



Environmental
Defenders
Office

Western Australia (Inc)

Annual Report

2015

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MANAGEMENT COMMITTEE

Dr Johannes Schoombee	Convenor
Michael Bennett	Secretary
Rhett Nicholas	Treasurer
Peter Robertson	Member
Norman Pater	Member
Sarah Robertson	Member
Rhiarne Bruce	Member

Retired

Rhett Nicholas	Treasurer
Norman Pater	Member
Sarah Robertson	Member
Rhiarne Bruce	Member

Members Co-opted

John Southalan	Member
Mitchell Brown	Treasurer
Peter Rogers	Member
Alex Gardner	Member
Clare Wood	Member
Natazsa Bariacto	Member
Henry Jackson	Member

CURRENT STAFF

Patrick Pearlman	Principal Solicitor
Majella Metuamate	Office Coordinator
Ian McLeod	Outreach Solicitor

Former Staff

Jessica Smith	Outreach Solicitor
Annaleen Harris	Outreach Solicitor
Carolyn Dearing	Outreach Solicitor

Hours of Operation: Monday to Friday from 9.00am to 5.00pm

CONVENOR'S REPORT - DR J T SCHOOMBEE

Overview

This report covers the 2014-15 year but in line with previous reports, contains some references to more current events that are events after 30 June 2015.

I started last year's report by saying that that year had been an eventful and somewhat tumultuous one for the EDO WA. Things did not really quiet down during the past financial year. The course of government defunding was completed by the State government shortly before the end of the financial year. The State Government followed its Big Brother in Canberra and during budget time in May this year, took away our funding at State level. In this regard the EDO was specifically targeted for total defunding through the way the State Attorney-General allocated his departmental budget funds. So since the end of the past financial year, and going forward in the 2015-16 financial year, we have not been receiving any government funding at all. This is a first in the history of the EDO. That may change but who knows, given the bleakness of the Australian political landscape generally and specifically in relation to care for the environment.

On a positive note, we have put in a very good effort at fundraising and the EDO has been able to draw on accumulated savings. Raising funds to keep the EDO going is obviously a major challenge and no easy task in the current financial climate. We have been given a most beneficent top-up funding covenant by a donor on a confidential basis to help us maintain our activities in the current year. In terms of this covenant, the donor will make up any shortfall in our fundraising efforts, so that we can reach and maintain a monthly target of fundraising aggregating at \$100,000 for a year. So if the EDO raises say \$70,000, the top-up funding provides the extra \$30,000. The position is reviewed on a monthly basis and top-up funds can come in monthly.

I suppose one "benefit" of being bereft of government funding, is that we are now at liberty to bite the government hands that do not feed us, as most of our court action is directed at central government agencies, such as the Environmental Protection Authority (the EPA) and the Minister for the Environment. In the past, when we acted for bodies like Sea Shepherd in relation to the shark cull, we heard grumblings from the State A-G's department. Of course, it turned out, as reported in my previous report for 2013-4, that the EPA in the end found that the cull could not be justified on environmental grounds.

There is currently at least one major judicial review case being run by the EDO, in the form of a challenge to the Roe 8 highway extension. The extension will inter alia endanger the Beiliar wetland, in circumstances where the EPA had said, back in 2003, in Bulletin 1088, that any proposal for the construction of the alignment of Roe Highway Stage 8 through the Beiliar Regional Park would be extremely difficult to be made environmentally acceptable.

We are somewhat the victims of our own success in the James Price Point case. That case has now been written into the statute books because of amendments made to the Environmental Protection Act. It will be recalled that in James Price Point we acted for an Aboriginal law boss and the Wilderness Society and they succeeded in quashing the approval given to establish a LNG processing plant at James Price Point. We did so on the basis that some members of the EPA who had participated in the report on which the Ministerial approval of the project was based, had indirect financial interests in the project. This challenge was based squarely on the wording of the statute and our clients had indeed warned the State government during the assessment process, that it was flawed.

Our victory in the James Price Point case prompted the State Parliament to retrospectively change the location of the goal posts or whatever may be the right imagery, by enacting some appalling "curative" legislation. I set out the terms herein, as these have a bearing on the

current Roe 8 litigation. A new part X was added to the Environmental Protection Act 1986 by Act 27 of 2014, which came into force on 27 November 2014, to the following effect:

Part X — Validation

134. Terms used

(1) In this Part —

decision date means 19 August 2013, which is the date on which the decision in *The Wilderness Society v Minister for Environment* was delivered;

ground of invalidity means a ground of invalidity set out in section 135;

The Wilderness Society v Minister for Environment means the decision of the Supreme Court of Western Australia in *The Wilderness Society of WA (Inc) v Minister for Environment* [2013] WASC 307.

(2) In this Part, a reference to the doing of anything includes a reference to an omission to do anything.

135. Grounds of invalidity

These are the grounds of invalidity —

- (a) the participation (whether by taking part in the consideration or discussion of a matter, or voting on a matter or participating in any other way), in any purported proceedings of the Authority, by Authority members who were disqualified from participation because of —
 - (i) their direct or indirect pecuniary interest in a matter, whether or not that interest was disclosed in accordance with section 12(1) or determined under section 12(3) and whether or not a decision was purportedly made under section 13 in relation to the interest; or
 - (ii) a reasonable apprehension of bias;
- (b) the lack of a quorum at a meeting purportedly held by the Authority, where the lack of a quorum resulted from Authority members being disqualified from participation in the circumstances set out in paragraph (a)(i) or (ii);
- (c) the failure of the Authority to decide a question at a meeting purportedly held by the Authority, where —
 - (i) the failure resulted from non-compliance with the requirements of section 11(2)(e) for at least 3 Authority members to vote on the question or with any other requirement of section 11(2) with respect to voting; and
 - (ii) that non-compliance resulted from Authority members being disqualified from participation in the circumstances set out in paragraph (a)(i) or (ii);
- (d) the purported exercise of a power or duty of the Authority under a delegation made under section 19, where —
 - (i) the delegation was purportedly invoked in order to avoid the proceedings of the Authority being invalid on any of the grounds of invalidity set out in paragraphs (a) to (c); and
 - (ii) the delegation could not be invoked in the circumstances in which it was purportedly invoked, or did not authorise the exercise of the power or duty in the circumstances in which they were purportedly exercised.

136. Certain proceedings of Environmental Protection Authority and other things validated

(1) This section applies to anything done, or purportedly done, by or on behalf of the Authority before the decision date that, if this section had not been enacted, is or may be invalid on a ground of invalidity.

- (2) The things to which this section applies are to be taken to be, and to have always been, valid and effective to the same extent as they would have been if they had not been invalidated by a ground of invalidity.
- (3) The rights, obligations and liabilities of all persons are to be taken to be, and to have always been, the same as if the things to which this section applies had been validly done.
- (4) Anything done, or purportedly done, before the *Environmental Protection Amendment (Validation) Act 2014* section 4 comes into operation as a result or consequence of, or in reliance on or in relation to, a thing to which this section applies (a **validated thing**) is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if the validated thing had been valid at the time the other thing was done or purportedly done.
- (5) This section is subject to section 137.

Section 137 then provides, magnanimously, that the new legislation at least does not affect the result of the James Price Point case itself.

The legislation was justified by the Government on the basis that the validity of approvals in some 25 projects may be affected by the grounds of review established to be valid in the James Price Point, which included some projects already completed. There are many answers to this spurious line of reasoning but I shall mention only two. First, the breaches of the statute relating to indirect financial interests on the part of certain EDO members were nothing novel or esoteric – in fact or law when raised in the James Price Point case. Secondly, the legislation seeks to provide a procedural white wash for important projects not completed – or even started in a physical sense, like Roe 8.

The EDO has also acted in defamation cases where the public interest justifies it, for instance where concerned individuals who question a proposed development on environmental grounds, are sued in defamation by the proponents. It is now apparently the case in Australian law that even to refer outside court to such a writ as a "SLAPP" writ (Strategic Litigation against Public Participation), is itself defamatory. So I shall not use that term. Just into the current financial year, in late July 2015, one of our long-running and work intensive court battles ground to a halt of some sorts. This is the case where property developer Ross Leighton has sued inter alia Jane Genovese, represented by the EDO, for alleged defamation concerning comments made mainly on a website relating to the proposals by Mr Leighton for what has been termed an "age care" facility in the Wattle Grove area in the Shire of Kalamunda. I have acted as counsel for Ms Genovese, over time assisted by Annaleen Harris and then Patrick Pearlman at the EDO. Defamation cases are notoriously complex and our defence runs to some 72 pages. We are inter alia relying on freedom of speech about political matters and the so-called Lange defence, drawn from the Australian Constitution. The facility was much debated and Mr Leighton criticized the performance of a State Minister who had dared to knock back his rezoning application. This case has seen many interlocutory skirmishes in Court (as happens in defamation cases) and Mr Leighton has obtained partial enforcement of a cost order against Ms Genovese, following one such skirmish. But in late July this year, he filed a notice saying he was now representing himself and he told the Court that he could not at the time afford to further pay his lawyers. By that time, nothing had happened on his side of the case for 12 months, so the matter was placed by the Judge in the so-called Inactive Cases List where it now slumbers. Only time will tell whether the case will follow in the footsteps of Rip van Winkle and re-awaken or eventually be interred without resuscitation.

Management Committee

At the last AGM, the following were elected as members of the Management Committee: myself, Michael Bennett, Rhiarne Bruce, Rhett Nicholas, Norman Pater, Sarah Robertson, Peter

Robinson and John Southalan. Peter Rogers was co-opted to the Management Committee in April 2015. Rhiarne left the Management Committee in February and Sarah in April of this year. In the current year, we lost our Treasurer Rhett to Melbourne and he has been succeeded in that role by Mitchell Brown.

I thank the MC members for their work and support during the year but also going back in time, notably Michael Bennett and Peter Robinson who truly have veteran status – as in the veterans of the tenth legion of Julius Caesar rather than those eligible for a defence force pension in Australia.

Personnel

Patrick Pearlman has acted as our Principal Solicitor as has made a tremendous contribution to the work of the EDO. Patrick has had to work incredibly long hours and has produced quality work.

Majella Metuamate is our office co-ordinator. She has also worked hard and successfully on fundraising, amongst other things.

In November 2014, we were fortunate to procure the services of Ian McLeod, as a part-time solicitor, and we have benefitted much from his litigation experience and contacts within the conservation community.

Jessica Smith left the EDO in October 2014, to concentrate on her work at the Employment Law Centre. Jess worked with us for some 4 ½ years and was truly a star during her time at the EDO, working as our Outreach Solicitor on a part time basis. We wish her well in her further career.

Annaleen Harris began maternity leave in August 2013 and after a year returned to the EDO, to work part time. Annaleen took up a position with a law firm in April this year. She greatly contributed to the running of some complex matters, such as Genovese defamation case to which I have referred.

In the past financial year the EDO also had the benefit of the services of Carolyn Dearing and Zara Spencer (both until November 2014), as part time lawyers.

Volunteers

At the AGM we will again honour the number of volunteers who have so ably assisted us. I also wish to thank the barristers and solicitors who assisted us despite their own pressing commitments.

The past 20 years

I was a foundation management committee member of the EDO. So I was there when it all started and even before it started because the EDO in WA sprung from those involved in the South West Forest litigation. I took over as Convenor after about a year in the life of the EDO. So I have now been head of the EDO for the last 20 years. I feel it is time to now move on and leave the EDO in the able hands of others. We have achieved much but much remains to be done. There is a famous saying in Portuguese, drawn on inter alia by the first president of Mozambique, Zamora Machel, in his struggle days against colonial rule. He said: "A luta continua" ("the struggle continues") which certainly applies to the EDO. The full saying concludes: "vitória é certa", meaning: "victory is certain". We live in hope of that.



HANNES SCHOOMBEE
Convenor of the EDO

PRINCIPAL SOLICITOR’S REPORT – PATRICK PEARLMAN

Overview

To say the least, 2014-15 has been a “challenging” year. In the last year, we’ve seen the last of our government funding (which at one time was roughly \$230,000 annually – still not a lot) withdrawn and our paid legal staff shrink by 30%. Meanwhile, demand for our services has continued unabated or even increased. It would be easy – and understandable – to see this as a “glass half-empty” situation, but we have cause to see the situation in a more optimistic, “half-full” light. We have enjoyed some notable successes over the last 12 months, expanded existing partnerships or built new ones, and begun laying a foundation for EDO to be self-sustaining and free of its dependence on government funding. We remain the “go to” legal office in Western Australia for individuals and communities with public interest environmental law (and related) matters.

EDOWA’s funding in 2014-15

As an initial matter, it’s appropriate to recap what happened to EDOWA’s funding in 2013-14 to put our current situation in perspective.

As members may recall, in its waning days the Rudd Government sharply increased Federal funding to EDOWA and other EDOs around Australia. Not only was the roughly \$97,000 in recurring annual funding that EDOWA received from the Commonwealth continued but the Commonwealth allocated an additional \$300,000 to EDOWA in each of the next four financial years in order to enable the organisation to expand and increase its public interest legal services across Western Australia.

Unfortunately, Australians elected the LNP to power in the September 2013 election and the Coalition wasted little time implementing its environmental vision for Australia. On 19 December 2013, EDOWA received a letter advising that the Federal Government was terminating the additional \$300,000 in EDOWA funding immediately and that it would not renew the service contract pursuant to which we received recurring funding after it ended on 30 June 2014.

All EDOs lost their Federal funding and other environmental and public interest organisations fared similarly.

The LNP Government has steadfastly maintained its hostility to the notion of providing funding to EDOs, despite the Productivity Commission’s recommendations to restore funding to EDOs in its September 2014 report and recommendations to the Government. In fact, the Federal Government has even signalled that it is considering whether to allow environmental organisations – like EDOs – to have deductible gift recipient (DGR – tax-deductibility for donations) status by virtue of being enrolled on the Commonwealth Environment Department’s Register of Environmental Organisations (REO), opening a Senate enquiry into the activities of REO-listed organisations. That enquiry is still underway. Moreover, when the Federal Government partially restored funding to a number of other community legal centres (CLCs) at the end of March 2015, it expressly excluded EDOs from that action.

EDOWA took several measures in response to the Federal Government’s action. We ceased any plans to expand our legal staff. We sought, unsuccessfully, to find less costly but still suitable office space. EDOWA brought on 3 part-time (0.2 FTE) casual solicitors from late March 2014 through 30 June to address a backlog of advices. We also undertook a year-end appeal for donations that supporters responded to generously, raising another \$39,000 in May-June 2015. We also began investigating how we might qualify EDOWA as a Public Benevolent Institution (PBI), another basis for DGR treatment.

This brings me to the 2014-15 financial year. As I noted above, the Federal LNP Government remains steadfast in its opposition to the idea of restoring funding to EDOs, notwithstanding public outcry and the Productivity Commission's recommendations, and it appears serious about removing organisations like EDOs from the Register of Environmental Organisations.

State funding – which accounted for approximately 55% of EDOWA's government funding (roughly \$135,000 annually) continued in the new financial year. EDOWA applied for PBI status in mid-September 2014 as well. At the October 2014 AGM, members approved changes to EDOWA's Rules that the Australian Tax Office advised we needed to make in order to obtain PBI status. EDOWA ultimately was granted PBI status by the Tax Office on 15 May 2015. Not only does PBI status give EDOWA another basis to extend tax deductibility to donations to the organisation – vital if the Commonwealth delists EDOWA from the REO – it also allows employees to salary sacrifice certain expenses, essentially allowing them to reduce their tax assessable income.

Unfortunately, EDOWA received word in late May that Premier Barnett's Government was terminating all funding to the centre after 30 June 2015. This effectively removed the largest remaining source of funding (roughly \$135,000) in EDOWA's budget. The State Government claimed the drop in commodity prices (and hence reductions in mineral royalties) and decreased GST payments compelled it to terminate funding to EDOWA. Indeed, EDOWA was not the only community legal centre targeted by funding cuts. The State also terminated \$400,000 in annual funding to the Employment Law Centre, and cut another \$129,000 in funding to 13 other CLCs who comprised the group of CLCs funded under the same budget item from which EDOWA had been funded.

However, it's clear that EDOWA was singled out for particularly savage funding cuts. The Employment Law Centre had \$135,000 in funding restored – though the State Attorney General quickly admitted that the source of this money was the funding stripped from EDOWA. Moreover, while the other 13 CLCs shared a \$129,000 funding decrease, after inflation adjustments were accounted for, it turns out that those CLCs actually saw an overall increase in their average annual funding. The State Attorney General was asked a number of questions in Parliament about these funding matters: He chose to ignore them.

The loss of State funding has put EDOWA in a desperately tight situation. Careful husbanding of its revenues (donations, membership fees, costs awards, etc) over the years had allowed EDOWA to build up nearly \$200,000 in cash reserves – enough to operate for almost another year at current expenditure levels. As mentioned above, EDOWA managed to raise over \$40,000 between May and the end of July. In addition, an anonymous – and very generous – donor has entered into an underwriting agreement with EDOWA, committing to provide up to \$100,000 in funding from 1 October 2015 – 30 September 2016. The agreement provides that this amount is annualised (approximately \$8,333/mo) and is available to draw down, set off against any amounts EDOWA is able to raise via fundraising during the month.

We have also been obliged to begin charging clients for services provided in cases in which we act, though these charges are far below what such services would cost in the private sector. For example, in a litigated matter that involved well over 100 hours of solicitor work, EDOWA was paid \$5,000. Similar arrangements will likely be made in future litigation, though largely on a case-by-case basis.

Finally, in July, EDOWA applied for a 3-year grant from the Public Purposes Trust (funds largely generated by the interest on private law firm client trust accounts) to implement the Kimberley Project it previously sought. The current grant application seeks \$80,000/year in order to provide a dedicated solicitor to work on matters affecting indigenous and non-indigenous individuals and communities in the region. We've not received a final decision on our application to-date.

Coupled with our financial reserves, generous donations and membership fees should enable EDOWA to continue operating through November 2016. This is a remarkable achievement, all things considered. It also contrasts starkly to the situation most other EDOs find themselves in: Several were obliged to suspend active operations in June/July when their funding ran out.

Funding impacts on EDOWA staffing

We continue to operate on a shoestring budget, with 1.2 FTE solicitors (myself and Outreach Solicitor, Ian McLeod), a 1.0 FTE office coordinator, 3 volunteer solicitors (1-2 days/week) and up to 6 administrative and law school volunteers.

During 2014-15, we lost the services of 2 of our Outreach Solicitors: Jessica Smith, who'd been with EDOWA since February 2010, resigned in October 2014 to take a full-time role at Employment Law Centre; Annaleen Harris, who'd been with EDOWA since 2012, resigned in March 2015 to take a part-time role at Corrs Chambers Westgarth. Both Jess and Anni contributed greatly to the work EDOWA undertook over the years and we miss them sorely.

On a lighter note, EDOWA hired Ian McLeod in December 2014. Ian is the former Principal Solicitor at Northern Suburbs Legal Centre and a lecturer in Administrative Law at Edith Cowan University. Ian brings a wealth of experience in private practice and in the CLC sector, particularly in administrative and planning law and has been heavily engaged in some of the cases we're running in the Supreme Court and State Administrative Tribunal (SAT).

Provision of legal services

Despite the existential challenges EDOWA has faced over the past year, we have been extraordinarily busy and productive. During the past twelve months, the organisation has continued to aggressively pursue its mission of protecting WA's environment by providing community groups and individuals with legal services.

More significantly, EDOWA has continued to offer services into new areas of practice beyond its historic focus on environmental assessments. EDOWA continues to be active in the Mining Warden's Court where we currently act as counsel for four parties whose objections to mineral tenement applications are pending before the Warden.

Likewise, EDOWA has become more active in local government and planning matters, another area in which it has historically had a limited role. We continued to act for local landholders in western York Shire who seek to intervene a developer's appeal of the refusal of its proposed landfill in York Shire. Western Australia is the only Australian State that does not allow third parties (i.e., members of the public) to appeal planning decisions of local, regional and state governments. Members of the public may, with the SAT's leave, be allowed to intervene or lodge submissions or otherwise participate in a development appeal to the SAT. Our client's efforts during most of 2014-15 resulted in the developer, SITA Australia, substantially reducing the size and intensity of its proposed landfill and in SITA being obliged to withdraw and resubmit a re-worked Works Approval application to DER. In September, our clients were granted intervenor status and we're proceeding toward a mid-November trial.

We also intervened in another SAT proceeding on behalf of rural landowners in the City of Swan, who sought to oppose a developer's appeal against the City's refusal to approve a substantial expansion of the developer's existing sand mine. EDOWA intervened in this ostensibly local planning matter because the sand mine is located in conservation status woodland and has the potential to impact threatened species of flora and fauna. Because the mine had been approved in the mid-1980s, and because the WA Environment Minister determined that expansion of the mine did not require a more current, rigorous assessment, planning laws offered the only vehicle to try to protect both the rural amenity of the area and the environmental values of the property. Ian McLeod represented the clients and the matter

went to hearing in mid-June 2015. In early October, we received the SAT's decision refusing the developer's appeal.

Meanwhile, EDOWA continues to represent a local community activist against a developer's defamation action in the Supreme Court. On a very positive note, just before the end of the financial year, the Court moved the proceeding to the inactive cases docket due to lack of action by the plaintiff over the preceding 12 months. The Court's decision means that the developer/plaintiff has 6 months' time within which to present the Court with a plan of action for pursuing his claims and thereby obtain leave of Court to reinstate the case to the active docket. If the action remains on the inactive docket for more than 6 months, it may be dismissed for lack of prosecution on an application by the defendants. That 6-month period expires at or about the end of January 2016.

We continued providing assistance with review applications under the *Freedom of Information Act 1997 (WA)* and providing assistance in environmental merits appeals and judicial review proceedings.

EDOWA remains committed to achieving public interest environmental outcomes and fostering effective public participation in judicial and political processes. While much of our effort seeks to prevent public agencies from making poor, unsound or harmful decisions, review of the legal correctness of environmental decisions after they are made remains a critical role. Communities and individuals rely on EDOWA to provide expert legal advice on challenging decisions which do not comply with legal or procedural requirements. Where our analysis indicates that a legal error has been made, and public interest environmental outcomes are at stake, EDOWA remains ready and able to seek judicial review on a client's behalf.

Services Provided in 2014-15

(1) Litigation and Representation

(a) Supreme Court proceedings.

EDOWA had one case running in the WA Supreme Court between 1 July 2014 and 30 June 2015.

- *Leighton v Garnham* (developer defamation action against community opposition organisers): EDOWA continues to have another case underway in the WA Supreme Court. In June 2012, we agreed to represent Jane Genovese, a local resident in Kalamunda, in fighting a defamation action brought against her and two other community activists who successfully opposed a local developer's proposed aged-care high-density residential development and rezoning application. EDOWA is acting as instructing solicitor for Ms Genovese and Dr Hannes Schoombe is counsel on the case. While defamation actions are not, per se, "environmental" matters, such actions often overlap with such matters as they have the potential to chill community activists' and environmentalists' exercise of their right to free speech regarding matters of public interest. The EDO has attempted to protect that critically important right in the context of environmental activism.

(b) Mining Warden's Court proceedings

We act for 4 clients in 2 ongoing proceedings in the WA Mining Warden's Court.

- *Poelina v Blackfin* (Duchess Paradise coal mine): EDOWA continues to represent Nyikina traditional owner, Dr Anne Poelina, who opposes Blackfin's proposed Duchess Paradise coal mine – the first such mine proposed in the West Kimberley. The proposed mine would be located a few kilometres north of the

Fitzroy River and a few kilometres east of the nationally significant Camballin wetlands. Dr Poelina objected on public interest grounds, namely environmental impacts, under s111A of the Mining Act 1978 (WA) and successfully sought to stay the hearing of her objections until after the completion of the State's environmental assessment of the proposal. Given that the proposed mine seeks to exploit large coal reserves in the Canning Basin, there is every reason to believe that, if Blackfin's mine is approved, more applications will be sure to follow, resulting in major environmental impacts in an area that has been placed on the National Heritage Register. It is critically important that the environmental, social and economic impacts of the proposed mine be closely scrutinised given the importance of the West Kimberley and Fitzroy River catchment. At Blackfin's request, the WA EPA has put assessment of the mining proposal on hold until mid-2016.

- (2) TWS & Ors v Polaris Metals (Helena and Aurora Range iron ore mine): In May 2014, EDOWA agreed to represent three organisations – the Wilderness Society (WA) Inc., the Wildflower Society of WA Inc. and the Helena and Aurora Range Advocates Inc. – who had lodged objections to two mineral tenement applications lodged by Polaris Metals. The tenement applications are part of a larger mining proposal, known as the J5 and East Bungalbin Iron Ore Mine, which would mine iron ore from the banded iron formations in the Mt Manning Helena and Aurora Range Conservation Park, an ecologically significant and visually stunning area of the Yilgarn that has been the focus of efforts to establish as a national park for nearly 40 years.

(c) State Administrative Tribunal

- SITA Australia v Wheatbelt JDAP (Allawuna Farm municipal landfill, York Shire): In May 2014, EDOWA lodged an application with the SAT on behalf of the Avon Valley Residents' Association (AVRA), seeking leave to intervene or lodge submissions in support of the Wheatbelt Joint Development Assessment Panel's April decision denying SITA Australia's application for approval to construct and operate a 250,000 tonne/year Class II municipal waste landfill. SITA's proposed landfill would be located in agricultural and conservation-zoned portions of western York Shire, near its boundary with Mundaring Shire and close to the Mundaring catchment public water supply and Mt Observation National Park. AVRA represents over 50 rural landowners and farmers, concerned about air and water pollution, loss of amenity, increased heavy truck traffic, diminished land values and other negative effects of the proposed landfill. While the SAT has yet to rule on AVRA's application for leave to intervene, it has permitted AVRA to participate in mediation meetings between SITA and the JDAP.
- (2) Urban Resources v City of Swan: EDOWA first assisted Paul and Wendy Noone, 2 rural landowners in the Bullsbrook area of the City of Swan, in lobbying the City of Swan to refuse a sand mine operator's application for planning approval to significantly expand its operation, from roughly 40 trucks per day to 160, allowing the mine to produce 500,000 tpa of sand. Environmental approval for the mine was issued in the mid-1980s and no further assessment was required by the WA Environment Minister when operational control of the mine changed. After the City refused the mine operator's expansion proposal, EDOWA represented the Noones, who were granted leave to intervene in the operator's appeal to the SAT. The Noones introduced expert evidence regarding traffic and road safety impacts associated with the mine expansion. Ian McLeod

represented the Noones at the 2 1/2 day trial held in mid-June 2015. In October 2015, the SAT released its decision refusing the mine operator's appeal.

In addition to formally representing AVRA before the SAT, EDOWA has also assisted two other, individual residents of western York Shire who are proceeding pro se but likewise seek to intervene or lodge submissions in opposition to SITA's proposed landfill.

(d) Other Casework

EDOWA also provides continuing, informal assistance and advice to other members of the public participating in other types of administrative or judicial matters. We continue to assist clients lodging submissions, objections and appeals against EPA reports to the Environment Minister on environmentally significant proposals.

EDOWA continues to assist clients in efforts to obtain access to information and materials available to the public under the Federal and State Freedom of Information legislation. This includes Sea Shepherd Australia, Rottneest Society, and Environs Kimberley.

(2) Advice

A substantial component of EDOWA's work is providing, one-off and typically quick turnaround advices to members of the public on a wide range of issues affecting the environment and public participation in the judicial and administrative process. Over the past year, we have given advice on issues as diverse as noise pollution complaints, defamation, clearing of native vegetation, protecting endangered species and national and cultural heritage sites, water pollution and use, mining and energy development, and freedom of information matters.

Advice on State and Commonwealth environmental impact assessment processes related to significant proposals continues to be a substantial area of enquiry. The clearing of urban bushland and the potential for this to impact on threatened species of flora and fauna is another area of concern to many of our clients.

Overall, our assistance helps people to better understand the laws affecting the environment, empowering them to speak out and take action to defend fragile ecosystems and protect biodiversity.

(3) Law Reform

Another major component of the legal service that EDOWA provides focuses on the reform of environmental laws and policies – typically through submissions to legislative and executive branch bodies. Compared to last year, the number of law reform submissions we lodged in 2014-15 decreased somewhat. We contributed comments to 4 ANEDO submission in response to Commonwealth proposals: (1) dredging in the Great Barrier Reef, (2) proposed Bat Camp removal policy, (3) registration of environmental charities, and (4) EPBC Act draft approval conditions. We also drafted 3 submissions on the following WA-specific matters: (1) the *Criminal Code Amendment (Preventing Lawful Activity) Bill 2014*; (2) the draft Approval Bilateral Agreement between the Commonwealth and WA; and (3) EPA Environmental Assessment Guideline 9.

EDOWA also continues to be represented on State environmental stakeholder reference groups, namely: (1) EPA's environmental stakeholder reference group, (2) the Dept. of Mines and Petroleum's Reforming Environmental Regulation Advisory Panel. We remain a member of Department of Environmental Regulation's stakeholder reference group but no meetings of that group occurred in 2014-15.

We also participated in the UWA Oceans Institution “Rigs to Reef” workshop in October 2014. Attendees represented government, private sector and environmental interests and provided input regarding proposals to decommission in place offshore drilling platforms and facilities in order to provide artificial reef habitats.

(4) Community Legal Education and Outreach

The EDO continues to provide a comprehensive community legal education and advice service to communities in Western Australia - both in metropolitan and remote, rural and regional areas. During 2014-15, EDOWA reversed last year’s drop-off and provided or participated in 8 CLE or Continuing Professional Development (**CPD**) presentations on the following subjects, all but 1 of them in the Perth metropolitan region: fracking (Sept 2014), third party rights in environmental appeals (NELA, Oct 2014), comparison of US – Australia environmental laws (NELA, Nov 2014), general update on environmental law issues (Mandurah, Nov 2014), overview of the WA Environmental Protection Act and public interest litigation (March 2015), protection of black cockatoos under Federal law (Bunbury, April 2015), managing water resources from a conservation perspective (UWA, April 2015), and noise pollution (WA Architects’ Assn, May 2015). EDO’s CLE materials – including presentation handouts and fact sheets – are freely available on the centre’s website.

In addition, EDOWA published its regular newsletter for members and supporters, *EDOnews*, four times in 2014-15 (August, October, December 2014; March 2015) and provided numerous updates to both its website and Facebook page.

Activity Summary

Activity	2014-15	2013-14
Information & Referrals	17	57
Advices	87	126
Cases Opened	15	40
Cases Closed	2	34
Community Legal Education	8	4
Law Reform and Legal Policy	7	20

Volunteer and Pro Bono Assistance

(1) Volunteers

The EDO’s capacity to provide services to clients is greatly increased by the assistance of legal services volunteers – mostly law students but also licensed practitioners. Our outstanding volunteers have contributed greatly to EDOWA’s provision of legal service this year, providing legal research support, compiling briefs for counsel, summarising evidence, serving court documents and answering the phone and acting as a point-of-contact for clients. EDOWA is very grateful for the hard work of its law student volunteers who contributed 1492 hours of unpaid work to the EDO this year – a 20% increase over the 1243 hours recorded in 2013-14, and an increase of over 40% from the 1065 hours volunteers logged in 2012-2013. Ordinarily, legal assistants in the private sector are billed out at roughly \$90/hour, meaning our volunteers’ time equates to nearly \$135,000 in value added to EDOWA’s work.

We also continue to rely on EDO supporter Craig Chappelle who provides us with the professional layout of the *EDOnews* at no charge.

(2) Pro Bono Assistance

In addition to the assistance EDOWA receives from its legal volunteers, the organisation also receives and relies on the assistance of barristers and solicitors working pro bono or on a reduced fee basis to take public interest environmental matters to court on behalf of its clients. This year our Convenor, Dr Johannes Schoombee has assisted with running defamation proceedings for our client Jane Genovese. Perth barristers, Greg McIntyre SC and Henry Jackson provided prospects advices to EDO clients, and UWA Law School professor Alex Gardner and Dean Erika Techera have given us valuable advice and insights on complicated issues of environmental and administrative law.

Volunteer Awards

The EDO wishes to acknowledge the contributions of the following volunteers who gave generously of their time, knowledge, skills and enthusiasm in 2014-15:

Gold Award (100+ hours)	Silver Award (50-100 hours)	Bronze Award (25-49 hours)
Su-Mita Sen Hill	Ella Wisniewski	Rebecca Dennison
Chris Bailey	Jacqueline Trotter	Iva Stejskal
Haley Graydon		Clare Wood
Hannah Spivey		
Rachel Robinson		

Collaboration

EDOWA continues to partner with ANEDO on submissions on Commonwealth environmental law reform and mining law reform. We also continue to collaborate with environmental non-government organisations – such as Environs Kimberley, World Wildlife Fund, The Wilderness Society, Conservation Council WA – on state-based law reform submissions and CLE workshops.

We continue to maintain ties with WA law schools located in Perth, an effort begun in 2012-13. That effort has proven very successful. We continue to partner with the University of Notre Dame in an “externship” volunteer program. EDOWA has also built a solid relationship with the University of Western Australia, particularly Law School Dean Erika Techera and Professor Alex Gardner. For example, Dean Techera and I co-authored an article, entitled “Sharks: Conservation, Culling and Controversy” in the June 2015 edition of the *Australian Environment Review*.

TREASURERS REPORT – MITCHELL BROWN

The 2015 was a year of tightening the proverbial Belt. With prudent saving over the last 5 years, the EDO managed to have a surplus of cash stockpiled away to ensure that we are able to survive the tougher periods, or if we were ever to lose funding. After many hours and discussions, plans and budgets have been put in place to safeguard that we make the most of what money we have left to continue our responsibility of defending the environment within Western Australia.

At this point as an organisation we expect to be able to keep operating until mid-2016. So with this we have become ever reliant on our members, through their fees and donations. I would also like to take this opportunity to thank a generous donor who has kindly offered to help support the EDO quite substantially by providing us financial assurance over the next 12 months. This being said, this generous donation is contingent on us continuing to raise money and I implore all members to help where possible and encourage others to support the great work of this organisation. Unfortunately 2016 looks grim, with the organisation starting to live from month to month, but with our team actively working for the betterment of the community, our mission and service will remain the same.

I would also like to take this opportunity to thank my colleague and outgoing Treasurer Rhett Nicholas for his tireless efforts during the year.

Acknowledgement of Funders

The EDO would like to acknowledge the following funders:

- The Legal Aid Commission of Western Australia
- Our generous donors, who gifted a total of \$53,014 to the EDO

Balance Sheet
as at 30 June 2015

(The full financial statements are available to members upon request)

	NOTE	2015	2014
		\$	\$
CURRENT ASSETS			
Cash at bank			
- General		14,406	21,939
- Fund		190,749	267,727
Cash on hand		20,370	12,736
Trade and other receivables	2	<u>5,197</u>	<u>28,444</u>
TOTAL CURRENT ASSETS		<u>230,723</u>	<u>330,846</u>
NON-CURRENT ASSETS			
Property, Plant and Equipment	3	<u>13,794</u>	<u>16,144</u>
TOTAL NON-CURRENT ASSETS		<u>13,794</u>	<u>16,144</u>
TOTAL ASSETS		<u>244,516</u>	<u>346,990</u>
CURRENT LIABILITIES			
Trade and other payables	4	9,023	12,760
Unearned income	5	91,735	91,060
Provisions	6	<u>16,863</u>	<u>17,816</u>
TOTAL LIABILITIES		<u>117,622</u>	<u>121,636</u>
NET ASSETS		<u>126,895</u>	<u>225,354</u>
EQUITY			
Retained surplus		225,354	151,400
Net profit/(loss)		<u>(98,458)</u>	<u>73,954</u>
TOTAL EQUITY		<u>126,895</u>	<u>225,354</u>

**Notes to the Financial Statements
For the year ended 30 June 2015**

	2015	2014
	\$	\$
2. TRADE AND OTHER RECEIVABLES		
Trade debtors	73	20,789
Sundry debtors and prepayments	3,364	5,896
Rental bond	1,760	1,760
	5,197	28,444
3. PROPERTY PLANT & EQUIPMENT		
Furniture & Fittings — at cost	45,007	45,007
Less Accumulated depreciation	(32,301)	(31,326)
Total Furniture & Fittings	12,706	13,681
Office Equipment — at cost	55,597	55,597
Less Accumulated depreciation	(54,509)	(53,134)
Total Office Equipment	1,088	2,463
Total Property Plant & Equipment	13,794	16,144
4. TRADE AND OTHER PAYABLES		
Trade creditors	1,040	1,061
Employee expenses payables	6,144	7,381
GST payable	1,840	4,319
	9,023	12,760
5. UNEARNED INCOME		
Income in advance (member)	3,736	645
Grant income in advance	87,999	90,415
	91,735	91,060
6. PROVISIONS		
Provision for annual leave	14,863	13,116
Audit fee	2,000	4,700
	16,863	17,816

**DETAILED STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED 30 JUNE 2015**

The below statements have been prepared in accordance with the reporting requirements of the Community Legal Service Information System ("CLISIS"). Refer to Note (i) and (ii) below for a reconciliation of income and profit with the financial statements.

	Note	2015 \$	2014 \$
INCOME			
Grants			
- Commonwealth		2,416	256,017
- State		144,004	130,443
Service Generated Income		20,529	52,512
Other Income		<u>62,710</u>	<u>39,961</u>
	(i)	<u>229,659</u>	<u>478,933</u>
LESS EXPENDITURE			
Clients Disbursements		704	2,495
Communications		4,381	3,303
Insurance		2,933	3,211
Depreciation		-	-
Electronic filing system		-	-
Finance, Audit & Accounting charges		10,666	28,343
Repairs and maintenance		-	34
Office costs		30,630	29,426
On-costs		15,083	15,586
Office overheads		14,557	13,777
Capital expenditure - fittings		-	33,947
Promotions		2,031	-
Legal		25,985	200
Library, Resources and Subscriptions		8,428	25,827
Salaries		193,155	200,740
Staff recruitment		-	849
Staff training		518	1,578
Superannuation		18,885	19,238
Travel		<u>163</u>	<u>287</u>
		<u>328,118</u>	<u>378,841</u>
SURPLUS/(DEFICIT)	(ii)	<u><u>(98,458)</u></u>	<u>100,092</u>

The accompanying notes form part of these financial statements.

**DETAILED STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED 30 JUNE 2015**

(i) Reconciliation of Income between CLSIS and EDOWA Accounting Principles.

For the purpose of our reporting to the Commonwealth and State funding providers we are required to present income and funds received for and during the period.

	2015	2014
	\$	\$
Income received in accordance with CLSIS	229,660	478,933
Prior period income utilised/(unearned income)	<u>(91,735)</u>	<u>(58,233)</u>
Income in accordance with EDOWA accounting principles	<u>137,924</u>	<u>420,700</u>

(ii) Reconciliation of Surplus/(Deficit) between CLSIS and EDOWA Accounting Principles.

For the purposes of our reporting to the Commonwealth and State funding providers we are required to present income as funds received for and during the period.

	2015	2014
	\$	\$
Current year surplus/(deficit) in accordance with CLSIS	(98,458)	100,092
Brought forward surplus/(deficit)	90,461	30,330
Surplus/(deficit) in accordance with CLSIS	<u>(7,997)</u>	<u>130,422</u>
Add capital expenditure in accordance with CLSIS ¹	-	33,947
Less unearned income	<u>(90,461)</u>	<u>(90,461)</u>
Surplus/(deficit) in accordance with EDOWA accounting principles	<u>(98,458)</u>	73,908

Note:

1. Capital expenditure - fittings approved by CLSIS report.