

**ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.
ENVIRONMENTAL DEFENDERS OFFICE OF NORTHERN QUEENSLAND INC.**

FEBRUARY 2003 BULLETIN

2003 Already A Busy Year for Environmental Protection!

Dear Bulletin recipients, EDO Qld and EDO NQ would like to apologise for the delay in sending out Bulletins - but you will be pleased to hear that we have been busy helping our clients keep the government accountable on the environment, and running numerous community legal education workshops! EDO Qld has recently helped the Humane Society win a case against the Commonwealth Minister for the Environment and Heritage, Dr David Kemp, about Flying-foxes (see below "Bat Case 2"), and is also running another Federal Court case about the proposed Nathan Dam on the Dawson River (see below "Nathan dam case"). EDO NQ will also be busy with two Court cases in March, which we will discuss in the next Bulletin!

Bat Case 2 – Humane Society International Succeeds in Federal Court

On 12 February 2003 Justice Kiefel of the Federal Court declared that Commonwealth Guidelines made under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') purported to give exemptions from that Act which were *not authorised by law*. Justice Kiefel made the declaration after an application to the Court by the well-respected Humane Society International Inc., which was represented by Queensland barristers Stephen Keim, Chris McGrath and solicitors at EDO Qld.

One implication of the decision is that any fruit grower who culled, (i.e. killed), vulnerable Spectacled or Grey-headed Flying-foxes earlier this season thinking that he or she were exempt from the need to *refer* the matter to the Commonwealth Minister for the Environment under the EPBC Act, may have breached the EPBC Act. However whether or not the EPBC Act was actually breached would depend in each case upon the individual impacts or likely impacts of the action on the vulnerable flying-foxes.

The Commonwealth Minister for the Environment, who to date is underplaying the implications of this Federal Court decision, now needs to correct the Commonwealth Guidelines to avoid any growers being misled by the unauthorised exemption contained in those Guidelines.

A longer article about this important case and its broad implications is contained in the Environmental Defenders Office newsletter, which is about to be posted to members. Copies of the judgment in the case, Humane Society International Inc. v Minister for the Environment and Heritage [2003] FCA 64 (12 Feb 2003) are available at http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/64.html or contact EDO Queensland.

Why not join EDO or make a donation to support our work? See forms at the end of this newsletter.

Nathan Dam case - Qld Conservation Council (QCC) and World Wide Fund for Nature (WWF) challenge the proposed Nathan Dam

EDO Qld and barristers Chris McGrath and Stephen Keim are representing QCC and WWF in another Federal Court case, about the Nathan Dam. The huge Nathan dam is proposed to be built on the Dawson River in the Fitzroy Basin, which drains into the Great Barrier Reef World Heritage Area (GBRWHA). The dam is being built to provide irrigation to enable new agriculture.

Recently the Commonwealth Environment Minister decided that Commonwealth approval was required for the dam because of impacts the dam was likely to have on federally listed threatened species and ecological communities. However, the Minister disagreed with submissions from the Great Barrier Reef Marine Park Authority, QCC and WWF that expressed concerns about the impacts of the proposed dam (and the agriculture it will enable) on water quality in the GBRWHA.

QCC and WWF have engaged EDO Qld as their solicitors to ask the court to review this aspect of the Minister's decision. A win could mean not only that the Nathan dam proposal needs to be assessed for its impacts on the GBRWHA as well as species and communities, but also that the Minister has to take a broad approach when considering the adverse impacts of actions on matters of national environmental significance.

For more information contact Larissa Waters or Jo Bragg at EDO Queensland.

EDO Qld and our clients need your help to support its solicitors to spend time working on this important and potential landmark case, so if you are able please make a donation to us using the form at the end of this Bulletin.

Shelbourne Bay Sand Mining – Minister’s Decision Imminent

The Queensland Minister for Natural Resources & Mines, the Hon Stephen Robertson, MP has confirmed that an application for renewal of mining leases under section 286 of the *Mineral Resources Act 1998* (Qld) (“MRA”) over nearly 65 hectares of the spectacular sand dune country at Shelbourne Bay on Cape York Peninsula’s North East has been made by the leaseholder. Under the MRA, the Minister has a statutory duty to consider the renewal application. The Wilderness Society in conjunction with traditional owners the Wuthathi Land Trust have been running a lengthy campaign to convince the Queensland Government to cancel the two leases. They argue that the Minister should reject the application owing to the areas natural and cultural values. The leases expired on Friday 28 February 2003 and the Minister is expected to announce shortly after that day whether the leases will be renewed. *For more information contact Matt Patterson of EDO NQ.*

Giant Fish-shaped Pontoon Planned for Great Barrier Reef

The Great Barrier Reef Marine Park Authority (GBRMPA) has issued Terms of Reference for a Public Environment Report to Dectar Pty Limited (trading as “Sunlover Cruises”) who has applied under the *Great Barrier Reef Marine Park Act 1975* (Cth) and the *Sea Installations Act 1987* (Cth) for permission to install and operate a 125m x 60m multi-storey theme-based tourist pontoon at Moore Reef. Moore Reef is within the Cairns Section of the Great Barrier Reef Marine Park, within the World Heritage Area and 27 nautical miles east of Cairns. The proposal is intended to replace the existing 46m x 15m single level pontoon. The proposal includes facilities for coral viewing vessels, scuba diving, scenic flights, weddings and overnight accommodation. GBRMPA advises that a draft Public Environment Report will be issued for public comment shortly. *For more information contact EDO NQ.*

Community Environmental Law Workshops

EDO Qld’s recent community environmental law workshops have been a huge success! Since October 2002, EDO Qld has travelled to Warwick, Agnes Water, Rockhampton and the Redlands. EDO Qld has also held specialist campaigners’ and water issues workshops in Brisbane, as well as making presentations at protests against the Finfish Seacage proposed for Moreton Bay. Attendees have commented that they thoroughly enjoyed the workshops and gained a great deal of information from attending. The series of community environmental law workshops continues throughout March and April 2003, with visits by EDO Qld scheduled to the Sunshine Coast (joint workshop with the Sunshine Coast Environment Council, SCEC), the Redlands (jointly with the Wildlife Preservation Society of Qld Bayside Branch, WPSQBB) and hopefully to Emerald (date yet to be confirmed). If you are interested in how you can use the law to protect your local environment, you are urged not to miss out on attending one of these community environmental law workshops! Thank you to our workshop funder, the Gaming Machine Community Benefit Fund. *Contact the EDO Qld office on 07 3210 0275 or edoqld@edo.org.au for further details on when and where the workshops will be held.*

Planting the Seed Now on Sale

The latest offering from the EDO Education team is now available. *Planting the Seed - A Guide to Public Participation and the Environment Protection and Biodiversity Conservation Act* is a plain English, 82 page spiral bound book that:

- Will help you understand the kinds of decisions that the Commonwealth Government can make about the environment and make you aware of how you can participate in this decision making, and
- Will make you aware of what you can do to protect the environment if Commonwealth environmental laws are being broken.

To order see the order form available on our website at www.edo.org.au or contact Michelle Seaton at EDO NSW on 02 9262 6989 or email edonsw@edo.org.au. Price: \$19, or \$16 for not-for-profit and NGO’s, plus postage of \$5 for the first copy and \$1 for each thereafter.

Annual QELA Conference Details Confirmed

The Queensland Environmental Law Association (QELA) is holding its annual conference “What Cost the Tick: Approvals and Outcomes” from 7–9 May 2003, focusing on Commonwealth, State and local government development approval processes. This includes considering whether the intended balance of environmental, social and economic “outcomes” are being achieved or whether decision makers are restricted to complying with the “process” at the cost of achieving the intended balance. The conference program and online registration is now available at <http://www.qela.com.au/annualconference2003.shtml> or contact QELA on 07 3832 4865.

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

Environmental Defenders Office (Qld) Inc.

4th Floor, 243 Edward Street, Brisbane 4000. Ph: (07) 3210 0275, Fax: (07) 32100253, email: edoqld@edo.org.au

Environmental Defender’s Office of Northern Queensland Inc.

130 Grafton St CAIRNS 4870. Ph: (07) 4031 4766, Fax: (07) 4041 4535, email: edonq@edo.org.au

