



EDO BULLETIN

July - September 2008

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Booth v Yardley - electric grids start to come down after second contempt proceedings!

Readers will recall from earlier this year that lychee farmers Mr & Mrs Yardley had disobeyed the order of the Planning and Environment Court that they dismantle their lethal electric grids by pulling down and taking apart the horizontal wires and metal poles by 31 March 2008. Dr. Carol Booth was forced to file a second application for contempt of the Court. The hearing was in August 2008, with Dr Booth represented by EDO Qld and barrister Dr Chris McGrath. We await Judge Wilson SC's decision, but in good news have now heard that the grids have been partially dismantled.



Grids down on the north Queensland property

Full dismantlement of electrified grids has been the aim of this and other bat cases that EDO has run for Dr Booth, so we are pleased to see some results and hope to hear from the Yardleys that they have completely dismantled their killer grids.

Dr Booth and EDO continue to lobbying the EPA to require all electric grids in Queensland to be dismantled, given their harm to native wildlife and their ineffectiveness at crop protection. EDO welcomes the 1 September 2008 start of the ban on shooting these protected animals, a cruel and ineffective means of crop protection. The EPA are to be applauded for this ban and should now move to ban all electric grids.

Metroplex v Brisbane City Council & Friends of Pooh Corner & Others

This case concerns a proposed industrial development at the former Wacol army barracks, a well known bushland site containing endangered vegetation. EDO Qld assisted community group Friends of Pooh Corner with procedural advice in their Planning and Environment Court appeal, heard for three weeks in August-September 2008 before His Honour Judge Rackemann.

Friends of Pooh Corner presented evidence that Metroplex's overall site design would unacceptably impact endangered regional ecosystem, *Eucalyptus seeana*, and would destroy most of the identified hollow bearing trees on the site. EDO Qld congratulates group leaders Nikki Parker and Simon Birrell for a very well prepared and run case, including their proficiency with technology in the Court's first electronic (paper-free) trial. EDO and Friends of Pooh Corner await Judge Rackemann's decision.

For more information about EDO-Qld cases contact us on (07) 3211 4466 or edogld@edo.org.au.

False Cape update

After sustained pressure from EDONQ and its clients, on 4 September 2008 federal Environment Minister Peter Garrett suspended the federal development approval for the False Cape development in Cairns, and ordered that a full environmental audit of the site be conducted. This welcome decision came after evidence was gathered by concerned EDONQ clients, showing approval breaches regarding erosion and sediment control measures. Campaigners, CAFNEC and EDONQ have lobbied all three levels of government for years to take action to stop the further environmental degradation of the site and the adjacent waters of the Great Barrier Reef Marine Park and World Heritage Area. EDONQ is still pushing for the Queensland government and Cairns Regional Council to also take action to rectify breaches of state approvals and to require rehabilitation of the site.

Grease Trap waste decision: Lavis v Mareeba Shire Council & Ors

Readers will recall EDONQ's involvement in the Dimbulah grease trap waste appeal. Unfortunately, on 30 July 2008 His Honour Judge White handed down his judgment to give the proponent in principle approval for the proposed grease trap waste disposal operation. Final approval conditions are yet to be finalised, and both the Mareeba Shire Council and EDONQ's clients are considering their appeal prospects.

Mission Beach and Shoalwater Bay developments stopped by federal government

On 28 July 2008 federal Environment Minister Peter Garrett rejected a proposed 40 residential lot subdivision at Mission Beach at the intersection of vital wildlife corridors between the Wet Tropics World Heritage Area and nearby coastal cassowary habitat. Minister Garrett found that the adverse impacts upon the endangered Southern Cassowary from the development would be "clearly unacceptable" and rejected the proposal outright, rather than allowing it to undergo further environmental impact assessment. EDONQ and a large number of local conservation organisations and their members have applauded Minister Garrett's decision.

Using the same powers under the EPBC Act, on 5 September 2008 Minister Garrett rejected the proposed Shoalwater Bay coal port, rail facility and Galilee coal mine. Conservationists welcomed the decision but expect a fresh referral of the proposal in slightly different locations to be made.

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

Other cases of interest...

Federal Court rules against greenwash advertising

The Federal Court has declared Holden's "Grrrrreen" marketing campaign for Saab to be false and misleading for claiming that it would plant 17 native trees to offset the carbon emissions for the life of every car purchased. The Court found that this number of trees would offset the carbon emissions for only one year of the vehicle's operation. EDO would like to see federal regulation of carbon offset schemes, and earlier this year made a submission to the ACCC on this issue (see www.edo.org.au/policy/pdf/subs08/carbon_offset080218.pdf).

EPA takes action against toxic waste dumping

Congratulations to the EPA for taking court action against Parkside Holdings Pty Ltd and its employee for offences against the *Environmental Protection Act* for burying 70 44-gallon drums of copper chromium arsenate at the company's timber mill, south of Gladstone. The Court fined the company and employee a total of \$120,000.

Bauxite exploration permitted on Wildlife Reserve

On 3 September 2008 the Land Court gave mining company, Cape Alumina, permission to explore for bauxite on land owned by Terri Irwin, and part of the Teve Irwin Wildlife Reserve. It is understood that Ms Irwin is considering an appeal. EDO supports Ms Irwin's campaign and regularly assists clients with private conservation areas which are under threat from mining proposals. EDO will continue to lobby the government for better protection for conservation areas from resource extraction.

Climate change cases

A Victorian planning Tribunal (VCAT) has refused a development application along the South Gippsland coast because of the threat from inundation by rising sea levels.

A judge in the US state of Georgia has applied the US *Clean Air Act* to stop construction of a coal fired power station. The decision applies the earlier US Supreme Court decision in *Massachusetts v EPA*, where the Court found that carbon dioxide was a dangerous air pollutant that should be regulated by the *Clean Air Act*. The Georgia decision has been appealed. For more information see <http://green-law.org/>.

In September six UK Greenpeace activists were acquitted of causing \$76,000 of damage for shutting down a coal fired power station. The defendants relied on the defence of 'lawful excuse', claiming they were defending property of a greater value (the Earth) from the global impact of climate change.

Recent EDO law reform submissions

It's been a busy few months on law reform for EDO Qld and EDONQ. We have recently prepared law reform submissions on:

- Great Barrier Reef amendment laws (to a federal Senate Inquiry into the Bill, who then requested EDONQ Principal Solicitor Adam Millar give verbal evidence), where we argued for better protection and proactive management of the Reef, including from land-based polluting activities;
- Tougher laws to protect koala habitat from urban development and infrastructure (to EPA and Deputy Premier Paul Lucas), including reducing the exemptions for 'committed development', protecting all types of koala habitat, and increasing the role of the EPA in assessing development and providing EPA with additional funding to do so;
- Qld Biosecurity Discussion Paper (Department of Primary Industries and Fisheries), where we supported the Strategy but called for greater focus on the threat from climate change induced weed and pest booms which will threaten our natural environment; and
- Green Paper on Sustainable Housing (Department of Infrastructure and Planning), where we called for fo-

cus on energy and water efficiency in all new and renovated houses

These Qld submissions are available from www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm

EDO Qld & EDO NQ have also had input into recent law reform submissions by the Australian Network of Environmental Defenders Offices (ANEDO) on:

- Review of the Environment Protection Biodiversity Conservation Act;
- Carbon Pollution Reduction Scheme Green Paper;
- Senate Inquiry into the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 and related Bills;
- COAG Working Group on Climate Change and Water – Design Options for the Expanded National Renewable Energy Target Scheme; and
- Inquiry into the implementation, operation and administration of the Legislation underpinning carbon sink forests

These national submissions are available from www.edo.org.au/policy/policy.html.

LAW AND POLICY WATCH

Changes to Queensland Environmental Law and Policy - May to September 2008

Climate Change

- **Net feed-in tariff, energy efficiency and gas target laws for Queensland:** The *Clean Energy Act 2008* was passed in May 2008. The Act introduces a net feed-in tariff for households whereby power generated in excess of that used will be paid at 44 cents for every kilowatt-hour. However, virtually no households would generate excess power in order to receive the tariff, and EDO would like to see the scheme changed to a gross feed-in tariff to actually stimulate solar uptake. The Act also requires medium-high energy user businesses to identify and implement energy efficiency, conservation and management measures. Thirdly, the Act requires electricity retailers to source at least 15% of their energy from gas-fired generation by 2010, an increase on the existing 13% target and a fast-tracking of the 18% by 2019 target.
- The Queensland government has announced a \$60 million **household energy efficiency funding** initiative which will operate from 1 January 2009. To pre-register for the ClimateSmart Home Service, visit www.climatesmart.qld.gov.au or call 1300 130 372.
- In September 2008 the Premier released the *Towards Q2 Tomorrow's Queensland* policy document, which includes a **2020 target to cut by one-third the carbon footprint** of Queensland households by reducing car and electricity use and waste to landfill. Sadly, the number of new coal mines being approved by the Qld government is likely to swallow any greenhouse gas savings from reduced household energy consumption.

Water

- **Recycled water Bill passed:** The *Water Supply (Safety and Reliability) Bill 2008* was passed in May 2008, establishing new regulatory arrangements for recycled water and drinking water quality.
- **Draft South East Queensland Water Strategy:** This *Strategy* is the Queensland Water Commission's proposed 50 year plan to meet the water needs of SEQ. Public comments were due by 31 July 2008, and will be considered before the strategy is finalised by the State Government and the South East Queensland Council of Mayors. *The Draft Strategy is available at www.qwc.qld.gov.au/SEQWS*
- Rebates (capped at \$10,000) for payment of fixed water charges may be available for eligible primary producers under an amendment to the **Rural and Regional Adjustment Regulation 2000**.
- **Unallocated water to be gifted to Commonwealth:** On 12 September the Queensland government announced plans to permanently gift 10.6 billion litres of unallocated water from the Qld Murray-Darling catchment to the Commonwealth to help save the Murray.

Accountable Government

- In August the Queensland government released its response to the June 2008 independent review of the *Freedom of Information Act 1992*. The government has supported *most* of the 141 recommendations to strengthen community access to information. The draft *Right to Information* legislation is expected to be

Law and Policy Watch continued

released for public consultation by December 2008, and debated in the first half of 2009. For more detail see www.thepremier.qld.gov.au/initiatives/foi_review/index.aspx.

- The **Public Service Act 2008** passed in June 2008 aims to improve the accountability and efficiency of the public service by setting out principles to guide the public service and by establishing the Public Service Commission.
- Amendments to the **State Electoral Act** have reduced the threshold for disclosing political donations to \$1000, reduced timeframes for disclosure to 6 months, and prohibited donations from non-Australian companies.
- Amendments to the **Crime and Misconduct Act 2001** made in September 2008 have removed protection against self-incrimination for witnesses involved in secret Crime and Misconduct Commission hearings.

Planning and Development

- In May 2008, the Premier announced that the **review of the SEQ Regional Plan** would start 12 months early, given huge population growth, traffic congestion and the housing affordability crisis. The announcement is yet another example of fast-tracking planning and environmental laws to enable development, which usually comes at the cost of meaningful community participation and environmental protection.
- In mid May 2008 the Stanwell-Gladstone Infrastructure Corridor State Development Area was declared, and in late August 2008 the Bromelton State Development Area was declared. The normal environmental and planning laws do not apply within **State Development Areas**.
- In June 2008 the annually updated **SEQ Infrastructure Plan and Program 2008-2026** was released, which now includes 60 new projects and will see total investment in infrastructure 2008-2026 reach over \$107 billion. Many of those projects include new roads, tunnels and dams, despite the climate implications and dependency of those activities.
- Rules about conflict of interest, codes of conduct and ethics principles are established by the June 2008 **Iconic Queensland Places Regulation 2008** to apply to the new panels which decide development applications in iconic areas like Noosa and Port Douglas.
- **Brisbane City Plan 2000** has been amended to include new Parks Planning and Design Code as well as changes to Subdivision Code, Park Code, House Code, Residential Design–Low Density, Character Residential and Low–Medium Density Code.
- The planning and implementation of the **Toowoomba Pipeline project**, connecting Lake Wivenhoe and Lake Cressbrook, has been approved in an amendment to the *State Development and Public Works Organisation Regulation* that was notified on 22 August 2008.
- **Bowen Hills Urban Development Area** was declared on 11 August 2008. The community is expected to be invited to comment on the proposed development plans for the UDA during October.

Nature Conservation

- In May 2008 the Queensland government announced that from September 2008 the EPA would no longer issue permits to shoot flying-foxes, following findings by the Animal Welfare Advisory Committee that the practice was inhumane. EDO applauds this move.
- The **Fisheries Act 1994** was amended in September 2008 to limit **indigenous fishing rights** to non-commercial uses, overcoming a 2006 Court of Appeal decision which upheld the right of a traditional fisher to use commercial fishing nets.
- In July 2008, the Qld government handed back three areas of land to the Lama Lama people of Cape York Peninsula and signed an agreement establishing the 35,560 hectare Lama Lama National Park, the **first national park on Aboriginal land** in Qld. Sadly in other Qld National Parks the State Government has approved construction of water treatment facilities (Paluma NP) and electricity transmission infrastructure (Eubaneegee Swamp, Russel River and Wooroonooran NPs).
- An August report highlighting the **continued decline of SEQ koala populations** has spurred the Queensland government to appoint another expert taskforce to recommend action. EDO Qld have written to the EPA, Deputy Premier and other Cabinet Minister calling for tougher laws to protect koala habitat from urban development, the real threat to koala survival. .
- Queensland's new **Environmental Offsets Policy** took effect from 1 July 2008. The Policy will not override more detailed offset policies like the *Vegetation Management Offset Policy*, but alarmingly allows financial contributions to be made as an offset. The Policy is at www.epa.qld.gov.au/publications?id=2501.
- In September 2008 the Premier released the *Towards Q2 Tomorrow's Queensland* policy document, which includes a welcome target of increasing Queensland's protected area estate to 12.9 million ha (an increase in 50%) by 2020.

Pollution

- Changes to the **Environmental Protection Act 1994**, tabled on 26 August 2008, remove the distinction between Level 1 and 2 Environmentally Relevant Activities (ERAs), except for mining and petroleum activities. New enforcement tools, in the form of clean up and cost recovery notices were also introduced. Offence provisions for environmental nuisance, air and water pollution, and fuel quality standards, have also been moved from the Regulations to the Act – which means higher penalties can be imposed. A new **Environmental Protection Regulation** is being proposed which will reorganise how ERA are listed in Schedule 1.
- **Transport Operations (Marine Pollution) Regulation 2008** commenced on 1 September 2008. It contains obligations (with severe penalties for non-compliance) on ship owners and masters to exercise responsibility for the marine environment.

Law and Policy Watch continued

Mining

- On 25 August 2008 the Queensland government announced a 20 year **moratorium on oil shale mining** of the McFarlane deposit, 15km south of Proserpine. Legislation to enforce the ban will be introduced in October 2008.
- The *Clean Energy Act 2008* passed in May 2008 clarifies the legal tenure and safety arrangements for the emerging **underground coal gasification (UCG)** industry through amendments to the *Mineral Resources Act* and the *Petroleum and Gas Act*. The UCG process involves combustion of coal underground in the coal seam and capture of the resultant gas for process-

ing into oil and related by-products. The Act sets out the requisite mining and petroleum tenures and relevant OH&S requirements that apply in the stages of exploration, testing and production.

- The June 2008 state budget saw **mining royalties** increased for the first time in 30 years. A new two tier coal royalty rate of 10 per cent will apply to coal being sold at over \$100 per tonne, while the seven per cent rate continuing to apply to coal sold under \$100 per tonne. The separate Australian Coal Association Low Emissions Technology levy, legislated under the *Clean Coal Technology Special Agreement Act*, will now also be able to be deducted from those royalties.

Recent changes to Federal Environmental Law and Policy

Climate change

- The federal government released the Green Paper on its proposed **Carbon Pollution Reduction Scheme** in July 2008. The scheme's flagship is an Emissions Trading regime which will allocate carbon pollution permits that can be traded in the market place – thereby creating a pricing mechanism that promotes energy efficiencies and investments in activities that do not pollute the atmosphere. ANEDO made a submission on the Green Paper (see Law Reform), criticising the proposal to give free permits to big polluters. The government's White Paper is due to be released by December 2008 and ANEDO will also comment on that.
- The Final Garnaut Report on the Emissions Trading Scheme was released on 30 September 2008 and will be discussed in our next Bulletin.
- The *National Greenhouse and Energy Reporting Regulations 2008* commenced on 1 July 2008, which set out detail on compliance with, and administration of, the 2007 Act. A *National Greenhouse Energy Report (Determination) 2008* has been introduced to clarify how to measure Scope 1 and 2 emissions from activities that produce greenhouse gases.
- Amendments to the *Energy Efficiency Opportunities Regulations 2006* give detailed reporting requirements for the energy efficiency reporting program that commenced on 1 July 2008.
- Legislation to establish a regulatory framework for **CO2 storage under the seabed** in Commonwealth waters was before Parliament in September 2008. ANEDO made a submission on the *Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008* (see Law Reform).

Water

- On 8 September 2008 the Federal government announced a proposal to buy-back water entitlements from Queensland and northern New South Wales holders. Other major reforms to Murray Darling water laws will be outlined in the next Bulletin.
- Federal Government will begin offering rebates for installation of water tanks.

Accountable Government

- Improvements to the disclosure and reporting of **political donations** introduced in August 2008 have been incorporated into the *Commonwealth Electoral Act 1918*. Tax law amendments also mean that donations over \$1,500 to political parties and candidates are no longer tax deductible.

Marine protection

- On 18 June 2008 Australia introduced amendments to *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to meet its international obligations to provide greater protection to Australian waters from **oil pollution from ships** and to provide further funding for compensation from oil spillage.
- Laws about the protection and management of the **Great Barrier Reef Marine Park** were introduced in June 2008, following the 2006 Howard government review. The changes include addition of an EPBC Act approval trigger for actions outside the Park that are likely to significantly impact inside the Park; a requirement for ecologically sustainable use; new offence and civil penalty provisions; and a ban on greenhouse gas storage projects within the Park.

COMMUNITY EDUCATION

EDO Qld was pleased to have barrister and conservationist Andrew Sinclair speak at our AGM on "How to Fight, and How Not to Fight – the Tactics and Strategy of Environmental Law". Andrew's presentation was very well received by the packed-crowd of EDO members and community activists!

Also in September EDO Qld spoke to environmental management and planning students at the University of Qld on the Community in Planning and Environment Law. *Handouts from these events are available from www.edo.org.au/edoqld/edoqld/factsheets/.*

OPPORTUNITIES TO COMMENT

- The federal government advice agency Infrastructure Australia's discussions papers on Future Infrastructure Requirements and Public Private Partnerships are open for comment until **15 October 2008**. See www.infrastructureaustralia.gov.au/submissions.aspx.
- Draft Terms of Reference for the Nathan Dam Environmental Impact Statement are open for public comment until **17 October 2008**. See www.dip.qld.gov.au/projects/water/nathan-dam.html.
- The Qld government Peak Oil discussion paper is open for comment until **17 October 2008**. See www.epa.qld.gov.au/environmental_management/sustainability/mcnamara_report/.
- The Qld government Issues Paper – Review of the Queensland Government climate change strategy is open for comment until **27 October 2008**. See www.climatechange.qld.gov.au/response/2050review.html.
- The Whitsunday Draft Water Resource Plan is open for comment until **27 October 2008**. See www.nrw.qld.gov.au/discussion_papers/index.html.
- Draft statutory Regional Plans for Maranoa and Districts, South West Qld and Central West Qld are open for comment until **29 October 2008**. See www.dip.qld.gov.au/regional-planning/index.php.
- The draft Rural Futures Strategy for South East Queensland is open for comment until **3 November 2008**. See www.dip.qld.gov.au/regional-planning/have-your-say-on-the-draft-rural-futures-strategy.html.
- The federal government's discussion paper on improving fuel efficiency of Australian vehicles is open for comment until **7 November 2008**. See www.environment.gov.au/settlements/transport/.
- The Archer Basin, Lockhart Basin and Stewart Basin wild river declaration proposals are open for comment until **21 November 2008**. See www.nrw.qld.gov.au/wildrivers/index.html.
- The Australian Marine Conservation Society is calling for support to lobby the federal government for a Coral Sea Heritage Park. Lodge a letter of support at www.amcs.org.au/default2.asp?active_page_id=562.

REPORTS RELEASED

- Queensland's first Pollutant Emissions Report Card released July 2008: www.epa.qld.gov.au/environmental_management/national_pollutant_inventory/.
- Office of Climate Change report on climate change impacts in Queensland released June 2008: www.climatechange.qld.gov.au.
- Conservation sector report on Qld environment report card after 10 years of Labor government policy released June 2008: www.wilderness.org.au/files/paradise-list.pdf/view.
- HREOC report on the social and human rights implications of climate change: www.humanrights.gov.au/about/media/papers/index.html.
- Australia's first online recycled product directory: <http://rcp.brba.com.au/default.aspx>.
- Australia's National Greenhouse Accounts: www.climatechange.gov.au/inventory/.
- Federal government report on marine biodiversity decline: environment.gov.au/coasts/publications/marine-diversity-decline/.
- Federal government report on household energy use since 1986: www.environment.gov.au/settlements/energyefficiency/buildings/publications/energyuse.html

Staff changes for Qld EDOs

EDO-Qld has temporarily farewelled third solicitor Anita O'Hart, who is taking a year off for maternity leave. Congratulations to Anita and husband Seamus on their soon-to-arrive bundle of joy!

Warm welcome to locum trainee solicitor Scott Sellwood who will work with EDO-Qld until Anita's return in October 2009. Scott is already fitting in perfectly with the office and making a valuable contribution to our important work. Scott previously worked as Associate to Judge Wilson SC of the Planning and Environment Court. When not at EDO, Scott is busy studying permaculture design with the Northey Street City Farm.

EDO-NQ is currently recruiting to its vacant second solicitor position and hopes to be able to announce a new member to their dedicated team in the near future.

Jobs at EDO

EDO WA seeks an experienced and committed environmental lawyer able to practise in WA, for the full-time position of Principal Solicitor in Perth. Contact Amber Centa at edowa@edowa.org.au or 9221 3030.

EDO NSW seek an Assistant Policy Officer for legal and policy research to support the work of the EDO policy team on law reform submissions and projects. See www.edo.org.au/edonsw/site/jobs.php or contact Jeff Smith on 02 9262 6989 or jeffrey.smith@edo.org.au.

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