



ENVIRONMENTAL DEFENDERS OFFICE  
(QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF  
NORTHERN QUEENSLAND INC.



## BULLETIN – APRIL 2003

### **Minister Kemp Finally Amends Significance Guidelines for Grey-headed and Spectacled Flying-foxes as a result of Bat Case 2!**

Environment Australia has now amended both the Spectacled and Grey-headed Flying-fox Guidelines on Significance in response to the Humane Society International's (HSI) recent success in the federal court, and has also published an accompanying clarification. We understand that the Minister has also sent a letter of clarification to grower organisations. Humane Society International has thus achieved its objectives in this case, and growers need to carefully consider if any proposed killing of these listed flying-foxes may require referral to Environment Australia, irrespective of whether or not that grower has a State permit that allows culling.

*Copies of the Significance Guidelines Supplements for the Grey-headed and Spectacled Flying-foxes are available from [www.ea.gov.au/epbc/assessmentsapprovals/guidelines\\_index.html](http://www.ea.gov.au/epbc/assessmentsapprovals/guidelines_index.html). Copies of the judgment in the case, *Humane Society International Inc. v Minister for the Environment and Heritage* [2003] FCA 64 (12 Feb 2003) are available from [www.austlii.edu.au/au/cases/cth/federal\\_ct/2003/64.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/64.html) or EDO Qld.*

### **Update on Nathan Dam case - QCC and WWF v Minister for the Environment and Heritage**

This case challenges the Federal Environment Minister's decision about assessment of the impacts of the Nathan Dam under the Environment Protection and Biodiversity Conservation Act 1999 ("EPBC Act"). On behalf of our clients QCC and WWF, EDO(Qld) and our barristers will argue before the Federal Court that Minister Kemp should have considered the impact on water quality in the Great Barrier Reef World Heritage Area (GBRWHA) as a result of the irrigated agriculture from the Dam. Since our last update on the case, EDO(Qld) has filed the evidence that will be relied on in Court, and streamlined the issues in dispute. The Minister did not file any additional evidence with the Court, as the case is likely to focus on legal argument about the interpretation of the Minister's obligation to consider "all adverse impacts" of the Dam when making his decision about whether his approval is required for the Dam. A number of side issues have now been dropped in order to concentrate on this main point, that is, consideration of the downstream impacts from the irrigated agriculture on the GBRWHA. A win could not only strengthen the rigour of the

environmental assessment of the proposed Dam, but could also require the Minister to consider the adverse environmental flow-on effects of actions when considering the adverse impacts of actions on matters of national environmental significance in the future! EDO(Qld) is now liaising with our barristers, solicitors for the Minister, and the Court to set a hearing date, likely to be sometime in July 2003.

*For more information contact Larissa Waters or Jo Bragg at EDO (Qld).*

### **Recent EPBC Act case successfully challenges misleading freeway project referral: Mees v Roads Corporation [2003] FCA 306 (8 April 2003)**

On 8 April 2003, the Federal Court found that a referral by the Victorian Government to the Federal Environment Minister under s68 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) ("EPBC Act") of part of a proposed freeway near Melbourne contained information that was misleading. The court found that the failure to state in the referral that it was likely that a further freeway link would need to be constructed across a particular area of environmentally sensitive land in the future (as a consequence of the construction of the freeway) was misleading in the context of the referral. Section 489 of the EPBC Act makes it a criminal offence to provide false or misleading information to the Minister to obtain an approval under the Act.

The decision confirms the ability of conservationists to challenge false or misleading information contained in referrals by bringing injunction proceedings under s475 of the EPBC Act, which is a powerful avenue to attack deficiencies in environmental impact assessment procedures. The case highlights how the EPBC Act has dramatically improved the integrity of environmental impact assessment in Australia and provides a warning of the dangers of submitting false or misleading information under the Act.

*Copies of the judgment in the case, Mees v Roads Corporation [2003] FCA 306 (8 April 2003), are available from [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2003/306.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/306.html) or EDO Qld. Thanks to barrister Chris McGrath for his contribution to this article.*

### **Legislative Amendments to Cancel Sand Mining Leases at Shelburne Bay Passed!**

As we mentioned in our last Bulletin, the Queensland Government recently proposed amendments to the Mineral Resources Act 1989 (Qld) to enable refusal of an application for renewal of two mining leases over 65 hectares of pristine sand dune country at Shelburne Bay on North East Cape York Peninsula. The good news is that these amendments became law on 1 May 2003, with the passage of the Land Legislation Amendment Act 2003 by the Queensland Parliament! The amendments ensure that renewal of mining leases will not occur in this case, and expressly provide that no compensation is payable.

*For more information contact Lyndon Schneiders at The Wilderness Society on (07) 3846 1420.*

### **Recent EDO-NQ Environmental Law Workshops Empower Local Communities**

From April 14 to 16 EDO-NQ presented three days of workshops to conservationists from the Mackay and Whitsundays communities. The workshops were sponsored by the Mackay Whitsunday Regional Strategy Group and covered a range of topics including coastal management laws, vegetation clearing laws, the Integrated Planning Act, the Environment Protection and Biodiversity Conservation Act, Defamation law and Freedom of Information. The workshops had a practical focus and were well received. EDO-NQ plans to present similar workshops to other North Queensland communities later this year.

*For more information about upcoming workshops contact Joanna Cull at EDO-NQ on (07) 4031 4766.*

### **Successful South Australian Landclearing Case Highlights Deficiencies in Qld Vegetation Laws**

Congratulations to EDO South Australia, who recently had an important win for their local resident clients in the Environment Resources and Development Court of South Australia. The case involved an appeal by seven residents of Coffin Bay against a local Council approval for an "International Health Clinic" and 36-lot residential subdivision on 10 hectares of pristine coastal bushland on the outskirts of a Coffin Bay township on Lower Eyre Peninsula. The Court held that the proposed development was "premature" and that only small-scale development should be considered until a proper study had been undertaken to determine how best to balance the competing demands of native vegetation protection, water availability, bushfire protection and urban development. However, the Court did not offer any opinion as to the importance of preserving the vegetation, preferring to leave that task to the town planning review it believed was necessary to determine the best ultimate use of the Deferred Urban Zone land.

The case highlights the superiority of South Australian vegetation management laws when compared with Queensland's Vegetation Management Act (for freehold land) and Land Act (for leasehold land) vegetation protection regime, particularly in relation to urban landclearing for subdivision. Unlike South Australia, in Queensland the public have no rights to formally object to or appeal to the court against subdivision approvals involving vegetation clearing. EDO Qld will soon be publishing a factsheet for the public about landclearing laws in Queensland and the avenues for participation that do exist, so contact us for a copy.

*Contact EDO SA solicitor Mark Parnell on (08) 8410 3833 or [Mark.Parnell@edo.org.au](mailto:Mark.Parnell@edo.org.au) for more information about the case, or Larissa*

*Waters or Jo Bragg at EDO Qld for information about Queensland landclearing laws. Thanks to Mark for his contribution to this article.*

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