

EDO BULLETIN

April-May 2009

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- Details of EDO law reform submissions - both State and Federal
- Recent changes to environmental law & policy
- Your opportunity to comment on major environmental issues

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Commonwealth refuses to release audit report on False Cape

The Commonwealth Department of the Environment, Water, Heritage and the Arts ("DEWHA") has refused to release to EDO-NQ a copy of the full audit report in relation to the developer's compliance (or lack of) with Commonwealth development approval conditions without an application under the *Freedom of Information Act 1982* (Cth).

This refusal comes despite the long-time and ongoing monitoring of the False Cape site near Cairns by the concerned local community and conservation campaigners and their free sharing of information and results of that monitoring with all levels of government, and all relevant departments and agencies, including DEWHA.



Photograph by Steven Nowakowski www.stevennowakowski.com

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

Queensland Government moratorium on clearing endangered regrowth

Effective from 8 April, the Government has placed a maximum 6 month moratorium on clearing of key regrowth vegetation. The ***Vegetation Management (Regrowth Clearing Moratorium) Act 2009*** applies to regrowth vegetation within 50 metres of a watercourse in the Great Barrier Reef catchments of Mackay/Whitsunday, Burdekin and the Wet tropics; and, certain mapped areas of endangered regrowth vegetation on freehold and leasehold land.

EDO hopes to provide input into the drafting of the new regrowth regulations that will follow the moratorium.

For more information contact EDO Qld on (07) 3211 4466 or edoqld@edo.org.au

Something to watch for...

New EDO-NQ fact sheets on private land conservation.

Coming soon!

Department of the Environment refuses Port Hinchinbrook sea-dumping application

EDO-NQ, its long time clients and supporters the Alliance to Save Hinchinbrook Inc. ("ASH") and many others within the North Queensland conservation community were delighted to hear that the Queensland Government recently relied on the *Cardwell Hinchinbrook Regional Coastal Management Plan* to refuse an application by Port Hinchinbrook Services Pty Ltd for permission to dump sea dredge spoil from the Port Hinchinbrook marina development into the World Heritage listed Hinchinbrook Channel. The refusal decision was made by the Queensland Government's newly formed Department of Environment and Resource Management ("DERM"), following consultation between the previous Environment Protection Agency and Department of Natural Resources and Water.

The marina development at Oyster Point ("Port Hinchinbrook"), south of Cardwell and adjacent to the World Heritage listed Hinchinbrook Island, has a long and controversial history. It has been the focus of tireless opposition on a wide range of environmental grounds and from a large number of individuals and groups, including the now defunct Friends of Hinchinbrook Inc. and ASH.

The Port Hinchinbrook marina developer has maintained that in order to have its canals accessible and operable throughout the day and night, and in all tides, it is necessary to dredge the canals within the marina and to remove that dredge spoil to another location.

To date, the dredge spoil has been removed and dumped on approximately 30 hectares of nearby agricultural land owned by the developer. It is understood that the developer still holds a discharge licence to dredge the Port Hinchinbrook waterways to land disposal; but it is understood that no land disposal sites are currently approved as required. In addition, for many years ASH have raised concerns that the dumping of acidic and saline dredge spoil on 30 hectares of nearby agricultural land has caused the death of much vegetation in the coastal Girramay National Park. It is understood that DERM are continuing their investigation of those concerns.

The developer still holds a discharge licence to dredge the Port Hinchinbrook waterways to land disposal, but land disposal sites must be approved for the purpose and Port Hinchinbrook currently has none approved. Possibilities include developer-owned agricultural land on the western side of the Bruce Highway, and agricultural land south of the present 30-hectare spoil-covered site, where a large proposed golf course is apparently intended to be continuously built up on top of incoming dredge spoil. The spoil is proposed to come not only from existing artificial waterways, but also from a proposed new marina of some 13 to 26 hectares (part of the so-called 'Stage II' proposal).

For more information, please contact Adam Millar at EDO NQ.

Conditional approval of Gunns Pulp Mill lawful, says Federal Court

Readers will recall that the Federal government previously granted conditional approval to Gunns Ltd for the construction of a pulp mill in Tasmania's Bell Bay. On 9 April 2009, the Federal Court of Australia dismissed an application by Lawyers for Forests Inc that the Environment Minister had no power to grant conditional approval to Gunns, without knowing the impact of the mill's effluent output on the surrounding environment.

In dismissing Lawyers for Forests application, Justice Tracey found the Minister had given appropriate consideration to the 'precautionary principle' as required under the *EPBC Act* (which states that a lack of full scientific certainty should not justify the postponement of a measure preventing environmental degradation).

In doing so the Court confirmed the validity of the Environmental Impact Management Plan (EIMP), stating that the EPBC Act did not provide an exhaustive list of the conditions which may be imposed on an approved project and, that the Environment Minister had the discretion to amend the EIMP upon receiving new information.

On 8 May 2009, Justice Tracey decided that Lawyers for the Forest had to pay Gunn's costs.

The full decision in *Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts* [2009] FCA 330 can be accessed here:

www.austlii.edu.au/au/cases/cth/FCA/2009/330.html

STATE LAW REFORM SUBMISSIONS

Draft SEQ Regional Plan off track

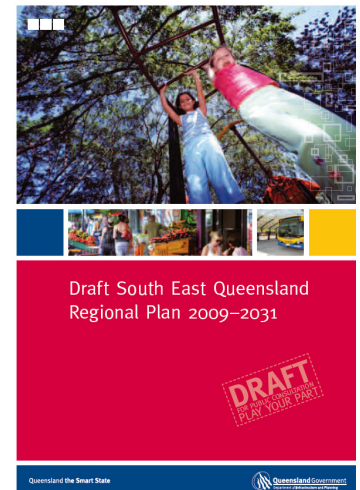
EDO Qld lodged its submission on the draft SEQ Regional Plan 2009-2031 on 1 May 2009. The plan has some good points but is basically off track. Under current population growth projections the draft plan cannot deliver its promise of balancing economic growth and sustainability, environmental protection and climate change within an ecologically sustainable framework. The State of the Region Report 2008, which is a State government document meant to inform the regional planning process, which has been effectively ignored, shows that our current population is severely degrading our region – doubling SEQ's population will topple our life-support systems. The draft Plan fails to identify whether there is sufficient water, food, energy and open space to support such a population.

Apart from keeping population to sustainable levels, which is the job of State governments, not just the Commonwealth, a key recommendation of the EDO submission is that mandatory targets for greenhouse gas emission reductions and renewable energy in SEQ must be determined before the draft Plan is finalised. These regional targets should be incorporated into the draft State regulatory

provisions to make them as binding as possible on all parties. Most environment organisations advocate an emissions reduction target of, at least, 30% by 2020 below 1990 levels. Queensland Conservation Council (QCC) believes that Australia is well placed to move even further and set a 50% reduction target with a climate neutral position by 2050.

Thank you to the following volunteers who ably assisted EDO's Scott Sellwood and Jo Bragg with this detailed submission: Sarah Wilson, Benedict Coyne, Polly Grace, Joyce Teh, Jena Moghaddam and Jayne Lightfoot.

This submission is available at
<http://www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm>.



NATIONAL LAW REFORM SUBMISSIONS

CPRS Exposure Draft Bill

EDO Qld and EDO NQ recently contributed to the ANEDO submission on the Carbon Pollution Reduction Scheme Exposure Draft Bill ('the Bill'). While ANEDO generally supports national action to avoid catastrophic climate change, changes to the Bill are needed if it is to deliver a just transition to renewable energy economy. ANEDO made detailed recommendations, including:

- Permitting stabilization levels below 450 parts per million of carbon dioxide equivalent (as climate science is updated);
- Prohibiting the Climate Minister from considering voluntary actions when setting the emission cap as doing so allows the Minister to introduce less stringent caps, thus failing to provide incentives for big polluters to undertake voluntary action;
- Requiring emissions permits be in the form of a licence, with no proprietary character;
- Adopting a price floor instead of a price cap, to ensure permit prices are high enough to encourage the transition to a low carbon economy;

- Removing all provisions that allow direct assistance to be given to coal-fired electricity generators, as these entities have been aware of the Scheme's introduction for several years;
- Giving the public access to data on the emissions of individual facility;
- Making provision for merits appeal rights for third parties, as a check on decision making and accountability, where a decision under the Scheme has potentially significant consequences and is accompanied by a broad discretion.

Australia's Future Tax System

Also in April, ANEDO (of which EDO Qld and EDO-NQ are part) made a detailed submission to the inquiry into Australia's Future Tax System, concentrating on the opportunities for environmental tax reform.

The nub of ANEDO's submission was the recommendation that the traditional pillars of traditional taxation pillars of equity, efficiency and simplicity, should be informed by the principles of Ecologically Sustainable Development (ESD).

National Law Reform - continued

Access to (Environmental) Justice

In May, ANEDO, with input from EDO Qld and EDO-NQ made the following recommendations on the Senate Legal and Constitutional Affairs Committee Inquiry into Access to Justice:

- Amending the standing requirements of s 475 of the *Environment Protection and Biodiversity Conservation Act 1999* should be open to all parties by a s 475 to provide that any person can commence proceedings to enforce a breach of the Act
- That legal aid be made available for public interest environmental law matters on a national scale;

- That the risk of adverse cost orders against public interest litigants be alleviated through the use of own costs orders, upfront costs orders and limited cost orders
- Extend the Commonwealth Test Case Fund to allow for use in public interest litigation concerning State laws
- Improve core funding to EDO offices around Australia to better meet the need for environmental law assistance

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



LAW AND POLICY WATCH - April to May 2009

Queensland environmental law and policy changes

Nature Conservation

- On 3 April 2009, the Queensland government declared 19,000 square kilometres of land in the Archer, Stewart and Lockhart River basins of Cape York as 'wild rivers'. The *Wild Rivers Act* protects these areas from developments that will degrade the natural values of these river ecosystems. The declarations also preserve Indigenous peoples traditional hunting, fishing, land management and conservation rights and promote sustainable commercial activities by limiting the types and scale of development allowed.

Planning and Development

- Development on school campuses, funded as part of the Federal government's "Building the Education Revolution", are, following amendments to the *Integrated Planning Regulation*, exempt from assessment against local planning schemes. The amendments which came into effect on 24 April, place restrictions on the size and placement of proposed buildings, particularly in schools in residential areas, within coastal management districts, on local heritage places or places of cultural significance, or where there is protected vegetation.
- The **Planning and Environment Court forms** have been updated. For the current versions go to <http://www.courts.qld.gov.au/107.htm#pe>

Environmental Protection

- EDO welcome's Brisbane City Council's decision to purchase the floodplain between Wynnum and Manly Roads, forming one half of the Hemmant Tingalpa Regional Wetland Corridor. EDO congratulates BCC politicians and staff and most of all, Hemmant Tingalpa Wetlands Conservation Group and B4C for their tireless efforts over the last 8 years to protect this important area from urban development. We urge the State and local governments to cooperate to purchase the old Master Butchers Site nearby, currently subject to Planning and Environment Court appeal concerning Sunnygold's development proposal. This is a most important link in the environmental corridor.

Local Government

- A Bill to replace the *Local Government Act 1993* has been introduced into parliament. EDO will take a close look at the draft provisions to ensure the new laws hold local government officers to account, provide for transparent decision making, and do not restrict the community's right to access information held by local governments. Stay tuned.

Water

- New processes for granting unallocated water in water resource plan or wild river areas have been introduced in amendments under the *Water Regulation*.

Machinery of Government

- Following the post-election revamp of state government machine, Premier Anna Bligh has restructured the Government's Parliamentary committee system. The shake-up will establish 4 new super committees, including an Environmental and Resources Committee. This committee will address issues such as environmental protection, mining, water security and energy.

Marine protection

- From 1 July, recreational fisherman will be limited to catching one shark or ray after 10 stingrays were found – with their tails cut off – at Shorncliffe pier. DPIF & RSPCA are investigating whether the slaughter involved breaches of the Animal Care and Protection Act.

LAW AND POLICY WATCH - April to May 2009

Federal environmental law and policy changes

- The ***Carbon Pollution Reduction Scheme Bill 2009***, and associated Bills – including one to establish the Australian Climate Change Regulatory Authority, have been introduced into Federal Parliament. EDO joins the conservation sector in condemning the Federal government for further weakening the national response to climate change. Stay tuned for information on action you can take to tell the Government that the *CPRS Bill* must be strengthened if we are to present a legitimate face at global climate summits, and be in any position to avoid catastrophic climate change.
- Interim measures to **protect the Coral Sea** have been introduced by the federal government. 972,000km² of Australian waters and seabed east of the Great Barrier Reef Marine Park has been declared a conservation zone until permanent biodiversity protection measures, as part of the East Coast bioregional marine planning, can be finalised. For more information go to www.environment.gov.au/coasts/coral-sea.html
- **Amendments to the *Environment Protection Biodiversity Conservation Regulation*** give the Director of National Parks greater power to regulate (and, prohibit) how non-commercial fishing can be carried out within Commonwealth reserves and conservation zones.
- A **senate enquiry into federal environment laws** has strongly criticised existing regulation, in particular the failure of the EPBC Act to effectively regulate land-clearing and the inability to challenge ministerial approval for developments. The EPBC Act has not been reviewed since 2006 and remains the primary federal instrument on environmental protection and regulation. The Senate's criticism of the Act is in line with academic and public interest groups who have highlighted the limited improvement in environmental outcomes since the Acts commencement. The report coincides with the release of the draft of Australia's Biodiversity Conservation Strategy for 2010-2020, a policy document guiding the management and protection of Australia's plants, animals and ecosystems over the next 10 years.
- **National Pollutant Inventory report** for 2007 – 2008 has been released. The report identifies 77 polluting substances from 132 sources in Queensland. The information is accessible on the website at <http://www.npi.gov.au/overview/view.html> and can be used to identify pollutants by location, substance, source, industrial facility as well as combined searches and mapping.
- A Bill to establish a **national drink bottle deposit and recovery scheme** has been introduced into Federal Parliament.

REPORTS RELEASED

- The results of a 2008 survey of the environmental attitudes, knowledge and behaviour of Queensland youth (aged 12 – 24) are available from the Queensland Youth Environment Council website www.qyec.org.au/index.php/get-involved/survey
- WWF – Australia has released a report looking at the likely cost of expanding Queensland's protected area estate to 20 million hectares, including an additional 4.35 million hectares of National Park, by 2020. To read "20 Million hectares by 2020 go to www.wwf.org.au/publications

OPPORTUNITIES TO COMMENT

- DNRW is inviting public comments on its proposal to declare the Wenlock River area a wild river area under the **Wild Rivers Act**. Submissions close **29 May 2009**.
www.nrw.qld.gov.au/wildrivers/wenlock.html
- Public comment on the draft **Australia's Biodiversity Conservation Strategy 2010–2020** has been invited until **29 May 2009**. The draft strategy will guide how governments, the community, industry and scientists manage and protect Australia's plants, animals and ecosystems over the next ten years. See <http://www.environment.gov.au/biodiversity/strategy/review.html>
- Queensland's DPIF is calling for a community member to apply for a position on the **Biosecurity Queensland Ministerial Advisory Council**. The Advisory Council will provide independent advice on the strategic direction and priorities for biosecurity in Queensland. For application details call 13 25 23 or visit www.dpi.qld.gov.au. Applications close **29 May 2009**.
- To have your say on the management of water from **Queensland's coal seam gas projects** go to www.getinvolved.qld.gov.au/consultqld/index.cfm?go=consultonline.viewIssue&issueID=432. Submissions close **1 June 2009**
- State government is reviewing the management plans for a large number of **Queensland's protected areas**. Comments on Round 1 of the review are due **29 June 2009**. To see the areas under review, go to www.epa.qld.gov.au/parks_and_forests/managing_parks_and_forests/management_plans_and_strategies/management_plan_submission_guide_round_1_consultation/
- The CSIRO is inviting contributions to a national research study investigating **household consumption in Australia**. Please follow the link www.questionpro.com/akira/TakeSurvey?id=1169675 to complete the online survey.

OTHER NEWS

Earth Jurisprudence 16 -18 October 2009

Friends of the Earth Adelaide, in partnership with the University of Adelaide, the Conservation Council of South Australia and with assistance from the UK Environmental Law Association (UKELA), are organising Australia's first Earth Jurisprudence Conference in Adelaide, 16-18 October 2009. Earth Jurisprudence calls for a radical shift to our legal system, from a human-only orientation to an Earth centred approach. Participant numbers are limited, so go to www.adelaide.foe.org.au/?page_id=233 to find out more and register.

GreenFEST 2009 5-7 June 2009

Brisbane City Council is hosting the second annual Greenfest on 5, 6 and 7 June at the Brisbane City Botanical Gardens. Go to www.greenfest.com.au for program details.

EDO NEWS

New enviro-law website

On 21 May 2009 EDO VIC launched a new online resources for environmental law. Check it out at www.envirolaw.org.au

EDO NQ seeks volunteers

EDO-NQ is now seeking volunteer law students to assist with the preparation of community legal education materials.

Please contact Patrick Vuleta, at pvuleta@edonq.org.au, if interested.

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To subscribe free to the EDO NSW Bulletin, (covering Cth and NSW issues) please send an email to edonsw@edo.org.au

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