

**Suite 4, Woods Building  
544 Hay Street, Perth WA 6000  
Phone: 08 9221 3030  
Freephone: 1800 175 542 (Country  
WA)  
Fax: 08 9221 3070  
[www.edowa.org.au](http://www.edowa.org.au)  
[edowa@edowa.org.au](mailto:edowa@edowa.org.au)**



**Environmental Defender's Office WA (Inc)**

# **Annual Report 2011**

**Income & Expenditure Statement**  
**For year end 30 June 2011**

	<b>2011</b>	<b>2010</b>
	<b>\$</b>	<b>\$</b>
<b>INCOME</b>		
Grants		
- Commonwealth	114,474	86,417
- State	91,139	76,865
- Ian Potter	17,000	—
- Legal Contribution Trust	—	30,366
- Lotterywest	12,049	—
Bank Interest	7,172	3,808
Fundraising	11,745	8,785
Legal costs recovered	7,082	—
Membership Subscriptions	2,907	3,587
Legal Fee Income	14,000	6,000
<b>TOTAL INCOME</b>	<b>277,568</b>	<b>215,828</b>
<b>LESS EXPENSES</b>		
Client disbursements	7,082	—
Communications	3,523	4,746
Consultant fees	—	3,580
Depreciation	776	9,415
Finance, audit & accounting charges	16,164	8,846
Grant Expenses		
- Factsheets (Ian Potter and Lotterywest)	17,000	—
- Strategic Planning (Lotterywest)	3,740	—
Insurance - contents, directors & volunteers	2,323	2,164
Membership Fees	2,353	—
Minor Equipment	-	222
Office costs	12,575	10,651
On-costs	11,626	2,002
Overheads	11,308	5,009
Practice certificates	1,060	1,100
Promotions	2,677	—
Reference material	57	64
Salaries	152,576	153,276
Staff recruitment	594	360
Staff Training	531	4,158
Subscriptions	0	3,342
Superannuation	14,223	13,665
Travel	2,232	1,353
<b>TOTAL EXPENSES</b>	<b>262,380</b>	<b>223,953</b>
<b>SURPLUS/(DEFICIENCY)</b>	<b>15,188</b>	<b>(7,825)</b>

## Balance Sheet

### As at 30 June 2011

	2011 \$	2010 \$
<b>CURRENT ASSETS</b>		
Cash at bank:		
- General	11,879	13,801
- Fund	82,288	69,059
- Online Saver	62,346	35,448
- Cash on hand	87	100
Accounts Receivable	3,661	—
Sundry debtors and prepayments	5,268	4,935
Rental Bond	1,760	1,760
Undeposited Funds	1,935	—
<b>TOTAL CURRENT ASSETS</b>	<b>169,224</b>	<b>125,103</b>
<b>NON-CURRENT ASSETS</b>		
Property, Plant & Equipment	1,554	—
<b>TOTAL NON-CURRENT ASSETS</b>	<b>1,554</b>	<b>—</b>
<b>TOTAL ASSETS</b>	<b>170,778</b>	<b>125,103</b>
<b>CURRENT LIABILITIES</b>		
Payables	21,144	13,552
Unearned Income	28,598	8,287
Provisions	10,540	7,956
<b>TOTAL LIABILITIES</b>	<b>60,282</b>	<b>29,795</b>
<b>NET ASSETS</b>	<b>110,496</b>	<b>95,308</b>
<b>EQUITY</b>		
Accumulated Surplus - Opening Balance	95,308	103,133
Net Surplus/(Deficiency)	15,188	(7,825)
<b>Accumulated Surplus - Closing Balance</b>	<b>110,496</b>	<b>95,308</b>

12

## Table of Contents

<b>Management Committee and Staff</b> .....	2
<b>Hours of Operation</b> .....	2
<b>Convenor's Report</b> .....	3
<b>Services Provided</b> .....	4
• Litigation & Advocacy .....	4
• Advice .....	5
<b>Law Reform</b> .....	6
<b>Community legal education</b> .....	7
• Seminars.....	7
• Factsheets .....	7
<b>Outreach Activities</b> .....	8
<b>Volunteer and pro bono assistance</b> .....	9
<b>Volunteer awards</b> .....	9
<b>Collaboration</b> .....	10
<b>Treasurer's Report</b> .....	10
<b>Acknowledgement of funders</b> .....	11
<b>Balance sheet</b> .....	12
<b>Income &amp; Expenditure</b> .....	13

## Management Committee

Dr Johannes Schoombee	Convenor
Sharon Mascher	Deputy Convenor
Lee McIntosh	Secretary
Sarah Van Gent	Treasurer
Peter Robertson	Member
Wayne O'Sullivan	Member
Emma Cavanagh	Member
Dr Donald Stevenson	Member
Susan Liddicoat	Member

## Staff

Josie Walker	Principal Solicitor
Jessica Smith	Outreach Solicitor
Narelle Pierce	Outreach Solicitor
Laura Zimmermann	Coordinator

## Hours of operation

The EDO operates 9:00am to 5:00pm Monday to Friday.

## Acknowledgement of funders

EDOWA would like to acknowledge the following funders:

- The Commonwealth Attorney-General's Department
- The Legal Aid Commission of Western Australia
- Lotterywest
- The Ian Potter Foundation

## Collaboration

The EDO has been collaborating with the Community Legal Centres Association of WA in preparing a standard costs agreement for community legal centres acting for clients in litigation in higher Courts, to enable cost recovery in successful cases.

We have collaborated with environmental non-government organisations including the Conservation Council of WA, the Wilderness Society and WWF on law reform submissions.

Most of our seminars were organised with logistical assistance from local environment groups and service-providers on the ground, including the Conservation Council of WA, the Peel Harvey Catchment Council and Environs Kimberley.

## Treasurer's report

Financially 2011 was an interesting year, with the challenge of balancing the budget while meeting community demand keeping us all on our toes.

The majority of our income is recurrent funding from the State and Commonwealth governments. This is supplemented with top-up grants, firstly in the form of non-recurrent government funding and also from non-government sources.

Over the past few years EDO has been able to balance its budget thanks to non-recurrent funding from the Commonwealth Attorney-General's Department including \$35,000 which is used to cover operating expenses this year. This will not be repeated in the 2011/2012 financial year. However, an additional \$15,000 has been provided specifically to upgrade furniture and fittings.

Non-government funding during 2011 came from a number of sources and was mostly targeted at specific projects. The Ian Potter Foundation granted us \$17,000 which was used towards the updating of our Factsheets. This project was also assisted by Lotterywest who provided funds for the formatting and publication of the Factsheets.

Lotterywest also provided a grant for the Strategic Planning Process.

Income was also received in the form of legal fees and client disbursements relating to litigation during the year and, importantly, members' fees and donations.

The majority of this income was tied to specific projects. However, the overall operating capacity of EDO did not increase significantly. Indeed the surplus shown at year end will effectively disappear during the first half of the 2011/2012 financial year, as final costs on the aforementioned projects come through.

Employees' expenses remain our largest cash outflow. Towards the end of the financial year the decision was made to increase our staffing hours to better meet community demand. We now have a full-time Outreach Solicitor position (job-shared), taking our employee level to 2.8 full-time equivalents, up from 2.2 at the beginning of the financial year.

Review of other expenses shows that we continue to operate at minimal levels and it is therefore necessary that the EDO continues to source additional funds to be able to meet its operating costs.

## Convenor's Report - Dr Johannes Schoombee

This year the EDO has once again shown that it is at the forefront of the fight for environmental justice.

The EDO represented traditional owner Joseph Roe in his bid to stop the clearing of native vegetation on James Price Point, the site of the proposed gas hub in the Kimberley. Unfortunately Mr Roe was not successful in obtaining orders to halt the clearing. However, this was an important test case on whether native vegetation could be cleared for a proposal which had not yet received Federal or State approval. In recognition of the novel legal questions decided in the case, the Court of Appeal decided not to make a costs order against Mr Roe. The EDO also provided advice to many more citizens on the legality of government decision-making, breaches of environmental law and how to get involved in decision-making processes. This work is key to ensure that the community is able to have its say in circumstances where the big money attached to resource development can often drown out community voices.

This year we have been planning for the future, ensuring that we are able to provide the best possible service to the Western Australian community in the years ahead. Our six-year Strategic Planning Project commenced in October 2010 with funding from Lotterywest. This has provided an opportunity to assess the strengths and achievements of the EDO and areas for development over the next six years.

The process started with surveys sent out to clients, members and conservation organisations. We are grateful for the time taken by survey recipients, many of whom provided detailed and thoughtful responses. We received responses from over 95% of stakeholders questioned. This feedback reinforced the high value placed on EDO services by environmentally concerned citizens in the community.

A theme that emerged from the strategic planning consultation was that members and clients want the EDO to continue focusing on its core activity of providing advice and representation in public interest environmental law matters. There is no other organisation providing these services in Western Australia.

Two areas where members said they would like to see us develop our services are improving our capacity to help clients with merits appeals and with detailed submissions on major projects. We are looking at ways to increase collaboration with technical experts to enhance clients' participation in environmental decision-making processes.

We are also looking to increase the number of workshops provided in both metropolitan and regional areas. Workshops play an important role in increasing the community's awareness of environmental law and how they can be involved in environmental decision-making processes.

A Strategic Planning day was held on 28 May 2011 to draw these ideas together and formulate a new six-year plan. The Strategic Plan should be ready for release in late 2011.

Management Committee members this year were Sharon Mascher, Lee McIntosh, Peter Robertson, Wayne O'Sullivan, Donald Stevenson, Susan Liddicoat, Emma Cavanagh and Sarah Van Gent. I would like to thank them all for contributing their time and skills to the work of the EDO.

At the end of the year we said farewell to Sharon Mascher, who has been involved with the EDO for the past 10 years, serving a number of terms as a Management Committee Member. Sharon has contributed much expertise and enthusiasm to the organisation. Sharon is moving back to her native Canada where she will continue to lecture in environmental law.

In the course of this financial year law graduate Claudia Maw capably filled the roles of Paralegal, Coordinator and part-time Outreach Solicitor (after her admission to practice in February 2011). Claudia left the EDO in April 2011 to take up a full-time role in private practice.

Laura Zimmermann commenced as Coordinator in January 2011 just in time to be immersed in preparation work for a Court of Appeal challenge. In her six months with the office, Laura provided excellent support to Management Committee and Solicitors, and kept the whole organisation running smoothly. Laura left the office to travel in July 2011.

Narelle Pierce started work as part-time Outreach Solicitor in May. Narelle is an experienced solicitor with a background in administrative law, and is a valuable addition to the EDO team.

## Services Provided

### Litigation and Representation

4

In October 2010 the EDO commenced proceedings on behalf of traditional owner Joseph Roe challenging two clearing permits related to the Browse LNG proposal on James Price Point. In both cases it was argued that the clearing permits had been invalidly granted because the proposal was awaiting strategic approval by the State and Federal environment ministers.

The Supreme Court agreed that there was a serious question to be tried and listed the matter for hearing in the Court of Appeal in January 2011.

The Court of Appeal handed down its judgment in *Roe v The Director General, Department of Environment and Conservation for the State of Western Australia* [2011] WASCA 57 in March 2011. Ultimately the Court held that the clearing permits were valid because the Browse LNG proposal was a "strategic" proposal rather than a "significant" proposal. The prohibition in the *Environmental Protection Act 1986* (WA) (the EP Act) against the granting of clearing permits while an assessment was pending was held only to apply to "significant" proposals.

The EDO had argued that the proposal was both "strategic" and "significant", however the Court found that these categories were mutually exclusive. It also found that the Browse LNG Proposal, although large in scale, was not sufficiently well-defined to be a "significant" proposal. This result came as a surprise to many, given the level of detail provided in the Strategic Assessment Report released in December 2010.

In its judgment, the Court of Appeal provided a detailed commentary on the operation of Part IV of the EP Act, which will provide an invaluable guide to the application of these provisions in future cases.

The Court of Appeal decided not to award costs against Joseph Roe on the grounds that the proceedings were brought in the public interest, and had decided novel and important questions of law. Such a decision not to award

## Volunteer and pro bono assistance

The EDO is very grateful for the assistance of a large number of enthusiastic legal volunteers. This year volunteers contributed over 700 hours of unpaid work to the organisation. A majority of these volunteers are law students in their fourth or fifth year of study. We have also had some law graduates and solicitors generously give their time to work for the EDO.

Volunteers provided legal research assistance, made urgent deliveries and helped with the preparation of court documents in the busy period when we were engaged in litigation in the Court of Appeal. For a small office like ours to take on a major resource company and two government departments with seemingly unlimited legal and administrative resources can be quite daunting. The dedication and good humour of all our volunteers and staff working cooperatively enabled us to keep pace with the demands of trial preparation and to present the case effectively at the hearing, without losing too much sleep.

Legal research on environmental law questions continued to be the major activity carried out by volunteers throughout most of the year.

Our volunteers also write a large proportion of the articles for our **edonews** newsletter. This enables us to keep members up to date on environmental law stories from WA and around the world.

The EDO is grateful to Craig Chappelle, a long-time EDO supporter from Denmark, who has done the layout for our Annual Report, newsletters and Factsheets on a voluntary basis since 2007.

We would also like to thank barristers Matthew Howard SC and Henry Jackson, who acted pro bono in the James Price Point litigation.

We are similarly grateful to other members of the legal profession and the conservation community who provided us with valuable pro bono assistance such as giving a second opinion on complex advices, drafting of our standard costs agreement, and peer review of Factsheets.

9

## Volunteer awards

The EDO wishes to acknowledge the contributions of the following volunteers, who gave their time, knowledge, skills and enthusiasm to the EDO in 2010-11:

### Gold Award

Edward Fearis  
Renee Asher  
Sally Carlin  
Madison Hershey

### Silver Award

Moshe Phillips  
Clarence Paul  
Chloe Henderson  
May Lowe

### Bronze Award

Lisa Kastropil  
Stephanie Jones  
Clare Fielding  
Juliette Mwenda Somerville  
David Carroll  
Jodie Moffatt  
Monika Kryger

Nicole Hauck  
Nicolette Strauss

The EDO grants annual awards to volunteers as follows: Gold Award 100+ hours service; Silver Award 50+ hours service; Bronze Award 25+ hours service.

## Outreach activities

The EDO held three regional seminars this year, in Broome, Kununurra and Mandurah (servicing the Peel region). These regions were targeted to improve regional community knowledge about environmental laws, and respond to specific regional concerns.

The Peel Region seminar, held in Mandurah in November 2010, was co-presented with WWF-Australia. Outreach Solicitor Jessica Smith presented on the EIA process under State and Federal laws, while Katherine Howard from WWF-Australia presented on how to write good submissions.

In March 2011, Principal Solicitor Josie Walker held a public seminar in Broome on legal aspects of the Browse LNG hub proposal. Workshop participants gained a better understanding of the strategic assessment process being followed under both State and Federal law, and the relationship between the two. Josie also explained which other environmental and planning approvals will be required for the project, and talked about the possible National Heritage listing of the West Kimberley being considered by the Federal Department of Environment. The workshop concluded with an interactive session on writing effective submissions to government departments.

In June 2011, Jessica travelled to Kununurra, which the EDO last visited in 2005. Jessica gave a seminar at which she provided an overview of some key environmental law topics such as sources of environmental law in Western Australia, environmental offences and EIA under State and Federal laws.

8 After each of these seminars, EDO solicitors provided a free advice clinic, giving members of the local community an opportunity to meet with a solicitor face-to-face to receive advice on specific environmental law issues.

The EDO truly provides a State-wide service. Services are provided via telephone, post and email to clients from all over the State, so that distance is usually not an obstacle. Occasionally we do travel to meet regional and remote clients and visit the areas that they are fighting to protect. To minimise costs, this travel is either combined with a seminar trip, or clients raise funds to cover our travel costs. A large number of inquiries are received every year from clients in the Kimberley and the South West in particular.

## Activity summary

Activity	2010/2011	2009/2010
Information & Referrals	35	38
Advices	152	124
Cases opened	53	54
Cases closed	49	61
Community legal education	29	14
Law reform and legal policy	10	16

costs is very unusual, and is a testament to the high level of public interest in this case.

In June 2011 the EDO commenced to act in the Mining Warden's Court for Anne Poelina, a Nyikina Traditional Owner, who is objecting to an application for a coal mining lease at Duchess Paradise adjacent to the Fitzroy River. This is a very significant application, being the first application in the area and expected to open up a new coal mining province in the Canning Basin. If allowed to proceed, this development could lead to an irrevocable change in the character of the region, and to the loss of environmental and cultural values. This in turn would jeopardise the development of a culture and conservation economy by Traditional Owners along the Fitzroy River.

We represented several clients in negotiations with government departments and local government regarding environmental law matters – for example the enforcement of conditions of consent, and preventing proposed actions by a local government which appeared to have been in breach of environmental law. The EDO also represented several applicants in freedom of information requests throughout the year.

Access to information is important to anyone seeking to be involved in environmental decision-making processes. Navigating through the process of lodging an application, negotiating with the agency about the terms of the application and fees, and seeking internal review can take many months. The tendency of agencies to interpret exemptions relating to commercial information very broadly is concerning, as it often deprives applicants of important information related to public decision-making. The EDO has assisted several applicants to appeal against agency determinations to the Office of the Information Commissioner. Decisions by the Information Commissioner are published and can provide a helpful precedent for future applications.

## Advice

The EDO provided 152 short one-off advices this year. This is a 23% increase on the previous financial year. In addition, the EDO provided complex written advice in over 50 ongoing casework files.

Client confidentiality prevents us from providing the details of most of these advices, but several themes and recurring issues can be observed.

We were contacted by many conservation groups and individuals for assistance in relation to the environmental impact assessment (EIA) process for major proposals. Some wanted to know how policy instruments would be applied in the assessment process, and whether certain environmental factors such as threatened species were likely to be considered. Others sought assistance in drafting effective submissions.

The EDO was also called on to advise in several cases on the legality of decision-making processes and possible judicial review challenges.

Defamation advices continued to be a major area of work. The EDO assisted many conservation groups and community members with advice on how to avoid being sued for defamation in relation to environmental campaigns and statements to the media.

We provided advice to several clients on the application of the *Environment*

*Protection Biodiversity Conservation Act 1999* (Cth) (the EPBC Act) to specific development proposals.

Clearing of native vegetation around Perth and the loss of urban trees continues to be a major concern for many clients. In particular, there is great concern about the impacts that loss of further vegetation could have on endangered black cockatoos. There is an urgent need for law reform in this area to provide better protection under State law for threatened species.

With the resources boom continuing apace, we provided many advices on mining and petroleum lease applications, and the environmental assessment of mining proposals.

## Law Reform

As the only legal centre which regularly acts on the side of the community in environmental law matters in Western Australia, the EDO is in a unique position to advocate for law reform which enhances public participation and leads to better environmental outcomes. This year the EDO has been involved in responding to a number of proposed changes in laws and policies affecting the environment. In April 2011, the federal government released a new draft bilateral agreement between the Commonwealth and the State of Western Australia under the EPBC Act. The previous bilateral agreement dated 2002 no longer applies, as a result of recent changes to the levels of EIA in Western Australia. Once finalised, the new bilateral agreement will accredit the State EIA processes under the EPBC Act. This means that one of the ways in which the Commonwealth government will be able to assess a proposal under the EPBC Act is by relying on the State EIA, thereby avoiding the need for the Commonwealth to conduct its own separate EIA.

The EDO, after holding a meeting with representatives from various conservation groups, lodged a detailed submission on the new draft bilateral agreement to the Department of Sustainability, Environment, Water, Population and Communities in May 2011. The submission outlined the EDO's concerns about some of the ways in which the State EIA processes are not as rigorous as those at the Commonwealth level and other issues such as potential for bias where the EIA is conducted at State level and the proponent is a State government entity. The submission provided a number of recommendations about safeguards that could be added to the bilateral agreement to ensure that a high standard of EIA was conducted.

At the time of writing this report, the new bilateral agreement had not yet been finalised.

The EDO was invited by the Environment Protection Authority (EPA) to join its Stakeholder Reference Group. The group includes representatives from government, industry and conservation groups and is intended to provide advice on the policies, strategies and processes that frame the EPA's work.

One of the most significant law reform proposals to emerge this year was the Rangelands Reform process, being managed by the Department of Regional Development and Lands. The rangelands of Western Australia occupy 87% of the State's landmass. The major land tenure types in the rangelands are pastoral leases, conservation reserves, indigenous reserves and unallocated crown land.

Changes to the system of pastoral tenure presents great opportunities and also risks to the environment. On the one hand, it could increase the intensity of uses on this land, leading to increased landclearing and other environmental impacts. On the other hand, if it allows uses which are both more economically viable and more environmentally sensitive, this could lead to overall improvements in rangeland condition.

The EDO lodged a submission on the Pastoral Tenure Reform Discussion Paper released in mid-2011, and is continuing to work with the Government and conservation groups to secure a positive outcome from this process.

## Community legal education

The EDO provides community legal education by way of various seminars throughout the year and through our extensive series of fact sheets, which are available on our website.

### Seminars

Each year, the EDO provides at least three free public seminars on environmental law in rural, regional and remote areas. These seminars are intended to provide general information to members of the community about how the environment is protected through law in Western Australia and what opportunities there are for community involvement, thereby empowering them to take action to defend the environment. The EDO tries to tailor the topics covered in each seminar to the interests of the local community.

In 2010/2011, the EDO held community legal education seminars in Mandurah, Broome and Kununurra. More details of these seminars are provided below under "Outreach Activities".

### Factsheets

A major project for the EDO this year was to comprehensively review, update and re-write EDO Factsheets on environmental law topics. We identified 32 Factsheets which needed updating or substantial revision. Most of these re-writes were finished by the end of this financial year, with only a handful remaining to be completed in the first three months of the following year.

We were fortunate to obtain a grant from the Ian Potter Foundation to fund this important work. Using this money we were able to employ an experienced environmental law solicitor (former EDO Principal Solicitor Lee McIntosh) and a talented paralegal (former EDO volunteer Renee Asher) to do the majority of this writing, with additional writing and checking done by staff solicitors. Law student volunteers also assisted with reference checking and legal research.

This re-write was timely, considering that the majority of Factsheets were 5-8 years old, and there had been significant changes to some areas of the law in this time. Not only were the Factsheets brought up to date with changes to the law, they were also comprehensively re-written in a more accessible style and with a greater emphasis on common EDO client queries.

The result is a fantastic up-to-date resource in which the community can find an understandable and relevant explanation of many different aspects of environmental law.