

**Annual Report  
2017 – 2018**

**Environmental  
Defenders  
Office  
NSW**



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We recognise the traditional owners and custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander elders past and present and aspire to learn from traditional knowledge and customs so that together we can protect our environment and cultural heritage through law.

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# Environmental Defenders Office NSW

EDO NSW is the leading public interest environmental law organisation in Australia; a non-government community legal centre with a formidable track record of successful Court outcomes and in driving systemic change through our policy and law reform expertise.

For 33 years, we've provided vital legal services to people from all walks of life who want to protect our natural and built environment and the plants and animals that share it.

We provide expert, independent analysis of laws and regulations, legal education and support to communities across Australia and the Pacific, and we pursue litigation in the public interest.

Our vision is of a sustainable environment protected by law.

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NSW

**EDO**

DEFENDING THE ENVIRONMENT  
ADVANCING THE LAW

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## Year at a glance 2017 - 2018

We gave

**832**

pieces of

**legal advice**



Advice provided in

**66%**

of

**NSW  
postcodes**



Reached over

**4,000**

**subscribers**

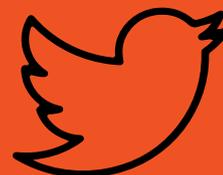
with our weekly eBulletin



**388,700**

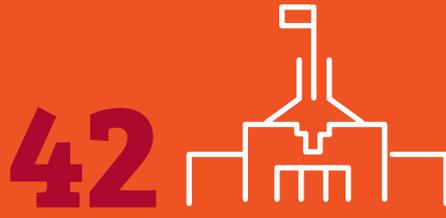
**Twitter  
impressions**

@EDONSW





**23**  
litigation  
matters  
before the courts.



**42**  
law reform and policy  
submissions to  
government

**Lectured**  
on environmental  
and planning law in



**7**  
universities



**29%**  
increase  
in followers

Worked with  
**South Pacific**  
partners on



**18**  
litigation  
and policy matters

**123%**  
increase  
in  
donations  
and grants  
income



Hosted

**60**  
volunteers



**227,464**  
web page views



# Letter from the CEO & the Chair of EDO NSW Board

This Annual Report provides you with the highlights of EDO NSW's work during the 2017/18 financial year. It is a glimpse of the range of the organisation's accomplishments, both large and small, local and global. The results within are testament to the passion and work ethic of our staff and the courage and commitment of you, our supporters. What struck us reading through this year's report was how tangible EDO NSW's impacts are.

The year has seen many changes. We farewelled Sue Higginson, a remarkable lawyer and leader whose contribution to public interest environmental law in this country is both rare and outstanding. We made the difficult decision to close our Northern Rivers office. We farewelled old friends and outstanding contributors and welcomed new staff. We took innovative approaches to case law, developed our social media profile and kicked off our fundraising program in earnest.

What remained the same, however, is our approach to our core business. Over three decades of public interest environmental law service provision has shown that the EDO NSW approach to legal services - evidence based and level headed - works. Our ability to reason and to persuade is not borne of the sensational, but the rational. This is so important in the highly polarising space in which we work. Since the Office was created, the EDO has always believed that, if we get the science right and we get the law right, we can be a great catalyst for good. And what an enormous catalyst for good we have been this year.

The true impact of our work often takes time. You'll find no better example of the effectiveness of our long-game approach to achieving positive environmental outcomes than our water work. As you read through this report it will become clear that the EDO's work has driven life altering changes in the management of water resources in the Murray Darling Basin.

EDO NSW's core belief is that the most effective way to protect nature, public health and future generations is through a set of strong, effective and clear rules that we all adhere to, because it's the law. Achieving that set of circumstances is an extraordinary challenge and the area we work in is in constant flux and notoriously difficult.

For example, this year saw the implementation of new NSW land clearing laws, allowing broad-scale land clearing to occur with limited oversight and

potentially catastrophic impacts on our native species, including koalas. Our services allowed our client, the Nature Conservation Council of NSW, to expose through litigation the unlawfulness of decision making about this critical issue, and obtain documents shedding further light on the circumstances and likely impact of the land clearing code. An issue that may very well have otherwise been out of sight and out of mind found its way to the front pages - highlighting our crucial function as a driver of accountability and transparency, two things which, when absent, allow poor environmental outcomes to flourish.

EDO NSW recognises the challenges faced by our neighbours in terms of environmental degradation, poverty and resourcing constraints. Our international program seeks to build the capacity of similar organisations in the Pacific region. We are delighted to announce that this year EDO NSW has successfully confirmed a five-year funding agreement to work with the Center for Environmental Law and Community Rights in Papua New Guinea to develop litigation and education strategies to address illegal logging of PNG's precious rainforests.

The EDO's financial position is in good health. After intentionally running deficits for three years (following an extraordinarily generous gift a few years ago) we have now delivered a substantial surplus. The surplus cannot be put down to any one factor (we did receive another extraordinary gift) but the result has been achieved through the collective performance of our entire team and our supporters.

When we look back on 2017/18, we feel an immense sense of pride in the work EDO NSW has done, with your support, to defend, to drive change and to hold the line – all in the name of our environment, our communities and our future. We hope you enjoy this report.

**David Morris, Chief Executive Officer**  
**The Hon. Jane Mathews AO, Chair**



# Water

Water is a precious resource in Australia, of intrinsic concern to us all. Yet water rights are often in dispute, mining can jeopardise water quality and quantity, and sharing often limited resources can place community relationships under strain. EDO NSW continues to apply and advance the law concerning this most vital resource.

## *Defending the iconic Murray-Darling*

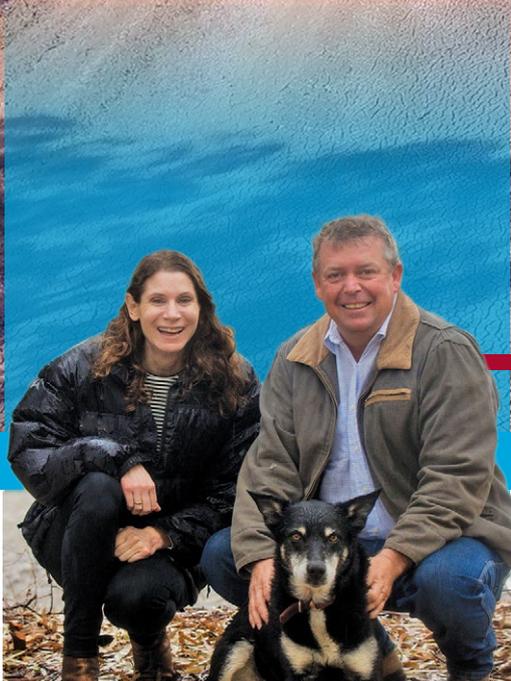
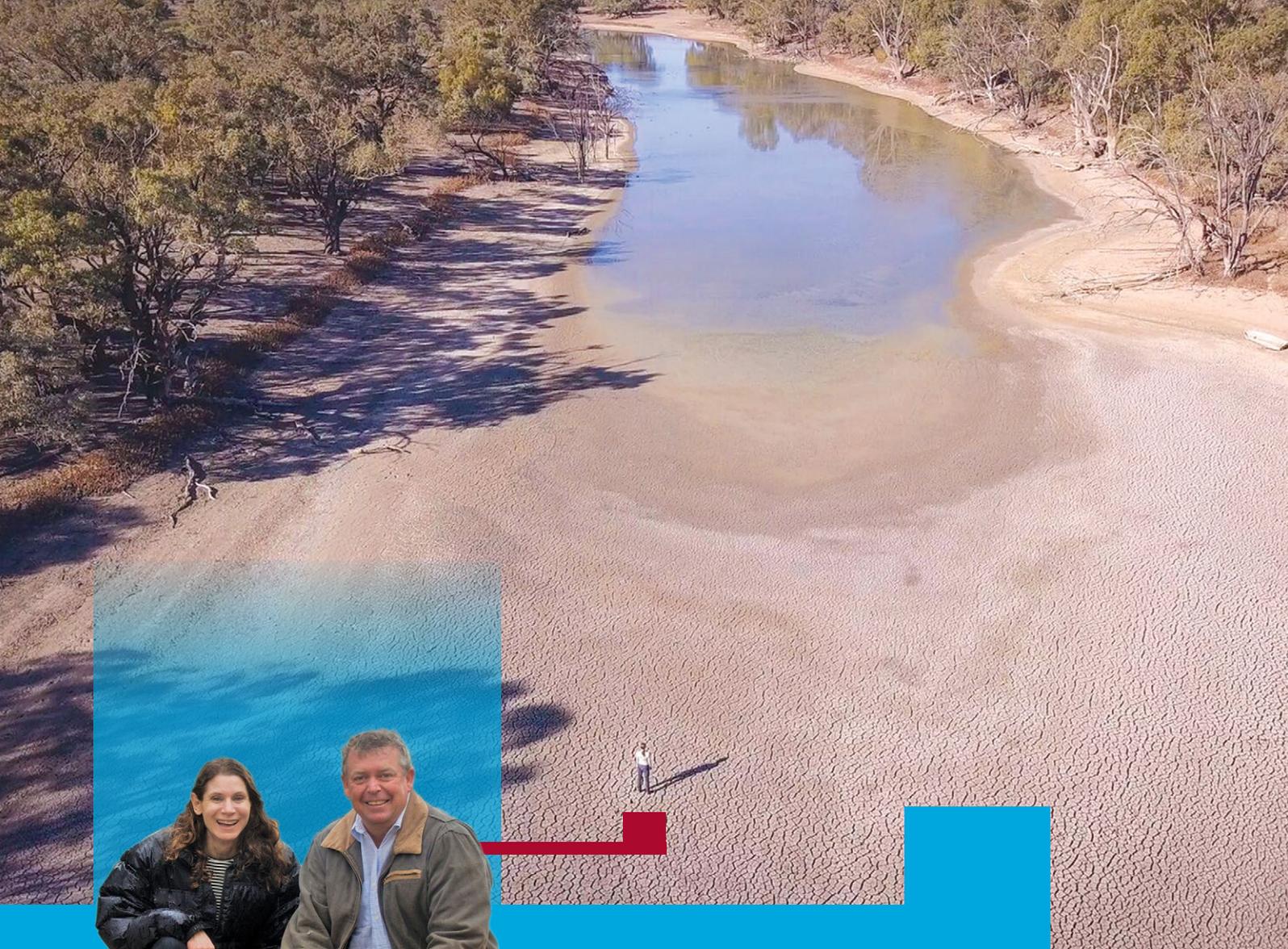
To say it has been a massive year for our water law reform work would be an understatement, especially in working to protect our great river system, the Murray-Darling. The Murray-Darling Basin is the food bowl of Australia, home to some 50 Aboriginal nations, 16 internationally-listed wetlands and an irreplaceable part of our culture, environment and economy. Yet the environment and communities of the Basin have been pushed to the brink by decades of mismanagement, over-extraction, inequity and greed.

Our forensic legal investigations underpinned the ABC's 4 Corners episode *Pumped*, an exposé of alleged illegal water harvesting in the Murray-Darling Basin, which aired in July 2017 and resulted in a media storm. Since then, an independent review of NSW water management by Ken Matthews AO, two NSW Ombudsman reports, an ongoing ICAC investigation and a South Australian Royal Commission have continued to reveal mismanagement of this vital and contested resource.

The importance of sustainably managing scarce water resources to ensure resilient systems and thriving regional communities is clear. But water law is an incredibly intricate and technical regime that currently lacks transparency and accountability. EDO NSW has been able to shine a light on significant problems and continues to advise and assist farmers, floodplain graziers, small irrigators, Aboriginal communities and people across the Basin in understanding and applying the rules.

The work of this office has been a catalyst for legislative change and in 2018 we welcomed the establishment of the NSW Natural Resource Access Regulator and amendments to improve water metering and transparency. On behalf of the Inland Rivers Network we also commenced the first ever civil enforcement proceedings under the *NSW Water Management Act 2000*.

We will continue to apply the law in the courts, work constructively with government agencies and inquiry processes, seek law reform at both the state and national level and help Basin communities understand and apply the law to ensure a sustainable and resilient Murray-Darling Basin.



## PERSPECTIVE

*EDO NSW has consistently argued that the law must ensure that the Murray-Darling Basin is managed sustainably and that NSW water laws are upheld by all water users. We all need water to survive – and a healthy river equals healthy ecosystems, communities and farms.*

**Dr Emma Carmody, Senior Policy and Law Reform Solicitor, EDO NSW**

*We're fighting powerful organisations which simply are there for economic gain. There's got to be a counterbalance and the EDO was that counterbalance for us. When we found the EDO, it was like a weight had lifted off our shoulders. There was someone who could help.*

**Chris Lamey, Border Rivers farmer, Moree**

## IN BRIEF

*Inland Rivers Network v Harris & Another:* In November 2017 we began civil enforcement proceedings in the NSW Land and Environment Court on behalf of the Inland Rivers Network, in relation to allegations of unlawful water pumping by a large-scale agribusiness operator on the Barwon-Darling River.

Australian Conservation Foundation application to WaterNSW: Our client is seeking access to information held by the NSW Government about Water Access Licences held by major irrigators on the Barwon-Darling River. The irrigators have sought review in the NSW Civil and Administrative Tribunal of the decision to release the documents.

# Protecting Sydney's drinking water

In late 2015, Springvale coal mine, lying beneath the Newnes State Forest in the Blue Mountains just west of Sydney, was granted planning approval to extend its operations and to discharge large amounts of untreated and highly saline mine water into the Coxs River, which forms part of Sydney's drinking water catchment.

On behalf of our client, 4nature, we challenged the approval, arguing it was invalid because the mine would not have a 'neutral or beneficial effect' on water quality, as required by law [*4nature Inc v Centennial Springvale Pty Limited & Others*].

In August 2017, the NSW Court of Appeal found in favour of our client and referred the matter back to the Land and Environment Court to hear submissions from both parties before determining the future of the mine.

Before the matter could be heard, the NSW Government introduced special legislation to circumvent the judicial process. This legislation allows the mine to continue operating and polluting Sydney's drinking water. The Government justified this extraordinary step on the grounds that Springvale mine is the only provider of coal to the Mt Piper Power Station and any interruption to the mine's activities would result in an energy crisis.

Our experts were prepared to challenge this argument in court, but the special legislation denied the public the opportunity to hear this important evidence.

It is always disappointing when government resorts to retroactive laws to defeat public interest litigation. This case demonstrates the Government's willingness to put the short term interests of coal mining companies before the public interest. EDO NSW will not be deterred and will continue to run important cases and advocate for law reform on issues vital to the health of our communities and environment.

## Concerns about bottling

In 2017, a group of Tweed valley residents contacted our Advice Line to raise concerns about the way in which water bottling developments are assessed, approved and enforced.

Water bottling – the extraction, processing and bottling of groundwater for sale - is controversial, as it can compete with other water users and have adverse impacts on groundwater-dependent ecosystems. These operations also generate considerable plastic waste, while water transport tankers can impact the amenity and safety of people living in rural areas.

With bottling looking set to expand in the Tweed valley, EDO NSW coordinated a response. Our legal outreach team conducted a workshop on water regulation and enforcement and engaged with the local council to inform it of the approval process for bottling facilities. Our work clarified the applicable legal standards for both the Council and local community, highlighting the scientific studies needed to support a development application for a bottling facility.

With our assistance, the client produced a detailed report alleging ongoing and systemic breaches of development consent conditions for four local water bottling facilities and setting out the range of enforcement options available to Council. We travelled to the Tweed to brief councillors on their powers and responsibilities as the regulator under law. We were able to work constructively with Council to ensure the full range of investigation and enforcement options was understood. Since then Council has taken decisive steps to ensure water bottling operations in the Tweed are complying with the law.



# Transparency

The truth will out – well, it might if you have freedom of information laws, dedicated clients and public interest lawyers with stamina. Freedom of Information (FOI) laws are an important mechanism for making government decisions transparent and accountable and for the public to have confidence in the decision-making process. The more transparency around these deliberative processes, the more likely they will be of high quality and serve the public interest.

## A long hard FOI fight

It took a three-year legal process for Humane Society International Australia (HSI Australia), represented by EDO NSW, to access over 60 documents about how the Australian Government came to accredit a NSW biodiversity offsets policy for major projects [*Humane Society International v Department of the Environment and Energy*]. This major FOI win revealed that the policy failed to meet national environmental standards – but was accredited anyway.

The objective of FOI legislation is to promote better-informed decision-making by increasing scrutiny and discussion of government activities. Despite this clear mandate to make important information available to the public, HSI faced an unnecessarily drawn-out legal process in the Administrative Appeals Tribunal, as the Department of the Environment continued to object to the release of information.

EDO NSW was determined to fight as long and as hard as necessary to advance the interests of our clients, who in this case were seeking to uphold a crucial democratic right, to ensure openness in government decision-making.

Although the documents when finally released were a depressing read as they confirmed accreditation of a sub-standard policy, this was a heartening win for transparency and the value of FOI laws.



### PERSPECTIVE

*Public access to government information is a critically important part of our democratic society. This type of case emphasises the importance of organisations like EDO NSW, which have the expertise to assist individuals and community groups to challenge the barriers often put up to prevent access to government information.*

David Morris CEO, EDO NSW

### IN BRIEF

*Lock the Gate v Dept of Planning & Environment/Dept of Premier & Cabinet:* In May 2018, we went to the NSW Civil and Administrative Tribunal on behalf of Lock the Gate seeking access to information held by the NSW Government about deals relating to the \$262 million buy-back of the coal exploration licence for Shenhua Watermark's controversial coal mine in the Liverpool Plains in north central NSW.

In November 2017 Sea Shepherd Australia released rare whaling footage filmed on a 2008 Australian Customs mission to the Antarctic, and obtained with the help of EDO NSW under Commonwealth Freedom of Information laws. The footage made headlines around the world and highlighted our work to uncover it.

*Millers Point Community Assoc Incorporated v Property NSW and Others - Sirius Building:* In July 2017, our client Millers Point Community Association was thrilled by the success of its court challenge to the NSW Heritage Minister's decision not to list the Sirius Building on the State Heritage Register, even though the Heritage Council had recommended it be listed due to its rarity and aesthetic value. This was the first time the undue financial hardship provisions of the *Heritage Act 1977* had been considered in the Land and Environment Court. The case laid bare the Government's internal decision making process which prioritised financial considerations over heritage significance.

# BIODIVERSITY

The biodiversity of Australia is extraordinary. It is diverse, spectacular, often unique and is vital for ecosystem health, human wellbeing and productive landscapes. It has immense intrinsic as well as commercial value. It is also under threat.

We are world leaders in fauna extinction rates, with almost 2000 species and ecological communities at risk. Australia also has one of the highest rates of land clearing in the world. The EDO litigation and advice teams use existing laws to help concerned communities protect many plant and animal species. Yet it is clear we need stronger laws in place, including at the national level, to address the threats that generate habitat and biodiversity declines that inexorably lead to extinctions.

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## *Preparing the next generation of environmental laws*

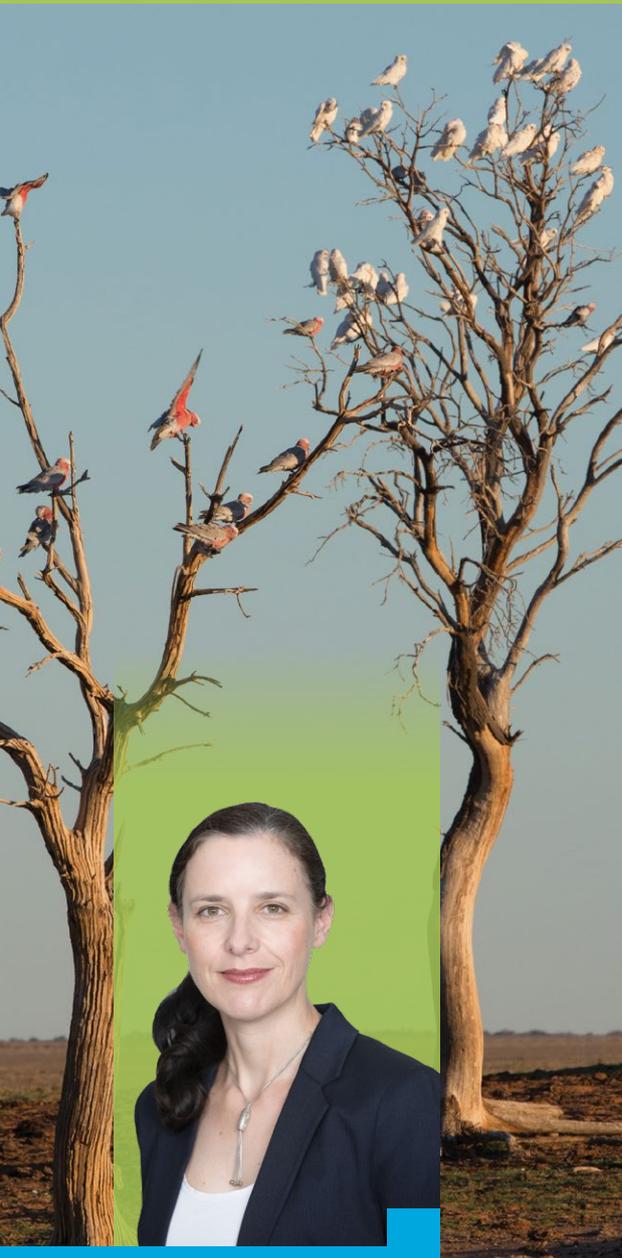
Throughout this year our law reform team worked furiously to contain the worst excesses of the new NSW biodiversity laws and Native Vegetation Code, which commenced in August 2017. Only aggregate information is publicly available on clearing under the new laws. There is no publicly available information on specific impacts, for example the impacts of Code-based clearing on endangered ecological communities. We continued to engage in the technical detail as elements of the new laws are rolled out, through policy submissions on offsets, mine rehabilitation and wildlife licensing; through factsheets and community workshops to explain the laws; and by litigation in challenging the new Native Vegetation Code.

However, winning small amendments will not address the extinction crisis. From our extensive experience we know that federal leadership is needed – namely strong laws that will actually protect our unique biodiversity.

This is why we joined forces with Humane Society International Australia (HSI Australia) to compile the report *Next Generation Biodiversity Laws – Best practice elements for a new Commonwealth Environment Act*, published in June 2018. The focus of this report is biodiversity, but the law reform recommendations form a key component of a larger law reform goal – to develop a next generation of effective national environmental laws.

A new Environment Act for Australia is needed to address contemporary challenges of natural resource management, land use, human settlements, systems of production and consumption, climate change and biodiversity protection. The Environment Act must be underpinned by renewed national leadership, independent and trusted institutions, strong community engagement and mechanisms that deliver access to justice. Legislation backed by these features will ensure the high levels of environmental protection Australia needs now to protect the biodiversity future generations will depend on.





## PERSPECTIVE

*Most people want to save our unique threatened species, but when it comes to the legal detail of how to do that, EDO NSW is providing solutions for strong nature laws.*

**Rachel Walmsley, Policy & Law Reform Director, EDO NSW**

*Since the establishment of HSI in 1994, EDO has been our constant and faultless legal advisor. Here are just a few of the issues they have tackled with great vigour for us: successful court actions to protect cetaceans from Japanese whalers; grey-headed flying foxes from fruit farmers; various shark, dogfish, finfish and albatross species, seals and sea lions from a major fishery; possums and wallabies from Tasmanian exporters and endangered habitats from councils.*

*Major court cases, first class advice on trade, timber and palm oil imports and the Trans Pacific Partnership and, more recently, comprehensive drafting advice on next generation biodiversity and ocean protection laws.*

*Even this impressive list only begins to convey the essential and integrated role they play in helping protect our diminishing biological heritage nationally.*

**Michael Kennedy AM**  
Co-founder HSI Australia

## IN BRIEF

*NCC v Minister for Primary Industry & Another:* In November 2017, EDO NSW brought legal action on behalf of the Nature Conservation Council of NSW to challenge the NSW Native Vegetation Code on various grounds, including the failure of the Ministers concerned to take into account the principles of environmentally sustainable development (ESD). On 9 March 2018 the Government conceded the case and the NSW Land and Environment Court declared the Code invalid. This extraordinary order underlined a profound problem with the new biodiversity and land clearing laws and management system – it gave the strong impression of treating ESD as just another box to tick. Regrettably, the Code was remade without amendment.

*Residents Against Intermodal Development Moorebank Inc v NSW Minister for Planning & Qube Holdings Ltd:* A March 2018 judgment from the NSW Land and Environment Court protected the rare flowering plant *Hibbertia fumana* (thought extinct for 200 years until found on this site in 2016) from the massive intermodal development at Moorebank, southwest Sydney. On behalf of Residents Against Intermodal Development Moorebank (RAID), we achieved a number of positive outcomes for the community and, importantly for biodiversity, the case achieved substantially better protection for the *Hibbertia fumana*, including a species survey plan, remediation of associated land and possible translocation of plants into rehabilitated land.

*HSI Australia v Great Barrier Reef Marine Park Authority:* In June 2017, representing HSI Australia, we sought an independent review in the Administrative Appeals Tribunal of the Great Barrier Reef Marine Park Authority decision to approve a lethal shark control program in the Great Barrier Reef Marine Park. The matter will proceed to a full hearing in January 2019.

# Access to Justice

Merits appeal rights were introduced over 30 years ago as part of extensive law reform designed to improve the integrity of the planning system. They allow communities to challenge a development approval on a project's merits, taking into account environmental, social and economic impacts.

Over recent years, community merits appeal rights have been eroded – routinely, in cases involving mining projects. EDO NSW advocates for the reinstatement of community rights to a merits appeal. It's crucial that the people with most to lose – whose homes, businesses, communities, land, air and water quality are at risk from mines and other developments – are able to have their voices heard in Court.

## *A community gains access to justice through merits appeal rights*

The Gloucester community has endured much pain in recent years. We were ecstatic that we'd finally won a long battle against AGL's coal seam gas project, but we were worn out. Which is ironic when you think about it, because we moved here for the vibrant, peaceful community, beautiful surroundings and a change in pace.

Those few months after we beat AGL were amazing. We had won our lives and community back. However, this was short lived. A fear that had lingered in the back of our minds reared its ugly head - a proposal for the Rocky Hill Coal Mine Project, just 1km from family homes. This time we were up against both Gloucester Resources Ltd (GRL) and Australia's largest coal producer, YanCoal.

However, we thought it would be okay, because EDO NSW had supported us for years with legal advice and expert evidence, leading to the Department of Planning & Environment recommendation that the Project be refused. The Government was on our side for a change.

Then everything changed for the worse. In February 2018 we learnt that the Minister for Planning had allowed GRL to retain merits

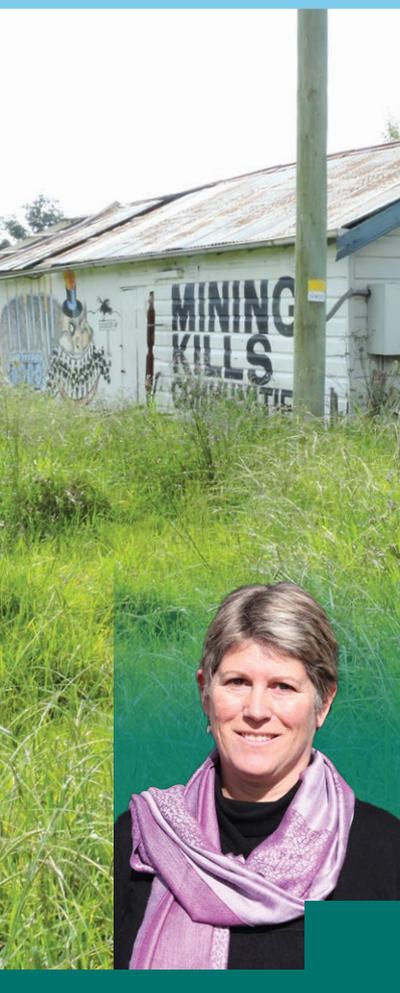
appeal rights despite routinely removing them for all objectors.

We found ourselves without an automatic right to participate in the merits appeal that would determine the fate of us all.

Fortunately EDO NSW backed us, concerned that our voice needed to be heard at this final hour. With their help, we were able to join the merits appeal to help the Department of Planning defend its refusal of the mine.

What's happened in Gloucester reflects a deeply disturbing inequality being strongly experienced by communities across NSW. It is distressing to think what our community, who live on the lands of the Worimi and Biripi peoples, would be facing now if the EDO didn't exist. We all feel a great peace of mind knowing that EDO NSW is there and we deeply respect the ethics, integrity and sheer hard work of all the incredible professionals who give so much of themselves to protect our future.

With gratitude,  
**Julie Lyford OAM,**  
**Chair, Groundswell Gloucester**



# Climate Change

The impacts of climate change are already being experienced in Australia and around the world, generated largely by the burning of coal and other fossil fuels. With increasing urgency and determination, EDO NSW seeks to advance an effective legal framework for tackling this challenge. We need laws that prioritise people, nature and future generations.

## Climate change - the present and future challenge

**In December 2017, representing Wollar Progress Association, we began proceedings in the NSW Land and Environment Court challenging the NSW Planning Assessment Commission (PAC) decision to allow the extension of Wilpinjong open-cut coal mine at Wollar, near Mudgee [*Wollar Progress Association v Wilpinjong Coal Pty Ltd & Anor*].**

**We argued that future emissions from the burning of this coal needed to be considered with reference to the NSW Climate Change Policy and the Paris Agreement, which outline government objectives to reduce greenhouse gas emissions.**

**In June 2018 the Court decided that neither the Paris Agreement nor the NSW Climate Change Policy Framework were relevant policies under the Mining SEPP and so the PAC was not required to consider them when deciding to approve the Wilpinjong extension.**

**This case uncovered serious flaws in our planning laws and adds weight to the need for law reform to establish climate change as a critical factor in determinations concerning projects that will adversely contribute to it.**

**In 2018–19, we continue to pursue all avenues, including innovative legal approaches, to meeting this challenge.**

### IN BRIEF

*Groundswell Gloucester v Gloucester Resources*: In April 2018 our client Groundswell Gloucester was joined to proceedings on the Rocky Hill coal mine at Gloucester in the upper Hunter, with climate change impacts one of the main grounds of challenge.

*ACA v NSW Minister for Planning & Wyong Coal Pty Ltd & Kores Australia Pty Ltd*: On behalf of the Australian Coal Alliance (ACA), in January 2018 we filed a case challenging the approval of the Wallarah 2 longwall coal mine on the Central Coast. ACA will argue that the principle of intergenerational equity - not condemning future generations to an unstable climate - is paramount when considering the public interest for coal mine projects.

### PERSPECTIVE

*The business-as-usual approach to coal mining in Australia won't protect current and future generations from the impacts of dangerous climate change.*

**Elaine Johnson, Principal Solicitor, EDO NSW**

*The EDO is involved in some of the most challenging and cutting-edge environmental litigation in Australia and, indeed, the world. For example, I've been instructed by the EDO, on behalf of Groundswell Gloucester, to oppose development consent for a greenfield open cut coal mine because of its impacts on climate change. Clearly the EDO is at the vanguard of climate change litigation.*

*One of the pleasures of being instructed by the EDO is the chance to work not only with the team of able and committed environmental lawyers and scientists but also the expert witnesses. A great strength of the EDO is its ability to retain some of the leading experts in their fields, so that the quality of evidence presented is exceptionally high.*

**Robert White, Barrister**



# Empowerment

We currently provide advice on over 50 pieces of NSW legislation that impact our natural and built environments. Our specialist information and advice helps affected communities have their say in public consultations and adjust to new regulations; it also improves compliance with the law.

We empower communities to identify unlawful behaviour, to challenge unwelcome or unhealthy developments and navigate their way through a planning system that can be confusing and intimidating.

## *Aboriginal culture and heritage – once in a generation legislative reform*

In early 2018, our outreach lawyers conducted workshops with Aboriginal communities in Bourke, Walgett, Dorrigo and Lismore to discuss how they could make their voices heard on the Draft Aboriginal Cultural Heritage (ACH) Bill. Reform in this area is legally and culturally complex and long overdue, so it's vital that Aboriginal people are central to the process of creating this new law and understand what it means for them.

NSW is the only Australian jurisdiction without stand-alone cultural heritage legislation. Regulation continues under flora and fauna legislation via the *National Parks and Wildlife Act 1974 (NSW)*, a great offense to many Aboriginal people. We welcomed the release of the Draft ACH Bill but had some concerns, set out in our legal update *Aboriginal Cultural Heritage Reforms: 6 things you need to know*.

By meeting with and listening to Aboriginal communities, the outreach team was able to identify additional problems with the Bill, which in turn informed the EDO NSW submission on the Draft ACH Bill, written by our law reform and policy team and informed by our Aboriginal Advisory Committee.

*Walgett's Dharriwaa Elders Group determined to prepare a detailed submission in response to the Aboriginal Cultural Heritage Bill. We requested that EDO NSW assist members and staff to analyse and discuss the Bill's framework for supporting NSW Aboriginal families and communities to maintain and strengthen Aboriginal Cultural Values, including to protect places and landscapes - Country.*

*In this Walgett workshop, we greatly appreciated the time EDO staff spent explaining how our ideas could be achieved in legislation. We had developed most of our ideas from previous internal workshops with members and directors, as well as government representatives, during the different phases of the legislation's development, so by the time the EDO NSW team held their workshop with us we were ready to get down to the hard legal framework ideas.*

*Belinda and Jemilah individually spent a lot of time checking our drafts, helping me maintain consistency throughout our large, detailed submission. I really appreciate the voluntary time they spent, particularly on the last weekend, helping me cross the t's and dot the i's.*

*I think EDO NSW, yet again, helped us believe that it IS possible to use the law in ways that will benefit NSW Aboriginal people.*

**Project Manager Wendy Spencer, Dhariwaa Elders Group**



# Protecting heritage-listed and critically endangered woodland

Some years ago we received a call on our Advice Line from a resident of Mulgoa deeply concerned about a proposal to subdivide and develop the state-heritage-listed Fernhill Estate for residential housing.

Fernhill is not just a historically significant homestead; the extensive estate comprises critically endangered woodland and supports numerous threatened species, including koalas. It also contains sites of Aboriginal cultural significance.

Our outreach team held a workshop to help the community understand the assessment process and pointed out some potential problems with the development application that provided a clear basis for refusal. We also wrote to the local council and expressed the view that the development application could not be lawfully approved in its current state.

Over the next few years, the application was withdrawn, reworked and resubmitted several times. Each time we were able to help our client respond. In the meantime, they tirelessly and tenaciously campaigned for the land to be purchased and reserved for public use.

In 2018, when the developer chose to sell the land, the NSW Government took the opportunity to purchase it for the people of NSW. This should ensure the Fernhill Estate, with its irreplaceable natural and cultural features, will be preserved in perpetuity.

*Our aim was to prevent inappropriate development that would impact significantly on both Fernhill and Mulgoa. Mulgoa is a unique area, rich in scenic beauty, biodiversity, history and adjacent to the Greater Blue Mountains World Heritage Area. We believe it is important for Fernhill to be conserved for future generations. Our sincere appreciation goes to the EDO for their legal expertise, community engagement and incredible ongoing support. They contributed enormously to a great result for the public and future generations.*

Sandra Newham, Fernhill Estate client

## IN BRIEF

Have Your Say, our online database of opportunities to participate in environmental decision-making, had 38,000 views in 2017-18, an 18% increase on the previous year.

In 2017/18, we made 42 law reform and policy submissions to state and federal governments. We share every submission online, providing important legal analysis for others wishing to make their own.

This year our outreach team of environmental lawyers delivered 24 community legal education workshops to almost 1000 people across NSW on matters including Aboriginal cultural heritage, land clearing/biodiversity, Crown lands legislation and asbestos contamination.

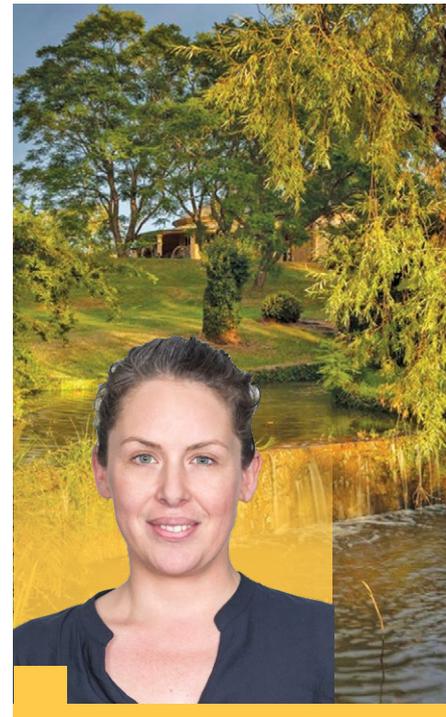
We lectured on environmental law to legal students at seven universities and at the Land and Environment Court Clinic.

## Thanks from clients

*We want to thank you for the assistance you have given over the last two weeks in understanding various Court processes. We are very grateful for the EDO's presence in making a difference for our community.*

*These issues are so distressing, frustrating and confusing for the individuals affected. I would definitely recommend your organisation to anyone in a similar circumstance.*

*As I write this a dear little swamp wallaby with joey in pouch is travelling past my house – a strong reason to battle against development. Your legal expertise and invaluable advice we used at every turn in events. Words cannot express how your caring support and dedication to our natural world lifts my spirits when the going gets tough.*



## PERSPECTIVE

*It has been another rewarding year for the outreach program – demystifying the law and making EDO NSW's services accessible to all NSW residents. We continue to be amazed at our clients' determination to grasp complex legal principles and apply their newfound knowledge for the benefit of their communities and the environment.*

Jemilah Hallinan, Outreach Director, EDO NSW

# International

Our support to partners across the Pacific helps level the playing field as they tackle complex legal issues in response to powerful governmental, mining and logging interests.

## *Shifting the power balance in the Pacific*

**Our International Program reached a game-changing milestone this year, securing significant funding from Rainforest Foundation Norway (RFN) to support the Center for Environmental Law and Community Rights (CELCOR) with forestry litigation and policy in Papua New Guinea (PNG). With our RFN funding, and leveraging the goodwill of the NSW and Victorian bars, we have been able to provide strong support to CELCOR on a number of significant logging-related cases, including in New Ireland Province and in Oro Province.**

**In December 2017, with funding from the Christensen Foundation, we supported CELCOR and its clients in filing a historic case under PNG's Constitution to access project and government documents in respect of the world's first commercial deep seabed mine, known as Solwara 1. Located in the Bismarck Sea, this is essentially an open-cut mine on the seabed about 1.6km from the surface. The community – despite repeated requests – has yet to see the full environmental permit for the project.**

**Our strong relationship with the Fiji Environmental Law Association (FELA) continues to grow through the ongoing support of the Packard Foundation. Building on our work with FELA to deliver a series of oceans**

**policy papers, we worked together to apply the results of our analysis to efforts to protect the Great Sea Reef (GSR), the third longest continuous barrier reef system in the world. The resulting report, *Protecting Fiji's Great Sea Reef and Seascape: Options For Strengthening Management Arrangements Under Existing Legislation*, outlines ways in which the GSR can be turned into a marine protected area under existing Fiji legislation.**

**Through funding provided by the Critical Ecosystems Partnership Fund (CEPF), we continue to support fledgling environmental law associations in Vanuatu, Solomon Islands and PNG.**

**Looking ahead, our key focus will be to convert the RFN funding into forestry litigation successes in the PNG courts. We will also be looking to expand our support on forestry and mining work in PNG and Solomon Islands, given that the threats in these countries are particularly severe.**

**At a regional level, climate change and plastics present significant challenges for policy makers in the Pacific and we will be actively seeking opportunities to support partners and contribute our experience and expertise to this work.**



## IN BRIEF

With the Secretariat of the South Pacific Regional Environment Programme (SPREP), we prepared a discussion paper and drafting instructions for the implementation of freedom of information legislation across the Pacific and prepared summaries of key environmental laws for 15 Pacific jurisdictions.

Support to the Landowners Advocacy Legal Support Unit (LALSU) within the Public Solicitors Office in Solomon Islands – ongoing prosecution of the first ever hearing of the Environmental Advisory Committee which will review the merits of a proposed bauxite mine on Wagina Island.

Facilitation of Australian volunteer placements within FELA and LALSU.

## PERSPECTIVE

*This is an incredibly exciting time for the International Program. We are now well positioned to scale up our impact – especially in helping to curb illegal logging and mining practices across the Pacific.*

*The experience, networks and resources we can leverage to support our partners is substantial and real. The balance of power shifts substantially when we are able to access the best barristers and scientific experts in Australia and the region to help our partners meet government, mining and logging interests head to head in local courts and law reform processes.*

**BJ Kim, International Program Manager, EDO NSW**

*The EDO has helped me push for environmental issues to be recognised in the Solomon Islands. It's my benchmark. Every time I face issues and challenges I recall what I went through with the EDO and think 'oh yeah, I can do this'. If we don't do what we're doing, how can the people know what to do when a development comes in?*

**Martha Manaka (Landowners Advocacy and Legal Support Unit, Public Solicitors Office, Solomon Islands)**

## Compliance and evaluation

We use formal evaluations and informal feedback to continuously develop and improve our international capacity development programs.

EDO NSW has been a full member of the Australian Council for International Development (ACFID) since 2013. ACFID maintains the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice for organisations working in aid and development. EDO NSW is committed to full adherence with the Code, conducting our work with transparency, accountability and integrity.

For further information about the Code, please refer to: [www.acfid.asn.au](http://www.acfid.asn.au). This site also includes information about how to make a complaint in relation to any breach of the Code.

# Our People



EDO NSW Board: Jeff Smith, Jane Wilder, Paul Brown, Jane Mathews (Chair), Kevin Rozzoli (Deputy Chair), Bronwyn Darlington. Absent: Leonie Gale, Ronnie Harding

## Board of Management

EDO NSW is a not-for-profit company limited by guarantee – our volunteer Board provides us with strategic direction and governance. Board members make a major contribution to our work and we thank them for the considerable time and expertise they devoted to the organisation in 2017-18.

Board members at 30 June 2018

**The Hon. Jane Mathews AO**  
Chair

**The Hon. Kevin Rozzoli AM**  
Deputy Chair

**Paul Brown**  
Treasurer

**Jane Wilder**  
Secretary

**Bronwyn Darlington**

**Leonie Gale**

**Ronnie Harding**

**Jeff Smith**

Our Patron is  
**Hal Wootten AC QC**

## Staff

EDO NSW is staffed by a dedicated team who regularly go above and beyond for our clients, our partners, for communities and the environment.

At 30 June 2018, the team was:

**David Morris**  
CEO

### Litigation

**Elaine Johnson**  
Principal Solicitor

**Brendan Dobbie**  
Senior Solicitor

**Rana Koroglu**  
Senior Solicitor

**Matt Floro**  
Solicitor

**Meg Lamb**  
Solicitor

**Emily Long**  
Solicitor

### Operations

**Blake Powell**  
Operations Director

**Justine Emerson**  
Legal Administrator

**Eamon Fraser-Crooks**  
Data & IT Administrator

**Kirsty Jordan**  
Administrative Officer

**Susan Ardill**  
Communications Officer

**Daria O'Neill**  
Fundraising Manager

**Amber Sprunt**  
Philanthropy Manager

### Policy & Law Reform

**Rachel Walmsley**  
Policy & Law Reform Director

**Emma Carmody**  
Senior Policy & Law Reform Solicitor

**Nari Sahukar**  
Senior Policy & Law Reform Solicitor

### Scientific Advisory Service

**Megan Kessler**  
Science Director

### International Program

**BJ Kim**  
International Program Manager

**Cecilia Fonseca**  
Paralegal

### Outreach

**Jemilah Hallinan**  
Outreach Director

**Belinda Rayment**  
Outreach Solicitor

# Acknowledgements

## Scientific Advisory Service

[www.edonsw.org.au/Science](http://www.edonsw.org.au/Science)

Our Scientific Advisory Service provides independent, objective scientific advice to our staff and clients. The service includes:

- In-house advice from our Scientific Director.
- A Technical Advisory Panel, made up of academic experts who provide pro bono strategic advice.
- An Expert Register of over 150 scientific experts in a range of fields who assist EDO NSW and our clients on a regular basis.

In 2017/18, 67 experts provided 80 advices to EDO NSW and our clients on 30 policy, litigation and outreach matters. This included reviewing environmental impact statements, preparing expert reports, giving technical input into policy submissions, and providing expert scientific advice to other EDOs and our International Program partners.

We thank all our experts, including those who provided advice anonymously, for their ongoing willingness to ensure that the community has access to the best scientific advice possible.

## Technical Advisory Panel

**Professor Richard Kingsford**,  
Director of the Centre for Ecosystem Science, UNSW

**Professor Chris Dickman**,  
Professor in Terrestrial Ecology, University of Sydney

**Associate Professor Iain MacGill**,  
Associate Professor in Energy Systems, UNSW

**Professor Nicole Gurran**,  
Professor of Urban and Regional Planning, University of Sydney

**Professor John Quiggin**,  
ARC Australian Laureate Fellow, University of Queensland

## Expert Assistance

**Doug Anderson**  
**Hedda Askland**  
**Renata Bali**  
**Sara Beavis**  
**David Boseto**  
**Karl Bossard**  
**Howard Bridgman**  
**Andrea Broughton**  
**Paul Burcher**  
**Rod Campbell**  
**Ian Cartwright**  
**Matthew Colloff**  
**Matthew Currell**  
**Peter Dart**  
**Neil Davis**  
**Clare deLacey**  
**Steve Douglas**  
**Stephen Gauld**  
**Warwick Giblin**  
**David Hadley**  
**Matthew Harrison**  
**Melissa Haswell**  
**Kevin Hayley**  
**Cameron Holley**  
**Grant Hose**  
**Narelle Irvine**  
**Stuart Khan**  
**Peter Kuskie**  
**Rebecca Lawrence**  
**Glenn Leembruggen**  
**David Leitch**  
**Michael Mahony**  
**Martine Maron**  
**David Milledge**  
**Robert Miller**  
**William Milne-Home**  
**Barry Noller**  
**David Paull**  
**Philip Pells**  
**Steven Pells**  
**Neil Perry**  
**John Richardson**  
**Hugh Saddler**  
**Geoff Sainty**  
**Will Steffen**  
**Adam Walters**  
**Ariane Weiss**  
**Adrian Werner**  
**Arthur White**  
**Scott Wilson**  
**Ian Wright**  
**Alison Ziller**  
**Institute for Energy Economics and Financial Analysis**  
**GML Heritage**  
**WolfPeak**

*EDO NSW is a critical countervailing power within the national and local governance structure that determines the allocation of environmental resources. I want to help EDO NSW perform their role. As all environmental policy and planning decisions reflect economics and often rely on economic arguments, I can help by cutting through the noise and rhetoric to explain the underlying assumptions used in economics-based arguments. EDO NSW can then use this knowledge to make effective representations in policy submissions.*

*The nature of this engaged research also informs my theoretical research, so my involvement with EDO NSW is a win-win and I feel proud to be involved with them.*

**Dr Neil Perry, Senior Research Lecturer - Corporate Social Responsibility & Sustainability, Economics, Finance and Property (SoBus), Western Sydney University**

## Aboriginal Advisory Committee

The Aboriginal Advisory Committee:

- Informs and advises us on environmental law issues that affect Aboriginal communities;
- Provides an Aboriginal perspective on our policy and law reform work;
- Advises us on the adequacy of our existing measures to advise and represent Aboriginal communities and individuals; and
- Advises us on protocols and procedures to ensure we operate in a culturally appropriate and respectful manner, particularly when providing services to Aboriginal clients.

All committee members provide their time voluntarily – we thank them for their expertise and commitment to helping EDO NSW provide the best service we can for our Aboriginal clients.

**Jason Behrendt**  
(Chalk & Behrendt Lawyers & Consultants)

**Neva Collings**  
(Orange Door Legal)

**Tony McAvoys SC**  
(Frederick Jordan Chambers)

**Natalie Rotumah**  
(NTSCORP Limited)

**Alice Williams**  
(Murray Lower Darling Rivers Indigenous Nations)

**Zachary Armytage**  
(Community Legal Centres NSW)

## LEGAL ASSISTANCE

EDO NSW is deeply grateful to the following barristers for their ongoing commitment to the provision of legal assistance in environmental matters on a pro bono or reduced rate basis in 2017-18.

**Richard Beasley (SC)**  
**Fenja Berglund**  
**Phillip Clay (SC)**  
**Ian Coleman (SC)**  
**Joanna Davidson**  
**Gideon Gee**  
**Sturt Glacken (QC)**  
**Michael Hall (SC)**  
**Natasha Hammond**  
**Peter Hanks (QC)**  
**Penny Harris**  
**Laura Hilly**  
**Saul Holt (QC)**  
**Tom Howard (SC)**  
**David Hume**  
**Marion Isobel**  
**Nicholas Kelly**  
**Geoffrey Kennett (SC)**  
**Nicolas Kirby**  
**Jeremy Kirk (SC)**  
**Jonathan Korman**  
**Richard Lancaster (SC)**  
**Jason Lazarus**  
**Craig Leggat (SC)**  
**Craig Lenehan**  
**Stuart Littlemore (QC)**  
**Stephen Lloyd (SC)**  
**Bruce McClintock (SC)**  
**Christine Melis**  
**Scott Nash**  
**Gregory Nell (SC)**  
**Emma Peppler**  
**Kim Pham**  
**Andrew Pickles (SC)**  
**Shane Prince**  
**Tim Roberston (SC)**  
**Aruna Sathanapally**  
**Mark Seymour**  
**James Smith**  
**Ashley Stafford**  
**Jane Taylor**  
**Josie Walker**  
**Trevor Wallwork**  
**Robert White**  
**George Williams (AO)**  
**Neil Williams (SC)**  
**Chambers and law firms**  
**Colin Biggers & Paisley**  
**Martin Place Chambers**  
**McCabe Curwood**



## Acknowledgements

### VOLUNTEERS

Volunteers support us across the entire organisation, but primarily with the provision of legal advice and casework. They greatly enhance our capacity to provide accurate and timely assistance to clients.

In 2018, we were pleased to host our first two Aurora Project legal interns, who assisted with work on the NSW Aboriginal cultural heritage reforms and ongoing legal advice work for our Aboriginal clients.

EDO NSW thanks the following volunteers for their commitment and hard work in 2017-18:

**Philip Adams**  
**Christine Ai**  
**Sheryl Antouny**  
**Rebecca Baker**  
**Genevieve Barry**  
**Laura Basse**  
**Josie Beissel**  
**Alexander Benn**  
**Sineadh Boccalatte**  
**Amelia Brown**  
**Felicity Brown**  
**Jasper Brown**  
**Lauren Bush**  
**Sarah Chapman**  
**Cassandra Cheeseman**  
**Lea Cheriffa**  
**Kumari Delgoda**  
**Jane Dillon**  
**Emma Donnelly**  
**Maxwell Edwards**  
**Michelle Falstein**  
**Stephanie Fett**  
**William Field-Papuga**  
**Cecilia Fonseca**  
**Samuel Gilbert**  
**Jay Gillieatt**  
**Nell Gordon**  
**Brydie Hand**  
**Emma Hollows**

**Kit Holmes**  
**Olivia Kilponen**  
**James King**  
**Liz Kristensen**  
**Nicholas Latham**  
**Roger Lee**  
**Isobel Leonard**  
**Ruby Li**  
**Will Lieu**  
**Trudy Lunzcer**  
**Sarah Mansfield**  
**Jacob Marcinak**  
**Jasmine Morris**  
**Ashlea Ostwald**  
**Lily Pan**  
**Duncan Paradise**  
**Vivian Paredes Aponte**  
**Karen Raubenheimer**  
**Siobhan Rooney**  
**Amy-Lee Russell**  
**James Ryan**  
**Anne Sara**  
**Gabriel Shaw**  
**Francisca Silva**  
**Natalie Taylor**  
**Margaret Turnbull**  
**Stephanie Willis**  
**Nancy Xie**

*I originally trained as a lawyer in Portugal and taught environmental law in Mozambique. After moving to Sydney, I came across the history of EDO NSW, Law of the Land: Rise of the Environmental Defenders. I was so inspired I applied to be a volunteer.*

*When I started in January 2017, I had one objective in mind — to support the EDO in any way I could, to help free up the team to better protect the environment. Since then, I've undertaken a huge number of different tasks and been privileged to be mentored by very talented lawyers. My enthusiasm remains as high as the day I was inducted, mainly because of the importance of the wide variety of cases I've had the privilege to assist with.*

**Cecilia Fonseca**



## A profound and lasting contribution to defend our environment

*None of us wants to 'shuffle off this mortal coil', but it will happen to all of us one day. It does give us the opportunity to provide more generous support for great organisations like EDO NSW than we're able to do during our lifetimes.*

*I would like to be remembered as a person who made a real contribution to our society and in my view environmental issues are the most important facing the globe today.*

*This being the case, I am honoured to be the bequest patron of EDO NSW and have made a gift to the EDO in my Will. It is most important that people realise they too can leave a bequest that can make a positive difference.*

**The Hon. Jane Mathews AO,  
EDO NSW Bequest Patron**

## BEQUESTS

We are extremely grateful to those whose legacy gifts we received this year. We'd like to express our appreciation to their family and friends for their thoughtful generosity and continued commitment to environmental protection. EDO NSW will honour their memory through tireless work to defend the environment.

On behalf of our precious environment, we thank you.

**Margaret Munro Esson  
Kenneth Edward Ferrier**

## EDO NSW LEGACY PARTNERS

EDO NSW recognises those who have decided to include us in their Wills. Thank you for this special gift of generosity and for the foresight to ensure that the communities and organisations which depend on us to defend their environment continue to have access to justice.

**Lee Andresen  
Mikla and Wayne Lewis  
Maria and Richard Maguire  
The Hon. Jane Mathews AO  
Sharyn Munro  
Carolyn Williams**

# Fundraising Report

Faced with the prospect of our own extinction in 2013/14 (following the loss of Federal Government funding), we reached out to our community – and they came to our rescue. Together we created a new, more independent financial platform from which to deliver our important legal services – and we haven't looked back.

Over the past four years, EDO NSW has increased our funding from sources that are not government or PPF by 20%.

In 2017/18, with a team of two new senior fundraisers, donations and philanthropic grants grew more than 20% on the previous year. Our regular giving program has grown by 30%, thanks to the dedicated Friends of the EDO. Major gifts have also grown significantly and more supporters are making our work part of their legacy by including a special gift to EDO NSW in their will.

Advancing the law and ensuring access to environmental justice are of the utmost importance for all our futures. None of this work would be possible without our loyal supporters and donors. Thank you for your support at a time when the world urgently needs us.

---

**Creating change takes innovation and leadership. We encourage influential people to step forward and join us by providing financial support to pioneer new frontiers of environmental litigation and legal work, securing the future for generations to come.**

---

## Thank you

We'd like to recognise these committed individuals and foundations for their outstanding annual support:

**Wendy Bowman  
Diversicon Environmental Foundation  
Andrew Hall  
Hill Family Conservation Foundation  
Colin Hindmarsh  
The Kirby Foundation  
McKinnon Family Foundation  
Peter and Kim Martin  
The Hon. Jane Mathews AO  
Cynthia Nadai  
Orgill Family Foundation  
Paddy Pallin Foundation Pty Ltd  
Purves Environment Foundation  
Kristina Stefanova  
Tertini Charitable Foundation  
Graeme Wood Foundation**

And a big thank you to those who wish to stay anonymous.

# Financial Report

## Financial performance

FY2017/18 was the first year EDO NSW did not run an intentional deficit since receiving a large donation in June 2014. In fact, we ended the year with a surplus of \$452,015. This outstanding result is due to a confluence of factors, including a significant financial gift from a long time supporter, several favourable cost awards in our clients' favour, an increased investment in the capacity of our Fundraising team and a substantial five-year grant in the International Program starting from January 2018. The surplus will be invested in continued organisational capacity-building with the dual aims of increased financial sustainability and greater impact for communities and the environment.

### Assets

#### *Current Assets*

Cash on hand	2,077,896
Accounts Receivable and other debtors	134,625
Other current assets	114,955

#### *Non Current Assets*

Property Plant & Equipment	20,945
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**TOTAL** **2,348,421**

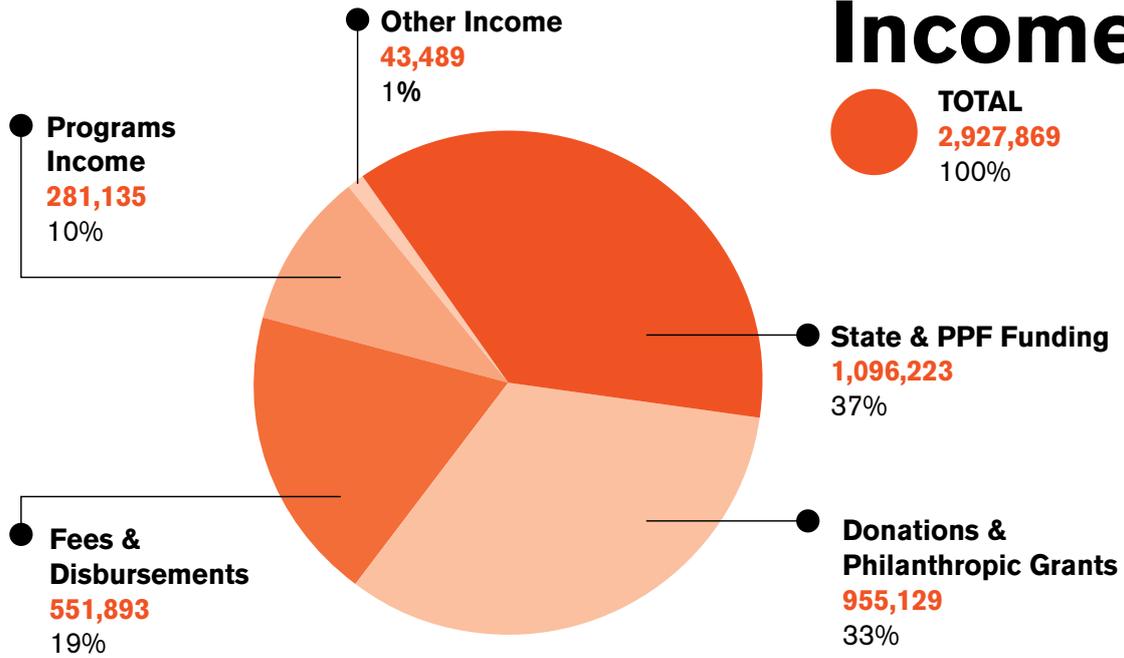
### Liabilities

Accounts Payable and other payables	304,492
Employee provisions	236,529
Grants in advance	258,564

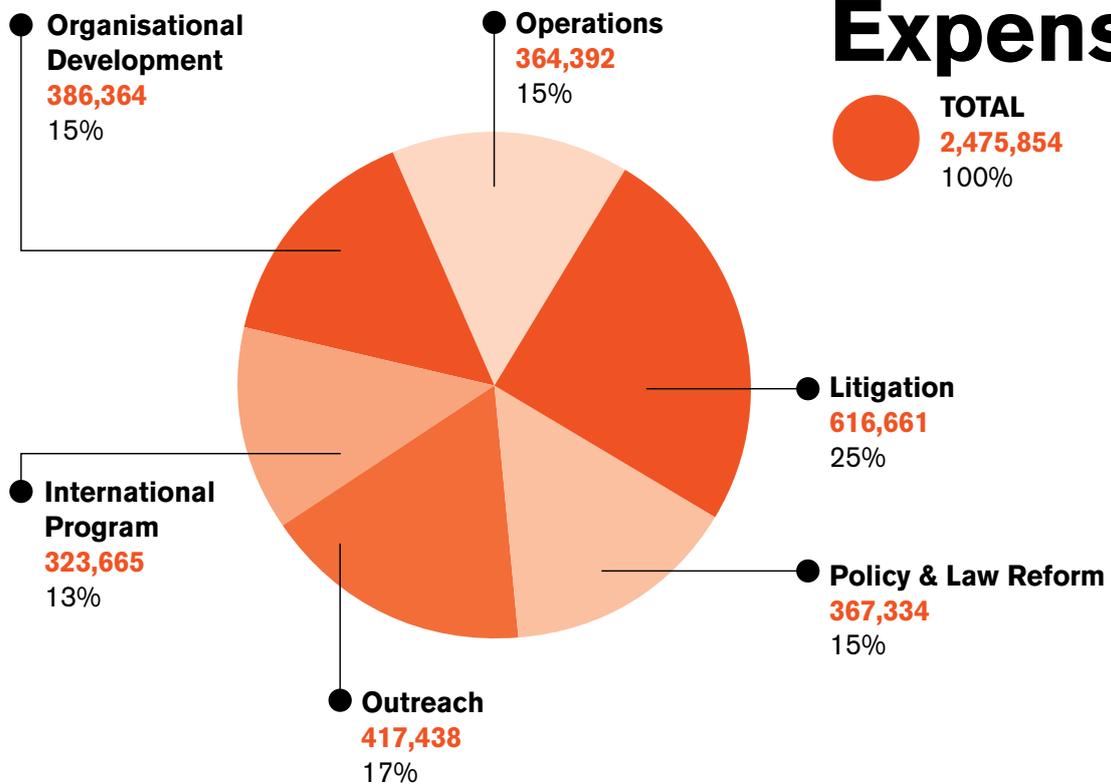
**TOTAL** **799,585**

**Total Equity** **1,548,836**

# Income



# Expenses



Our full financial report is at: [www.edonsw.org.au/annual\\_reports](http://www.edonsw.org.au/annual_reports)

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EDO NSW relies on contributions from individuals, organisations and foundations.

You can help provide access to environmental justice for communities across Australia by making a one-off donation to our Environmental Defence Fund, becoming a Friend of the EDO with a monthly gift, raising funds for us or making provision in your Will.

Ongoing or multi-year funding commitments help ensure our organisation is secure, dynamic and sustainable, allowing us to effectively plan and deliver game-changing litigation, legal education and law reform.

To discuss how you can support EDO NSW, call us on (02) 9262 6989.

## Ways to give



Online at [www.edonsw.org.au/donate](http://www.edonsw.org.au/donate)



By cheque or money order payable to 'Environmental Defenders Office Ltd' and posted with your details to EDO NSW, Level 5, 263 Clarence Street, Sydney 2000.



Direct deposit via EFTs  
Account Name: Environmental Defence Fund  
BSB: 814-282  
Account Number: 3089 2173

Please use your name as the reference and email your name and address to [fundraising@edonsw.org.au](mailto:fundraising@edonsw.org.au) so we can send you a tax-deductible receipt.



Find more information about Bequests at [www.edonsw.org.au/bequests](http://www.edonsw.org.au/bequests)

*Ever since I bought a run-down dairy farm in north east NSW and invited the rainforest back in, I've been an environmentalist. It has taken me 30 years and 70,000 trees to revegetate and renovate my forest. During this time I became aware of all the organisations wanting help and wanting to help. The question became 'how can I get the best bang for my buck? How do I leverage my donations so they do the most good?'*

*I read the book Client Earth a couple of years ago, which pointed out that the laws needed to protect the environment are [mostly] there; they were just not being enforced. That led me to the EDO and my decision to support them in their role as legal watchdogs.*

**Andrew Hall, Philanthropist**



NSW

**EDO**

DEFENDING THE ENVIRONMENT  
ADVANCING THE LAW

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