



EDO BULLETIN

Oct-Dec 2009

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Environment laws stop Traveston Dam

On 2 December 2009 federal Environment Minister Peter Garrett used his powers under the federal *Environment Protection and Biodiversity Conservation Act 1999* to formally refuse the proposed Traveston Crossing Dam. Minister Garrett's approval was needed for the dam to be built, in addition to the state approval already granted by the Queensland government.

EDO Qld had advised the Save the Mary River Coordinating Group on the approval process for the dam and on legal options to challenge any approval since it was first proposed in early 2006. EDO's advice on court avenues proved unnecessary as Minister Garrett determined that the impacts on nationally protected species like the Australian lungfish, Mary River Turtle and Mary River Cod were unacceptable and could not be mitigated, despite the 1200 state conditions.

EDO congratulates the community members and supporting environment groups on one of the most effective community-based environmental campaigns in Australian history, and thanks Minister Garrett for using our federal environment laws to their full potential to protect the precious species of the Mary River.

Lungfish case back in court | February 2010

EDO Qld's lungfish case for Wide Bay Burnett Conservation Council was heard in the Federal Court from 9-23 November 2009 with WBBCC represented by barristers Ken Fleming QC, Penny Hay and Dr Chris McGrath. The Court was presented with evidence of the alleged contraventions, by Burnett Water, of condition 3 of its federal environment approval.

During the trial, WBBCC called evidence from Mr Steve Burgess, Mr Jim Tait and fisheries scientists from the Queensland Fisheries department. The Court also heard evidence from Burnett Water including on the decision making process to design and operate the fishways.

The remaining evidence from WBBCC and closing arguments from both parties will occur in the week commencing 1 February 2010. Come along!

EDO wishes to thank all those who supported WBBCC during the case. Special thanks go to those members of WBBCC, the Save the Mary River Group and other groups who attended the Court at different times during the hearing.

This is a major public interest test case and you can **still** be part of it! Tax deductible donations can be made by contacting Emma-Kate Currie at Conservation Council at wbbconservation@bigpond.com or (07) 4123 3361.



Congratulations, Friends of Pooh Corner

In mid November 2009 the Planning and Environment Court dismissed a proposed industrial development at the former Wacol army barracks, a well known local bushland site containing endangered vegetation.

EDO Qld assisted community group Friends of Pooh Corner with procedural advice during the appeal. The appeal was heard over three weeks in August-September 2008 before His Honour Judge Rackemann. Although the refusal ultimately turned on the unacceptability of the proposal in terms of the amount of office space being sought and impacts on the existing traffic networks, the Court considered at length the evidence presented by Friends of Pooh Corner, and other conservation groups, in relation to the impacts on the endangered regional ecosystem, *Eucalyptus seeana*, the Bullockhead Creek (which traverses the site) and, the many hollow bearing trees on the site.

In considering the environmental impacts the Court concluded, however, that minor changes to the proposed layout, with an appropriate off-site offset requirement, would have been an acceptable response to the impacts of the new use.

EDO Qld congratulates Nikki Parker and Simon Birrell (Friends of Pooh Corner), Ed Parker (Save Our Riverfront Bushland), and Sheila Walker (Centenary and District Environment Action Inc) for their dedication to environmental advocacy. A special congratulation goes to Nikki for her IT prowess and advocacy skills, skills which were commended by Judge Rackemann in his written reasons (paragraph 196).

Read the decision here: *Metroplex v Brisbane City Council & Ors* [2009] QPEC 110 <http://archive.sclqld.org.au/qjudgment/2009/QPEC09-110.pdf>

Court of Appeal rejects quarry expansion

The Queensland Court of Appeal has rejected an appeal by Barro Group Pty Ltd against a decision of the Planning and Environment Court that its development application, to expand its quarry activities at Mt Cotton, was not properly made. The application by Barro, lodged with Redland Shire Council in April 2006, was not supported by evidence that the proposed expansion was consistent with, or could be assessed in the absence of, an allocation, or entitlement to, interfere with a State resource. Such a flaw in its application was fatal, and could not be cured at the discretion of the Court.

In dismissing the appeal Justice Keane made these comments about the protections afforded to the public interest and community involvement in planning decisions:

[51] ... This Court should be slow to adopt an interpretation of the IPA which diminishes the protection which s 3.2.1(7)(e), s 3.2.1(10) and s 3.2.8 are apt to afford the public interest and the opportunity for community involvement in decision making.

Congratulations to David Keogh and Simon Baltais who took an active role in the proceedings before the Court of Appeal.

You can read the decision here: *Barro Group Pty Ltd v Redland Shire Council & Ors* [2009] QCA 310 <http://archive.sclqld.org.au/qjudgment/2009/QCA09-310.pdf>

Garrett rejects Great Keppel Island redevelopment

Community efforts were rewarded when, on 30 October 2009, Federal Environment Minister Peter Garrett rejected the proposed tourist redevelopment of Great Keppel Island on the basis that the impacts of the project on matters of national environmental significance were "clearly unacceptable".

The proposal, declared "State Significant" under Queensland development laws, was to include: a 300 room hotel and day spa, 1700 resort villas, 300 resort apartments, a ferry terminal, retail village, golf course and sporting oval.

EDO congratulates the Capricorn Coast Conservation Council and Lot 21 Environment Group on their successful advocacy efforts.

Community Litigants Handbook 2nd Edition NOW AVAILABLE

Key improvements 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 third edition, reflecting the *Sustainable Planning Act 2009*, is forthcoming.

“No basis for imposing unlawful development on the community”

On 20 October 2009 Judge Alan Wilson SC (as he was then) found that three attempts, by the then Beaudesert Shire Council, in 2004, 2005 and 2006 to modify a rezoning of land at Mt Tamborine, were invalid. The original rezoning was approved in 1990 to accommodate a proposed tourist facility. A plan of development, the layout of the site, which was based on the unlawful modifications to the 1990 approval, was, logically, also determined by the Court to be invalid. Any building works associated with those invalid approvals was to cease immediately.

During the hearing the Progress Association also argued that a subsequent approval to subdivide the site, approved in 2007 and further amended in 2008, was also invalid. The Court rejected this argument, finding the Council did, in this instance,

have power to approve the subdivision application. The Progress Association has sought leave to appeal this decision in the Court of Appeal.

The proceedings were instituted by the Tamborine Mountain Progress Association after receiving preliminary advice from EDO Qld.

Rectifying errors in the assessment and approval of development was central to the Progress Association’s case. As the Court acknowledged in its closing remarks, “[there] is no basis for imposing unlawful development upon the community”.

Read the decision here: Tamborine Mountain Progress Association Inc v Scenic Rim Regional Council & Anor [2009] QPEC 98 <http://archive.sclqld.org.au/qjudgment/2009/QPEC09-098.pdf>

New planning laws commence

Queensland’s new *Sustainable Planning Act 2009* commenced on 18 December 2009.

Readers will be familiar with EDO’s planning law fact sheets, available online, which explain the development assessment and appeal processes under the previous *Integrated Planning Act 1997*. These fact sheets are still relevant for development applications that were lodged before 18 December 2009. For development applications lodged after this date, and until EDO uploads the new fact sheets, please ring EDO to check the law.

Similarly, where planning scheme changes were started before 18 December 2009, for example where Councils have advertised a “Statement of proposals” notifying proposed changes, the current fact sheet is still relevant.

Stay tuned in 2010 for a detailed look the new planning Act and associated regulations. In the meantime, please see www.dip.qld.gov.au/spa for access to information guides on the new laws



STATE LAW REFORM SUBMISSIONS

Draft Coastal Plan 2009

In November 2009, EDO Qld and EDO-NQ prepared a detailed submission on the *Draft Queensland Coastal Plan 2009*, which will, when finalised, be Queensland’s key coastal planning policy. Our major recommendations included:

- That the key coastal sites and areas of state significance such as significant wetlands, dune systems and endangered regional ecosystems currently protected under the Regional Coastal Management Plans are protected in the draft Coastal Plan as areas of high ecological value.
- That the draft Coastal Plan adopt a sea level rise estimate of 1.5 metres by 2100, rather than 0.8

metres. This takes into account the vulnerability of Queensland to sea level rise, the fact that estimates of 0.8 metres are outdated, the uncertainties associated with estimating sea level rise, and the need to ensure Queensland is not subject to high costs past 2100.

- That the final Coastal Plan ensures that future development, especially urban and residential development, avoid all coastal hazard zones.

A special congratulation to the Alliance to Save Hinchinbrook (ASH) for their excellent submission and ongoing advocacy to ensure the existing planning protections for the Cardwell-Hinchinbrook Channel are preserved.

State law reform submissions - continued

Modernising Queensland's biosecurity laws

EDO Qld made a submission on the discussion paper *Modernising Queensland's Biosecurity Legislation*. Limiting our comments to the laws regulating the use and misuse of agricultural chemicals, EDO recommended that:

- Within the objects clause of any new Biosecurity Act the protection of human health and environmental health be prioritised;
- The precautionary principle be a mandatory requirement in all decision making under the Act
- All users of chemicals be licensed and be required to keep records of their chemical use and submit them regularly to the Department. An annual audit of chemical use should be publicly available
- Liability for spray drift be widened beyond mere damage to crops or stock. Currently where the contamination and harm affects public health or ecosystem services the chemical use and distribution laws are silent.
- Provision is made for third party enforcement rights, like under the *Nature Conservation Act 1992*
- That responsibility for investigating and enforcing chemical use and misuse be streamlined, and investigation methods improved.

Climate Change and the South East Queensland Regional Plan

In October EDO Qld commented on the *Draft Climate Change Management Strategy for South East Queensland*. The purpose of the draft Plan, developed under the revised South East Queensland Regional Plan 2009-2031 (SEQRP), is to guide the implementation of regional planning policies to reduce greenhouse gas emissions (Policy 1.3) and increase the resilience of SEQ to the impacts of a

changing climate (Policy 1.4). Our key recommendations were:

- That the Plan must be supported by an appropriate statutory framework to make its contents and targets binding. Without this, it is unlikely to deliver actual greenhouse gas emissions reductions or improve our resilience to climate hazards.
- That the final Actions must be strengthened, particularly to incorporate emissions reduction targets from electricity generation and the industrial sector. EDO drew attention to the fact the draft Plan was devoid of *any* actions to reduce emissions from electricity generation or from the industry sector – which, according to the Department's own statistics, are the two biggest producers of greenhouse gas emissions by source and sector respectively. None of the 30 draft actions were directed at reducing emissions from these sources/sectors;
- That the final Actions need to cap population at sustainable levels as well as addressing energy efficiencies and improvements in public transport (through transit oriented developments)
- That the draft Actions must prioritise biodiversity conservation.

EDO acknowledges the assistance of Nikki Wawryk and Benedict Coyne, volunteer law graduates with a keen interest in ecological sustainability and, planning and environment law, in preparing this submission.

Copies of these submissions are available here: <http://www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm>

EDO invites your feedback on all our submissions. To provide feedback, or to contribute to current or future law reform projects, 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

During November 2009 the Australian Network of Environmental Defender's Offices (ANEDO) made submissions on the:

- National review into food labelling law and policy. ANEDO limited its comments to GM food labelling laws and policies, environmental considerations in food labelling regulation and, the need for a mandatory environmental labelling program
- Report of the Access to Justice Taskforce, *Strategic Framework for Access to Justice in the Federal Civil*

System, focussing on public interest costs orders; and, funding to enhance access to justice in the area of public interest environmental law

- Proposed reforms to the Commonwealth legislative arrangements for protecting traditional areas and objects under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act)

Copies of these ANEDO's submission are available from www.edo.org.au/policy/policy.html

QLD LAW AND POLICY WATCH OCT— DEC 2009

Great Barrier Reef protection

The *Great Barrier Reef Protection Amendment Act Bill 2009* was passed in early October 2009. Taking effect from 1 January 2010, readers will recall from the September Bulletin that these laws propose amendments to Chapter 4 of the *Environmental Protection Act 1994* to include a new class of environmentally relevant activity (ERA) for agricultural practices that impact on the Great Barrier Reef.

The Bill was amended on the floor of Parliament to include further amendments which insert new provisions into the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld):

- making it an offence for users of chemical products which are no longer registered by the federal chemical regulator to not comply with the chemical use restrictions prescribed by the new Reef protection laws;
- introducing a new power to prescribe, through regulation, controls on chemicals for the purpose of achieving the objectives of the Reef protection laws

A further change was made to the threshold for cattle grazing properties regulated by the new laws. Under the original Bill, the threshold was 100 standard cattle units, but this was amended so that only cattle properties of more than 2000ha are regulated as an agricultural ERA. The Minister does have the power to direct properties of more than 100 standard cattle units (but less than 2000ha) to implement an Environmental Risk Management Plan (ERMP), should it be necessary to achieve the objects of the new laws.

Planning and development

- The proposed alignment of the Southern Freight Rail Corridor has been varied in an effort to protect koala habitat and minimize impacts on landowners. A revised Assessment Report is expected early next year.
- The Callide Infrastructure Corridor State Development area has been declared under the *State Development and Public Works Organisation (State Development Areas) Regulation*.
- The *Body Corporate and Community Management Act 1997* has been amended to ensure a body corporate cannot restrict the use sustainable architecture or landscaping design initiatives.

Government accountability

On 3 December Parliament passed the *Integrity Act 2009*. The Act establishes a new Office of the Integrity Commissioner; gives legal force to the Register of Lobbyists and bans success-fees for lobbyists; and brings the actions of government-owned corporations within the jurisdiction of the Crime and Misconduct Commission. The law will commence 1 January 2010.

Vegetation management

Following the moratorium on clearing of key riparian and endangered regrowth vegetation since 7 April 2009, the Queensland government has now passed new laws that regulate the clearing of certain regrowth vegetation. The new laws took effect on 8 October 2009 and apply to:

- mature native vegetation that has not been cleared since 31 December 1989 (*high value regrowth vegetation*); or
- native woody vegetation within 50m of a watercourse within a the catchments of Mackay/Whitsunday, Burdekin and the Wet tropics, priority catchments that feed into the Great Barrier Reef (*regrowth watercourse vegetation*); or
- vegetation identified as category C area under a property map of assessable vegetation (PMAV)

The regulated regrowth is identified on a new regional ecosystem map (an online resource that allows lot on plan searching) at www.epa.qld.gov.au/nature_conservation/biodiversity/regional_ecosystems/introduction_and_status/regional_ecosystem_maps/index.html.

The new regrowth laws expand Queensland's existing vegetation management framework. The existing framework prohibits broad-scale clearing of mostly remnant native vegetation unless the clearing is exempt or is for a defined purposes and the clearing complies with the criteria under an applicable regional vegetation management code.

For regrowth vegetation covered by the new laws, the existing exemptions for clearing remain (for example, clearing necessary for essential or routine management, for urban purposes in an urban area, and for specified activities). However there are also additional exemptions which mean that regulated regrowth vegetation will not be protected where the clearing is in a key resource area or if it is for a 'significant community project'. A significant community project has an aesthetic, conservation, cultural or economic benefit to a local or regional community or, the State.

Qld law and policy watch - continued

Where clearing of regulated regrowth is not exempt, clearing may nevertheless be permitted – but is subject to the minimum standards set out in the new regrowth code. Clearing that is consistent with the code is permitted. It is up to the person responsible to determine if their clearing is consistent with the code. Where clearing is consistent DERM must be notified, but no permit is required (in this way compliance with the regrowth code is akin to a further category of exempt development).

The recode is available at www.nrw.qld.gov.au/vegetation/pdf/regrowth_guide_code.pdf

Climate change

- The Belvedere Coal project, which, at its peak of operation, is expected to generate 10Mt of coal per year, has been declared a significant project under the *State Development Act*. An EIS will be prepared. www.dip.qld.gov.au/projects/mining-and-mineral-processing/coal/belvedere-coal-project.html

- Amendments to the *Land Act 1994* will allow rural leases to support renewable energy projects that complement the existing use, such as agriculture or grazing. These changes allow projects like wind farms to coexist with other uses of State land.
- A proposed coal fired power station that is said to capture and store the carbon dioxide emissions, has been declared state significant by the State Coordinator General. EDO opposes investment in carbon capture and storage, and resists claims that CCS is a legitimate form of clean technology. See our October 2008 law reform submission www.edo.org.au/edoqld/edoqld/lawreform/CarbonCaptureBillSubmission1008.pdf

Local government

Minister Boyle has announced the *Local Government Act 2009* will commence on 1 July 2010.

FEDERAL LAW AND POLICY WATCH OCT— DEC 2009

- THE Copenhagen Accord**, the non-binding agreement reached at the conclusion of the 15th Conference of the Parties for the UN Framework Convention on Climate Change is available here: <http://unfccc.int/resource/docs/2009/cop15/eng/107.pdf>
- Legislative changes have established the **Great Barrier Reef Marine Park** as a matter of national environmental significance under the *Environmental Protection and Biodiversity Conservation Act 1999*. In addition to the permissions required under the *Great Barrier Reef Marine Park Act 1974* the changes require activities, whether or not they occur within or outside the marine park, that are likely to have a significant impact on the marine park to be assessed under the EPBC Act framework.

OPPORTUNITIES TO COMMENT

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|---|---|
| <ul style="list-style-type: none"> Public comment on the moratorium to protect koala habitat has been invited until 24 December 2009. The Moratorium is part of the Queensland Government's Koala Response Strategy to protect South East Queensland's Koala population from the serious threat posed by development, cars, dogs and disease. See http://www.environment.gov.au/biodiversity/strategy/review.html for further information. Don't forget to check EDO Qld's law reform submissions on koala conservation. | <ul style="list-style-type: none"> The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) is seeking input into options to address uncertainties in the potential risks, to health, safety and the environment, posed by nanotechnology. Comments due 12 February 2010. www.nicnas.gov.au/Current_Issues/Nanotechnology/Stakeholder_Consultation.asp |
| <ul style="list-style-type: none"> Federal Department of Climate Change is seeking feedback from stakeholders on the draft CPRS and RET regulations by Monday 11 January 2010. For full details see www.climatechange.gov.au/ | <h3>REPORTS RELEASED</h3> <ul style="list-style-type: none"> In early December, the Senate Standing Committee on Environment, Communications and Arts published its report into the impacts of mining in the Murray-Darling Basin. www.aph.gov.au/senate/committee/eca_ctte/mining_mdb/index.htm |

EDO NEWS

All the best Adam; welcome Justine

In October EDO-NQ said *adios* to Principal Solicitor & Coordinator, Adam Millar. Adam decided it was time to move on after three years with EDO-NQ. During his time with EDO-NQ, Adam made a very valuable contribution to the work of EDO-NQ, and the level of dedication he showed to individual clients was exemplary. Everyone at EDO wishes Adam all the best in his next adventure.

In the meantime, we welcome Justine de Torres to the position while EDO-NQ recruits a permanent replacement for Adam. Justine has many years of experience working in the area of environmental law, including as a solicitor with EDO-NSW. Welcome aboard Justine.

Welcome back Anita and Larissa

EDO Qld welcomes back solicitors Anita O'Hart and Larissa Waters. Anita and Larissa have been on maternity leave this year. Anita is working half day Mondays. Larissa will be in the office Tuesdays and Thursdays, for a half day also.

Congratulations Stephen Keim SC

We are very pleased to extend our congratulations to Stephen Keim SC for winning this year's prestigious Human Rights Medal. The Medal, awarded by the Australian Human Rights Commission, is presented to an individual who has made an outstanding contribution to the advancement of human rights in Australia. Readers will, of course, be familiar with Stephen's tireless support of EDO Qld, and his generous contributions to our environmental justice work.

From all of us at EDO, congratulations Stephen!

Climate Bulletin, Issue 4

EDO NSW has published Issue 4 of the Climate Bulletin. This bimonthly publication covers all aspects of climate law and policy in Australia and internationally.

If you would like to subscribe to the Climate Bulletin, please send an email to education@edo.org.au with the heading 'Climate Bulletin Subscribe'.

EDO Office Closures

EDO Qld will be closed from 5pm, Monday 21 December until 9am Monday, 11 January 2010. EDO-NQ closes 23 December and will reopen 6 January 2010.

From Jo, Justine, Larissa, Anita, Scott, Patrick, Bron, Angela, Amy and all our volunteers we wish you a sustainable and peaceful holiday season.

EDO JOBS

Principal Solicitor EDO NQ

EDO NQ is looking for an experienced environmental lawyer to fill the role of Principal Solicitor. The role will involve coordinating and delivering legal advice and casework services, engaging in law reform projects, and delivering community legal education. For more information contact Angela Strain on (07) 4031 4766 or by email at edonq@edo.org.au

Scientific Officer, EDO NSW

EDO NSW is recruiting a new Scientific Officer. The successful candidate will provide objective scientific and technical advice to the community on public interest environmental issues and administer the EDO's Scientific Advisory Service. Read the position description here:

www.edo.org.au/edonsw/site/jobs_scihoff091217.php

Applications close 10 February 2010.

Outreach Solicitor EDO WA

EDO WA is looking for someone with a passion for the environment who is also an excellent lawyer and communicator to fill the position of Outreach solicitor. Read the position description here: <http://www.edowa.org.au/jobs.php>

Applications close 15 January 2010.

Principal Solicitor EDO VIC

Due to continued growth and demand for our legal expertise, EDO Vic is recruiting a new Principal Solicitor to lead our busy advice and litigation practice. Essential requirements include litigation experience and environmental law expertise and, most of all, a passion to use your legal skills to make a difference. Formal applications will be invited early in 2010. For further information contact Brendan Sydes (03) 8341 3100.

To subscribe free to the monthly joint EDO-Qld and EDO-NQ Bulletin, email edoqld@edo.org.au or edonq@edo.org.au

To subscribe free to the EDO NSW Bulletin, (covering Cth and NSW issues) please send an email to edonsw@edo.org.au

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