R v Boyle, unreported District Court of Queensland, 22 March 2005 Land-Swap Avoids Jail For Clearing National Park And World Heritage Area

By Chris McGrath

On 22 March 2005 grazier Vincent Thomas Boyle was re-sentenced for clearing 13 hectares of a National Park and avoided jail by offering as compensation 480 hectares of (largely) uncleared land for inclusion in the same National Park.[1] While the offer of a land-swap as compensation for illegal clearing is novel, the real significance of the case is that it illustrates how Queensland courts increasingly consider heavy penalties appropriate for serious environmental offences.

The facts that led to the re-sentencing were as unusual as the sentence itself. In 2001 the grazier cleared a large swath through the Main Range National Park in southeast Queensland. The National Park forms part of the Central Eastern Rainforest Reserves Australia (**CERRA**) World Heritage Area. The cleared area separated two of the grazier's properties and the clearing allowed his cattle to move between the properties and increased the size of his pasture. The clearing was in a remote area but came to the Queensland Environmental Protection Agency's (**EPA**) attention as a result of complaints by bush walkers. The grazier was prosecuted for taking a natural resource in a protected area in contravention of s 62 of the *Nature Conservation Act 1992* (Qld), an offence with a maximum sentence of $225,000 or 2 years imprisonment for an individual.

A relevant precedent in Queensland for imposing a sentence of imprisonment for a vegetation clearing offence within a protected area is *R v Dempsey* [2002] QCA 45. In that case a sentence of 12 months imprisonment was imposed on a commercial timber-cutter who cut down and removed 25 trees, most of which were over 100 years old, from the Wet Tropics World Heritage Area contrary to s 56(1) of the *Wet Tropics World Heritage Protection and Management Act 1993* (Qld). Davies JA (with whom McPherson and Williams JJA agreed) stated:

> *"It is unusual to be confronted with a case of intentionally done environmental damage for commercial gain. ... This is an offence in which, in particular, the imposition of a custodial sentence may be an effective deterrent and, in my opinion, that is an important factor here. This was a serious, blatant and cynical act of environmental destruction for commercial gain. Even when one has regard to the plea of guilty I do not think that the sentence imposed for it was manifestly excessive."*

Similarly, McPherson JA stated in *R v Dempsey*:

> *"I agree [with the judgment of Davies JA]. I also agree specifically with Mr Justice Davies' remarks about the custodial period and its effect in cases of this kind. An actual period of prison custody is likely to have a real deterrent effect on others minded to commit like offences over and beyond that in other cases. If offenders consider that they might succeed in escaping with nothing more than a financial penalty, it may be that they would take the risk of doing so for the profit that appears to be recoverable from acts like this."*

These comments provided the backdrop for imprisonment being a real possibility in Boyle's case despite his plea of guilty, that he was 76 years of age, and had no criminal history. Rehabilitation of the cleared land was practically impossible and estimated to cost $410,000.

To avoid jail Boyle "volunteered" to donate 480 hectares of other forested land owned by him to the Main Range National Park. Given the significant conservation values of this land the EPA accepted his offer and agreed to not press for imprisonment. The agreement did not exchange the 13 hectares of cleared land, which remained in the National Park and CERRA World Heritage Area.

The sentencing judge, Hoath DCJ, made it clear that based on *R v Dempsey* imprisonment would have been imposed except for the fact that the grazier was in the unique position of having land of high conservation value to offer as compensation to the National Park.

Boyle was first sentenced in December 2004. He was fined $10,000 and ordered to pay compensation amounting to $410,000 with specific provision to allow him to pay this by a transfer of 480 hectares of his land to the Queensland Government for inclusion in the National Park.

1 R v Boyle, unreported District Court of Queensland, Brisbane, Hoath DCJ, 22 March 2005

Only days after the original sentence was imposed the EPA learnt that commercial timber cutters were logging the land offered in compensation. EPA officers investigated and found around 250 logs had been removed, old timber tracks had been re-opened and damage had been caused to parts of the land in removing the timber. The transfer of the land was proposed to occur in March 2005 so at the time of the logging it was owned by Boyle and no approval was required for the forestry operations. No offence had therefore technically been committed by the logging but it was clearly contrary to the spirit of the agreed land-swap. To halt the logging the Minister for the Environment took the rare step of issuing an order under the *Nature Conservation Act 1992* (Qld).

The EPA then sought to re-open the sentencing of Boyle on the basis of that the sentence had been decided on a clear factual error of substance (namely that the land offered in compensation was substantially pristine). Hoath DCJ accepted this and re-sentenced Boyle to pay a $50,000 fine, plus compensation of $410,000 with provision allowing this to be paid by transfer of the 480 hectares to the Queensland Government. A conviction was recorded. When estimated legal fees of $50,000 are added, the offence will have cost in the order of half-a-million dollars. This is a significant deterrent.

If the value of the compensation of $410,000 is included with the $50,000 fine, then the totality of the sentence imposed in this case is a record for a tree clearing offence in Australia. It surpasses the pecuniary penalty of $450,000 that was recently imposed on a NSW wheat farmer and his company in *Minister for the Environment & Heritage v Greentree (No 3)* [2004] FCA 1317 (14 October 2004). That case involved deliberate clearing and ploughing of 100 hectares of a Ramsar wetland in northern NSW in preparation for the planting of a wheat crop in contravention of s 16 of the *Environment Protection and Biodiversity Conservation Act* 1999 (Cth). The level of penalties imposed by Australian courts then drops away dramatically. The next closest fine was in *Dridan v Brinkworth* [2003] SADC 179, where a fine of $230,000 was imposed for clearing 266.25 hectares of native vegetation in contravention of s 26 of the *Native Vegetation Act* 1991 (SA).

Generally penalties for tree clearing offences under other Queensland laws, such as the *Integrated Planning Act* 1997 (Qld), have been lower than in Boyle's case. Sullivan recently noted that during 2004 two penalties of $100,000 or higher were imposed and that penalties in the range of $7,500–$15,000 have become relatively common for vegetation clearing offences in Queensland.[2] As vegetation clearing offences have been attracting steadily heavier penalties[3] the sentence in Boyle's case may be a harbinger of future sentencing for such offences.

***Gunns Limited v Marr & Ors* [2005] VSC 251 (18 July 2005)**
Statement of Claim Struck Out - Ruled Unfair to Defendants
By Wayne Gumley

On 13 December 2004, Gunns Ltd filed a Writ to commence against seventeen individuals and three corporate entities, the Wilderness Society, the Huon Valley Environment Centre and Doctors for Native Forests. The writ was accompanied by a 216 page statement of claim comprising 529 paragraphs. It claimed damages, including aggravated and exemplary damages, injunctions and costs for disruption of the plaintiffs' businesses allegedly caused by various tortious actions of the defendants. After a number of directions hearings, the Court fixed 4 July 2005 for a strike-out application to be heard up nth emotion of most of the defendants. On 1 July the plaintiffs sought leave to deliver an amended Statement of Claim which inserted many new paragraphs and extended the length of the document to 360 pages. It was accepted by the parties to the strike-out application that this amended pleading would be the document to which argument would be directed.

After hearing submissions over four days, Justice Bongiorno struck out the amended Statement of Claim. He described the structure of the writ as 'unintelligible' and in many parts, as 'at best ambiguous and at worst misleading'. He went on to comment that 'vague allegations on very significant matters may conceal claims which are merely speculative' ". The case is likely to continue as Gunns was granted leave to file and serve an improved Statement of Claim by 15 August 2005.

2 Sullivan G, "Enforcing Queensland's Vegetation Clearing Laws: Legislation, Policy and Procedure" (Queensland Environmental Law Association seminar paper, Brisbane, 14 March 2004).

3 Ibid.