

# case notes

## **EPA (Qld) v Aargus Pty Ltd – environmental consultant fined**

For the first time, the Queensland Environmental Protection Agency (EPA) has successfully prosecuted an environmental consultancy as a result of an incomplete contaminated land report under section 480(1) of the *Environmental Protection Act 1994* (Qld).

In the case of *Environmental Protection Agency v Aargus Pty Ltd* (Unreported, Magistrates' Court of Brisbane, Daley, M 30 July 2003), the consultancy, Aargus Pty Ltd, was convicted and fined \$10,000 and ordered to pay a further \$990.35 in costs. Aargus Pty Ltd lodged a contaminated land assessment report with the EPA stating that a site was suitable for unrestricted future use. The veracity of the report was checked by EPA officers, who discovered on inspection that the surface of the land was contaminated with abrasive blasting waste which contained lead and arsenic.

Aargus had engaged a contractor to prepare its report and the directors were not personally aware of the actual contamination of the land. However, the EPA considered this to be a very serious breach of the Environmental Protection Act, given the importance of such reports in the decision making process.

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## **Minister for the Environment & Heritage v Greentree [2003] FCA 857**

The respondents in this case for a Federal Court interim injunction are the 3 proprietors of a property known as 'Windella', including Ronald Greentree, members of a partnership that apparently manages the property and the on-site manager of the property.

On 8 August 2003 Justice Sackville dismissed the respondent's application to dissolve the interim injunction granted on 31 July 2003. His Honour went on to restrain the respondents from any activities disturbing or otherwise affecting that portion of the Gwydir Wetlands on Windella, the flow regime of waters into and out of the Windella component of the Gwydir Wetlands.

The Gwydir Wetlands, located approximately 60 kilometres west of Moree in north-west NSW, is a declared Ramsar Wetland. As such, Gwydir is protected under s16 and 17A of the Environment Protection & Biodiversity Conservation Act (**the Act**), which prohibits action that has, will or is likely to have a significant impact on the ecological character of the wetlands.

Part of the Gwydir Wetlands falls on privately owned land, including 100 hectares on the respondent's 'Windella' property. At some time between October 2002 and the latest inspection, the respondents ploughed in and leveled 99 per cent of the Gwydir Wetlands on their land. Only the creek bed and a portion of the banks remain intact. However, even with this level of destruction there was evidence before the court that "with proper management it may be possible to remediate the site over a period of time".

Sackville J rejected an argument from counsel for the respondents, Mr Littlemore, that the injunction should be dissolved due to the fact that the damage had already been done and the cultivation of wheat would not itself have a significant impact on the wetlands. Indeed, the fact that the evidence suggested that there had been a deliberate contravention of the Act weighed against the respondents in His Honour's consideration of the balance of convenience.

In assessing whether to sustain or dissolve the injunction Sackville J is required to look whether there is a serious case to be tried (the respondents conceded this issue) and the balance of convenience. In looking at the balance of convenience in this case Sackville J took into account:

1. that the area has been deliberately ploughed under without reference to the authorities responsible for the Gwydir Wetlands and that such actions give rise to the distinct possibility that the respondents have contravened the Act.

2. the evidence supports that there is at least a possibility, and probably a reasonable possibility, of a substantial degree of remediation on the site.

3. the adverse economic impact upon the respondents in that the continuation of the injunction would prevent the respondents from making economic use, for their own purposes, of this area of wetlands.

After consideration of the balance of convenience Sackville J found that the balance of convenience lies "clearly in favour of continuing the injunction". His Honor said:

" It is, in my opinion, of some importance that there may be an opportunity to rehabilitate the wetlands that have been declared under the Act to be of international importance. Steps should not be permitted that would or could significantly prejudice that outcome. The evidence indicates to me that if the further action took place by way of cultivation of this land for the purposes of growing wheat, then the prospects of remediation of the land would be significantly impaired."

The Minister for the Environment and Heritage has since filed civil proceedings against the respondents.

**What this means for conservation:**

This case sets two precedents – firstly, a party can not cause damage in breach of the Act and then rely on the fact that the damage has already been done to avoid an injunction preventing them from using the damaged land and benefiting from the breach. Secondly, the real possibility of a deliberate breach of the Act will be weighed against the breaching party when weighing the balance of convenience.

*Lyndall Kennedy, EPBC Unit Coordinator.*