



Australian Network of Environmental
Defender's Offices Inc

ABN 85 763 839 004
C/o- EDO NSW
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
T: + 61 2 9262 6989
F: + 61 2 9264 2414

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Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Secretary and Members of the Committee,

Inquiry into 'attacks on Australia's environment'

The Australian Network of Environmental Defender's Offices (**ANEDO**) consists of eight independently constituted and managed community environmental law centres located across the States and Territories.

The terms of reference (**TORs**) for this inquiry relate to a range of important environmental issues.ⁱ These include carbon pricing and climate change policy; the ongoing delegation of federal environmental assessment and project approval powers under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) to the States and Territories; and concerns about Australia's compliance with its international environmental obligations. In addition, TOR (c) refers specifically to ANEDO, namely, to inquire into 'attacks on funding for community environment organisations and the Environmental Defenders Offices...'.ⁱⁱ

Although ANEDO had no role in calling for this inquiry, given this direct reference, we take this opportunity to highlight and clarify the work we do. We also **attach** three previous submissions relevant to this and other TORs. Our network has made numerous further submissions relating to the various matters canvassed above, available on our website.ⁱⁱ

The Australian Government's sudden withdrawal of all federal funding from EDOs, announced by the Attorney-General in late December 2013, has placed very significant strain on member offices' capacity to assist the community (and State or Federal parliaments) on public interest environmental law matters.

Many EDOs relied almost exclusively on federal funding to assist communities across Australia, with an 18-year track record of bipartisan support. The sudden withdrawal of almost \$10 million in expanded funding over four years, as well as the annual Community Legal Service Program (**CLSP**) funding, raises the real prospect of closure for some offices and staff. As EDOs provide unique services not covered by Legal Aid, this would leave several States and Territories without any independent community legal centres who can advise on planning and environmental issues that affect people's homes, communities and livelihoods.

AUSTRALIAN CAPITAL TERRITORY GPO Box 574, Canberra 2601, T: (02) 6243 3460, E: edoact@edo.org.au
NEW SOUTH WALES Level 5, 263 Clarence St, Sydney NSW 2000, T: (02) 9262 6989, E: edonsw@edonsw.org.au
NORTHERN TERRITORY PO Box 4289, Darwin NT 0801, T: (08) 8981 5883 edont@edont.org.au
NORTHERN QUEENSLAND 1/ 96-98 Lake St, Cairns QLD 4870 T: (07) 4031 4766, E: edong@edong.org.au
QUEENSLAND 30 Hardgrave Road, West End QLD 4101, T: (07) 32 11 4466, E: edogld@edo.org.au
SOUTH AUSTRALIA Level 1, 182 Victoria Square, Adelaide SA 5001, T: (08) 8359 2222 E: edosa@edo.org.au
TASMANIA 131 Macquarie Street, Hobart TAS 7000, T: (03) 6223 2770, E: edotas@edo.org.au
WESTERN AUSTRALIA Suite 4, 544 Hay St, Perth WA 6000, T: (08) 9221 3030, E: edowa@edowa.org.au

Many parliamentarians from all sides of politics are aware and supportive of the work we do: to help their constituents understand and use the law to protect the environment; to secure public participation in resource management decisions; and to enforce compliance with environmental laws and regulations. Our lawyers are scrupulous, dedicated and well-respected within the community and the legal profession. However, some in government appear to be labouring under profound misconceptions about the nature of our work and the role our offices play in both the reform of the law and providing greater access to the legal system.ⁱⁱⁱ

In short, each EDO is dedicated to protecting the environment in the public interest. As not-for-profit community legal centres, we provide legal advice and representation; take an expert role in law reform and policy formulation; and offer community legal education programs to facilitate public participation in environmental decision-making. These services are fundamental to providing 'access to justice' across the spectrum of federal and state environmental and planning laws. We briefly outline our education, policy, advice and casework roles below (for further information, see **Attachment A**).

Community legal education

EDOs play a critical role in ensuring that community members understand the laws and decisions that affect them, and that their involvement in decision-making is efficient and effective. All offices produce fact sheets on a range of topics and bulletins providing updates on changes to laws and policies.

For example, the EDO NSW weekly e-bulletin has over 2300 subscribers and the EDO SA fortnightly e-bulletin has over 1900 subscribers, across the community, government and business sectors. EDO NSW, EDO NT and EDO WA have developed specific outreach programmes in consultation with indigenous communities. EDO SA runs a Rural Outreach Programme visiting communities to provide community education and specific legal advice. Various offices have delivered workshops and produced resources to assist rural communities to understand legal issues facing farmers. In response to growing concerns regarding unconventional gas projects, EDO Qld, EDO NSW and EDO Tasmania have produced publications explaining mining laws.

Policy advice and law reform

EDOs have been actively involved in policy development, expert advice and advocacy for reform of planning and environmental laws. The practical experience of EDO lawyers in listening to community concerns, monitoring developments, analysing laws and finding solutions to disputes provides a unique perspective on the effectiveness of existing laws.

Environmental and planning laws involve a complex intersection of laws, policies, science and community relations across local, state and national levels of government. EDOs remain a go-to source for accurate information and constructive advice for interested and affected community members.

EDOs contribute to policy development and law reform in both responsive and proactive ways. Our contributions add to the rigour of decision-making process, strengthen legislative protections and reflect our desire that litigation only be a last resort. The ANEDO network has also conducted a range of comparative analyses that have identified areas for improvement in areas such as sustainability, access to justice or climate change. For example, in 2012 the network produced (and recently updated) *An assessment of the adequacy of threatened species & planning laws in all jurisdictions of Australia*.^{iv}

Legal advice and casework

EDOs play a unique role in empowering community members to exercise legal rights enshrined by Parliaments of the Commonwealth, States and Territories. As former High Court judge, Justice Toohey noted, 'there is little point in opening the doors to the Courts if litigants cannot afford to come in'.^v

As many experts have noted, public interest environmental litigation^{vi} can make important contributions to achieving the aims of environmental legislation. This includes by 'increasing enforcement of environmental laws and enhancing transparency, integrity and rigour in government decision-making' (McGrath 2008); and by empowering public interest litigants to play a legitimate role as 'surrogate regulators' (Grabosky et al. 2002).

EDO advice therefore redresses a significant imbalance between community members and comparatively well-resourced government authorities and private companies. Our clients represent a broad cross-section of individuals and groups, including farmers, urban and rural residents, Coastcare and Landcare groups, indigenous communities, large and small environmental NGOs, representative bodies and consultants. As the Southern Coastcare Association of Tasmania recently noted:

Slashing funds that sustain the network of EDOs will have a severe impact on grassroots, apolitical community organisations like SCAT and the network of Coastcare groups we support. ... The cost to sustain the network of EDOs, relative to the value they provide to care groups and communities, is a huge return on investment for the Australian taxpayer.

While federal funding to EDOs was very limited, this funding enabled communities to access to high quality legal advice, representation and technical expertise in situations where significant environmental and heritage values are under threat – and often where legal processes have not been followed. This provides an important check on decision-making.

The Federal Government's removal of all EDO funding sends two signals. First, that environmental protection is somehow an indulgence, rather than a fundament of Australia's economy, society and long-term wellbeing. Second, that if communities wish to protect their environment against powerful interests, including legal breaches and wrongful decision-making, they are on their own.

The need for a broader, integrated vision of environmental conservation in Australia

Finally, while the Inquiry TORs are directed to the Abbott Government's environmental record, ANEDO submits that the long-term conservation of Australia's natural and cultural heritage is too important to rely on any particular political persuasion. Successful leadership in the 21st century requires a significant rethink of priorities that are attuned to the concept of *ecologically sustainable development (ESD)*.^{vii} Put simply, 'Australians cannot afford to see themselves as separate from the environment.'^{viii}

The National Sustainability Council (2013) reinforces this view, noting that 'A healthy natural environment with functioning ecosystem processes is... an economic and social imperative':

For Australia to sustain the wellbeing of its population over the long term, we need to find ways of supporting economic growth without degradation of the environment and through wise stewardship of natural resources.

The imperative for economic growth needs to be balanced with an understanding that the wellbeing of current and future generations of Australians depends on the continued availability of our natural assess of reasonable quantity and quality.^{ix}

Parliamentarians are in a unique position to survey and influence laws that affect the environment, and each government can make decisions that are environmentally responsible or harmful. For example, successive governments have failed to implement the recommendations of the independent review of the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* (Cth).^x Successive governments have also demonstrated a willingness to vacate federal responsibility for 'matters of national environmental significance' (MNES) under the EPBC Act (see **Attachment B**). The current Government still has the choice to reconsider the hasty signing of approval bilaterals, to work with the States to improve the effectiveness of their environmental assessment laws, and to retain strong national oversight of projects that impact on MNES, including national icons such as the Great Barrier Reef.

Overall, ANEDO urges the Parliament to look more critically at the impacts of our political, economic and legal frameworks on the local, national and global environment; to integrate environmental considerations and evidence into law and policy-making in accordance with ESD principles; and to forge a more sustainable path for the wellbeing of present and future Australians, supported by strong environmental laws. Notwithstanding the recent termination of Federal funding to EDO, ANEDO and its members will continue working with communities, agencies and legislators in this endeavour.

Yours sincerely,

Australian Network of Environmental Defender's Offices

Rachel Walmsley
Policy & Law Reform Director, EDO NSW

ATTACHMENTS

We attach the following ANEDO policy submissions relevant to the Inquiry's TORs:

- A. [Supplementary Submission on Draft Productivity Commission report into Access to Justice Arrangements](#), July 2014 (TOR (c))
- B. [House of Representatives inquiry into streamlining environmental regulation, 'green tape' and 'one stop shops' for environmental assessments and approvals](#), April 2014 (TOR (b))
- C. [Submission to Senate Inquiry into Tasmanian Wilderness World Heritage Area](#), March 2014 (TOR (d)).

REFERENCES

ⁱ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Ausenviron/Terms_of_Reference.

ⁱⁱ <http://www.edo.org.au/>.

ⁱⁱⁱ See for example, ABC News, 'Eco-charities to lose charity status', 29 June 2014, http://www.abc.net.au/news/2014-06-29/andrew-nickolic-moves-to-strip-charity-status-from-someenviron/5557936?WT.ac=localnews_hobart.

^{iv} ANEDO, *Protect the laws that protect the places you love: An assessment of the adequacy of threatened species & planning laws in all jurisdictions of Australia* (2012) - [Download PDF](#). The 2014 update of this report is available on request. Both reports prepared for the Places You Love Alliance.

^v Justice Toohey, paper delivered to the National Environmental Law Conference, 1989.

^{vi} 'Public interest environmental litigation' refers to legal proceedings undertaken by a private individual or community group where the dominant purpose is not to protect or vindicate a private right or interest, but to protect the environment. See C. McGrath, 'Flying Foxes, Dams and Whales: Using Federal Environmental Laws in the Public Interest' (2008) 25 *Environmental and Planning Law Journal* 324, 327. See further N. Gunningham & D. Sinclair, *Leaders and Laggards*, Greenleaf, 2002.

^{vii} See *EPBC Act 1999*, ss 3-3A. *Ecologically sustainable development* has been defined as:

'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased'.

See: www.environment.gov.au/resource/national-strategy-ecologically-sustainable-development.

^{viii} *State of the Environment 2011*, 'Headlines', independent report to Australian Government, 2012.

^{ix} *Sustainable Australia Report 2013*, 'Reducing the environmental impact of economic growth', p 81.

^x Dr A. Hawke, *Report of the Independent review of the EPBC Act 1999* (2009), now 'archived' at <http://www.environment.gov.au>.