



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF
NORTHERN QUEENSLAND INC.



BULLETIN – April-May 2004

What's in this Bulletin?

We report on the commencement of Queensland's landmark new vegetation clearing laws and EDO's ongoing input into the detail of the supporting Regional Codes, update you on the recently heard Nathan Dam Full Federal Court appeal, and celebrate a magnificent court win by EDO NSW over filming in protected areas of the Blue Mountains! We also briefly outline new *Nature Conservation Act* amendments, thank WPSQ Hervey Bay, Bundaberg and Bayside for organising recent successful EDO workshops in those centres, and note EDO's submission work on the proposed Wild Rivers legislation. Lastly, we flag a Federal Court decision on costs in public interest cases and sadly farewell EDO NQ solicitor Steve Hall.

New Vegetation Laws through Parliament and commenced!

On 22 April 2004 the historic *Vegetation Management and Other Legislation Amendment Bill 2004*, to phase out clearing of remnant rural vegetation by 2006, was passed by Queensland State Parliament. This Act, along with amendments to the *Vegetation Management Regulation*, commenced legal operation on 21 May 2004. Jo Bragg and Larissa Waters of EDO Qld with a team of other environmentalists have been working extremely hard analysing drafts of the Bill, proposing amendments to that draft Bill, scrutinising the tabled Bill and last minute amendments proposed by the government, and reviewing and commenting on draft Regulations and regional assessment Codes. We continue to be involved in finalising the detail of the Codes, particularly in relation to extractive industries. This reform presents a window of opportunity where a few words changed in one of these documents results in important environmental gains!

For more information contact Larissa Waters or Jo Bragg of EDO Qld. See also the EDO Alert! circulated in March 2004 summarising the Bill, which is now on our website www.edo.org.au/edoqld. Some regional codes are now on the Department's website at www.nrme.qld.gov.au/vegetation/regional_codes.html.

Nathan Dam Appeal – Waiting for Decision after the Full Federal Court Appeal

In our recent EDO Alert! circulated in May, we advised that the State of Queensland had applied to "intervene" in the Full Federal Court Appeal. On 19 May 2004 the Full Federal Court in Brisbane heard the appeal by the Commonwealth Minister for the Environment and Heritage against the decision of Justice Susan Kiefel in the Nathan Dam case. At the hearing, oral arguments by legal counsel were presented to three Federal Court Judges, including arguments by our persuasive barristers Chris McGrath and Stephen Keim. The State of Queensland was granted leave to intervene and also presented its arguments at that hearing.

This move by the State of Queensland underlines the precedent value of this case for interpretation of environmental impact assessment legislation at Commonwealth and State levels.

We now wait for a decision from the full bench, which could take several months. Naturally we hope for a decision which upholds the first instance decision of Justice Kiefel, which would give her landmark decision on the need to consider cumulative, indirect impacts in environmental impact assessment even more precedent value! We will keep readers informed on the outcome of this seminal case.

For more information, contact Jo Bragg or Larissa Waters at EDO Qld. See EDO Alert! issued in December 2003 on our website which also includes an article on the case by Chris McGrath.

Battle over filming in Blue Mountains Wilderness Areas

In a significant victory for wilderness areas, especially the Grose Wilderness area of the Blue Mountains National Park, Justice Lloyd of the NSW Land and Environment Court ruled in April 2004 that the proposed commercial filming of scenes for the war movie "Stealth" in the area was unlawful. Justice Lloyd found in the case of *Blue Mountains Conservation Society Inc v Director-General National Parks and Wildlife; the Minister for the Environment and AFG Talons Pty Ltd*, that the authorities and consents issued on behalf of the Director-General for National Parks and Wildlife allowing filming were invalid. Justice Lloyd accepted the Society's arguments that the proposed commercial filming in a wilderness area was completely antipathetic to the intended use of the land. His Honour concluded his judgement with the words, "wilderness is sacrosanct".

However the New South Wales Government has introduced a Bill to Parliament to allow filming in NSW National Parks. Thus the battle to protect the Grose Wilderness has returned to the political arena.

Congratulations to lawyers at EDO New South Wales, barrister Tim Robertson QC and their clients for achieving this important and urgent Court ruling.

For more information contact Ilona Millar, Principal Solicitor at EDO NSW or see the EDO NSW website at www.edo.org.au/edonsw.

Nature Conservation Act ("NCA") developments – new conservation levels, koalas and new pets!

On 20 April 2004, the new EPA Minister John Mickel introduced a Bill into Parliament to amend the NCA. That Bill would give effect to proposed new categories of conservation status for plants and animals, and would bring the NCA into line with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the IUCN (International Union for the Conservation of Nature) categories.

When passed, the *Nature Conservation Amendment Bill 2004* will make the following changes:

1. A new category of protected wildlife, to be known as "Near Threatened" wildlife will be established – this category will *replace the existing Rare category* over time;
2. The names of two NCA wildlife categories will be replaced with names that are consistent with the IUCN terminology, so "Common" will become "Least Concern", and "Presumed Extinct" will become "Extinct in the Wild"; and
3. The criteria for the categories will be revised so that they are consistent with the IUCN criteria – based on three factors: population size, area of distribution and rate of decline.

No species will change status directly through these amendments, but rather species will be reclassified or placed in the new Near Threatened category through statutory processes set out in the NCA.

Separate recent amendments to the *Nature Conservation (Wildlife) Regulation 1994* have recognised the threatened status of the koala in the South East Queensland region and have upgraded its conservation listing to "vulnerable". This regional listing upgrade means tougher criteria to be satisfied before a permit to take SEQ koalas can be issued; more onerous management obligations, eligibility to be the subject of a recovery plan (not just a conservation plan; currently in draft), and eligibility to be the subject of an "interim conservation order" if the Minister thinks the SEQ koala is subject to a "threatening process".

Also, recently passed amendments to the *Nature Conservation Regulation 1994* include new five-year licences for recreational wildlife keepers, new licensing rules allowing pet stores to sell some native reptiles under commercial wildlife licenses, removal of reporting requirements for non-commercial wildlife keepers and encouragements to new wildlife carers to join established groups for mentoring and training.

For more information contact Larissa Waters at EDO Qld or visit the EPA website at www.epa.qld.gov.au.

Wild Rivers Submission Lodged

Before the recent State election Premier Beattie announced new Wild Rivers legislation for Queensland!

See the EDO Qld website at www.edo.org.au/edoqld for a copy of the submission recently prepared by EDO Qld on behalf of the Wilderness Society and the Queensland Conservation Council and with input from EDO NQ, outlining important features we expect to see in the exciting new legislation once drafted.

For more information contact Jo Bragg at EDO Qld or Jo Cull at EDO NQ.

EDO Qld Workshops a Huge Success- thanks to WPSQ Bundaberg, Hervey Bay and Bayside

EDO Qld would like to thank the Wildlife Preservation Society of Bundaberg (especially Ann Jarman) and Hervey Bay (especially Carol Bussey) for their hard work in organising and advertising EDO Qld workshops in those centres on 3 and 4 April 2004. The workshops covered getting involved in town planning and development, defamation, water and vegetation laws, and the EPBC Act, and were well attended and enjoyed by participants and EDO presenters Jo Bragg and Larissa Waters alike. We also thank WPSQ Bayside for organising an information day in the Redland Shire on 16 May. On that day, Jo Bragg of EDO Qld presented legal information about making submissions on extractive industry applications to an audience of 80 people.

If you would like EDO Qld to run a workshop in you area, email edoqld@edo.org.au.

EDO-NQ/CAFNEC Mission Beach and Innisfail Workshops – a big thanks to Earthwatch Institute

EDO-NQ held very successful workshops in Mission Beach and Innisfail over the weekend of 22-23 May 2004, thanks to the support of Sue Jenkins from Earthwatch Institute and Nicky Hungerford from CAFNEC (and also an EDO-NQ management committee member). The joint EDO-NQ, Earthwatch Institute and CAFNEC workshops were organized by Earthwatch Institute and were very well received by participants, with a number of requests for further sessions. The EDO-NQ component of the workshops provided participants with a general overview of Queensland's environmental legal system and also focused on specific interest areas such as voluntary conservation arrangements for land holders and defamation law. Thanks to all those from Innisfail and C4 at Mission Beach who assisted with organising the workshops.

If you would like EDO-NQ to run a workshop in you area, email edonq@edo.org.au.

Federal Court rules on costs in public interest EPBC Act cases: Mees v Kemp (No.2)

Mixed news for public interest litigants comes via the costs decision on Paul Mees' litigation under the EPBC Act (about the Scoresby Freeway in Melbourne) given by Justice Weinberg of the Federal Court on 3 May 2004. His Honour ordered that despite Mr Mees' loss in the case, the public interest nature of the case meant Mr Mees should only pay *half* of the legal costs of the Minister. While these costs will be considerable, this decision is an acknowledgement of the special features of public interest litigation.

For more information, see our upcoming June 2004 newsletter posted to members, or read the decision Mees v Kemp (No. 2) [2004] FCA 549 at http://www.austlii.edu.au/au/cases/cth/federal_ct/2004/549.html.

Farewell to Stephen Hall, and EDO-NQ seeks solicitor

A sad farewell to Steve Hall, the second solicitor in EDO-NQ, who has decided to return to his native Tasmania. We will miss Steve and his expertise in environmental litigation, and wish him all the best in his new endeavours.

Steve's departure means EDO-NQ are seeking an experienced solicitor to join the Cairns office. As readers would know, EDO-NQ is a State and Federal Government funded community legal centre responsible for advice, casework, law reform submissions and community education concerning public interest environmental law in North Queensland.

For a position description phone Steve or Birgit on (07) 4031 4766 or email edonq@edo.org.au. Salary range is \$40,048 - \$46,449 (depending on experience). Applications close **5pm Friday 4 June 2004**.

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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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