

ENVIRONMENTAL DEFENDER'S OFFICE (ACT) INC.

ANNUAL REPORT

2004-2005

PROTECTING THE ENVIRONMENT THROUGH THE LAW



Environmental Defender's Office (ACT)
Level 1 Public Trustee House,
4 Mort St
Canberra A.C.T 2601.

GPO Box 574 Canberra
A.C.T. 2601

Telephone: (02) 6247 9420
Fax: (02) 6247 9582
Email: edoact@edo.org.au
www.edo.org.au/edoact

TABLE OF CONTENTS

Chair's Report	2
THE EDO NETWORK	4
<i>A Brief History of the EDO Network</i>	4
<i>The Role of the EDO (ACT)</i>	5
<i>A Brief History of Our Achievements</i>	5
<i>the management Committee</i>	6
Role of the Committee.....	6
Management of conflicts of interest.....	6
<i>Organisational Management</i>	6
Ethical Standards	6
OVERVIEW OF 2004/2005	7
<i>Legal Advice and information provided</i>	7
<i>Community Legal Education</i>	9
<i>Law Reform and research projects</i>	9
<i>Meetings</i>	11
RESEARCH	11
<i>Access and Equity</i>	12
STAFF REPORT	12
Volunteers and Pro Bono	14
THE FUTURE	15
Legal aid in public interest environmental law matters	15
<i>The need for environmental legal aid</i>	15
FINANCES	16
<i>Funding</i>	16
FINANCIAL REPORT	17
INDEPENDENT AUDIT REPORT	18
APPENDIX ONE - REPORT ON ADVICE ACTIVITY	19

CHAIR'S REPORT

Access to legal services is crucial if citizens are to equally participate in civil society. The EDO (ACT) is committed to overcoming the inequality that unfortunately appears to be inherent in accessing the legal system - that one needs a lot of money, time and resources to challenge decisions. We will continue to speak strongly for an adequately funded EDO, in an area vital to the functioning of society. The EDO is committed to assisting the community in accessing the law which shapes and impacts our lives and the environment on which we depend. It is our responsibility as lawyers and concerned environmentalists from all fields to recognise short-termism of politicians and business groups and work together using legal processes along side other techniques such as lobbying, fundraising, media engagement, research, and education.

There are many examples in society which prove the need to defend our environment, "[Presently]...if the entire world were consuming at the rate we do in Western economies, it would take five planets to support us."¹ Our belief in individual economic freedom as the recipe for human happiness and prosperity has led to overconsumption of the earth's resources on a grand scale. In the developed world, we, as consumers, have largely benefited from the products of these practices. Canberra typifies this luxury. For example, to put our local water use in a global perspective, the average African family uses 19 litres per day compared to 930 litres per day for a Canberran.² This is not because we have more water to spare, one only has to look at studies undertaken on the state of our river system, the Murray Darling to understand this.³

More locally, current challenges in the Capital Territory and surrounding region include proposals to expand permissions for waterskiing and jet skiing on Lake Burley Griffin, a massive motor 'sports' dragway proposed for Majura Valley which will generate huge amounts of noise pollution, the not particularly enlightened proposal to consider as an option the

route for a proposed Belconnen to Civic busway through Bruce Ridge and O'Connor Ridge Nature Parks (the formerly already decimated by clearing for the Gungahlin Drive Extension freeway corridor), the proposed Molonglo Valley housing development which if improperly designed will threaten woodland birds and significant raptor populations, and the continued use of call-in powers by the Minister to remove public appeal rights in relation to developments throughout the Territory such as multi-storey buildings at Goodwin Village site in Ainslie.

As well as our over-consumption, human induced climate change is proving to be the biggest threat to humanity, other species, future generations and the ecosystems which support us. Reducing greenhouse gas emissions that contribute to climate change needs to be overwhelmingly a high priority for our society. In affluent Canberra over-reliance on the car is a key contributor to greenhouse gas emissions. Yet we witnessed in the last year the bulldozing of beautiful bush to make way for the Gungahlin Drive Extension freeway. One of the outreach projects EDO (ACT) will undertake in the coming year is a conference on climate change for all stakeholders.

The last year has been one of change and opportunity for the EDO in the ACT. In spite of a complete changeover of staff and a significant shift in the composition of the Management Committee, the EDO has in fact continued to provide advice and assistance to residents of the ACT and surrounding region who have been seeking to protect the environment.

There have been many highlights at the ACT EDO in the past year. One has been the introduction of strategic client-funded litigation. A case highlight was assisting ACT based film maker Jeni Macmillan who successfully defended various charges in the NSW Local Court under the NSW Forestry Regulations for remaining being in a prohibited area whilst making a documentary film about the impact of logging on a private landowner's water supply. This case raises constitutional issues of implied freedom of political communication, as McMillan was charged even though her footage was shown on commercial TV. The Forestry Commission have appealed the decision of the Local Court to the NSW Supreme Court. This attack on freedom of debate and dissent, has some disturbing similarities to Gunns Limited's attempts to use the law to silence 'freedom fighters' in Tasmania.

In the ACT, it has been encouraging to see the positive local response in favour of free speech and against such Strategic Litigation Against Public Participation (SLAPP). The EDO ACT was proud to host the 'freedom fighters' roadshow when it visited Canberra. On a local level, Dr Deb Foskey MLA has introduced an Anti-

¹ *Sustainable business: the need for new business models in a changing world*, Address by Travis Engen, President and Chief Executive Officer, Alcan Inc., at the Birkbeck Lecture Series (London, 27 October 2005)

² This figure comes from an ACTEW report for annual single residence use.

³ Murray-Darling Basin Ministerial Council (2002) *The Living Murray: A Discussion Paper on Restoring the Health of the River Murray*, Murray-Darling Basin Commission, Canberra.

SLAPP Bill to the ACT Legislative Assembly. In another recent development on this front, in November 2005, a Gunns-style SLAPP suit was brought against environmental activists who have opposed logging in the Eden region of southern NSW. We will be following this closely.

Further highlights throughout the year have been the continuing addition of new features on our upgraded website, including a secure online donations facility, and access to important case law, relevant links, EDO bulletins, and online copies of our law reform submissions.

These law reform submissions contributed to the development of policy in the ACT and covered such diverse topics as Planning System Reform in the ACT, Options for Sustainability Legislation in the ACT, Human Rights Legislation in the ACT and the Inquiry into Police Powers of Crowd Control. All have been well received, in particular the Sustainability Legislation submission which was singled out for praise by the ACT Chief Minister.

Despite these achievements, the EDO (ACT) did not receive funding from the ACT government for 2005/2006 financial year, largely it seems as a result of a change in grant criteria which shifted focus in grant-making to project-based enterprises. For the short term, this means we may be limited in our ability to contribute to ACT policy debate.

The EDO still receives a sizable grant from the Commonwealth for which we continue to fulfil our obligations to provide an affordable advice and legal service to citizens of the ACT and surrounding region.

The ACT funding cut has forced us to reassess and has led to a reaffirmation of our organisation's place in the ACT. At our Annual Strategic Planning Day in September, the Management Committee unanimously decided to pursue other sources of funding in order to continue to service the ACT community, given the strengths of our solicitor, Committee, and what we can achieve. In a community organisation many different skills are needed - desktop publishing, database management, fundraising, marketing, researching, secretarial, and of course providing a quality legal service for the protection of the environment to persons who cannot otherwise afford or obtain such services.

We would dearly love to be able to serve Canberra and the South-East Region on a full time basis. There is certainly the demand for it. Current and future projects of the EDO include:

- ACT Environmental Law (Plain English) Handbook update

- Making policy input in National debates around the reform and implementation of environmental laws, particularly the Environmental Protection and Biodiversity Conservation Act.
- International projects for environmental law advice services in the Asia-Pacific region
- Education outreach and working closely with other CLCs and Environmental organisations
- South east NSW region outreach program; and
- Ongoing case work where the independent resources of the EDO ACT and our clients combined with the input of the pro bono Bar and law firms can make this possible.

The Committee is fortunate to have a committed group of concerned environmentalists, lawyers and other professional and interested persons who have seen through the last year with conviction, kindness and action. Thank you to Matthew Zagor, Lee Nelson, Susie Brown, Kasy Chambers, Julia Pitts. Thank you to Julia Pitts, Caroline Plunkett and Lyndall Kennedy who all acted as Chair at various stages during 2004-2005. I came on board as Chair in September 2005 at the annual Strategic Planning Day.

Our solicitor Dr James Prest is well settled in, as is June Weise our office administrator. Both have proven their resilience, talent, resourcefulness to ensure the EDO keeps growing, embracing the challenges we face. Sincere thanks are extended for their excellent work, additional hours and commitment.

Finally, the input of volunteers thus far has been impressive. We are fortunate to have a dedicated and skilled group of volunteers. We thank you. Our volunteers have included Alison Gurr, Kelly Wilson, David Gill, Kasia Sienko, Lachlan Tait, Rory Eames, Maryanne McKay, Francis Elliott and Peta Nicholson.

I look forward to working with you all in the coming year towards the cause of improved environmental stewardship and protection. The past year has been one of consolidation laying a strong base from which the EDO can grow in the next year.

Christal George, EDO Chairperson

THE EDO NETWORK

EDOs are located in every capital city and in Far North Queensland. These offices are in regular contact and collaborate on national issues such as the Environment Protection and Biodiversity Conservation Act 1999 (Cth), and on issues of common concern such as State and Territory law reform proposals and cases raising similar or national issues. The EDO Network holds a national conference each year to discuss these issues. The EDOs also have a web page at www.edo.org.au. A national organisation 'ANEDO' ('Australian Network of Environmental Defenders' Offices') has been incorporated. Each EDO office will continue to function as an independent organisation, but the incorporated body will assist in providing a national voice for the EDO network and a vehicle for obtaining further funding.

The Environmental Defender's Office (ACT) is one of nine independent Environmental Defender's Offices in Australia. The members of the EDO Network share resources and ideas and meet for an annual network meeting. Members of the network contribute to the production of the quarterly environmental law journal, *Impact*. For more information on the EDO Network, please visit our national website at: www.edo.org.au.

A BRIEF HISTORY OF THE EDO NETWORK

The Environmental Defender's Office (ACT) Inc. is one of a network of community legal centres across Australia that specialise in environmental law.

The first EDO was established in Sydney in 1985, followed later by the opening of offices in Brisbane and Melbourne. Following a Commonwealth Government commitment in May 1995 to fund a national network of environmental lawyers, the other States and Territories established their offices to complete the EDO network across Australia.

The national network of EDOs was incorporated in May 2005. Most of the state and territory EDOs are now members of this national body called 'ANEDO' (Australian Network of Environmental Defenders' Offices). The establishment of ANEDO has facilitated better skills and research exchange between EDOs,

THE ROLE OF THE EDO (ACT)

The EDO (ACT) has three main functions:

- providing legal advice about environmental law to members of the community and community groups interested in preserving the environment;
- undertaking community education about legal issues related to the environment and planning; and
- researching and making submissions to government about reform of laws and policies affecting the environment.

Specific EDO services to the ACT and regional community include:

- Providing legal advice and assistance to people and groups seeking to protect the environment;
- Providing advice to people and groups wishing to appeal against administrative decisions relating to the environment;
- Presenting environmental law seminars to the community, and presenting individually tailored talks to schools and environmental groups;
- Providing environment and planning law information to the general public, such as the EDO's legal Fact Sheets and our upcoming Handbook on ACT Environmental Law;
- Researching public interest matters in environmental law;
- Working with other ACT community legal centres, indigenous groups and environmental groups to make submissions proposing improvements to environment and planning policies and laws;
- Promoting laws and law reform that helps protect the environment; and
- Publishing articles on environment and planning laws.

A BRIEF HISTORY OF OUR ACHIEVEMENTS

The EDO (ACT) was established in 1995 and was operational by mid-1996. Highlights of previous years included the following set out below.

In 1998 the EDO presented a major seminar on the ACT's new integrated pollution control and environment management legislation, as well as a number of educational presentations on tree protection legislation.

Detailed submissions were also made on the Environmental Protection and Biodiversity Conservation Bill (Cth).

In 1999 and 2000 written submissions were made on Utilities Policy and the ACT Environmental Impact Assessments as well as the National Competition Review of the Land (Planning and Environment) Act 1991.

In 2001, submissions were made on the Statutory Review of the Water Resources Act 1998. The Review resulted in a Report being tabled in the Legislative Assembly in June 2001. Submissions were also made regarding other significant law reform issues, such as heritage and tree protection.

The EDO made presentations to community groups, such as the presentation explaining defamation law to ACT community groups and activists.

In 2001, the EDO also published a set of plain English 'Fact Sheets' on ACT environmental law. The Fact Sheets were launched by the Minister for Urban Services and continue to be widely distributed by the EDO.

In 2003 the EDO published the *ACT Environmental Law Handbook* and began to provide a more expansive client service by drawing upon assistance from the pro bono Bar.

THE MANAGEMENT COMMITTEE

Role of the Committee

The Committee's primary role is the protection and enhancement of long-term environmental protection in the ACT. To fulfil this role, the Committee is responsible for the overall Corporate Governance of EDO including its strategic direction, establishing goals for management and monitoring the achievement of these goals.

Composition of the Committee

The EDO's Management Committee during 2004-2005 was:

Julia Pitts (Chair from November 03)
Kasy Chambers (Vice Chair)
Matthew Zagor (Secretary)
Lee Nelson (Treasurer from November 2003)
Caroline Plunkett
Suzanne Falvi
Lyndall Kennedy
Clare Henderson
Susie Brown
Hanna Jaireth

Management of conflicts of interest

Committee members are required to keep the Chair advised, on an ongoing basis, of any interest that could potentially conflict with those of the EDO. Where the Committee considers that a significant conflict exists, the member concerned is not present at the meeting whilst the item is considered. The Committee has developed procedures to assist the Committee to disclose potential conflicts of interest.

ORGANISATIONAL MANAGEMENT

Membership of the EDO Management Committee is open to all non-corporate members, and any member may nominate or be nominated to the Management Committee in a voluntary capacity. The Management Committee determines the strategic and policy goals of the EDO and the most appropriate means to achieve those goals.

The EDO utilises volunteer workers for a range of legal, administrative and clerical functions. Volunteers

are supervised at first instance by the Solicitor, and ultimately by the EDO Management Committee.

The Management Committee is elected at the Annual General Meeting in accordance with the procedures set out in the EDO's Rules of Incorporation. The Management Committee may delegate aspects of its authority to specialised sub-committees. Daily operational management of the EDO is the responsibility of the Solicitor, who works cooperatively with the Office Administrator.

EDO procedures relating to Governance are documented in a Policy and Procedures Manual, and staff are trained in their accurate and timely application.

Ethical Standards

The EDO has a staff Policy and Procedures Manual, and an EDO Service Standards, both of which are updated annually. These documents address such issues as standards for legal policy and law reform, standards of organisational management, and standards for assessing client satisfaction and managing complaints. Further, EDO complies with the performance requirements of stakeholders, such as Commonwealth and ACT governments.

OVERVIEW OF 2004/2005

The EDO had another successful year in operation, providing advice, legal education and submissions on environmental legal issues throughout the ACT, surrounding areas of NSW as well as on Commonwealth environmental law issues across Australia.

The EDO benefited from the services and skills of its solicitor for most of the year. Dr James Prest, the EDO's new solicitor, commenced with us in September 2004. During the period July 2004- September 2004, Kath Taplin was the EDO solicitor prior to transferring to Indonesia to take up a work placement.

LEGAL ADVICE AND INFORMATION PROVIDED

Most matters were resolved via the provision of information and advice without requiring long term legal assistance. The information and advice subject matter included a variety of administrative decisions regarding the environment and planning, noise, air and water pollution, tree and vegetation protection, environmental impact assessments and various development proposals.

A full listing of casework activity is annexed to this report as a PDF file (Appendix One). The EDO ACT does not provide a duty solicitor service. However we have a standing client referral arrangement with the Land and Planning Division of the ACT Administrative Appeals Tribunal.

Some cases requiring more extensive work concerned:

- Objections to development incompatible with residential policy and use in the 'Bush Capital', particularly relating to multi-unit development;
- Advice on noise pollution, particularly regarding motor sports;
- Advice on restraining unapproved development on leased lands;
- Advice on mobile telephone towers.
- Advice on incorporation of environmental groups in ACT and in NSW;
- Advice on misleading environmental claims in product marketing particularly in relation to the sale of timber products as "sustainably produced";
- Advice regarding police complaints and assaults by police on environmental demonstrators;
- Advice on defamation law;

- Advice regarding the application of the *Environment Protection and Biodiversity Conservation Act* (Cth) to activities in the ACT;
- Advice on voluntary conservation agreements in NSW;
- Advice on reckless destruction of known threatened plant habitats in nearby areas of NSW;
- Advice on significant tree protection; and
- Legal and process advice on planning law, including appeals to the AAT.

In 2004-05 there were three major casework matters which provided a focus for the EDO:

Important case of Freedom of the Media and Freedom of Political Communication
EDO ACT during 2004-05 introduced strategic *client-funded* litigation coupled with an extended array of pro bono assistance from the private bar.

A case highlight was assisting ACT based film maker Jeni Macmillan who successfully defended various charges in the NSW Local Court under the *NSW Forestry Regulations 1999* for remaining being in a prohibited area whilst making a documentary film about the impact of logging on a private landowner's water supply. This case raises constitutional issues of implied freedom of political communication, as McMillan was charged even though her footage was shown on commercial TV. The Forestry Commission have appealed the decision of the Local Court to the NSW Supreme Court.

Upholding Commonwealth Environmental Laws

EDO ACT acted on a full fee recovery basis for the Wilderness Society Inc in *TWS v Minister for Environment and Heritage & Gunns* which was filed in the Federal Court in April 2005. This matter also involved substantial assistance from Stephen Keim of the Queensland Bar.

TWS is a major national environment group. The defendants included Australia's largest woodchipping company - the proponent for a pulp mill development in Northern Tasmania., and the Commonwealth Minister for Environment and Heritage. The project was formally referred under the *EPBC Act* to the Commonwealth Minister for Environment and Heritage in January 2005 for a decision.

The pulp mill will lead to an increase in native forest destruction, at least in the short term, and an ongoing significant level of native forest conversion to plantations. The present approach to environmental impact assessment proposed by the Commonwealth is to ignore the environmental impact of forestry activities. This is based on the exemption in s.38 of the

EPBC Act for RFA forestry. However the RFA is due to expire in 2017. The proposed mill has a projected life of at least 30 years. The proposed assessment will not consider the impacts of forestry post 2017 despite the expiry of the RFA.

The Federal Government's stated reason for not assessing the impact on forests is that there is a Regional Forest Agreement (RFA) in place, and the relevant federal environment laws have deemed that the RFA takes into account the impacts on the forests. However there is a disparity between the life of the pulpmill and the life of the RFA.

The application to the Federal Court lodged by EDO ACT sought to have the Court set aside the Minister's decision on assessment of the pulpmill in so far as it failed to refer to impacts on Tasmania's forests. It sought an order to direct the Minister to re-designate the pulpmill proposal as a controlled action on the existing grounds with the addition of the impacts of logging of the forests to feed the pulpmill after 2017. Assessment of the forests should have included impacts on World Heritage, RAMSAR wetlands and threatened species.

EDO ACT had carriage of the matter through several interlocutory steps. It was transferred from the office in June 2005 to the Queensland EDO due to resource limitations. In August 2005 the litigation came to a halt after EDO and TWS were advised that Gunns had withdrawn its first referral, meaning that the basis for the court case no longer existed. In an incredible turn of events, the company submitted a fresh referral document and the Minister made a fresh decision on the environmental impacts of the new referral, rendering all the previous litigation pointless.

Other casework achievements of 2004-05

- Advice to Ridgeway Residents which led to leading to ACTPLA making orders against Fairbairn Park Control Council in relation to soil erosion, waste dumping, water pollution and unapproved development at the Fairbairn Park motor 'sports' complex. Other assistance was provided in relation to noise pollution control in the ACT and NSW as well as administration of the *Land (Planning and Environment) Act 1991*.
- Assisting a range of clients to obtain referred pro-bono services for example in relation to ACT AAT appeal rights.

Testimonials

"[Our] problem has posed just about every issue in environment-protection disputes one could imagine: from strong vested political interests and an associated 'powerlessness' of the protestors, through press and community hostility towards the protesting community, to the obvious cross-border issues and a relatively complex legal situation...Through all this, for the past year or more James [Prest] has provided us with unflagging assistance and advice, showing an amazing capacity (within EDO's strictly limited resources) to get things done rapidly but with the highest thoroughness and professionalism... Certainly we found it invaluable."

Client, April 2005.

"The EDO has a vital role in the community both local and on larger picture issues. Thanks and keep up the good work." Client, July 2005.

COMMUNITY LEGAL EDUCATION

Seminars and presentations conducted as part of the EDO's community legal education program contribute to community awareness of the EDO and environmental and planning law issues. These efforts are complemented by the EDO Fact Sheets, website, as well as production and distribution of the EDO newsletters and e-bulletins.

During 2004-05, the EDO delivered an informative program of community legal education presentations. These included:

- Presentation of a legal briefing on the Land Act to the *ACT Planning Law Reform Round Table – a Roundtable on Reform of the Land (Planning and Environment Act) 1991*, held 11 March 2005 at University House which was a joint EDO function with CCSERAC.
- Presentation of a paper "Recent Developments in Public Interest Law in the ACT" to the EDO NSW *20 Years of Public Interest Environmental Law Conference*, 13-14 May 2005 at Customs House, Sydney.
- Hosting and co-presentation of workshop on National Heritage laws at ANU on 16 May, "Introduction to the Heritage Provisions of the EPBC Act", in conjunction with the WorldWide Fund for Nature's EPBC Unit.

Other presentations included presentations at several ACT schools including Erindale College regarding aspects of environment and planning law, a presentation made to CCSERAC's to World Environment Day Fair, and a CLE presentation to a major Canberra law firm.

Fact Sheets

During 2004-05 there was significant progress on the Fact Sheet Revision project with many existing fact sheets revised and published on EDO ACT's website. In addition a number of entirely new Fact Sheets were published – on the following topics:

- Freedom of Information (FOI) Law in ACT;
- Commonwealth FOI law;
- Noise pollution fact sheet;
- Pollution Law Fact sheet
- Investigating Government Decisions
- Challenging Government Decisions.

Website

The EDO ACT website was completely rebuilt from September 2004. Technical problems had meant that

prior to that time, for a limited period, the EDO did not have a web presence.

The new website is expansive and contains much valuable information. It is more interactive than the previous site – for example members of the public can make requests for legal advice by submitting email through the site.

Main features of the site include:

- Selected chapters of the ACT Environmental Law Handbook
- Fact sheets on ACT and Commonwealth environmental law;
- Recent court and tribunal decisions page;
- Recent legislative developments page;
- News Page, Events Page
- Membership, FAQ, On-line donation pages.

LAW REFORM AND RESEARCH PROJECTS

The EDO was involved in a number of law reform activities, primarily by way of making submissions on proposed legislation. A generous grant from the ACT government assisted EDO to make this impact on the law reform process during 2004-05, but EDO's capacity to do so in future has been put in question by the cessation of such funding at the expiry of the financial year.

Land Act submission

The EDO made representations to ACTPLA in relation to the operation of the *Land (Planning and Environment) Act 1991* as part of the Planning System Reform process. We wrote: "From the content of the discussion papers it is clearly evident that the development industry has clearly communicated its desire to achieve a more streamlined planning and approval process in the ACT. These demands represent a valuable opportunity for ACTPLA and the ACT to increase pressure on the broader community to do more to achieve greater ecological sustainability. ACTPLA needs to grasp this opportunity to create greater incentives for increased ecological sustainability of development projects. It can do so by ensuring that offers of exemptions and fast-tracking of development assessment are only available to developments that offer much improved environmental standards, greater levels of protection of biodiversity and improved energy and water efficiency." As part of that submission we also recommended the curtailment of Ministerial call-in powers in s.229B *Land Act*. We also made a presentation to the Planning and Environment

Committee of Assembly prior to the Launch of the ACTPLA discussion papers.

better protected if they were included in the *Human Rights Act* than if they were not included in the Act.

Options for Sustainability Legislation in the ACT

The EDO made a submission to the Office of Sustainability which contained a critical analysis of sustainable development legislation in other jurisdictions to inform drafting of ACT sustainability legislation. We wrote: "Sustainable development legislation could significantly assist in the promotion of sustainable development principles in the ACT. Making a formal and long term statutory commitment to sustainable development will mean that these principles will prevail over short-term economic and political trends. There is a risk that a path of least resistance may be followed, whereby existing sustainability initiatives within government are merely described and codified; where existing efforts are repackaged and re-badged as something new, and where the impact of the legislation on broader society outside of the ACT government is extremely limited. A sustainability Act could set out the Government's responsibilities, ensure that sustainability concerns guide all decision-making and consolidate already existing initiatives. This approach needs to be taken into account in the course of, and the recommendations of, ACTPLA's Planning System Reform Project. Depending on commitments made in the legislation, a *Sustainable Development Act* could establish the ACT as a leader in Australia in the field of sustainable development. "

Police Powers of Crowd Control submission

EDO ACT also made representations to the Police Powers Inquiry of the 6th Standing Committee on Legal Affairs of the ACT Legislative Assembly Entitled "The Risks of Use of Capsicum Spray and Pain Compliance Techniques against Public Gatherings". The background to the submission (and indeed the entire inquiry) was arose from a request for legal assistance which came from two young Canberrans who were subjected to an unprecedented use of chilli pepper spray by police during their attendance at a protest against global warming held on federal Election Day in October 2004. This incident involved the use of chilli pepper spray against a peaceful political demonstration. It amounted to an attempt by police to use chemical weaponry to suppress the expression of political views in breach of the participant's human rights of peaceful assembly and freedom of expression.

Environment-related human rights

"The Case for Environment Related Human Rights" was EDO's a submission to the ACT Attorney-General for consideration in the s.43 Review of Operation of the *Human Rights Act 2004* (ACT). We argued that there is a need for specific recognition of environment-related human rights within the *Human Rights Act 2004* (ACT). Environment-related human rights would be

MEETINGS

A number of meetings were held during 2004-2005 with a number of MLAs and their staff regarding environmental legislation in the Territory. Other meetings were conducted with members of the Executive regarding the administration of environmental law and legislation in the Territory.

Meetings were held with the ACT Commissioner for the Environment, Dr Rosemary Purdie, as well as with staff of Environment ACT including Liz Fowler, the EPA, and Dr Maxine Cooper, the Conservator of Flora and Fauna. In April 2004 we met with the Tree Protection Unit of Environment ACT over the shape of proposed Tree Protection legislation, as well as meeting with staff of the Office of Sustainability over the possible shape of ACT Sustainability legislation. Not surprisingly meetings were also regularly held with the Director of the Conservation Council of Canberra and the SE Region.

The EDO solicitor attended regular meetings of the Free Legal Advice Forum – a coalition of community legal centres providing advice in the public interest in the ACT. The EDO continued to participate in meetings of the ACT Community Legal Centres Group. In order to maintain communication with other EDOs across Australia we participated in national e-mail forums. Our solicitor attended both ANEDO National Network Meetings, in Adelaide in October 2004 and in Sydney in May 2005.

As part of an increased focus by EDO ACT on international cooperation projects given our natural advantage of being based in the nation's diplomatic capital, we participated in a range of discussions directed towards these ends. We met the EDO NSW in relation to future EDO projects in the Solomon Islands to assist landholders in relation to illegal logging and fishing. Discussions were also held with Solomon Islands Public Solicitors Office staff. In April 2004 we met with an Ausaid representative to discuss projects in the Solomon Islands.

EDO ACT also supplied documents and comments to EDO NSW to assist with Grant applications to Myer Foundation and Ford Foundation for international cooperation projects

The EDO has been relatively constrained by lack of funding to undertake detailed research. Nevertheless the Office undertook substantial research, much of it on volunteered time, for the preparation of four law reform submissions during 2004-05 on the following topics:

- Proposed Planning System Reforms (review of the *Land (Planning and Environment) Act 1991*)
- Incorporation of Environment related Human Rights in the *Human Rights Act 2004*
- The Development of Sustainability Legislation in the ACT
- Police Powers of Crowd Control.

Earlier in 2004, EDO staff met with senior Japanese environmental law academics from the University of Hokkaido, and University of Tokyo in order to discuss explain biodiversity conservation law in Australia.

A study tour in USA was undertaken in November 2004 at private expense as an adjunct to the solicitor's private consulting activity. Dr Prest met with staff of Earthjustice (formerly the Sierra Club Legal Defense Fund) (www.earthjustice.org) in Washington and also with staff of the Environmental Law Institute (www.eli.org) in Washington. These meetings yielded results of relevance for entire ANEDO network which were communicated at National meetings of ANEDO.

ACCESS AND EQUITY

The services of the EDO are available to individuals and organisations in the ACT and surrounding areas with environmental law concerns, subject to the EDO's casework guidelines and newly introduced means test.

Hours of Operation

The hours of the EDO are generally from 9.30am to 5.30pm on Wednesday and Thursday. A telephone and e-mail message service is available at all times. Legal advice on matters involving environmental law is given face to face, in writing and where appropriate, by telephone. Pre-arranged interviews with the solicitor may be negotiated at other times.

New EDO (ACT) premises

The EDO (ACT) moved in December 2003 from its premises in the Centre Cinema Building, 1 Bunda Street, Civic into the Legal Aid Offices in Mort St (located in the Bus interchange in Civic), which is close by to our old office. The new office was set up in January 2004. Many thanks are due to Legal Aid for kindly taking providing space for us and assisting EDO ACT as part of the free legal services community in the ACT.

Means Testing Policy

The EDO management committee adopted a means testing policy this year. Generally stated, this policy ensures that organisations and individuals of limited means receive EDO assistance free of charge, while clients with higher income levels may contribute towards the costs of their environmental law matter. Since implementing the policy the EDO has found that its client base remains largely unchanged.

Access

The EDO is centrally located in Canberra with easy access by public transport. Both a telephone answering and email service are available for inquiries outside existing office hours. Our website is located at www.edo.org.au and is an important tool for obtaining information. The solicitor and volunteers travel to venues to give presentations and workshops to schools and community groups, as well as to meet with clients.

Membership

Membership of 'Friends of the EDO' is available to anyone who wishes to support the work of the EDO. Friends receive newsletters, invitations to social events and discounted admission to EDO seminars.

STAFF REPORT

Despite a complete changeover of staff during 2004-2005 the Environmental Defender's Office ACT (Inc) entered a new phase of growth and achievement. During the period July 2004- September 2004, Kath Taplin was the EDO solicitor prior to transferring to Indonesia to take up a work placement. Dr James Prest, the EDO's new solicitor, commenced with us in September 2004.

We made several detailed submissions on environmental law reform topics in the ACT during 2004-05. These included submissions on:

- Proposed Planning System Reforms (review of the *Land (Planning and Environment) Act 1991*)
- Incorporation of Environment related Human Rights in the *Human Rights Act 2004*
- The Development of Sustainability Legislation in the ACT
- Police Powers of Crowd Control.

We engaged in many legal education initiatives, monthly radio presentations and media. We and represented the community perspective on environmental law before a number of Legislative Assembly committees and at several conferences.

We appeared twice before the Standing Committee on Planning and Environment of the Legislative Assembly. During April 2005 we met with the ACT Office of Sustainability to discuss the development of sustainability legislation in the ACT. Earlier in 2005 we met with the Environment Protection Authority in order to discuss progress with improvements to the *Environment Protection Act 1997* (ACT) and its administration, particularly in relation to noise pollution and compliance.

We continued to distribute the ACT Environmental Law Handbook funded through an Environment ACT Grant.

During 2004-05 the EDO ACT continued the trend first set in 2003-04 of undertaking court related matters where independent sources of funding could be secured. Unlike other EDOs, EDO (ACT) has historically faced significant obstacles preventing it from being solicitor on the record for environmentalists before courts and tribunals. Both this and last financial year, and in no small respect due to the efforts of the pro bono Bar, EDO (ACT) managed to independently fund a number of cases before a court, all of which were successful from the perspective of our clients.

We acted in matters on the basis of independent funding and pro-bono Bar assistance in the Federal Court and the NSW Local Court. We also provided advice and assistance to self-represented litigants in the ACT AAT.

The EDO (ACT), like EDOs nationwide, is able to provide quality legal services to dedicated environmentalists (sometimes referred to by EDOs as 'defending the environmental defenders'). One important case we were involved in concerned two young people who had been sprayed with the irritant capsicum spray by AFP at a political rally on Election Day in October 2004. Our involvement in assisting our clients to file complaints with the Commonwealth Ombudsman eventually led to an Inquiry by the ACT Legislative Assembly's Legal Affairs Committee into Police Powers of Crowd Control and review of related questions in a detailed written submission we made to that Committee. The EDO (ACT)'s involvement in such recent cases (as earlier in 2003-04 we had represented those who had sought to defend Bruce Ridge from bulldozing for a freeway) demonstrates the organisation's genuine commitment to access to law and justice.

Generally speaking, EDO (ACT) has sought to take a more strategic and innovative approach this year. In coming years we are seeking to focus on the strengths and advantages of being located in the National Capital in terms of an increased focus on Commonwealth environmental law and opportunities to become involved in the Asia-Pacific region in terms of capacity building in developing countries in environmental law reform, administration and compliance.

We have continued to be closely involved in the 3 Nationwide network of EDOs, ANEDO which has now become an incorporated body. We have attended the ANEDO meeting in Adelaide in September 2004 and continued to participate in electronic forums for information and resource sharing amongst EDOs. Other EDOs in the Network share information generously which is critical from the perspective of a smaller EDO office.

On a more local level we also benefit from excellent and ever developing relationships with other ACT community legal centres, and law firms who are prepared to provide pro bono assistance.

Office accommodation and, correspondingly our capacity to achieve more increased with the expansion of offices occupied with the ACT Legal Aid Office at Mort Street in Civic. After many years in a humble office in the Centre building, the EDO (ACT) has moved to new premises and now has larger

accommodation within those premises. EDO (ACT) now benefits from the in-kind assistance of Legal Aid, which includes some IT support, access to library services and a client friendly atmosphere. Small Community Legal Centres such as EDO (ACT) genuinely benefit from such generosity.

Further achievements throughout 2004-05

- Extension and continuation of volunteer program
- Recruitment, training and encouragement of approx 15-20 new volunteers during 2004-05. Holding volunteers meetings and creating a volunteer team spirit.
- Major expansion of office accommodation and improvement of signage of the office
- Upgrading of computerised accounting and time billing systems
- A number of very successful presentations to a range of audiences about the EDO and environmental law topics.
- Boosting the non-grant income and membership of EDO markedly.

Aside from the above, EDO (ACT)'s year was an overall success with grant commitments being met.

At 30 June 2005, the EDO staff was:

- James Prest Solicitor (3 days pw)
- June Weise Administrator (2 days pw)

A limited amount of training was attended by staff which included

- Attendance by the Principal Solicitor at the Law Society's Practice Management Course which spanned many evenings and several weekends.
- Attendance at several CLE events held by Law Society.
- Computerised accounting training using MYOB

Dr James Prest
Principal Solicitor.

VOLUNTEERS AND PRO BONO

The members of the Management Committee of the EDO are all volunteers. In addition to their role in overseeing the management of the organisation, all members of the committee contribute significantly to activities of the EDO, such as organising seminars, and submission writing. During the year the EDO received excellent support from legal practitioners, students and other volunteers.

Barristers who have worked with and assisted the EDO during 2004-05

Anne Gibbons (Ada Evans Chambers, Sydney)
Peter Lowe (Ada Evans Chambers, Sydney)
Stephen Keim (Higgins Chambers, Brisbane)
Dr Max Spry
Stephen Hausfeld

Volunteers also did many hours of administrative, legal research and legal education work.

All volunteer work is supervised at all times by our solicitor. All EDO volunteers are provided with an orientation kit and lengthy face-to-face briefing. They are required to complete confidentiality and conflict of interest declarations. An in-house system of supervision exists to prevent legal advice being given by unqualified and uncertified individuals. This includes provision of a copy of the EDO's Risk Management Guide to all volunteers without exception.

Volunteers to whom the EDO is greatly indebted for their contribution within 2004-05 include:

Allison Gurr
Amra Lee
Andrew Collins
Anne Rawson
Clare Guenther
David Gill
Emily Maher
Glen Harris
Joel Harris
Kasia Sienko
Kelly Wilson
Lian Yong
Robyn Selby-Smith
Rory Eames
Sarah Ransom
Shelley Mulherrin
Sophie Crowe
Sue Berger

The EDO thanks all of the members of the ACT Community Legal Centres community for their advice and assistance. In particular thanks are extended to the Women's Legal Centre particularly Rosemary Budavari and also to the Consumer Law Centre, and particularly Mr David Tennant, Director of CARE Incorporated.

Gary Williams, Chartered Accountant, of Rosenfeld, Kant and Co provided his services once again to audit the EDO's accounts free of charge. The Legal Aid Office ACT has provided free conference room facilities and library facilities to the EDO (ACT), which have been of significant benefit to our organisation.

THE FUTURE

The EDO (ACT) is building on its achievements of 2004-2005 in its ninth year of operation and is looking to expand its operations in the coming year, particularly if successful in gaining additional funding.

In the provision of legal advice, there is still considerable unmet demand for the EDO's services.

Members of the ACT community and local environment groups are increasingly looking to the EDO for assistance in their quest to protect the natural environment. With additional funding, the EDO will be able to better serve a larger number of people more effectively.

As has been reported in previous years, the EDO is unable to use its Commonwealth funding for the purposes of litigation. The EDO intends to seek funding from other sources during this next year and in particular to apply for funding from other Commonwealth and ACT government grant programs that can assist the EDO to better achieve its objectives and meet the needs of the ACT community. In order to assist clients in situations where a capacity to pay exists, the EDO has introduced a fee arrangement.

LEGAL AID IN PUBLIC INTEREST ENVIRONMENTAL LAW MATTERS

THE NEED FOR ENVIRONMENTAL LEGAL AID

Legal aid is only available for some environmental cases in the public interest in NSW, but not in the ACT or other States or the Commonwealth.

An important component of such grants of aid in NSW is the provision of a costs indemnity so that, should a litigant face an adverse decision, it does not have to pay the costs of the other side. Provision for such indemnity is made in s. 47, Legal Aid Commission Act 1979 (NSW).

Commonwealth legal aid in public interest environmental matters, together with an indemnity provision, are important examples of giving substance to a procedural right. Governments of all types have often been reluctant to enforce their own legislation. Recent practice bears this out. The Joint Select Committee on Quality of Building in NSW heard evidence in 2002 about the failure of Local Government to implement Local Environmental Plans. It was also only recently that the NSW Department of Urban Affairs and Planning first commenced proceedings to enforce planning laws (with the laws being in place since 1979). In the first two years of operation, the Commonwealth has also only recently brought its first enforcement proceedings under the Environment Protection and Biodiversity Conservation Act 1999, whilst the Queensland EDO has brought two sets of proceedings on behalf of both a concerned individual and a conservation group.⁴

⁴ *Booth v Bosworth* [2001] FCA 1453 (17 October 2001) and *Humane Society International Inc v Minister for the Environment & Heritage* [2003] FCA 64 (12 February 2003).

FINANCES

FUNDING

The EDO is funded by an annual grant from the Commonwealth Government, which was \$31,088 in 2004 / 2005. The grant only covers 19 hours of a solicitor's time each week. The Commonwealth's annual grant contains a restriction on litigation related activities. The Commonwealth's litigation restriction funding condition constrains our ability to offer a comprehensive legal service to the ACT community. Nevertheless in several instances during 2004-05 we were able to provide a more comprehensive service to clients who met the requirements of our Casework Guidelines and were able to contribute to the cost of their representation. In this sense, revenue from client billing in selective instances has become a source of income for EDO ACT, in a trend mirrored by the activities of other EDOs around Australia.

The EDO has made efforts to obtain alternative sources of funding and will continue to do so. Unfortunately an application by the EDO to receive funding from the Statutory Interest Account administered by the ACT Law Society under the *Legal Profession Act 1970* was unsuccessful, despite a detailed submission that clearly stated that EDO ACT applies a means test to potential clients. Nevertheless an initial resolution was made by the Society to make a grant to EDO in the order of \$15,000 in response to a request for \$30,000 of funding for increased access to environmental justice in ACT Tribunals and Courts. This initial promise to EDO by the Law Society did not receive the concurrence of the ACT Attorney General (or his Department) and that funding was never provided. Many misconceptions and preconceived notions about the role of the EDO and concepts of public interest litigation persist in some quarters.

The EDO received grants from the ACT Government under the ACT Environmental Grants Program for 2003/2004. The ACT grants were for Environmental Law Submissions and for Community Legal Education. Notification of continued funding for these activities in 2002/2003 has been received from Environment ACT, as well as a grant to update the Fact Sheets.

The EDO has raised funds from membership and "Friends of the EDO" fees.

The follow activities have been undertaken to pursue additional funding:

- We lodged an application for funding from the Statutory Interest Account ACT Law Society in October 2004.
- We have approached several MLAs seeking additional ACT funding
- We have contributed to an ANEDO network submission on public interest environmental law funding
- We have held several meetings with ACT law firms to secure pro bono assistance.
- Supporter access to a secure server for donations to EDOACT has been set up on our website with the assistance of www.ourcommunity.com.au.
- We have continued to sell copies of the Environmental Law Handbook.
- With the assistance of EDO SA we have undertaken preparations for increased direct fundraising activity (eg through a 'Support the EDO Case by Case' sale of organic wines to members and supporters).

FINANCIAL REPORT

One of the fundamental responsibilities of any Management Committee is to monitor the financial performance of the organisation. Over the past year, the EDO (ACT) has implemented financial reporting strategies and systems to enable the Committee to make pro-active decisions about expenditure of grant and self generated income in line with its strategic directions.

In particular, and as foreshadowed in the 2003/04 Treasurer's Report, the EDO (ACT) upgraded its financial reporting software and formulated policy to guide financial expenditure and improve financial information management systems. The result has been the establishment of better monitoring and reporting systems, an improvement in accuracy and timeliness of reporting and the creation of transparency around the true costs of providing services.

The 2004/05 financial year generated a deficit of \$8,350, down from a surplus of \$3,955 in the previous year. The deficit this year can be attributed to a conscious decision by the Management Committee to commit some of its reserves, at a time of need, to defending the intrinsic value of the environment in the ACT and the rights of ACT citizens to peaceful protest in defence of this value. Clearly however, such an approach is unsustainable for the EDO (ACT) and can not be taken in perpetuity.

At the time of writing, I am aware that the EDO (ACT) has been unsuccessful in obtaining any funding from the ACT Government for its activities in 2005/06. Instead we are relying on a combination of the Australian Government, our members, assistance from community minded organisations and the ability to generate our own income from fee revenue to fund our activities over the next twelve months.

We move into 2005/06 with a balanced budget reflecting conservative decisions by the Committee in a time of constrained funding. Retention of the organisation's equity, built up over many careful years, will continue to be a key concern for the Committee.

The Management Committee is committed to finding new avenues of funding for the EDO. Submissions have been made by community legal centres throughout Australia for increases in recurrent Australian, State and Territory funding for core services, however no increase directly to the EDO (ACT) has been forthcoming. We are therefore, grateful for the commitment of our members, volunteers and staff, without whose support we could not continue to operate our core services.

As Treasurer, I would like to take this opportunity to thank June Weise, the EDO (ACT) Office Administrator, for her professionalism, dedication and guidance in all things financial over the past year.

Lee Nelson
Treasurer
Environmental Defenders Office (ACT) Inc.

October 28 2005

INDEPENDENT AUDIT REPORT

Refer to Separate PDF File Attachment

APPENDIX ONE - REPORT ON ADVICE ACTIVITY

Refer to Separate PDF File Attachment