

Annual Report

July 1st 2002 - June 30th 2003



Environmental Defender's Office
of Northern Queensland Inc.

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President's Report

It has been a pleasure serving as EDO-NQ's president for the past year and I am proud to present this report on behalf of the Management Committee.

It has been an excellent year in a number of different respects. In the area of community legal education, Joanna Cull has won consistent high praise for the quality of her presentations and she has traversed much of our service area, delivering interactive workshops in Mackay, Airlie Beach, Townsville and Mission Beach – as well as seminars closer to our office in Cairns and Kuranda.

In the area of policy and law reform, Stephen Hall followed up on Matt Patterson's excellent work on the proposed new Biodiscovery laws, preparing a comprehensive submission on the Biodiscovery Bill.

Joanna and Matt have also provided regular comment and advice regarding two other major policy developments – the ongoing reform to land clearing laws and the recently released Great Barrier Reef World Heritage Area Draft Zoning Plan.

In the area of case work Matt devoted significant time to Planning and Environment Court appeal on behalf of Dr Jon Nott. Whilst the decision of the Court was disappointing, the litigation has served to highlight the issue established by Dr Nott's research. No doubt this will increase the chances of Cairns City Council and other local authorities reviewing their inundation level standards, hopefully before a major cyclone demonstrates why this is necessary.

As Joanna has noted in her report, the case work advice given to NQCC in connection with the proposed Radical Bay Resort correctly identified the best strategy to oppose the development. It illustrates the benefits of sound and timely legal advice. As a person who grew up in Townsville, spending many weekends on Magnetic Island, I am glad that EDO-NQ has assisted in limiting inappropriate development on it.

From an administrative and organisational perspective EDO-NQ has emerged at the end of the year in very healthy shape. The move to new premises was accomplished with a minimum of fuss and there is no doubt that the new office provides a more efficient, pleasant and functional work setting. Overall funding has increased slightly. I wish to express my appreciation to the Commonwealth Government and Queensland Government for their ongoing support which provides EDO-NQ's core funding. Also the Environmental Protection Agency for its \$7,000 grant and the Gaming Machine Community Benefit Organisation for its \$3,483 grant.

The Management Committee was very sorry to lose Matt Patterson's services after more than two years with us. However, we were very fortunate to find a

replacement of Steven Hall's calibre. For those who have not yet met Steven, he has come to Cairns from the EDO Tasmania office where he achieved some outstanding results.

Together Ingrid Yamaoka, Joanna Cull and Stephen Hall make up an excellent team of employed staff. EDO-NQ is very well placed for the year ahead.

In conclusion, I would like to thank all of the other members of the Management Committee. The spirit of collaboration and good will within the committee have made my duties as President an enjoyable and rewarding experience.

Rowan Silva
EDO-NQ President
September 2003

Solicitor/Coordinator's Report

2002-2003 has been another extremely busy year for EDO-NQ. There have been some exciting developments for the Queensland environment over the past year. The release of the Draft Zoning Plan for the Great Barrier Reef Marine Park which zones 32.5% of the Great Barrier Reef Marine Park green (no take) as part of the representative areas program and the announcement by the State Government of a moratorium on land clearing in Queensland pending finalisation of a joint Queensland and Commonwealth package to address Queensland land clearing have been two highlights.

Funding

This year saw the finalisation of our three year funding agreement with the State and Commonwealth government and the EDO-NQ recurrent funding of \$ 137 864 remains secure until July 2005. We also received a grant of \$7000 from the Environmental Protection Agency, to assist us with ongoing operational costs and a grant of \$3 483 from the Gambling Machine Community Benefit Organisation, which we used to upgrade our office furniture. We take this opportunity to thank our funders for their ongoing support of EDO-NQ.

Office Premises

In August 2003 we moved to our new premises at 130 Grafton Street Cairns. In September 2003 we celebrated the opening of our premises with a welcome from members of the Gimuy Wallabarra Yidinji people and an inspiring talk from Peter Garrett, ACF president.

Office Staffing

In May of this year we farewell our solicitor/policy officer Matt Patterson. Matt spent two years working with EDO-NQ for the North Queensland environment and his dedication and expertise has been missed greatly at EDO-NQ. We have been fortunate however to welcome Stephen Hall as our new casework solicitor. Stephen has been working for the past two year at EDO-Tasmania, where he undertook a number of high profile and successful actions, including proceedings against the Tasmanian forestry industry. We are lucky to have such an experienced litigation solicitor on board at EDO-NQ.

Ingrid has continued her fantastic work as EDO-NQ's Administrator and I am continuing on as Solicitor/Coordinator of the organisation.

Law and Policy Reform

EDO-NQ has continued on with its law and policy reform work over the past year. As mentioned in last year's report EDO-NQ coordinated a submission by local, state and national environment groups on the Biodiscovery Discussion Paper, which concerned proposed state legislation to control access to biological resources in Queensland and undertook consultation as part of this process with the North Queensland Land Council and ATSIC. Since then the Biodiscovery Bill

has been released and EDO-NQ recently prepared a submission on the Bill based partially on our previous work.

EDO-NQ also prepared detailed advice regarding proposed changes by the State government to Queensland's World Heritage legislation, to assist conservation organisations in formulating their responses to the proposals.

Other policy and law reform activities have included the raising of awareness as to the Great Barrier Reef World Heritage Area Draft Zoning Plan, which was recently released for public comment and awareness raising and the provision of some advice in relation to the current ongoing reforms to Queensland land clearing laws. These reforms to State land clearing laws have involved the declaration of a moratorium on the processing of new land clearing application until negotiations between the State and Federal governments as to the new regime for land clearing control in Queensland are completed and the funding to assist farmers who have their land clearing rights restricted as a result of any changes is finalised. Negotiations have not yet been concluded but it is hoped that they will result in the protection of "of concern" regional ecosystems and a phase out of all remnant clearing by 2006 under a transitional cap of 500, 000 hectares. The cessation of clearing of remnant vegetation would be a major win for the Queensland environment and the finalisation of negotiations are awaited with great interest by all concerned. Also on the land clearing front, a very successful National EDO Network Conference "I can see clearly now – Land clearing and Law Reform" was held in Sydney in July 2003 and was attended by EDO-NQ staff..

EDO-NQ also participated in a joint campaign between the Wuthathi people, and conservation organisations to prevent the renewal of sand mining leases over 65 hectares of pristine dune country at Shelburne Bay. On 1 May 2003, the Land Legislation Amendment Act was passed preventing renewal of the leases. Whilst issues surrounding pastoral leases in the area are yet to be resolved, the decision by the State not to renew the mining leases was a significant step in achieving protection for the Shelburne Bay area.

Finally on the law reform front, I presented a paper in April 2003 at a QELA Cairns regional seminar - "Environmental Law Update" . The seminar had a special focus on prosecutions and my paper examined procedural issues associated with environmental prosecutions in the public interest and analysed their utility in achieving public interest outcomes. The paper concluded by emphasising the need for third party civil enforcement rights in environmental legislation, which is always a law reform focus for EDOs around Australia.

Community Education

This year has been an extremely busy one for EDO NQ's community education program. In Cairns, EDO-NQ presented a seminar on Defamation Law and held our annual information and advice stall at the CAFNEC Envirofiesta. The year was marked however by the commencement of our interactive workshop series for conservationists in regional areas. EDO-NQ presented successful seminars in Mackay, Airlie Beach, Townsville and Mission Beach. The workshops covered a range of topics including coastal management laws, vegetation clearing laws, the *Integrated Planning Act*, the *Environmental Protection Act* and the *Environment Protection and Biodiversity Conservation Act*.

Workshops on a range of topics are now available to any community group in North Queensland and EDO-NQ is developing a focus on the provision of education to the more remote and rural areas.

EDO NQ continues to publish joint monthly email bulletins and a joint newsletter with EDO Queensland. These bulletins and the newsletter provide the community with updates on changes

to environmental law and policy, include articles on recent EDO case work and law reform initiatives and keep members informed of staff and management committee member changes

Case Work

Legal advice this year centred around advice on planning matters, Great Barrier Reef and State Marine Parks issues, vegetation clearing and Wet Tropics World Heritage management.

Our major case for the year involved representation of Dr Jon Nott, a senior lecturer from the School of Tropical Environment Studies and Geography at JamesCook University in Cairns, who lodged an appeal against a major coastal residential and tourist development planned by Daikyo (North Queensland) near Palm Cove. Dr Nott's case was that part of the development as approved by Council would lie below the 1 in 100 year marine inundation level based upon new research he has conducted into tropical cyclone activity in northern Australia. Dr Nott's view was that the frequency and intensity of major cyclones has been under-estimated by relying solely on the historical record, which is less than 100 years in North Queensland. Unfortunately, Dr Nott's appeal was not successful and the Court declined to amend the condition to increase the minimum habitable floor level to 5.15m AHD, as had been requested in submissions made on Dr Nott's behalf. One of the major reasons given by the Court for its decision was that Dr Nott was in effect asking the Court to act as a planning authority and to "substitute a standard devised by him for Council's adopted standard". The result was disappointing and did little to ease concerns held by many in the community as to the likely impacts of cyclonic events on North Queensland coastal areas.

On a more positive note, EDO-NQ was involved last year in advising the North Queensland Conservation Council in relation to a proposal for a major tourist resort on a combination of leasehold and freehold land at Radical Bay on Magnetic Island. Advice pertained in particular to prospects of the State renewing the lease held over the land by the developer. Subsequent lobbying by NQCC resulted in a decision by the Minister not to renew the lease and the land has reverted to unallocated state land, which may put an end to major development at Radical Bay once and for all.

Conclusion

With staff changes, office relocations, increased security in funding and some good environmental outcomes, the past year at EDO-NQ has been busy and challenging but rewarding. The focus on environmental issues in Northern Queensland and Australia is ever increasing and EDO-NQ is in a strong position to make a valuable contribution to preservation of this area.

I would like to thank Matt, Ingrid and the Management Committee for their support and assistance over the 2002-2003 financial year and I would like to welcome Stephen to EDO-NQ. I am looking forward to working with Ingrid, Stephen and the Management Committee and to achieving good conservation outcomes over the next year.

Joanna Cull

EDO-NQ Solicitor/Coordinator
September 2003

Introducing Stephen Hall – New Casework Solicitor

I started life as a lawyer in North West Tasmania where I worked as a general litigation solicitor in a small country legal practice. I was there for three years until leaving in 1997 to travel in India, Nepal and South East Asia. When I returned to Australia I started work as the “Bridgewater Solicitor” with the Hobart Community Legal Service. That was a challenging position. I was the sole lawyer working in a vast broad-acre public housing estate. In two and a half years I saw over a thousand clients and dealt with practically every legal problem imaginable. The job also required me to make regular visits to Tasmania’s notorious Risdon Prison, (home at the time to inmates like “Chopper” Read and Martyn Bryant).

My life as a planning and environmental lawyer began three years ago, when I took on the position as principal solicitor at the Tasmanian Environmental Defenders Office. Growing up in Tasmania through the seventies and eighties, during the epic campaigns over Lake Pedder, the Franklin and the Wesley Vale pulp mill, it was hard for me not to be interested in the environmental law. My first year at EDO(Tas) didn’t disappoint, with several ground breaking cases involving Tasmania’s perennial forestry issues being fought (and won) on behalf of clients. Forestry is definitely THE issue of the day in Tasmania, for good reason. While land-clearing in Queensland has reached terrible rates, Tasmania, a fraction of Queensland’s size, has an even higher rate of clearing (by percentage of landmass) and has the third highest clearing rate outright behind Queensland and NSW. It’s practically all tall native *Eucalypt* forest, a lot of it old-growth and most of it is being woodchipped and exported raw to Asia at bargain prices.

So why was I interested in coming to EDO-NQ? There is a multitude of reasons; like the chance to live and work in a real tropical climate, to see something of the North’s magnificent world heritage areas i.e. the reef and the rainforests. There is also the chance to work in a different jurisdiction and geographically, FNQ would have to be one of the most interesting in the country; practically every development triggers the EPBC Act. Coming to grips with Queensland’s incredibly complex planning and environmental law system certainly presents a challenge for the old grey matter. I’ve had some great support from Jo, Ingrid and the committee and I give them my sincere thanks for making me feel at home so quickly.

Stephen Hall
EDO-NQ Solicitor
September 2003

Administrator's Report

One of the biggest and most welcome changes to the financial management of the EDO's this year was the finalization of a Triennial Service Agreement between the Commonwealth of Australia, Legal Aid Queensland and EDO-NQ. In terms of funding it will provide our office with a steady funding level for the next three financial years (to 30 June 2005).

I would like to thank the Environmental Protection Agency and the Gambling Machine Benefits Fund for their ongoing financial support of our organization. Without their funding support small environmental organizations like ours would find it very hard to keep up with current technology advancements.

Also I'd like to extend a big thank you to those who have supported the case of Dr Jon Nott versus Cairns City Council and Daikyo (North Queensland) Pty Ltd regarding the proposed residential and tourist development at Palm Cove.

Ingrid Yamaoka

EDO-NQ Administrator

September 2003

Treasurer's Report

As outgoing treasurer of EDO-NQ I present these Financial Statements and Auditor's Report for the last time. Once again I am humbled by the wonderful Ingrid whose efforts have meant I have been able to adopt a more relaxed approach than might be hoped for in a treasurer.

The reports reflect the continued financial health and viability of EDO-NQ and demonstrate the efficiency and probity of the management in place.

I formally table the Auditor's Report of EDO-NQ for 2002 - 2003.

Vaughan Edwards
EDO-NQ Treasurer
September 2003

Additional Information

Hours of Operation

EDO-NQ continues to operate from 9am to 5pm, Monday to Friday. Solicitors provide phone advice and assistance during those hours subject to availability. Face to face appointments are available between those hours also and appointments are made by telephoning the office during business hours.

Research

EDO-NQ continues to work with Andrea Olsen of James Cook University, who is investigating ways in which Queensland's *Integrated Planning Act 1997* (Qld) can achieve its goal of ecologically sustainable development without compromising the rights of Native Title holders. EDO-NQ and James Cook University obtained funding for this project in 2001 from the Australian Research Council. EDO-NQ has contributed \$5000 and in kind support to the project as the James Cook University Industry Partner. Completion of Andrea's project has been delayed due to work commitments also related to her area of study and due to recent changes in the area of law the subject of her research. As a result of these recent changes in law, it is likely Andrea's research will now have the requisite degree of originality to be worthy of the award of a PhD. EDO-NQ is proud to be part of this leading research in the area of native title and planning law.

Access and Equity

EDO-NQ continues to strive to achieve access and equity in its service delivery to the North Queensland region. As part of the preparation of its Service Standards Manual EDO-NQ has developed comprehensive Standards for Accessibility, including transparent casework selection guidelines, arrangements for provision of services to clients with a disability and arrangements for use of translator and interpreter centres.

Community Development Work

EDO-NQ has been working over the past year towards designing and delivering community legal education and law reform and policy activities within a community development framework. Solicitors are in regular contact with the EDO client base to ensure that the work of the EDO-NQ in the areas of community education and law/policy reform is sensitive to community need and facilitates community involvement in environmental decision making.

A community legal education case work committee was formed this year, to plan community education programs and to evaluate and plan further community education activities in light of feedback obtained from attendees. EDO-NQ solicitors are in regular contact with relevant North Queensland and national conservation organisations to discuss law reform and policy issues and

in particular to determine the needs of those organisations and obtain feedback from previous initiatives.

Volunteer and Pro Bono Work

EDO-NQ has received extensive pro bono legal assistance over the past financial year from Barristers Chris McGrath, Steven Keim and Steven Keliher. As part of the preparation of its Service Manual EDO-NQ has updated its Volunteers Policy and intends to go on a volunteer recruitment drive over the next financial year.

Training and Supervision provided to Staff

EDO-NQ continues to support the professional development of its staff. Ingrid Schoell, our Administrator obtains assistance in relation to office accounting procedures as it is required. Last calendar year, Matt Patterson and Joanna Cull, our two EDO-NQ Solicitors at the time, attended a conference of the Australian National Network of Environmental Defenders Offices, hosted by EDO-NSW. This conference, entitled "I Can See Clearly Now – Land Clearing and Law Reform", was particularly useful in light of the subsequent developments in land clearing legislation in Queensland which occurred in the following twelve months. Earlier this calendar year, Joanna Cull attended the Queensland Association of Independent Legal Services (QAILS) annual conference, which was a useful networking, training and information gathering exercise. EDO-NQ also sent Joanna to attend a week long course on marine environment and pollution law at the University of Queensland, which was very useful in assisting with EDO-NQ's case work, community education and law reform activities in the area of the marine and coastal environment. EDO-NQ remains a regional member of the Queensland Environmental Law Association, receiving regular seminar papers by email. QELA is introducing additional processes for regional participation in these seminars, which should be of great benefit to EDO-NQ staff. Joanna and Stephen Hall, our new case work solicitor, were fortunate to attend a media workshop funded and organised by the Australian Conservation Foundation, held in Cairns earlier this year. Joanna and Stephen also attended a seminar on the recently released *Biodiscovery Bill 2003*, which was hosted by the Environment Institute of Australia. Staff are encouraged to submit requests for continuing education for consideration by the management committee.

Management and Staff (as at 30 June 2003)

Management Committee

President: Rowan Silva
Secretary: Mandy Shircore
Treasurer: Vaughan Edwards
General: Jax Bergersen
Nichola Hungerford
Peter McCallum
James McLellan
Michael Neal
Nigel Weston

Staff

Solicitor/Coordinator: Joanna Cull
Solicitor/Legal Officer: Matt Patterson (to 16 May 2003)
Administrator: Ingrid Yamaoka

Newsletter Editor

Ingrid Yamaoka

Funding Acknowledgment

The Environmental Defender's Office of Northern Queensland Inc (EDO-NQ) is principally funded by the Commonwealth Attorney-General's Department under the Commonwealth Community Environmental Law Program.

EDO-NQ has also been provided with non-recurrent funding from the Gambling Community Benefits Fund, from the Queensland Law Society Grants Fund (through the Legal Aid Queensland Office) and from the Environmental Protection Agency. We gratefully acknowledge the support of these departments and agencies.