



ANNUAL REPORT

1 July 2005 – 30 June 2006

2005/2006 - A Year of Transition

Dr Hannes Schoombee, Convenor

In last year's Annual Report I reflected with great optimism on the receipt of a second tranche of Government funding; \$75,000 for the appointment of an Outreach Solicitor. One year on however I can say that although our 'core' legal capacity was doubled with the addition of that State grant, we are certainly not yet in a position where we have enough resources to respond to the demand for our services. We can and must get bigger and better still.

Like so many community legal centres, we have to acknowledge that there is a tension between our well-earned profile in the community as a knowledgeable and accessible resource for the environment movement on one hand, and the EDO resources which may be available at a given point in time to meet the demand for our services. In this 05/06 year that tension was slightly more acute than normal when budget constraints did not allow for the replacement of Pete Stone's fundraising and promotions role when he left in February, and we finished the financial year with 2 full-time lawyers but only 2 days per week of administrative support from Fran Jones, our new and now sole Office Coordinator.

But then the good news kicks in, as it so often does in the context of the EDO. We have had a strong year overall and received a boost from the new staff who came on board in the course of the year. Cam Poustie (an EDO veteran who has worn many hats for us over the years) became our new Principal Solicitor and Nicola Rivers our new Outreach Solicitor. They replaced, respectively, Leigh Simpkin and Rick Fletcher, whom I wish to thank for their contribution to the EDO over a long period (Rick started with us as a student volunteer). Cam, Nicola and Fran did and are doing a tremendous job and I certainly feel very positive about the EDO's future prospects. Our legal advice output for instance actually increased in the final months of the financial year even though paid staff time was then reduced as compared to the start of 05/06.

The limitations we have faced with regard to paid office

staff were significantly reduced by the contribution of legal professionals and law student volunteers. The 05/06 year again showed that the EDO has a great capacity to attract and retain volunteer support, which in turn meant that we were able to prepare many more advices and update more fact sheets than our overworked paid staff would otherwise have been able to. It also meant we continued to successfully refer many of the clients who we either have no capacity to help, or who perhaps do not meet one or more of our criteria for legal assistance. All of this of course also promotes a proper understanding of environmental law in its many facets – not only for our clients but also for the lawyers and budding lawyers who work with us.

That said, we must continue to pursue new sources of income that expand our capacity without distracting the organization from our *raison d'être*; the provision of public interest environmental law advice to those that cannot otherwise afford it.

Unfortunately the 05/06 year also presented many other challenges to the EDO, its clients, and to all those concerned with public interest environmental law in an Australian context. Litigation by Gunns Limited continues against various key Australian environmentalists, albeit after the latter have won a series of interlocutory victories (at the date of writing the plaintiffs had again been forced to pay the environmentalists' legal costs after a third attempt at a statement of claim was struck out). If the case is ultimately successful (from Gunns' perspective) however, it could have far-reaching consequences for community debate about the environmental impacts of almost any industry.

The litigation context in WA is getting tougher and tougher. Those acting for environmental plaintiffs seem to be finding themselves more and more in a situation where they may have to face applications for personal costs orders against them. I know of at least one major environmental case where a leading Silk was asked to advise whether myself and other

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Core funding for the EDO WA (Inc) is provided by the Commonwealth and State Attorney Generals' Departments

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lawyers on my side should be sued personally for the cost of the case, in terms of s 37 of the Supreme Court Act which allows the Court to make costs order against non-parties.

The new Planning and Development Act was passed in the second half of 2005, with the State Government again refusing to introduce such basic public involvement opportunities as third party rights of appeal. Community input to planning appeals therefore remains in the tenuous situation of being at the discretion of whichever State Administrative Tribunal members preside over that particular hearing. In the event that the proponent does not appeal against the relevant local government's decision the community has no access to this review process at all (unless specifically preserved in their local planning scheme, such as is still the case in the old Shire of Albany town planning scheme area).

There was some good news, however. On 1 January 2006 the defamation laws changed such that a profit-making corporation cannot sue on the basis that it was defamed unless it employs less than 10 persons. However, if you defame a corporation and the defamation "rubs off" on say its high profile managing director, he or she can still sue you! The motivation behind the change was that there is a difference between the good reputation of a corporation and of an individual and that, in the cut and thrust of political debate, companies are well placed to respond to environmental concerns in the public arena without having to sue individuals and small community groups when they say nasty things about companies viewed as rapacious developers or dedicated polluters. I understand anecdotally however that this change has not stopped certain companies from threatening environmentalists with defamation litigation. So it remains to be seen whether such threatened or actual litigation (instituted by what used to be called "SLAPP writs"), with their serious potential to suppress environmental debate, have really become things of the past.

I have been with the EDO for a while now but it is always a pleasure to be able to thank:

Marilyn Ashton, Office Coordinator until September 2005 (having thus given nearly six years of service to the EDO);

Jayne Head, Office Coordinator (Finance and Reporting) from April to December 2005 (resigned for personal reasons);

Rick Fletcher, Outreach Solicitor until February 2006 (resigned for personal reasons);

Pete Stone, Coordinator for Special Projects and Promotions from August 2005 to February 2006 (resigned for personal reasons);

Leigh Simpkin, Principal Solicitor until April 2006 (originally started with the EDO in October 2003);

Nicola Rivers, Outreach Solicitor from February 2006;

Fran Jones, Office Coordinator from February 2006; and

Cameron Poustie, Principal Solicitor from April 2006.

Thanks also to my colleagues on the Management Committee (like the staff, the Committee also saw a number of changes during the course of the 05/06 year):

Andrew Roberts, Deputy Convenor;

Janice Dudley, Secretary;

Cameron Poustie, Treasurer until April 2006 (resigned to take up the Principal Solicitor's role);

David Lloyd, Interim Treasurer from June 2006 (first elected as a committee member at the 2005 AGM);

David Garnsworthy, committee member until April 2006 (resigned for personal reasons);

Harriet Ketley, committee member until April 2006 (resigned for personal reasons);

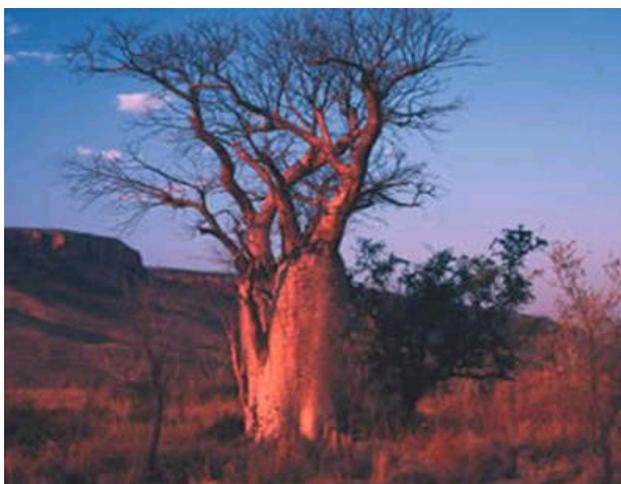
Angas Hopkins, committee member;

Jay Anderson, committee member;

Sharon Mascher, committee member (casual vacancy appointment from May 2006);

Michael Bennett, committee member (casual vacancy appointment from May 2006); and

Lee McIntosh, committee member (casual vacancy appointment from May 2006).



Solicitors' Reports

Cameron Poustie, Principal Solicitor

Although I have had some association with the EDO for a number of years now, I have only been in the Principal Solicitor's role since mid April. The learning curve associated with this return to paid employment here has been almost vertical!

Legal advice highlights from my short time in the role in the 05/06 year have included advising:

Conservation Council about the proposed second expansion of the Boddington gold mine;
a Goldfields group about pollution / environmental harm issues; and
a Wheatbelt group with the legalities of a proposed biosolids facility.

I wrote a few law reform submissions and ran a few community legal education sessions in that relatively short time as well; they are outlined as part of the separate article in this report on all such activities for the whole office.

Highlights from Leigh's contribution to the role in the 05/06 year (i.e. the vast majority of it) are as follows.

On 8 July 2005, the EDO held a well-received major public seminar; Water Law in Western Australia. Approximately 100 people enjoyed presentations from Alex Gardner (UWA), Dr Kerry Trayler (Department of Environment, as it then was) and Ilona Millar (Principal Solicitor, EDO NSW), among others. Future seminars of this magnitude on other topics of interest will be difficult with current levels of administrative support, but are certainly in the pipeline if funding is successfully sought for the 'outsourcing' of conference organizing and catering.

Much less positive was the result for the Lakes Action Group, who in a State Administrative Tribunal decision on 1 August 2005 were unable to show that a quarry near Northam had no planning approval. The result of this decision was potentially very negative for all concerned, with the opponents seeking indemnity costs (a higher sum than is ordinarily possible in litigation scenarios) against both the Lakes Action Group and the EDO itself as LAG's lawyers. In the end both the push for indemnity costs and the move to obtain costs from the EDO itself were unsuccessful, but LAG unfortunately did have to pay some of the other side's costs.

Leigh's legal advice work in 05/06 included:

- advice about the scuttling of a boat called the Saxon Ranger in the Shoalwater Marine Park;

- assisting with The Wilderness Society's appeal against the latest attempt at broadscale logging near Widgemooltha;
- helping a group with their continuing concerns about existing and proposed operations at Alcoa's Wagerup plant; and
- reviewing various draft publications to advise on the risk of defamation.

Once again, Leigh was heavily involved with the law reform and legal education work covered in a separate article in this report.

Legal advice highlights:

	04/05	05/06
New clients	49	94
Total clients	70	118
Advices	81	167
Open cases	19	34

Volunteer Report

A total of 36 volunteers, the vast majority of them law students, provided a total of over 900 hours to EDO WA during 2005-2006; what an incredible effort!

Gold award winners (100 hours):

Paul Graham and Xian Li Davies

Silver award winners (50 hours):

Lucy Howard, Jeffery Dundas and Robert F. Hanna

Bronze award winners (25 hours):

Kevin Sneddon, Sonia Isaac, Rebecca Heath, Joshua Wilcox, Julia Horsely, Katrina Bercov, Michelle McComish, David Lloyd, Shevaun Stringer



Nicola Rivers, Rural, Regional and Remote Solicitor

I started with the EDO in February 2006, taking over from Rick Fletcher who was in the role of RRR solicitor since September 2004. Rick conducted many successful regional visits during his time at the EDO. He visited Geraldton, Kununurra and Broome in 2005, giving legal advice sessions and presenting on the changes to the native vegetation clearing laws and the pressures on the environment from rapid development.

In April, Leigh Simpkin, the previous Principal Solicitor, and I visited Kalgoorlie, Coolgardie and Merredin to conduct school visits, workshops and legal advice sessions. With the help of local clients and contacts we were able to organise some very successful sessions. I particularly enjoyed the school visits where we discussed environmental issues that affect the local area, especially salinity, with high school students.

I have also worked on a number of interesting advices for our remote rural and regional clients, particularly in the areas of mining and environmental protection on public land.

I have conducted two presentations to university students on environmental law and on the use of SLAPP suits to silence environmental protestors. I have also conducted a presentation to the chairs of the NRM groups in WA on the new defamation laws and what impacts they will have on groups and individuals who make critical public statements as part of a campaign to protect the environment.

I also completed our Law Society PPT funded project on 'Incentives for sustainable land use'. The project culminated in a major law reform submission that was sent to many government agencies and Ministers. More information on the project is below.

Public Purposes Trust (PPT) grant

The Law Society's Public Purposes Trust granted the EDO funds in 05/06 to undertake a project entitled "Incentives for land users who adopt environmentally sound land use management and practices".

From research conducted under previous projects, the EDO was aware that there are a number of laws and policies that act as a disincentive to managing land sustainably in WA. While a number of incentives are currently in place, we also felt that there were opportunities to develop further incentive programs or change the law to improve incentives. The aim of the project was to educate the community on incentives available, and suggest law reform to remove disincentives and create new incentives.

We conducted a literature review of the numerous articles that had been written on the topic and synthesised this into a paper. We also conducted workshops in regional areas to gain feedback from landholders as to what laws they perceived to be a disincentive, and which incentives they thought were the most effective. In addition, we asked landholders to suggest new incentives that they felt would change the behaviour of landholders.

We then developed a law reform submission collating all of this work. The submission was sent to a number of WA Government agencies and Ministers, and we have received some positive responses from them.

The project also allowed us to develop a new fact sheet on voluntary conservation (specifically conservation covenants), to update our mining fact sheet, and to begin the review of a number of other fact sheets which await anticipated legislative changes before we can finalise them. Throughout the year we advised clients on these issues and were able to do so much more effectively due to the financial support of the PPT.



Leigh Simpkin and Nicola Rivers with a 500 year old salmon gum on the NARA property in Coolgardie

Treasurer's Report

Cameron Poustie, Outgoing Treasurer

Although I was not Treasurer on the Management Committee for the duration of the 05/06 year, I retained primary responsibility for that year's accounts through to the time of writing, when the audit was finalised. Next year, while I will still be notionally responsible as Principal Solicitor (i.e. it will still be part of my overall office management role), I very much look forward to the accounting work mostly being done by Office Coordinator Fran and our new Treasurer, David Lloyd!

Audited accounts

An extract from our audited accounts for the year ending 30 June 2006 is provided separately, along with explanatory notes. A full set of reports, including auditors report, is available on request or on our website.

Current assets

Our cash position was quite tight during the year so we had to close our term deposit account. This made us more flexible in terms of meeting payments as they come due, of course, but was a lost opportunity for higher interest income. Ideally we should have a cash management account instead, allowing for withdrawals without penalty while still earning good interest. At the time of writing such an account was being investigated.

Income

Most components of our income in 05/06 were substantially similar in size to 04/05. Key differences included amounts relating to:

- Natural Resource Management / Environmental Management System project (no amounts in 05/06, as that work finished early in 04/05);
- Client Disbursements Recovered (significant amounts in 04/05 associated with Coogee, but nothing in 05/06 as we finalised only one litigious case); and
- Seminars (most income associated with our big July 2005 seminar was received late in the previous financial year).

Less significant to the result, but still pleasing, was a modest increase in membership income and donations.

Expenses

Most components of our expenses were substantially similar in size to 04/05. Key differences included:

- our Natural Resource Management / Environmental Management System project (reduced salaries in 05/06, as that work finished early in 04/05);
- Client Disbursements Recovered (significant amounts in 04/05 associated with Coogee, but much less in 05/06 as we finalised only one litigious case);
- seminars (note however that this difference was in the other direction to the two mentioned above, namely a lot of the costs of the July seminar were paid in 05/06 even though most of the income from that seminar came in during 04/05); and
- finance, audit and accounting (although we ended up generating 04/05 accounts that the auditor was happy with, the process of getting there was far from smooth and consequently quite a deal more expensive than in previous years).

Rent and power also increased significantly, and in order to keep that item down we will almost certainly need to leave our current premises in late March next year when our current five year lease expires.

Overall result

As with last year, we were 'forced' to use some of our accumulated surplus to avoid having staff resources fall too short of the demands placed on the office. The EDO continues to run a tight ship in terms of carry forward surplus; planning for a series of long term surpluses with a view to developing a nest egg has some appeal, but the reality of such an approach is to constrain current staff resources over a long period while that nest egg 'gestates'. It should also be noted that the vast majority of our funding comes from grants, and we are unable to accrue significant surpluses from year to year with such money.

It should be noted, however, that we are confident of finishing 06/07 with a small surplus.

As an addendum, it might legitimately be asked how we could decide not replace an existing staff position (Pete Stone) and still finish the 05/06 year (slightly) in the red. The principal answer to such a question is that we were banking on Pete's unique fundraising skills to effectively earn back his salary in the second half of 05/06, and were not so confident that a new person could so quickly "pay for themselves". Instead, all the new staff "got back to basics" and focused on both giving legal advice and meeting our quite substantial obligations to report to our funding bodies.

At the time of writing the relationship between legal and administrative staffing levels is a tricky issue requiring further Management Committee discussion.



Law Reform

Community Legal Education

The EDO held a number of legal education sessions in 05/06 on a range of topics. A number of presentations related to the protection of free speech through the new defamation laws and the torts raised by the Gunns litigation. Legal education sessions are listed below.

- Address to the Alumina Action Alliance on the torts involved in the Gunns litigation (conspiracy and interference with business relations, as well as breach of confidence) – August 2005.
- Presentation to volunteers of the Citizens Advice Bureau on Environmental Law and the services the EDO provide – August 2005.
- Joint panel discussion at National Council of Women WA conference on Women and the Law. Topic discussed was access to justice: third party rights in planning – September 2005.
- Regular speaking spots on RTR FM Radio on environmental law topics of interest to the public, particularly areas of upcoming law reform.
- Presentations as part of the “Freedom Fighters Tour” on the protection of free speech in the context of the Gunns litigation in Margaret River and Perth – November and December 2005.
- Presentation to members of the (then) Department of Environment on the EDO and current environmental issues – February 2006.
- Presentation at a Conservation Council general meeting on the changes to defamation laws as a result of new law reform – March 2006.
- Public seminar on Best Practice in Community Consultation in conjunction with Dr Wally Cox from the EPA – March 2006.
- Presentation to high school students on salinity and other local environmental issues at Coolgardie High School and Merredin High School – April 2006.
- Workshop on incentives for sustainable land use with community members in Kalgoorlie and Merredin – April 2006.
- Presentation for the Law Society’s Law Week on the protection of the Dampier Rock Art (in conjunction with the National Trust) – May 2006.
- Presentation on the laws relating to non-violent direct action at an “activist skillshare weekend” – May 2006.
- Presentation and discussion with political science students on defamation and SLAPP suits as they apply to environmental issues at Murdoch University – May 2006.

Rural, Regional and Remote visits

Geraldton – July 2005
 Kununurra – August 2005
 Broome – August 2005
 Merredin – April 2006
 Kalgoorlie – April 2006

Law Reform submissions

Part of the core work of the EDO is to contribute to law reform on environmental matters. A number of significant law reform submissions were completed in 05/06, with the main topics listed below.

- Environment Protection and Biodiversity Conservation Act policy; Guidelines for Significance (with Australian Network of EDOs)
- Pesticide legislation review
- Used tyre strategy (with Conservation Council)
- Senate Inquiry into national parks, conservation reserves and Marine Protected Areas (with ANEDO and others)
- Scope of State Infrastructure Strategy
- Information Policy Statement
- Fire and Emergency Services Legislation review (with Conservation Council)
- Review of Forest Products Act
- Water policy framework
- Incentives for sustainable land use (funded by the Law Society’s Public Purposes Trust)

Hours of operation and contact details
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