



# EDO BULLETIN

April-June 2010

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## Queensland Environmental Defenders call on State Govt to help fund Public Interest environmental litigation

On 11 June 2010, the EDO-NQ and EDO (Qld) made a joint submission to the Queensland Attorney General, Cameron Dick, requesting that the State make up to \$180,000 legal aid funding available annually for public interest environmental cases run in State courts. In support of their submission, the Queensland EDOs noted the financial obstacles individuals and community groups face in bringing lawsuits on behalf of the public that seek to enforce State, Commonwealth and local laws intended to protect the environment. The Queensland EDOs further noted the benefits that the public has reaped in New South Wales, which has long had in place financial assistance for such litigation. "Legal aid has been available for years in N.S.W. and has allowed numerous worthy public interest environmental law cases to be run in that state's courts," noted Patrick Pearlman, principal solicitor of the EDO-NQ, based in Cairns. "We're simply seeking similar funding for groups and individuals that want to protect Queensland's ecosystems on behalf of all of us," he added.

In contrast to the complete absence of Queensland State legal aid for public interest environmental cases since 1992, there is some limited legal aid for matters concerning Commonwealth environmental laws. The Commonwealth's "public interest and test case" scheme, enabled EDO (Qld) to run litigation on behalf of the Wide Bay Burnett Conservation Council asserting Burnett Water Pty Ltd's failure to comply with environmental conditions related to operation of the Paradise Dam, which in turned related to the rare Queensland lungfish. According to Jo-Anne Bragg, principal solicitor for the EDO (Qld) office in Brisbane, "even with community donations that the Council was able to raise, and generous assistance from law students and barristers, we could not effectively have run such a major case in the Federal Court against a dam operator without assistance from the Commonwealth. But most cases we see are about State law, so establishing some State funding for public interest environmental litigation is imperative to restore some power to the community against major development interests when government decides not to prosecute."

Under the Queensland EDOs' proposal, an independent assessment committee would review applications for legal aid for public interest environmental litigation and determine whether the lawsuit raises sufficiently broad public interest concerns and, if so, recommend funding to assist in running that case. It is worth emphasizing that the legal aid sought by the Queensland EDOs would be available to any party running a public interest environmental law matter in court – not just the EDOs.

While Attorney General Dick expressed interest in the Queensland EDOs' submission, support from the public – including from members of academia and the bar – will be particularly helpful. On that note, Brisbane barrister, Stephen Keim, authored a letter on 16 June 2010 strongly supporting the EDOs' legal aid funding request, which the EDOs have forwarded to Attorney General Dick. Links to the EDOs' submission for legal aid funding, together with Mr Keim's letter of support, are provided on each EDO's website ([www.edo.org.au/edonq](http://www.edo.org.au/edonq) and [www.edo.org.au/edoqld](http://www.edo.org.au/edoqld)).

## EDO NSW Marks Twenty-Five Years of Service to the Public and Protection of Australia's Environment

In Sydney this past May, the Australian Network of Environmental Defenders Offices ("ANEDO") marked the twenty-fifth anniversary of the New South Wales office's birth as the first of Australia's Environmental Defenders offices.

The anniversary was marked with a two-day conference, entitled "Public Interest Law in Australia 25 Years On," providing a retrospective on the organisation's victories, and yet-to-be-achieved victories, since its advent and providing a long-range view of environmental issues that will have to be tackled over the next 25 years.

Speakers at the conference included the Honourable Robert McClelland (MP and Federal Attorney General), Professor Ian Lowe (President of the Australian Conservation Foundation), the Honourable Murray Wilcox (former judge of the Federal Court and current member of the EDO NSW's board), the Honourable Duncan Kerr (MP), and Emeritus Professor Ben Boer (University of Sydney).

The highlight of the conference was a dinner graced by His Honour, Robert Shenton French, Chief Justice of the High Court of Australia, who provided an interesting – and entertaining – account of his own experiences with public interest and environmental

legal issues over the course of his career as a practitioner and jurist.

Sometimes we lose sight of the hard-fought battles to protect the environment waged over the past two-and-a-half decades, the progress we have made and how far we have yet to go in order to vouchsafe Australia's unique and magnificent

ecosystems. The Sydney conference provided a welcome opportunity to reflect on what your Environmental Defenders have managed to achieve, how much we have yet to achieve, and how incredibly important it is – for ourselves and future generations of Australians – that we do not fail in our efforts.

An outline of the Sydney conference program, including links to speakers' presentations and materials, is available at [http://www.edo.org.au/conference\\_2010.php](http://www.edo.org.au/conference_2010.php).



## Major Prosecution Launched against John Holland Pty Ltd

In May 2010 the Department of the Environment and Resource Management launched major prosecutions against John Holland Pty Ltd and John Holland Group Pty Ltd.

The complaints allege that each company wilfully contravened conditions of development approval at Abbott Point and at Dalrymple Bay. The complaints also allege that each company wilfully and unlawfully caused material environmental harm in breach of section 435(1) of the *Environmental Protection Act 1994* ('EPAct'). The particulars of the complaints for Abbott Point include that spent garnet was released to land and waters.

These prosecution are remarkable firstly as the breaches are alleged to be wilful and secondly as the potential maximum penalties that may apply to the companies total tens of millions of dollars, way above previous penalties actually awarded in prosecutions under the Environmental Protection Act 1994.

The case is yet to be heard and decided by the Court so we do not yet know if the companies have contravened the EPAct.

For more information, including John Holland's statement that it expects to be defending all the charges see ABC <http://www.abc.net.au/rn/nationalinterest/stories/2010/2899992.htm>

## Draft Queensland Coastal Plan 2009 Update

Last year EDO and EDO NQ lodged a joint submission on the draft Coastal Plan, and many other groups also lodged submissions. The reform package included amongst other things a draft State Planning Policy on Coastal Protection.

On 7 May 2010 conservation groups met with Minister Kate Jones and officers of the Department

of the Environment and Resource Management to express strong concerns about the number and nature of Maritime Development Areas ("MDAs") that are identified as locations for future development. 27 of those MDAs include areas of high ecological significance. You can see a list of MDAs showing local government area on the Department's

website at [http://www.derm.qld.gov.au/environmental\\_management/coast\\_and\\_oceans/coastal\\_management/maritime\\_development\\_areas.html](http://www.derm.qld.gov.au/environmental_management/coast_and_oceans/coastal_management/maritime_development_areas.html) and also a summary of submission points.

*Please write to Minister Kate Jones, with a copy to EDO, and to the Queensland Conservation Council if you disagree with the identification or extent of any of the MDAS*

## Results of the Qld Coastal Growth Summit 30-31 March 2010

Queensland Conservation Council's Jeff Poole recently attended the Premier's Queensland Growth Management Summit as a community representative.

In Spinifex, Poole recounts the first day of the summit as a series of presenters unanimously singing the praise of unrestrained population growth with little discussion of the other two topics of the conference: liveability and ecological sustainability.

The workshop phase of the summit was more encouraging as community representatives departed from the course laid out by the keynote speakers, delving into how to make ecologically sustainable development a reality.

The Premier introduces new initiatives in response to the Summit, yet fails to propose any serious

limitations on population growth, a response which is insufficient to the crisis at hand. Some measures are suggested to shift around population growth, such as decentralizing government agencies to more rural areas, but this is a stop-gap measure.

The report also contained some positive initiatives. i.e. the commitment of the Queensland government to the development of a National sustainable population policy that would be ratified at state level.

For the more information and the full report of the Government's response to the ideas of the summit: <http://growthsummit.premiers.qld.gov.au/>

For a conservation response see the Queensland Conservation home page on growth <http://www.qccqld.org.au/>

## Australian government launches action against Japan over whaling

You might recall that in 2008 the Humane Society International gained a declaration and injunction against a Japanese company, directing that company to stop whaling in the Australia Whale Sanctuary, adjacent to Antarctica, in breach of the *Environment Protection and Biodiversity Conservation Act 1999*.

Dr. Chris McGrath was a key barrister amongst the legal team for that case, along with EDO Sydney solicitors and Peter Gageler QC. The new Commonwealth government lead by Prime Minister Kevin Rudd did not promptly carry out a pre-election promise to enforce Australian law against Japanese Whalers.

Finally, on 31 May 2010, after repeated requests by conservation groups, the Australian government has taken action against Japan in the International Court of Justice (ICJ) in the Hague, alleging breach of international conventions concerning whaling.

The contentions include, in effect, that Japan is not observing in good faith the zero catch limit in relation to the killing of whales for commercial purposes and that the scale of its taking of whales for scientific purposes cannot be justified.



Photo: Greenpeace

Whatever the motives, political or pragmatic the ICJ action is a decision that assists protection of whales and we applaud the Commonwealth government for finally taking legal action.

For more information on the case visit <http://www.hsi.org.au/> and <http://www.envlaw.com.au/whale.html>.

## Regulatory Impact Statement for the Protection of Wetlands of High Ecological Significance in Great Barrier Reef Catchments

A regulatory impact statement is a document analysing the impacts of a proposed regulation. An impact statement has been released for a series of regulations designed to protect wetlands of high ecological significance in Great Barrier Reef Catchments from high impact earthworks.

These new regulations would include amendments to the *Sustainable Planning Regulation 2009*, a temporary State Planning Policy, a new development assessment code, and amendments to the *Environmental Protection Regulation 2008*.

Wetlands in the Great Barrier Reef catchment are currently being lost at a rate of 3%-5% a year. The proposed regulations aim to stop this, by ensuring not net loss of wetlands by 2013.

In general, they aim to do this by making earthworks in or around wetlands of high ecological significance assessable development for which the Department of Environment and Resource Management ("DERM") would be a concurrence agency. Under the *Sustainable Planning Act 2009*, a concurrence agency has the power to impose conditions or reject the development entirely if it is not satisfied the development is in accordance with the relevant codes.

DERM is inviting public comment on the regulatory impact statement until 30 June 2010. Further information on the statement can be found on DERM's website, at: <http://www.derm.qld.gov.au/wildlife-ecosystems/ecosystems/wetlands-spp.html>

## QLD LAW AND POLICY WATCH

### Wenlock Basin Wild River Declaration

The *Wenlock Basin Wild River Declaration 2010* has been published in June 2010. The Declaration brings the Wenlock Basin under the protections of the *Wild Rivers Act 2005*. As a wild river, the Wenlock River now has restrictions on activities such as extracting resources and developing the land within 500 metres of the Wenlock River. Some activities which are held to be low impact may still be possible within this area. For more information, visit the Department of Environment and Resource Management's website at <http://www.derm.qld.gov.au/wildrivers/wenlock.html>

### New National Parks

New areas of national parks have been declared under the *Nature Conservation Act 1992*. This includes – Macalister Range National Park, Tewantin National Park. The Glasshouse Mountains National Park has also been increased by 2000 hectares.

### Queensland Waste Strategy 2010 – 2020

The Department of Environment and Resource Management has released a draft waste management strategy consultation paper. This paper provides details on the proposed strategy, which will eventually include new waste management

legislation, and an industry waste levy. The draft strategy is open to public comment until July 31. For more information, visit the Department's website at [http://www.derm.qld.gov.au/environmental\\_management/waste/strategy/index.html](http://www.derm.qld.gov.au/environmental_management/waste/strategy/index.html)

### Koala Conservation State Planning Policy

The State Planning Policy and State Planning Regulatory Provisions for the Koala Conservation Strategy in South East Queensland were released in May 2010. These documents set out the regulatory framework for koala conservation in South East Queensland. For more information, visit the Department of Environment and Resource Management's website at [http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala\\_crisis\\_response\\_strategy/state\\_planning\\_policy.html#state\\_planning\\_policy\\_spp](http://www.derm.qld.gov.au/wildlife-ecosystems/wildlife/koalas/koala_crisis_response_strategy/state_planning_policy.html#state_planning_policy_spp)

### Coal Seam Gas Water Management Policy

The Department of Environment and Resource Management has released a final version of the Coal Seam Gas Water Policy. This policy is to address the issue of salt produced through coal seam gas extraction, and reduce its impact on the environment. More details can be found on the Department's website at [http://www.derm.qld.gov.au/environmental\\_management/coal-seam-gas/water-policy.html](http://www.derm.qld.gov.au/environmental_management/coal-seam-gas/water-policy.html)

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