



ENVIRONMENTAL DEFENDERS OFFICE  
(QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF  
NORTHERN QUEENSLAND INC.



## **BULLETIN – MARCH 2003**

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

As well as informing you on key Court cases, this month's issue alerts you to upcoming environmental legal workshops in Mackay and Airlie Beach and briefs you on important changes and proposed changes to Queensland laws and policies, (including to the Integrated Planning Act 1997 and to vegetation protection legislation). And read how two sand mining leases for Shelburne Bay will not be renewed!

### **Super-Cyclone Case Goes to Trial.**

EDO-NQ is representing Dr Jon Nott, senior lecturer from the School of Tropical Environment Studies & Geography at James Cook University in Cairns, who lodged an appeal against a giant coastal residential and tourist development planned by Daikyo (North Queensland) in Far North Queensland near Palm Cove. Dr Nott's case is that part of the development will lie below the 1 in 100 year marine inundation level based upon new research he has conducted into tropical cyclonic activity in northern Australia. The findings of Dr Nott's investigations were published to critical acclaim last year in the prestigious international journal Nature. Dr Nott is of the view that the frequency and intensity of major cyclones has been under-estimated by relying solely upon the historical record which is less than 100 years in North Queensland. Dr Nott has determined the intensity of prehistoric tropical cyclones over the past 5,000 years from coastal ridges of detrital coral and shell. *Nott v Daikyo (North Queensland) Pty Limited & Cairns City Council* will be heard in the Planning & Environment Court in Cairns from Wednesday 26 March 2003. For further information contact EDO-NQ.

### **Queensland Government Cancels Mining Leases over Shelburne Bay.**

On 25 March 2003 the government introduced to Parliament amendments to the Mineral Resources Act 1989, to enable the Minister for Natural Resources and Mines, Stephen Robertson, to refuse 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. Despite the leases being granted in 1975, no mining has ever occurred on the site, which is within 100 meters of the Category A environmentally sensitive area of the Great Barrier Reef Marine Park. These amendments ensure those leases will not be renewed. Although

issues surrounding the future of an existing cattle lease over Shelburne Bay remain to be resolved, this is the first step in securing the future of a priceless part of Australia's heritage and the Queensland Government must be congratulated for removing the threat of sandmining under those two leases from the sprawling white sand dunes of Shelburne Bay. For more information contact Lyndon Schneiders at The Wilderness Society on (07) 3846 1420.

### **Upcoming Workshops for Conservationists in Mackay and Airlie Beach.**

EDO Qld has recently run a successful workshop on Environmental laws at Nambour. That workshop was a joint presentation with the experienced Sunshine Coast Environment Council, and attracted many community activists keen to influence proposed planning schemes in the region. EDO-NQ will be presenting workshops for conservationists in the Mackay and Airlie Beach areas on 14 April (Airlie Beach) and 15 and 16 April (Mackay). The workshops will cover the EPBC Act, the Environmental Protection Act, the Integrated Planning Act, Coastal Management, Freedom of Information, Defamation and will focus on working with conservationists to develop practical skills that will assist them to use legislative mechanisms available to them to protect their local environment. The cost of the workshops will be \$5. For details and to register contact Jo Cull or Ingrid Yamaoka at EDO-NQ on (07) 40314766 or [edonq@edo.org.au](mailto:edonq@edo.org.au). Registration is due by Wednesday 9 April 2003.

### **New State Planning Policy on Extractive Resources.**

The Queensland Department of Natural Resources and Mines are proposing a new State planning policy ('SPP') under the Integrated Planning Act 1997 which supports an unanticipated expansion of extractive industries into bush land in South-East Queensland. Community groups in South-East Queensland have fought long and hard to protect bush land, particularly koala habitat, in the South-East area and are gravely concerned about this proposal and its conflicts with the existing SPP 1/97 Conservation of Koalas in the Koala Coast. The proposed new SPP is not yet released for public submissions. We recommend any person concerned about protecting bush land in South-East Queensland help nip this poorly thought out proposal in the bud. Write to The Hon. Stephen Robertson, Minister for Natural Resources and Mines opposing the release of any extractive industry policy that promotes expansion of extractive industries into significant South-East Queensland bush land and Koala coast koala core habitat. For more information contact Simon Baltais on mb: 0412 075 334 hm/fax: 07 3822 4943, email: [baltais@bigpond.com](mailto:baltais@bigpond.com). For information about SPPs see Factsheet 3 on the EDO Qld website at <http://www.edo.org.au/edoqld/>. For information about other State planning policies that have been adopted, see the website of the Department of Local Government and Planning at <http://www.ipa.qld.gov.au/codes/codespolicies.asp>.

### **Bosworth pays Dr. Booth's Court Costs.**

In March 2003, lychee farmer Mr. Rohan Bosworth complied with a Federal Court order and reimbursed Dr. Carol Booth for the costs and expenses she

incurred in the Booth v Bosworth case. In that case, which was decided by the Federal Court in 2001, Dr Booth successfully gained an injunction to stop Mr. Bosworth operating a 1.6 km electric grid to kill Spectacled Flying-foxes in breach of provisions of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 ('EPBC Act'). The take-home message for fruit growers is that non-compliance with the EPBC Act may prove very expensive. For more information contact Jo Bragg at EDO Qld.

### **Important Amendments to the Integrated Planning Act 1997 ("IPA").**

The Integrated Planning and Other Legislation Amendment Act 2001 ("IPOLAA 2001") will bring sweeping changes to IPA once it is fully commenced. Recently, several sections of IPOLAA 2001 were commenced, making important amendments including:

- re-defining the precautionary principle so that its meaning is consistent with the Commonwealth Environment Protection and Biodiversity Conservation Act 1999;
- expanding the Planning & Environment Court's ability to forgive non-compliance with IPA when hearing appeals (this might adversely affect submitters' chances of success in preliminary points such as challenges to developers' non-compliance with advertising requirements);
- giving a right to request a statement of reasons for a decision (or conduct) made under IPA, although there is still no right to then challenge the decision (or conduct) in court through judicial review;
- changing the requirement on local Councils to review their planning schemes from every 6 years to only every 8 years; and
- changing the previously two-step public consultation process for amending a planning scheme to a one-step process, by removing the requirement for a planning scheme amendment to be subjected to a statement of proposals. For more information contact EDO Qld.

For a copy of IPOLAA 2001 see <http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2001/01AC100.pdf>.

### **Bill to Alter Queensland Vegetation Laws Passed by Parliament.**

The Natural Resources and Other Legislation Amendment Bill 2003 ("the Bill"), introduced into Parliament on 25 February 2003, amends a number of pieces of legislation including the Vegetation Management Act 1999 (VM Act) and the Land Act 1994 (Land Act). After lengthy debate, the Bill was passed by the Queensland Parliament on 27 March 2003, and now awaits formal enactment by the Governor, after which time it will commence. Although the ecosystem types protected and therefore the total area of vegetation protected on State and Freehold land in Queensland has not changed, once enacted the amendments will significantly improve the capacity for enforcement of both Acts. The proposed amendments to the Land Act include a mechanism for

forfeiture of leases where a lessee has more than one conviction for tree clearing offences - regardless of whether the offences were committed on land the subject of the lease - and new provisions for enforcing compliance with the Act, including transfer of liability (except criminal liability) under compliance notices with the lease. There is also a presumption that the illegal clearing was done by the occupier of the land unless proved otherwise. This will make enforcement of the Act easier, as has been shown by a similar provision in the successful and comprehensive South Australian landclearing legislation. The proposed amendments to the VM Act include the creation of a power to refuse a development application where there has been a conviction for a vegetation clearing offence and new provisions for enforcing compliance with the Act, including registration of compliance notices to the title of the land and transfer of liability (except criminal liability). Amendments to both Acts create executive officer liability, remove the availability of the "honest and reasonable but mistaken belief" defence to illegal tree clearing offences, and introduce new mechanisms for calculating penalties for tree clearing offences, with the penalty to be determined on the basis of the area of vegetation cleared. For more information contact Jo Cull at EDO NQ.

## **Staff News**

We are very sorry to say goodbye to Terri Westacott, who has done a wonderful job as EDO Qld administrator for the last year. Terri is pursuing full time studies in professional photography. Solicitor Matt Patterson is leaving EDO of Northern Queensland in mid May for the fun of an extended cycling trip in Europe with his partner. Well you can hardly blame Matt (or Terri) for taking these exciting steps. However any solicitor with experience in litigation law who is interested in working at the EDO of Northern Queensland (located in Cairns) please email [edonq@edo.org.au](mailto:edonq@edo.org.au) for a copy of the Position Description and Selection Criteria. We are fortunate that Eva Illuk, an experienced legal administrator has now taken up the role as EDO Qld administrator. Welcome Eva!

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