

## FEDERAL COURT

### ***Wide Bay Conservation Council Inc v Burnett Water Pty Ltd (No 2) [2009] FCA 237 (18 March 2009)***

- Statement of claim struck out in lungfish case

This interlocutory decision follows an earlier decision of *Wide Bay Conservation Council Inc v Burnett Water Pty Ltd* [2008] FCA 1900. In the first case Logan J rejected an application by Burnett Water for a stay of proceedings brought by Wide Bay Conservation Council seeking an injunction under s 475 of the *EPBC Act* to compel Burnett Water to provide for upstream movement of Australian Lungfish (see NELR 0803 Casenotes). The case arises from a dam project on the Burnett River in South East Queensland known as the Paradise Dam, the construction and operation of which, was approved subject to conditions, by the Minister under the *EPBC Act*. The case provides some useful guidance on the pleadings required in seeking injunctive relief under the *EPBC Act*, particularly with regard to particulars of alleged offences under the Act.

In these proceedings Burnett sought further and better particulars or the striking out of the statement of claim. The decision of Logan J was that the statement of claim should be struck out with leave to file an amended statement of claim, rather than to make an order for the furnishing of further and better particulars. The Conservation Council's application for further discovery was also dismissed.

### ***Lamason v Australian Fisheries Management Authority [2009] FCA 245 (20 March 2009)***

- Unsuccessful challenge to fishing permit allocations

This proceeding concerns an attempt to set aside a particular aspect of a new fisheries management regime for the Eastern Tuna and Billfish Fishery (the ETBF or the Fishery), namely Item 5 in the table in s 32 of the Management Plan for the ETBF. The applicants held a number of fishing permits entitling them to fish in a number of zones of the Fishery, including Area E, a coastal zone of the Fishery around Cairns and Townsville, from approximately Shelbourne Bay to Proserpine. The applicant contends that the "Relative Price Factor" derived for a fishing permit package in item 5 was derived by a method that was irrational, unreasonable and capricious, and was against the weight of evidence and submissions to the Authority, with the consequence that item 5 should be declared invalid.

In the Federal Court decision, Spender J provides a detailed description of the fishery, the role of the Respondent (AFMA) under the *Fisheries Administration Act 1991* (Cth), and the process by which fishing permit packages for the ETBF were determined. He concluded at paras 186 to 189 that:

- the applicants did not challenge the statutory power which underpins the Management Plan, the only challenge is to the correctness of a single item, item 5, which relates to the relative permit value of a particular fishing permit package;
- the evidence merely underlines that the determination of the Management Plan, including, in particular, item 5 of s 32, was made after a prolonged public debate, was legislative in character, turned on matters of fact and judgment, which involved expert knowledge and opinion;
- the Allocation Advisory Panel which made the determination did not carry out its task irrationally or unreasonably, nor did the Authority. The Panel confronted the contentions of the applicants, and for considered reasons rejected them. Whether the Panel was right or wrong in that regard is immaterial to the question of the validity of the Management Plan.

Accordingly the application for a declaration that item 5 of s 32 of the Management Plan is invalid was refused.