

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

BULLETIN

August - October 2006

What's in this Bulletin?

This Aug-Oct 2006 Bulletin is belated because your EDOs have been very busy using the law to protect our environment! This Bulletin contains EDO Court news on our koala habitat appeal and the Court of Appeal hearing about False Cape in Cairns. We've been doing lots of other cases which we'll report on in our November-December Bulletin! Read about our recent law reform work on the IPA review and our submission on the Bill to reform our federal environment laws, and our recent community workshops on biodiversity and vegetation clearing laws. We update you on a raft of important changes to environmental laws including nature conservation, water and planning laws. Finally, we sadly farewell Rob Stevenson and Kirsty Ruddock and warmly welcome Adam Millar, Nicole Leaney, Anita O'Hart and Peter Syson!

COURT CASE NEWS

Case update from EDO-Qld

Koala habitat case update – Wildlife Preservation Society Qld Bayside Branch Inc. v Redland Shire Council and Heritage Properties Pty Ltd (“401 Redland Bay Rd case”)

This planning appeal concerns proposed Residential A development over koala habitat on a key 67 hectare site in the Redland Shire. Part of the site was illegally cleared in late 2004 after the development application was lodged. After court argument by Steve Keliher, barrister for the Appellant, the developer was ordered by the Planning and Environment Court to lodge an affidavit as to whether it has any further documents in its possession or control with respect to that clearing. The developer disputes the relevance of any clearing to the issues in the appeal.

Ecologist Lynn Roberts and Planner Peter Syson will meet with experts for the other parties and prepare joint reports on areas of agreement and their own reports on areas of disagreement before Christmas. The case is expected to be heard in the Planning and Environment Court in February 2007.

EDO Qld's win in Bat Case 4 and our new Climate Change case will be discussed in the November-December Bulletin.

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

Case update from EDO-North Qld

False Cape appeal heard – CAFNEC & Save our Slopes v Reef Cove Resort P/L and Cairns City Council

In June 2006 the Planning and Environment Court struck out some of the grounds of challenge by CAFNEC and Save our Slopes (represented by EDO-NQ) to Cairns City Council's approval of the False Cape development. The grounds struck out were about errors of law by the Council in ignoring the Hillslopes Development Control Plan (Hillslopes DCP) and in considering there were good town planning grounds to approve the development despite conflict with the planning scheme. On 16 November 2006 the Court of Appeal heard arguments from Save Our Slopes appealing that strike out decision, on the basis that the Planning and Environment Court erred by applying the wrong test on a strike out application and in considering what constituted sufficient planning grounds. Thank you very much to Stephen Keim SC who represented Save our Slopes before the Court of Appeal. A decision is expected in the new year.

EDO NQ has been doing lots of other cases which will be outlined in the November-December Bulletin.

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

Other cases of interest

California sues car makers for greenhouse gas emissions

The state of California has launched a public nuisance lawsuit against six major car manufacturers on the grounds that their products' greenhouse gas emissions have contributed to global warming and harmed the Californian economy.

The complaint seeks to hold the General Motors Corporation, Toyota, Ford, Honda, Chrysler and Nissan liable for damages for past and future contributions to emissions. If successful, the action could found a new area of climate change litigation with ramifications for Australian businesses. A copy of the claim is on the Californian Attorney-General's website at http://ag.ca.gov/newsalerts/cms06/06-082_0a.pdf.

Good news in Gunns 20 litigation

Readers will know of timber giant Gunns Ltd's claim for \$6.89 million in damages from 20 people from The Greens and The Wilderness Society for trespass, sabotage and obstruction on its logging sites in Tasmania.

In early August 2006, the environmentalists had a victory when Gunns were ordered to pay preliminary legal costs of nearly \$87,000 to three defendants including Australian Greens leader Bob Brown and State Greens leader Peg Putt. Costs for other defendants have yet to be assessed.

Then on 28 August 2006, Justice Bongiorno of the Victorian Supreme Court struck out Gunns' statement of claim for a third time, but was not prepared to summarily dismiss the proceeding as he thought that some of the allegations by Gunns were serious and they should be allowed to put their case, if properly pleaded.

Gunns were given until 2 November 2006 to redraft their statement of claim. The latest writs drop the allegations of conspiracy to conspire in relation to the campaign against Gunns, and drop all claims against the Greens and some other previous defendants. However, Gunns' lawyers have asked for more time to plead claims regarding the environmentalists' campaigns in Japan and relating to banks in which Gunns own shares.

LAW REFORM NEWS

IPA Review – EDO submission

Our recent EDO Alerts! will have kept readers informed about the IPA review joint submission by EDO-Qld, EDO-North Qld and Qld Conservation Council, endorsed by many other conservation groups. A copy of the final submission written by Anita O'Hart of EDO Qld is now available on our website at www.edo.org.au/edoqld/edoqld/new/IPA%20submission%20031106.pdf. Your EDOs will continue to work to improve Queensland's planning and development laws as this IPA review continues!

Amendments to federal environmental laws – EDO submission

In October 2006 the Australian Network of Environmental Defender's Offices (ANEDO) made a submission commenting on the Federal Government's proposed changes to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The EPBC Act is the key piece of Federal environmental legislation and is triggered whenever a proposed development will have an impact on an area of national environmental significance such as a World Heritage Area or a Ramsar wetland; or where a development is proposed to take place on Commonwealth land.

Given the threats posed by climate change, ANEDO is concerned that a development which will emit significant amounts of greenhouse gases is not sufficient to trigger the Act and require the approval of the Environment Minister. The need to include a "greenhouse trigger" was one of the major points made in the submission on the Bill by ANEDO, which is available at www.edo.org.au/edonsw/site/policy.php.

The Senate Committee examining the *Environment & Heritage Legislation Amendment Bill (No. 1) 2006* only allowed a few weeks for public submissions on these amendments, which was insufficient for all interested community groups to have their say. However many individuals and groups from Queensland lodged a

submission to the Senate Committee on the proposed amendments. 34 of the submissions were in response to a last minute email by EDO Qld and EDO NQ which summarised the main points of the ANEDO submission. Well done everyone.

COMMUNITY EDUCATION & EVENTS

EDO Qld staff gave several talks to the community during August-October, including on biodiversity laws to conservation groups in Logan, to legal studies students at Parliament House, and on the new Koala Conservation Plan to over 130 people at a Qld Environmental Law Association seminar.

EDO Qld staff also attended a climate change litigation meeting in Sydney in October, with EDO NSW and other environmental groups, to explore possible climate change cases.

Thankyou to Simon Baltais of the Wildlife Preservation Society of Qld (Bayside Branch) who spoke at EDO Qld's AGM in September on the new Koala Conservation Plan and how it fails to deliver effective protection for koala habitat given the exemptions for extractive industries and committed development.

NEWS OF RECENT ENVIRONMENTAL LAW AND POLICY CHANGES

Climate change

- In August 2006 the **National Agriculture and Climate Change Action Plan 2006-2009** was released by the Natural Resource Management Ministerial Council. The Action Plan is an agreement by Australian governments to develop a coordinated framework for climate change policy in agriculture, focusing on four key areas – adaptation, mitigation, research and development and awareness. The mitigation strategies include reducing methane and nitrous oxide emissions, improved efficiency and reduced energy use, alternatives to fossil fuel use and biosequestration. EDO looks forward to actual climate change policy being developed at all levels of government. The Action Plan is available from: www.daffa.gov.au/data/assets/pdf_file/33981/nat_ag_clim_chang_action_plan2006.pdf.

Water

- In the *Water Amendment Regulation (No. 6) of 2006* notified in the gazette on 8 August 2006, the Premier committed the state and local governments to a host of **projects to deliver water** to the South East corner from September 2006 until 2011. The projects include the Western Corridor Recycled Water Scheme; tapping groundwater and aquifers in Bribie Island and in and around Brisbane; the Tugun Desalination Plant; the Southern Regional Water Pipeline and the Northern and Eastern Pipeline Inter-connector (the 'Water Grid'); and raising Mt Crosby Weir and Hinze Dam and new dams on the Mary and Logan Rivers. Recycled water for drinking was nowhere in sight.
- The *State Penalties Enforcement Regulation* was amended on 30 August 2006 to enable local governments to enforce breaches of **water restrictions**, following an earlier legislative oversight.
- New rules for **greywater use** came into effect on 10 August 2006 with changes to the *Plumbing and Drainage Act 2002* made by the *Building and Other Legislation Amendment Act 2006*. Greywater from laundries, baths, showers and basins from single detached dwellings can now be used above ground for lawns and gardens as long as it does not cause a nuisance, danger or health risk to any one. However, it is still an offence to use kitchen greywater. The amendments also allow applications to be made to install chemical, composting or incinerating toilets, which were previously banned.

Protected areas

- The **Great Sandy Marine Park rezoning** plan came into effect on 31 August 2006, including new restrictions on fishing and aquaculture. See our June 2006 Bulletin for more details about the rezoning.
- A new **Marine Park Regulation 2006** came into effect on 18 August 2006, repealing the older regulation. Some changes are made, including to amounts of fines for offences, considerations in granting a permit (previous breaches are now relevant), powers to vary and cancel permits, appeals against permit decisions, and specific objectives to be achieved for each type of zoned area – with a worrying addition of a "reasonable use" clause even within conservation zones.

Nature conservation

- **New koala conservation rules** came into effect for South East Queensland on 2 October 2006, in the *Nature Conservation (Koala) Conservation Plan 2006 and Management Program*. The Plan and Program divide Queensland into three koala districts with special management areas and policies for regulating development and other issues that impact upon koalas and koala habitat. The Program includes development assessment criteria which the EPA in a new concurrence role and local governments in koala habitat areas will apply. Jo Bragg of EDO Qld has prepared a critique of the new rules which is available at www.edo.org.au/edoqld/edoqld/new/Koala%20Laws%20Oct%2006.pdf.
- A swag of **new Nature Conservation Regulations** has replaced some of the earlier Regulations which had reached the end of their 10 year lifespan. Previously there were Regulations, Wildlife Regulations and Protected Area Regulations. As of 21 August 2006 there are now five instruments – the Administration Regulations, the Wildlife Regulations, the Wildlife Management Regulations, the Protected Area Regulations (as before) and the Protected Areas Management Regulations. Some new features include:
 - Internal review and appeal to a Magistrate for most permit decisions and commercial activity agreements (Administration Regulations);
 - Public comment on protected area permits and commercial activity agreements can now be required by the chief executive (Administration Regulations);
 - New rules regarding the Tourism in Protected Areas commercial activities management framework, including the ability to enter into 10 year agreements with individual operators. Agreements can only be for activities which are consistent with the management intent and plan for the protected area, with suitable persons and where there is adequate insurance cover for the activities. However, the amendments allow but do not *require* the chief executive to impose a condition in an agreement that it assist in achieving the purpose of the Act. Agreements can be amended or suspended on a number of grounds including if the activity is having an unacceptable impact on the character or amenity of the protected area or if there is a breach of the agreement.

Pollution

- The federal government approved a national implementation plan in August 2006 for the Stockholm Convention on **Persistent Organic Pollutants** (POPs), which applies to the most hazardous and environmentally enduring substances. The major actions detailed in the plan are to destroy existing stockpiles of POPs waste. Copies of the plan are available at www.deh.gov.au/settlements/chemicals/international/pop.html

Planning

- The **SEQ Regional Coastal Plan** was finalised and commenced on 28 August 2006. The Plan manages the impacts of coastal development particularly from dredging, marinas, waterfront estates and acid sulfate soils. The Plan must be incorporated into town planning schemes by local government, who must also have regard to the provisions of the Plan when assessing development applications. EDO continues to advocate for the law to require environmentally protective documents to be *followed* rather than simply 'had regard to' amidst a host of other things.
- **SEQ Plan Amendment 1** - our July 2006 Special Bulletin discussed draft changes to the SEQ Regional Plan in detail. The finalised amendments were released on 31 October 2006 and deal primarily with the Mt Lindesay/North Beaudesert Study Area and change the urban footprint maps. Amendments to the Regulatory Provisions of the Plan came into force on 31 October 2006 and complementary amendments to the *Integrated Planning Regulation 1998* which commenced on 10 November 2006 make the Office of Urban Management a concurrence agency for reconfiguration of lots located in a Major Development Area. SEQ Regional Plan Amendment 1 is available from www.oum.qld.gov.au/?id=381.

EDO NEWS

Staff changes at EDO – farewell Kirsty & Rob, congrats Hayley, welcome Adam, Nicole, Peter, Anita!

Recently Kirsty Ruddock, Principal Solicitor at EDO-NQ for the last 2 years, left EDO-NQ to take up the position of Principal Solicitor in EDO's Sydney office. We'll miss Kirsty in Queensland but are thrilled she will continue her public interest environmental work in the EDO family! Congratulations to Hayley Blackman of EDO-NQ on the recent birth of her daughter. Hayley is on maternity leave from EDO-NQ, so welcome to Nicole Leaney as the interim second solicitor at EDO-NQ! EDO extends a very warm welcome to new EDO-NQ Principal Solicitor Adam Millar, previously on EDO-NQ's management committee. Adam brings litigation experience and his local Cairns knowledge to the role!

EDO Qld welcomes new management committee member, town planner Peter Syson, and is also proud to announce that Anita O'Hart, solicitor and author of the recently published Litigants Handbook, has been employed as a part-time solicitor for the rest of the financial year. At our AGM, EDO Qld farewelled long-term committee member, treasurer and one-time Principal Solicitor Rob Stevenson. Rob's contribution to EDO has been immense and we will shortly present him with a Certificate of Appreciation for his years of dedication. Farewell Rob, you are always welcome back!

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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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