

Environmental
Defender's
Office

Western Australia (Inc)

Annual Report

1 July 2001 – 30 June 2002

2001/2002 - A Watershed Year

Dr Hannes Schoombee, Convener

This has been a year of many changes for the Environmental Defender's Office, with new office premises, new staff, new funding commitments, new projects and new laws.

Six years of subsidized office space from the Law Society (WA Branch) came to an end in March of this year, and we extend sincere thanks to the Law Society for their helping hand. Establishing an EDO presence in Western Australia would have been far more difficult without their generous assistance in this regard.

Moving office was a daunting task, but EDO staff are now enjoying more spacious premises in the Kings Hotel building, conveniently located near to the Supreme Court Library. This new office gives us room to expand in the next few years, and the layout has been designed with that potential in mind. The down side is, of course, surviving in the commercial rental environment, so our fundraising efforts need to be redoubled.

The office move coincided with what we hope to be the temporary departure of EDO's solicitor, Michael Bennett. Michael has been with the EDO since its inception and has developed an extensive knowledge of and reputation in, environmental laws. Upon invitation, in April this year he took up a position for a period of time with the Department of Premier and Cabinet to assist with the implementation of the Government's environmental law program. Michael recently completed his Master in Laws

specialising in Environmental Law at the Australian National University.

We have been very fortunate to attract Lee McIntosh to take Michael's place. Lee is a very experienced and capable environmental lawyer. Her talents have ensured that the EDO's legal services have continued without a hitch and we warmly welcome Lee to the EDO team.

The Rural and Remote Communities Outreach funding has drawn to a close this year and we thank The Myer Foundation for their support for the EDO Bush Lawyer. In the past 18 months, Sandy Boulter, in her Bush Lawyer role, has established valuable networks, speaking at numerous forums and giving broad ranging environmental law support throughout the State. A major task was her involvement in representing the Leeuwin Conservation Group in their efforts to stem development at Gnarabup, near Margaret River. Sandy made the Bush Lawyer exercise a great success for the EDO.

New Projects

With mounting environmental pressures in the coastal zone, the EDO decided to implement a special focus on 'Coast Law' and was successful in obtaining funding from both Coastwest/Coastcare and The Myer Foundation to sponsor this work. The EDO's major seminar this year was the hugely successful "*Lines in the Sand: Coast Law in Western Australia*" at the Fremantle Sailing Club in May 2002.

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EDO gratefully acknowledges the support of



Environmental Defender's Office

Western Australia (Inc)

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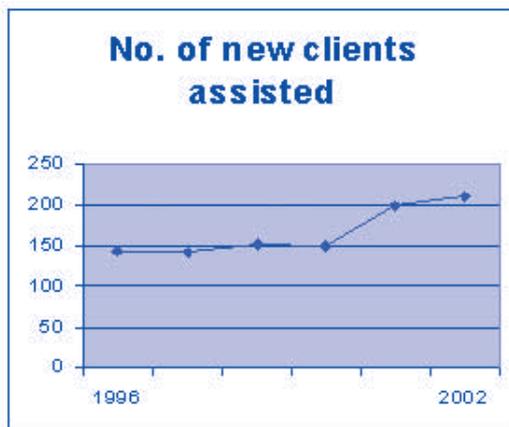
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LEGAL ADVICE

In 2001/2002 the Environmental Defender's Office assisted 210 new clients with legal advice, bringing the total number of all legal advices for the year to 621. Since 1996, the EDO has assisted nearly 1000 clients, and has opened over 1,500 matter files. The graph below indicates the steady growth of new clients assisted in recent years.

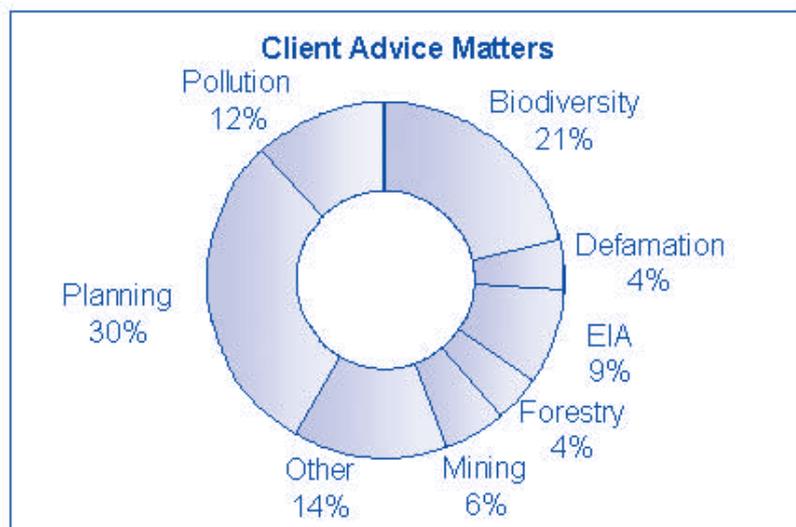


Clients contact the EDO from all over the State. Although 54% of clients are from the metropolitan area, 46% are from Esperance to Kununurra and various places in between. Our Bushlawyer program, followed by our Coast Law Project has made EDO's services more readily available statewide. Through legal education and advice many more people in rural and remote areas are now more aware of their rights and responsibilities in environmental law issues.

Planning issues continued to be the area in which most people sought advice. The graph at right displays the range of legal advice provided this year.

Matters on which the EDO provided legal advice this year included:

- ← Environmental impact on mangroves of a proposed sea surge wall
- ← Proposal to expand liquid waste facility
- ← Environmental impact on wetland by proposed development
- ← Degradation of a primary dune system
- ← Emissions from waste management plant
- ← Unauthorised clearing
- ← Environmental impacts of mining proposals
- ← Illegal land clearing
- ← Advice on environmental impact assessment on proposed ammonia plant
- ← Coastal development in metropolitan and rural areas
- ← Protection of native fauna in State Forest logging areas
- ← Discharge of waste water from coastal mining operation
- ← Land clearing in water catchment area
- ← Collection of sand and seaweed from beach foreshore
- ← Freedom of Information and internal review requests
- ← Burning waste on a Council waste disposal site
- ← Breach of subdivision conditions





LEGAL REPRESENTATION

THE CASE

The Leeuwin Conservation Group (Inc.) was concerned about the legality and merits (including the environmental impact) of the Western Australian Planning Commission's decision to grant approval for subdivision of private land on the western side of Walcliffe Road at Gnarabup

In WA no one (other than the actual applicant for subdivision) has a right to appeal against the merits of subdivision decisions. The Group could therefore not complain about the environmental impact or other impacts of the subdivision heard in any Court or Tribunal.

The Lakes Action Group objected to the expansion of an aggregate quarry into remnant native vegetation in Northam. The EDO gave advice to the Group regarding how to be joined as a third party in the Town Planning Appeals Tribunal.

The EDO gave advice to the Friends of Rockingham Beach on the legality of an approval granted by the City of Rockingham for a 12 storey hotel fronting Rockingham Beach Road.

The EDO provided advice to the Yarloop and District Concerned Residents Committee concerning commencing actions against Alcoa of Australia Pty Ltd for health and environmental issues associated with its Wagerup Refinery.

Various clients have lodged environmental objections to mining proposals at many locations throughout the State. These objections are currently before the Mining Warden's Court. The EDO is representing clients in that Court.

THE OUTCOME

The EDO represented the Group in Supreme Court proceedings to challenge the legality of the WAPC's subdivision decision. The developer was also involved in the proceedings, at its own request. The Full Court of the Supreme Court found that the WAPC's decision was unlawful, but didn't overturn the decision because it also found that 1) the decision was illegal on a mere technicality only, and 2) the Group did not have "standing" (a sufficient legal interest) in the proceedings. Because the Group was ultimately unsuccessful, it was ordered to pay the legal costs of the developer and the WAPC.

The Lakes Action Group was successfully joined as a third party in the Town Planning Appeals Tribunal. The EDO was unable to provide legal representation to the Group in the proceedings but facilitated the Group's retainer of a private solicitor.

Friends of Rockingham Beach used a little known provision of the Town Planning and Development Act 1928 to apply to the Minister for Planning to conduct an inquiry into the City of Rockingham's decision. The Minister agreed to conduct an inquiry and the inquiry has now commenced.

The EDO provided advice to residents about possible causes of legal action, but was unable to provide legal representation. The EDO facilitated the residents' retainer of a private solicitor.

The EDO successfully applied to adjourn the hearing of environmental objections to mining proposals near Denmark and Broome, on the basis that the proposals are currently undergoing environmental impact assessment by the EPA. The Mining Warden or Minister for Mines cannot grant approvals until the EIA process is completed.



TREASURER'S REPORT

An extract of audited accounts for the year ended 30 June 2002 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 2001/2002 year was \$227,597 which represents an increase of 10% on the previous year. This is mainly attributable to a one-off grant from the Legal Contribution Trust of \$55,360.

Legal Education activities continued to generate significant revenue with a record amount of \$33,924, due mainly to our successful Coast Law conference in May.

The Law of Landcare 2nd edition generated an excellent increase in sales of that book. *The Guide to Environmental Law* has not been reprinted, and sales have slowed.

Our financial success was reduced to some extent by the finalisation of our Conservation Covenant program and by the end of the Myer Foundation grant for the Bush Lawyer.

The decrease in donations across the 2000/2001 and 2001/2002 years is due to a once off major donation in 2000/2001. Nevertheless, we have been very fortunate to have received some significant donations from several generous supporters in the 2001/2002 year.

Total Membership Income increased by a healthy 19% in 2001/2002.

EXPENSES

Total expenses have increased by 11% since 2000/2001. Salaries increased slightly over the year and for the first time, the EDO is now paying commercial rent. *The Law of Landcare* reprint has not yet been fully recovered, but is projected to do so in 2002/2003.

EDO solicitors took advantage of a special research package from Lexis Nexis Butterworths and we have continued to update our computer network. Both of these measures have led to improved office efficiency.

Travel is another area of increase as our Bush Lawyer project was very active and highly visible in rural and regional areas.

SURPLUS AND ASSETS

Our 2001/2002 surplus of \$6,980 is slightly down on the previous year, however the EDO has maintained significant cash and cash equivalent reserves.

CURRENT LIABILITIES

The item 'Unearned Income' consists mainly of instalments of Myer and Coastwest/Coastcare grants received in 2001/2002. These amounts relate to the Coast Lawyer program, which will span financial year 2002/2003 (with the exception of the Coast Law conference mentioned above). In accordance with standard accounting practice, these grants will be recognised as income in the year the relevant work is done, namely 2002/2003.

CONCLUSION

This financial year has also been a watershed for the EDO. We are moving away from total reliance upon our core Commonwealth funding, and finding new avenues of income as the reputation of the EDO grows throughout the State.

The Management Committee congratulates all EDO staff for their commitment to fundraising activities in 2001/2002. Additionally, Cameron Poustie, Marilyn Ashton and Lynn MacLaren have done great work maintaining and reporting on the EDO's financial records across the year.

ENVIRONMENTAL DEFENDER'S OFFICE WA (INC.)

BALANCE SHEET AS AT 30 JUNE 2002

	2002	2001
	\$	\$
CURRENT ASSETS		
Cash at bank - General	8,152	11,079
- Fund	11,547	31,461
Cash on hand	100	100
Sundry debtors	2,321	8,954
Term Deposit - General	40,400	-
- Fund	67,674	25,000
	-----	-----
TOTAL CURRENT ASSETS	130,194	76,594
	-----	-----
NON-CURRENT ASSETS		
Property, Plant and Equipment	14,675	13,093
	-----	-----
TOTAL NON-CURRENT ASSETS	14,675	13,093
	-----	-----
TOTAL ASSETS	144,869	89,687
	-----	-----
CURRENT LIABILITIES		
Accrued Expenses	-	1,250
Unearned Income	56,492	14,107
Provisions	11,479	8,796
Miscellaneous	4,384	-
	-----	-----
TOTAL LIABILITIES	72,355	24,153
	-----	-----
NET ASSETS	72,514	65,534
	=====	=====
EQUITY		
Accumulated Surplus - Opening Balance	65,534	56,899
Net Surplus	6,980	8,635
	-----	-----
Accumulated Surplus - Closing Balance	72,514	65,534
	=====	=====

BALANCE SHEET



Community legal education is vital to disseminate information about environmental law to a wider audience. The EDO concentrates a great deal of energy into legal education, as is shown in the **Calendar of Events** on this page.

In 2001-2002 the major legal education event was our May conference, *"Lines in the Sand, Coast Law in Western Australia"* which attracted a capacity audience of 220 people. The conference speakers addressed an extensive program and have provided papers which will form the basis of our third book. The conference received support from a number of generous sponsors, including The Lotteries Commission, Coastwest/Coastcare and The Myer Foundation.

The Management Committee congratulates June Lowe, Lynn MacLaren and Renelle Thorpe for the outstanding success of this conference.

Last year *"The Law of Landcare in Western Australia"* was extensively edited and reprinted to incorporate a number of legislative changes. We thank Jean-Pierre Clement for his excellent work on the book, which continues to be much sought after by farmers, students, landcare workers and agencies.

Our fact sheet series has been updated and funding for another 40 titles has come from the Public Purposes Trust, The Ian Potter Foundation, Dept of Planning and Infrastructure and Water and Rivers Commission.

The EDO's connections with the universities have continued to flourish. This year, EDO solicitors have given lectures at Murdoch University and the University of Western Australia, covering a range of environmental law issues including mining law, environmental law and politics, and legal rights for environmental activists. We have also benefited from nearly 500 hours of voluntary legal research from law students from these universities and we extend our thanks to these students for their great contribution.

We have used many avenues to promote environmental law to the public, including media work, speaking at numerous community fora, and publishing papers and submissions on our web page. We hope we have succeeded in our endeavours to get the broadest possible spread of information to the community.

Calendar of Events

July 2001

- ← Michael Bennett addressed the History Teachers and Political & Legal Studies Educators' Conference on 'Access and Equity in the Legal System'
- ← JP Clement began edit *The Law of Landcare in Western Australia* 2nd Edition

August 2001

- ← Sandra Boulter addressed the Kojonup LCDC on drainage issues at a Kojonup Drainage Field Day
- ← Michael Bennett addressed the Willetton Rotary Club
- ← Sandra Boulter and Michael Bennett addressed DEP staff on the role of EDO

September 2001

- ← Sandra Boulter attended the State Landcare Conference in Mandurah and set up EDO display
- ← Sandra Boulter attended UWA Water Resource Workshop

October 2001

- ← Steve Seigal (EDO study tour lawyer from USA) presented a paper 'Legal Protection for Biodiversity – Lessons from America'
- ← Sandra Boulter presented a paper on GMO's and EIA's at the Cotton Conference in Broome
- ← Sandra Boulter attended Community Water Allocation Workshop in Broome
- ← Sandra Boulter visited Eco Beach, Broome and Thangoo Station - site of proposed Kaolin mine

November 2001

- ← Sandra Boulter presented a paper at the State Coastal Conference in Esperance
- ← Michael Bennett presented a paper on 'Mining Law Reform' to the AMPLA Conference on Rottneest
- ← 2nd Edition of 'The Law of Landcare' printed

December 2001

- ← Sandra Boulter published article in RRR Network News (rural, remote and regional women's quarterly journal).

January 2002

- ← Plans began for Coast Law Project with news of successful application

April 2002

- ← Lee McIntosh began lecture series at Murdoch University and UWA
- ← Lee McIntosh published paper: 'Opportunities for Public Participation in Environmental Assessment of Mining Proposals'
- ← Sandra Boulter presented 'Fire and the Law' paper to CALM conference on Fire in the South West Ecosystem
- ← Sandra Boulter and Lee McIntosh attended stakeholder Planning Legislation Forum at DPI

May 2002

- ← Sandra Boulter gave several radio and newspaper interviews on the Coast Law Project
- ← EDO Coast Law Conference

June 2002

- ← Project to research and write 40 fact sheets continues



LAW REFORM

In the last year, the State government has sought public submissions about reforming many laws which affect the environment. Recognition of the EDO's expertise in and knowledge of environmental law is evidenced by requests from government agencies to the EDO for contributions to legislative programs. This recognition and the EDO's involvement with the community has led to submissions on the following issues:

- ← The Department of Environmental Protection on its review of the *Environmental Protection Act 1986*;
- ← The Department of Environmental Protection on its review of the *Contaminated Sites Bill 2001*;
- ← Various government agencies on the laws relating to land clearing;
- ← The Legislative Council Standing Committee on Economics and Industry Inquiry into the Bellevue Hazardous Waste Fire;
- ← The Legislative Council Standing Committee on Public Administration and Finance on the *Planning Appeals Amendment Bill 2002*;
- ← The Department of Mineral and Petroleum Resources on the interim and final reports on the Reform of Project Approvals System (Keating Report);
- ← The Department for Planning and Infrastructure on Consolidation and Streamlining of Planning Legislation;
- ← The Department for Planning and Infrastructure on Model Scheme Text Provisions;
- ← The Ministerial Taskforce on State Greenhouse Strategy;
- ← Letter to the Minister for the Environment about how to enforce forest management

plans and bind the Crown to the fauna provisions of the *Wildlife Conservation Act 1950*;

- ← Brief prepared on behalf of the Coastal Planning Coalition for a Report on Coastal Planning to the sub-committee of the Ministerial Taskforce on Coastal Planning; and
- ← The Ministerial Taskforce on Coastal Planning.

In addition to these submission, the EDO is represented on the reference group for the Department of Environment, Water and Catchment Protection's development of a Community Involvement Framework.

In the year ahead, the EDO has already planned a submission on limitations law (the law relating to the time in which legal actions must be commenced) and the State Gene Technology Bill 2002.



**The EDO's 2002/2003 focus
will be on coastal issues**



from front page ...

The 18 conference papers will be published as a book on Coast Law, and will be EDO's third major publication. This publication will be invaluable to fill the current dearth of information on laws regulating the coastal zone.

From the beginning of the 2002-2003 Financial Year, Sandy Boulter assumes the mantle of "Coast Lawyer" – her first task as the editor of the Coast Law book.

The EDO has embarked on an extensive Fact Sheet Project and has committed to producing a set of over 40 additional fact sheets on environmental law topics. These will be available on a specially designed section of EDO's web site, or printed on demand, providing greater flexibility to up-date them as laws change. This project has been generously sponsored by the Public Purposes Trust (PPT) and The Ian Potter Foundation, with assistance from the Department of Planning and Infrastructure and Water and Rivers Commission. Rick Fletcher was employed at the start of the project and more recently, Cameron Poustie has been employed part-time as Fact Sheet coordinator. The project represents a considerable research task, but we are looking forward to the expansion of this popular fact sheet series. The new fact sheets will cover topics such as 'Petitions', 'Gravel Pits and Quarries' and 'Noise'.

In addition to seminars and fact sheets, our legal education work extends to presenting talks to university students and in other fora. Our lawyers have also lectured and tutored in a number of university courses related to the environment. We continue to foster and reap rewards from our connections with universities and are grateful for the hundreds of hours of voluntary legal research we receive from law students. This appears to be a mutually beneficial arrangement, as the students acquire valuable environmental law experience, sowing seeds for future environmental lawyers in WA!

The new political climate has presented opportunities for law reform and the EDO has put

forward submissions on a number of issues, including the enquiry into the Bellevue fire, and submissions on Mineral Titles, Transferable Water Entitlements and the review of the Environmental Protection Bill. Having such input at the developmental stage of environmental law changes, will hopefully lay more sound foundations for environmental protection in years to come.

Support

Once again, we have continued to enjoy the loyal support of our members and donors, who are at the heart of our organisation. Three memorable social occasions were held this year - EDO's Fifth Birthday in August 2001, a sell-out film night in November 2001 and our office warming in April 2002 – all providing excellent opportunities to meet and thank our members for their support. I also thank the members of the EDO Management Committee who meet monthly to guide and oversee the activities of the organisation.

The EDO has been fortunate this year to receive support from a number of organisations, notably: the PPT and The Ian Potter Foundation for the fact sheet project, Lexis Nexis Butterworths for CD-ROM based and on-line legislation resources and, for supporting the Coast Law Conference, we thank Coastwest/Coastcare, The Myer Foundation, The Lotteries Commission of Western Australia, Fishcare WA/Fisheries Department, Fremantle Port Authority and Cullen Wines.

Summary

Despite a year of considerable change, we have been able to build on our strengths and continue to offer what we trust is a first class environmental law service. Our resources have been strengthened by the support and contributions of supporters and philanthropic bodies, and we are proud of the EDO's output both as to quantity and quality. However, with the new office, we have new financial challenges to meet and, as we set our goals to extend our services and staffing levels, we will need to seek new avenues of funding to secure a solid expansion in the future.

HANNES SCHOOMBEE
CONVENOR

ENVIRONMENTAL DEFENDER'S OFFICE WA (INC.)

STATEMENT OF INCOME AND EXPENDITURE

FOR THE YEAR ENDED 30 JUNE 2002

INCOME AND EXPENDITURE

	2002	2001
	\$	\$
INCOME		
Bank Interest	3,174	1,986
Client Disbursements Recovered	1,807	2,018
Conservation Covenants	-	8,975
Donations	20,315	33,575
Environmental Law Handbook	492	2,305
Fundraising	2,061	-
Grants		
- Commonwealth	76,496	76,934
- Coastwest/Coastcare	2,208	-
- Legal Contribution Trust	55,360	-
- Lotteries	9,358	9,122
- Myer	-	29,409
Law of Landcare Book	8,108	901
Legal Costs Recovered	6,623	15,493
Legal Education Activities	33,924	19,481
Membership Subscriptions		
- Corporate Body	49	-
- Membership Renewals	6,215	5,915
- Non-Profit Group	207	69
- Unwaged Membership	160	60
- Waged or Household	1,040	409
TOTAL INCOME	<u>227,597</u>	<u>206,652</u>

ENVIRONMENTAL DEFENDER'S OFFICE WA (INC.)

STATEMENT OF INCOME AND EXPENDITURE

FOR THE YEAR ENDED 30 JUNE 2002

	2002	2001
	\$	\$
EXPENSES		
Annual Practice Certificates	940	840
Audit	400	-
Bank Charges	688	399
Client Disbursements	1,836	2,313
Coast Law Grant	2,208	-
Computer - related	1,670	1,603
Consultancy Fees	4,535	-
Depreciation	9,132	8,090
Environmental Law Handbook	25	20
Freight & Courier	-	30
Fundraising	503	39
Insurance	2,776	2,839
Law of Landcare Book	9,079	54
Legal Education Activities	17,143	9,163
Myer Grant	-	47,157
Office Furniture & Equipment - Small	1,074	1,941
Phone/Fax/Internet	6,682	5,648
Photocopying & Printing	4,060	4,892
Postage	2,513	1,633
Promotions	1,483	816
R&M	328	-
Reference Material	2,011	1,700
Rent & Outgoings	7,324	619
Salaries	127,345	95,290
Stationery	1,506	1,422
Subscriptions	1,523	1,523
Sundry	398	690
Superannuation	10,191	7,623
Training/conferences	-	750
Travel	3,244	923
	—	—
TOTAL EXPENSE	220,617	198,017
	—	—
SURPLUS	6,980	8,635
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INCOME AND EXPENDITURE