

President's Report

EDO Tas ends defamation proceedings

In November 2003, the EDO ended its defamation proceedings against Barry Chipman, Timber Communities Australia and Alderman Ian Routley. The case arose because Mr. Chipman attempted to have the EDO's Commonwealth and State funding terminated as a result of what he described as a "concentrated campaign of sabotage and lawlessness against the forestry industry" and that we were encouraging "illegal action and acts of civil disobedience in our forests". Mr. Routley made similar claims in relation to our website links to "radical forest activist groups". The claims were nonsense, which neither defendant made any attempt to verify.

In August 2003, the Supreme Court ordered that the EDO pay \$120,000 into court as security for the costs of the defendants (in the event that we lose the case), and further ordered that the case could not proceed further until this was done. Obviously, we did not have \$120,000 and it was impossible to raise that sum. Our only course was to end the case, which caused us to be liable for the costs of the defendants. Although the defendants said their costs were over \$65,000, they agreed to accept \$30,000 in settlement of the case. The EDO subsequently launched a public appeal which raised over \$32,000. This was enough to pay the monies then due to the defendants, but not before the defendants' lawyers threatened us with contempt of court!

The Committee decided to launch the action on the basis of legal advice. Despite having to abandon the case, it is fair to say that none of the Committee members has any regrets. Fortunately, the public appeal raised sufficient money to allow the EDO to continue operation.

It is also hoped that by reason of the defendants incurring costs of \$35,000 (for which they will be liable), they may more carefully consider the making of absurd, damaging and unfounded allegations. On the other hand, it may not make any difference to them. Timber Communities Australia and Mr. Chipman are part of a very well resourced organisation, backed by the timber industry. Mr. Routley was indemnified – at least in part – by Launceston City Council.

Finally, the Commonwealth suspended funding of the EDO while the issue was being resolved. However this funding was restored in November 2003 and we have recently signed a three-year funding agreement with the State government.

The EDO thanks our lawyers, Wallace Wilkinson & Webster, for running the defamation case and especially thanks Lindi Wall for her tireless efforts on our behalf.

ROLAND BROWNE, President

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Thank you

The staff & Management Committee would like to thank all those people who responded to the public appeal last November for their generosity and support, without which this office would not be operating as it is today.



EDO

Changes at EDO Tas

New Lawyer

The Management Committee and staff are pleased to welcome Jess Feehely to the role of Principal Lawyer in the Tasmanian office. Jess has worked for a number of years in the environmental & planning law section of a national law firm.

Jess is able to provide:

- **advice to individuals or groups** at the EDO office, by telephone or at outreach locations (by arrangement)
- **community legal education** for community groups on various issues.

The EDO actively participates in legislative review and policy changes and welcomes input from the community. Please feel free to contact this office from 9am—5pm weekdays

Telephone: **6223 2770**

Fax: **6223 2074**

Email: **edotas@edo.org.au**

Changes to our website

Our website is moving to **www.edo.org.au/edotas**. We hope the new website will be available by 14 June. We would like to take this opportunity to thank the State Library Tasmania Online program and in particular Liz Clark for all the assistance in hosting our current site.

EDO NSW helps stop filming in Blue Mountains Wilderness Area

In April 2004, the EDO NSW successfully represented the Blue Mountains Conservation Society Inc in its urgent attempts to prevent filming of a blockbuster war movie, *Stealth*, in the Grose Wilderness area of the Blue Mountains National Park.

In a landmark decision for wilderness protection, Justice Lloyd found that the authorities and consents issued for the commercial filming were invalid. His Honour accepted the Society's claim that the use of an area designated as wilderness for commercial filming activities was contrary to the purpose for which the land was reserved, the objectives of the *National Parks and Wildlife Act 1974*, the principles of management for national parks and the principles of management for wilderness areas. His Honour concluded "*the governing consideration in the present case is this: declared wilderness areas are sacrosanct.*"

***"Declared wilderness areas
are sacrosanct"***

Blue Mountains Conservation Society Inc v Director-General National Parks and Wildlife & Ors [2004] NSWLEC 196

EDO Qld continues to fight against Nathan Dam approval

The EDO (Qld) had a significant victory in December 2003 when the Federal Court overturned the federal approval for the proposed Nathan Dam. Justice Susan Keifel found that, when assessing the potential impacts of an action referred under the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister is required to consider the "whole, cumulated and continuing effect" of the activity. This includes the associated activities of third parties.

***The Minister must consider the
"whole, cumulated and continuing
effect" of activities referred under
the EPBC Act***

In the case of the Nathan Dam, the Minister was required to consider the impact of increased downstream agricultural development (including increased run-off of agricultural chemicals) on the Great Barrier Reef World Heritage Area.

The Minister appealed against this decision on the basis that the interpretation of the impacts of an action was too broad. The Full Federal Court heard the appeal in Brisbane on 19 May 2004 and a decision will be released later this year.

Queensland Conservation Council Inc v Minister for the Environment and Heritage [2003] FCA 1463.

Meander Dam Update

In early 2003, the Resource Management and Planning Appeal Tribunal overturned the Assessment Committee for Dam Construction's approval of a major dam project in the Meander Valley. Following this decision, the government passed the *Meander Dam Project Act 2003* to allow the project to proceed.

On 18 September 2003, the Minister for Environment and Heritage gave approval for the construction and operation of the Meander dam, subject to numerous conditions relating to the management of impacts on the *Epacris exserta* or Spotted-tailed Quoll. The Tasmanian Conservation Trust, assisted by the Humane Society International, has appealed against the approval.

The TCT's claims include:

- that reasonable consideration was not given to the impact on threatened species; and
- that there is no scientific justification for the proposed mitigation measures.

The Rivers and Water Supply Commission and the State of Tasmania applied to have the matter heard in Hobart, however the Court refused this application. The appeal will be heard in Sydney on 30 July 2004.

Velvet Worms — Three Years On ...

In 2001, EDO Tas successfully represented a number of citizens in an appeal against a proposed forestry operation in St Marys (*F Giles, J Weston & T Dudley v Break O'Day Council & T Denney* [2001] RMPAT 115). Applying the precautionary principle, the Resource Management and Planning Appeal Tribunal overturned the Council's decision to grant a permit for the logging on the basis that the activity was likely to harm the Giant Velvet Worm population on the site.

This excellent result has been consolidated by a recent Council approval on the site. The Break O'Day Council approved the application for a 5-lot subdivision for Environmental Management purposes, subject to conditions requiring:

- Stream side reserves to be widened to 30 metres on each side of the stream;
- An endorsement on the titles preventing any further subdivision and restricting development to one caretaker's residence and one shed on each lot; and
- Retention of vegetation under a private reserve covenant under the *Nature Conservation Act 2002*.

To achieve this level of protection on land that had been destined for logging is a fantastic result.

Water Management Act amended

The *Water Legislation Amendment Act 2004* was passed on 27 May 2004. The principal amendments relate to water management plans, taking groundwater and water trading under the *Water Management Act 1999*.

Water Management Plans

- Must now include "environmental objectives" and identify the "water regime" that best gives effect to these objectives.
- Will be reviewed by the Resource Planning and Development Commission.
- Will no longer be subject to five year reviews. The plans will be reviewed when necessary to ensure consistency with a State policy or for environmental or economic reasons. Individual plans may nominate regular review periods.

Declaration of Groundwater Areas

- The Minister may declare an area to be a "groundwater area" in which a licence will be required to take groundwater. Public consultation will be undertaken before a groundwater area is declared.

Water Trading

- New water licences will no longer be required for water transferred between connected watercourses

New Commonwealth Heritage Regime—EPBC Act amendments

A new regime for the protection of heritage under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* commenced on 1 January 2004. Key features of this new heritage regime are:

1. Two new lists of significant heritage places:
 - **National Heritage List** – places of national heritage significance
 - **Commonwealth Heritage List** – heritage places managed by the Commonwealth
2. New criteria for listing of heritage places
3. The Australian Heritage Council has replaced the Australian Heritage Commission as the independent advisory body on heritage issues
4. Actions which have or are likely to have a significant impact on the heritage values of a listed heritage place must be approved by the Minister
5. The definition of “environment” has been expanded to include the heritage values of places. Active heritage groups will now have standing to take action against developments which threaten heritage values
5. Australian government agencies must prepare and comply with management plans for heritage places under their control

Changes to the Register of the National Estate

The Register of the National Estate will continue under the new heritage regime as a record of natural, cultural and historical heritage places. Where these places are on Commonwealth land or affected by Commonwealth actions, the heritage values are protected under the EPBC Act. However, the EPBC Act does not restrict development on National Estate places on private land.

Heritage places that are currently listed on the Register of the National Estate will **not** automatically be transferred to the National or Commonwealth Heritage List. The Minister may transfer National Estate heritage places to the new lists until 1 July 2004.

The Register of the National Estate will continue as a record of natural, cultural and historical heritage places.

How to Nominate a Heritage Place

Anyone can nominate a place for inclusion on the Heritage Lists.

The Australia Heritage Council will assess whether the heritage values of the place satisfy the listing criteria and make a recommendation to the Minister. The Minister may publish a notice inviting public comments in relation to a proposed listing.

The Australian Heritage Council has received nominations for three Tasmanian heritage places: **Port Arthur Historic Site, Recherche Bay and Richmond Bridge**

Macquarie Island and the Tasmanian Wilderness area are currently recorded as “indicative places” (that is, likely to satisfy the heritage criteria) however formal nominations have not been received. To date, no Tasmanian heritage places have been nominated for the Commonwealth Heritage List.

To request a nomination kit, contact the Australian Heritage Council on (02) 6274 1111 or ahc@deh.gov.au

DID YOU KNOW?

In the Karri Forrest of south west Western Australia **1080** is a naturally occurring compound in **native pea** plants. More intriguing is how it got its name. American researchers in the 50s undertook extensive experiments into compounds contained in West Australian plants and experiment number 1..0..8..0.. revealed a highly toxic compound in the pea genus *Gastrolobium*.

In WA 1080 is used to control feral animals: as native flora and fauna evolved together, so native animals are relatively unaffected by its toxin. In Tasmania 1080 is used to control native animals eating introduced forestry plantation seedlings.

DPIWE releases Enforcement Policy

The Department of Primary Industries, Water and Environment (*DPIWE*) have published their enforcement policy for offences under the *Environmental Management and Pollution Control Act 1994 (EMPCA)*. The Enforcement Policy states that, in assessing whether it is in the public interest to take enforcement action, DPIWE will consider factors such as:

- The seriousness of the incident;
- The environmental track record of the offender;
- The need to deter further similar incidents;
- Mitigation actions taken by the offender; and
- Cooperation with DPIWE (including how quickly the incident was reported).

The Enforcement Policy does not apply to local governments, who also have enforcement powers under EMPCA. Copies of the policy are available at www.dpiwe.tas.gov.au

Interesting legislation being considered by Parliament

A number of interesting bills are currently before Parliament. These include:

- ***Ban on Canal Estate Development Bill 2004***
This Bill proposes a ban any development that incorporates works to construct canals and raise land above flood levels.
- ***Freedom of Information Amendment (Repeal of Special Forest Exemption) Bill 2004***
This Bill proposes to remove the current exemption for information relating to the performance of the functions and powers of Forestry Tasmania, Private Forests Tasmania and the Civil Construction Services Corporation.
- ***Genetically Modified Organisms Control Bill 2004***
The current moratorium on commercial release of genetically modified crops in Tasmania is achieved by declaring GMOs to be pests under the *Plant Quarantine Act 1997*. This Bill creates clearer controls by allowing the Minister to declare the whole or any part of Tasmania to be a GMO-free area. A person will not be permitted to deal with a GMO in a declared area without a permit and a GMO licence (issued under the *Gene Technology Act 2001*). In determining whether to issue a permit, the Minister must consider the likely impact on market access for non-GM crops and animals and the proposed management regime for the GMO.

Review of Litter Act 1973

DPIWE is undertaking a review of how litter is managed in Tasmania. A number of options have been proposed to deal with inadequacies in the current system of litter management, including:

- inclusion of littering provisions in the *Environmental Management and Pollution Control Act 1994*;
- introducing a range of penalties for littering, including abatement notices;
- distinguishing between dangerous litter (such as syringes) and non-dangerous litter;
- placing restrictions on the distribution of advertising material such as leaflets;
- improving reporting mechanisms.

Copies of the Issues and Options Paper for the review are available at www.dpiwe.tas.gov.au. You can make a written submission on any issue related to the regulation of litter until **2 August 2004**:

Litter Management Review
PO Box 44
Hobart TAS 7001

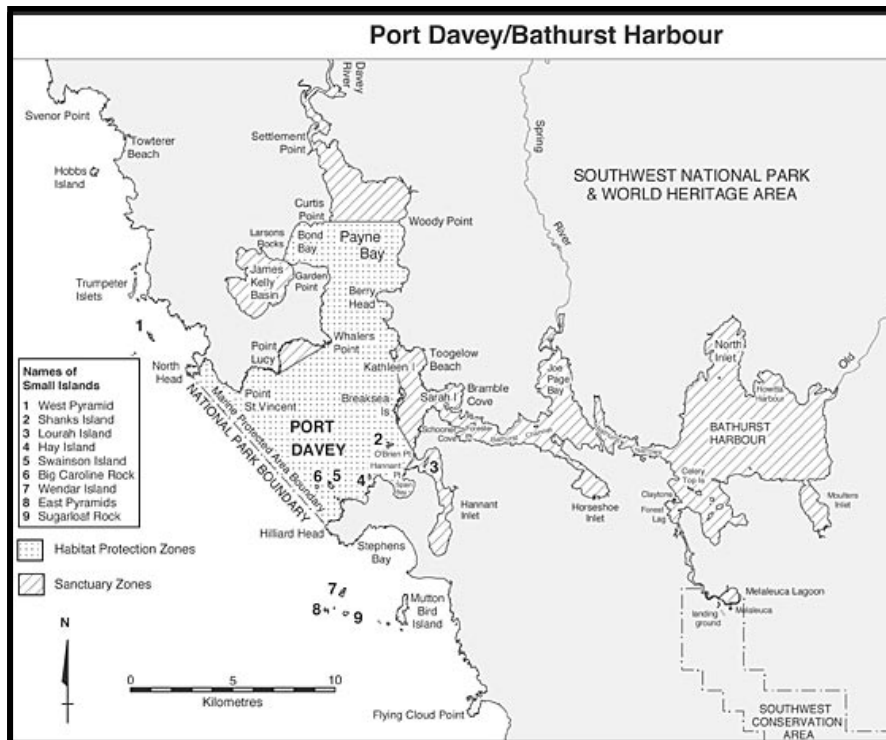
The Port Davey/Bathurst Harbour Marine Protected Area

Jenny Leaman BA LLB — EDO Volunteer

The Bathurst Harbour area is the largest undisturbed estuarine system in southern Australia. Unique features of the ecosystem are the highly stratified, darkly stained brackish surface waters, the extraordinarily low level of nutrients and the occurrence of relatively deep basins of saline water. In Bathurst Channel the abundance and variety of benthic animals increases westward. Slow growing sedentary colonial animals such as sponges, lace corals and sea squirts usually restricted to deeper water are able to grow in shallow waters. Many of these are filter feeders and large numbers of them grow attached to the Channel walls and floor. A new species of skate has been found in Bathurst Harbour and its closest relatives are found in New Zealand and South America. Port Davey can be divided into two distinct habitat zones. The tannin stained waters of the Davey River or Bathurst Channel influences the eastern Shore. The western shore has a wide range of habitats representative of the more exposed Davey bioregion and some sheltered habitats. The area from Whalers Point to Point St Vincent includes a higher diversity of seaweeds including giant kelp and bull kelp. James Kelly Basin and Hannant Inlet also contain unique habitats and are thought to provide nursery areas for juvenile fishes.

It is therefore hardly surprising that there have been recent moves to provide the marine environment with the same high level of protection and status that has been afforded to the terrestrial environment of the Tasmanian Wilderness World Heritage area.

The declared Port Davey / Bathurst Harbour MPA will be managed to ensure the conservation of marine biodiversity and other values



Consequently, the RPDC conducted an inquiry which followed the Tasmanian MPA Strategy which was developed by the Marine and Marine Industries Council, that represents a range of stakeholders who have expertise in marine conservation, management and utilisation. The delegated panel of the RPDC went through an extensive process of public consultation on the terms of reference, a background report, public hearings and draft recommendations report over a 2 year period. The aim of their work was to ensure a balance was found that achieved the dual objectives of conservation and sustainable resource use. A final recommendations report was tabled in Parliament on 19 August 2003, and in February 2004 Minister for the Environment, Judy Jackson, declared the Port Davey/Bathurst Harbour MPA. Subsequently this area will be managed to ensure the conservation of marine biodiversity and other values.

About half of each new marine reserve will be sanctuary zones (also known as no take zones) where no fishing or other extractive uses will be permitted, in order to ensure that they remain as benchmarks for the future. The other half are designated habitat protection zones where lower impact fishing such as abalone diving, rock lobster potting and hand lining will be permitted, but trawling, netting, long lining and fish trapping will not. In all zones, normal minimal impact recreational activities will continue, such as swimming, diving, underwater photography, boating and anchoring.

Canal Estate Proposed for Ralph's Bay

Report prepared by the Save Ralph's Bay Action Group

In April 2004, Sydney based development company, Walker Corporation, officially began the 3-month community consultation period associated with its proposed 800-lot, 200-berth marina canal estate at Ralph's Bay in south-east Tasmania. The nature and spatial scale of the proposed development raise serious concerns regarding ecological, social and infrastructure impacts. In terms of both governmental attitudes toward development of Tasmania's natural areas and the ability of Tasmania's planning framework to adequately address coastal development, the proposal sets a timely and worrying precedent.

Ralph's Bay is a conservation area under the *Nature Conservation Act 2000*, and is listed on the Register of the National Estate, with the entire area providing critical flora and fauna habitat, including for threatened migratory bird species listed under the *EPBC Act*. The area is a key 'birder' site for a range of birdlife, including international migratory species. For the local community, it forms an integral and valued component of the immediate environs.

The issues raised by this proposal are numerous and wide ranging, including the equity and effectiveness of Tasmania's planning process, protection of conservation areas and our coastline and the specific impacts of the proposal itself.

The proposal is clearly contrary to the:

- **Sustainable development objectives** of the RMPS
- Requirement to **protect and conserve coastal areas** under the State Coastal Policy 1996
- **Objectives for integrated transport and land use planning** under the recently signed *National Charter of Integrated Land Use and Transport*
- Objectives to **retain areas of significance** under the Register of the National Estate
- Objectives for **sustainable coastal management, including retention of areas of high conservation significance**, under the Derwent Estuary Management Plan
- **Retention of habitat necessary to sustain threatened species** under both the *Threatened Species Protection Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999*.

Impacts of the proposed development include:

- **reclamation of public beach and foreshore and restricted public access**
- **revocation of a conservation area for private gain**
- **destruction of at least two-thirds of a wetland**
- **increased traffic volumes, movements, infrastructure impacts and subsequent requirements for road network upgrades;**
- **conversion of key habitat, including for threatened species**
- **disturbance and transportation of heavy metals**

What is being offered by Walker Corporation cannot compensate for what will be lost. In return for the irreversible destruction of a complex ecological system, valued community recreational area and important vista, Walker Corporation is proposing 800 houses for a wealthy few; a small, ecologically-meaningless 'conservation island'; and an ongoing and unquantifiable financial cost for the community and government, who will be left to pay the real costs of this development.

This proposal should not proceed to the planning stage. As much as it is about finding workable solutions to issues, the land use planning process is also about saying no in circumstances where the inherent unsustainability of a development is clear. The Tasmanian Government should not be considering these types of developments on Tasmania's coastlines or in its conservation areas.



Save Ralph's Bay Action Group is a community organisation formed to oppose this development. We welcome all input, suggestions and assistance! For further information, please visit our website at www.saveralphsbay.org

**** THE INFORMAL CONSULTATION PERIOD ENDS ON 22 JUNE 2004 ****

State of the Environment Report 2003

The State of the Environment Report 2003 was released on 10 March 2004. This Report, which contains information on a range of environmental indicators, provides a means to assess progress towards the sustainable development objectives under Tasmania's Resource Management and Planning System.

The Report makes a wide range of recommendations, including:

- encouraging Hydro Tasmania to pursue emerging opportunities in hydrogen-powered vehicles and fuel cell technology as part of an integrated renewable and efficient energy strategy for Tasmania;
- finalising and implementation of the Tasmanian Salinity Strategy;
- systematic mapping of acid sulphate soils in risk areas
- preparation of a *State Policy on the Protection of Scenic Landscapes*
- developing practical methodologies for assessing the potential socio-economic impacts of proposed environmental flow regimes and Water Management Plans;
- consistent State-wide implementation of water metering;
- preparation of a Planning Directive to ensure that wetlands are identified in, and protected through, planning schemes;
- consolidation of all registers and lists of State and Local Government cultural heritage
- updating the legislative regime protecting Aboriginal heritage
- undertaking a comprehensive 10 year review of the operation of the Resource Management and Planning System; and
- investigating opportunities for the implementation of user-pay systems for environmental and natural resource management.

Copies of the State of the Environment Report 2003 are available at www.rpdc.tas.gov.au/soer/

Protecting Our Liquid Assets: EDO Conference, 27 August 2004

The management of Tasmania's water resources is a hot topic, covering issues such as environmental flows, the supply of water for irrigation, the impacts of plantations and forestry activities on catchments and salinity. These issues are set against a backdrop of national water reform initiatives and the ongoing development of water policy in Tasmania.

To address the need for reform in the law relating to water management in Tasmania, the EDO and the Tasmanian Conservation Trust are hosting ***Protecting Our Liquid Assets : Water Management Law Reform***. The conference will present legal, scientific, economic and conservation perspectives of water and catchment management.

The conference will be held on **27 August 2004** at the Henry Jones Art Hotel, Hobart. A copy of the program will be available on our website shortly (www.edo.org.au/edotas). For more information, contact Jane Brown on (03) 6223 2770.

Environmental Defenders Office (Tas) Inc

The EDO is a non-profit community legal centre advising on environmental and planning law. Our aim is to increase public awareness of environmental laws and remedies and to assist the public to use the resource management and planning system more effectively. **Our practical guide to environmental and planning law in Tasmania, *The Environmental Law Handbook (2nd Edition)*, edited by Chris Harries, is available from the EDO office for \$27.50 / \$16.50 (postage extra).**

The EDO staff would like to say a big thank you to all those who contributed to this edition of the EDO Bulletin, particularly our trusty volunteers — Melanie Brough, Richard Griggs, Lili Kalitz, Jenny Leaman, Elizabeth Legge and Steph Middleton. This Bulletin is produced with funding from the Commonwealth Community Environmental Legal Program and the State Government.

The EDO Bulletin is an information source without assuming a duty of care. It contains general information only and should not be relied on as a substitute for professional advice. The EDO Tas takes no responsibility for the views of the contributors expressed in this EDO Bulletin.