



ENVIRONMENTAL DEFENDERS OFFICE
(QLD) INC.

ENVIRONMENTAL DEFENDER'S OFFICE OF
NORTHERN QUEENSLAND INC.



BULLETIN – OCTOBER 2003

What's in this Bulletin?

This month there is no update on our important Court cases, as we are still awaiting decisions from the Courts. However, we do outline crucial new changes to the town planning appeal laws relevant for public submitters opposing development, and note new laws about Aboriginal and Torres Strait Islander Cultural Heritage. We also describe tax benefits for entering into voluntary conservation agreements to protect privately owned bushland, and flag the implications for conservation groups of proposed changes to the federal charity laws. Finally, we'd like to thank all new and renewing EDO members for this financial year! To donate or automatically renew your membership each year (which gives us more time and funds to run important Court cases!), see the form on this site.

New tax benefits for voluntary environmental protection

A recent Queensland Cabinet decision on land tax and transfer duty should encourage new purchasers to protect the conservation values of their land. People who purchase land after 1 July 2003 and enter into a conservation agreement with the EPA to designate all or part of the newly acquired property as a nature refuge within 12 months of the purchase will be reimbursed the transfer duty paid on the purchase and any amount of land tax paid on the property. Land must be considered by the EPA to be of high conservation value, in order to be eligible to become a nature refuge.

There have also been changes to the income tax laws by the Commonwealth government to support voluntary conservation measures, which can apply to any privately owned land. Recent amendments to the *Income Tax Assessment Act 1997* which commenced on 21 October 2003 allow an owner to deduct from their income any reduction in the market value of their land resulting from entry into a conservation covenant with the State or local government on or after 1 July 2002. Previously, there was no income tax deduction for conservation covenants entered into with state or local government. A conservation covenant is similar to a conservation agreement, but the land does not have to be of high conservation value in order to be subject to a covenant; and the covenant *must* be registered on the land title, therefore binding all current and future owners of the land to the obligations of the covenant, such as maintaining native vegetation.

For more information about entering into conservation agreements and other

ways to protect privately owned bushland, contact Larissa Waters at EDO (Qld) on 32 10 0275 or lwaters@edo.org.au.

Important changes to planning appeal rules relevant for submitters

Ushering in yet more changes to the *Integrated Planning Act 1997* ('IPA'), the *Integrated Planning and Other Legislation Amendment Act 2003* ('IPOLAA 2003') was recently passed by State Parliament. Parts of the new Act have already commenced, while others are yet to begin operation.

Amongst a raft of changes made to IPA and various other Acts, IPOLAA 2003 makes important changes to the rules about instituting Planning and Environment Court appeals which are critical for submitters. We will send an EDO Alert! email when these changes come into effect. The changes are mostly detrimental, except for point (5):

(1) Submitters will be obliged to serve their Notices of Appeal on prospective other parties within 2 business days of filing the Notices of Appeal to ensure its validity, rather than the 10 business days they currently have to serve (new section 4.1.31(2)(b) IPA);

(2) Submitters will have to serve the Notice of Appeal on all referral agencies (being government departments listed on the Decision Notice from Council) for a development application, that is, advice agencies as well as concurrence agencies (new section 4.1.41(1)(b) IPA);

(3) Submitters will no longer be required to obtain the name and address of other principal submitters from Council, which means that submitters' informal networks will have to be good to be aware of other submitters that may wish to assist on an appeal;

(4) Advice agencies are now entitled to become parties to appeals as well as concurrence agencies (new s 4.1.43(8) IPA). This is potentially useful in that it gives advice agencies (such as the EPA, in certain circumstances), greater rights to push their position on the development, but could also have a negative effect where pro-development advice agencies wish to participate in an appeal; and

(5) Finally, any submitter can now join in on any other submitter's appeal (new section 4.1.43(4) IPA). This means that one appeal can be lodged against a development which includes as many submitters who wish to participate, rather than each submitter having to lodge separate appeals, then seeking directions for the appeals to be heard together. This positive change will save submitters money, is administratively and legally simpler, and facilitates formal support networks for submitter appeals.

Other changes made by IPOLAA 2003 are to the rules about community infrastructure, private building certification procedures, preliminary approvals, the definitions of the different types of development (operational work, building work), and other minor changes and corrections.

For more information about the changes made by IPOLAA 2003, contact Larissa Waters at EDO (Qld) on 32 10 0275 or lwaters@edo.org.au.

New Aboriginal and Torres Strait Islander Cultural Heritage Laws!

On 28 October 2003 the Queensland Parliament passed the *Aboriginal Cultural Heritage Bill 2003* and the *Torres Strait Islander Cultural Heritage Bill 2003* ("the Acts"). The Acts are expected to commence in 2004, and will repeal the *Cultural*

Record (Landscapes Queensland and Queensland Estate) Act 1987.

The Acts introduce a number of changes, including establishing blanket protection of cultural heritage irrespective of whether it has been identified or registered; a general duty of care to take all reasonable and practical steps to be aware of and to avoid harming Aboriginal or Torres Strait Islander cultural heritage; a significant increase in penalties; and integration with the native title process and creation of other mechanisms for identification of the appropriate representatives of cultural heritage in particular areas. Also of note is the fact that the Acts have been drawn into the Integrated Development Assessment System ("IDAS") under the *Integrated Planning Act 1997* ("IPA"). Where it is proposed to excavate, relocate or remove cultural heritage or activities are proposed that require an EIS or material change of use in a registered cultural heritage area, IPA assessment is triggered, and the Department of Natural Resources and Mines acts as a concurrence agency. As such, the Minister for that Department can require a cultural heritage management plan to be developed either as part of an information request in the IDAS process or as a condition of development approval.

The EDOs welcome this new stronger recognition and protection of Aboriginal and Torres Strait Islander cultural heritage and look forward to the commencement of the Acts.

The Acts can be downloaded via www.legislation.qld.gov.au. For further details contact Joanna Cull of EDO-NQ on (07) 40314766 or email jcull@edo.org.au.

Law reform by charities prohibited in draft Charities Bill 2003

On 22 July 2003, the Federal Treasurer released an exposure draft of the *Charities Bill 2003* for public comment. It is the opinion of the EDOs that this Bill potentially has major negative financial implications for conservation organisations and for the community sector, including community legal centres. Most notable in this regard is section 8(2)(a), which provides that if an entity has a purpose of attempting to change the law or government policy and this is more ancillary or incidental to the other purposes of the entity, it will be excluded from the definition of a charity. Exclusion from the definition of charity would result in a loss by the relevant organisation of associated taxation benefits, which are significant for many organisations. The EDOs are also concerned about the workability of the Bill, due in particular to the conflation of the concepts of an entity's purpose and its activities. On 28 September 2003, the EDO National Network forwarded a detailed submission outlining its concerns to the Taxation Board.

For more information contact Joanna Cull at EDO-NQ on (07) 40314766 or jcull@edo.org.au.

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