



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF
NORTHERN QUEENSLAND INC.



BULLETIN

March-April 2005

What's in this Bulletin?

It's been a busy year already for EDO-Qld and EDO-NQ! This Bulletin outlines recent **Court case** news, including 3 EDO NQ cases, 1 EDO Qld case, the EDO NSW case challenging whaling in the Australian Whale Sanctuary and a recent successful prosecution of illegal clearing of a World Heritage Listed National Park by the Queensland EPA. We update you on our recent **law reform** activities, including detailed work on the draft *Wild Rivers Bill 2005*, the review of the interim vegetation clearing codes, a submission and community workshops on the draft SEQ Regional Plan, and a submission on the draft Koala Conservation Plan. We also note recent **legal changes** to water and fisheries laws and the commencement of the new Cairns IPA planning scheme, as well as two discussion papers open for public comment. Finally, we invite you to the **national EDO conference** in Sydney in May, and announce recent EDO staff changes!

COURT CASE NEWS

Case update from EDO-NQ

1. [Mackay Conservation Group Inc v East Point Pty Ltd & Mackay City Council](#)

The EDO-NQ is currently representing the Mackay Conservation Group (MCG) in their appeal against the approval by the Mackay City Council of a major coastal development on a largely undeveloped site of 67.67 hectares at East Point in Mackay. The case commenced before the Planning and Environment Court in Brisbane on 21 March 2005 and was scheduled to be heard until 1 April 2005. However due to the large number of expert witnesses called by the respondents the case ran over until the 8 April and was then adjourned until 4 - 6 May at which time MCG will present their case. The public is welcome to attend. *Barrister Stephen Keim SC is representing the MCG, assisted by solicitor Joanna Cull of EDO NQ and a team of expert witnesses.*

2. [Yorkeys Knob Residents Association v Toma Group Pty Ltd](#)

On 14-16 February 2005 EDO-NQ represented the Yorkeys Knob Residents Association in their Planning and Environment Court appeal against the approval by the Cairns City Council of a large development at Yorkeys Knob. His Honour Judge White handed down his decision on 1 April 2005 in favour of the Appellants, Yorkeys Knob Residents Association. His Honour set aside the preliminary approval and the development approval that had since been issued. His Honour found that the design and bulk of the development, in particular a building 130 metres long and 12.7 high, was not compatible with the surrounding land uses and was therefore not within the reasonable expectations of the community. Consequently the developer will have to submit a new development application to build on the site. This is a fantastic result as it is an important precedent for what is acceptable development in North Queensland and the importance of amenity and its effect on local residents. *Particular congratulations go to EDO-NQ's Kirsty Ruddock who also acted as the court advocate for the Association in this successful case!*

3. [Community for Cassowary and Coastal Conservation Inc. v Oasis Mission Beach Pty Ltd & Johnstone Shire Council](#)

On 7 April 2005 the EDO-NQ lodged an appeal on behalf of the Community for Cassowary and Coastal Conservation (C4) against the lack of conditions imposed on an approval by the Johnstone Shire Council for a residential development on a site that adjoins and includes known cassowary habitat. C4 are seeking further and better conditions to improve the cassowary habitat including widening and revegetating the cassowary corridor, requiring buffers between the development and surrounding conservation areas and the prohibition of domestic cats and dogs in the subdivision. Stay tuned for news on progress of this case!

For further detail about any of these cases contact Kirsty Ruddock at EDO-NQ on kruddock@edo.org.au and see the EDO-NQ Alerts on Yorkeys Knob and the Mackay case issued recently.

Case update from EDO-Qld

[Bosworth v Booth – Full Federal Court Hearing on 16 May 2005](#)

As readers would recall from EDO Qld's Alert! in December 2004, this case is an application by lychee farmer Mr Bosworth to challenge the 2001 injunction which has for nearly four years stopped his use of an

electric grid to kill flying foxes. Mr. Bosworth's subsequent EPBC Act application for approval for culling the Spectacled flying foxes using the grid (Referral 2002/571) was rejected by the Federal Minister for the Environment some years ago.

On 3 December 2004, Justice Kiefel of the Federal Court heard politically extreme arguments from Mr Bosworth that the EPBC Act could not regulate freehold land, and in his case amounted to an acquisition of land by the Commonwealth for which just terms had not been paid! The Court agreed with barrister Chris McGrath that Mr Bosworth's action had no reasonable basis, struck out the application, and ordered indemnity costs in Dr Booth's favour.

Undeterred, Mr Bosworth has now appealed against Justice Kiefel's strike out, and the matter is scheduled to come before the Full Federal Court for hearing on 16 May 2005. The Appeal will start at 10:15 am in a Court on level 7 at the Federal Court located at 119 North Quay, Brisbane. Members of the public are welcome to attend to view the hearing, but must switch off mobile phones, remain silent, and bow to the judges as you enter or leave the court room.

For more information on this case, contact EDO Qld on 3211 4466 or edoqld@edo.org.au.

Other interesting cases – whales and land clearing

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

The EDO NSW on behalf of the Humane Society International continues to push for Australian law to be upheld in its case against a Japanese whaling company operating in the Australian Whale Sanctuary adjacent to Australia's Antarctic Territory.

The Federal Court is yet to determine whether EDO NSW has the go-ahead to serve the proceedings, which were commenced in October 2004, against Kyodo Senpaku Kaisha Ltd in Japan. Justice Allsop of the Federal Court requested that the Australian government, which is not a party to the proceedings, make submissions on whether the case should proceed. In its submission the Australian government has expressed its preference for pursuing diplomatic channels, rather than legal ones.

However, EDO NSW says it is entirely appropriate to challenge whaling in our courts, as the EPBC Act allows conservationists like the HSI to bring proceedings to enforce the law to protect whales in Australia waters. If successful in getting approval from the Federal Court to proceed, EDO NSW will seek an injunction against the annual whale hunt, and a declaration that Kyodo Senpaku Kaisha's activities are illegal under the EPBC Act.

The case is timely as the Japanese government has recently announced that it intends to double its catch of minke whales in the Southern Ocean when it resumes its whale hunt later this year and it also proposes to begin hunting humpbacks and fin whales as well as part of its scientific research whaling program.

For more information contact Jessica Simpson at EDO NSW on (02) 9262 6989.

2. Land-swap avoids jail for clearing National Park and World Heritage Area: EPA v Boyle

In 2001 grazier Vincent Boyle cleared part of the Main Range National Park in SEQ (part of the Central Eastern Rainforest Reserves of Australia World Heritage Area) to join two of his cattle properties.

Boyle was prosecuted by the Environmental Protection Agency (EPA) for taking a natural resource in a protected area in contravention of s 62 of the *Nature Conservation Act 1992* (Qld), an offence with a maximum sentence of \$225,000 or 2 years imprisonment for an individual.

To avoid jail Boyle "volunteered" to donate 480 hectares of other forested land owned by him to the Main Range National Park. Given the significant conservation values of this land the EPA accepted his offer and agreed to not press for imprisonment.

Boyle was first sentenced in December 2004. He was fined \$10,000 and ordered to pay compensation amounting to \$410,000 with specific provision to allow him to pay this by the transfer of 480 hectares of his land to the Queensland Government for inclusion in the National Park.

However, only days after the original sentence was imposed, the EPA learnt that logging was occurring on the land offered in compensation. EPA officers investigated and found around 250 logs had been removed, old timber tracks had been re-opened and damage had been caused to parts of the land in removing the timber.

The EPA then sought to re-open the sentencing and on 22 March 2004 Boyle was re-sentenced on the same terms as the original sentence but with the fine raised to \$50,000. The sentencing judge, Hoath DCJ, made it clear that imprisonment would have been imposed except for the fact that the grazier was in the unique position of having land of high conservation value to offer as compensation to the National Park.

If the value of the compensation of \$410,000 is included with the \$50,000 fine, then the totality of the sentence imposed in this case is a record for a tree clearing offence in Australia. As vegetation clearing

offences have been attracting steadily heavier penalties the sentence in Boyle's case may foreshadow future sentencing for such offences.

Congratulations to the Queensland EPA and the Hon. Minister Desley Boyle for taking vital and successful enforcement action in this case! Thankyou to barrister Chris McGrath for drafting this article.

LAW REFORM NEWS

Wild Rivers Bill submission

Since Premier Beattie's February 2004 election commitment to introduce special legislation to protect Queensland's Wild Rivers, EDO-Qld and EDO-NQ have been working with the Queensland Conservation Council and The Wilderness Society providing legal advice and assistance as part of the campaign to improve the government's Wild Rivers proposal. EDO-Qld had detailed input into a Negotiating Position formulated by the groups and given to government in November 2004, and recently has been privy to drafts of a consultation paper and draft Wild Rivers Bill. EDO-Qld made a major contribution to the submission on that Policy Paper and Draft Bill which was submitted on behalf of various environment groups on Friday 15 April 2005. Amongst the changes requested in that submission, EDO-Qld sought improved public enforcement rights, Parliamentary scrutiny of motions to revoke Wild River declarations, and the inclusion of a public nomination process for Wild Rivers.

For a copy of that submission or more information on the Wild Rivers campaign, see www.wildrivers.org.au.

SEQ Regional Plan submission and workshops

You might recall that EDO-Qld ran 8 workshops on the draft SEQ Regional Plan earlier this year jointly with local groups to encourage public debate and submissions. EDO-Qld also lodged a submission prepared by Principal Planner Brian Feeney of Community Planning Advocacy Centre with Jo Bragg of EDO-Qld.

Approximately 217 people in total attended the 8 workshops. Steve Austin kindly mentioned the workshops a number of times on his ABC radio show, interviewing Jo Bragg twice which helped to raise awareness of conservation issues and the draft SEQ regional plan generally.

A big thankyou to presenters, chairs and organisers Brian Feeney, Lindsay Holt, Queensland Conservation Council, Paul Summers, Simon Baltais, Brian Rignon, Stephanie Haslam, Sheila Davis, Alan Grant, Rita Mahon, Larissa Waters, David Keogh and Ted Fensom. Thanks also to the Gaming Machine Fund for a special purpose grant to help to run these workshops.

EDO Qld has written to various state Ministers conveying our views on the draft Plan (our main point: being that: nature conservation areas inside and outside the Urban Footprint need to be identified in a cadastrally based map and protected in the regulatory provisions) and are seeking meetings with those Ministers. The draft SEQ Plan is expected to be finalised in June 2005.

For more information contact Jo Bragg at EDO Qld or see our website for our legal briefing handed out at the workshops and our submission.

Koala Conservation Plan submission

As noted in our last Bulletin, in January 2005 the Qld EPA released the draft *Nature Conservation (Koala) Conservation Plan and Management Program 2005* ("draft Koala Plan"). The draft Koala Plan is a very welcome initiative and our experience is that there is very strong public support for koala protection. EDO-Qld recently made a submission on the draft Koala Plan, including the following main points:

1. EDO Qld recommend that the EPA be "concurrence agency" for Koala Area A2 ("Other major koala habitat") as well as A1 (major koala habitat) as a concurrence agency can approve, refuse or approve development with conditions. In other words, exercise real power in relation to the decision on the development.
2. The EPA needs to be granted sufficient resources to enable it to adequately carry out its role in the development assessment process.
3. We recommend that the proposed IDAS Koala code needs to be strictly protective of koala habitat, and EPA decision-making needs to be tightly bound to the code.
4. The broad exceptions to protection of koala habitat, for example the broad definition of "development commitment", need to be narrowed if koalas are to be effectively protected in the medium to long term.

For more information contact Jo Bragg at EDO Qld or see our submission on the EDO Qld website.

Submission made on review of the interim vegetation clearing codes

Readers will recall the detailed involvement EDO-Qld and EDO-NQ had in the land clearing campaign from February 2003 until the Bill phasing out broadscale land clearing in Queensland commenced in May 2004. Following that period, EDO with The Wilderness Society and the Queensland Conservation Council

remained involved with the drafting of interim vegetation clearing codes, and made some policy gains in the drafting of rules about vegetation thickening. Recently those interim codes came up for review, and EDO assisted QCC and TWS by coordinating a lengthy submission comprising suggested amendments to the codes. Our main asks included that fewer exemptions be given from the 'mandatory' performance requirements at the beginning of the codes, and the allowances given to extractive industries (for example to clear Endangered Regional Ecosystems) be removed and that industry be treated like other industries in being subject to tougher code rules.

For more information on the vegetation clearing code submission, contact Larissa Waters of EDO Qld on 3211 4466 or lwaters@edo.org.au.

NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES

Important legal changes to water and fisheries laws, and new Cairns IPA planning scheme

1. New Queensland water metering laws, and Commonwealth labelling rules

Recent amendments to the *Water Regulation 2002* commenced on 18 February 2005 and establish a framework to monitor water extraction through compulsory water metering in rural Queensland. Anyone who takes or interferes with water in the State must now to obtain an authorisation to do so and to install an approved water meter.

Still on the water theme, the Commonwealth *Water Efficiency Labelling and Standards Act 2005* commenced on 18 March 2005. The Act - the first of its kind in the world - requires a range of water-using appliances or products to carry a label advising consumers how much water the product uses and how efficiently it uses it, the aim being to reduce water bills and greenhouse gas emissions.

2. Fisheries Act rolled in to the *Integrated Planning Act 1997* (IPA)

A number of approvals previously dealt with under the *Fisheries Act 1995* (Qld) were rolled in to IPA on 1 March 2005 with the commencement of the *Primary Industries and Other Legislation Amendment Act 2003* (Qld). Constructing or raising waterway barrier works, performing work in a declared fish habitat area and removing, destroying or damaging a marine plant are now all operational works under IPA. These operational works along with aquaculture activities are now assessable and self-assessable development as set out in Schedule 8 of IPA. Public notification of applications for these types of development of at least 30 business days is required enabling interested persons to lodge submissions. Submitters have appeal rights regarding a decision made in relation to these applications, as well as limited appeal rights in relation to some types of code assessable developments.

To access copies of these new laws, visit www.legislation.qld.gov.au/Legislation.htm.

3. New Cairns IPA Planning Scheme commenced

The new Cairns Plan commenced on 1 March 2005 after being adopted by Cairns City Council on 27 January 2005. Cairns Plan replaces the Planning Scheme for the Balance of the City of Cairns, the Planning Scheme for Part of the City of Cairns and part of the Mareeba and Douglas Planning Schemes that apply to Cairns. Over 1400 submissions were received by Council during the consultation period on a wide range of issues. Some features of the new Cairns Plan include:

- ⇒ Hillslope development controls tightened, particularly in relation to minimizing clearing of vegetation and earthworks. All buildings on slopes greater than 15% must now be approved by Council.
- ⇒ Identification of heritage sites and establishment of character precincts where development will no longer be self-assessable.
- ⇒ Protection of significant waterways and vegetation through mapping and the ability of Council to require buffers between them and any development.
- ⇒ Creation of pedestrian/cycle paths between natural areas and open spaces to act as vegetated corridors.
- ⇒ All multi-unit dwellings now required to be of tropical design and character.

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

Opportunities for comment

The following discussion papers are currently open for public comment:

1. Review of the *River Improvement Trust Act 1940*

This Act sets up statutory bodies (17 at present) whose aims are to prevent and/or mitigate flooding by protecting, repairing and improving the beds and banks of rivers. The discussion paper identifies shortcomings with the current system and puts forward 6 alternate models. Public comments on the discussion paper are due by **30 April 2005**.

A copy of the paper can be downloaded from the Department of Natural Resources & Mines website at www.nrm.qld.gov.au/community/discussions.html.

2. Review of the Aboriginal Land Act 1991

This review looks at the effectiveness of the Act in transferring traditional lands, both in trust and freehold, to indigenous Queenslanders, particularly in the light of the uncertainty of title faced by many communities. It also proposes ways to increase the number of Aboriginal land holding bodies and looks at the impact of the Commonwealth *Native Title Act 1993* on the Act and its processes. Public comments on the discussion paper are due by **13 May 2005**.

A copy of the discussion paper is available by phoning the Department of Natural Resources & Mines on (07) 3238 3726 or from their website at www.nrm.qld.gov.au/nativetitle/land/ilar.html.

EDO NEWS

EDO Network Conference 2005 - Public Interest Environmental Law in Australia

On 13-14 May 2005, the Environmental Defender's Office (NSW) will be hosting a two day conference in Sydney to celebrate the 20th anniversary of the Environmental Defender's Office Network.

This conference provides an opportunity to reflect on the development of public interest environmental law in Australia over the last twenty years, to discuss current issues of importance and to explore future directions in environmental law and policy in Australia. As well as a host of distinguished speakers, Jo Bragg and Larissa Waters of EDO-Qld and Kirsty Ruddock of EDO-NQ will address the conference.

The conference will be held in the historic Customs House building at Circular Quay in inner-city Sydney. A reception will be held at the conference venue on the first night of the conference for participants and members of the public. For updates, registration forms and cost please visit www.edo.org.au/edonsw.

For further information contact Christine Palomo on (02) 9262 6989 or christine.palomo@edo.org.au. Thanks to Sydney City Council for providing the venue for this conference.

EDO staff changes – farewell Jo Cull, and welcome Hayley (NQ), Rachelle (NQ) and Bronwyn (Qld)

EDO Qld extends a warm welcome to our new administrator Bronwyn Bell, who is already demonstrating great initiative in the role. Since Eva Illuk resigned in December 2004, EDO Qld has been helped by temporary administrators Judy Window and Saren Starbridge, who did outstanding jobs in the short periods they had to familiarise themselves with EDO Qld's systems!

The EDO-NQ has restructured its operations slightly, and will now have 1 part-time solicitor and 1 part-time legal officer, with the office to be closed on Fridays. Welcome to Hayley Blackman who has joined EDO-NQ as the new Legal Officer. Hayley will be admitted as a solicitor later in the year, so will initially focus on law reform and community education. She comes with extensive experience with community organisations and community education and holds a social work degree as well as a law degree. Rachelle Philips has also joined the EDO-NQ as the new part-time administrator. Rachelle has extensive experience in accounts and office management and is also studying law part-time.

Jo Cull will be continuing as a casual employee to finish the Mackay case, and will then depart EDO-NQ after 5 years as the EDO-NQ Principal Solicitor. EDO-NQ and EDO-Qld say a huge thank you to Jo Cull for all her hard work over the years, which along with her dedication, has helped steer EDO-NQ through ups and downs and has produced great results. Jo will be sorely missed by EDO and by her clients, but we wish her well in her new role as refugee project worker at the South Brisbane Immigration Legal Centre.

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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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