

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

# **BULLETIN**

**June 2006**

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

This Bulletin is packed with EDO news on cutting edge climate change and coal mine cases, our law reform work on Queensland's vegetation clearing laws and an urgent call for the Premier to do what he promised to do to protect nominated Wild Rivers. We update you on the Great Sandy Marine Park Plan and a raft of other important changes to environmental laws including gallons about water! There are six opportunities to comment on planning issues, sustainable building design, vegetation clearing, accountable government and non-native species. We invite readers to our Community Litigants Handbook Launch in Brisbane on 25 July, and call for EDO membership renewals – we need your membership and support!

## **COURT CASE NEWS - Case update from EDO-North Qld**

### Greenhouse test case decided - *Wildlife Whitsunday v Minister for Environment and Heritage*

Unfortunately, the first climate change case against the Federal Government brought by Wildlife Whitsunday with the assistance of EDO-NQ and EDO-Qld was dismissed by the Federal Court on 15 July 2006. The case involved two large mines in the Bowen basin that were scheduled to produce 48 million tonnes of coal over 15 years, equivalent to about 25% of Australia's greenhouse gas emissions in a total year and worth \$3.5 billion to the economy.

His Honour Justice Dowsett found a government official acted lawfully considering greenhouse emissions but in finding no link between the emissions and any specific damage to Australia's environment. The mines therefore did not require approval under the federal EPBC Act. The case highlights the need for law reform in this area to ensure that the EPBC Act does consider greenhouse gas emissions in the future. Nonetheless, proponents of coal mines and their lawyers are well advised to address the greenhouse gas emissions of their projects because, as this case shows, the Minister treats them as relevant impacts.

EDO congratulates Wildlife Whitsunday for its initiative in running this case, and expresses our appreciation to inspirational barristers Stephen Keim SC and Chris McGrath for their work on the case.

*The decision is available from [www.austlii.edu.au/au/cases/cth/federal\\_ct/2006/736.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/736.html) and a summary is on EDO-NQ's website.*

### Other coal mines in North Queensland – proposed expansion withdrawn!

EDO-NQ has been providing legal advice to Wildlife Whitsunday on the proposed expansion of the Isaac Plains mine in the Bowen Basin to mine 60 million tonnes of coal over 15 years. The mine project was referred to the federal Environment Department but the referral document failed to address the greenhouse gas emissions that are likely to be caused by the mining, transport and use of the coal and the consequential impacts on matters protected by the EPBC Act (such as World Heritage Areas). Australian Greenhouse Office methodology suggests the expanded mine would produce to 28-37% of Australia's annual greenhouse gas emissions over its 15 year life span. EDO-NQ wrote to the mine saying failing to mention greenhouse impacts was recklessly or negligently false or misleading under section 489 of the EPBC Act, amongst other matters. In a win for the environment, the mining company while not accepting that they have breached the EPBC Act, have now agreed to withdraw this referral to avoid further litigation.

It is expected that the coal mine will put in a fresh referral which addresses the impacts of the greenhouse gas emissions from the mining, transport and use of the coal on matters protected by the EPBC Act, such as the Wet Tropics and Great Barrier Reef, which are vulnerable to climate change. Only with this

information can the federal Minister assess the full impacts of the proposed coal mine expansion, and we hope that his actions match his rhetoric on climate change and he refuses the coal mine expansion. We encourage readers to write to federal Minister Ian Campbell asking him to require the mines to undertake federal assessment for their greenhouse impacts and to reject the proposed expansion.

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

### EDO-Qld continues vegetation clearing campaign work with comments on new clearing codes

In June and July EDO-Qld will continue its work assisting the Queensland Conservation Council, WWF Australia and The Wilderness Society on the vegetation law reform campaign, by drafting submissions on the recently released draft vegetation clearing codes for ongoing purposes (see Opportunities for Comment). EDO-Qld will also draft a submission on behalf of those groups on the new policies on vegetation clearing in the rezoning and subdivision contexts when they are released in July 2006.

### Wild Rivers update – government proposes moratorium on Wild River nominations

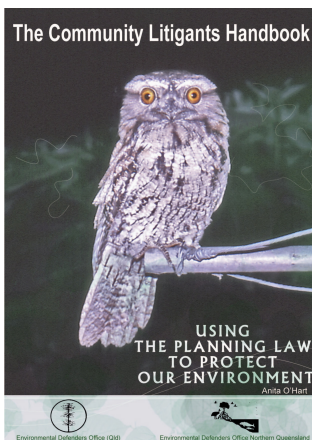
In 2004, the Queensland Premier made an election commitment to protect our wild rivers. But more than two years later *not one* river has been protected. Now Mr Palaszczuk, The Minister for Natural Resources, Mines and Water has publicly stated that he is prepared to put off a decision for up to a year on whether to protect four wild rivers located in the Gulf of Carpentaria – the Gregory and Staaten Rivers, Settlement Creek and the streams of Morning Inlet.

A delay could be disastrous for Queensland Wild Rivers as the Minister has had over six months to make a decision and there has been strong public support for their protection from environment groups and the Gulf's Traditional Owners. The streams and waterways of Hinchinbrook and Fraser Islands were also nominated for Wild River declaration at the same time and their fate still remains unclear. The Queensland Cabinet will be making its decision to put off *or* immediately protect these wild rivers on Monday 3 July 2006.

EDO has been providing legal support to The Wilderness Society on this issue as a top priority. We urge the Premier to honour his election commitment and immediately declare all six rivers nominated as Wild Rivers. EDO encourages readers write to the Premier, telephone their local member and write letters to the editor about this issue. *Thanks to Larissa Corder of The Wilderness Society for contributing to this article.*

## COMMUNITY EDUCATION & EVENTS

### Community Litigants Handbook launch on Tuesday 25 July in Brisbane



The Community Litigants Handbook written by Anita O'Hart on behalf of EDO-Qld and EDO-NQ will be formally launched on Tuesday 25 July 2006 by the Attorney-General Linda Lavarch.

The launch will be held at the Banco Court, Law Courts Complex, 304 George Street, Brisbane, at 5:30pm on 25 July 2006. Entry is by donation. Please RSVP to EDO-Qld by 10 July.

The Handbook is designed to skill you up in deciding why, when and how to start and run an appeal in the Planning and Environment Court against development applications. Come along and learn how to ensure the community's voice is heard in the Planning and Environment Court!

To RSVP or pre-order your copy of the handbook (\$30), call Bronwyn at EDO-Qld on 3211 4466 or e-mail [edoqld@edo.org.au](mailto:edoqld@edo.org.au).

## NEWS OF RECENT ENVIRONMENTAL LAW AND POLICY CHANGES

### Great Sandy Marine Park finalised

The Queensland Government released maps for a final zoning plan of the new Great Sandy Marine Park on 18 April 2006, following public and stakeholder consultation in 2005. The new park will absorb existing Woongarra and Hervey Bay Marine Parks and covers over 6000km<sup>2</sup> of tidal waters and tidal lands from Baffle Creek, north of Bundaberg, to Double Island Point including Fraser Island.

The government was unwilling to go as far as the Great Barrier Reef Marine Park Authority did in 2004 when it set aside 33.4% of the Reef as Marine National Park zones closed to all harvest of wild marine life. The Great Sandy Plan did not follow the biosystematic approach taken on the Reef, and less than 5% of area will be protected in Marine National Parks closed to all fishing and harvesting. However, a campaign by a broad coalition of conservation groups, whale watch operators and the Butchulla elders of Hervey Bay did result in improvements over the original draft Plan, particularly in regard to increasing national park in critical spots, prohibition of sea cages, and elimination of trawling in the Strait and in some estuaries. The plan also identifies special management areas to improve protection for particular species: dugongs, turtles, grey nurse sharks, humpback whales, and migratory wading birds. There are also a number of "go slow" zones to reduce boat strikes of dugongs, one of the major mortality sources.

The big disappointment is the Great Sandy Strait "Designated Area" including the Strait and certain estuaries. There was considerable pressure to end all commercial fishing in this zone. Trawling will end, except in the Mary River estuary, but recreational and commercial line and net fishing will continue. Commercial crabbing and bait netting and some limited recreational fishing will be allowed in yellow "conservation park" zones. Oyster racks and "ranching" of sea cucumbers and scallops (seeding areas with larvae and bottom trawling to harvest) will be permitted, even in the whale special management area in Platypus Bay.

The new Marine Park and the zoning plan are expected to be enacted by regulation on 31 August 2006 and will be reviewed after five years. Currently only the final zoning maps are available on the EPA website, at [www.epa.qld.gov.au/parks\\_and\\_forests/marine\\_parks/great\\_sandy\\_marine\\_park/](http://www.epa.qld.gov.au/parks_and_forests/marine_parks/great_sandy_marine_park/).

*Thanks to Dr Martin Taylor of the Australian Rainforest Conservation Society for this article.*

### In Brief - Other Changes to Environmental Law and Policy

#### Climate change

- Readers interested in climate change will be pleased to hear that the federal **Energy Efficiency Opportunities Act 2006** commenced on 6 April 2006. The Act requires large energy using businesses to assess and publicly report on potential energy efficiency improvements, but does not require any *implementation* of energy efficiency measures identified in the report, which vastly undermines the potential of the Act to reduce Australia's greenhouse emissions.
- The annual update of the **SEQ Infrastructure Plan & Program** (SEQIPP) was released on 24 May 2006. 350 projects are envisaged by the 2006 version, up from 230 in the first 2005 version, with the bulk of these new projects for road and public transport projects, and smaller amounts for social and community infrastructure, energy networks and water infrastructure. Was any analysis of greenhouse gas emissions done on these major energy guzzling programs? What about peak oil? What about demand management options for water supply? For a copy of SEQIPP 2006 see [www.oum.qld.gov.au](http://www.oum.qld.gov.au).

#### Water

- The *Water Amendment Act 2006* (Qld) commenced on 17 May 2006 and established the **Queensland Water Commission**, which will undertake regional assessments of water supply and demand and develop 'water security options' which the Minister will consider when making a 'regional water security program'; facilitate, implement and ensure compliance with regional water security programs approved by the Minister; and set further restrictions on water usage where necessary to ensure supply.
- Amendments to the *Water Regulation 2002* (Qld) which commence on 1 July 2006 **suspend previous new water charges** and reinstate the water charges that applied before 2006 until the results of an independent analysis of the state government's water planning and management costs are released. The government should not be hesitating to increase water charges in these times of water shortage!

## Pollution

- The *Maritime and Other Legislation Amendment Act 2006* (Qld), which mostly commenced on 17 May 2006, amends several Acts to better deal with **marine pollution** (including narrowing the defences and allowing cost recovery for pollution cleanup) and abandoned and wrecked ships.
- Amendments to the *Environmental Protection (Water) Policy 1997* (Qld) commenced on 1 May 2006 which will better **protect riverine, estuarine and coastal water quality** in three project areas – Moreton Bay/SEQ, the Mary River Basin/Great Sandy Region and the Douglas Shire. These are powerful amendments which state ‘environmental values’ and ‘water quality objectives’ that must be considered in assessing development applications and setting conditions on Environmentally Relevant Activities in those areas. Amendments to existing development approvals can also be ordered to achieve the environmental values and water quality objectives. EDO welcomes these amendments!

## Protected areas

- Amendments to the *Nature Conservation Regulation 1994* (Qld) commence on 16 June 2006 and allow leashed **dogs to be taken into protected areas** and **horse riding** on identified horse trails in prescribed national park (recovery) areas. While conservation officers can order an animal be removed from the area if it is a danger to persons or wildlife or has caused a nuisance or disturbance in the area, our native wildlife will surely smell and hear dogs and horses in their habitat! EDO had to read these amendments twice because we could not believe that dogs would be let into national parks!

## Extractive industries

- Amendments to the *Environmental Protection Regulation 1994* (Qld) that mostly commence on 1 July 2006 adopt **new codes of environmental compliance** that contain the standard environmental conditions for four Environmentally Relevant Activities, including extractive activities.

## OPPORTUNITIES TO COMMENT...

The following discussion papers are currently open for public comment:

### **Wide Bay Burnett Draft Regional Plan – comments due 7 July 2006**

The Wide Bay Burnett Draft Regional Plan was released for public comment on 1 June 2006 and covers 22 local government areas from Cooloola Shire to Monto Shire, including 12 non-coastal Councils. The Draft Regional Plan deals with major issues including water supply, protection of rural areas, future residential growth areas, transport and infrastructure and waste management. This important Plan will shape local council planning schemes to cater for an expected additional 100,000 people in the area over the next 20 years. As for the SEQ Regional Plan released in 2005, readers are encouraged to make submissions to ensure that the ecologically sustainable carrying capacity of the region determines its future population, that regional policies are prioritised to minimise any planning uncertainty, that nature conservation areas are protected from development, and that the community is consulted on the changes to local planning schemes that will occur once the Regional Plan is finalised. The draft plan is available at [www.wbb2026.qld.gov.au](http://www.wbb2026.qld.gov.au).

### **Brisbane City Council Draft Sustainable Development Incentives Policy – comments due 14 July**

Brisbane City Council has released a Draft Sustainable Development Incentives Policy for new sustainable multi-unit residential and office development in Brisbane for public comment by 14 July 2006. The Policy is not mandatory but is intended to encourage developers to go beyond compliance for building sustainability by allocating sustainable building features points, and using the total points for a proposal to calculate financial incentives for developers. Send your comments on this proposed approach to [DA.Sustainability@brisbane.qld.gov.au](mailto:DA.Sustainability@brisbane.qld.gov.au) or call Council on (07) 3403 8888. The Draft Policy is available from [www.brisbane.qld.gov.au/bccwr/building\\_and\\_development/documents/200605\\_sdip\\_v8.pdf](http://www.brisbane.qld.gov.au/bccwr/building_and_development/documents/200605_sdip_v8.pdf).

### **EPBC Act Key Threatening Process nomination – comments due 19 July 2006**

The introduction of live native or non-native fish into Australian watercourses that are outside their natural geographic distribution has been nominated for listing as a Key Threatening Process (KTP) under the EPBC

Act. A process can be listed as a KTP if it threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community. Listing as a KTP under the EPBC Act has no legal consequences itself, but it requires the Minister to consider whether a Threat Abatement Plan should be made to provide for research, management, and other actions necessary to reduce the impact of the KTP.

EDO encourages readers to submit comments in favour of the KTP listing, and encourage the adoption of a nation-wide Threat Abatement Plan to address the problem. Comments on the nomination are due by 19 July 2006. To submit comments, see [www.deh.gov.au/biodiversity/threatened/nominations/invasive-fish.html](http://www.deh.gov.au/biodiversity/threatened/nominations/invasive-fish.html).

### **Draft regional vegetation management codes – comments due 28 July 2006**

Regional vegetation management codes are used to assess applications to clear vegetation for ongoing purposes such as thinning, fodder harvesting, weed control and to establish necessary infrastructure. These codes are under review, and the public is invited to comment on new draft codes by 28 July 2006. Key changes include consolidation of the 24 codes into just 4 codes, dealing separately with extractive industries in Key Resource Areas, new stipulations on extent of fodder clearing, allowing some small scale vegetation clearing, replacing rules about State Wildlife Corridors with requirements for connectivity, and confirmation of essential habitat by the presence of habitat factors on the ground.

EDO Qld will coordinate a submission on the draft codes on behalf of the major environment groups in Queensland, and encourages readers to make their own submissions. Each draft code has an introduction which outlines the key changes made and describes how to comment on the codes. The draft codes are available from [www.nrm.qld.gov.au/vegetation/code\\_review](http://www.nrm.qld.gov.au/vegetation/code_review).

### **Review of the Offices of Ombudsman and Information Commissioner – submissions due 31 July 2006**

The Parliamentary Legal, Constitutional and Administrative Review Committee is inviting submissions as part of its consideration of separate strategic management reviews of the two important statutory offices of Ombudsman and Information Commissioner. Written submissions are invited by 31 July 2006 and electronic and paper copies of the two reports are available from the Queensland Parliament's Table Office on 07 3406 7525 or by emailing [TableOffice@parliament.qld.gov.au](mailto:TableOffice@parliament.qld.gov.au). Guidelines for the making of submissions can be accessed at the Queensland Parliament website – [www.parliament.qld.gov.au](http://www.parliament.qld.gov.au) – under 'Committees'.

## **EDO NEWS**

### **It's membership renewal time!**

EDO-Qld and EDO-NQ will soon send out membership renewal reminder letters to our members. But why not save an extra piece of paper (and EDO some postage) and get in early by downloading the 2006/2007 membership form online? Why not join both EDOs, to support our work throughout Queensland! Or tick the *tax deductible* donation box on the membership form and help both you and us!

To join EDO-Qld, go to [www.edo.org.au/edoqld](http://www.edo.org.au/edoqld) and follow the link to the membership form.

To join EDO-NQ, use the membership form at [www.edo.org.au/edonq/documents/membership\\_application.pdf](http://www.edo.org.au/edonq/documents/membership_application.pdf).

### **EDO-NQ thanks Gambling Community Benefit Fund for new photocopier grant**

EDO-NQ was in urgent need of replacing our old copier and a grant from the Gambling Community Benefit Fund will enable us to buy an all in one copier/scanner/fax! A big THANKYOU to the Gambling Community Benefit Fund for assisting the EDO-NQ with this much needed purchase!

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