

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

BULLETIN

June 2005

What's in this Bulletin?

This Bulletin reports on EDO's **casework** - the Jimbelung case for EDO-Qld, the East Point case for EDO-NQ, and an update on EDO-NSW's Whales case, then outlines recent EDO **law reform** submissions on the *Queensland Heritage Act* and the *Wet Tropics Management Plan*. We then note **recent legal developments** including *Local Government* and *Nature Conservation Regulation* amendments, Wet Tropics arrangements and new federal ozone licensing laws. There are three **opportunities to comment** on water initiatives, and read about EDO-Qld's recent EDO network 20th birthday party!

COURT CASE NEWS

Case update from EDO-Qld

1. The Wilderness Society v Minister for the Environment and Heritage and Gunns Ltd, ACD 12 of 2005
See the forthcoming EDO Qld Alert! on this Regional Forest Agreement test case under the EPBC Act.

2. Jimbelung Pty Ltd v Beaudesert Shire Council and Others [2005] QPEC 025 and [2005] QPEC 032

EDO Qld recently assisted Friends of Tamborine Mountain Association Inc. ('FOTMA') to argue a procedural point in the Brisbane Planning and Environment Court. FOTMA, 3 community associations and 47 individuals had become respondents by election to developer Jimbelung Pty Ltd's appeal against Council's refusal of an application to build 66 units on Mount Tambourine. The subject land is next to a National Park, of conservation value, steeply sloping and has bushfire issues.

The developer began the appeal in 1998 then entered protracted negotiations with Council but took no Court steps for almost 7 years, until an application for directions this year. In a preliminary hearing, FOTMA's barrister Steve Keliher successfully argued that Rule 389(2) of the UCPR should apply, meaning that because of the almost 7 year delay, a formal order of the Court was required to continue with the case (see Judge Wilson's 15 April 2005 judgement at www.courts.qld.gov.au/qjudgment/QPEC%202005/QPEC05-025.pdf).

In the subsequent hearing about whether that order to proceed should be granted, Jo Bragg acted as the barrister and argued that the appeal should be struck out because of the prejudice the delay had caused the co-respondents (some of whom had passed away), and the community expectation for increased environmental protection of the site (as reflected in the then draft SEQ Regional Plan) compared with 1998 environmental rules. On 10 May 2005 Judge Wilson decided that overall the appeal should be allowed to proceed, but that the developers must pay our client's costs of legal preparation and court time arguing about the Rule 389 point (see judgement at www.courts.qld.gov.au/qjudgment/QPEC%202005/QPEC05-032.pdf). The clients will now continue the merit appeal.

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

Case update from EDO-NQ

Mackay Conservation Group Inc v East Point Pty Ltd & Mackay City Council

From 4-6 May 2005, the Planning and Environment Court in Brisbane heard a further three days of the appeal by the Mackay Conservation Group (MCG) against the Mackay City Council's approval of a major coastal development on a largely undeveloped site of 67.67 hectares at East Point in Mackay. The hearing of the appeal did not finish and has been adjourned to the week commencing 8 August 2005, at which time evidence will be heard from remaining witnesses for MCG, followed by closing submissions by the parties.

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

Other EDO's cases

Update on EDO NSW illegal whaling case: HSI v Kyodo Senpaku Kaisya Ltd

On 27 May 2005 Justice Allsop of the Federal Court of Australia declined to grant HSI leave to serve originating process on the whaling company in Japan, on the principal basis of the diplomatic implications of the proceedings. HSI have now appealed that decision to the Full Court of the Federal Court of Australia.

The judgment and more information about the case is available from HSI's website www.hsi.org.au, which also contains a summary of outcomes from the recent International Whaling Commission meeting at Ulsan.

LAW REFORM NEWS

Queensland Heritage Act 1992 review

EDO-Qld and EDO-NQ recently made a submission on an EPA discussion paper proposing reform of the *Queensland Heritage Act 1992*. The major reforms proposed by the EDO included greater transparency of the listing process, increased public access to information, the ability to lodge submissions in support of proposed listings as well as objections, increased rights of the public to apply for stop work orders and the introduction of emergency listing procedures.

The submission also recommended that the Queensland Heritage Council have the role of a concurrence agency with respect to developments on or near heritage places and the criteria for approval/refusal be changed to whether the development will destroy or "significantly" affect heritage values, not "substantially" affect. The EDO also recommended the development of a State Planning Policy for cultural heritage, reflecting both indigenous and non-indigenous cultural heritage, to improve identification and protection of heritage at a local level. We will keep readers informed of any draft amendments to the *Heritage Act* flowing from the discussion paper.

For more information contact EDO-NQ on (07) 4031 4766 or EDO-Qld on (07) 3211 4466.

Wet Tropics Management Plan Review

EDO-NQ in conjunction with the National Parks Association of Queensland (NPAQ) and the Cairns and Far North Environment Centre (CAFNEC) recently made a submission on proposed amendments to the *Wet Tropics Management Plan 1998* as part of the Plan's 7 year review. The submission argued against proposed amendments to expand the infrastructure exemption to 'all infrastructure' including powerlines and pipelines (instead of just roads), and objected to feasibility being a basis of decisions on infrastructure rather than impact on the Wet Tropics World Heritage Area. EDO-NQ, NPAQ and CAFNEC recommended strengthening the criteria for infrastructure permits by including no net adverse impact on the integrity of the area as a precondition and that "do nothing" be included as an explicit alternative to any proposed action.

For more information please contact Hayley Blackman at EDO-NQ on (07)4032 4766.

COMMUNITY EDUCATION

On 17-19 June 2005 EDO-NQ staffed a stall at the biannual indigenous Laura Cultural Festival and spoke to the public about environmental issues and EDO-NQ's role.

NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES

Important legal changes to...

1. Amendments to the *Nature Conservation Regulation* and *Nature Conservation (Wildlife) Regulation*

In June 2005 two Nature Conservation Amendment Regulations were made by the Governor-in-Council. The first Amending Regulation commenced on 10 June 2005, making minor changes and also introducing a new licence which can be granted after 1 January 2006: a commercial wildlife licence (mobile) for macropods. That licence will allow protected macropods to be bought, accepted or moved within the State in a mobile facility without adversely affecting the conservation of the animals.

The second Amending Regulation commenced on 24 June 2005 and complements 2004 amendments to the Act (see April-May 2004 Bulletin) to re-name the categories of conservation status. References to "common" wildlife and plants in the Regulation and in licences are replaced with "least concern" wildlife and plants, references to "rare" are gradually being replaced with "near threatened", and "presumed extinct" with "extinct in the wild". The declared management intent for near threatened wildlife is also newly inserted in to the *NC (Wildlife) Regulation*.

*For copies of the *Nature Conservation and Other Legislation Amendment Regulation (No. 1)* and *(No. 2)* of 2005, see No.s 111 and 138 at www.legislation.qld.gov.au/Legislation%20Acts&SLs/SL2005.htm.*

2. Wet Tropics Regional Agreement and Management Plan

On 29 April 2005 the State and Federal Governments and the 18 Rainforest Aboriginal tribal groups of the Queensland Wet Tropics World Heritage Area (WTWHA) endorsed the *Wet Tropics Regional Agreement* and the *Aboriginal Cultural and Natural Resource Management Plan*. The Agreement provides the foundation for government agencies to involve Aboriginal people in decision-making and on-ground management activities in the WTWHA. The Management Plan supports the Agreement through investment strategies and actions directed towards meeting the aspirations of Traditional Owners in caring for their country and culture.

For more information about this Agreement and Management Plan please contact EDO-NQ.

3. New ozone protection laws

The Federal Department of Environment and Heritage recently announced the introduction of a new national refrigeration and air conditioning licensing scheme which commences on 1 July 2005. The scheme, enacted under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, replaces existing state and territory licensing and will apply to anyone who buys, sells, stores or handles ozone depleting or synthetic greenhouse gas refrigerant. Those who acquire, possess or dispose of these substances will be required to hold a national refrigerant trading authorisation and handlers of refrigerant gases with a risk of emission will have to obtain Refrigerant Handling Licences.

For more information about the scheme see www.arctick.org and www.deh.gov.au/atmosphere/ozone.

4. Local Government Legislation Amendment Bill 2005 passed

This Bill to establish an enforceable code of conduct for local Councillors (see May 2005 Bulletin) passed and commenced operation on 31 May 2005. The *Local Government Act 1993* now requires Councils to develop an enforceable code of conduct which sets out penalties for non-compliance and establishes a general complaints process. Draft codes of conduct must be published for public comment and final codes and complaints procedures adopted by 1 March 2006.

In other local government reform, the *Local Government Regulation 2005* and *Local Government Finance Standard 2005* subordinate legislation will commence on 1 July 2005, replacing the earlier 1994 instruments. There does not appear to be any major policy changes in these new instruments.

For more information contact Hayley Blackman at EDO-NQ on (07)4031 4766.

5. IPA Planning Scheme for Johnstone Shire Council

The Johnstone Shire Council (JSC) Planning Scheme commenced on 20 June 2005 after being adopted by JSC on 26 May 2005. Features of the new Scheme include a simplified approval process for many types of applications, a special heritage code for the protection of character and heritage buildings, and measures for the protection of habitat areas, wildlife corridors, mangroves and wetlands.

For more information contact Hayley Blackman or Kirsty Ruddock at EDO-NQ on (07)4031 4766.

Opportunities for comment

The following discussion papers are currently open for public comment:

1. Preparation of Draft Moreton Water Resource Plan; nominations for Community Reference Panel

The State Government is preparing a Water Resource Plan for the Moreton Catchment, which covers Greater Brisbane, the Lockyer Valley and inland parts of the Sunshine Coast, and encompasses areas east of the Toowoomba range to Moreton Bay and from Landsborough in the north to the NSW border.

Public comment is sought by **15 July 2005** on issues raised in an Information Report which will inform preparation of the draft Moreton WRP. The public may also nominate people to represent them on the Community Reference Panel which will be established to assist in developing the draft Plan.

For more information on Moreton Water Resource Planning see www.nrm.qld.gov.au/wrp/moreton.html.

2. Discussion paper on proposal to declare Lockyer Valley a Subartesian Area

A discussion paper has been released which contains a proposal to declare the Lockyer Valley a Subartesian Area under the *Water Act 2000* and proposes metering and licensing for the taking of groundwater be extended to include the whole of the Lockyer Valley catchment, except for stock and domestic purposes. Public comments on the discussion paper are due by **15 July 2005**.

For a copy of the paper see www.nrm.qld.gov.au/wrp/lockyer_discussion.html.

3. Regulatory Impact Statement and Water Quality Guidelines released

Later this year the Queensland Government intends to develop programs and put new laws to Parliament to address stormwater, sewerage, and agricultural run-off focussing on three regions: Mary River Basin/Great Sandy Region, Douglas Shire, and Moreton Bay/South East Queensland.

To assist in formulating the Bill, a Regulatory Impact Statement (RIS) and water quality guidelines have been released for public comment until **29 July 2005**.

Information about the water quality standards and the regulatory impact statement is available at the EPA's website, www.epa.qld.gov.au, or for further information phone 1800 177 291.

EDO NEWS

Successful EDO Network 20th birthday party at EDO-Qld on 17 June 2005!

After the recent EDO birthday conference in Sydney (see forthcoming Newsletter), EDO-Qld decided to bring the party to Brisbane!

The event was a huge success with more than 60 people including distinguished guests Matt Foley, Stephen Keim SC (*pictured right, with EDO Qld Chair Lesley King*) and early EDO-Qld instrumentals Adrian Jeffreys, Tony Woodyatt and the Cominos family. Inspirational speeches from EDO-Qld's Jo Bragg and Stephen Keim SC topped off the night in reflecting on the glorious achievement of 20 years of EDOs in Australia!

Thanks to all who attended and who have supported EDOs over the years.



Thanks to EDO-Qld and EDO-NQ PLT interns

During June 2005 EDO-Qld hosted Practical Legal Training course students Naomi Field and Shveta Maharaj and EDO-NQ hosted Tracy White during their final workplace placement training before being admitted as legal practitioners in Queensland. Naomi, Shveta and Tracy have ably assisted us during this busy casework period and we hope they have gained useful experience and skills for future use in their careers. Thanks to all for their hard work!

To subscribe free to the monthly joint EDO-Qld and EDO-NQ Bulletin, email edoqld@edo.org.au or 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

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

Environmental Defender's Office of Northern Queensland Inc.

1st Floor, 96-98 Lake St, Cairns 4870. Ph: (07) 4031 4766, Fax: (07) 4041 4535, e: 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.