



BULLETIN

August 2005



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

What's in this Bulletin?

This information-packed Bulletin reports on EDO's **court case news** including our Bat and Greenhouse test cases, and congratulates the state and federal government on recent successful environmental court cases. We flag **recent legal developments** including release of the final SEQ Regional Plan, new national climate change policy and amendments to Queensland water, building, packaging and duck hunting laws. We note an **opportunity to comment** on the *Great Barrier Reef Marine Park Act* review, mention upcoming EDO **workshops** on the EPBC Act in Brisbane on 17 September and Cairns on 1-2 October, and on planning laws in Townsville and the Whitsundays in mid-late September, and provide some **useful tips** on heritage listing and pollution levels. Finally, EDO-Qld calls for management committee nominations for our **upcoming AGM** on 27 September which will feature barrister Chris McGrath speaking on greenhouse and whales test cases, and we note a **job going at EDO-Qld** for a junior lawyer shortly!

COURT CASE NEWS

Case update from EDO-Qld

1. Bat Case 3 – Booth v Thomas and Frippery Pty Ltd

Readers may recall this case about a farmer electrocuting Black Flying-foxes from our December 2004 EDO Alert! as the first use of the public enforcement rights in Queensland's *Nature Conservation Act*.

Well known conservationist Dr Booth, represented by EDO-Qld and barrister Chris McGrath, was successful in obtaining orders on 22 December 2004 to restrain the farmer from killing or injuring the protected bats until a full court hearing could be held, at which time Dr Booth would seek a permanent injunction and an order to dismantle the electric grids. That **court hearing is next week, Monday 5th – Wednesday 7th September** in the Planning and Environment Court in Townsville before Judge Pack, and members are welcome to attend. EDO-Qld will report in more detail on this case after the hearing.

2. Regional Forest test case – Wilderness Society v Minister for Environment and Heritage & Gunns Ltd

Readers will recall from our July 2005 EDO Alert! that this Regional Forest Agreement Test case is a judicial review of the federal Environment Minister's decision on the application of the EPBC Act to Gunns Ltd's proposed pulp mill. The Wilderness Society, represented by EDO-Qld and barrister Stephen Keim SC, contend that the Minister wrongly failed to consider the pulp mill's impacts on World Heritage values and on threatened species following the expiry of the Tasmanian Regional Forest Agreement.

On 15 August 2005 Gunns Ltd withdrew their referral of the proposed pulp mill, and submitted a fresh referral containing revised plans. This means the decision under challenge in the Federal Court is no longer legally operative, and the case will have to be discontinued. The Wilderness Society with assistance from its legal team will closely review the Minister's decision on the fresh referral and examine options for another challenge if similar legal mistakes are made in the Minister's reasons.

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

Case update from EDO-NQ

1. New greenhouse test case - Wildlife Whitsunday v Minister for Environment and Heritage

EDO-NQ and barristers Stephen Keim SC and Chris McGrath are representing the Wildlife Preservation Society of Queensland- Proserpine/Whitsunday Branch Inc (Wildlife Whitsunday) in a new Federal Court test case. The case is the first legal challenge against the Australian Government for failing to consider the effects of global warming on the environment.

Wildlife Whitsunday contends that the Minister failed to consider the environmental impacts of greenhouse gases and global warming when approving the construction of 2 new coal mines. The coal from the coal mines will largely be burnt in coal-fired power stations producing greenhouse gases

contributing to global warming. Global warming is expected to cause severe impacts to the Australian environment, including to the iconic Great Barrier Reef and Wet Tropics Rainforests.

A directions hearing was held before His Honour Justice Dowsett of the Federal Court on 19th August 2005 where both QCoal Pty Ltd (Sonoma mine) and Bowen Central Coal Management Pty Ltd (Isaac Plains mine) were joined as parties to the proceedings. The matter has been set down for hearing on **20th October 2005** in the Federal Court in Brisbane. EDO-NQ thanks EDO-Qld for appearing as town agent at the directions hearing and assisting with Brisbane tasks.

Congratulations are due to the President of Wildlife Whitsunday Ian Lee and his wife Dymphna, who were recently awarded one of 10 Queensland "Pride of Australia" medals for their contributions to their community through their environmental work. Well deserved, Ian and Dymphna!

2. New coastal development case - *Alliance to Save Hinchinbrook v Environmental Protection Agency*

EDO-NQ on behalf of the Alliance to Save Hinchinbrook (ASH) have filed an application seeking Judicial Review of the decisions by the Environmental Protection Agency (EPA) and Queensland Parks and Wildlife Service (QPWS) under the *Marine Parks Regulation 1990* and the *Integrated Planning Act 1997* to approve the construction of 2 breakwater walls in the Hinchinbrook Channel at Oyster Point, Cardwell. The breakwaters have been proposed by Cardwell Shire Council to facilitate the use of the marina at the Port Hinchinbrook development and reduce the need for dredging the access channel.

ASH contends that both the EPA and QPWS failed to consider the impacts of the increased boat use in the area and resultant boat strikes on dugongs and the newly identified Australian snubfin dolphins as a consequence of the construction of the breakwaters. ASH also contends that the EPA failed to take into account the precautionary principle in forming conclusions on the likely effects of the proposal on dredging in the area. ASH says that there is no evidence that the breakwaters will be effective in reducing dredging without future extensions to the length of the breakwaters.

A directions hearing is set down before the Supreme Court in Cairns at 10am on Monday 3rd October 2005, and NQ members are encouraged to attend. Barrister Stephen Keim SC will appear for ASH.

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

Other cases of interest

1. EDO NSW in court to stop importation of elephants

EDO NSW are running an appeal on behalf of the International Fund for Animal Welfare (IFAW), the RSPCA and the Humane Society International (HSI) against the importation of eight Asian elephants from Thailand to Taronga and Melbourne zoos. IFAW, RSPCA and HSI are appealing against the federal Minister's decision to import the elephants on the grounds that the zoos cannot meet the biological and behavioral needs of the elephants and there is no conservation benefit to stocking the elephants as it is unlikely that a breeding program would result in elephants being released back to the wild. The zoos have agreed to postpone transporting the elephants until the appeal is complete.

The hearing will be held on 26 September 2005 in the Administrative Appeals Tribunal in Sydney.

For more information contact Jessica Simpson at EDO NSW on jessica.simpson@nsw.edo.org.au.

2. Congratulations to the Qld EPA on recent prosecutions

On 28 July 2005 developers Red Peak Forest Estate Pty Ltd pleaded guilty in the Cairns Magistrates Court to three charges of causing unlawful environmental nuisance under the *Environmental Protection Act 1994 (Qld)* ('EP Act') and were fined \$97,000. The charges related to the company's inadequate erosion controls which resulted in the release of sediment from the residential development site at Caravonica in February 2004, polluting local waterway Avondale Creek. The prosecution and fine sends a clear message that proper measures must be taken to prevent erosion, and encourages Councils to impose clear, tight conditions on development approvals – and to enforce those conditions.

The EPA also successfully prosecuted two boaties in June 2005 for driving at inappropriate speeds in turtle and dugong go slow areas in Moreton Bay. Both men were convicted and fined, one \$300 and the other \$350. There are 5 go slow areas in Moreton Bay which were introduced around seagrass beds in an attempt to protect feeding turtles and dugongs from boat strikes.

For more information contact the EPA via (07) 3227 7111.

3. Congratulations to the DEH on Greentree appeal dismissal

Remember the farmer who cleared an internationally important wetland and ploughed it with wheat (see *June 2004 Bulletin*)? After he was convicted and fined in the Federal Court in the federal government's first enforcement action under the *Environment Protection and Biodiversity Act* (EPBC Act), he appealed to the Full Court against that decision.

Recently the Full Court dismissed Mr Greentree's appeal and ordered costs against him. The judgement is important as it cements the principles by which future courts will determine the level of penalties to be imposed for breaches of the EPBC Act, and confirms the high level of penalty that is appropriate for serious breaches of the Act for commercial gain – in this case, \$150,000 against Mr Greentree and \$300,000 against the company that carried out the clearing. EDO congratulates the DEH on successfully defending the appeal.

The judgment of the Full Court is available at www.austlii.edu.au/au/cases/cth/FCAFC/2005/128.html. Thanks to Barrister Chris McGrath for his assistance with this article.

NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES

Important legal changes to...

1. Final SEQ Regional Plan and SEQ Infrastructure Plan & Program released

The final SEQ Regional Plan was released by the Office of Urban Management on 30 June 2005. The plan predicts a population rise of 1 million people by 2026, yet no comprehensive study of the ecologically sustainable carrying capacity of the region has occurred.

The Plan does not prioritise the regional policies it contains, which will make it difficult when Councils amend their local schemes to reflect the Plan, by early November 2005. In EDO's experience, any uncertainty in planning instruments as to what values should predominate is usually resolved in favour of development. We advise community groups to ask their Council for public consultation on the changes to the local scheme, and to advocate for the pro-environment parts of the SEQ Plan to be clearly adopted in local schemes.

Nature conservation areas inside the "Urban Footprint" are vulnerable to development and are not protected from development by the Plan. Nature conservation areas outside the "Urban Footprint" are threatened by non-urban activities which the Plan does not regulate. This is a missed opportunity to properly identify and strongly protect nature conservation areas within and outside of the urban footprint.

However, there is small encouragement in a separate policy on nature conservation, which contain new provisions on Koala Conservation. Until the EPA's draft Conservation Plan for koalas is finalised, development in koala habitat areas will be assessed against the *Interim Guideline: Koalas and Development* made under the Plan. These Guidelines repeal and replace the State Planning Policy 1/2005: Conservation of Koalas in South East Queensland. The *Interim Guideline* establishes 3 habitat areas with associated development assessment criteria: the Koala Conservation Area, Koala Sustainability Area and the Urban Koala Area. The *Interim Guideline* is available from www.epa.qld.gov.au/nature_conservation/wildlife/koala_conservation_plan/interim_guideline_koalas_and_development/.

The SEQ Infrastructure Plan and Program (SEQIPP) was released on 27 April 2005. SEQIPP outlines details of the infrastructure proposed in the SEQ Plan, but it is not statutory document and has administrative effect only. Was any analysis of greenhouse gas emissions done on these major energy guzzling programs? What about peak oil crisis?

For a copy of the SEQIPP see www.oum.qld.gov.au/docs/SEQIPP/SEQIPP_full.pdf.

The final SEQ Regional Plan is available for download from www.oum.qld.gov.au.

*For **copies of papers** from a recent EDO-Qld seminar on the final SEQ Regional Plan see our website www.edo.org.au/edoqld.*

2. Amendments to the Water Regulation 2002 and Fitzroy Basin Water Resource Plan (WRP)

Amendments to the *Water Regulation 2002* were recently made the *Water Amendment Regulation (No. 2) 2005*, including specifying new codes for self-assessable operational works for the taking of overland flow water.

The *Water Resource (Fitzroy Basin) Amendment Plan (No. 1) 2005* also recently amended the Fitzroy WRP to include allocation and management of surface and overland flow water. The Fitzroy WRP area is in Central Qld consisting of the Isaac, Nogoa, Mackenzie, Comet, Dawson and Fitzroy catchments.

Similar rules for managing overland flows already apply in the Border Rivers, Moonie and Warrego/Paroo/Bulloo/Nebine catchments and Condamine-Balonne.

For a copy of both amendments see www.legislation.qld.gov.au/Legislation%20Acts&SLs/SL2005.htm. Information sheets and codes are available at www.nrm.qld.gov.au/water/management/overlandflow.html

3. New sustainable housing Building Regulations

Under amendments to the Buildings Regulations that come into force on 1 March 2006, all new home plans approved in Queensland after 1 March 2006 must include:

1. Greenhouse efficient hot water system;
2. Energy-efficient lighting;
3. AAA-rated shower roses in reticulated town water areas;
4. Dual flush toilets; and
5. Water pressure limiting devices to restrict maximum water pressure to no more than 500 kilopascals (only in areas with high water pressure).

New units and townhouses will also be required to have water-saving shower roses, dual-flush toilets and energy-efficient lighting. Water-saving shower roses and dual-flush toilets will also be mandatory for bathroom renovations in houses and units. Whilst not required by these changes, the State government is also working on a Standard which local governments can adopt to encourage people to install rainwater tanks in new houses in areas where water demand and rainfall make it practical.

Still on the sustainable housing theme, under the *Plumbing and Drainage and Other Legislation Amendment Bill 2005*, which was introduced to Parliament on 9 August 2005, homeowners in sewered areas will be able to divert greywater from showers, bathtubs and washing machines to water their gardens via underground watering systems.

For a copy of the amendments go to <http://www.lgp.qld.gov.au/?id=247>.

4. National Packaging Covenant 2005-2010

The National Packaging Covenant first commenced in July 1999 and is a voluntary agreement between all tiers of government for managing the environmental impacts of consumer packaging in Australia. It is underpinned by the regulatory *National Environmental Protection (Used Packaging Materials) Measure* (NEPM). The first Covenant and NEPM expired in July 2005, but a new revised covenant will operate from 15 July 2005 to 30 June 2010. The new Covenant is designed to minimise the environmental impacts arising from the disposal of used packaging, conserve resources through better design and production processes and facilitate the re-use and recycling of used packaging materials. It includes product stewardship policies, the implementation of the NEPM by relevant jurisdictions, and the provision of services for local government used packaging and paper recovery systems.

A copy of the 2005-2010 National Packaging Covenant is available from www.deh.gov.au/settlements/publications/waste/covenant/pubs/covenant.pdf.

5. Asia-Pacific Partnership on Clean Development and Climate

On 28 July 2005 Australia entered a partnership with the United States, India, China, Japan and South Korea to address climate change, energy security and air pollution. The partnership focuses on developing clean technology to reduce greenhouse gas emissions, including "clean coal" and carbon capture and storage, as well as renewable energy such as hydro, wind and solar power. The federal government says the partnership is consistent with the recent G8 agreement on climate change (see www.number-10.gov.uk/output/Page7882.asp), which concentrates on promoting energy efficiency and developing low-emission technology.

However, the agreement does disappointingly little to address greenhouse emissions in the short-term, and avoids committing countries to any binding targets to reduce emissions. Australia, as one of the world's largest coal producers, has refused to ratify the Kyoto protocol, which commits countries to lowering greenhouse emissions by meeting specific targets – despite Australia negotiating a target which allows an 8% increase of emissions on 1990 levels.

For the Environment Minister's media release about the Partnership, containing links to further information, see www.deh.gov.au/minister/env/2005/mr28jul2005.html.

6. Duck and Quail Hunting Banned

The *Nature Conservation (Duck and Quail) Conservation Plan 1995*, which manages duck and quail hunting in Queensland, is set to expire in September 2005 and the Premier and Minister for Environment Desley Boyle have announced that it will not be renewed. More than 700 comments on the issue were received by the Minister with all but 15 in favour of banning quail and duck hunting. Community pressure, declining bird numbers, diminishing wetlands, drought effects and studies showing high rates of wounding in duck hunts were the reasons for the decision. EDO congratulates the EPA and the Premier on this wise decision!

7. Dugong agreement

Environment Minister Desley Boyle has signed an agreement with traditional owners from Ayr, Bowen and Proserpine which formalises the groups' self-imposed ban on dugong hunting. Marine turtles can still be taken for traditional and customary purposes in accordance with their self-managed hunting approval system. The agreement is the first of its kind and is intended to make it easier for the EPA to monitor and enforce species protection legislation against illegal poachers.

For more information contact the EPA on 3227 8819.

Opportunities for comment

Review of Great Barrier Reef Marine Park Act

The federal Minister for Environment and Heritage has announced a review of the *Great Barrier Reef Marine Park Act 1975*. The review is part of the Government's commitment to improve the performance of the Great Barrier Reef Marine Park Authority (GBRMPA) and ensure it works in harmony with the EPBC Act. Currently GBRMPA functions as a strong statutory authority based in the region, with full decision making powers capable of implementing conservation initiatives to protect the Reef.

Conservation groups have expressed concerns that the review is a veiled attempt to shift key decision making powers and policy development responsibility from GBRMPA to the DEH. In response the federal government has released statements saying the review is not about 'winding back' GBRMPA.

The terms of reference for the review and information on public submissions process are available at www.deh.gov.au/coasts/mpa/gbrmpa/index.html. Public submissions are due by **30 September 2005**.

COMMUNITY EDUCATION

SEQ Regional Plan seminar a success

EDO-Qld and QCC's successful seminar on the SEQ Regional Plan on 9 August 2005 was attended by over 50 people and involved some lively debate on issues of sustainability and population levels. Many thanks to presenter Lindsay Enright from the Office of Urban Management, who joined EDO-Qld's Jo Bragg and Larissa Waters in addressing attendees. We also thank Metro Arts for providing the venue.

*For a copy of the seminar papers including Larissa's Introduction to the Plan, and Jo's Conservationist's Analysis of the Plan including **recommended actions for communities**, see www.edo.org.au/edoqld.*

Mission Beach Cassowary Conservation Plan meeting - 3 September 2005

EDO-NQ are meeting with C4 (Community for Coastal and Cassowary Conservation) and other interested parties at Mission Beach on Saturday 3 September 2005 to discuss development issues facing the Mission Beach area and the development of a Cassowary Conservation Plan. A Cassowary Conservation Plan, similar to the Koala Conservation Plan, has been developed by EDO-NQ Project Officer Tracey White in consultation with the Cairns and Far North Environment Centre (CAFNEC), C4 and other interested conservation and indigenous groups.

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

Upcoming EPBC Unit/ EDO-Qld EPBC Act seminar - 17 September 2005 + Cairns 1-2 October 2005

WWF's EPBC Unit and EDO-Qld will present a seminar on using the federal *Environment Protection and Biodiversity Conservation Act* ('EPBC Act') from 9am-4.30pm on Saturday 17 September 2005 at Metro Arts on Edward Street, Brisbane city. Speakers are Lyndal Kennedy and Tracey Rich of WWF's EPBC Unit and Larissa Waters of EDO-Qld. The seminar will cover an overview of the EPBC Act and the National Heritage provisions; case studies and an overview of EPBC Act court cases; effective EPBC submission writing and the interaction of the EPBC Act with Queensland development laws. The seminar is free to

attend and although it will not be catered, refreshments can be purchased from the cafes nearby.

If you would like to attend this seminar please RSVP to EDO-Qld by email on edoqld@edo.org.au.

The EPBC Unit is also holding this seminar in Cairns on the weekend of 1-2 October 2005, exact time and venue to be confirmed. For more information contact Lyndal Kennedy on lkennedy@wwf.org.au.

Planning Workshops for Townsville and the Whitsundays – mid and late September

EDO-NQ will be holding a planning workshop in Townsville in mid September and the Whitsundays in late September/early October (dates are yet to be finalised but will be published in the next Bulletin). The workshops will focus on public participation in planning process, particularly in relation to coastal development and will address issues such as the operation of local laws, the *Integrated Planning Act*, the *Coastal Protection and Management Act*, submission writing and appealing decisions.

For more information on these workshops contact EDO-NQ on (07) 4031 4766 or edong@edo.org.au

EDO NEWS

EDO-Qld Annual General Meeting 27 September + call for new Management Committee Members

EDO-Qld's AGM will be held on Tuesday 27 September 2005, with details soon to be posted to members. The event will include as a guest speaker public interest barrister Chris McGrath on "Having a whale of a time in the EPBC hothouse - new public interest test cases". Chris will explain his recent high profile Federal Court cases about Japanese whaling and coal mine greenhouse emissions and explore the practical implications of these outstanding test cases for Queenslanders.

If members are interested in nominating for the EDO-Qld management committee at the AGM (or suggesting someone you think would be appropriate) please email edoqld@edo.org.au and we can refer you to a current committee member for an explanation of the role and duties involved.

EDO-Qld thanks temporary junior lawyer Naomi Field, and seeks new junior lawyer

EDO-Qld has recently had invaluable assistance from temporary junior lawyer Naomi Field, who will sadly now leave us to commence permanent full time employment with a Brisbane firm practicing planning and environment law. We wish Naomi all the best with her career and thank her for her hard work.

EDO-Qld will soon be seeking to employ a replacement junior lawyer on a part-time basis for between 9 and 12 months. Potential applicants can contact EDO-Qld for details in advance of formal advertisement.

USEFUL TIPS

Pollution levels in your suburb – using the National Pollutant Inventory (NPI) website

The NPI can tell you about pollution levels where you live. You can search by location (eg postcode or Council shire) and will get a report on all reported emissions in that area. You can also search by particular substances (90 are reported to the NPI) or even on particular facilities if you know their name. The website www.npi.gov.au also includes factsheets about health and environmental effects of the 90 NPI substances.

Online guide to protect historic Queensland homes

The EPA has released the Illustrated Guide to Entering Houses into the Queensland Heritage Register, an online guide to assist people identify and nominate houses for entry into the Register. The Guide includes the principles used in assessing cultural heritage significance. To access the Guide or search for houses or heritage listed sites in the Queensland Heritage Register see www.epa.qld.gov.au/culturalheritage.

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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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