



2006-2007 – The EDO on the move

Dr Hannes Schoombie Convenor

Having been the EDO Convenor for ten years at this AGM, it is always interesting to me to think of the titles to my Convenor's report. How can a year be summarised in just a few words? This year was particularly challenging in this regard, as in many ways last year's title of "A year of transition" still seems apposite. This year there were no staff changes, but instead the staff were tasked with the difficult process of moving offices.

The move across the road to Suite 4, 544 Hay Street from the Kings Hotel freed up significant resources for our core operations, but the process of moving was an eventful one, to say the least. The full story does not bear telling here, but suffice it to say that a leaky roof, inefficient old air-conditioning and a medical emergency for one of the staff conspired to create a truly challenging few months. Thankfully, those issues (and more) have now all been successfully addressed. I commend the staff for steering the organisation through such a difficult time, and I urge members to come in and check out the new place when they can! We are grateful for having retained an office location in the centre of Perth which we feel best serves the needs of the EDO and its clients.

From the point of view of an environmental litigant 06-07 was arguably just as challenging a year. Our Federal environmental laws were the subject of a number of amendments in late 2006, with many being considered regressive from the point of view of community involvement in the decision-making process. One such change worth noting here is the removal of the previous ban on requiring litigants to undertake to pay financial compensation to the developer should the litigation both fail and cause losses for the developer. It will be interesting to see whether the Federal Court exercises its discretion not to require such undertakings in situations where the litigant is pursuing the public interest.

Late June 2007 also saw the handing down of the WA Court of Appeal decision in *Re Minister for the Environment; ex parte Elwood* [2007] WASCA 237. This case gave a wide interpretation to the powers of the Minister for the Environment to approve changes to a "proposal" under the Environmental Protection Act without the requirement for a fresh assessment of the changes by the Environmental Protection Authority. Under s45C of the Act, the Minister must not give approval to such changes without EPA assessment if he or she considers that the

changes might have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal. The Court held in this regard that the Minister should compare the effect of the proposed changes with the effect on the environment of the original proposal as implemented – not with how the original proposal was supposed to have been implemented, having regard to the implementation conditions set when the original proposal was approved (at paragraphs [115], [117], [118] and [166]; Buss JA for the Court). Lee McIntosh and I will be talking about this case and its problematic consequences as part of a National Environmental Law Association event to be held at Minter Ellison on Tuesday 30 October 2007.

We were not presented with any suitable opportunities for civil litigation this year, which allowed more time for us to help more clients in total; the legal advice highlights in Cameron's report show a significant growth in total clients, cases closed and total advices when compared with 05-06.

Staff have certainly been working very hard throughout the financial year the subject of this report. That effort has of course still not enabled us to assist all comers, with a typical month involving the referral of some requests for legal assistance to one of our pro bono lawyers or law firms, or at very least deferring our capacity to assist to a later week or sometimes even month. In short then, there remains significant unmet need in the environmental law sector, which we can only hope will be at least partially addressed when we move to a new triennial Commonwealth funding agreement from the middle of 2008.

We were fortunate this year to have received a slightly higher number of donations than in 05/06, and our fundraising income was boosted by the contributions of Katrina Bercov, who put together our first and hopefully not last Quiz Night on 31 October, the same night as last year's AGM. The event raised an amazing \$6,900, more than any other EDO WA fundraiser. The funds enabled us to go some way to recovering our two lawyer / one coordinator staffing levels, with Office Coordinator Fran moving to four paid days of work from the beginning of January 2007.

Also very positive this year was the assistance we received from volunteers. Michelle Ng, one of our star volunteer law students for the year, has written elsewhere in this Annual Report about the key tasks she and other

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The EDO thanks the following sponsors for their support:



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law students have helped with in 06/07, and we very much appreciate the quality and quantity of those contributions. In all, around 50 volunteers assisted us during 06-07 (05-06: 36), working more than 1,750 hours (05-06: 900). It gives me great pleasure to recognise the following volunteer award winners in particular:

Bronze award (25 hours): Christal George, Sonia Isaac, Jerrem Ng, Kathryn Grocke, Melissa Yuen, Penelope Pain

Silver award (50 hours): Craig Chappelle, David Lloyd, Hayden Teo, Lucy Howard, Michelle McComish, Michelle Ng, Rosie Phillips, Sally Fox, Toby Nisbet

Gold award (100 hours): Inga Berg, Katrina Bercov, Paul Graham, Kevin Sneddon

It should be noted that the above list compares very favourably with 05-06, where we gave out two gold awards, three silver and ten bronze.

It will be noted that some of the above people are volunteer lawyers rather than law students. In those cases, obviously their contribution cannot be measured solely in hours. Other volunteer lawyers who made invaluable contributions to our legal output in 06/07 are Lee McIntosh, Michael Bennett, Andrew Roberts, Steve Walker, Greg McIntyre SC, Hylton Quail, Alex Gardner and Peter Rattigan.

Perth's bigger law firms have become bigger supporters of the EDO this year, with Mallesons for example providing very useful free advice during our lease negotiations, and of course also providing the venue tonight. I should also take this opportunity to thank Clayton Utz, and in particular their pro bono coordinator Nick Cooper, who have come on board as an enthusiastic pro bono partner during the course of the 06/07 year.

I listed above Lee, Michael and Andrew, who are of course on our Management Committee. This year also saw Management Committee members assisting with financial management (David Lloyd), running community legal education sessions (Lee McIntosh) and writing articles for newsletters (Michael Bennett). We really are very lucky to have such an active Management Committee, and I take this opportunity to thank all who served in 06-07.

We are sorry to say goodbye, for now at least, to Deputy Convenor Andrew Roberts and committee member Jay Anderson. Jay left us in February 2007, after serving since 2003, to take up a new position in her beloved area of speleology (cave ecosystems), that position being based in Margaret River. We also thank Amber Kwaymullina for her interest in the EDO. Amber had to resign due to work commitments in February 2007 after originally nominating to the Committee at our last AGM.

Andrew Roberts will not be continuing as Deputy Convenor, after serving a remarkable 10 years on the Committee, including nine years as my Deputy Convenor. Andrew's wise counsel over the years and dedication to the cause of the EDO will really be missed by us, but we will still be able to draw on his expert input in areas such as planning law.

We were pleased in March 2007 to welcome Taron Brearley onto the Committee. Taron works at the Office of Energy, and brings to the EDO an interest in strategic planning as well as skills as an economist.



Solicitors' reports

• Cameron Poustie Principal Solicitor

2006-07 has been an action-packed year, although a lot of the action has not been as enjoyable as one would like! It is hard to reflect on this year without thinking about the office move, which turned out to be an even more involved and stressful undertaking than we had anticipated. That said, at date of writing we are relatively settled in at our new premises, which are smaller but considerably cheaper than the rent we expected to pay had we stayed on at the Kings Hotel. Every year those savings will allow us to afford more staff, and therefore provide a better service to our clients.

Public interest environmental law in WA is not without its frustrations, a key one of course being the requirement for litigants to show 'standing', or that they have a "sufficient interest" to be able to bring their case to court. Litigants under WA law mostly also face the risk of paying the legal costs of their opponents if their case is unsuccessful, which in practice can amount to the risk of liquidation for the majority of WA environment groups. These hurdles have meant that we have not been involved in any public interest environmental civil litigation in 06-07, but we of course remain keen to assist a suitable client when the time comes.

Our capacity to litigate is, of course, hampered by the fact our Commonwealth funding cannot be used for litigation, which in practice meant in 06-07 that I could not spend any paid time on litigation-related matters. The limited litigation time I did spend in 06-07 was in fact mostly on two criminal public interest matters; see further below.

My key legal advices in 06-07 dealt with issues including the following:

- the legal status of "conditions" and "recommendations" relating to fisheries under the *Environment Conservation and Biodiversity Protection Act (Cth)*
- the Burrup Peninsula
- the construction of a brickworks at Perth Airport
- the expansion of Alcoa's Wagerup facility
- the possible introduction of container deposit legislation into WA
- the proposed Denmark community windfarm
- the massive proposal for salt works in Exmouth Gulf, and
- reviewing various draft publications to advise on the risk of defamation.

Key outcomes from my legal advice work in 06-07 included:

- referring to the Ombudsman some concerning legal questions about the issue of an Alcoa Wagerup-related Environmental Protection Act pollution licence
- helping an environment group ward off an unjustified defamation threat
- providing legal advice that assisted in convincing the City of Albany to vote to propose the expansion of third party planning appeal rights in that local government area, and

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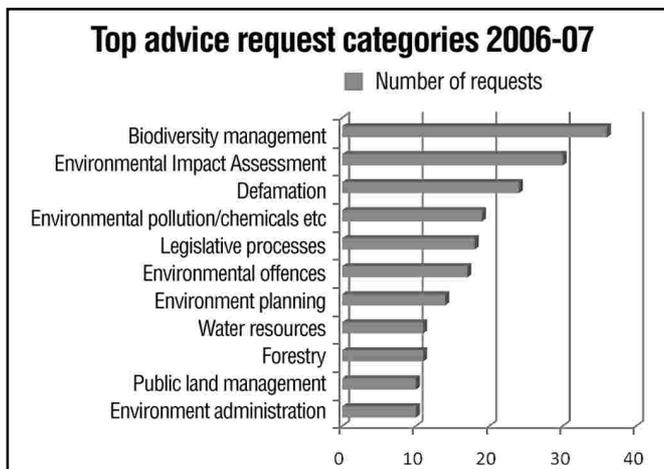
- forcing the police to drop one charge of obstruction against an Arcadia protestor on the basis that the contractor said to have been obstructed was not a “public officer” under the WA Criminal Code.

I worked on two public interest criminal matters in 06/07, both relating to nonviolent protests conducted in defence of Arcadia coupe in November 2006. At date of writing one of those matters has been to trial and we are optimistic of acquittals on both charges. Thanks so much to barrister Steve Walker for his masterful presentation of the arguments in that case.

I wrote a number of law reform submissions during the year, which are covered in a separate article (along with those prepared by Nicola). It was also a busy year for both of us in terms of Community Legal Education events (again, see separate report), although more so for Nicola, as she has travelled around the State as part of her Rural, Regional and Remote role.

Legal advice highlights

	05/06	06/07
New clients	94	84
Total clients	118	133
Advices	167	182
Cases closed	18	70



• Nicola Rivers
Rural Remote and Regional solicitor

This year provided opportunity to advise clients from all over WA on a huge range of environmental matters. Featuring prominently were environmental impact assessment, forestry, land clearing, and water management.

Some of the major issues that I advised on were the implications of the Tasmanian Wielangta forest case for WA forestry, the lead pollution in Esperance, the logging of Arcadia forest and the Alcoa expansion. A highlight of the year was seeing the Nunn block near Bridgetown finally included in the conservation estate after more than a decade of campaigning by the local environment group, Bridgetown Greenbushes Friends of the Forest.

My law reform focus in 2006-07 was waste management law. We received a grant from the Law Society's Public Purposes Trust to run community legal education and provide law reform suggestions on waste law. The subject for the waste project was very broad, covering all the Federal and WA laws that regulate waste generation,

transport and disposal. The project coincided with the release of the draft *Waste and Resource Recovery Bill* which became a major focus for the project, particularly the possibility of the introduction of a container deposit scheme for WA.

As part of the project I presented two workshops on the proposed WARR Bill to help community members understand the Bill and write submissions to Government. We also drafted a Factsheet on waste management law and advised clients on a number of waste issues. The major output of the project was a paper outlining all waste management laws in WA and nationally, and providing law reform suggestions for WA. I had invaluable assistance in this project from a number of volunteers including Paul Graham, a lawyer from the UK, and Inga Berg, a lawyer from Germany.

Some of the highlights of my year were the visits to Busselton, Denmark and Port Hedland as part of the RRR program. During the visits I presented sessions on environmental law, gave legal advice to local community members, and finally got to meet some clients that I had spoken to over the phone for more than a year, but never met. The sessions included discussions of defamation law, changes to the EPBC Act, waste management law reform, and the new contaminated sites regime.

As always, our volunteers have given me a huge amount of assistance researching various laws, drafting fact sheets, writing newsletter articles and generally providing a lively atmosphere in the office.

Many thanks to Cameron, Fran and the management committee for their support, and particularly to the previous principal solicitors of the EDO, who continue to give me much assistance – Leigh Simpkin, Lee McIntosh and Michael Bennett.

Coordinator's report

For me this has been a challenging year, with important outcomes achieved to secure funds and move to a new EDO WA office location; installation of a new IT system in addition to ongoing support for the provision of legal services in Western Australia and effective networking at State and National level within both the Australian Network of Environmental Defenders Offices and associations of Community Legal Centres.

The intensity of EDO WA activities during the year was interspersed with a medical crisis and I sincerely acknowledge the contributions from the EDO lawyers, Nicola and Cameron, plus all the EDO WA volunteers who enabled the office relocation to become reality and see us installed in smaller, but cosier premises in the heart of Perth CBD.

Despite a major office upheaval, it was “business as usual” and many of the visitors to the old office will tell you of the stacks of boxes containing books and papers. No sooner was the move completed and all the empty packing boxes disposed of than stories were told by visitors to the new office having to negotiate their way past an equally large stack of boxes containing the new server, workstations and various IT paraphernalia.

In 2006 -2007 the Law Society provided a grant to work on Waste Management law, at the same time of the drafting of the WARR Bill.

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The reality of the issue faced us head on in our new office location where the waste was no longer someone else's responsibility. To date, the EDO WA has been unable to obtain bins for disposing of recyclables, except for paper and cardboard waste. Some of the regional centres are way ahead of us in the Perth metro area.

In amongst the physical movements were human movements. I have enjoyed working with the many volunteers who freely give up their time in pursuit of hands on experience in environmental justice with the EDO. This was especially so with Inga Berg, the law student intern from Germany. She settled in well to Perth and completed her legal examinations by correspondence – receiving her successful results days just before her departure. I know that she found many contrasts between Western Australia and Germany and was particularly animated in the debate on the issue facing Australians for the humane management of feral camels – or the alternative of being left alone to Darwinian principles of “survival of the fittest” and natural evolutionary processes!

David Lloyd, the EDO WA Treasurer, came in new to the organisation with all guns blazing and taught me more than a few things about precise accrual based accounting. Whilst extremely taxing at times I also learnt more about tax rules, such as those relating salary sacrifice! I have valued the contributions from David to support me with implementation of new financial management tools and the transfer of financial data onto a new IT system using the most recent software which integrates well with other office applications.

During the year a number of organisational goals were achieved and existing plans revisited plus concepts and drafts for new plans made. EDO members and volunteers were active throughout the year and it is with the long-term vision that EDO WA intends to embark on an organisational strategic planning process for the next decade and beyond.

The opportunity to embark a strategic planning process will harness the energies of all EDO staff, volunteers, partners and supporters and enable the organisation to grow in maturity as the leading community environmental legal centre in WA as the sequence of events unfold from climate change impacts and with the development and introduction of new technologies. EDO WA plans to stay abreast of changes in order to tailor and develop its services. This will progress hand in hand with the fledgling Fundraising and Promotional Plan for 2008.

I am proud to be a cornerstone of EDO history and had the pleasure of meeting and communicating with former staff throughout the year. In fact, Kirstine Forester enabled EDO WA to be the recipient of workplace giving scheme at the Equal Opportunities Commission for which we are very appreciative. Margaret Robertson provided useful suggestions for the EDO Newsletter and Leigh Simpkin regularly touches base.

Since starting in my position I have benefitted from the work commenced by Katrina Bercov and Pete Stone in leveraging funds for EDO WA through membership drives and a Quiz Night. The annual membership fees have not changed, but more and more members recognise that the amounts are not adequate for administration and choose to make a donation at the time of renewing or taking out a

new membership. This awareness and positive action by members to make unsolicited donations reflects the community commitment to ensuring the longevity of EDO WA and the need for ongoing environmental legal services.

I anticipate that the coming year will involve as many changes as the last but with a more strategic and sustainable focus and less on office ergonomics and technical specifications of electronic equipment.

Francesca M Jones
EDOWA Coordinator 2006-07

EDO law reform submissions

The EDO keeps busy every year making recommendations to State and Federal Governments about ways that environmental laws (or other laws affecting environment groups) could be improved. In most cases those submissions are made in response to invitations from government having regard to the value of suggestions we have made about other topics.

In the 2006-07 year we made the following key submissions:

- the proposed changes to the Environmental Protection Act 1986 (August 2006)
- community consultation (August 2006)
- the proposed Waste Avoidance and Resource Recovery Bill (November 2006)
- the Biosecurity and Agriculture Management Bill (February 2007)
- the review of the Public Interest Disclosure Act 2003 (February 2007)
- proposed Planning Infringement Notice regulations (March 2007)
- the draft Biodiversity Conservation Strategy (March 2007)
- the draft paper on the proposed Water Resources Management Bill (May 2007), and
- the proposed changes to the Associations Incorporation Act (May 2007).

We also provided input into national submissions made by the Australian Network of Environmental Defender's Offices, including:

- The Prime Minister's task group on emissions trading
- Possible design for a national greenhouse gas trading scheme
- Amendments to the Environment Protection and Biodiversity Conservation Act
- National pollutant inventory NEPM variation.

Most of our above submissions are available on our website: www.edowa.org.au/submissions/index.html.

If not, please email Cameron Poustie for a copy, at cpoustie@edowa.org.au



Community legal education

The EDO delivered a number of community legal education outcomes in 06-07 on a range of topics. Key legal education activities are listed below.

- Nicola gave a guest lecture in July 2006 to Murdoch University science students on environmental law
- Cameron wrote an article about the *Environmental Protection Act* “minor or preliminary works power” for the September 2006 Greener Times
- in November 2006 Cameron presented to a group at the Glyde In Community Centre in Fremantle about Freedom of Information laws
- Nicola presented a workshop in Perth in November 2006 on the proposed *Waste Avoidance and Resource Recovery Bill*
- At Denmark in November 2006 Nicola presented on defamation law and the *Waste Avoidance and Resource Recovery Bill*
- our revised Clearing Factsheet was finalised and put on our website in November 2006
- our new Contaminated Sites Factsheet was finalised and put on our website in December 2006
- Nicola gave a presentation in Busselton in January 2007 on the changes to the EPBC Act and defamation law
- Cameron held two stakeholder meetings (in February and March 2007) for the purposes of developing a new handbook about nonviolent direct activism and the law (which at date of writing is advanced but not yet finalised)
- Cameron wrote an article for the March 2007 Greener Times about the proposed *Associations Incorporation Act* reforms
- as part of the second day of the Conservation Council’s State Conference in March 2007, Cameron spoke at Naragebup Rockingham Regional Environment Centre about the late 2006 changes to the *Environment Protection and Biodiversity Conservation Act* (Cth)
- Nicola gave a guest lecture to Murdoch political science students on the Wielangta forest case in Tasmania
- Nicola presented a workshop in Port Hedland on environmental laws, and the new *Contaminated Sites Act* in May 2007
- Lee McIntosh (in her capacity as Management Committee member) ran a session about the new *Contaminated Sites Act* as part of a Conservation Council General Meeting in May 2007
- we published a revised version of our Aquaculture Factsheet in June 2007
- Michael Bennett (in his capacity as Management Committee member) wrote an article about the new Lobbyists Register for the June 2007 Greener Times
- we published a new Factsheet on waste law
- in June 2007 Cameron gave a presentation to the Claremont branch of the University of the Third Age (an educational and social group for over-55s) about the EDOWA, including providing an overview of some key environmental law cases we have run, and
- we published a paper outlining all waste management laws in WA for our Law Society project.



Volunteer law students: the backbone of the EDO

Michelle Ng EDO volunteer

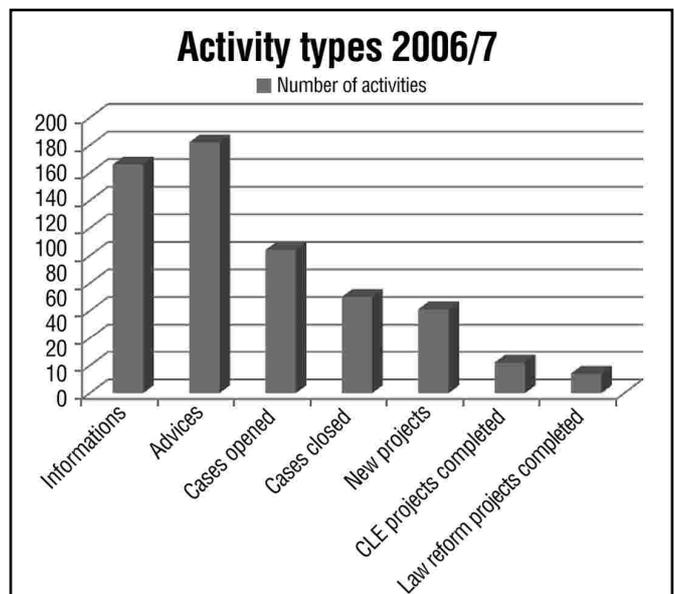
Volunteer law students helped with the following key things in 2006-07:

- preparing notes and draft slides for community legal education presentations
- researching and drafting new and amended Factsheets for our website
- researching and drafting our proposed nonviolent direct activism handbook
- drafting law reform submissions, and
- drafting community legal education articles for publication in various newsletters.

Volunteers at the EDO mainly do some of the labour-intensive research work for Cameron and Nicola, freeing them to help as many different clients as possible. Resources are limited, and there is no real shortcut when doing research. Most of the time spent by many of the volunteers is essentially puttering around the worldwide web, rummaging through government sources, and laboriously sifting through legislation, before throwing it all together into a semblance of order.

I’ve had a range of diverse experiences from volunteering at the EDO. There is always something different to do, and people from a wide number of backgrounds to meet. There is a variety of topics which I have worked on, many of which I had never thought about, or knew the importance of, before my time here. Sometimes the work is boring, sometimes amusing and, more often than not, somewhere in the middle. It is, however, always important.

There is not much practical application of anything in law schools, and it is great to realise that at least some of that time spent acquiring such a large debt was not completely meaningless. I would highly recommend the EDO to students wishing to gain some actual application of knowledge, in comparison to a vacation clerkship, where the main requirement is to make sure to show up dressed and on time in the morning.



Treasurer's report 2006-07

After starting the year with a complete turnover of staff at EDO WA and the approaching need for an office move, the year ended with new and cheaper office premises for EDO WA and with 100% staff retention. The positive start for 2007-08 financial year can be attributed to some key factors which occurred during the 2006-07 year; significant achievements in securing additional funds and effective cost-cutting measures; sustained volunteer support, and committed and flexible staff.

In 2006-07 funds were received from both the Commonwealth and State Departments of the Attorney General, 33% and 31% of total income respectively. Funding provided from these departments is dependent upon regular reporting as part of the funding agreement. EDO WA consistently submitted accurate and timely reports throughout the year and was selected as a centre to receive visitors from the State and Federal Legal Aid offices. The relationships between EDO WA and the Departments of the Attorney General are positive and we look forward to that continuing in future years.

The Public Purpose Trust of the Law Society of WA funded (15% of total income) an EDO WA project to implement community legal education and law reform papers concerning waste management legislation in WA.

Lottery West provided project funds (7.5% of the total income) to support the EDO WA office relocation, IT overhaul and staff training. These funds came at critical time and EDO WA appreciates receipt of these funds as an acknowledgement of its role in the community in providing legal resources. Many of the purchases and expenditure on items outlined in the grant schedule will improve efficiency and are intended to minimise rising costs of overheads and any large outlay on IT equipment in the near future. EDO WA has benefitted enormously from IT support services provided by Msquared. In addition, at the end of the year the Commonwealth Department of the Attorney General provided two complete new workstations for volunteers and indicated its intention to contribute to the cost of a new telephone system for the EDO WA office.

The unflinching support from the EDO WA membership throughout the West Australian community has resulted in continuing membership numbers, a 4% increase in donations and a sell-out Quiz Night event on All Hallows eve. The success of the Quiz Night event, organised by Katrina Bercov, increased EDO WA revenue and provided an opportunity for members and supporters to renew and invigorate their active giving, both through memberships and donations (nearly 10% of total income). Sponsorship and planned giving programs are both areas which EDO WA intends to build upon in the coming year.

The sustained volunteer contributions to EDO WA enhance all aspects of EDO WA services and as Treasurer I can confirm that their value is priceless. Further recognition of volunteers is attributed by colleagues elsewhere in this Annual Report and I am confident that their contribution will continue to be important long into the future.

Turning to the staff, 2006 -2007 has benefitted from the professionalism, dedication and flexibility of staff employed by EDO WA. Not only were all staff new to the organisation



in 2006, but a number of new steps were initiated to streamline and improve financial management, accountability, reporting and ease of payments.

Revised accounting procedures were instituted in which figures for income and expenditure are allocated to the appropriate funding stream on entry into the accounts. Although there is extra work associated with allocation of the annual budget to these funding streams this method now allows quick and accurate reporting. This year has seen an increasing reliance on electronic banking and use of emails for obtaining financial authorisations. The acquisition of new software from Lotteries West funds will enable direct email interface and automated ATO reporting. All of these elements of financial organisation have been aimed at reducing staff time and improving accountability and efficiency.

Currently we only produce a consolidated financial report for the organisation and its Tax Deductible Public Fund, but we will be reporting on the Public Fund separately in future years. The separate Public Fund committee is responsible for producing and signing off on all reports from the Fund.

Jonathan Lamprell-Jarrett of Dry Kirkness Chartered Accountants was appointed to conduct the 2006-07 audit of EDO WA accounts. A full set of reports is available on request.

As Treasurer of EDO WA I wish to acknowledge and emphasise the importance of investment in sound administrative structures and diligent staff. As EDO WA enters the 2007-08 financial year the organisation has prepared a Fundraising Plan, a Financial Policy and more detailed financial procedures in order to satisfy our statutory and reporting requirements.

David Lloyd
EDO WA Treasurer 2006-2007

