



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF  
NORTHERN QUEENSLAND INC.



## BULLETIN May 2005

### What's in this Bulletin?

EDO-Qld and EDO-NQ continue to be kept busy with the pace of environmental law and our court cases! This Bulletin outlines our recent **law reform** activities, including introduction of the *Wild Rivers Bill* to Parliament and our submissions on the EPBC Regulation review and review of matters of national environmental significance. We then update you on our **court cases** - 2 EDO-Qld cases (including developments on the Nathan Dam case), and 1 EDO-NQ case about cassowary habitat protection. We also note recent **legal changes** to water, vegetation and local government laws, and a discussion paper on the Burnett Basin Water Resource Plan for **public comment**. Finally, we mention our **community education** activities and note a call for expressions of interest for EPBC Act workshops!

### LAW REFORM NEWS

#### Wild Rivers Bill introduced to Parliament

Readers will recall the work EDO-Qld (with help from EDO-NQ on northern issues) has been doing with the Wilderness Society (TWS) and the Queensland Conservation Council (QCC) on the Wild Rivers campaign over the past year, including a detailed submission to the government on draft legislation in April 2005. On 24 May 2005, the *Wild Rivers Bill 2005* was introduced into Parliament, with debate adjourned. Disappointingly, most of the suggestions made in our detailed submission have not been picked up – there is still no Parliamentary scrutiny of the Minister's decision to revoke a Wild River (meaning lower protection for Wild Rivers than for national parks), no public nomination process, and no improvements on public enforcement rights which are currently inconsistent in the Acts amended by the Bill. Moreover, the Bill contains changes from earlier drafts which further compromise the ability of the legislation to protect Wild Rivers:

- an exemption from compliance with the Bill is given to two major projects (the Aurukun and PNG pipeline projects; see Part 4 of the Bill),
- mining exploration permits in watercourses or lakes in wild rivers are permitted (proposed new section 391AA *Mineral Resources Act*), and
- dams and weirs are only prohibited in the high preservation area of wild rivers – and so are allowed in the preservation area, floodplain management area and broader wild river catchment (proposed new sections 966A and 966B *Water Act*). This is contrary to the election promise given by the Premier in February 2004 that “*we will not allow dams to be built on Queensland's wild rivers. Our wild rivers will run free.*”

EDO, TWS and QCC are concerned that the Bill will not adequately protect the floodplains of wild rivers, is not an adequately funded initiative, and that the government has not committed to a strict timeline by which all of the 19 rivers identified in the election policy will be protected within the next 18 months through this framework legislation (which does not as yet protect any rivers). EDO, TWS and QCC will continue advocate for changes to the Bill before it is debated and passed in the House.

For a copy of the Bill see <http://www.legislation.qld.gov.au/Bills/51PDF/2005/WildRiversB05.pdf>, and for more information about the wild rivers campaign see [www.wildrivers.org.au](http://www.wildrivers.org.au).

#### EPBC Reform – Submission on Draft Regulations + Review of Matters of NES

Recently EDO-NQ worked with the Australian Conservation Foundation to provide comments to the federal Department of Environment and Heritage on proposed amendments to the EPBC Regulations dealing with access to biological resources (the genetic resources of native species in Commonwealth areas). Although first proposed in 2001, the amendments have not yet gone before Parliament. EDO-NQ and ACF raised concerns that the amendments in their proposed form do not provide adequate protection for Traditional Owners (as only Native Title Holders and landowners are able to negotiate benefit sharing arrangements) and are not consistent with the Convention on Biological Diversity. The draft Regulations are expected to be finalised shortly.

Also on the EPBC, recently the Australian Network of Environmental Defender's Offices (ANEDO) prepared a detailed submission in response to the review of matters of national environmental significance (NES) protected by the EPBC Act. ANEDO's major recommendations were that existing triggers be strengthened to help ensure optimal environmental outcomes for current matters of NES, and that new triggers be established for greenhouse gas emissions, dioxins, water extraction, wild rivers and wilderness.

For more information on the EPBC Draft Regulations contact EDO-NQ on [edonq@edo.org.au](mailto:edonq@edo.org.au).

For a copy of ANEDO's submission on the review of matters of NES, see [www.edo.org.au/edonsw](http://www.edo.org.au/edonsw).

## COURT CASE NEWS

### Case update from EDO-Qld

#### 1. Bosworth v Booth – Full Federal Court dismisses appeal

As readers would recall from the last Bulletin, 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 application was dismissed by Justice Kiefel on 3 December 2004 as having no reasonable basis, and he appealed to the Full Federal Court against that dismissal.

On 16 May 2005 barrister Chris McGrath and solicitors EDO-Qld appeared on behalf of Dr Carol Booth before the Full Federal Court (Justices Hely, Dowsett and Spender). After a short hearing the Full Court dismissed the appeal with costs, ruling that the appeal was incompetent on the following bases:

- (a) *the decision by Kiefel J. to strike out the 2004 action by Bosworth as an abuse of process was an interlocutory proceeding (not legally final) according to the High Court in In the matter of an appeal by Gaye Alexandra Mary Luck [2003] HCA 70 (4 December 2003); and*
- (b) *The Federal Court of Australia Act 1976 s24 (1A) provides that there is no appeal from an interlocutory order unless the Court of a Judge gives leave to appeal. Such leave was not given.*

#### 2. Nathan dam case – decision on controlling provisions won!

Readers will recall EDO-Qld's win for QCC and WWF Australia in the Nathan Dam case and then appeal (*Minister for the Environment and Heritage v Queensland Conservation Council Inc. and WWF Australia* [2004] FCAFC 190 (30 July 2004)). That appeal confirmed the important principle that the federal Minister must take a broad approach when setting the terms of reference for environmental impact assessments under the EPBC Act, and must consider *indirect* impacts and effects which are the consequences of the proposed action, even if they are undertaken by a third party.

In the case of the Nathan Dam, this meant that the Minister was ordered to reconsider the "controlling provisions" for the environmental assessment of the Dam; specifically, to consider whether the proposed Dam was likely to have a significant impact on the GBRWHA and on migratory species when factoring in the impacts of farmers irrigating with the Dam water and the associated chemical run-off.

On 12 April 2005 the new federal Minister for Environment and Heritage Senator the Hon. Ian Campbell decided there was a likely significant impact on the GBRWHA and migratory species, and added these matters as controlling provisions. The proponent for the Dam, SUDAW, will now have to address likely impacts on the GBRWHA and migratory species as well as listed threatened species and communities, when preparing their environmental assessment report.

***The Minister's decision means that the Nathan Dam case has not only established an important principle for environmental impact assessment in Australia generally, but has also resulted in an important factual outcome for the assessment of the dam itself.***

The Minister must now reconsider what level of assessment will be required to be undertaken by SUDAW, and following review of that assessment report, the Minister will then decide whether to approve the Dam, approve it with conditions, or refuse it altogether. There have been just 2 refusals under the Act to date, but we hope that new Minister Campbell will use this opportunity to refuse approval for the Dam and protect our important matters of national environmental significance.

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

### Case update from EDO-NQ

#### Community for Coastal & Cassowary Conservation Inc. v Johnstone Shire Council & Oasis Mission Beach

The EDO-NQ recently represented the Community for Coastal and Cassowary Conservation Inc. (C4) in their appeal against the lack of conditions imposed by the Johnstone Shire Council on an approval for a

residential development at Mission Beach on a site which adjoined and included cassowary habitat. The adjoining cassowary habitat also contained endangered vegetation. A conservation covenant was negotiated over this area with a 60 metre habitat corridor through the subdivision to connect with other habitat areas. After a number of meetings with the developer, a settlement was reached and Consent Orders filed on 6 May 2005. The developer agreed to widen the cassowary corridor to an average of 80 metres (up from 60 metres), place restrictions on the size of dogs allowed to be kept within the subdivision and a condition that any domestic cats must remain indoors or within a cat enclosure at all times. The developer also agreed to include native species endemic to the area in planting around common areas of the subdivision and in the habitat corridor. Congratulations to EDO-NQ and C4 for gaining these important improvements to protect cassowary habitat!

Please contact Kirsty Ruddock at EDO-NQ on [kruddock@edo.org.au](mailto:kruddock@edo.org.au) for further details.

## **NEWS OF RECENT AND FORTHCOMING LEGAL CHANGES**

### **Important legal changes to water, vegetation and local government laws**

#### **1. Water and Other Legislation Amendment Act 2005**

Amendments to the *Water Act 2000* passed on 11 May and assented to on 19 May 2005 require all water service providers, including Councils and water authorities, to prepare mandatory drought management strategies to protect water supplies during drought, and mandatory system leakage management plans to minimise the loss of water through leakage in water distribution systems. The Amending Act has only partially commenced, with some provisions not yet proclaimed into force and the provisions dealing with drought and system leakage scheduled to commence on 1 October 2005.

The amendments also make provision for overland flow water entering or exiting a water system to be considered when developing a water resource plan, but landholders' rights to take overland flow for stock and domestic purposes without a water entitlement remain. Overall the amendments seek to improve water use efficiency and appear consistent with the Queensland Water Efficiency Taskforce and the National Water Initiative.

For a copy of the Amending Act see [www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC019.pdf](http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC019.pdf).

#### **2. Vegetation Management and Other Legislation Amendment Bill 2005 (VMOLA 2005)**

Proposed amendments to the *Vegetation Management Act 1999* (VMA) were introduced to Parliament on 24 May 2005, but have not yet been passed. The Bill proposes 4 minor changes to address implementation issues and to correct unintended consequences of VMOLAA 2004:

- (a) An addition to the 'specified activity' exemption, so that no clearing permit will be needed for clearing in a watercourse or lake where the activity has been approved under other legislation and entails associated clearing of less than 0.125 (or 1/8<sup>th</sup>) of a hectare of not-of-concern remnant or non-remnant vegetation.
- (b) To address an unintended consequence of the VMOLAA 2004 amendments, the Bill extends the right to clear for a single residence to self-assessable building work and public housing.
- (c) Clarification of the application of transitional provisions in the original VMA relating to areas designated as special facilities zones under local planning schemes. The Bill clarifies that those areas will only remain exempt if they remain zoned for special facilities or if after a planning scheme change the development rights are recognised or preserved.
- (d) Clarification that the DNR has the power to consider the existence of commercial timber when assessing clearing application on State land where the State owns the trees.

For a copy of the Bill see [www.legislation.qld.gov.au/Bills/51PDF/2005/VegManOLAB05.pdf](http://www.legislation.qld.gov.au/Bills/51PDF/2005/VegManOLAB05.pdf).

#### **3. Local Government Legislation Amendment Bill 2005**

Introduced to Parliament on 19 April 2005 but not yet passed was a Bill to amend the *Local Government Act 1993* requiring local governments to develop a code of conduct for Councillors and to establish a general complaints process. The amendments provide a framework for local governments to develop an enforceable code of conduct and set out penalties for non-compliance. Under the Bill, draft codes must be submitted for public comment and Councils will have until 1 March 2006 to adopt a code of conduct and complaints procedure. EDO-Qld and EDO-NQ clients regularly complain of biased behaviour by rogue Councillors. We welcome this legislation to impose binding Codes of Conduct and penalties for breach on those who decide important development issues.

For a copy of the Bill see [www.legislation.qld.gov.au/Bills/51PDF/2005/LocalGovtAB05.pdf](http://www.legislation.qld.gov.au/Bills/51PDF/2005/LocalGovtAB05.pdf).

### **Opportunities for comment**

## Proposed amendment to Burnett Basin Water Resource Plan to include groundwater

The Burnett Basin Water Resource Plan is to be amended to regulate the groundwater (sub-artesian water) resources of the Coastal Burnett Groundwater Area. An information report has been prepared about sub-artesian water resource issues in the Coastal Burnett Groundwater Area to assist with the preparation of the Draft Burnett Basin Water Resource Amendment Plan. Public input in the development of the draft is being sought and a Community Reference Panel will also be established through a public nomination process to provide advice on matters relating to the draft amendment plan. Public comments are due by **5pm 24 June 2005**.

*A copy of the Information Report is available from [www.nrm.qld.gov.au/wrp/burnett](http://www.nrm.qld.gov.au/wrp/burnett), and for more information contact Mark Pearson at the Department of Natural Resources on 1800 135 531.*

## **COMMUNITY EDUCATION**

EDO-NQ was involved in a presentation to a large number of Legal Studies and Geography students from local and regional high schools as part of Law Week celebrations. The focus of the presentation was public involvement and participation in the planning process. Students were given a brief overview of planning law generally and then specific examples of development around Cairns were selected for a more indepth and critical analysis of how the Cairns Plan operates, particularly whether or not the objectives of the plan are being achieved.

Recently Jo Bragg of EDO-Qld spoke to an audience of more than 200 attendees at the Local Government Infrastructure forum. Jo addressed state level infrastructure, discussed the application of the Nathan Dam decision to the adverse impacts of infrastructure, and criticised the failure of the SEQ Regional Plan to strongly protect nature conservation areas.

## **EVENTS OF INTEREST**

### **EPBC Unit Call for Expressions of Interest for Workshops 2005/2006**

The EPBC Unit project will continue its successful workshop series into the 05/06 financial year, and now invites expressions of interest from people/ groups/organisations who are interested in hosting an EPBC Act workshop in their area. This year the EPBC Unit can offer 3 types of workshops:

- Overview of the EPBC Act
- National Heritage System
- Second Stage EPBC Act Workshop

The workshops and associated publications are free of charge, but we prefer you to secure us a venue. Expressions of interest should include your name, contacts, the type of people/groups (e.g. conservationists, local councils, friends of...) likely to attend the workshop and the area in which you propose to have the workshop. Expressions of interest must be in writing and should be sent by Monday 13 June 2005 to: Lyndall Kennedy, EPBC Unit Coordinator, WWF Australia, 15/71 Constitution Ave, Campbell ACT, 2612; Email: [lkennedy@wwf.org.au](mailto:lkennedy@wwf.org.au); Fax: (02) 6257 4030.

*See [www.wwf.org.au/epbc](http://www.wwf.org.au/epbc) for more information about the EPBC Act or the Unit.*

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