



Annual Report 2009

Environmental Defender's Office W.A. (Inc.)

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Environmental
Defender's
Office

Western Australia (Inc)

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Mission Statement

Protection of WA's environment by providing community groups and individuals with environmental legal services including advice, education, representation and opportunity to participate in reform of laws affecting the environment.

About EDOWA

The EDO is a non-profit, non-government community legal centre specialising in public interest environmental law. Our services include:

- providing community groups and individuals with legal advice and representation on environmental issues;
- promoting environmental law reform; and
- undertaking community legal education.

Acknowledgements

EDOWA gratefully acknowledges the following funders:

- The Government of Western Australia Department of the Attorney General
- The Australian Government Attorney General's Department
- The Law Society of Western Australia (Legal Contributions Trust)

Convenor's Report

The year 2008/09 has proven to be, yet again, another eventful year for the EDO.

As is customary, my first thanks must go to the EDO staff for their work and dedication to the organisation, particularly our outreach solicitor Kristy Robinson who stepped into the breach and ably acted in the position of Principal Solicitor between October 2008 and January 2009. I am pleased to welcome our new Principal Solicitor, Josie Walker who hails from EDO NSW, and our new Coordinator, John Dyer, who brings a wealth of experience in community legal centres. I also extend my gratitude to Cameron Poustie and Amber Centa, who we farewelled last year, for their contribution to the EDO.

I also wish to thank our Management Committee members. Without the time these volunteers give to the organisation it could not exist. They are Rahima Bannerman, Janice Dudley, Sharon Mascher, Lee McIntosh, Wayne O'Sullivan, Peter Robertson, and Garry Rutherford. Thank you also to those Management Committee members we have farewelled throughout the year: Michael Bennett, Taron Brearley, Ruth Sandri, Stephanie Turner and Alison Xamon. Michael moved to Canberra after a long and rewarding association with the EDO. He acted as our first principal solicitor.

Volunteers and pro bono lawyers also make a valuable contribution to the work of the EDO. It is a testimony to the EDO's standing in the community that so many law students are willing to donate their time to the EDO free of charge. Indeed this year we have even had a waiting list of volunteers! It gives me great pleasure to recognise the contribution of the following volunteer award winners:

Bronze Award (25 hours)

Jannette McLeish, Minori Lee and Una Tseng

Silver Award (50 hours)

Rachel Collins, Saxon King and Divvy Doss

Gold Award (100 hours)

Kelly Dawson and Renee Asher

While the EDO has not undertaken any litigation this financial year, its staff has been kept busy providing advice and assistance to clients on a wide range of issues. Pressure to develop pristine areas of the State is stronger than ever following the election of a new State Government in 2008. Barrow Island, the Kimberley and the South West are just some of the unique areas under pressure. We have recently witnessed a lemming-like joy amongst the press and some politicians at the go-ahead of the Gorgon project on Barrow Island, a Class A nature reserve.

As part of the EDO's outreach program, EDO lawyers travelled to many of these areas under pressure last year, such as Broome, Exmouth, Esperance and Margaret River, to conduct community legal education workshops and assist the involvement of community groups in the decision making processes.

Law reform is another important component of EDO's work. There has been a lot of political pressure for potentially significant changes to the environmental approvals procedures to cut 'green tape'. It is essential that public interest environmental protection viewpoints are considered as part of this process, which is why our Principal Solicitor Josie Walker is part of the Minister for Environment's Environmental Stakeholder Advisory Group which will make recommendations to the Minister in relation to this issue.

Also as part of EDO's law reform work, I was a member of the Expert Committee on the Regulation Review on Clearing of Native Vegetation. This committee was established in July 2008 by the then Minister for Environment to review the Environmental Protection Act 1986, and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004. Its work culminated in a report to the Minister with seventeen key recommendations on improvements that could be made to the regulatory framework controlling clearing of native vegetation in WA, and the decision making processes of the agencies responsible for the implementation of that framework. This report and its recommendations are also being considered by the Environmental Stakeholder Advisory Group.

At our Strategic Planning Day in May 2009, the Management Committee had a chance to reflect on operational priorities for the EDO. There were no changes proposed to our Strategic Plan for 2008-2011, however it was agreed to prioritise certain activities within this plan. These included:

- providing a quality high-volume advice service in simple cases
- acting in strategic cases with a strong public interest dimension
- continuing to offer legal education workshops in rural and remote areas
- ensuring that everyone who could benefit knows about EDO services
- conducting regular satisfaction surveys of clients and workshop participants

The gap of several months between the changeover of principal solicitors has led to our advice and case numbers this year being slightly lower than previous years due to lack of manpower in the office. We are now running at full capacity again and are looking forward to another positive year ahead where we can make a difference.

The ability of the office to run at full capacity is, however, always subject to the ability to maintain our funding levels. We were fortunate in 2008/2009, the year the subject of this report, to have received funding from the Law Society's Legal Contribution Trust, to make up for a shortfall after we did not receive a grant from the Law Society's Public Purposes Trust. Next financial year 2009/2010, amidst a global downturn, we face a different situation. The EDO did not receive grants from either of these sources and we are now drawing from our 'safety net' accumulated surplus. While it was the purpose of the surplus to be used in times such as these, we will not be able to operate at the same level next year if we are also unable to secure further funding.

At the beginning of the 2009/2010 financial year, we remain optimistic and focused on improving the level of service we can provide clients to assist them with their important work of defending the unique environment of Western Australia.

Dr Hannes Schoombee

Principal Solicitor's Report

I commenced work as Principal Solicitor of EDOWA in January 2009, having previously worked as a litigation solicitor for the EDONSW for two and a half years. I have enjoyed the challenge of moving to this beautiful state, and taking on a much greater diversity of work, including managing the office, giving legal advice, writing law reform submissions and presenting workshops. In fact the only thing I have not done since I arrived in Western Australia is go to Court!

There has been a steady stream of requests for advice since the beginning of the year. These included significant advices given to environmental groups on major resource projects such as the LNG gas hub proposal in the Kimberley and the Chevron LNG gas processing plant proposed for Barrow Island. We have also helped community groups to lobby against harmful development in their local area and provided advice on reporting breaches of conditions of approval. A client whom we advised in relation to a Freedom of Information request was successful in having the disputed documents released by the Information Commissioner.

I am inspired by our clients who continue to fight selflessly for the protection of the environment, often at considerable personal cost. Usually the clients who come to us seeking our help have nothing to gain from the campaigns that they are involved, but are motivated by the conviction that the places that they love, and the precious environmental values of Western Australia should be preserved for future generations. They are usually fighting against considerable odds, with the substantial resources of government and industry ranged against them. It is a privilege to be able to assist these people, to even out the playing field a little by giving them good legal advice.

We have been fortunate in having eight very talented law student volunteers helping with the work of the EDO since I arrived. Volunteers have carried out legal research, updated fact sheets, and written articles for our newsletter. They have also cheerfully helped out with a backlog of administration work such as archiving of old files and updating databases.

The past six months have been significant from the point of view of law reform. We have taken every opportunity to call for positive change, such as creation of a Biodiversity Act for Western Australia. Equally important is resisting calls for law reform from those who would like to change the system for the worse.

The resources lobby is arguing strenuously for reform of the environmental approval system, as seen in the Industry Working Group Report released in August 2009. Debate about the Report fired up in April 2009 when some of the stakeholders' submissions were leaked to the press, provoking outrage among environmental groups. Changes proposed by the Industry Working Group could weaken environmental protection, such as transferring all environmental approvals for mines and petroleum projects to a single decision-making authority – most likely the Department of Mines and Petroleum itself. Mining and petroleum interests also want to make important changes to the assessment process, to allow works approvals and environmental licences for mines and petroleum projects to be granted before the environmental assessment process is complete.

The EDO has played an important role in opposing these reforms, and suggesting alternative changes which would improve efficiency without compromising environmental outcomes. In May the EDO was asked to join the Environmental Stakeholder Advisory Group, along with representatives from conservation groups, the mining and development industries, local government and academics. This group has been convened by the Minister for Environment, Donna Faragher, to provide more balanced advice on reform of the Environmental Assessment system. It is likely to provide a number of important advices to the Minister for Environment in the year ahead.

In April 2009, the Environmental Defender's office made representations to the Auditor-General's review of management of Threatened Species by the Department of Environment and Conservation. Many of the points raised by the EDO were picked up in the Auditor-General's final report released in June, including the need for a new Biodiversity Act to replace current ad-hoc arrangements for threatened species protection. The Auditor-General also said that a system should be developed to identify and manage habitat critical to threatened species survival. This should strengthen the pressure on government take much-needed action on threatened species law reform.

The previous year's law reform submissions have borne some fruit this year, with the Legislative Council's Legislative Standing Committee recommending that objectors should have the right to appeal to the State Administrative Tribunal against the grant of planning approval where the proposal is a matter of public or environmental interest. The EDO lobbied strongly for third party appeal rights in the previous financial year, including giving evidence at the Legislative Standing Committee's review of the State Administrative Tribunal Act.

In the year ahead I will make it a focus to promote the work of the EDO to the broader community, so that all of those who could use our services throughout the state know that we are available to help. This will probably mean a gradually increasing volume of work, so we will need to increase the turn-around time for smaller advice matters, while not neglecting the major public interest matters which require a considerable commitment of resources. We will continue to provide rural, remote and regional workshops and advice clinics outside of the Perth metropolitan area. We will continue to be a leading advocate for environmental law reform on issues which have the greatest potential to affect environmental outcomes.

Josie Walker

Outreach Solicitor's Report

As the outreach solicitor of the EDO, my visits around Western Australia as part of the remote rural and regional program (RRR program) have by far been the highlight of 2008/2009. Continued pressures from the resources boom and a pro-development government which has threatened to "dramatically overhaul the current unwieldy approvals process" mean it is a crucial time for environmentally concerned community members to be involved in these decision making processes to help protect the unique environment of Western Australia. The RRR program allows us to extend our services to support the involvement of the community across the state.

As part of the program I visited Esperance, Lancelin, Margaret River, Exmouth and Broome this year to conduct workshops on various aspects of environmental law, and run free advice clinics. Along with many other parts of WA, these areas are each a place of special beauty and environmental significance that is under threat from industry and development. These threats include dust pollution from shipping activities in Esperance, land use and climate change pressures upon Lancelin coast, threats to biodiversity in Margaret River, development pressures in Exmouth including a proposed salt mine in the gulf, and of course, the LNG hub proposed by the State Government for the Kimberley coast. It is always inspiring to meet local community groups fighting tirelessly and selflessly to protect these special areas, and to be able to assist their work.

In terms of providing legal advice, some significant issues I advised on throughout the year include illegal clearing of native vegetation, pollution laws, breaches of licence conditions and works approvals, means to protect biodiversity and the creation of reserves in WA. I have also advised and assisted clients on opportunities for mining objections particularly in relation to uranium mining, pesticide poisoning of trees, Ministerial bias and appealing industry licence conditions. As always, individuals and community groups speaking out can be threatened with defamation action, so I have also provided advice in this area to several clients.

I would like to thank the EDO staff I've worked with this year for each being wonderful colleagues and friends. A huge thank you must also go to EDO

volunteers who, despite being busy people, devote their spare time to assist EDO staff with work and have been an amazing help to the office this year. A special thank you must also go to our legal intern Kelly Dawson who worked tirelessly updating our fact sheets and helping the office tick over when we only had one solicitor on staff.

I look forward to being able to build upon the relationship with clients, members and staff that I have developed this year, and to continue to provide a high level of service to our clients to help their fight for our environment.

Kristy Robinson

Professional Development Activities undertaken by EDOWA staff and volunteers during the year

- National Association of Community Legal Centres (NACLC) Conference, Darwin
- Legal Aid Continuing Professional Development Seminar – various topics.
- Community Legal Education (CLE) for Community Legal Centres (CLCs) Program – Tax law for CLCs
- CLE for CLCs Program – Creating Dynamic Community Education Conference 2008
- NACLC CLSIS Training
- CLE for CLCs Program – Privilege
- CLC Association – Legal Profession Act
- In-house presentation on Environmental Assessment Law and current Law Reform Issues by Lee McIntosh, Dr Hannes Schoombée & Michael Bennett
- CLE for CLCs Program – Trade Practices issues for consumers
- Legal Aid Continuing Professional Development Seminar
- Three- Day Intensive Course in Environmental Protection Law, University of Western Australia
- In-house training in workshop facilitation by Alive and Kicking

Service Delivery

Advice and Casework Services

The EDO provides a free legal advice service to members of the public in public interest environmental law matters.

One EDO staff solicitor is designated as 'duty solicitor' each week, and has the responsibility for being the first point of contact for new requests for advice. Requests for advice are principally made by phone, but some also arrive by email. The duty solicitor assesses the request for advice and may deal with each request for advice in one of three ways.

If the matter is a relatively simple environmental law matter, the duty solicitor will give a short advice to the client over the phone or by email. About two thirds of requests for advice are dealt with in this way.

If the matter is a more complex matter which requires a number of hours' or up to several weeks' work, the client is asked to fill in a Request for Assistance form. The matter then goes to a casework meeting and solicitors determine whether the matter has a strong public interest dimension, whether the office has the appropriate expertise and resources to deal with the matter, and that the client does not have the financial means to seek advice from a private lawyer. If these criteria are satisfied, then the matter is opened as an EDO casework file. The EDO Management Committee reviews new cases each month and comments on the appropriateness of cases undertaken. Cases involving litigation or a very substantial time commitment cannot be opened without the approval of the Management Committee.

Other requests for advice are dealt with by providing information, rather than legal advice. A small number of cases are referred to other service providers, where the matter does not fit within the EDO's casework guidelines, or the EDO has a conflict of interest.

The EDO also holds face-to-face advice clinics in rural, remote and regional areas, usually in conjunction with a community legal education workshop.

Community Legal Education

Community legal education workshops provide legal information to members of the community, empowering them to take action on their own behalf to defend the environment. EDO workshops are tailored to the interests of communities where they are held. Core topics usually include state and federal environmental assessment law. Other topics such as safe speech, heritage protection or mining law are added depending on the needs of the audience.

Community legal education workshops in 2008/2009 included:

- Esperance, July 2008
- Lancelin, October 2008
- Margaret River, March 2009
- Broome, May 2009
- Exmouth, June 2009

Another form of community legal education is via our Fact Sheets. The EDO has Fact Sheets on 49 different environmental law topics on its website. The Fact Sheets explain the law on each topic in a format that is easy to understand and relevant to members of the community concerned about the environment. They are a cost-effective way of educating the community about environmental law. A large number of client queries about environmental law are answered by accessing our Fact Sheets without the need to speak to a solicitor. In other cases Fact Sheets give clients background understanding of the environmental law framework so that queries about specific matters can be answered more quickly.

Keeping such a large number of fact sheets up-to-date with frequent changes to the law is a daunting task. Two new Fact Sheets, one on Climate Change and one on Renewable Energy, were completed in 2008/2009. Updates of twenty existing Fact Sheets were commenced in 2008/2009, and these will be published in stages after being subject to peer review.

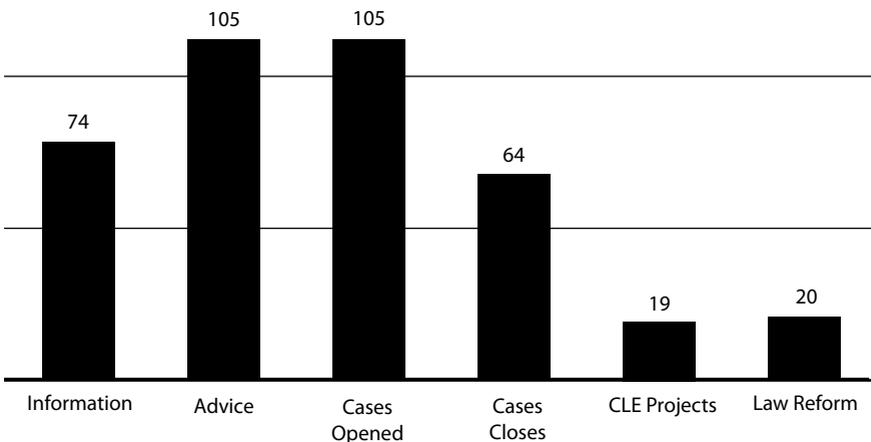
Law Reform and Legal Policy

Since its inception, the EDO has had a strong involvement in legal policy and law reform initiatives in Western Australia. As the only law office which regularly acts on the side of the community in environmental law matters, the EDO is in a unique position to advocate for law reform which enhances public participation and leads to better environmental outcomes.

Law reform activities in 2008/2009 included:

- participating in the Regulation Review Committee: Clearing of Native Vegetation.
- participating in the Minister for Environment's Environmental Stakeholder Advisory Group on the reform of the environmental assessment and approvals system.
- collaborating with the Australian Network of Environmental Defender's Offices (ANEDO) on a submission to the Federal Government's inquiry into the Environment Protection Biodiversity Conservation Act 1999.
- collaborating with ANEDO on various submissions related to the Federal government's proposed Carbon Pollution Reduction Scheme.
- submission to the Auditor-General's Examination of Threatened Species Management by the Department of Environment and Conservation.

Service Delivery, by Activity Type



Volunteer Report

It is a great encouragement to all involved in the EDO that so many law students and graduates are willing to give their time to work unpaid for the EDO. These are the environmental defenders of the future. Their contribution consists not only in the work they accomplish, but also in enriching the life of the office with their particular passions and perspectives. Volunteers worked a total of 615 hours this year.

This year we have made a conscious decision to take on a smaller number of volunteers, with a more substantial commitment of time per volunteer. This means that solicitors can spend more time training and mentoring volunteers, which produces positive results in terms of the quality of work produced, and the quality of the work experience that volunteers receive. Volunteer work consists of doing legal research related to advices, drafting articles for our EDO newsletter and researching updates for EDO Fact Sheets.

Neither do EDO volunteers shy away from doing the more mundane administrative work which keeps the office ticking over.

Finance Report

The major source of income for the EDO continues to be the Commonwealth and West Australian Governments' Community Legal Services Program. However to maintain our current level of service requires additional sources of funding. This year we were grateful to receive a one-off grant of \$55,000 from the Legal Contribution Trust. Approximately half of this income was spent in the current financial year, and the remainder has been set aside to cover expenses in the year ahead.

The EDO has continued to receive generous support in the form of donations from members of the WA community, in spite of tough economic times.

In March this year, the Commonwealth Attorney-General advised that the litigation restriction on EDOs had been lifted, meaning that the EDO can now use Commonwealth legal services funding for litigation-related activity in appropriate cases.

This year the EDO ran at a relatively small deficit, but retains healthy reserves, with total equity at the end of the year being \$103,133.

Balance Sheet as at 30 June 2009

	2009	2008
	\$	\$
CURRENT ASSETS		
Cash at bank: - General	3,892	15,884
- Fund	4,843	11,814
- Online Saver	127,380	80,820
Cash on hand	81	59
Accounts Receivable	28	244
Sundry debtors and prepayments	5,913	1,870
Rental Bond	1,760	1,760
TOTAL CURRENT ASSETS	143,897	112,451
NON-CURRENT ASSETS		
Property, Plant and Equipment	9,415	22,047
TOTAL NON-CURRENT ASSETS	9,415	22,047
TOTAL ASSETS	153,312	134,498
CURRENT LIABILITIES		
Payables	14,635	14,299
Unearned Income	32,025	2,486
Provisions	3,519	2,572
TOTAL LIABILITIES	50,179	19,357
NET ASSETS	103,133	115,141
EQUITY		
Accumulated Surplus - Opening balance	115,141	62,925
Net Surplus/(Deficiency)	(12,008)	52,216
Accumulated Surplus - Closing Balance	103,133	115,141

Income and Expenditure Statement for the year ended 30 June 2009

	2009	2008
	\$	\$
INCOME FROM ORDINARY ACTIVITIES	237,658	278,777
LESS EXPENSES:		
Employee expenses	188,638	167,985
Occupancy	19,248	18,220
Overheads	9,306	12,942
Depreciation	14,001	13,061
Client disbursements	81	398
Other	18,392	13,955
TOTAL EXPENSE	<u>249,666</u>	<u>226,561</u>
SURPLUS/(DEFICIENCY)	<u>(12,008)</u>	<u>52,216</u>

Grants received 2008/09

Commonwealth CLSP, \$108,452

The Australian Government Attorney General's Department

State CLSP, \$80,318

The Government of Western Australia Department of the Attorney General

Legal Contributions Trust, \$55,000 *

The Law Society of Western Australia (Legal Contributions Trust)

*\$24,634 expended in 2008/09, balance to be expended in 2009/10