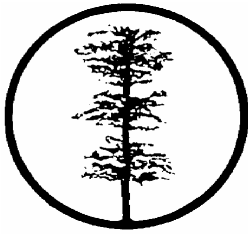


**ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC. and  
ENVIRONMENTAL DEFENDER'S OFFICE OF NORTHERN QUEENSLAND INC.**

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Level 9, 193 North Quay  
Brisbane 4000  
Telephone: 3211 4466  
Facsimile: 3211 4655  
[edoqld@edo.org.au](mailto:edoqld@edo.org.au)  
[www.edo.org.au/edoqld](http://www.edo.org.au/edoqld)  
ABN 14 911 812 589

Level 1, 96-98 Lake St  
Cairns 4870  
Telephone: 4031-4766  
Facsimile: 4041-4535  
[edong@edo.org.au](mailto:edong@edo.org.au)  
[www.edo.org.au/edong](http://www.edo.org.au/edong)  
ABN 32 017 484 326



**Friday 14 July 2006**

**EDO ALERT – Whaling Case proceeds!**

**Humane Society International Inc. v Kyodo Senpaku Kaisha Ltd [2006] FCAFC 116  
(14 July 2006)**

The Full Federal Court comprising Black CJ, Moore and Finkelstein JJ by a majority decision gave the Humane Society International permission to serve legal proceedings on a Japanese whaling company. This overturned an earlier controversial decision of that Court by a single Justice to refuse permission to serve the legal proceedings, which earlier decision was based on the difficulty or "futility" of enforcing any injunction and the undesirability of upsetting diplomatic relations between Australia and Japan.

By way of background, the appellant is a public interest environmental organisation. It alleges that the Japanese company has been breaching a law of the Commonwealth, the *Environment Protection and Biodiversity Conservation Act* 1999 by killing, injuring, taking and dealing with Antarctic minke whalers in part of the Australian Whale Sanctuary adjacent to the Australian Antarctic Territory.

This decision of the Full Federal court is highly important for four reasons:

1. The important case to restrain allegedly illegal whaling may proceed;
2. The Justices all unanimously agreed that no weight ought to be attached to political considerations of the relationship between Australia and Japan;
3. Two of the three Justices considered that issue of an injunction can be seen as having an educative element as well as an element of deterrence. So they were not prepared to refuse permission to serve the legal proceedings on the grounds of futility of enforcement. The Justices analysed the objects of the EPBC Act and noted that some of the objectives are expressed directly in the language of promotion including the object provided for by s3(1)(c) namely to promote the conservation of biodiversity, which is an object that the legislation links to the establishment of an Australian Whale Sanctuary.
4. This case has strong persuasive precedent value for other legislation, including State legislation like the Queensland *Nature Conservation Act* 1992 or the *Integrated Planning Act* 1997 which provides for public interest enforcement orders.

We applaud the Humane Society International for pursuing this action and warmly congratulate the generous legal team for this case- Senior Counsel Stephen Gageler, Barrister Chris McGrath and the Environmental Defenders Office of New South Wales.

For a copy of the judgement, see <http://www.austlii.edu.au/au/cases/cth/FCAFC/2006/116.html>.

Further information on the case is available at [www.hsi.org.au](http://www.hsi.org.au). Contact Nicola Beynon 0404 065 517 or Michael Kennedy 0416 215 517 of the Humane Society International