

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

# **BULLETIN**

## **January 2006**

---

### **What's in this Bulletin?**

Happy New Year readers! This Bulletin updates you on EDO's current **court cases** including the upcoming bat case appeal and Hinchinbrook channel breakwater hearings, and recent **law reform** activities to protect cassowary habitat. We summarise **recent legal changes** including to water charges in Queensland, incorporation of the new National Packaging Covenant and changes to the planned phase-in of the SEQ Regional Forest Agreement. We list six **opportunities to submit comment** on government initiatives covering juicy topics like local government corruption and electoral arrangements, wild rivers, heritage places and promotion of alternative transport. In **EDO news** there's a vacancy at EDO NSW and we give you **useful tips** on tax deductibility for environment groups and an EPBC newsletter.

### **COURT CASE NEWS**

#### **Case update from EDO-Qld**

##### Nature Conservation Act bat case - *Booth v Frippery Pty Ltd and Thomas*

Readers will recall from our November Special Bulletin Dr Carol Booth's appeal to the Court of Appeal in this important test case about when protected wildlife may be lawfully killed or harmed. A hearing date of **27 February 2006** has now been allocated for the Court of Appeal to hear Dr Booth's application for leave and appeal in Brisbane. Members of the public are welcome to attend but must observe court protocols such as bowing to the judges, switching off mobile phones and keeping quiet.

The Environmental Protection Agency (EPA) has also applied to join as a party to the appeal, and the Court is expected to grant the EPA's application at the start of the hearing. EPA's recently filed legal submissions on the interpretation of section 88(3) support those filed for Dr Booth by EDO Qld and barristers Chris McGrath and Stephen Keim SC. EDO welcomes the EPA's participation in this important appeal as the case has implications for the EPA's ability to enforce its wildlife protection laws.

Dr Booth is seeking donations in this case to help pay court fees, transcript fees and barristers' fees. Tax deductible donations can be made to EDO Qld by cheque or by credit card using the donation form at [www.edo.org.au/edoqld/edoqld/new/membership%20form.pdf](http://www.edo.org.au/edoqld/edoqld/new/membership%20form.pdf). Please note on the donation that you "prefer the donation to be spent for the bat case".



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

#### **Case update from EDO-North Qld**

##### Breakwater Case - *Alliance to Save Hinchinbrook v Environmental Protection Agency*

Last year EDO-NQ on behalf of the Alliance to Save Hinchinbrook (ASH) filed an application seeking judicial review of decisions by the Environmental Protection Agency and Queensland Parks and Wildlife Service under the *Marine Parks Regulation 1990* to approve the construction of two breakwater walls in the Hinchinbrook Channel at Oyster Point, Cardwell. The hearing is on **9 and 10 February 2006** at the Supreme Court in Cairns, where Stephen Keim SC will appear for ASH. Interested readers are encouraged to attend!

### New Hillslope Development Case - SOS & CAFNEC v Reef Cove Resort Ltd & Cairns City Council.

EDO-NQ on behalf of SOS Community Action Group (SOS) and the Cairns and Far North Environment Centre (CAFNEC) have applied to the Planning and Environment Court for declarations that a development approval and operational works approval granted to Reef Cove Resort by the Cairns City Council to develop 102 residential lots, at False Cape east of Cairns, are invalid. SOS and CAFNEC are arguing that the approvals conflicts with relevant provisions of the planning scheme, particularly sections of the Hillslopes Development Control Plan on slope instability and visual amenity. A directions hearing will be held on **6 February 2006**. The full case will be heard on **12 and 13 April 2006** at the Planning and Environment Court in Cairns. Barristers Stephen Keim SC and Tracy Fantin are appearing for SOS and CAFNEC.

### Cassowary case - Community for Coastal & Cassowary Conservation v Johnstone Shire Council & Cavanah

As reported in the September 2005 Bulletin the EDO-NQ is acting for the Community for Coastal & Cassowary Conservation Inc (C4) who have lodged an appeal against the decision of the Johnstone Shire Council to approve a 22 lot residential subdivision in the rural conservation zoning at Mission Beach. The case has been set down for hearing for 7 days commencing on **3 of April 2006** before Judge White in the Planning and Environment Court at Cairns. Barrister Chris McGrath will be appearing for C4.

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

## **LAW REFORM NEWS**

### **Cassowary Conservation Plan**

Readers may recall from the August 2005 Bulletin that EDO-NQ along with the Community for Coastal and Cassowary Conservation (C4), the Cairns and Far North Environment Centre (CAFNEC) and other interested parties were seeking the development of a draft Cassowary Conservation Plan, similar to the Koala Conservation Plan, in an effort to halt the rapidly declining cassowary numbers in the region. The proposal was presented to the Minister for Environment, Hon Desley Boyle MP towards the end of last year. The Minister's response was that such a plan is unnecessary as the current Cassowary Recovery Plan along with the *Vegetation Management Act 1999* provide sufficient protection for the cassowary. EDO-NQ will be continuing to advocate for continued protections for cassowaries given our concerns about the legal loopholes associated with the *Vegetation Management Act* and lack of legal effect of the Cassowary Recovery Plan. *For more information about contact EDO-NQ on (07) 4031 4766 or [edonq@edo.org.au](mailto:edonq@edo.org.au).*

## **NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES**

### **Important legal changes to...**

#### **1. New Packaging NEPM incorporated - Environmental Protection Amendment Regulation (No. 2) 2005**

On 16 December 2005 amendments to the *Environmental Protection Regulation* came into force, which enact the renewed *National Packaging Covenant* that will apply from July 2005 until 30 June 2010. The amendments alter who the re-use, recycle and energy recovery rules will apply to, by changing the definition of "brand owner" to include the first person to sell an imported product in Australia and retailers who supply (polyethylene) plastic bags to customers.

The obligation to implement an action plan and keep statistics on re-use, recycling and energy recovery of consumer packaging materials will now not apply to businesses with a gross annual turnover of less than \$2 million. Where a brand owner is required to have an action plan, it must commit to re-using (as a first preference), recycling or energy recovery of set percentages of consumer paper (80%), glass (60%), steel (65%), aluminium (75%) and plastics (35%), and must keep annual statistics on these and other matters for five years. The amendments also clarify that compliance with the *Australian Retailers Association Code of Practice for the Management of Plastic Bags* is sufficient, and means a plastic bag brand owners will not also have to prepare an action plan and keep annual statistics.

EDO supports the implementation of the National Packaging Covenant, but would like to see incorporated into law an obligation to firstly **reduce** packaging waste, by practices such as encouraging consumers to use calico or biodegradable plastic bags and properly filling bags.

*For a copy of the Amendment Regulation see [www.legislation.qld.gov.au/LEGISLTN/SLS/2005/05SL322.pdf](http://www.legislation.qld.gov.au/LEGISLTN/SLS/2005/05SL322.pdf).*

2. New water charges legislated – Water and Other Legislation Amendment Regulation (No. 1) 2005

The *Water and Other Legislation Amendment Regulation (No. 1) 2005* implements the Premier's water pricing package announced on 20 December 2005 and foreshadowed in the Queensland Water Plan 2005-10. The *Amendment Regulation* establishes a framework to implement new water charges for local governments, industry and irrigators, which commenced on 1 January 2006 and 1 July 2006 for local governments. The *Amendment Regulation* also establishes new penalty infringement notices (PINs) in relation to a number of offences under the *Water Act 2000*, which commenced on 16 December 2005.

*For a copy of the Amendment Regulation see [www.legislation.qld.gov.au/LEGISLTN/SLS/2005/05SL334.pdf](http://www.legislation.qld.gov.au/LEGISLTN/SLS/2005/05SL334.pdf)*

3. Forest protection slowed in favour of graziers under SEQ RFA phase-in

The EPA has granted lease extensions to 34 graziers using land due to be protected under the SEQ Regional Forest Agreement, because of expected financial hardship if their grazing leases were not renewed. After examination by an independent panel and the Qld Rural Adjustment Authority, the EPA accepted that financial hardship would occur and will allow 34 graziers (of 47 applicants) to submit applications to extend their leases before the next phase of the SEQ Regional Forest Agreement, which will create 406,000 hectares of new national park, comes into effect in February 2006. The lease extensions will affect 37 forest reserves totalling 14,000 hectares of forest dedicated for protection.

*For more information contact the EPA via the state government switchboard on (07) 3227 7111.*

### Opportunities to comment on...

The following discussion papers are currently open for public comment:

1. Local Government election & CMC discussion papers – comments due 10 February and 1 March 2006

The Crime and Misconduct Commission has released a public discussion paper on issues arising from its inquiry into Gold Coast City Council, including the adequacy of existing legislation and topics such as misleading voters, electoral bribery, electoral returns, and conflicts of interests.

*Have your say on the CMC discussion paper available from [www.cmc.qld.gov.au](http://www.cmc.qld.gov.au) by **10 February 2006**.*

In a related initiative, the Department of Local Government and Planning (DLGP) has released a Community Questionnaire and Discussion Paper on Local Government Electoral Arrangements. The documents invite public comment by **1 March 2006** on the management of council elections, caretaker periods, a Code of Conduct in council elections, election donations, dissolving a council and penalties for council electoral offences.

*Have your say on the DLGP discussion paper available from [www.lgp.qld.gov.au/elections](http://www.lgp.qld.gov.au/elections).*

2. Draft Mary Basin Water Resource Plan (WRP) – comments due 11 February 2006

Don't forget the draft Mary Basin WRP is open for public comment until **11 February 2006!**

*The draft plan and an accompanying overview report are available from [www.nrm.qld.gov.au/wrp/mary](http://www.nrm.qld.gov.au/wrp/mary).*

3. Wild River declaration proposals and draft Wild River Code – comments due 10, 17 & 28 February 2006 and 24 April 2006

Don't forget the six Wild River declaration proposals open for public comment - for the proposed Wild River areas of Hinchinbrook (by **10 February 2006**); Fraser Island (by **17 February 2006**); and Settlement Creek, Mornington Inlet, the Gregory River and the Staaten River (now due by **24 April 2006**).

The Department of Natural Resources and Mines has also recently released the draft Wild River Code for public comment until **28 February 2006**. Once a wild river is declared, certain development activities within the river, its major tributaries and catchment area must be assessed against this code. The Code provides the rules for when the following activities will be permitted in a Wild River area: agriculture and animal husbandry; aquaculture; environmentally relevant activities; forestry; tidal works, activities in fish habitat areas and marine plants; riverine protection works; urban, commercial and industrial development; vegetation management; overland flow; subartesian water; and waterway barrier works.

*Copies of the declaration proposals can be found at [www.nrm.qld.gov.au/wildrivers](http://www.nrm.qld.gov.au/wildrivers).*

*The draft Wild River Code can be found at [www.nrm.qld.gov.au/wildrivers/pdf/wild\\_river\\_code.pdf](http://www.nrm.qld.gov.au/wildrivers/pdf/wild_river_code.pdf).*

4. Draft Report on Regulation of Historic Heritage Places – comments due 24 February 2006

The Productivity Commission has announced a public inquiry into the policy framework and incentives for the conservation of Australia's historic heritage places. The inquiry covers buildings, structures, created places and landscapes and places of historic significance, but does not consider natural or indigenous heritage or moveable cultural heritage.

A draft report is open for public comment until **24 February 2006**. Submissions must be accompanied by a coversheet available from [www.pc.gov.au/inquiry/heritage/subcoversheet.rtf](http://www.pc.gov.au/inquiry/heritage/subcoversheet.rtf). The final report, containing findings and recommendations to the federal government, will be prepared by the Productivity Commission after consideration of public submissions and hearings.

For more information see [www.pc.gov.au/inquiry/heritage/](http://www.pc.gov.au/inquiry/heritage/).

5. Smart Travel Choices for SEQ: A Transport Green Paper – comments due 28 February 2006

This Green Paper on the future of transport in South East Queensland proposes transport policy initiatives designed to complement the SEQ Regional Plan (see August 2005 Bulletin) and improve transport outcomes. The initiatives aim to promote walking, cycling and public transport and to broaden and sustain the impact of current planning, infrastructure and service measures.

The initiatives in the Green Paper are open for discussion until **28 February 2006**. Comments will influence a future White Paper which will detail the government's financial and implementation commitment to actions that result from the Green Paper and community consultation.

The Green Paper and further information is available from [www.transport.qld.gov.au/smart.travel.choices](http://www.transport.qld.gov.au/smart.travel.choices).

## COMMUNITY EDUCATION

### EDO-NQ Planning Workshops

EDO-NQ will present a number of planning and environmental law workshops in Mackay, Townsville and the Atherton Tablelands over the next few months. Keep an eye out for dates and times in future Bulletins.

### EDO NEWS - Education Officer position at EDO NSW

The EDO NSW seeks a suitably qualified applicant for the newly created position of Education Officer. The position is open to dynamic, self-motivated individuals who satisfy the following essential criteria:

- knowledge and understanding of environmental law and policy;
- tertiary qualifications or demonstrated experience in adult or community education;
- project management experience, including budgeting and evaluation of projects and events;
- excellent written and oral communication skills.

Additional criteria and full position description are available from [www.edo.org.au/edonsw/site/jobs\\_volunteer.asp](http://www.edo.org.au/edonsw/site/jobs_volunteer.asp).

### USEFUL TIPS - Tax deductibility for environment groups

A new factsheet on the Australian Taxation Office (ATO) website outlines the requirements for organisations to receive tax deductible gifts. The factsheet details the requirements for entry on the Register of Environmental Organisations and deductible gift recipient (DGR) endorsement, including how to apply for entry on the Register and endorsement as a DGR, as well as the types of gifts that can be made and how donors can claim deductions. Organisations currently on the Register include organisations involved in land, wildlife and rainforest conservation, including your EDOs!

The ATO factsheet is available from <http://ato.gov.au/print.asp?doc=/content/30675.htm>.

---

To subscribe free to the monthly joint EDO-Qld and EDO-NQ Bulletin, email [edoqld@edo.org.au](mailto:edoqld@edo.org.au) or [edong@edo.org.au](mailto:edong@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](mailto:edonsw@edo.org.au)

**Environmental Defenders Office (Qld) Inc.**

9th Floor, 193 North Quay (corner Herschel St), Brisbane 4000. Ph: (07) 3211 4466, Fax: (07) 3211 4655, e: [edoqld@edo.org.au](mailto:edoqld@edo.org.au)

**Environmental Defender's Office of Northern Queensland Inc.**

1<sup>st</sup> Floor, 96-98 Lake St, Cairns 4870. Ph: (07) 4031 4766, Fax: (07) 4041 4535, e: [edong@edo.org.au](mailto:edong@edo.org.au)

**If you no longer wish to receive our Bulletin by email, please email EDO-Qld and EDO-NQ with "unsubscribe Bulletin" in the subject line. Your email address will be removed from our database and we will not send you our email Bulletins.**