



## ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Thursday 27 November 2003

### **EDO Alert! Third party enforcement rights in the Nature Conservation Act!**

Finally, last night the Queensland Parliament passed the *Environmental Legislation Amendment Bill 2003*, which amends the *Nature Conservation Act 1992* to give members of the public the legal right ('standing') to seek declarations and enforcement orders about offences in relation to threatened species or protected areas in Queensland!

These new rights will mean that a conservation group or an individual environmentalist will have legal standing to seek (for example) an "injunction" to stop unlawful damage to a protected area, and rehabilitation orders. As with town planning court cases, each side will pay their own costs, so while it will still cost money to get a case up, these amendments remove two significant barriers to environmentalist litigation for the *Nature Conservation Act* - legal standing and fear of paying the other sides' costs if unsuccessful.

The Bill also includes extended standing to seek Judicial Review of government decisions made under the *Nature Conservation Act*, so any environmental group established and active for over two years will meet the criteria to be able to seek Judicial Review in the Supreme Court.

**Congratulations** is due to the Queensland government for passing these important amendments, and to Dr Carol Booth, the Queensland Conservation Council and EDO's own Jo Bragg for the leg work in advocating these amendments and proposing drafts of the new sections!

### **Background on the importance of third party rights**

The experience in Australia and elsewhere is that third party or open standing provisions for enforcement are rarely used, but their existence and occasional use have valuable cautionary value in ensuring compliance with environmental laws. Queensland Dr. Carol Booth used those provisions in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) to gain an injunction in the Federal Court to halt illegal use of an electric grid by a farmer who had used it to kill 18,000 (now) listed threatened Spectacled Flying-foxes.

For a long time environmental and community groups have advocated that provisions granting third party or open legal standing to enforce environmental laws be included in Queensland and Commonwealth legislation. The traditional open standing provisions in the *Integrated Planning Act 1997* (Qld) rolled over from prior planning legislation were joined by similar provisions in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the *Water Act 2000* (Qld). It is an excellent sign of progress that a good package of third party enforcement rights (addressing open standing and costs and standing for judicial review) has been included in the *Nature Conservation Act 1992*. For equity and consistency with the *Integrated Planning Act 1997* (Qld) EDO Qld advocates that such a package of third party enforcement rights is appropriate for inclusion in all environmental laws.