



EDO BULLETIN

July-Sept 2009

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Lungfish case Court hearing adjourned

On 7 September 2009, which by chance is National Threatened Species Day, Wide Bay Burnett Conservation Council, attended the Federal Court to commence the four week hearing of evidence and legal argument in this public interest test case. The legal team, lead by Ken Fleming QC, Penny Hay and Dr Chris McGrath, and witnesses for WBBCC were all ready, along with many volumes of documents forming part of the evidence. The first matter to be heard was an application by Burnett Water, the dam operator, that the case be adjourned.



Burnett Water relied on evidence from one of its lawyers of recent negotiations between Burnett Water and the Commonwealth public servants at the Department of Environment, Water, Heritage and Arts ("DEWHA"). The evidence was that these negotiations might result in Minister Peter Garrett deciding to change the conditions of approval within a few weeks. The changed conditions proposed by Burnett Water, amongst other matters, removed the requirement for the fish transfer device to be "suitable for lungfish". In its place the draft variation provided that the device need not be operated in various circumstances pending finalisation of Fishway Operating Rules and provided for enhanced lungfish monitoring.

Such changed conditions would be bad news for lungfish. The evidence from expert reports tabled in Court is that a mere handful of tagged lungfish have successfully used the upstream fishway in 3 and a half years and only a very tiny number, possibly none, have been recorded as using the downstream fishway. Those expert reports also identify that during the past three and a half years there have been periods of many months at a time when the fishway has not operated at all. If the conditions were changed, there would be no way to hold Burnett Water legally accountable for such deficiencies of design or operation, irrespective of the impacts on lungfish.

The trial will recommence Monday 9 November 2009. Come along and support the lungfish and WBBCC.

The ABC's 7.30 report ran a report on the Lungfish on November 5. Read the transcript or watch the video at <http://www.abc.net.au/7.30/>

Request to Minister Peter Garrett

WBBCC and other conservation groups have requested that Minister Garrett confirm that he will not change the conditions until the case is heard and judgement given. WBBCC considers that that the most appropriate action is for the Court case to run its course based on the existing conditions.

This is a major public interest test case and you can be part of it! If you'd like to donate tax deductible funds to help Wide Bay Burnett Conservation Council with this case, contact Emma-Kate Currie at the Wide Bay Burnett Conservation Council at wbbconservationc@bigpond.com or call 4123 3361

Sustainable Planning Bill passed

The Sustainable Planning Bill was passed by Parliament on 16 September 2009. It has not yet commenced.

Planning Minister Stirling Hinchliffe is quoted in Hansard as saying that EDO was on balance happy with the significant element of the legislation. This is not correct. EDO Qld met with Minister Hinchliffe and Minister Jones after the Bill was tabled and emphatically pointed out 5 key issues that the community conservation sector has advocated since 2006 that were not addressed.

EDO Qld will be organising a community Q&A on the new Act in October 2009.

To register your interest, please contact EDO Qld on (07) 3211 4466 or email edoqld@edo.org.au

False Cape EPBC Act approval suspended once again

Commonwealth approval for the proposed Reef Cove Resort development at False Cape has been suspended for another 12 months. According to a media release from Commonwealth Environment Minister Peter Garrett, appropriate measures to address the erosion and sediment problems at the site have not been put in place. This further suspension has come as little surprise to the local conservation community because for more than the last 12 months the developer has seemed either unwilling or unable to undertake any remediation or rehabilitation of the site to comply with EPBC Act approval conditions.

Readers will recall that Minister Garrett first suspended the False Cape EPBC Act approval on 4 September 2008 because of the developer's failure to comply with approval conditions, particularly relating to sediment and erosion control, and concerns of damage that was being caused to the adjacent marine environment including the Great Barrier Reef World Heritage Area.

The further suspension of the Commonwealth approval is not the only recent news surrounding this inappropriate development:

- The development company, Reef Cove Resorts Limited, was placed in external administration in July 2009 amid speculation that it is continuing to experience dire financial difficulties.
- The company receivers have since placed the property on the market.
- On 23 September 2009 the Cairns Regional Council decided to remove the Special Facilities Overlay from the site, seemingly signaling an intention not to support expansion of the proposed development in the future; this overlay has been one of the major factors which has allowed the development to be approved by previous local governments despite a number of clear conflicts with the local planning scheme.

To many conservationists and campaigners in the area, the time seems riper than ever for a three-tiered government buy-back of the site.

For more information about EDO-NQ cases contact us on (07) 4031 4766 or edong@edo.org.au.

OTHER CASES OF INTEREST

EPA fines Mackay resort \$40,000

The Illawong Lakes Resort managers, Zaps and Sons Pty Ltd, and the resort's Body Corporate have been fined \$40,000 each charged with contravening their environmental licence conditions and for non-compliance with environmental protection orders issued under the Environmental Protection Act

EPA fines Innisfail Transport Company for toxic spill

Followmont Transport Pty Ltd and company employee David Ansin pleaded guilty in the Brisbane Magistrates Court to charges relating to the release of a highly toxic farm chemical, Endosulfan, into Innisfail's Warrina Lakes in December 2007. More than 200 fish died, including barramundi, freshwater eels, and tarpon.

\$160K fine for illegal land clearing

A NSW farmer who cleared 215ha of native vegetation, knowing a permit was required, has been fined \$160,000. To read the sentencing remarks of Preston CJ read *Director-General of the Department of Environment and Climate Change v Rae* [2009] NSWLEC 137.

REPORTS RELEASED

- The Murray Darling Basin Authority recently released *The Basin Plan: A Concept Statement* which explains the key elements and approach being taken in developing the new Basin Plan. Copies of the Concept Statement can be downloaded from www.mdba.gov.au.

- Findings from the **Indigenous Dispute Resolution and Conflict Management Case Study Project** are now available. The report, 'Solid Work You Mob Are Doing: Case studies in Indigenous Dispute Resolution & Conflict' is available from www.fedcourt.gov.au/pdfsrfts/solid_work_report.pdf

Community Litigants Handbook 2nd Edition Now Available

The Handbook is a step by step guide for self represented litigants in the Queensland Planning and Environment Court.

Key improvements in this edition include:

- Tips for preparing for and participating in mediations
- Summary of new Planning & Environment Court Rules and new Practice Direction
- Improved navigation with a detailed table of contents

A further revision will be released when the Sustainable Planning Bill comes into effect.

“Stand up and be heard”: an EDO client story

EDO Qld was approached earlier this year by a community member concerned about the impact of a proposed medical facility in a residential area.

Armed with the Community Litigants Handbook, and some procedural advice from an EDO Qld solicitor, our client represented herself in a Planning and Environment Court Appeal, and was successful in having conditions applied to lessen the impacts of the development.

She wrote to thank EDO Qld, saying *"you do good works and help empower people to seek a fairer go in the courts and that is a great thing because if we all stood up a bit more I think there would be less people trying to take advantage of others"*.

STATE LAW REFORM SUBMISSIONS

Koala Conservation State Planning Policy

On 28 August, EDO Qld responded to the Department of Infrastructure and Planning invitation for comments on the proposed State Planning Policy (SPP) for koala conservation in South East Queensland. Implicit in the preparation of a further statutory koala conservation instrument is that current efforts to protect koalas in SEQ have failed.

EDO Qld made it clear that the proposed SPP for koala conservation is the last chance to save SEQ's koalas from regional extinction. Current efforts – Koala Plan 2006 and 2009 Koala State Planning Regulatory Provisions - to protect koalas in SEQ have failed.

Every disruption of urban koala populations has

become critical to the long term survival of bushland koalas in SEQ and vice versa. The scientific data is telling us to immediately stop clearing koala habitat.

EDO Qld argued that the proposed SPP Koala Conservation must protect all remaining koala habitat in SEQ from development pressures. It should not matter where they are in relation to future growth areas or urban infill sites. The viability of SEQ's koala population depends on koalas being able to safely move within and between these last remaining urban and bushland refuges.

A copy of EDO Qld's submission is available here:
<http://www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm>

Community calls for equal access, and end to “pay for access” to government decision makers

In its submission to the Bligh government's discussion paper on Integrity and Accountability, EDO recommended that the Queensland government:

1. Ban private electoral funding of political parties or candidates
2. Cap electoral expenditure
3. Introduce publicly funded State and Local government elections
4. Ban paid lobbyists. Register employees of

commercial enterprises who are lobbyists

5. Introduce transparency and real time disclosure of the electoral and decision-making process; and
6. Ensure that information about procurement processes and calls for tenders and expressions of interest, including tenders and evaluation reports for government contracts are readily accessible to the public under legislative provisions without the need for a FOI application.

(Continued on page 4)

Law reform submissions - continued

EDO also reminded the government that:

- A. The Integrity Commissioner has in recent times made valuable public comments on not just compliance with the law but how standards are to be improved. The community needs independent bodies speaking out on integrity and accountability issues in general. An independent body must be empowered to take enforcement action if the laws are breached, rather than as the CMC usually does, merely recommending changes to departments or politicians with other priorities.
- B. As to the effectiveness of the CMC, the experience of EDO's clients over the years is that complaints about local government matters (such as suspected conflict of interest) are often given low priority at the CMC due to lack of resources to investigate.

- C. To ensure that the impacts of undue influence of developers over government are discovered and remedied the State Government must trigger nothing less than a Royal Commission - preferably led by Mr Tony Fitzgerald, QC - into the influence of the development industry on State Government decision-making over the past ten years.

In October EDO will be making submissions on the following law and policy initiatives:

- Draft South East Queensland Climate Change Management Plan (**due date extended to 9 October 2009**)
- Draft Coastal Plan 2009 (**due 31 October 2009**)

If you would like EDO to include your comments in our submission please contact EDO Qld on (07) 3211 4466 or email edoqld@edo.org.au or EDO-NQ on (07) 4031 4766 or email adminnq@edo.org.au.

NATIONAL LAW REFORM SUBMISSIONS

Submission on Interim Report – Review of EPBC Act

In August 2009 the Australian Network of Environmental Defender's Offices (ANEDO) made a submission to the Interim Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This submission is in addition to comments provided at previous stages in the review process.

The key recommendations of the ANEDO highlight the importance of public interest litigation and public participation as well as the need for accountable and transparent decision making.

In particular, the ANEDO made recommendations relating to impact assessment under bilateral agreements, regional forestry agreements, strategic impact assessment, threatened species and ecological communities, governance and decision making and review mechanisms and access to courts.

A copy of the ANEDO's submission is available from www.edo.org.au/policy/090810epbc_interim_report.pdf

Qld environmental LAW AND POLICY WATCH July-August 2009

Local Government

Name changes - Roma Regional Council has changed names to Maranoa Regional Council. The Dalby Regional Council has also changed names to Western Downs Regional Council.

Water

The *Water Regulation 2002* has been amended to allow a NSW water access licence, where it is in accordance with the Border Rivers Resource Operations Plan and the New South Wales–Queensland Border Rivers Intergovernmental Agreement 2008, to have a similar effect to a Qld water allocation

Planning and Development

The revised South East Queensland Regional Plan 2009-2031 was released on 28 July 2009.

On 16 August 2009 the Department of Environment and Resource Management (DERM), in their concurrence agency jurisdiction under the *Coastal Protection and Management Act*, directed Gympie Regional Council to refuse a large multi-use development at Inskip Point on the basis of its ecological impacts

Amendments to the *Urban Land Development Authority Regulation 2008* have given effect to the development scheme for the Bowen Hills, Northshore Hamilton and Fitzgibbon urban development areas. Now in their approved forms these development schemes override other local planning instruments.

Climate Change

In July, the Queensland government released the *Draft South East Queensland Climate Change Management Plan*, which sets out the draft action items that are proposed to implement the climate change priorities (DRO1) in the SEQ Regional Plan 2009. EDO will be preparing a detailed response to the draft. An initial impression is that the draft strategy does not go far enough because it fails to set any interim emissions reductions targets and contains no action items directed at addressing SEQ's dependence on non-renewable energy. For more information see Opportunities to Comment.

Queensland government released its revised climate change strategy on 20 August 2009. ClimateQ – towards a greener Queensland is available http://www.climatechange.qld.gov.au/whats_being_done/queensland_climate_change_strategy.

Nature Conservation

In August, the Queensland government continued its commitment to transition former forest reserves to the protected area estate by extending the Conondale, Endeavour River, Freshwater, Japoon, Mitchell-Alice Rivers National Parks and establishing the Nerang National Park.

Machinery of Government

Outdated neighbour laws will be repealed and replaced under a State Government plan to quell disputes over dividing fences and nuisance trees. The new laws are currently being drafted but are likely to define more exactly what constitutes a 'nuisance tree' and the ownership of dividing fences.

Fed environmental LAW AND POLICY WATCH July-August 2009

- The list of critically endangered ecological communities in the *Environment Protection and Biodiversity Conservation Act 1999* has been amended to include the Grassy Eucalypt Woodland of the Victorian Volcanic Plain and the Lowland Native Grasslands of Tasmania.
- The list of endangered species in the *Environment Protection and Biodiversity Conservation Act 1999* has been amended. The *Epacris graniticola* plant (aka Mt Cameron Heath) has been changed from endangered to critically endangered, the *Spyridium microphyllum* has been removed from the endangered list, *Marginaster littoralis* has been included on the critically endangered list, *Marginaster littoralis* and *Tasmanipatus anophthalmus* have been included on the endangered list, *Patiriella vivipara* has been labelled as vulnerable and the *Hypolimnys pedderensis* has become extinct.
- The Australian Competition and Consumer Commission (ACCC) has prepared draft water charge rules for water infrastructure operators. These are now being considered by Climate Change and Water Minister Penny Wong, and are available for viewing online. <http://www.environment.gov.au/water/policy-programs/water-act/infrastructure-charge-rules.html>

OPPORTUNITIES TO COMMENT

- The time for commenting on the draft **South East Queensland Climate Change Management Plan** has been extended to **9 October 2009**. Read the strategy at www.dip.qld.gov.au/regional-planning/climate-change.html
- Draft terms of reference (TOR) for the environmental impact statement to assess the **Gladstone Steel Making Facility** are available for public comment until **12 October 2009**. www.dip.qld.gov.au/projects/mining-and-mineral-processing/steel/gladstone-steel-making-facility.html
- Public comment on the **draft Coastal Plan 2009** has been invited until **31 October 2009**. To read the draft Plan go to www.derm.qld.gov.au/coastalplan
- The **draft State Policy for Healthy Waters 2009** and the **draft State Planning Policy Guideline for Healthy Waters 2009** have been released for public comment. Submissions are due by **30 November 2009**. For more information, visit the Department of Environment and Resource Management's website: http://epa.qld.gov.au/environmental_management/water/environmental_values_environmental_protection_on_water_policy/urban_water_quality_and_flow_management.html.
- The Department of Environment and Resource Management is proposing an amendment to the **Stock Route Network Management Regulation 2009**. Submissions are due by **19 October 2009**. For more information, visit the Department's website: http://www.nrw.qld.gov.au/land/stockroutes/stock_route_ris.html

OTHER NEWS

Climate Change @ Work 29 October 2009

The [Climate Change @ Work conference](#) will be held at the Ship Inn, Southbank, Brisbane on 29 October 2009. It will address Australia's potential for increased sustainability in the workplace.

To register go to <http://cccqld.org.au/Climate-Change-Work-conference.html>

EDO-NQ AGM

Our AGM will be held Thursday, 15th October at 5.30pm at Artspace 124 Grafton St, Cairns. We are pleased to present Dr Andrew Dennis as the guest speaker at our AGM. Dr Dennis will be presenting a talk on threatened species in Queensland. You are invited to come along to hear this informative talk and then stay for the AGM.

RSVP for catering purposes: adminnq@edo.org.au or 07 4031 4766

EDO-NQ Principal Solicitor Applications close Monday 12th October 2009

Opportunity for an experienced Environmental Lawyer to assist the community defend Northern Queensland's unique environment. EDONQ seeks an experienced environmental lawyer able to hold a principal solicitor's practising certificate in Queensland.

The Principal Solicitor's role focuses on advancing environmental interests and holds the potential to make a positive contribution to the preservation and protection of two World Heritage Areas and other ecological systems under threat in Queensland's far north.

The position is being offered as a full time position with remuneration of \$65,229 plus superannuation. Copies of the Position Description and Selection Criteria are available from our website www.edo.org.au/edonq. Please contact Michael Neal at michael@paelaw.com or 07 4041 7622 for more information.

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If you've found what you've read useful, **please make a donation**, so we can keep defending the environment.

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To donate to EDO-NQ, please call the office directly on (07) 4031 4766.

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