

BULLETIN

November 2005

What's in this Bulletin?

Once again, this Bulletin is overflowing with information about our recent cases, law reform activities and important legal changes. Cases discussed include the recent Greenhouse Test Case and the Hinchinbrook Breakwater Case. There is also information about the NSW EDO case dealing with the 'Water Sharing Plan' for the Gwydir River, which is being heard in the High Court in December and could have implications for Water Resource Planning in Queensland. In law reform news, this Bulletin provides information about the recently passed Wild Rivers Bill and the EDO's activities in relation to vegetation clearing reforms. In addition, changes in environmental impact statements (EIS) under amendments to the *State Development and Public Works Organisation Act*, and also the introduction of the *Defamation Bill 2005* (Qld) are documented below. At the end of the Bulletin there is also an outline of discussion papers currently open for public comment.

COURT CASE NEWS

Case update from EDO-Qld

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

See EDO Qld's recent Alert! about this nature conservation case and Dr Booth's application for leave to appeal to the Court of Appeal.

Case update from EDO-NQ

1. *Greenhouse test case - Wildlife Whitsunday v Minister for Environment and Heritage*

Wildlife Whitsunday's case against the Minister for Environment and Heritage was heard in the Federal Court in Brisbane on the 20th and 28th October 2005. A judgment is not expected to be handed down until early 2006. As you may recall from last month's Bulletin, the case is the first legal challenge against the Australian Government for failing to consider the effects of greenhouse gases and global warming on the environment when approving the construction of 2 new coal mines. Global warming is expected to cause severe impacts to the Australian environment, including to the iconic Great Barrier Reef and Wet Tropics Rainforests.

On a related theme, it is interesting to note that on the day of the hearing, 20 October 2005, the first Kyoto Protocol emission credits were generated by two hydroelectric power projects in Honduras (the hydroelectric projects, which do not emit greenhouse gases, are creating credits for Italy and Finland to use in meeting their emissions reduction commitments under the protocol.) On the Australian front, Anthony Albanese introduced the *Avoiding Dangerous Climate Change (Climate Change Trigger) Bill 2005* – into Parliament in early September 2005. The main purpose of Bill is to introduce a Greenhouse trigger into the *Environmental Protection and Biodiversity Conservation Act*. This means that proposals for developments which produce greenhouse gases would trigger Commonwealth assessment and require the Minister to consider the impacts of greenhouse gas emissions when approving such developments. We will keep you informed of the Bill's progress in future Bulletins.

2. *Hinchinbrook Breakwater Case – Alliance to Save Hinchinbrook v Environmental Protection Agency*

As you may recall, the EDO-NQ is acting for the Alliance to Save Hinchinbrook Inc (ASH) who have brought proceedings to review a decision of the EPA/QPWS to approve the building of 2 rockwall breakwaters into the Hinchinbrook Channel at Oyster Point. The case has been set down for hearing before Justice Jones in the Supreme Court in Cairns on the **6th and 7th February 2006**. On 3rd October 2005 Cardwell Properties Pty Ltd and Port Hinchinbrook Services Ltd were joined as parties to the proceedings. On 7th November 2005 Justice Jones heard an application by ASH that each party bear their own costs in the proceedings. The EPA agreed to the application but Cardwell

Properties and Port Hinchinbrook Services opposed the application and disputed that ASH had a case. Judgment on the costs issue has been reserved.

While on the subject of Hinchinbrook, the EDO congratulates the state government for rejecting the application by Cardwell Properties to construct Port Hinchinbrook Stage II. The Hinchinbrook channel is a listed World Heritage Area which provides important habitat for turtles, dugongs and dolphins. It is good to see the government taking some responsibility for ensuring its protection.

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

Other EDO's cases

EDO-NSW in the High Court on water planning issues!

EDO-NSW, representing the Nature Conservation Council of New South Wales, will appear in the High Court on 13 December 2005 in Canberra challenging the validity of the Water Sharing Plan for the Gwydir River. The appeal will concern whether the Plan is invalidated by the NSW Minister for Natural Resources' failure to set aside water for environmental health *before* allocating water for irrigation and other consumptive purposes. The High Court's decision may have implications for Water Resource Planning in Queensland in relation to the need to allocate water for 'environmental flows'.

For more information about this case, contact Jeff Smith or Ilona Millar of EDO NSW on (02) 9262 6989.

LAW REFORM NEWS

Wild Rivers Bill passed

Readers will recall the work EDO-Qld (with help from EDO-NQ on northern issues) has been working with the Wilderness Society (TWS) and the Queensland Conservation Council (QCC) on the Wild Rivers campaign over the past 18 months, and that the *Wild Rivers Bill 2005* was introduced into Queensland Parliament on 24 May 2005 with debate adjourned.

EDO, TWS and QCC continued to advocate for changes to the Bill before it was debated by the House, and were successful in gaining an amendment to the Bill requiring Parliamentary approval to revoke a Wild River, putting Wild Rivers on a par with National Parks in that respect.

The Bill was finally debated by the House and passed on 28 September 2005, receiving assent on 14 October 2005 but not yet proclaimed into force. Other minor changes made to the original tabled Bill include a one year limit on moratoria (with a one year extension allowed) while a Wild Rivers declaration is being prepared, and substantial amendments regarding mining which clarify administrative processes but do not alter the government's policy.

While EDO maintains its concerns with the Bill outlined in our May 2005 Bulletin, we congratulate the government on introducing this landmark Bill, which is the first stand-alone, comprehensive legislation to protect Wild Rivers in Australia.

EDO looks forward to continuing our work with TWS and QCC and having input into the government's draft declarations of Wild Rivers, which will contain the detail that will be the real litmus test of the legislation's ability to protect rivers. EDO urges the government to deliver on its election promise and declare the 19 rivers listed in the election policy document before the end of this term of government.

For a copy of the Act see <http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC042.pdf> and for more information about the wild rivers campaign see www.wildrivers.org.au.

Vegetation clearing law reform

EDO Qld continues our work of the last 3 years on the vegetation campaign with The Wilderness Society (TWS) and the Queensland Conservation Council (QCC) by attending Business Advisory Committee Meetings with DNRM and other stakeholders, in relation to the review of the interim clearing codes, and drafting or coordinating submissions on various vegetation law reform issues as outlined below.

Offsets discussion paper

In October 2005 EDO Qld coordinated a submission on behalf of the QCC in response to the government's limited release discussion paper on offsets. The submission reflected QCC's policy position that providing an area of land as an offset for clearing another area which otherwise would be

protected by the vegetation clearing codes was not acceptable, particularly where Endangered or Of Concern Regional Ecosystems would be cleared. However, the submission reflected that should the government proceed with the offsets proposal, offsets should only be available for projects of state significance and not for all other types of clearing, and that various parameters would have to be met before an offset should be accepted.

Freehold Forestry Code

EDO Qld have been advising The Wilderness Society and the Australian Rainforest Conservation Society on the development of a freehold forest practices code, in particular on the Department's powers to ban rainforest logging on freehold land. Whether this ban is reflected in the revised code remains to be seen, as the final Vegetation Management Forest Practice Code for Native Forest on Freehold Land is scheduled to be released and take effect on 30 November 2005 once consultation with stakeholders is completed. After 30 November 2005, forest practices in remnant vegetation on freehold land will be lawful only if they comply with all parts of the revised code.

For more information on vegetation clearing law reform, contact Larissa Waters of EDO Qld.

NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES

Important legal changes to...

1. Laws protecting free-flowing rivers in Queensland – Wild Rivers Act 2005 passed

Queensland now has a *Wild Rivers Act 2005*! See 'Law Reform' above for details of the new laws.

2. New limitations on defamation promote free speech – Defamation Bill 2005 introduced

The EDOs welcome the introduction on 25 October 2005 of the *Defamation Bill 2005* (Qld), particularly the provisions restricting the ability of corporations to sue for defamation (except not-for-profits or small businesses). Each year EDO has clients threatened with legal action for alleged defamation for speaking out about proposed developments. The Bill will help protect the right of the public to engage in debate on important issues of public interest without the threat of being sued.

Other features of the Bill include replacing the two-tiered defence of "truth and public benefit" with just "truth", reducing the time limit for bringing an action, and reforming the types and amounts of damages (monetary compensation) that can be awarded. The Bill is expected to commence on 1 January 2006, implementing a national agreement to make state defamation laws uniform.

EDO congratulates the Queensland government on introducing the Bill to Parliament. EDO suggests a further initiative as a counterpart to defamation reform, being a Bill to protect public participation by limiting the use of other claims such as common law tort claims by companies, as in the Gunns litigation against the Wilderness Society and 19 other groups and individuals. EDO will seek meetings with new Justice Minister Linda Lavarch to further discuss these reform suggestions.

For a copy of the Bill see www.legislation.qld.gov.au/Bills/51PDF/2005/DefamationB05.pdf and for more information contact EDO Qld

3. Vegetation clearing laws - VMOLA 2005 passed

Readers will recall from our May 2005 Bulletin the introduction of a Bill to make minor amendments to the *Vegetation Management Act 1999*. The *Vegetation Management and Other Legislation Amendment Act 2005* was passed by Parliament on 28 September 2005, and commenced operation on 14 October 2005. See 'Law Reform' above for EDO Qld's ongoing work on vegetation clearing law reform.

For a copy of the amending Act see www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC041.pdf.

4. Changes to EIS rules for state significant projects – SDPWOOLA Bill 2005 introduced

The *State Development and Public Works Organisation and Other Legislation Amendment Bill 2005* was introduced into Parliament by the Premier on 4 October 2005. The Bill amends the rules about Environmental Impact Statements (EIS) under the *State Development and Public Works Organisation Act* by:

- Inserting timeframes for the finalisation of the terms of reference for an EIS about a significant project; completion of the EIS; and substantial commencement of the development;

- Providing that the Coordinator General (“CG”) can evaluate changes (upon which public comment *may* be sought) made to a project following the completion of the CG’s report evaluating the EIS, but before the project commences;
- Removing the requirement to give reasons for each condition stated or recommended in the CG’s report, when the CG’s report recommends that an application be approved (but it seems that this does not prohibit the seeking of reasons under the *Judicial Review Act*); and
- Allowing the CG to declare projects of state significance that do not require an EIS, which would instead go through the normal development processes under the *Integrated Planning Act* and other legislation. The CG may only declare a project a significant project for which an EIS is not required if the CG is satisfied that appropriate environmental assessments will be carried out for the project under another Act. The Bill also contains provisions regarding petroleum activities, mining leases and gas pipelines where these projects are declared state significant projects, and acquisition of land for Infrastructure projects.

The Bill is available from www.legislation.qld.gov.au/Bills/51PDF/2005/StateDevtOLAB05.pdf

Opportunities for comment

The following discussion papers are currently open for public comment:

1. Draft ROP for Georgina and Diamantina catchments – comments due 16 December 2005

A draft Resource Operations Plan (ROP) for surface water in the Georgina and Diamantina basins is open for public comment until **16 December 2005**. ROPs provide the management rules and mechanisms to implement water resource plans. The draft ROP envisages an estimated 12,000 megalitres per annum of unallocated surface water will be made available for future development, and gives significant state projects such as mines and other developments the opportunity to access 1,500 megalitres per annum.

The draft plan is available from www.nrm.qld.gov.au/wrp/georgina_diamantina.

2. Gold Coast Water Resource Planning – comments due 18 November 2005

Submissions on the proposal to prepare a Draft Gold Coast Water Resource Plan for the Pimpama River, Coomera River, Nerang River, Tallebudgera Creek and Currumbin Creek catchments are due by **18 November 2005**. Submissions should be sent to The Chief Executive, Department of Natural Resources and Mines, Attention: Scott Smith, Water Services (Gold Coast WRP), PO Box 1653, Coorparoo Qld 4151.

As part of the process, a moratorium on the granting of new licences to take surface water from Gold Coast streams took effect from 1st October 2005. The moratorium applies to new and existing applications for the construction of works to take water from a watercourse, lake or spring, but existing licence holders, or those undergoing works to take water for stock and domestic purposes, are not affected by the moratorium.

Further information on the Gold Coast WRP is available from www.nrm.qld.gov.au/wrp/goldcoast.html.

3. Gold Coast Cruise Ship Terminal Draft EIS Terms of Reference – comments due 28 November 2005

On 27 October 2005 the government released draft terms of reference for an Environmental Impact Study (EIS) for a proposed Cruise Ship Terminal and marina facility for superyachts, recreational and commercial vessels at The Spit on the Gold Coast. An EIS is meant to fully assess the environmental, social and economic implications of the proposal. Members of the public can make submissions on the terms of reference for the EIS by **28 November 2005** to ensure the EIS covers all possible issues of concern.

Relevant material is available online at: www.thepremier.qld.gov.au/infrastructure.

EDO NEWS

EDO-NQ AGM:

EDO-NQ held its AGM on 3rd October 2005 and saw the election of James Crawford to the Committee. James has been involved in the campaign to save Hinchinbrook from inappropriate development since 1994 and is also involved in local environmental issues. James joins Rowan Silva

(President), Mandy Shircore (Treasurer), Nicky Hungerford (Secretary), Michael Neal, Nigel Weston, Su Groome and Bill Mitchell.

Stephen Keim SC also talked at our dinner after the AGM, and gave us an informative talk about climate change. Thanks very much Stephen!

New website for EDO-NQ

If you click on www.edo.org.au/edonq, you'll find our new improved website, full of case information, new factsheets, and other information about our office and work. Thanks to the Gambling Community Benefit Fund for funding the new site, and Rob Rutten for his work on the design and IT, and Steven Nowakowski for allowing us to use his beautiful photography of the region on the site.

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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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