



Environmental  
Defender's  
Office

Western Australia (Inc)

# Annual Report

1 July 2000 – 30 June 2001

## Five Years, on track for environmental justice

*Dr Hannes Schoombee, Convener*

*It is not the reading on the speedometer that counts  
But the roads you have travelled*

We have indeed travelled many roads in the last five years but by and large our journeys have been fruitful - even the rough rides like the South-West Forest litigation that ended in the High Court. We have dents to show - but the trees in Jane and the like are still standing.

It is five years since the EDO was officially opened by the Commonwealth Attorney-General on 8 July, 1996. Since its inception, the EDO has had a very significant output for a small office. We have handled 786 requests for legal assistance and 18 matters in courts and tribunals, a number of which have set important precedents. Our publications include two substantial books. Nineteen workshops and seminars have been held - events often attracting capacity audiences, attesting to the good reputation of our legal education work.

Over the past five years the EDO has achieved a great deal despite limited resources. A number of factors have played a part in this: the firm foundations laid by the vision and dedication of our founding members and supporters; the skill and enthusiasm of our staff; the high level of volunteer help we receive from lawyers and from law students, and also for other services such as

information technology support and graphic design; and our members and donors giving their steady support, which is invaluable to sustain the work of the EDO. These many contributions, great and small, have culminated in what can be claimed to be a success story. I thank everyone who has played a part. It is also important to note that we arose out of the conservation movement and have maintained close ties with that movement.

Our Principal Solicitor, Michael Bennett, has been with the EDO since we opened our doors in 1995. Michael has given truly sterling service to the EDO, far beyond the call of duty. He is now rightly regarded as one of the State's foremost experts in environmental law and his stature has been recognised within the legal profession and in government departments.

This financial year has seen the development of our Rural and Remote Community Outreach program, which was started in January 2000 with 12 month funding from The Myer Foundation. EDO Bush Lawyer, Sandy Boulter, has been engaged in a hectic schedule. On top of a heavy work load of legal advice matters, Sandy attended six rural workshops and held four legal advice days,

*EDO gratefully acknowledges the support of*



THE MYER FOUNDATION



Western Australia  
Lottery

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travelling from southwest towns to Broome and Kununurra in the north. Her activities generated media coverage around the state, which served to increase the profile of the EDO. The Bush Lawyer project – unrestricted by the “no litigation” condition on our Commonwealth funding - gave the EDO capacity to represent the Speleological Society in objecting to limestone mining at Cape Range. This significant objection, heard over 6 days in the Mining Warden’s Court, resulted in a finding that the Cape Range Peninsula has the qualities necessary for listing on the World Heritage Register, and a recommendation that more than 99% of the area claimed for a mining lease, should be excluded.

This has also been a busy year for the EDO in the metropolitan area, with six diverse public events, including the second Planning Law Seminar, a public meeting with Justice Stein discussing the NSW Land and Environment Court and a Law Week public meeting on “Environmental Law: Past Present and Future”. We have been pleased to note the attendance of State Government Ministers with responsibilities for planning and the environment at such meetings.

Over most of the 2000-2001 financial year, the EDO has had a total of five staff: a legal team of three being: Principal Solicitor Michael Bennett, Solicitor and Finance Officer Cameron Poustie, and Bush Lawyer Sandy Boulter, plus two administration staff, Coordinator June Lowe, and Administration Assistant Marilyn Ashton. In June 2001 Cameron Poustie left the EDO to pursue another avenue in his career path, but we are hopeful that he will be able to return to the EDO in 2002.

Cameron is to be thanked in particular for his work on a project with the National Trust to establish a program of Conservation Covenants, involving voluntary agreements with landowners to protect native remnant vegetation in perpetuity. Cameron drafted 47 covenants and completed 25 (some of which were started the previous year), and in June this year completed a set of protocols for the National Trust to continue this work on their own. Cameron’s professionalism has enabled the

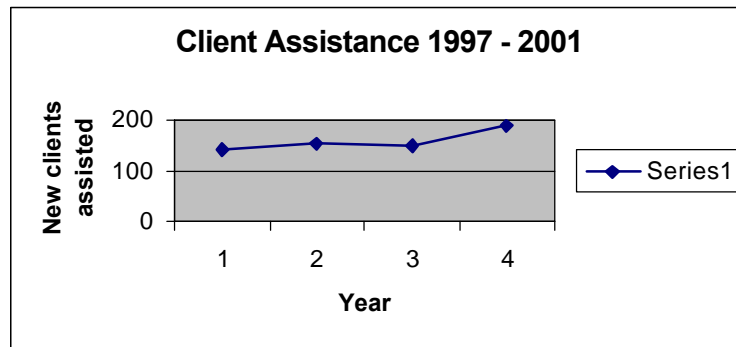
National Trust to become largely self-sufficient in processing these Conservation Covenants.

We thank the Lotteries Commission, who this financial year provided a major grant for much needed new office equipment (phones, computers and printers) and furniture. This support has been invaluable to the administration of the office.

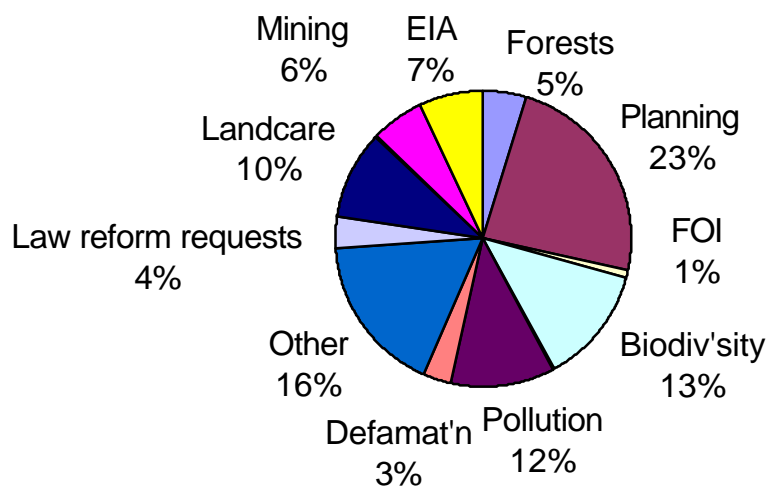
We also thank Agriculture WA for their support of the Bush Lawyer in providing Sandy’s transportation to many rural events. Sincere thanks also to The Myer Foundation, for their generous sponsorship of the Bush Lawyer project during this year. This project has certainly proved its value to rural communities and has now attracted a further twelve months funding, allocated from the Solicitors’ Guarantee Fund by the State Attorney-General. We note that this is the first financial support that EDO (WA) has received from the Western Australian State Government. We thank the State Attorney-General for his recognition of the importance of the EDO’s environmental law service to the rural community. This is in stark (and welcome) contrast to the position taken by the previous State government.

The EDO Management Committee has been a dedicated team and I thank them all for their contribution to the management of the EDO. I also wish to thank all our members and supporters, whose goodwill and generosity of spirit has been a key ingredient of the successes we have had over the first five years.

In 2000/2001 the Environmental Defender's Office dealt with 198 new client advice matters. This record number continues the growth trend of the last 5 years, indicated below.



The range of issues dealt with also continues to grow. Some client advice requests involve two or more issues, particularly where planning is concerned. The range of client advice matters is illustrated on the following graph.



The 'Other' category includes a high proportion of drainage, clearing and other "landcare" issues. This increase can be attributed to the expansion of our legal advice service to rural Western Australia through our Bush Lawyer program.

Some of the matters on which the EDO provided legal advice in this financial year included:

- Areas in which the Commonwealth's Environment Protection and Biodiversity Conservation Act could provide better environmental outcomes than could be achieved under State legislation
- Remedies available against a developer who cleared a wetland area proposed for protection.
- Legal options for requiring energy efficiency in building design
- What approvals are required for the construction and operation of a proposed satellite launch facility at Christmas Island

- Whether WA's proposed bilateral agreement with the Commonwealth over environmental impact assessment procedures met the standards in the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*
- Controls on a local government constructing a local road through and adjacent to Ramsar registered wetlands in Busselton and the relevance of the new *Environmental Protection and Biodiversity Conservation Act*
- The law regulating a prescribed burn in a National Park proposed by the Department of Conservation and Land Management (CALM)
- The law relating to the lease of Crown land for a tourist resort, and the consequences of a breach of the conditions of the Crown lease
- The law relating to the protection of roadside vegetation and its applicability to local government undertaking roadworks
- The law relating to the burning of vegetation as it applies in the East Kimberley
- Controls on the subdivision and development of private rural land adjacent to the WA coastline
- The process of objecting to the grant of a mining lease near Ramsar wetlands on the Broome coastline.

Feedback from our client evaluation forms consistently show that our clients are very satisfied with the service they receive. Particular mention is regularly made regarding the promptness of the service received and the clarity of the legal advice.

## LAW REFORM

In the present political climate, law reform presents many opportunities to make lasting improvements to the laws protecting the environment. EDO's expertise, coupled with our close links with community groups, places us in an ideal position to advocate for environmental law reform.

In 2000-2001, the EDO focussed on the big picture of natural resource management in Western Australia. In conjunction with a number of conservation groups, the EDO organised a round table to discuss the scope for developing an integrated legislative framework for natural resource management in Western Australia. The EDO then played the lead role in producing an Issues Paper entitled 'Reform of Natural Resource Management in Western Australia'.

The EDO also contributed to the more immediate effort of improving legislation in specific areas, including the following:

- **Environmental impact assessment** – the EDO prepared a report for the Conservation Council on the draft bilateral agreement between Western Australia and the Commonwealth, which would accredit State environmental impact assessment processes
  - **Land degradation** - the EDO contributed to the Green Paper prepared by the Land Conservation Regulations Reference Group, which suggested a number of reforms to the law relating to land degradation issues such as land clearing and drainage of saline water
  - **Gene Technology** – the EDO prepared a submission on the Commonwealth's Gene Technology Bill
  - **Vegetation on road reserves** – the EDO wrote to the Minister to the Environment outlining the difficulties facing private citizens and environmental groups seeking to protect remnant roadside vegetation and making suggestions for interim measures and law reform to protect this valuable contributor to the state's biodiversity.
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# LEGAL REPRESENTATION

## THE CASE

The EDO represented the Serpentine-Jarrahdale Residents and Ratepayers Association in a Supreme Court challenge to the grant of two mining leases. The mining leases had been granted by the former Minister for Mines despite a recommendation by the Mining Warden that significant areas of bushland and wetland should be excluded from the leases.

The EDO represented the Australian Speleological Federation in the Mining Warden's Court in its objection to the grant of 10 mining lease applications over 84 square kilometres of the Cape Range peninsula. The expert evidence presented in support of the Federation's objection focussed on the world heritage attributes of the peninsula. These attributes included unique subterranean fauna and archaeological evidence of early human occupation.

The EDO assisted the Australian Speleological Federation with its appeal to the Minister for the Environment against the level of environmental impact assessment for the quarry proposed for the Cape Range peninsula.

Following an appeal by the affected landowner, the Minister for Primary Industries overruled the Commissioner of Soil and Land Conservation and lifted a Soil Conservation Notice of 4 years standing. The Notice had prevented clearing of native vegetation on 75 hectares of private agricultural land. The Avon Valley Environmental Society applied under the Freedom of Information Act for documents which might reveal the reasons for the Minister's decision. The EDO represented the Society in an appeal to the Information Commissioner after the Department of Agriculture refused to release the documents.

In another Freedom of Information case, the EDO represented a member of the public concerned about the environmental risks associated with the release of Rabbit Calicivirus Disease. The case involved an appeal to the Administrative Appeals Tribunal from a decision of the National Registration Authority that certain documents should not be released.

## THE OUTCOME

This matter had not been resolved by the end of the 2000-2001 financial year. However, in a sneak preview of next year's report it can be revealed that on 10 July 2001 the Supreme Court issued orders quashing the two mining leases. The case was conceded by the new Minister on the basis that the former Minister had not referred the mining proposal to the EPA before granting the mining leases.

On 9 February 2001, the Mining Warden recommended that only 0.02% of the area applied for be granted, and that any decision about whether the proposed quarry should proceed should not be made until there had been an environmental impact assessment carried out by the Environmental Protection Authority. In making the recommendation, the Warden found that the Cape Range karst system met the criteria for World Heritage listing. The Minister for Mines has yet to make a decision, and is unlikely to do so until the environmental impact assessment of the proposed mine has been completed.

On 8 May 2001 the Minister for the Environment allowed the appeal and set the assessment at Environmental Review and Management Program, the highest available level of assessment.

On 4 January 2001 the Information Commissioner ordered the partial release of the documents. She found that there was a strong public interest in disclosure of the material that was before the Minister when he made his decision, and that the public interest in the disclosure outweighed the right to protection of personal information. She also noted that where there is no requirement to publish reasons for a decision, the Freedom of Information Act is an important tool in the accountability of government decision making. The documents revealed that the Minister ignored the advice of his own appeals committee in giving permission to clear.

Prior to the hearing, the EDO and lawyers for the National Registration Authority were able to agree that the bulk of the documents in question should be released. At the time of this report, a final decision on the remaining documents had not been made.



# TREASURER'S REPORT

An extract of audited accounts for the year ended 30 June 2001 is provided below, together with some explanatory notes. A full set of accounts, including the auditor's report, is available on request.

## INCOME

Total Income for the 2000/2001 year was \$206,652, giving us an increase of 11% over the 1999/2000 income of \$186,275. The increase was due to a number of factors, including a one-off extraordinary donation of \$22,000 to the EDO Fund, as well as income from the successful National Trust Conservation Covenant project. Total membership Income increased by 27%.

## EXPENSES

Total expenses have increased by 23% since 1999/2000. Once again, Myer grant expenses made up the bulk of the increase, as Sandy Boulter's contract was extended for six months longer than the term covered by the Myer grant. Sandy's position will be continued next financial year because of a new grant from the Legal Contribution Trust.

Expenses such as Depreciation, Reference Material and Computer-related have increased, reflecting the use of a significant Lotteries Commission grant to purchase new office equipment. Insurance increased significantly with the addition of this equipment and the retention of five staff in this financial year. One other increase of interest is bank charges, due to the EDO accepting payments through credit cards for the first time.

## SURPLUS

Our 2000/2001 surplus of \$8,635 is significantly lower than the 1999/2001 figure of \$25,213 – the latter figure being recognised at the time as “saving

for the future”. We continue to benefit from having very low rent, although the end of this advantage is imminent.

## ASSETS

EDO finished the year with a strong cash position of \$76,594 (including term deposits). Although this is slightly down on last year, it leaves the EDO in a good financial position.

## CURRENT LIABILITIES

The item Provisions relates to PAYE tax and superannuation commitments, and Unearned Income is funds received for a special project to be undertaken in 2001/2002. This project involves the publication of a number of environmental law Fact Sheets.



# ENVIRONMENTAL DEFENDER'S OFFICE WA (INC.)

## BALANCE SHEET AS AT 30 JUNE 2001

	2001	2000
	\$	\$
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CURRENT ASSETS		
Cash at bank - General	11,079	33,446
- Fund	31,461	8,196
Cash on hand	100	100
Input tax credits receivable	-	36
Sundry debtors	8,954	10,233
Term Deposit - General	-	25,000
- Fund	25,000	15,000
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TOTAL CURRENT ASSETS	76,594	92,001
	<hr/>	<hr/>
NON-CURRENT ASSETS		
Property, Plant and Equipment	13,093	5,482
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TOTAL NON-CURRENT ASSETS	13,093	5,482
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TOTAL ASSETS	89,687	97,483
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CURRENT LIABILITIES		
Accrued Expenses	1,250	396
Unearned Income	14,107	28,661
Provisions	8,796	9,077
Miscellaneous	-	2,450
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TOTAL LIABILITIES	24,153	40,584
	<hr/>	<hr/>
NET ASSETS	<u>65,534</u>	<u>56,899</u>
EQUITY		
Accumulated Surplus - Opening Balance	56,899	31,686
Net Surplus	8,635	25,231
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Accumulated Surplus - Closing Balance	<u>65,534</u>	<u>56,899</u>



# ENVIRONMENTAL DEFENDER'S OFFICE WA (INC.)

## STATEMENT OF INCOME AND EXPENDITURE

### FOR THE YEAR ENDED 30 JUNE 2001

INCOME

	2001	2000
	\$	\$
<b>INCOME</b>		
Bank Interest	1,986	1,037
Client Disbursements Recovered	2,018	1,913
Conservation Covenants	8,975	2,475
Donations	33,575	9,087
Environmental Law Handbook Income	2,305	1,534
Fundraising	-	1,371
Grants - Commonwealth	76,934	79,828
- Lotteries	9,122	3,600
Law of Landcare Book Income	901	3,445
Lecture Fees	1,819	997
Legal Costs Recovered	15,493	23,096
Legal Education Activities	17,662	25,322
Membership Subscriptions		
- Corporate Body	-	150
- Membership Renewals	5,915	4,410
- Non-Profit Group	69	175
- Unwaged Membership	60	60
- Waged or Household	409	255
Myer Grant Income	29,409	27,520
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<b>TOTAL INCOME</b>	<b>206,652</b>	<b>186,275</b>



# ENVIRONMENTAL DEFENDER'S OFFICE WA (INC.)

## STATEMENT OF INCOME AND EXPENDITURE

### FOR THE YEAR ENDED 30 JUNE 2001

INCOME

	2001	2000
	\$	\$
<b>EXPENSES</b>		
Annual Practice Certificates	840	820
Bank Charges 399	68	
Cleaning	-	140
Client Disbursements	2,313	2,290
Computer - related	1,603	848
Consultancy Fees	-	916
Depreciation 8,090	2,982	
Environmental Law Handbook Expense	20	115
Freight & Courier	30	51
Fundraising Expenses	39	877
Insurance	2,839	1,185
Landcare Guide Expenses	54	210
Legal Education Activities	9,163	11,570
Myer Grant Expense	47,157	23,024
Office Furniture and Equipment		
- Small Items	1,941	949
Phone/Fax/Internet	5,648	5,804
Photocopying & Printing	4,892	3,664
Postage	1,633	1,597
Promotions	816	779
Reference Material	1,700	908
Rent & Outgoings	619	676
Salaries	95,290	90,029
Stationery	1,422	2,320
Subscriptions 1,523	1,583	
Sundry Expenses	690	725
Superannuation	7,623	6,302
Training/conferences	750	30
Travel	923	600
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TOTAL EXPENSE	198,017	161,062
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SURPLUS	8,635	25,213
	=====	=====

Community Legal Education (CLE) is always an important focus of the EDO and the 2000/2001 CLE calendar shows our fifth year has been busier than ever with legal education initiatives.

**Planning law** was the topic of the year's major seminar, held in Perth in November 2000. This was the EDO's second seminar on this topic, fulfilling our promise to those who were on the waiting list of the first (sold out) seminar. Sandy Boulter presented a shorter version of the Planning seminar to a Broome audience in October 2000.

**The Environment Protection and Biodiversity Conservation Act 1999 (Cth)** ("EPBC"), which came into effect in July 2000, is arguably the most significant Commonwealth environmental legislation to be introduced in the last 20 years. The EDO has sought to inform groups and individuals of its ramifications. Michael Bennett prepared a Fact Sheet which was published and distributed by the national EDO Network, and with Cameron Poustie presented a workshop on EPBC to a forum at the Conservation Council in March 2001. Michael also presented two similar workshops in Bunbury in June 2001.

In her role as **Bush Lawyer**, Sandy Boulter held numerous workshops around the state: Dandaragan (catchment management), Broome and Boyup Brook (planning), and Duranillin (drainage) and gave talks at the Moora Salinity Conference and the Kununurra Fire Forum. To promote the work of the EDO, she took the EDO display to the Wagin Woolewarama and also held special legal advice days in Kununurra, Broome, Bridgetown and Busselton. A Fact Sheet titled "Drainage on Agricultural Land" was added to our series, proving very popular with rural clients.

Two major EDO events looked at future possibilities for environmental law. A capacity-crowd public meeting was held at the Alexander Library during Law Week. Titled 'Environmental Law: past, present and future,' the meeting featured author and historian Tim Bonyhady, Michael Barker QC and Environment Minister, Dr Judy Edwards MLA. In February 2001 we organised a public lecture by Justice Stein who described the workings of the NSW Land and Environment Court. This event attracted great interest from lawyers, community groups, government agencies and politicians.

## Calendar of legal education events

### July 00

- Dandaragan workshop concerning legal aspects of catchment management
- 7 lectures and 6 tutorials for 'Environmental Law for Non Lawyers' course, UWA

### Oct 00

- Planning seminar, Broome
- Broome and Kununurra legal advice days

### Nov 00

- Boyup Brook talk concerning planning policies
- Bridgetown and Busselton legal advice days
- Cockburn Bushland meeting
- Planning Seminar, Perth

### Feb 01

- Workshop on environmental impact assessment, Perth
- Public lecture by Justice Stein on the NSW Land and Environment Court, Perth

### Mar 01

- Environment Protection and Biodiversity Conservation Act workshop, Perth
- Murdoch University lecture, environmental law class
- EDO display to 'Taking Care of Bush' forum at Rockingham Festival
- Public meeting 'Environmental Law: past, present and future'
- Moora salinity conference
- Display to Wagin Woolewarama

### Apr 01

- Workshop, Duranillin 'Drainage law'
- Forestry conference 'Searching for sustainability: Forest law and policy in WA'
- UWA guest lecture 'Old Growth, New Government: W.A.'s forests - the law and the policy'
- UWA Extension seminar 'How to be a community activist'

### May 01

- Kununurra Fire Conference
- Kununurra legal advice day
- Murdoch University lecture, Environmental politics class

### June 01

- Bunbury workshop on Environment Protection and Biodiversity Conservation Act.



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  - **Vegetation on road reserves** – the EDO wrote to the Minister to the Environment outlining the difficulties facing private citizens and environmental groups seeking to protect remnant roadside vegetation and making suggestions for interim measures and law reform to protect this valuable contributor to the state's biodiversity.
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