biological Diversity.

The Indigenous Solicitor was appointed to the Inaugural Aboriginal Advisory Committee of the Australian Law Reform Commission in April 2009.

The EDO also participated in NSW Young Lawyers Shadowing program with Aboriginal student Natahlia Houlten, from Kempsey now studying at St Vincents College. Natahlia attended the Office for a week and viewed our work.

4. ACCESSIBILITY PROGRAM

In 2008-2009 the EDO continued to develop an Accessibility program. The Accessibility program aims to expand the EDO's constituency to ensure that a broad cross-section of the community accesses EDO services.

The EDO has identified two key groups that are underrepresented in accessing EDO services – people

from culturally and linguistically diverse backgrounds and young people.

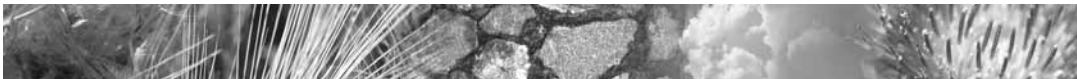
At a general level, the Accessibility program ensures that these two groups are specifically targeted when the EDO promotes its services.

More specific projects have been undertaken to increase the visibility of the EDO in these target groups. Throughout the project period the EDO engaged these target groups in the following ways:

People From Culturally And Linguistically Diverse Backgrounds

Specific initiatives this year, include:

- Translated information about the EDO was placed on the home page of the EDO website. The information explains the EDO and the range of services it provides. So far this information has been translated into Spanish, Arabic, French, Cantonese and Mandarin. The information was translated by bilingual EDO volunteers and staff. The information will be translated into more languages as the opportunity arises
- A letter was sent to over 80 peak organisations servicing clients from culturally and linguistically diverse backgrounds. The letter explained the services provided by the EDO and encouraged the organisation to refer clients with environmental law issues to the EDO for assistance



The EDO continues to provide advice to people with little to no English through Translation and Interpreting Service (TIS) National. This service allows clients to call the EDO via an interpreter.

Young People

The EDO engages with young people primarily by providing opportunities for student volunteers to learn about and apply their skills in environmental law. The EDO has increased its capacity to host student volunteers to four per day. Student volunteers greatly assist the work of the EDO by conducting legal research and assisting with the day to day running of litigation. In return, the EDO provides professional guidance, the opportunity to learn and develop new skills and job references.

In addition to regular volunteers, the EDO accepts formal student placements from the following institutions:

- University of Wollongong
- University of Sydney
- University of Western Sydney
- University of Technology
- University of Wollongong
- College of Law

Students from these institutions complete coursework with the EDO, learning about environmental law under the direct supervision of EDO solicitors.

Other regular placements include students completing the 'Practising in the Public Interest' course conducted by the Public Interest Law Clearing House and the Public Interest Advocacy Centre. Throughout 2008-2009 the EDO accepted three lots of placements with each placement comprising 2 students for one day of intensive training in public interest law in practice.

The EDO also attended Climate Camp in Newcastle in July 2008. This camp provided an opportunity for the EDO to engage with and assist young people to take action on an issue that is particularly important to them – climate change. The EDO provided on-the-ground legal advice to people participating in the camp and arranged for legal representation for some of those arrested during the direct action.

The EDO and Maddocks have teamed up to sponsor a student writing prize. Maddocks sponsors the prize which is open to all university students. The students are invited to submit an article for publication in the EDO's legal journal *IMPACT!* and the winner, in addition to being published, is awarded \$500.

Media and Communications

The media is important to the EDO as it provides an effective means of highlighting the issues we engage with and promoting the work of the EDO. Over the past couple of years, the EDO has placed a much greater emphasis on its media and communications work.

In 2008-2009, the EDO has received significant media exposure, either through direct mentions, or through our clients where the media reported on one of our matters. We have indicated where the media related to our clients.

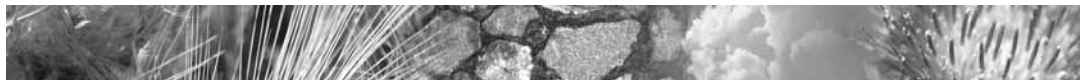
Media coverage of the EDO or EDO-related matters includes:

Television

- *7:30 Report* - "Farmers Angry As Mining Companies Move In" (EDO clients) (July 2008)
- *A Current Affair* - "BHP - the Big Aussie Bully" (EDO clients) (23 July 2008)
- *7.30 Report* - "Climate change threatens coastal towns" (EDO clients) (10 September 2008)
- Interview on *NBN North Coast News* about climate change (31 January 2009)
- Interview with *WIN TV* on the Wollongong LEP (4 April 2009)
- Interview on *Prime TV News* - "Splendour court case" (7 May 2009)
- *NBN TV News* - "Splendour court case" (EDO clients) (7 May 2009)

Radio

- Interview with *ABC North Coast Radio* regarding the Hastings Point case (July 2008)
- Interview with *ABC North Coast Radio* about planning workshops (July 2008)
- Interview with *Bay FM Radio* on the planning law changes and the development application for a Splendour in the Grass festival at Yelgun (1 August 2008)
- Interviews with *ABC North Coast Radio* about the planning reforms (4 & 6 August 2008)
- *ABC Radio National* - "NSW Government brushes off calls for independent catchment study" (EDO clients) (19 August 2008)
- Interview with *ABC North Coast Radio* on human rights and the environment (August 2008)
- Interview on *ABC North Coast Radio* on the EDO's Brainfood in Byron Seminar Series (29 August 2008)
- Interview on *ZZZFM Radio* on the EDO's Brainfood in Byron Seminar series (2 October 2008)
- Interview with *FBI Radio* on climate change and adaptation (November 2008)



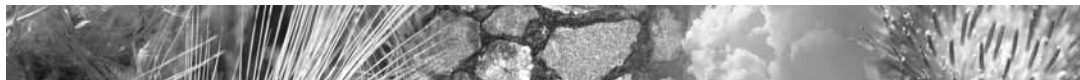
- Interview with *ABC Radio* on carbon capture and storage (13 November 2008)
- *ABC News* - "Appeal lodged against Splendour festival" (EDO clients) (19 November 2008)
- Interview on *ABC Radio, The World Today* - "Australian Alps added to conservation agenda" (November 2008)
- Interview on *ABC Radio* promoting upcoming CPRS/climate change seminar on 3 February 2009 (29 January 2009)
- Interview on *ABC North Coast Radio* about the Iron Gates case (5 February 2009)
- Interviews on *ABC Radio* about Splendour in the Grass case (12 & 20 February 2009)
- Interview on *Gosford Radio 2GO* about the Ourimbah workshop (3 March 2009)
- *ABC North Coast Radio* - "Interview with CONOS President Bob Oehlman" (EDO clients) (8 May 2009)
- Interviews on *ABC Local Radio* about the Repco Rally Australia (25 & 26 June 2009)

Newspapers

Articles

- *Sydney Morning Herald* - "Miners at the Coalface of Change" (EDO clients) (5 July 2008)
- *Sydney Morning Herald* - "Bureaucrats take axe to logging data" (5-6 July 2008)
- *Byron Shire Echo* - "Sartor cops a bagging at Bruns protest" (5 August 2008)
- *Byron Shire Echo* - "Councillors give nod to Splendour at Yelgun in close decision" (EDO clients) (5 August 2008)
- *The Northern Star* - "Government puts stop on quarry" (EDO clients) (5 August 2008)
- *Sydney Morning Herald* - "Paroo pact 'breached'" (EDO clients and Scientific Advisory Service) (15 August 2008)
- *Northern Star* - "Rous may pull the plug" (23 August 2008)
- *Sydney Morning Herald* - "Residents ready to use green bans to stop bay development" (EDO clients) (4 September 2008)
- *Tweed Echo* - "Legal centre joins draft-plan doubters" (11 September 2008)
- *The Northern Star* - "Court action again delays Condon development" (13 September 2008)

- *The Northern Star* - "Threat of legal action over Kyogle IGA" (16 September 2008)
- *Daily Examiner* - "Shun Rumour: Mill push alive" (22 September 2008)
- *The Northern Star* - "Developer warns Art Deco buffs of legal action" (10 October 2008)
- *The Australian* - "Litigation prods governments into action on climate" (EDO clients) (17 October 2008)
- *Sydney Morning Herald* - "Groups rally against planning laws" (EDO clients) (19 October 2008)
- *Northern Rivers Echo* - "Water rights subject of EDO talk" (28 October 2008)
- *Byron Shire Echo* - "Splendour approval taken to court" (EDO clients) (18 November 2008)
- *Northern Rivers Echo* - "Quarry no champion to the people" (EDO clients) (20 November 2008)
- *Australian Associated Press* - "Mining projects may face more scrutiny" (EDO clients) (26 November 2008)
- *Northern Rivers Echo* - "Logging leaves locals livid" (EDO clients) (27 November 2008)
- *The Northern Star* - "Kyogle rallies around new race" (EDO clients) (2 December 2008)
- *Sydney Morning Herald* - "River 'killed' by pollution feeds city water supply" (EDO clients) (2 December 2008)
- *Byron Shire Echo* - "Court date set for Splendour challenge" (EDO clients) (16 December 2008)
- *Sydney Morning Herald* - "The Sydney Magazine Special Issue – 'the (top 100) 2008 Sydney's most influential people'" (Issue 69, January 2009)
- *Manly Daily* - "Councillors want towers files access" (EDO clients) (18 February 2009)
- *Sydney Morning Herald* - "Cute, endangered and legal to shoot" (EDO clients) (20 February 2009)
- *Northern Rivers Echo* - "Dunoon celebrates DA withdrawal" (EDO clients) (26 February 2009)
- *Richmond River Sun* - "Iron Gates clean-up will be pursued" (February 2009)
- *The Northern Star* - "Organisers abandon Splendour trial" (EDO clients) (27 March 2009)
- *Sydney Morning Herald* - "Treasures looted and sold online" (EDO clients) (2 April 2009)
- *The Northern Star* - "Heated views on carbon permits" (7 April 2009)
- *Sydney Morning Herald* - "Small farmers take fight to mighty miner" (EDO clients) (13 April 2009)



- *Rural Press* - "Council faces court over Big W decision" (EDO clients) (14 April 2009)
- *South Coast Register* - "Terara residents hint at legal action" (15 April 2009)
- *Sydney Morning Herald* - "New laws to protect Aboriginal artefacts" (EDO clients) (16 April 2009)
- *Sydney Morning Herald* - "Luxury homes plan for Currawong rejected" (EDO clients) (29 April 2009)
- *The Manly Daily* - "Currawong saved" (EDO clients) (29 April 2009)
- *Sydney Morning Herald* - "Norfolk warrior against rubbish" (EDO clients) (4 May 2009)
- *The Northern Star* - "Byron Splendour plans in doubt" (EDO clients) (8 May 2009)
- *The Northern Star* - "Sue lays down the law to save the planet" (15 May 2009)
- *Sydney Morning Herald* - "Resident fears over electricity upgrade" (EDO clients) (19 May 2009)
- *Sydney Morning Herald* - "Warden upholds coalmining plan" (EDO clients) (22 May 2009)
- *Sydney Morning Herald* - "Heritage interests out, apartments in" (EDO clients) (30 May 2009)
- *Sydney Morning Herald* - "The Hunter – a peephole to future of others" (EDO clients) (30 May 2009)
- *Sydney Morning Herald* - "Seeing red over logging in land of rare parrot" (EDO clients) (1 June 2009)
- *Sydney Morning Herald* - "Motor rallies hassle-free for 10 years" (EDO clients) (3 June 2009)
- *Sydney Morning Herald* - "Huge land deals 'illegal'" (9 June 2009)
- *Sydney Morning Herald* - "Deal or no deal? Developer sits tight" (10 June 2009)
- *Northern Star* - "Repco Rally's latest PR fiasco" (11 June 2009)
- *Northern Rivers Echo* - "Lantern Parade great debate puts roo on the menu" (11 June 2009)
- *Sydney Morning Herald* - "Toxic metals threat" (18 June 2009)
- *Sydney Morning Herald* - "Labor knew about toxic water threat" (19 June 2009)
- *Newcastle Herald* - "No retrospective on \$300m plans" (19 June 2009)
- *Northern Star* - "Stink over chicken poo" (20 June 2009)
- *Northern Star* - "Rally given green light" (24 June 2009)
- *Sydney Morning Herald* - "Bush bashing: rally laws override locals" (25 June 2009)
- *Northern Rivers Echo* - "Fowl stench brewing at Tatham" (25 June 2009)

Columns

Through the Northern Rivers Office, the EDO has written regular columns in the *Northern Rivers Echo*, the *Northern Star* (Farmers Bulletin) and *Byron Bay Echo*. Columns have been written on the following topics:

- Noise from agricultural activities (July 2008)
- Protecting koala habitat (July 2008)
- Wild dog management (July 2008)
- Trees as carbon sinks (August 2008)
- Dunoon dam (August 2008)
- Private covenants as consent conditions (August 2008)
- Local heritage protection (September 2008)
- Phone tower concerns communicated (September 2008)
- Travelling Stock Routes (September 2008)
- Pesticide spray drift from timber plantations (October 2008)
- Putting the environment into the Lismore plan (October 2008)
- Burning question about sugar cane (October 2008)
- Toxics and human rights (November 2008)
- Genetically modified crops (November 2008)
- If you do the crime, do you do the time? (November 2008)
- Twelve months to save the world – no, really (December 2008)

- Clearing a way for koalas (December 2008)
- Koala Plan fails to impress (December 2008)
- Climate change (December 2008)
- The possibilities and perils of biodiesel for fuel (February 2009)
- Biodiesel for consumers (February 2009)
- Dirt roads causing residents problems (March 2009)
- Easy access makes big difference for the public (May 2009)
- Transparency and public participation in planning (May 2009)
- The buzz on biofuels (January 2009)
- Impacts of a proposed gas pipeline (April 2009)
- Managed Investment Schemes (May 2009)

Newsletters

- *Live Wires* - "The EPBC Act and biodiversity conservation" (July 2008)
- *Dunoon and District Gazette* – "Never underestimate people power" (April/May 2009)

Online

- EDO page created on Wikipedia (February 2009): http://en.wikipedia.org/wiki/Environmental_Defender%27s_Office_NSW
- EDO created a Facebook page

PART B:

PRIORITY AREAS

Climate Change

Casework

Walker v the Minister for [2008] NSWCA 224

As reported last year, the EDO assisted Jill Walker, a local resident, in a successful Land and Environment Court challenge to a Concept Plan approval of a development at Sandon Point. The proposed development was for up to 285 homes and an aged care facility to be built on flood-prone coastal land.

It was argued that the Minister failed to take into consideration the recommendations and findings of a Commission of Inquiry report, and that the Minister failed to apply the principles of ecologically sustainable development (ESD) when deciding to approve the proposal.

In a detailed judgment, Justice Biscoe found that the Minister for Planning had failed to consider ESD by failing to consider whether the impacts of the proposed development would be compounded by climate change; in particular, by failing to consider whether changed weather patterns would lead to an increased flood risk in connection with the proposed

development in circumstances where flooding was identified as a major constraint on development of the site.

In the past year, the Minister for Planning successfully appealed to the NSW Supreme Court, Court of Appeal. Ms Walker then sought special leave to appeal to the High Court. The application was heard in March 2009. The High Court declined to grant leave on the basis that while there were valid arguments in her favour, they did not think those arguments would succeed if the appeal was heard by the High Court.

Caroona Coal Action Group Inc v Coal Mines Australia Pty Ltd & Minister for Mineral Resources

By June 2009 the EDO was in the late stages of commencing proceedings in the Land and Environment Court on behalf of the Caroona Coal Action Group Inc to challenge the exploration licence and coal authorisation granted to Coal Mines Australia Pty Ltd (a subsidiary of BHP Billiton).

The exploration licence covers over 300 square kilometres at Caroona in the Liverpool Plains region of NSW, which is recognised as one of Australia's most productive food bowls. It is believed that the

coal reserves in the area are in excess of 500 million tonnes. It is BHP Billiton's intention, if granted approval by the NSW Government, to then establish a large longwall mine development to extract the coal over a 30-50 year period. The Caroon Coal Action Group Inc is particularly concerned about the impact that exploration and mining will have on the unique groundwater systems of the Liverpool Plains, and the compatibility of mining and continued agriculture in the region.

The legal challenge will be based on the Minister for Mineral Resources' failure to follow the correct procedures for granting an exploration licence and a transfer of a coal authorisation. In particular, it will be alleged that the Minister did not consider the need to conserve and protect the flora, fauna, fish, fisheries, scenic attractions and features of Aboriginal, architectural, archaeological, historical or geological interest in the land as required by the *Mining Act 1992*.

The Scientific Advisory Service has played a key role in the formulation of this case, including site visits, obtaining advice from a range of experts, reviewing key documents and in-house advice to the clients.

[Proceedings were commenced on 7 July 2009 and the case has been listed for hearing on 26-29 October 2009.]

Legal and Technical Advice

The EDO has provided the following advice this year, including:

- Attendance at Climate Camp with ongoing legal advice and assistance to arrestees during the three-day camp, in consultation with criminal lawyers organised by the EDO to give advice at the camp
- Conference with pro bono firm and the organisers of "Climate Ride 2008" in relation to public liability insurance and the text of waivers and disclaimers
- Advice to national climate groups on World Heritage in Danger listing and impacts on cultural heritage values
- Ongoing advice regarding a coal-fired power station in the Hunter, including the release of harmful wastes (CO₂) to the environment, monitoring required under licence, lodging a FOI application, technical research and engaging climate experts to prepare reports
- Conference with Australia-wide conservation group and other activists about potential EDO NSW support work regarding a new power station in WA
- Advice on Mandatory Renewable Energy Target (MRET) regulations relating to burning native forest waste
- Policy assistance on a proposed Bill to protect good quality agricultural land from mining activities
- Advice, based on expert assistance, outlining the GHG emission implications of urban sprawl as opposed to infill



development regarding the Huntlee New Town development

- Review of environmental assessment and irrigation management plan for the Duralie coal mine extension, and engagement of expert from the Expert Register to provide advice on potential impacts of altered irrigation using mine wastewater on the Mammy Johnson's River
- Letter to the Department of Climate Change opposing a proposed amendment to greenhouse reporting requirements under the *National Greenhouse and Energy Reporting Act* that would remove the need to report on energy production

Policy and Law Reform

Carbon Pollution Reduction Scheme (CPRS)

The EDO has engaged actively with the Federal Government's proposed Carbon Pollution Reduction Scheme (CPRS) over the past 12 months. Our work has included the following:

- Submission on behalf of ANEDO made to the Federal Government on the Carbon Pollution Reduction Scheme Green Paper; which canvassed options and preferred approaches on issues, such as which industry sectors would be covered and how emission caps would be set. The submission emphasised that the overarching objective of the scheme must be an environmental one – to reduce Australia's greenhouse gas emissions.

Australian targets should be set that are in line with international obligations and scientific projections

- Proactive analysis of the White Paper for advice to conservation groups as needed
- Consultancy for a national conservation group on the draft Exposure Bill, with specific advice relating to target setting, compensation to industry, reforestation and property rights
- Attending a legal expert roundtable at invitation of Department of Climate Change to provide our views on the Exposure Bill and to raise any concerns
- Undertaking several consultancies on behalf of major Australian conservation groups to provide advice and drafting instructions on improvements to the CPRS Bill relating to, inter alia, flexibility, price floor mechanisms and including deforestation in the scheme
- Submission on behalf of ANEDO on the draft Exposure Bill
- Submission to the Independent Pricing and Regulatory Tribunal as part of its review of whether NSW mitigation measures are needed in light of the proposed CPRS. The submission emphasised the importance of complementary measures in order to address climate change in a coordinated manner; including the need for laws and policies at all levels and all fields e.g. transport, planning codes, and coastal development

Renewable Energy

Renewable energy has a crucial role to play as part of Australia's long-term mitigation response to climate change. In the past year, the Australian Government has moved to reform the regulatory framework on renewable energy through expanding the renewable energy target scheme. The EDO has been actively engaged in this process through the following:

- Writing a submission on behalf of ANEDO in response to a Discussion Paper by the COAG working group on Climate Change and Water on the Expanded National Renewable Energy Target Scheme
- Writing a submission on behalf of ANEDO to the Department of Climate Change on its Exposure Draft of the *Renewable Energy (Electricity) Amendment Bill 2008*, and related Regulations
- Supporting a submission on behalf of ANEDO to the Senate Standing Committee on Environment, Communications and the Arts on the *Renewable Energy (Electricity) Amendment (Feed-in Tariff) Bill 2008*
- Undertaking a consultancy on behalf of a major Australian conservation group to provide a number of ongoing advices and drafting instructions on the Exposure Draft Bill in order to enhance the incentives for less commercially viable forms of renewable energy generation
- Writing a submission on behalf of ANEDO to the Department

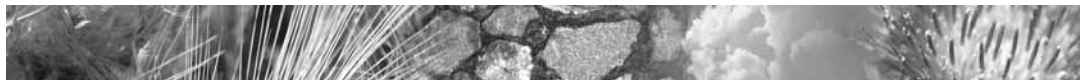
of Resources, Energy and Tourism on the Energy White Paper emphasising the need to link with renewable energy laws

Climate Change and the Coast

The impacts of climate change on the coast and the need for regulatory reform has been an important part of the EDO's recent casework and policy and law reform (see, for example, the Walker case and the report on behalf of the Sydney Coastal Council's Group in 2007-08).

During the last 12 months, the EDO prepared a submission and appeared before the House of Representatives Inquiry into Climate Change and Environmental Impacts on Coastal Communities. The EDO emphasised the importance of a robust State and Federal framework to address the projected impacts of climate change on coastal communities in Australia and discussed the common law and legislative framework relating to liability for climate change impacts from sea level rise. The report of the Committee is due in late 2009.

At the State level, the EDO responded to the Draft NSW Sea Level Rise Policy prepared by the Department of Environment and Climate Change, with specific recommendations for improving the policy and how to address potential climate change impacts on the NSW coast, as well as providing advice to various groups on the policy. The EDO was assisted in this process by an expert from the Register who reviewed the draft



policy and gave an assessment on whether the sea level rise planning benchmark was scientifically defensible. The NSW Government is yet to finalise the policy.

Carbon Capture and Storage

In mid-2008, the Federal Government proposed new laws on Carbon, Capture and Storage through amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act (CTH) 2006*. The EDO NSW, on behalf of ANEDO, wrote two submissions on the Bill, as well as appearing before an Inquiry hearing in July 2008. In two separate Committee reports, ANEDO was referenced on 16 occasions, with our submission and evidence quoted extensively. A number of recommendations picked up on themes argued by ANEDO including the role for an expert panel, the need for transparency and further and ongoing consultation and community engagement. However, the central arguments of ANEDO around, for example, “greening” the Act, certainty around liability and providing environmental safeguards for sensitive areas were not adopted by either Committee, nor included in the legislative changes.

Carbon Sinks

The EDO led a submission on behalf of ANEDO to the Senate Standing Committee on Rural and Regional Affairs and transport in its inquiry on a draft Bill designed to provide tax incentives for the establishment of carbon sink forests. A key argument in the submission

was the need for a comprehensive framework to rigorously and transparently assess forest carbon sink proposals in accordance with ecologically sustainable development (ESD), and that ad hoc taxation amendments are not sufficient.

The EDO also drafted a report and briefing note on behalf of Humane Society International containing drafting instructions for a Commonwealth Tropical Forest Act, including how to introduce prohibitions and restrictions on timber importations from tropical forests. The advice was supported in Parliament in a speech by Kelvin Thomsen MP in December 2008.

Climate Geoengineering

In October 2008, the Royal Society of London launched a study on climate geoengineering to help policymakers decide which schemes should be researched and deployed, if any. The Society called for submissions. The EDO prepared a multi-disciplinary submission highlighting the applicable international law and how this applies in two case studies (sulphur-based aerosols and ocean iron fertilisation). The Society established a working group to assess the submissions, and evaluate the different proposals, with a report expected in September 2009.

Climate Change and Natural Resource Management

Last year, the EDO wrote a submission and presented evidence before the Standing Committee on Natural Resource Management (Climate Change). The Final

Report was released in May 2009 and adopted some of our key recommendations such as the better implementation of ESD in natural resource management issues. The Final Report also references a report by the EDO for the Sydney Coastal Councils Group, adopting its overarching recommendation, namely, that the government should provide better guidance for local government on adaptation.

Programs

The following program activities addressing climate change took place during 2008-2009:

Workshops and Seminars

The EDO held five events this year on climate change:

- "What's Law Got to do with Climate Change?" (Climate Camp, Newcastle)
- "Coastal Development, LEPs and Climate Change" (Lake Macquarie)
- "Climate Change" (Ballina, with Chris McGrath, barrister)
- "Reporting back on the Climate Summit" (State Library, Sydney)
- "The Federal Government's Carbon Pollution Reduction Scheme: Impacts and Implications" (Edmund Rice Centre's Pacific Calling Program, Sydney)

Presentations


- "Understanding climate risk and the impact on legal action: state and national perspectives" (2nd

Annual Climate Change Summit 2008, 23 July 2008, Jeff Smith)

- "Climate Change Negotiations and the Law" (UNSW International Environmental Law students, 3 August 2008, Amelia Thorpe)
- "Factoring Climate Change and Sea Level Rise into Infrastructure Development Decisions" (*Local Government Sustainable Development 2008 Conference*, 11 September 2008, Kirsty Ruddock)
- "Adapting to Climate Change - a Legal Perspective" (*Saving a Sunburnt Country? The Challenges of Species Adaptation in a Heating Land* NCC Conference, 13 November, Jeff Smith and Tom Holden)
- "Putting climate change on the agenda - can the community lead the push?" (*Saving a Sunburnt Country? The Challenges of Species Adaptation in a Heating Land* NCC Conference, 13 November 2008, Kirsty Ruddock)
- "Councils' responsibilities for climate change adaptation" (*NSW Coastal Conference* Wollongong, 6 November 2008, Robert Ghanem).
- "Climate Change" (New England Landcare Adventure, 25 March 2009, Mark Byrne)
- "Climate Change and Coastal Infrastructure" (*NSW Sustainable Development Conference*, 12-13 May 2009, Kirsty Ruddock)

Papers

- Ghanem R, Ruddock K and Walker J (2008) "Are our laws



responding to the challenges posed to our coasts by climate change?" *Climate Change and the Law* UNSW Law Journal at pp 40-47.

- Ruddock K (2008) "Climate Change Impacts in the Torres Strait" 7(8) *Indigenous Law Bulletin* at pp 2-3, 6.
- Ruddock K and Green D (2009) "Could Litigation Help Torres Strait Islanders Deal with Climate Impacts?" in *Sustainable Development Law and Policy – Climate Change Reporter* (American University Washington College of Law/ACLE), Winter 2009, Volume IX (2) at pp 23-31.
- Thorpe A (2008) "Tort-based climate change litigation and the political question doctrine" 24 *Journal of Land Use and Environmental Law* at pp 79-105.
- Walker J (2008) "Failure to Consider the Impacts of Climate Change in Part 3A approval" 6(5) *Local Government Reporter* (January/February 2008) at pp 70-72.

Environmental Planning and Development

Casework

Hastings Point Progress Association v Tweed Shire Council & Aeklig P/L;

Hastings Point Progress Association v Tweed Shire Council & Planit Consulting P/L;

Hastings Point Progress Association v Tweed Shire Council & Aeklig P/L (Appeal)

The EDO Northern Rivers acted for the Hastings Point Progress Association Inc in two Land and Environment Court proceedings challenging two separate development consents granted by Council which allowed 3 storey developments in the coastal hamlet of Hastings Point on the Tweed Coast, contrary to the existing character of the area.

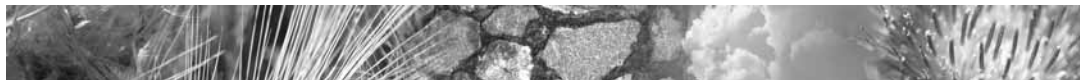
The Association claimed that the developments would change the existing character of the coastal hamlet. It also argued that in consenting to the developments, Council breached its own local planning controls by failing to take into account the cumulative impacts that the developments will have on the site's community, locality and catchment. It further argued that the decisions of Council to consent to the 3 storey developments, given a clear

previous commitment to maintain the existing two storey character of the hamlet, are manifestly unreasonable.

The cases were heard together before Justice Pain in the Land and Environment Court. Her Honour dismissed one application and allowed the other. With regards to the Aeklig development, the Court found that Council was not required to take into account the provision in the LEP as State Environmental Planning Policy - Seniors Living allowed the setting aside of local planning controls in the LEP that would otherwise prohibit the development. The Association appealed this decision to the Court of Appeal, and judgement has been reserved.

However, with regards to the Planit Consulting development, there was a successful outcome. The Court held that in granting consent to a 3 storey multi-housing development, Council failed to take into account the cumulative impacts of the development as was required by the Tweed Local Environmental Plan and therefore the development consent was invalid.

Following the decision on the Planit Consulting development, the proponent resubmitted the same DA to Council. The Council refused the development. At the same meeting, Council voted to adopt planning controls limiting all buildings south of the bridge in Hastings Point to no more than 2 storeys in height in accordance with the recommendation of the Rueker Report (the independent



consultant engaged to review building heights in Hastings Point).

The EDO understands that the Mayor gave a speech at the meeting commending the action of the Association in protecting the unique character of the coastal village of Hastings Point from inappropriate development.

Gwandalan Summerland Point Action Group v Minister for Planning & Rosecorp

In September 2008, the Minister for Planning approved a Concept Plan for an extensive subdivision development by Rosecorp on development sites at Catherine Hill Bay and Gwandalan. The EDO acted for the Gwandalan Summerland Point Action Group, which commenced legal proceedings in the Land and Environment Court challenging the approval.

Prior to lodgement of the Concept Plan application, the Gwandalan and Catherine Hill Bay sites were zoned for environmental protection, and the Department of Planning had ranked these sites as the lowest priority for urban release. The sites contain significant populations of the threatened plant species *Tetratheca juncea*, and have important scenic and heritage values.

However in 2006 a Memorandum of Understanding (MOU) was signed between Rosecorp and the former Minister for Planning under which he agreed to facilitate development of these sites for residential purposes. In exchange, Rosecorp was to dedicate a 300 hectare parcel of

land at Catherine Hill Bay for a conservation reserve. Following the signing of the MOU (which was also formalised in a Deed), the former Minister agreed to consider a Concept Plan proposal for the sites under Part 3A of the *EP&A Act 1979*. Approval was subsequently granted.

Gwandalan Summerland Point Action Group challenged the Concept Plan approval on two grounds. The first ground alleged that there was a reasonable apprehension of bias in the decision-making process by the former Minister. The second ground alleged that he had unlawfully taken into account the terms of the MOU and the Deed signed with Rosecorp.

[Postscript: Judgment was delivered in this matter on 31 August 2009. Justice Lloyd held that both the concept plan approval and the project application approval were void, as the grounds relating to a reasonable apprehension of bias and the taking into account of irrelevant considerations were made out. The case attracted considerable media attention and analysis].

Friends of Currawong Inc v Minister for Planning & Ors

The EDO commenced proceedings on behalf of Friends of Currawong in the NSW Land and Environment Court to prevent the Minister for Planning from approving part of the Currawong development. These proceedings were brought on the grounds that the *EP&A Act 1979* prohibits the Minister from approving that part of the project.

Friends of Currawong sought a declaration from the Court that the Minister for Planning is prohibited from approving the part of the project that is within the "County Open Space" zoning under the Pittwater Local Environmental Plan 1993. Friends of Currawong was also seeking orders restraining the Minister from approving that part of the project under Part 3A, and restraining the Director-General of the Department of Planning from preparing a report for the Minister on that part of the project.

The proceedings were discontinued when the Planning Minister, Kristina Keneally, refused the development application for the subdivision and development of Currawong Beach. The site is now to be listed on the State Heritage Register.

Hill Top Residents Action Group v Ministers for Planning and NSW Sport and Recreation

In this case the EDO is representing Hill Top Residents Action Group in their Land and Environment Court challenge to the Minister for Planning's consent to a major project, being a regional shooting complex. The Scientific Advisory Service reviewed various ecological assessments (and independent reviews of same) to assist in the decision on whether to challenge the environmental aspects of the proposal. The development was not permissible under the existing planning controls in place at the time, so the Minister amended a State Environmental Planning Policy in order to allow the project to proceed.

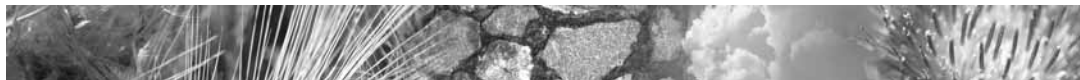
However, the amendment to the SEPP was mis-drafted, so that the project is arguably still not permissible.

This matter is due to be heard in August 2009.

Legal and Technical Advice

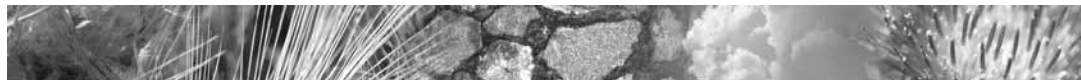
The EDO receives many inquiries from the community about planning and development issues through our telephone Inquiry Line. The EDO has provided the following advice this year, including:

- Advice to an environment group at Ryde about the LEP amendment process for urban bushland, including letter to Council to raise legal issues about the appropriate zonings in the new LEP prepared under the Standard Instrument. Against the advice of the Department of Planning, Council voted to change the zoning of all its urban bushland under the draft LEP to Environment Conservation, providing a much greater level of environmental protection
- Advice on a rezoning proposal at Green Point, near Forster, including a review of documents and expert advice
- Advice to a Landcare group in the Tweed regarding its submission on the Tweed Coast Regional Crown Reserve Plan of Management
- Advice to a resident of a caravan park on community land about ability to protect interest through lodgement of caveats
- Advice to a resident on rural cemetery laws



- Advice to a resident regarding the use of community land for a rugby club
- Ongoing assistance to a community group about classification of convict stockyard
- Advice to a resident about the legality of a helipad in a rural zone
- Ongoing advice for resident objectors for a case in the Land and Environment Court about a large development in Jamberoo. The Council was successful in defending the appeal, meaning the development was not approved
- Meeting with Council raising client concerns about compliance with planning consent by a quarry operation in Lismore
- Advice to Central Coast groups on clearing vegetation in breach of development consent
- Brief to Counsel on behalf of a community group for opinion on prospects on challenging a carparking development at Berowra Waters Marina
- Advice on challenging development consents on the South Coast on zoning grounds
- Ongoing advice to a local residents group at Newington on V8 Supercar issues
- Advice to a local heritage committee regarding Council consent to demolition of a significant heritage building for a supermarket in the main street of rural Kyogle
- Advice to a resident of Casuarina Beach regarding a Part 3A Concept Plan and existing easement for the Town Centre
- Advice on the appropriateness of a DA for a youth centre at Bunbury Reserve in Macquarie Fields. The DA was refused at the site, while an alternative, more appropriate, site was chosen
- Advice to a conservation association at Nambucca Valley about the interaction of gene technology and planning legislation in NSW
- Advice to community group about rezoning of open space on the foreshore at Newcastle. The group used the advice to “upzone” certain areas in line with their objectives
- Brief to Counsel on behalf of a community group at Dunoon for advice about whether a proposed residential development would be inconsistent with the relevant zoning objectives
- Policy advice to a national conservation group on coastal law reform issues
- Advice to residents on Redfern-Waterloo Authority proposals
- Advice regarding existing use rights for an onsite sewerage management system
- Advice to a community group on designated development appeal rights if Champions Quarry expansion is approved by Council

- Advice on compensation and acquisition issues in relation to public open space at Little Manly
- Advice on obligations to remove trees
- Advice to a resident regarding the reclassification of community land to operational in a draft Byron LEP
- Advice to a residents group on challenging the spot-rezoning of an LEP in the Dee Why Town Centre
- Comprehensive submission on behalf of a community group at Tucki, objecting to the proposed expansion of a sandstone quarry, as well as advice responding to Council's legal advice on variation from the DCP provisions on buffers. The Council refused the expansion. Arising out of this and other matters, Council also commissioned an independent inquiry into its development assessment processes
- Advice to a resident about the permissibility of a purported 'ancillary' gravel screening works on a flood zone
- Ongoing assistance to a local action group on the Iron Cove Bridge upgrade, including FOI assistance and advice as to whether the RTA provided misleading information on the time savings from the upgrade
- Advice to a resident on illegal barge activities at Little Wobby Beach
- Advice to a community group regarding the Saltwater development at South West Rocks, including the effect of a DCP for council control of development on the site; the need for a public hearing; and the failure to take SEPP 71 into account
- Advice to a residents association regarding grounds for review of decision to grant modification approval to Woolworths proposal at Mullumbimby, allowing on-site sewerage in flood zone
- Advice to a community association at Duffys Forest on breaches of a development consent
- Advice to a koala advocacy group regarding its proposed submission on the Part 3A Blakebrook Quarry application
- Letter to Minister for Lands highlighting a potential breach of the *Crown Lands Act 1989* resulting from plans by Council to build a car park on Crown Reserve at Brighton Le Sands. Subsequently, the Department of Lands wrote to the Council recommending that the proposal not proceed, and that a new plan of management be prepared in the public interest
- Ongoing advice to a Northern Rivers community group on the proposed Rally in the Kyogle & Tweed Shires covering road closures, FOI and planning
- Advice to a Turrumurra group on the draft LEP for the Town Centre in Ku-ring-gai, addressing concerns about the Panel deciding the matter; lack of proper consultation, lack of detail in the proposal and impacts on biodiversity



- Advice to a community association about issues with environmental protection in the new Shoalhaven LEP process and how they can best protect Lake Wollumboola
- Letters to the Ministers for the Environment and Planning highlighting deficiencies in the planning framework in relation to ESD and climate change in light of the Walker decision

Policy and Law Reform

The planning system in NSW continued to undergo significant reform in the past 12 months. The EDO participates with other stakeholders in regular Implementation Advisory Committee meetings chaired by the Planning Minister and also meets regularly with the Director General (with the Total Environment Centre) on current issues.

During the past 12 months, the EDO undertook work on the following:

- A submission and meetings on the proposed SEPP (Repeal of Concurrence and Referral Provisions) 2008, which identified key environmental areas where concurrence needs to be retained. The Department has decided to keep the environmental SEPP and DECC concurrences in the new policy
- A submission on the NSW draft Complying Development Codes, which argued that complying development must only apply to minor variations/renovations and not, for example, to sensitive

environmental zones where more thorough assessment is needed, as well as the need to monitor cumulative impacts of complying development

- A brief paper on the key elements of a good planning system, the reforms needed and a critique of recent reform processes
- A letter to the Planning Minister highlighting our concerns with changes to the *Heritage Act 1977*, including requiring the Minister to consider the economic consequences of listing a place on the state heritage register prior to listing
- Appearing before the Legislative Council Standing Committee on State Development to discuss our submission on the implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW, climate change and natural resource issues in planning and development controls, and the duplication of processes under relevant Commonwealth and NSW legislation

Programs

The following program activities addressing environmental planning and development took place during 2008-2009:

Workshops

Nine planning workshops were held throughout the year, with a clear emphasis on explaining the recent changes at workshops in Sutherland,

Mosman, Coffs Harbour, Ballina, Port Macquarie and Murwillumbah. A series of workshops were also held on Coastal Development, LEPs and Advocacy at Ourimbah, Narooma and Wollongong.

Presentations

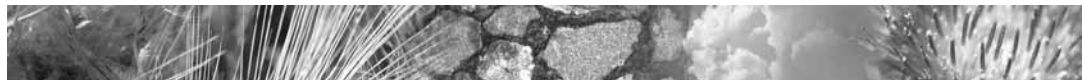
EDO staff also spoke at a number of external forums on planning law, primarily to explain and reflect on recent Court decisions and the planning reforms. These included:

- “Coastal Councils Planning for Climate Change” (National Coastal Conference, 21 August 2008, Robert Ghanem, joint presentation with Sydney Coastal Council Group)
- “To what extent does the NSW planning framework promote sustainable best practice?” (Rothworks Conference, 4 September 2008, Amelia Thorpe and Josie Walker)
- “Recent court rulings that impact on marinas” (Marinas - Coming to a Shoreline Near You? Seminar NSW Maritime Panel, Engineers Australia and PIANC Australia, 15 September 2008, Kirsty Ruddock)
- “Are We There Yet? The Absence of the Essential Element” (Environmental Planning and Law Association Conference, 17-18 October 2008, Sue Higginson)
- “A Great Planning Debate: that the NSW Planning Reforms Cannot Possibly Work - Arguments for the Affirmative” (Legalwise seminars, 19 November 2008, Kirsty Ruddock)

- “Planning Law” (Lecture to Architecture students, University of Sydney, 2 April 2009, Amelia Thorpe)
- “Environmental Impact Assessment in NSW” (Lecture at the University of New South Wales, School of Biological Sciences, 5 May, 2009, Tom Holden)

Papers

- Ghanem R (2008) “Amendments to the NSW planning system – sidelining the community” 14(2) Local Government Law Journal at pp 140-149
- Hallinan J (2009) “The Downward Spiral of Environmental Assessment in New South Wales: Part 3A and the Sandon Point Case” in Bonyhady T and McIntosh A (eds) *Mines, Mills and Other Controversies: the Environmental Assessment of Major Projects* Federation Press (forthcoming in late 2009)
- Ratcliff I (2009) “Planning Controls” section in *Environment Chapter of Law Handbook*, RLC Publishing, Redfern
- Thorpe A and Graham K (2009) “Green buildings - are codes, standards and targets sufficient drivers of sustainability in NSW?” in *Environmental Planning and Law Journal* (accepted for publication in forthcoming edition)



Biodiversity Conservation

Casework

True Conservation Association Inc v Minister Administering the Threatened Species Conservation Act 1995

In these proceedings the Association sought to challenge a decision by the Minister to grant biodiversity certification to *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP). The effect of biodiversity certification is that species impact statements no longer need to be carried out for individual development applications in the area covered by the Growth Centres SEPP. Biodiversity certification is a process whereby up-front planning for threatened species protection is intended to take the place of site-by-site assessments. The Minister cannot grant biodiversity certification unless she is satisfied that the SEPP will lead to the overall improvement or maintenance of biodiversity values.

The Association believed that, in this case, biodiversity certification was granted prematurely and based on inadequate information. The plan would result in the clearing of 1,856 ha of some of the rarest vegetation communities in the State. Approximately 16 threatened plant species and 22

threatened fauna species would suffer a loss of habitat as a result of the planned development under the Growth Centres SEPP.

In July 2008, the government passed special legislation – the *Threatened Species Conservation (Special Provisions) Act 2008* – to confer biodiversity certification on the area within the Growth Centres SEPP covered by the original order; making the Court proceedings futile.

Conservation of North Ocean Shores Inc v Byron Shire Council & Ors [2009] NSWLEC 69

In this matter, the EDO successfully represented the Conservation of North Ocean Shores Inc in its challenge to a development consent for the Splendour in the Grass Music Festival.

The Chief Judge of the Land and Environment Court found that Council acted outside of its power when it granted consent to Splendour in the Grass to hold a music festival on high conservation value lands north of Byron Bay.

A significant part of the subject land was zoned for habitat protection under the Local Environmental Plan. The Court found that the development was properly characterised as a temporary place of assembly which is a prohibited use in the habitat zone.

The habitat zoning on the land was put in place after a detailed

Commission of Inquiry in 1998 that had before it scientific evidence of the significance of the wildlife corridor on the land. The corridor is a regionally significant wildlife corridor linking coastal ecosystems to world heritage hinterland ecosystems.

The development would have seen substantial earth works on the land to accommodate the music festival including a 25 metre wide tunnel excavated through the wildlife corridor requiring the removal of native vegetation and wildlife habitats.

Nambucca Valley Conservation Association Inc v Nambucca Shire Council & Anor

On behalf of the Nambucca Valley Conservation Association Inc, the EDO has commenced proceedings in the Land and Environment Court challenging the decision of Council to allow a rural residential development to proceed in core koala habitat.

The Association is challenging the decision on a number of grounds, including the significant impact on threatened species (including the koala) and an endangered ecological community; failure to consider provisions of the Nambucca Local Environmental Plan; failure to properly exhibit the proposal after it was amended; and improper deferral of environmental considerations by the Council.

The matter is set down for hearing in August 2009.

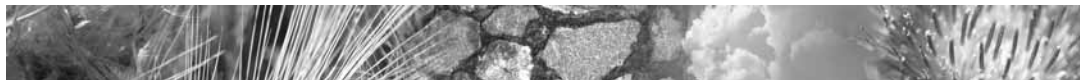
Sweetwater Action Group v Minister for Planning & Ors

The Minister for Planning recently approved the concept plan for the new Huntlee Town Centre in the Lower Hunter. The Concept Plan approval is to facilitate an area to house over 20,000 people near Branxton despite the site being ranked last under the Department of Planning's assessment of 91 possible development sites in the Lower Hunter Valley.

The EDO is acting for the Sweetwater Action Group Incorporated (SWAG) a group of concerned residents who are challenging the Concept Plan approval and related rezoning of the site.

The site is one of only a few places where the critically endangered plant, *Persoonia pauciflora* is found. SWAG is concerned that the Minister has not considered the precautionary principle and biodiversity in assessing the development. There are also concerns about the appropriateness of locating a large new population in an area that is not well serviced by public transport or other facilities.

The case will raise similar issues to those raised in the Catherine Hill Bay/Gwandalan case. In 2006 a Memorandum of Understanding (MOU) was signed between Hardie Holdings (of which Huntlee Holdings is an affiliate) and the Minister for Planning under which the Minister agreed to facilitate development of



the Branxton site for residential and commercial purposes. In exchange, Hardie Holdings is to dedicate 876 hectares of land for a conservation reserve. The grounds for the challenge are apprehended bias, taking into account irrelevant considerations and the failure to consider ecologically sustainable development (including the fundamental principle of biodiversity conservation).

The matter is listed for hearing in October 2009.


Legal and Technical Advice

The EDO has provided the following advice this year, including:

- Advice to a NSW environmental group on the proposed changes to the shark meshing program
- Advice to a State-wide group on leases in national parks including:
 - > assessment of positive and negative characteristics, and
 - > best practice for leases to protect biodiversity and public values of national parks where areas in parks are leased for private purposes
- Ongoing assistance to residents on Lord Howe Island on rat eradication strategies and associated risks to biodiversity
- Interim advice to a regional environmental group about prospects of compliance action in relation to breaches of Shannon Creek dam approvals which are impacting on threatened species
- Advice to a resident on a proposal by Council to attempt to relocate threatened flying foxes at Singleton
- Advice to a regional group regarding a developer appeal against Council's deemed refusal for the Splendour in the Grass Festival
- Advice to a community group on assessments under the *EPBC Act 1999* in relation to the redevelopment at the Australian Institute of Police Management site at North Head and impacts on biodiversity, particularly little penguin habitat. Consequently, the development footprint was significantly reduced for the college
- Letter to the Minister for the Environment on behalf of a community group about subdivision and impacts on endangered Macquarie perch in the Mongarlowe River
- Ongoing advice to a resident regarding the enforcement of Iron Gates remediation orders, including the capacity to join proceedings, and letters to solicitors for Iron Gates (in liquidation) and to the liquidator; requesting further action to remediate the Iron Gates site in accordance with the Court Orders
- Advice and brief to Counsel to advise a residents association on challenging the approval of a DA for a 27 lot subdivision on

Wadalba Hill, based on Council's failure to consider the significant biodiversity and Aboriginal cultural heritage values of the site. The Scientific Advisory Service has also provided ongoing assistance in this matter, including a review of environmental assessment documents and a site visit to assess the merits of the deemed concurrence by the Department of Environment and Climate Change

- Ongoing assistance to a national group on flying fox issues
- Series of advices, including brief to Counsel, for a State-wide environmental group on proposed changes to the *National Parks and Wildlife Act 1974* to facilitate tourism
- Advice to a peak regional environmental group regarding a submission on the North Shore Quarry DA, including potential impacts on Green & Golden Bell Frog habitat
- Review of ecological assessment documents, attendance at the first hearing of an advisory PAC, and preparation of a submission to Department of Planning on impacts of the Metropolitan coal project on Prickly Bush-pea, a threatened species dominant at the site
- Letter to Council stating that a Koala Plan of Management was required for a residential development application before Council could determine the application. The EDO understands that the Council accepted the correctness of the EDO's representations
- Letter to DECC regarding a Council's proposed redevelopment of a site with threatened species habitat, submitting that Council's proposal was inconsistent with DECC's recovery plans. Consequently, DECC made a submission to Council on the concept plan after receipt of our letter and Council adopted DECC's recommendations in relation to further consultation and threatened species assessment for future development applications
- Provision of a Model Covenant to a national group for conservation agreements around Australia
- Advice to a NSW-wide conservation group on legislative options for protection and better management of travelling stock reserves
- Advice to a local group, including the review of ecological assessment documents and the preparation of an expert brief on a proposal for clearing an endangered ecological community for a private college at Kurri Kurri, which is also habitat for the highly endangered Regent Honeyeater
- Advice to client on the ADI St Mary's site, including implications of changes to the SEPP relating to this site, and on how to provide



statutory protection for land which community groups want protected as part of the Cumberland Conservation Corridor Proposal

- Submission on behalf of koala advocacy group on the impacts of the expansion of a caravan park on koalas at Evans Head, including input obtained from an expert ecologist
- Comprehensive advice to a NSW-based Aboriginal group on the implications of BioBanking for Indigenous groups
- Advice to a resident group regarding a proposed kennel at Coffs Harbour on the edge of core koala habitat, including possible grounds to refuse/ review development consent
- Preparation of letters for a community group at Berowra Creek to the Department of Education and Training and the Department of Environment and Climate Change about damage to an Endangered Ecological Community at John Purchase School, Cherrybrook, by contractors
- Advice to a NSW environmental group on the closure of a NSW shark fishery
- Letter to Council, indicating that a development consent for a rugby club had not considered SEPP 44 regarding koalas. Council subsequently 'withdrew'

the DA and advised it will be resubmitted with a design that considers koala impacts

- Advice to a national climate group on World Heritage in Danger listing for Wet Tropics World Heritage area and whether that would affect the listing of cultural values
- Advice to NSW-based Aboriginal group on the proposed Biodiversity Strategy
- Letter to Railcorp and meeting with contractor and community group covering remediation of damage to biodiversity and Duck River from works conducted on the Railcorp site near Granville
- Advice to a resident on the need for Council to consider a newly listed endangered ecological community when considering an application for review under the *EP&A Act 1979*; and what amounts to a 'significant impact' under the *EPBC Act 1999*
- Series of advices to a resident on an agreement with the Nature Conservation Trust to protect a property in the Capertee Valley
- Advice to, and meeting with, a Morpeth-based conservation group to discuss private conservation and different types of covenants
- Legal and scientific assistance, review of environmental assessment documents and expert advice to an environment group at Ryde, in lodging complaints

with DECC and DEHWA in relation to clearing of Sydney Ironbark Turpentine Forest, an endangered ecological community, at the Macquarie Hospital site. DECC responded to our report with a site visit in four hours, and DEHWA with a written response within 24 hours. In a letter to the EDO, the group stated:

Ms Johnson responded without hesitation to our urgent plea for help, making immediate representations for a stop work order to both the State and Federal Environment Ministers and following up with the relevant agencies...

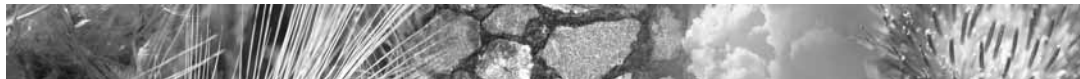
The EDO [also] through Mr Tom Holden, assisted us to obtain an independent expert ecologist's report that confirms the presence of remaining endangered Sydney Ironbark Turpentine Forest. We are presently taking action to press the Council and the NSW and Federal Governments to ensure that the remaining community is managed properly and that offsets are given for the damage done;

There is no doubt that the EDO has responded quickly to our needs as a community environment group in every way it possibly could and we feel that it is vital that the EDO continue to be able meet its charter

to defend the environment in this and many other ways;

As Convenor of REG, please also accept my deep personal appreciation of the help by you and your staff this year;

- Advice to a resident regarding a rescission motion and an *EPBC Act 1999* referral with respect to a proposed residential development at Patch's Beach
- Advice to a resident regarding the requirement for Council to independently assess the need for a species impact statement; and Council's ability to refer a controlled action to the Federal Minister for the Environment
- Meeting with the Federal Environment Minister on behalf of local resident re concerns about operation of *EPBC Act 1999* and the Minister's role in Botany area
- Policy and technical advice to DECC on aspects of Biobanking that should be monitored over the 2 year trial period
- Advice regarding a potential dam case in Queensland, including teleconferences, review of documents and identification of experts
- Submission to the Minister on the significance of the impacts of a proposed rezoning and residential subdivision at Jervis Bay on Matters of National Environmental Significance and Commonwealth Land (Booderee National Park) based on a review



of environmental assessment documents. The rezoning had to be referred to the Federal Environment Minister for approval under the *EPBC Act 1999*, because it was going to impact the National Park and federally listed threatened species. The submission argued that approving the rezoning was inconsistent with the *EPBC Act 1999*, and Australia's international obligations under it. The Minister refused approval of the rezoning, with our submission being quoted a number of times in the recommendation report from DEHWA to the Minister, which recommended refusal of the rezoning

- Policy advice regarding the Significant Impact Guidelines under an EBPC Act Policy Statement
- Review of environmental assessment documents and advice regarding the Federal Environment Minister's reasons for the decision to approve a development at Catherine Hill Bay

Policy and Law Reform

Climate Change and Biodiversity

Climate change will have profound impacts on biodiversity, and there is an abiding need to re-evaluate our current approach to conservation. The EDO has done considerable work in this area, with particular emphasis on whether the current legislative frameworks in NSW and at the Commonwealth level can facilitate adaptation. In the last 12

months, the EDO completed a lengthy multi-disciplinary Discussion Paper and held a Roundtable to canvass the issues raised. The Roundtable was attended by a number of scientific and legal experts including Judy Lambert (Facilitator), David Farrier (Wollongong University), Jan McDonald (Griffith University), Gerry Bates (Sydney University/ ANU), Michael Dunlop (CSIRO), Simon Ferrier (CSIRO), Tony Auld (DECC) and Martin Fallding (consultant). Other experts who agreed to review the paper included Paul Adam (University of NSW), Chris Dickman (University of Sydney), David Keith (DECC), Brendan Wintle (University of Melbourne), Sarah Bekessey (RMIT), Hugh Possingham (University of Queensland) and Lesley Hughes (Macquarie University).

The Discussion Paper was presented to the independent panel reviewing the *EPBC Act 1999*, the NSW Government, and the NSW Legislative Assembly Inquiry into Managing Climate Change Impacts on Biodiversity. It is available on the EDO website.

The EDO also made a short submission on the draft National Biodiversity Strategy to the Department of Environment, Heritage, Water and the Arts. The submission outlined that the Strategy should be given greater force and used as a tool to discuss biodiversity priorities in the context of both the challenges of

climate change and the independent review of the *EPBC Act 1999*.

Protected Areas Management

The management of protected areas is a cornerstone of the Australian Government's efforts to protect Australia's unique biodiversity and implement its international obligations under the *Convention on Biological Diversity 1992* (CBD). Article 8 of the Convention specifically requires parties to establish a system of protected areas where special measures need to be taken to conserve biological diversity.

In the past year, the EDO wrote a submission to the NSW National Parks and Tourism Inquiry (run by the Department of Tourism) raising concerns about facilitating inappropriate tourism in national parks. The EDO also responded to the proposed *National Parks and Wildlife Regulation 2009*. The main concern was to ensure that the Regulations maintain important environmental safeguards and adequately facilitate Indigenous access and engagement.

At a Federal level, ANEDO also prepared a submission, with significant input from the Scientific Advisory Service, on the Consultation Draft for Australia's Strategy for the National Reserve System 2008-2030. ANEDO supported the key directions under the strategic themes for the National Reserve System which include protected areas design and selection, protected area planning and management and strengthening

partnerships and community support. Importantly also, ANEDO was pleased to see that the final Strategy – released in May 2009 – put greater emphasis on two key issues raised in our submission; namely, greater recognition that adaptive management will be crucial under climate change, and greater recognition of the value of the knowledge held by Indigenous communities and private landholders in protected area planning and management.

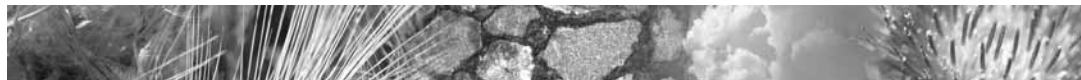
EPBC Act 1999

In late 2008 the Federal Minister for the Environment, Heritage and the Arts commissioned an independent panel to review the *EPBC Act 1999*, the first review since it commenced in 2000.

The review has been wide-ranging, covering the following areas:

- Scope of the Act
- Assessments and Approvals
- Biodiversity
- International Movement of Wildlife
- Protected Areas
- Indigenous Involvement
- Compliance and Enforcement, and
- Decision-making under the Act

ANEDO has been actively involved in this iterative process over the past year, making a comprehensive initial submission, meeting with the independent panel on two occasions to discuss matters arising from the submissions and the review process



and making a submission on the Interim Report. Further comments have been provided on request from the panel on issues including strategic assessments, prioritisation, listing processes, bilateral agreements, standing and the scope of merits review. The discussion paper prepared on Climate Change and Biodiversity was also presented to the panel.

In the panel's Interim Report, ANEDO submissions are referenced extensively, with around 70 references. For example, our submission relating to s516A of the Act (on ESD reporting by Commonwealth agencies) is discussed in great detail and some of our recommendations are endorsed.

The review process has highlighted the benefits of a multi-disciplinary approach with the policy, science and litigation teams in NSW working closely with all other EDO offices around Australia, as well as liaising with the major conservation groups.

Running concurrently with this review process has been an Inquiry by the Senate Standing Committee on Environment, Communications and the Arts. ANEDO prepared a submission to, and appeared before, the Senate Committee. In its first report, the Senate Committee made ten recommendations consistent with ANEDO recommendations, with ANEDO being mentioned 26 times in the report.

Biocertification

Under the *Threatened Species Conservation Act 1995* the Environment Minister may make an order conferring "biodiversity certification" (biocertification) on an Environmental Planning Instrument. In order to do this, the Minister must be satisfied that the plan, in addition to any other relevant measures to be taken into account, will lead to the overall improvement or maintenance of biodiversity values. The effect of biocertification is to remove the need for a Species Impact Statement and DECC approval for developments under the plan. All developments which are permissible under a biocertified plan are deemed not to have a significant impact on threatened species, regardless of their actual impacts.

As noted above, the True Conservation Alliance, represented by the Environmental Defender's Office, launched a legal challenge to the Minister's decision to grant biocertification to the Growth Centres SEPP in February 2008 – the first use of the biocertification power. The case was due to be heard in July 2008. Prior to its commencement, the Government passed the *Threatened Species Conservation Amendment (Special Provisions) Act 2008*, which overrode the legal challenge.

In response, the EDO consulted with conservation groups and the policy, science and litigation teams prepared a paper outlining the legislative changes needed to the

biocertification process to improve it and to better operationalise the 'maintain or improve' test. The paper has been presented to, and discussed with, DECC.

Programs

The following program activities addressing biodiversity conservation took place during 2008-2009:

Workshops

The EDO held four workshops relating to biodiversity conservation in 2008-2009. In collaboration with the Tucki Landcare Group, the EDO held a workshop on Conserving Threatened Species at Goonellabah in September 2008. The EDO also hosted a Biodiversity Forum in Lismore in November 2008. Two EDO workshops on private conservation were also held in Grafton and Murwillumbah, with speakers from government, Councils, Land for Wildlife, the Nature Conservation Trust and the CMA also contributing.

Presentations

- "Biobanking, Biocertification and Native Vegetation" (Lectures to UNSW Law Students, September 2008, Rachel Walmsley)
- "Community Expectations of an Ecological Consultant" (Ecological Consultant's Association Annual Conference, 5 September 2008, Tom Holden and Rachel Walmsley)
- "BioBanking and the BioBanking Assessment Methodology" (Australian Centre for Climate and Environmental Law and

Sydney Law School CLE, 17 November 2008, Tom Holden).

- "Introduction, Overview and Case Studies on the Lismore LEP" (Lismore LEP Biodiversity Forum, 4 December 2008, Mark Byrne, Ian Ratcliff and Sue Higginson)
- "Biodiversity Law" (Interview recorded for SCU Science School for external education materials, 6 April 2009, Sue Higginson)
- "Biodiversity Law" (Lecture to SCU School of Law and Justice, 27 April 2009, Sue Higginson)
- "Biodiversity protection through the Standard LEP" (Lismore Council, 16 June 2009, Sue Higginson)

Papers

- Smith J (2008) "How Adaptable Are Our Conservation Regimes?" in Bonyhady T, McDonald J and McIntosh A (eds) *Adapting to Climate Change: Australian Law and Policy* Federation Press (forthcoming in late 2009)
- Walker J and Walmsley R (2008) "Biobanking: Certainty for Developers and New Hope for Threatened Species" 46(8) *Law Society Journal* (September 2008) at pp 52-55



Natural Resource Management

Casework

Tomsys Timbers Pty Ltd v Clarence Valley Council & Elland Preservation Organisation Inc

Tomsys Timbers wanted to place a major sawmill development and operation on environmentally significant rural land in the Clarence Valley.

In this successful case, the EDO Northern Rivers acted for the Elland Preservation Organisation Inc (EPO). EPO was concerned about the impacts of a proposed major sawmill development on the natural rural environment. The proposed development was on environmentally constrained land and at the top of a water course that feeds directly into a significant wetland before feeding into the Orara River.

Council refused the development application lodged by Tomsys Timbers (the sawmill company) on three separate occasions on a number of legal and environmental grounds. Further, Council has a sustainability initiative and Industrial Lands Strategy that when applied concludes that this type of major industrial development should only be considered on lands appropriately zoned industrial. Tomsys Timbers appealed to the

Land and Environment Court challenging Council's refusal.

As the proposal was designated development, EPO joined the proceedings and raised a number of environmental matters that Council was not raising in its case. The main arguments put to the Court by EPO, backed by expert advice, were that the proposal would have an unacceptable impact on water quality and cause water pollution and it would adversely affect threatened species. Further, it was argued that the Environmental Impact Statement prepared by the proponent was substantially inadequate and did not comply with statutory requirements.

After the EPO filed its expert evidence in the matter, Tomsys Timbers sought to discontinue the proceedings. The matter was settled on the basis that Tomsys pay the costs incurred to date.

North Coast Environment Council Inc v Department of Environment and Climate Change

The EDO (through the Northern Rivers Office) acted for the North Coast Environment Council Inc (NCEC) in this matter, which ended successfully.

The NCEC filed an application in the NSW Administrative Decisions Tribunal challenging the decision of the Department of Environment and Climate Change (DECC) to refuse NCEC access

to information it holds regarding logging approvals on private land.

The NCEC lodged a Freedom of Information Application with DECC seeking information on private logging operations in NSW. The NCEC sought the information in order to independently assess how the relatively new system of regulation over logging on private lands in NSW was being applied.

DECC refused access, claiming that the material sought contains the business affairs and personal affairs of the landholders. DECC also said that landholders may be subject to trespass, property damage and blockades if the material is released. NCEC believed that DECC did not apply the Act in accordance with the law and that in the public interest the information sought should be released.

Five landholders that conduct private logging operations on their land joined the proceedings. They claimed that their property and commercial interests would be adversely affected if the information held by DECC was released. No evidence to back up or provide any substance to such claims put by DECC or the landholders was provided.

Prior to hearing, DECC agreed to release the documents to the NCEC and the matter was settled by way of consent orders.

Blue Mountains Conservation Society Inc v Delta Electricity

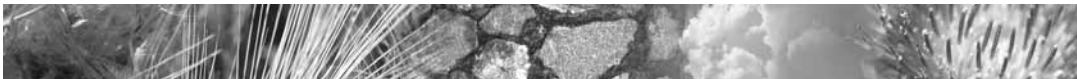
In June 2009, on behalf of the Blue Mountains Conservation Society, the EDO commenced civil enforcement proceedings in the NSW Land and Environment Court against Delta Electricity under the *Protection of the Environment Operations Act 1997*, for causing water pollution. Water quality testing results from upstream and downstream of a discharge point from Wallerawang Power Station, as well as from the discharge point itself indicate that the power station is introducing salts and metals into a river which runs into Sydney's drinking water supply. The enforcement authorities have been advised of the results but have so far not done anything about it.

The Scientific Advisory Service has played a formative role in this case, through ongoing advice, meetings with clients, site visits, data analysis and engaging and briefing experts.

As the client has indicated that it could not afford to continue with the proceedings unless its liability was limited, the EDO is seeking a 'protective costs order', which caps the costs payable on a party/party basis in the proceedings. This issue is set down for hearing in August 2009.

Barrick Australia Ltd v Williams [2009] NSWCA 275

The EDO is acting for Neville "Chappie" Williams, defending an appeal by mining company Barrick Australia Limited from judgment



delivered by Justice Biscoe in the Land and Environment Court.

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

In the Land and Environment Court, Justice Biscoe held that Barrick's application to 'modify' the existing mine approval in fact proposed a 'radical transformation' of the Cowal Gold Mine. As such, the Court held that the application did not constitute a modification request for the purposes of Part 3A of the *EP&A Act 1979*. The Court also made findings against the validity of decisions made (or to be made) by the Director-General of the Department of Planning and the Minister for Planning which relate to Barrick's application.

This matter is set down to be heard by the Court of Appeal on 1 July 2009.

Legal and Technical Advice

Around two-thirds of all legal inquiries to the EDO are from rural and regional NSW. Many of these inquiries relate to issues around the management of our natural

resources – specifically, water, mining, land and forestry. These include:

Water

- Advice to a NSW-based Aboriginal group on the NSW Wetlands Policy and issues that may concern Indigenous people
- Review of EIA documents for a proposal to construct Wellington Weir at the end of the Murray River in South Australia, and liaison with members of the Expert Register to identify relevant experts who could assist in preparing a submission on the project
- Advice to a Hunter-based group on the potential for a legal challenge to the declaration of the Tillegra Dam as "critical infrastructure" under Part 3A
- Letter seeking copyright information on behalf of a regional group about the release of a Snowy Scientific Committee report and publication on their website before its formal release, as well as advice on the findings of the Committee and the licence review
- Advice to a community group on the Snowy Water licence and environmental flows in the Snowy River
- Ongoing advice to community associations, including an FOI application, a brief to Counsel about what action could be taken to enforce breaches of the water laws and the Paroo

River moratorium, and the review of an expert report

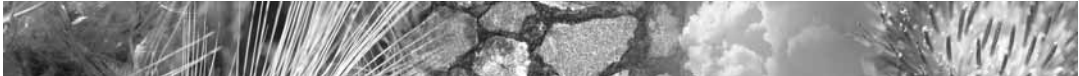
Mining

- Ongoing advice to residents on the Anvil Hill/Mangoola Coal Mine, including nuisance, modification issues, consultation requirements, brief to Counsel, meetings and correspondence with the mining company regarding noise mitigation and research on the impacts of dust, groundwater and light
- Advice to a national conservation group on who is legally responsible for management of tailings from the Ranger Uranium Mine
- Advice to a residents association regarding breaches of condition by Broula King mine
- Advice on the expansion of Northparks mine, covering the magnitude of the expansion and the associated increase in water use and potential impact on other water users in the region
- Advice to a community group in Wollombi on potential challenges to a determination under Part 5 of the *EP&A Act 1979* in relation to the Review of Environmental Factors for test drilling
- Ongoing assistance with regard to a sandmine in the World Heritage Area in the Blue Mountains. Council refused the DA due to non-compliance with a condition of the original consent. The consent has lapsed and Council is now unable to consider the application

- Policy advice on recent amendments to the *Mining Act 1992* to overcome the Ulan decision in the Court of Appeal
- Ongoing advice and meetings with a regional environment group to discuss an advice on Wilpinjong mine, including advice on breaches of development consent in relation to noise, lodging an FOI application and a letter to the Department requesting action
- Advice to a community action group on the procedures for granting exploration licences at Wybong
- Conference to discuss possible EDO NSW support for the Olympic Dam EIS, the largest proposed mining project in Australia
- Advice to a community group on an auger mining proposal in Lake Macquarie and whether it could be classified as open cut mining
- Review of EIA documents for East Quarry, Hunter Valley and meeting with the client to discuss how the EDO could assist on their matter and to provide general advice on how to proceed with a submission

Land and Native Vegetation

- Advice to a resident group at Invergowrie on a modification removing native vegetation from an endangered ecological community listing. As the client said:



The EDO enabled the community to focus its attention to the specific areas we legally could address...The EDO negotiated an extension of time allowing a well attended community meeting to be held and a group submission to Council to be prepared

- Ongoing advice to a landholder, including letters to the State Council of the Rural Lands Protection Board, on fencing and trespass issues regarding a Travelling Stock Route (where an Envirofund project is in place)
- Advice to a local action group as to whether the *Hub Action Group v Minister* case could be used to compel Council not to zone prime agricultural land as an Industrial Area
- Submission to Council, based on review by an expert, raising concerns with the lack of information provided in reports on stormwater management and leachate management at a landfill site, and highlighting client concerns with the impacts of the tip on Wolumla Creek and wetlands on the site
- Advice to a state-based group on definitions under the *Native Vegetation Act 2003* and regrowth as it relates to bushfire management
- Review of documents and test results relating to waste storage at Quirindi tip

Forestry

- Advice to a large regional group on potential *Private Native Forestry Bill* initiatives
- Advice to a regional environmental group regarding public consultation rights, failure to consider key threatening processes, failure to take account of unmapped gullies and inadequate frog/bat surveys in relation to a logging proposal at Clouds Creek
- Advice regarding proposed re-logging, including engaging an expert to review the environmental assessment of logging in a steep compartment at Nambucca, the analysis and interpretation of the advice, and a letter to Forests NSW outlining concerns regarding soil assessment and analysis that has been undertaken
- Informal briefing provided to a parliamentarian on regulation of timber plantations
- Advice to a NSW environmental organisation regarding legality of River Red Gum logging without EIS/ Part 3A approval, notwithstanding previous undertakings in accordance with Court settlement
- Advice on the meaning of “public interest” under the *Forestry Act 1916* and other contexts under Part 3A
- Letter to the Department of Primary Industries seeking access to information that should have been publicly available in relation to a

pine plantation, as well as querying why no species impact statement was provided prior to the Minister authorising the plantation. As a result of our correspondence, the information was provided to the client. In addition, the owners of the pine plantation met with the client and agreed to avoid putting the pine plantation on ecologically sensitive areas on the site

- Advice on the potential impacts of coal seam gas extraction on groundwater levels
- Review of documents prepared by a client regarding alleged misleading ecological reports, which assessed the impacts of mine subsidence
- Advice to a client on the technical aspects of a development application by Walferton tannery to treat effluent at a disused abattoir and irrigate treated effluent at a tannery at Aberdeen
- Engaged an expert and reviewed client submission to Hunter Water, regarding the ecological impacts of treated effluent being discharged to Congewai Creek under the Paxton Wastewater Treatment Plant upgrade

Policy and Law Reform

Native Vegetation

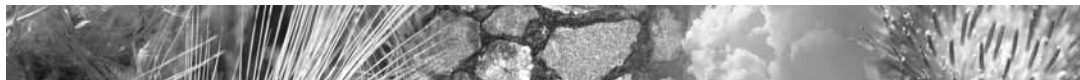
For some years, the EDO has been active in developing the legislative framework for the native vegetation laws in NSW, namely, the *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2005*.

More recently, the focus has shifted to ensuring that the laws are properly enforced and complied with. In the past year, the EDO met with senior DECC officers to discuss our concerns over lack of enforcement as well as commenting on the Draft Native Vegetation Compliance and Enforcement Policy and proposed changes to the Assessment Methodology that underpins the laws.

Furthermore, the EDO was commissioned to provide an overview of best-practice native vegetation laws in NSW and Queensland for the EDO in the Northern Territory and a major conservation organisation. The Northern Territory Government recently committed to an overhaul of landclearing regulation in the Territory, including a new Native Vegetation Act and caps on total clearing, in line with recommendations made by the EDO.

Water

Water management in Australia continues to go through a significant reform process, with a much greater role for the Commonwealth in more recent years. At the Federal level, ANEDO made submissions to the Senate Standing Committee on Rural and Regional Affairs and Transport on changes to the *Water Act (CTH) 2007* as well as water management in the Lower Lakes and Coorong. The EDO also made a submission on the Draft NSW Floodplain Harvesting Policy (with significant expert input from our Technical Advisory Panel) as well as providing advice



regarding the *Water Management Amendment Bill 2008* on provisions relating to 'severe water shortage'.

Forests

Forestry remains a concern for many EDO clients, and the issue has gained additional importance in light of the emergence of climate change. During the year, the EDO:

- was commissioned by a major national conservation group to provide drafting instructions for a Tropical Forests Act at the Federal level (as noted above)
- met with a number of conservation groups to discuss concerns with the current laws pertaining to plantations and private native forestry
- prepared a submission on behalf of ANEDO on DEHWA's draft strategy for the National Reserve System (2008-2030)
- commented extensively on the Regional Forestry Agreements as part of its submission work and ongoing discussions with the independent panel reviewing the *EPBC Act 1999*.

Programs

The following program activities addressing natural resource management took place during 2008-2009:

Workshops and Seminars

The EDO held 10 workshops on natural resource management during the past 12 months, covering Water

Law (Wanaaring, Broken Hill and Albury), Rural Environmental Law (Albury, Griffith and Uralla) Forestry and the Public Trust (Narooma) and the Snowy River (Bombala).

Professor Rob Fowler also presented a seminar on "The Dying Murray: Is There a Legal Cure?" in Sydney, while the successful BrainFood in Byron seminar series attracted influential speakers on issues relating to Mining and Water.

Papers

- Ruddock K (2008) "Justice in the Northern Territory?" 7(2) *Indigenous Law Bulletin* at pp 21-23

Presentations

- "National and State Water Law for Local Practitioners" (Albury CLE, 27 February 2009, Felicity Millner and Robert Ghanem)
- "A Payment for Ecosystem Services Scheme in PNG: Incorporating Lessons from Costa Rica's PSA" (*NZ CEL Conference*, 18 April 2009, Amelia Thorpe and Kristy Graham)
- "The utility of a statutory duty of care for the environment in place of further regulation of farming activities" (Moot at UNE, Armidale, Ian Ratcliff)
- "Native Vegetation & Water Management" (Hastings Landcare Small Farms Workshop, Wauchope, 31 May 2009, Ian Ratcliff)
- "Illegal Tree Clearing" (Byron and Ballina Council, 26 June 2009, Sue Higginson)

Environmental Justice

Casework

Minister for Planning v Walker (No 2) [2008] NSWCA 334

In this matter regarding development at Sandon Point, the EDO successfully argued against the usual costs order – that is, the loser pays - on the basis that the proceedings were brought in the public interest. The Court agreed, with the Court ordering that each party pay its own costs.

Anderson v Director General Department of Environment and Climate Change

This was an appeal to the Court of Appeal from a decision of Justice Lloyd of the Land and Environment Court, dismissing an application for review of the decision to grant a permit to destroy Aboriginal objects on Lot 208, Angels Beach. The matter has a long history, with the EDO being involved in several cases in the past.

The appeal was based on the principle of intergenerational equity, seeking to test the limits of the application of this principle to the protection of Aboriginal cultural heritage in NSW. The Court of Appeal dismissed the appeal.

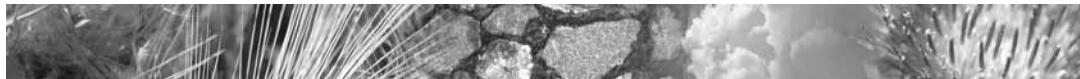
Anderson on behalf of Numbahjng Clan within the Bundjalung Nation v

Minister for Planning (No 2) [2008] NSWLEC 272; Anderson on behalf of Numbahjng Clan within the Bundjalung Nation v Director-General of the Department of Environment and Climate Change & Anor [2008] NSWLEC 299

These two cases sought to test the new Land and Environment Court Rule 4.2 allowing the Court to make no order for costs if it is satisfied that the proceedings were brought in the public interest. In both cases, the Court accepted that the proceedings were brought in the public interest.

In the first case, Justice Biscoe found that the new rules did not mandate special circumstances to justify a departure from the usual rule. However, His Honour held that there were several circumstances which weighed against departure from the usual rule as to costs, and ordered the applicant to pay the respondent's costs.

In the second case, Justice Lloyd held that the new rules merely gave statutory recognition to the judgements in the High Court case of *Oshlack* – namely, that the categorisation of proceedings as public interest litigation is a relevant consideration in the exercise of the court's discretion as to costs, but it is not the only consideration. In holding that the usual order as to costs should apply, His Honour drew attention to a number of countervailing considerations. His



Honour ordered the applicant to pay the respondent's costs.

***Lyall Munro & Wayne Nean
v Minister for Planning &
Moree Plains Shire Council;
Lyall Munro & Wayne Nean
v Minister for Lands***

In these two related cases, the EDO is acting for two elders of the Gomeroi nation in Moree. Both matters involve Taylor Oval, the main rugby league and cricket ground in Moree, which is a significant site for the local Aboriginal community who believe it is situated near a burial ground for the Gomeroi nation. Bodies of Aboriginal persons were excavated on the site in 1903. Taylor Oval has also been important for reconciliation in the town as an area where both Aboriginal and non-Aboriginal people have mixed over the generations.

The first matter involves the approval of a rezoning application for Taylor Oval from recreation to commercial use to facilitate the building of a Big W department store on the site. The case focuses on whether the Minister for Planning and Council followed the correct procedures for rezoning the land under the *EP&A Act 1979*. Proceedings were commenced in April 2009.

Related proceedings have been commenced in the Supreme Court against the Minister for Lands' decision to revoke the dedication of Taylor Oval for public purpose recreation. In this case, the EDO is seeking a declaration that the decision by

the Minister for Lands to notify the revocation of Crown Reserve at Taylor Oval is void, and related injunctions. The revocation of the dedication is an important step in allowing Lands to lease or otherwise deal with the land to enable the Big W development to proceed. The Minister is also contesting the right of the elders to bring the proceedings, as the challenge is based on the common law test of whether they are "a person aggrieved" by the decision. A hearing date has been set for November 2009 at the Supreme Court in Sydney.

Legal and Technical Advice

The EDO has provided the following advice this year, including:

Pollution and Public Health

- Advice to residents in Mogo about air and noise pollution in relation to their concerns with a bitumen mixing plant
- Letter to, and discussions with, Council urging action over a polluting industry operating without Council consent with impacts on a neighbour through noxious odours. Council has now issued an order requiring the current use of the property to discontinue
- Oral advice and expert referral to a resident group at Breakfast Point in relation to the requirements to remediate contaminated land in Sydney Harbour
- Assistance to affected farmers in relation to their concerns regarding pollution downstream

from Camden Sewerage Treatment Plant including referring clients to water quality experts to assist with collection of samples and letter to Sydney Water

- Ongoing assistance to a community group on a Part 3A application to build a marina, residential apartments and holiday accommodation on Lake Macquarie, including review of documents and engaging an expert to assess issues regarding the aquatic ecology and water quality impacts of the marina component of the proposal
- Advice to a residents action group at Shalvey on enforcement issues
- Policy advice on the legal options for banning fluorescent lightglobes, batteries and other hazardous materials from landfill
- Advice on contamination issues associated with a new coal terminal in Newcastle and clean up operations
- Assistance to a client at Wyong to resolve a dispute with Council over the contamination of water tanks from roadworks
- Advice and draft correspondence on public health issues to an advocacy group in the Hunter
- Letter on behalf of a resident association to the Council advising that a development application for the storage of liquid industrial waste at Peak Hill was a designated development

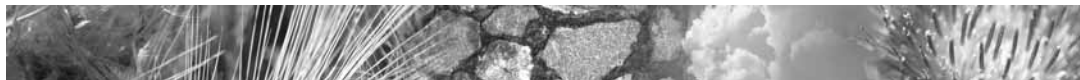
and that an EIS was required. As a result, the DA was withdrawn

- Ongoing assistance to an environmental group on Norfolk Island on disposal of waste and water contamination issues, including the role of the *EPBC Act 1999*, scientific assistance on dioxin levels and correspondence with the Federal Minister for the Environment and Norfolk Island administration. In commenting on EDO assistance, the group said:

The support and assistance has been of great benefit and has provided [us] with an excellent resource, a clear understanding of our rights on the island. We hope that we can in time make changes on the island and it is with the support of the EDO that this will happen

Aboriginal Cultural Heritage and Indigenous Rights

- Advice to an Indigenous group on outsourcing of management by Council of a Lifestyle Academy Centre
- Advice to Aboriginal elders about an approved Cultural Heritage Management Plan, including writing a submission to DECC raising concerns with its form
- Letter to the Minister for Environment and Climate Change about cultural heritage reforms including issues that arose in visit to Darug



- Advice to an Indigenous group on discussions with large mining company in the Hunter Valley on cultural heritage issues
 - Advice for Traditional Owners on proposed expansion of mine in Central West regarding the application of s75W of the *EP&A Act 1979* and procedural fairness
 - Lodged an FOI request on behalf of an Indigenous group on the management of a site in the Blue Mountains National Park, Kings Tableland
 - Assistance to a resident on issues relating to the Buladelah bypass
 - Advice on Fact Sheets prepared by a state-based Aboriginal organisation explaining amendments to the *NPW Act 1974*
 - Ongoing project management of Kutubu 2 matter in PNG, including:
 - > liaison with consultants, Oil Search, and client re alteration to contract and fee agreement
 - > review of draft gap analysis report prepared by consultants
 - > review of draft toxicology report
 - > liaison with consultants regarding the adequacy of the report
 - > meeting with clients
 - > coordination of final report
 - Advice to an Aboriginal elder about a dispute with Council and the marketing of cultural heritage tours
 - Advice for a state-based group on cultural heritage issues and enforcement by DECC
 - Advice for Traditional Owners on cultural heritage issues with consultation on consents to destroy
- Access to Justice, and Campaigner's Rights and Responsibilities***
- Advice regarding the status of amicus curiae submissions in Australia
 - Letter to the NSW Committee on the Independent Commission Against Corruption supporting the establishment of a legal framework to protect public sector whistleblowers
 - Lodged a review of an FOI decision not to allow access to documents on the basis the investigation is ongoing based on information to the contrary
 - Advice to protestors from the Climate Camp about the prospects of success of running a "reasonable excuse" defence in relation to trespass penalty notices under the *Rail Safety (General) Regulation 2008*
 - Lodged an FOI internal review and letter of review to Ombudsman on behalf of community group seeking documents with respect to agency responses to proposed residential subdivision at Dunoon
 - Advice on potential liability for campaigning activities

- Assistance to an individual in response to a conviction for intimidation for a logging protest near Moruya, including lodging an appeal against the decision in the Local Court
- Series of advices to rowing clubs on whether the Iron Cove Bridge proposal interferes with public rights of navigation and in particular the ability to challenge that decision through public nuisance proceedings in the Supreme Court
- Application for joinder in proceedings before the ADT in which BHP are objecting to the release of certain documents which were sought in an FOI application

Policy and Law Reform

Access to Justice

ANEDO prepared a submission to the Senate Legal and Constitutional Affairs Committee as part of the Senate Inquiry into Australia's Judicial System, The Role of Judges and Access to Justice. The submission focussed on the terms of reference, relevant from an environmental and community perspective, regarding the costs of delivering justice, the ability of people to seek legal representation, funding for Community Legal Centres, the adequacy of legal aid and the ability of Indigenous people to access justice.

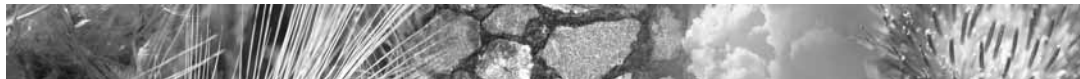
The EDO has been active in the area of freedom of information, with both the Commonwealth and NSW governments moving to

review their freedom of information laws over the past 12 months.

In September 2008, the NSW Ombudsman released a Discussion Paper on the *Freedom of Information Act 1989*, which formed part of a broader investigation by the Office into the processes and procedures surrounding freedom of information in New South Wales. The EDO made a comprehensive submission to the Ombudsman on the objects and presumptions of the Act, the scope and use of exemptions, the use of Ministerial Certificates, fees and charges and reviews. The EDO made a number of key recommendations on these issues that would return the law in this area to its original key objects – openness, transparency and accountability - including the creation of an independent statutory position of Information Commissioner.

The EDO also provided comments on Exposure Draft Bills produced by the Department of Premier and Cabinet in response to the Ombudsman's review – namely, the *Open Government Information Bill 2009* (Exposure Draft) and the *Information Commissioner Bill 2009* (Exposure Draft). Many of the recommendations made by the EDO (and others) are reflected in the new Bills.

At the Commonwealth level, the Federal Government also commenced a review culminating in the *Freedom of Information Amendment (Reform) Bill 2009* and the introduction of the *Information Commissioner Bill 2009*. These Bills contained many of



the suggested reforms outlined by the EDO in the submission to the Ombudsman in NSW. ANEDO's submission was therefore generally supportive of the changes.

Aboriginal Cultural Heritage and Indigenous Rights

The engagement of Indigenous communities in the protection of the environment and their cultural heritage are issues of fundamental concern for many Aboriginal communities. The EDO has engaged extensively with Indigenous groups and Traditional Owners in relation to these issues in recent years. We have provided legal advice, policy support and represented Indigenous clients in several cases before the courts, particularly in the area of cultural heritage.

In the past year, the EDO was commissioned by the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) to prepare four reports on Traditional Owner engagement in natural resource management; management options for the Werai forest; access and benefit sharing; and water for cultural purposes. The EDO also attended a workshop in Deniliquin in May 2009 and gave a presentation on management options for the Werai Forest.

In November 2008, DECC produced a Discussion Paper, *Towards an Aboriginal Land Management Framework for NSW*, to consider issues relating to land management including:

- Acknowledging Aboriginal connection to Country
- Improving Aboriginal access to public lands
- Increased Aboriginal participation in the management of public lands
- Developing economic opportunities from the sustainable use of land
- Learning and working for Country.

Following consultation with Indigenous communities, the EDO responded to the Discussion Paper. A key recommendation was that there needs to be a recognition of the impacts that lack of access to land has had on Aboriginal communities and legislative reform that recognises these associations.

The feedback from Indigenous communities – as part of this process and more generally - prompted the EDO to undertake a proactive policy initiative that looked closely at the area of cultural heritage in NSW. The EDO prepared a Discussion Paper involving, inter alia, a comparative analysis of Indigenous heritage regimes across Australia and the identification of best practice provisions. In May 2009, the EDO hosted a Roundtable to stimulate discussion on these issues, which was attended by many Indigenous experts, organisations and Traditional Owners. Further work in this area is expected in 2009-10.

In 2009, the NSW Government introduced an Exposure Draft Bill of the *National Parks and Wildlife*

Amendment Bill 2009 and consulted with key stakeholder groups, including the EDO. The proposed reforms will make significant amendments to Indigenous heritage including introducing new strict liability offences and increased penalties. In addition, general enforcement powers will be broadened to achieve the same level as in place for polluters. The EDO supported these changes, while also recognising that the overall legislative framework for cultural heritage still needs to be fundamentally reformed through a separate Act pertaining to cultural heritage.

Human Rights and the Environment

In late 2008, the Federal Government launched the National Human Rights Consultation, run by an independent Committee, seeking a range of views from across Australia about the protection and promotion of human rights in Australia.

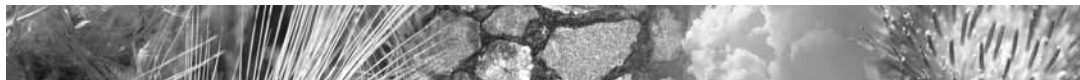
In order to facilitate active involvement by the community, EDO NSW and EDO Victoria prepared a discussion paper that sought to identify key issues to assist community groups in drafting their submissions.

ANEDO also wrote a submission highlighting the need for greater protection of human rights focusing primarily on those rights relating to the environment. The central recommendation of the submission was the need for a Human Rights Act to protect fundamental human rights. This legislation should include civil and political rights and economic, social and cultural rights, reflecting Australia's

international obligations, as well as the inclusion of the specific right to a clean and healthy environment.

As part of a separate process, the EDO and the Foundation for Aboriginal and Islander Research Action prepared a joint submission to the United Nations Human Rights Council. The submission was a response to the call by the Council in its decision 7/23 "Human Rights and Climate Change". At this time, the Council acknowledged the human rights impacts of climate change and proposed five terms of reference. The submission focused on the impact of climate change on Indigenous communities under the following terms of reference:

- assessments at the national level of the impact of climate change (experienced or anticipated) on human lives and on populations most affected and vulnerable;
- studies carried out at the national level, including by independent research institutions, on the relationship between climate change and human rights;
- projects and measures at a national level to mitigate or adapt to climate change, including information on any assessments of the impact of such projects and measures on affected populations and their human rights; and,
- views on the relationship between obligations arising out of international climate conventions and international human rights treaties, including on international assistance and cooperation.



Public Health

In April 2009, the EDO prepared a submission in response to the Draft NSW Pesticides Regulation 2009, which emphasised the importance of public notification of spraying and regulation of spray drift impacts.

Programs

The following program activities addressing environmental justice took place during 2008-2009:

Seminars

The EDO held seven seminars on environmental justice in 2008-2009:

- “Public Participation on the Endangered List” with the Hon Murray Wilcox QC, Roland Browne and Michael Bozic SC in Sydney
- “Your Rights and Responsibilities as a Protester in NSW” (Climate Camp, Newcastle)
- “Pollution Case Study: the Cox’s River” (Sydney)
- BrainFood series – “Sanitation” and “Pesticides” (both in Byron Bay)
- Rally Oh! (a forum to discuss the special legislation governing the World Rally Championships in the Northern Rivers area)

Presentations

- “Climate Crime” (Activating Human Rights and Peace Conference, SCU, July 2008, Mark Byrne)
- “Long Range Transboundary Air Pollution and the Montreal Protocol on Substances depleting the Ozone Layer” (UNSW International

Environmental Law students, 20 August 2008, Amelia Thorpe)

- “Climate Justice” (Lecture to UNSW Energy Policy class, Kirsty Ruddock)
- “A Bill of Rights in NSW” (NRCLC Seminar, 16 December 2008, Sue Higginson and Mark Byrne)

Publications

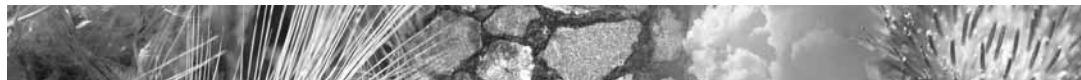
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- Collings N (2009) “Native Title, Economic Development and the Environment” in 93 Reform: Native Title 2009: A Journal of National and International Law Reform at pp 45-47
- Grais A and Collings N (2009) “Human Rights, Climate Change and Indigenous Peoples” in 35 Human Rights Law Resource Centre Bulletin March 2009 at pp 2-3
- Ratcliff I (2009) “Pollution” section in Environment Chapter of Law Handbook, RLC Publishing, Redfern
- Ruddock K (2008) “Bankruptcy: the Price for Seeking to Protect Indigenous Rights” 26 EPLJ at pp 81-87
- Ruddock K (2008) “Cheap retail at the cost of culture” in Eureka Street at <http://www.eurekastreet.com.au/article.aspx?aeid=10115>
- Ruddock K and Duggin G (2009) “Climate Change, Coal and Human Rights” 18(2) Human Rights Defender at pp 5-7

Corporate Social Responsibility and Governance

Legal and Technical Advice

The EDO has provided the following advice this year, including:

- Incorporation advice provided to two landcare groups near Ballina for their amalgamation proposal
- Advice to Hunter group on Ministerial directives to State-owned corporations regarding the Hunter Water Corporation
- Conference on restrictive contracts relating to power stations and coal in Victoria
- Assistance to EDO Victoria regarding a complaint about wood being carbon neutral
- Advice to a community group on the Hunter Development Corporation and their regulation
- Advice to a peak regional environment group regarding the possibility of defamation for statements made in relation to a proponent on rezoning
- Ongoing assistance to a NSW-based environmental group – in collaboration with pro bono support from Freehills – in responding to defamation action threatened by a developer. The developer has not taken further action since the response
- Advice and submission of a complaint to the ACCC on behalf of a national group in relation to claims by Linc Energy that coal to liquid products will reduce GHGs and are 'clean coal' products
- Lodged a complaint with the ACCC, alleging that representations made by Ultra Clean Coal are misleading and deceptive
- Advice to NSW-based group about copyright issues associated with displaying "greenwashing" advertisements
- Advice to national environment group on misleading comments about GM canola, including drafting a letter for them to send to company concerned
- Advice to NSW-based group on green offsets rating scheme and claims that it breaches section 52 of *Trade Practices Act (CTH) 1974*
- Lodged complaint to ACCC and advice to NSW environmental group about Australian Seafood advertisement
- Lodged complaint to the ACCC on behalf of clients about the Gaming Council advertising that they are first in conservation for hunting in NSW Forests



Policy and Law Reform

Sustainability and Governance

Under section 516A of the *EPBC Act 1999*, all Commonwealth Government agencies are required to report on their contribution to ecologically sustainable development (ESD) and other environmental matters.

As part of a proactive initiative, the EDO reviewed the performance of a number of Government departments. Arising out of the review, the EDO wrote to the Federal Minister recommending better tracking of sustainability reporting, stronger criteria to be put in regulations, reporting against best practice to be introduced, better coordination by DEWHA and the creation of a new Sustainability Commissioner to oversee sustainability reporting.

The EDO's concerns were passed on to the independent panel and were noted extensively in its Interim Report.

The EDO also prepared a submission to the Inquiry into Sustainable Procurement, a current Legislative Assembly inquiry conducted by the Public Accounts Committee in NSW. The submission highlighted the importance of NSW Government compliance with sustainable procurement policies and the need for a triple bottom line reporting regime in NSW similar to section 516A of the *EPBC Act 1999*.

Taxation and the Environment

In May 2008, the Commonwealth Government announced the review, *Australia's Future Tax System*. ANEDO prepared a submission, focussing its comments on the tax transfer impacts on the environment, the ways that taxes can improve environmental amenity and how the tax system can detract from environmental outcomes. The submission highlighted the importance of the tax system to the environment and the need to remove perverse incentives such as FBT and to encourage renewable energy through tax concessions.

Carbon Neutrality

The EDO prepared a submission on behalf of ANEDO to the Department of Climate Change on the draft *National Voluntary Carbon Offset Standard* encompassing the definition of 'carbon neutrality' and 'carbon footprint' and key principles. The submission, amongst other things, emphasised the need to ensure offsets are subject to rigorous scientific standards.

Programs

The following program activities addressing corporate social responsibility and governance took place during 2008-2009:

Presentations

- "Best Practice in Planning: the CUB site as a case study" (*Green Buildings 2008 Seminar*, 31 July 2008, Jeff Smith)

PART C:

REPORTING AND GOVERNANCE

EDO Clients

In 2008-2009, the EDO provided legal assistance to hundreds of clients, including a diverse range of individuals and community organisations. Organisations assisted by the EDO during the year include:

- Action for Public Transport (NSW) Inc
- Australian Conservation Foundation
- Australian Climate Justice Program
- Australian Floodplain Association
- Australian Society for Kangaroos
- Angels Beach Dunecare & Reafforestation Group
- Ballina Environment Society
- East Ballina Landcare
- Bass Hill/Georges Hall Residents Action Group Inc
- Bateau Bay/Shelly Beach Progress Association
- Climate Action Network Australia
- Communities of Congewai Catchment Inc.
- Friends of Currawong
- Friends of Mongarlow River
- Friends of Warringah
- Greenpeace
- Hastings Point Progress Association
- Humane Society International
- Koala Hospital
- Little River Landcare
- Macadamia Society
- Maitland Anti-Stink Campaign
- Manly Environment Centre
- Mudgee District Environment Group
- MLDRIN – Murray Lower Darling River Indigenous Nations
- Nambucca Valley Conservation Association Inc
- Nature Conservation Society
- North Coast Environment Group
- NSW Red Gum Action Incorporated
- Paroo River Association
- Ryde Environment Group
- Save Nimbo Creek
- Save South West Rocks
- SOS Liverpool Plains
- Southlakes Communities Against the Mine
- Sweetwater Action Group
- The Long Forest
- The Wilderness Society
- Uki Village and District Residents Association
- University of New South Wales Rowing Club
- WWF-Australia



Acknowledgements

Volunteers

The EDO continued to benefit from the assistance of volunteers throughout 2008-2009. The Sydney Office has capacity for four volunteers per day and the Office remained at capacity throughout the reporting period. The Northern Rivers Office was assisted by local volunteers from time to time but tended to rely on those in the Sydney Office.

In addition to regular volunteers who tend to contribute a day of work each week, the EDO accepted a number of student placements from various universities who undertook training as part of their coursework. Law graduates completing their practical legal training prior to becoming solicitors also made up a significant proportion of our volunteers throughout the year. The EDO was also able to attract volunteers to assist with both our Scientific Advisory Service and our International Program.

Volunteers greatly enhance the capacity of the Office to provide accurate and timely legal and technical assistance. The EDO would like to thank the following volunteers from 2008-2009 for their commitment and hard work:

- Kristina Augustin
- Alana Begg
- Liz Caldwell
- Ron Cater
- Tamzyn Chapman
- Jennifer Choi
- Phil Couch
- Emily Dyball
- Anthony Eland
- Michael Fallon
- James Fan
- Elyse Gorman
- Alex Grais
- Amber Hall
- Yvonne Hales
- Matt Jessep
- Rana Koroglu
- Zsofia Korosy
- Julija Kuklyte
- Aleta Lederwasch
- Anna Lindeman
- Christine Lloyd
- Jacqui Lumsdaine
- Chloe Mason
- Monica Massoud
- Beth Mulqueoney
- Lovissa Nellevad
- Jacqui Nissim
- Steven Perry
- Marguerite Petit
- Georgie Philpott
- Jeremy Pinto
- Brendan Ross
- Gabe Sassoon
- Sonali Seneviratne
- Kiran Singh
- Emma Sutton
- Chris Taylor
- Mira Van der Ley
- Huong Vu
- Brelleen Warry
- Elliott Weston
- Louise Whittan
- Jocelyn Williams
- Yang Xu

Pro Bono Assistance

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

Legal Assistance

The EDO would like to thank the following barristers, solicitors and firms who provided their time and assistance with EDO litigation and other matters in 2008-2009:

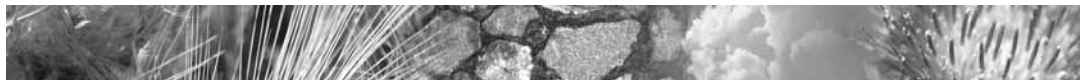
- Christine Adamson SC
- Gerry Bates
- Marion Carpenter
- Phil Greenwood SC
- Craig Leggatt SC
- Stephen Lloyd SC
- Ian Lloyd QC
- Bruce McClintock SC
- Tim Robertson SC
- Peter Tomasetti SC
- Bret Walker SC
- Neil Williams SC
- Margaret Allars
- Ken Averre
- Matthew Baird
- DLA Phillips Fox
- Sandra Duggan
- Nick Eastman
- David Farrier
- Freehills
- Gilbert and Tobin

- Jacquie Gleeson
- Tom Howard
- Heather Irish
- Jeremy Kirk
- Patricia Lane
- Patrick Larkin
- Jason Lazarus
- Craig Lenehan
- Michael McColl
- Chris McGrath
- Miranda Nagy
- Gerard Ng
- Bridie Nolan
- Chris Norton
- Rick O’Gorman Hughes
- Andrew Pickles
- Sarah Pritchard
- Mark Seymour
- Andrew Sinclair
- Kristina Stern
- Houda Younan

Scientific and Technical Assistance

The EDO would like to thank the following experts, both on and off the Expert Register, who provided assistance during 2008-2009, and all those who provided assistance anonymously:

- Paul Adam
- Stephen Ambrose
- Tony Auld
- Sara Beavis
- Sarah Bekessy
- Mal Brown
- Neil Davis
- Chris Dickman
- Michael Dunlop



- Laura Eadie
- Martin Fallding
- Simon Ferrier
- Toby Fiander
- Perry Goebel
- Garry Hall
- David Holden
- Kate Hughes
- Richard Kingsford
- Peter Karantonis
- Judy Lambert
- Barry Le Plastrier
- Iain MacGill
- Jan McDonald
- David Milledge
- Bill Morton
- Phil Mulvey
- Hugh Outhred
- Andy Pitman
- Damon Roddis
- Evelyn Rodrigues
- Nick Skelton
- Milton Speer
- Celine Steinfeld
- Jane Williamson
- Ian Wright
- Brendan Wintle

Donors

As a non-government and non-profit organisation, the EDO gratefully accepts support from a range of sources. The support received helps the Office to achieve its mission and in no way compromises the independence of the organisation. The EDO would like to acknowledge the following individuals and organisations (as well as those who choose to

remain anonymous) for their generous financial and/or in-kind support:

- Dr Lee Andresen
- Sean Arundell
- Geoffrey Ball
- William Blunt
- Environment and Planning Law Association (NSW) Inc
- Anis Ghanem
- Great Lakes Environment Association Ltd
- Sylvia Hale
- Dr Ronnie Harding
- Murray Hogarth
- Frank Hubbard
- Huskisson & Woollamia Community Voice
- Michele Kearns
- Dr Andrew Kelly
- David Lemcke
- DLA Phillips Fox
- Doug Lithgow
- Ron Marshall
- Ilona Millar
- Tony Moody
- Warwick Pearse
- Robert Purves
- Richard Smyth
- The Step Inc
- James Tedder
- Paul Toni
- John Weate
- Willoughby Environmental Protection Association
- Huong Vu
- Young and Cooke
- Alek Zander

EDO People

Staff

At 30 June 2009, the staff of the EDO comprised:

Director

Jeff Smith

Principal Solicitor

Kirsty Ruddock

Senior Solicitors

Ian Ratcliff (Northern Rivers)

Jessica Wood (Northern

Rivers – currently on leave)

Solicitors

Sue Higginson (Northern Rivers)

Felicity Millner

Neva Collings

Melissa Jolley

BJ Kim

Policy Director

Robert Ghanem (Acting)

Rachel Walmsley (currently on leave)

Policy Officer

Richard Howarth

Assistant Policy Officer

Gillian Duggin

Scientific Director

Tom Holden

Scientific Officer

Kristy Graham

Programs Director

Amelia Thorpe

Education Officers

Jemilah Hallinan

Mark Byrne (Northern Rivers)

Education Assistant

Heidi Evans

Operations Manager

Meredith MacDonald

IT/Administrator

John Scanlan

Receptionist/Administrator

Diana Beaton

Staff Changes


The EDO enjoyed relatively stable staffing during the year with no changes in the Programs, Science and Operations Teams, and Northern Rivers Office.

In the Policy Team, Rachel Walmsley went on maternity leave from October 2008. Robert Ghanem moved up from his Policy Officer position to act as Policy Director during Rachel's absence. Richard Howarth moved from Assistant Policy Officer to Policy Officer and Gillian Duggin was recruited as a new Assistant Policy Officer from December 2008.

In the Litigation Team, Josie Walker and Jacquie Svenson both left in December 2008 (Josie to take up the Principal Solicitor position at EDO WA) and were replaced by Melissa Jolley and BJ Kim. Elaine Johnson was employed as a locum solicitor during the second half of the year.

In the Programs area, the Office was able to expand Neva Colling's two day per week Aboriginal Liaison Officer role to a full-time Indigenous Solicitor position from October 2008. In May, we employed a Project Officer, Rosemary Bullmore, to work on two newly funded projects until March 2010.

The Office was fortunate in being able to employ a number of casuals



and interns for various periods during the year: Gabrielle Brine provided casual support to the Operations Team; Abby Symes worked as a Policy Intern; and Dominic Adams and Kate Vanderfield as Legal Interns.

Staff Training and Development

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

The Office is committed to allocating funds for external staff training and development, in addition to undertaking internal legal education sessions on specific topics with special relevance for the EDO's work. In 2008-2009, EDO staff attended a total of 79 external training sessions.

Board of Management

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

At 30 June 2009, the EDO Board comprised:

Patron

Mr Hal Wootten AC QC

Chair

The Hon. Murray Wilcox, QC

Vice-Chair

Prof. Michael Jeffery QC

Professor of Environmental Law and Head of Social & Environmental Research Group, University of Western Sydney

Secretary

Warwick Pearse

Principal, HSE Services

Treasurer

Helen Gillam

Lecturer, University of Technology, Sydney

Barbara Adams

Planner, Woollahra Council

Louise Byrne

Senior Solicitor, City of Sydney

Andrew Cox

Executive Officer, National Parks Association of NSW

Cate Faehrmann

Executive Director, Nature Conservation Council of NSW

Murray Hogarth

Director, Econation Pty. Ltd.

Frank Hubbard

Director, Corporate Responsibility, InterContinental Hotels Group, Australasia

Funding and Financial Report

Funding From Grants

The EDO is overwhelmingly dependent on grants to fund its operations at their current level. As in previous years, the major source of funding for the organisation is the Public Purpose Fund (PPF). This is triennial funding and was awarded for the period 2006 to 2009. The PPF provided \$1,357,048 or about 66% of the EDO's income in 2008-2009. The EDO was pleased to be successful in securing funding from the PPF for the period 2009 – 2012, providing a sound financial base for its continued operations.

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 covered the period 2005-2008; it was extended for a further year in 2008-2009 and will be extended again in 2009-2010 as the Commonwealth completes a review of the Program.

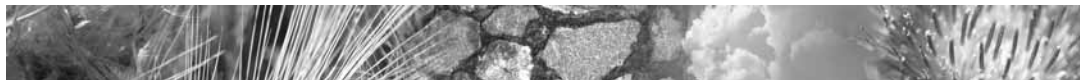
While Commonwealth and NSW CLSP recurrent funding has remained static, with indexation increases only, Community Legal Centres benefitted from the release of additional one-off funds in 2008-2009, which provided the EDO with \$20,000 above its base grant. CLSP funds from NSW accounted for \$174,967 or about 8.5% of

the EDO's income in 2008-2009; Commonwealth funding amounted to \$110,459 or 5.4% of overall revenue.

Up until recently, all the EDOs in Australia have been subject to a "no-litigation" condition preventing them from using funding received from the Commonwealth Government to undertake litigation or litigation-related activities. While the restriction did not have a significant impact on this Office due to the availability of a range of funding, it has seriously constrained the work of other Offices. ANEDO successfully negotiated the lifting of the litigation restriction during this year.

The EDO also benefitted from a one-off boost in its 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. Funding through this Program amounted to \$75,000 this financial year. This triennial grant was for the period 2006 – 2009. An application has been lodged for further funding for 2009-2012.

The John D. and Catherine T. MacArthur Foundation is another major funder of the EDO with triennial funding of \$US250,000 from 1 March 2007 to 28 February 2010. This funding is for a legal capacity building work in Papua New Guinea and in the Pacific. The EDO will seek further funding from the Foundation to fund international work beyond February 2010.



In addition to the triennial grants outlined above, the EDO received a number of smaller grants allocated for a shorter time and for specific projects during 2008-2009. These were:

- Community Legal Centres NSW through the Aboriginal Legal Access Program (with funding provided by the Public Purpose Fund) to improve delivery of environmental law services to Aboriginal clients in New South Wales
- NSW Government through its Environmental Trust for publication and distribution of a revised edition of the *Rural Landholder's Guide*
- City of Sydney Council for completion of a series of seminars and for development of a *Major Projects Toolkit*
- NSW Government through its Environmental Trust for a Private Conservation Program
- The Commonwealth Department of Agriculture, Fisheries and Forestry under its "Caring for our Country" Program to develop and distribute a publication, *Caring for the Coast: A guide to environmental law for coastal communities in NSW*

Income Generation

In addition to the income received from grants, the EDO generated other income from fees charged for our professional services, education activities, memberships, donations and bank interest. This money enables the EDO to undertake work which is strategically important but cannot be done within the terms of funding contracts. In 2008-2009, the EDO generated other income

of \$152,861. This compares with \$125,661 last financial year.

Financial Performance

In 2008-2009, the EDO had a surplus of \$46,364. This result is consistent with the outcome in most years where the surplus/deficit is within 5% of annual revenue. The Board seeks to steer a course which balances expending funds to enhance the work of the organisation to the greatest extent that is reasonable while retaining adequate reserves to ensure the organisation can deal with contingencies that may arise. To this end, the Board planned for and achieved a moderate surplus for this year.

Independent Auditor's Report

Scope

We have audited the accompanying financial report of Environmental Defender's Office Limited (the company), which comprises the balance sheet as at 30th June 2009 and the income statement, statement of changes in equity and cash flow statement for the year ended on that date, a summary of significant accounting policies and other explanatory notes and the directors' declaration.

The Responsibility of the Directors for the Financial Report

The directors of the company are responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including Australian Accounting Interpretations) and the financial reporting requirements of the company's constitution. This responsibility includes designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances. In Note 1, the directors also state, in accordance with Accounting Standard AASB 101: Presentation of Financial Statements that compliance with the


Australian equivalents to International Financial Reporting Standards (IFRS) ensures that the financial report, comprising the financial statements and notes, complies with IFRS.

Auditor's Responsibility

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

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

We believe that the audit evidence we have obtained is sufficient



and appropriate to provide a basis for our audit opinion.

Independence

In conducting our audit, we have complied with the independence requirements of the Australian professional ethical pronouncements.

Auditor's Opinion

In our opinion, the financial report presents fairly, in all material respects, the financial position of Environmental Defender's Office Limited as of 30th June 2009, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards (including Australian Accounting Interpretations).

Joe Pien Chartered Accountant

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

Dated this 9th day of October 2009

BALANCE SHEET AS AT 30 JUNE 2009

	2009 (\$)	2008 (\$)
ASSETS		
CURRENT ASSETS		
Cash Assets	735,361	387,952
Receivables	171,543	178,361
Other Financial Assets	37,132	110,669
TOTAL CURRENT ASSETS	944,036	676,982
NON CURRENT ASSETS		
Property, Plant & Equipment	46,750	60,756
TOTAL NON CURRENT ASSETS	46,750	60,756
TOTAL ASSETS	990,786	737,738
LIABILITIES		
CURRENT LIABILITIES		
Trade and Other Payables	432,294	227,568
Short Term Provisions	125,316	123,358
TOTAL LIABILITIES	557,610	350,926
NET ASSETS	433,176	386,812
EQUITY		
Reserves		110,000
Retained Earnings	433,176	276,812
TOTAL EQUITY	433,176	386,812

**PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED 30 JUNE 2009**

	2009 (\$)	2008 (\$)
INCOME		
Grants Received	1,805,823	1,557,450
MacArthur	86,187	91,294
Donations and Memberships	13,586	6,790
Conference, Publications & Workshops	4,931	5,540
Professional Fees	94,969	59,637
Interest Received	52,861	51,769
Other Revenue	100	1,925
	2,058,457	1,774,405

EXPENDITURE

Auditor's Remuneration - Financial Statements	9,815	7,815
Accountancy and Bookkeeping	30,403	19,456
Bad Debts Written Off	6,790	5,194
Bank and Government Charges	5,403	2,188
Casual Labour	-	3,053
Consultants Fees	-	9,007
Conference, Publications & Workshops	67,339	57,862
Depreciation	18,993	16,925
Doubtful Debts	-	3,675
Employee Entitlement Provision	1,958	13,854
Employee Expenses	1,630	1,369
General Expenses	826	769
Insurance	11,988	10,440
Legal Fees	977	-
Light & Power	4,917	4,795
Macarthur Expenses	99,628	119,116
Equipment Lease	6,205	6,644

**PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED 30 JUNE 2009 (Continued)**

	2009 (\$)	2008 (\$)
EXPENDITURE (Continued)		
Office Costs	15,454	13,311
Organisational Development	22,675	-
Postage & Couriers	3,666	3,569
Printing & Stationery	20,092	19,757
Rent - Office	118,004	110,934
Repairs & Maintenance - General Repairs & Maintenance	1,273	3,446
Salaries & Wages	1,348,858	1,191,629
Staff Training & Welfare	20,865	15,866
Staff Amenities	4,378	3,373
Staff Recruitment	890	1,897
Subscriptions	23,862	31,862
Superannuation Contributions	118,350	104,761
Telephone & Internet	30,160	36,553
Travelling Expenses	16,694	31,244
	2,012,093	1,850,364
OPERATING PROFIT/(LOSS) BEFORE INCOME TAX	46,364	(75,989)

[Note – this is an abridged copy of the Financial Report for the year ended 30th June 2009.
For a full copy of the Report, please contact the offices of the Environmental Defender's Office Ltd.]



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