



Resourcing Queensland's future

30 June 2017

Mr Rob Hansen
Committee Secretary

Agriculture and Environment Committee
Parliament House
George Street
Brisbane QLD 4000
aec@parliament.qld.gov.au

Re: Waste Reduction and Recycling Amendment Bill 2017

Dear Mr Hansen,

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission on the Waste Reduction and Recycling Amendment Bill 2017 (the Bill) to the Agriculture and Environment Committee (AEC).

The QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

This submission solely focuses on the End of Waste (EOW) framework amendments as presented in the Bill. QRC has no further commentary on the proposed light-weight plastic shopping bag ban or the container refund scheme.

QRC commends the Department of Environment and Heritage Protection (EHP) for recognising the potential implications of the current drafting of the Waste Reduction and Recycling Act 2011, and seeking amendments to the Act as it pertains to the EOW framework in response to key stakeholder issues raised during consultation since September 2016. QRC also values EHP's consideration of many of our issues and recommendations, which are now reflected in the Bill.

Overall, QRC does not oppose the Bill, however, the intent of the amendments should be more clearly specified in the Bill, the supporting Explanatory Notes or other form, including:

- The intent for extension provisions in the Bill to apply to EOW Approvals, including former Specific Beneficial Use Approvals transitioned to EOW Approvals;

- Provisioning to allow EOW Approval holders that have transitioned from a Specific Beneficial Use Approval, to continue operations without the requirement to conduct a trial;
- Clarification of the scope for minor amendments that 'relate to the use of the resource'; and
- Consideration of environmental harm (as opposed to nuisance) at a sensitive place or receptor in deciding whether to grant an EOW Approval.

QRC is also of the view, that in order to encourage the development and ongoing use of innovative practices that can reduce waste disposal and costs, facilitate new market opportunities and minimise environmental impacts under the new legislation, the resources sector and others should be afforded incentives, such as grants or waiving EOW Approval application fees.

QRC therefore seeks recommendations from the AEC, which will see certainty of process for the resources sector, in consideration of the issues raised in this submission.

QRC would welcome the opportunity to discuss our submission further with the AEC during its consideration of the Bill. QRC's Policy Manager, Environment, Chelsea Kavanagh, and Policy Director, Environment, Frances Hayter have carriage of waste policy matters and can be contacted at [REDACTED] and [REDACTED]

Yours sincerely



Frances Hayter
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Waste Reduction and Recycling Amendment Bill 2017

30 June 2017

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Table of contents

1	TR D T	1
2	BA R D.....	1
3	E D FWA TE FRA EW R A E D E T	3
3.1	TRANSITIONAL ARRANGEMENTS	3
3.2	TRIAL PROVISION FOR NEW APPROVALS	3
3.3	MINOR AMENDMENTS.....	3
3.4	ENFORCING A STANDARD OF ENVIRONMENTAL HARM.....	4
	RE E DAT	4
5	5

1 Introduction

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Agriculture and Environment Committee (AEC) on the Waste Reduction and Recycling Amendment Bill 2017 (the Bill) as introduced to Parliament by the Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, the Honourable Steven Miles, on 14 June 2017.

The QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

This submission solely focuses on the End of Waste (EOW) framework amendments as presented in the Bill. QRC has no further commentary on the proposed light-weight plastic shopping bag ban or the container refund scheme.

QRC has long been supportive of the intent behind the EOW framework. However, for the resources sector, it is critical that clear and certain processes are afforded to allow the system to function effectively and the benefits to be realised. Since the introduction of the EOW framework under the Environmental Protection and Heritage Legislation Amendment Act 2014 (EPOLA) in 2014, the Government has not yet delivered a system through appropriate legislation that provides the resource sector confidence in such processes.

The recent efforts undertaken by the Department of Environment and Heritage Protection (EHP) to rectify the current situation, including amendments as provided in this Bill, are commended, however, QRC seeks further clarification from the Department to address a number of concerns raised in this submission before our full support can be given.

2 Background

The EOW framework was first introduced in legislation in 2014 under EPOLA with Government recognising the need to replace the (now superseded) Beneficial Use framework with a clear approval pathway, which defines when and under what circumstances a waste stops being a waste under section 13 of the Environmental Protection Act 1997, and becomes a resource. Unfortunately, in the absence of amended regulations since that time, the resources sector and others have not been able to access the benefits of the reform.

In September 2016, EHP engaged with key stakeholders on draft provisions to facilitate the operation of the EOW framework under the Waste Reduction and Recycling Regulation 2011 (the Regulation). While the Waste Reduction and Recycling Act 2011 (WRR Act) amendments (as per EPOLA) commenced on 8 November 2016, significant issues raised during stakeholder consultation on the draft provisions resulted in a delay in the introduction of the Regulation.

For the resources sector, a major concern was the proposed imposition of conditions placed on the EOW Approval holder, which would result in the holder being liable for actions of the end user when at arm's-length (e.g. monitoring, reporting and assessment of best practice management at the site of use). This issue, which was previously flagged by QRC in 2014, transpired as a result of the WRR Act being amended as part of EPOLA to only allow obligations to be enforced on a holder of the Approval, and not on a user of the resource. EHP has now acknowledged the potential implications of the current drafting of the Act and as such is seeking to amend the provisions as outlined in the Bill. QRC is supportive of this course of action.

The other fundamental issue for the resources sector was the introduction of a trial provision for new EOW Approvals – a concept which was communicated very differently in the development of EPOLA, whereby an EOW Approval would serve the same purpose or intent as a Specific Beneficial Use Approval (BUA).

Between September 2016 and late April 2017, EHP was not able to confirm if:

- Operations under existing (at the time) Specific BUAs would automatically transition to EOW Approvals without being subject to a trial and if EOW Codes would subsequently be developed. Essentially, for many Specific BUA holders, there was simply a need for an approval mechanism, which allowed ongoing operation of beneficial use activities until a Code could be developed; or
- Proponents would be made to apply for a new EOW Approval with the requirement to conduct a trial. This was a concern for the sector as any successfully tested, proven and previously Government-endorsed beneficial use activity (and resource) would be burdened by going through a trial.

The lack of a permanent approval pathway for existing beneficial use activities to continue operations created significant uncertainty for Specific BUA holders.

In late April 2017, EHP advised that all existing Specific BUAs had been transitioned to EOW Approvals. According to the Department, the Approvals retain the conditions of operation held under the superseded Beneficial Use framework, however, upon approaching expiration there was no provision to allow for an extension of Approval. This again is a concern for the resources sector with regards to certainty of ongoing operation, particularly when there is no guarantee an EOW Code would subsequently be developed.

Similarly, where EHP had committed to preparing an EOW Code, the Department advised they would endeavour to have Codes completed ahead of expiration, however, again this could not be guaranteed and as such leaves operations at risk of temporary cessation, which in itself has potential environmental, social and economic implications.

It also remains unclear if EOW Approval holders will be subject to a trial under this transitional arrangement.

For Specific BUAs, which have transitioned to EOW Approvals and demonstrated successful and responsible beneficial use activities, QRC has strongly recommended that EHP:

- Allow ongoing operations without the requirement for proponents to conduct a trial;
- Commence the preparation of EOW Codes or, at a minimum, publicly document the Department's intent to prepare Codes for these Approvals; and
- Include a provision in the Bill to allow at least one extension for these Approvals to account for the relevant period between expiry and the preparation of an EOW Code for the activity, should it not be implemented in advance.

These recommendations, along with other minor issues, are discussed further in section 3 having regard to the amendments presented in the Bill.

While there are some concerns still to be resolved, QRC values EHP's consideration of our other issues and recommendations, which are now reflected in the Bill, including:

- Provision for major and minor amendments with accompanying approval timeframes;
- Retention of the provision to amend an of EOW Code via an amended yet streamlined section 168; and
- Addition of a timeframe (five years) related to information requests from the Chief Executive for inactive approvals.

We have no further comment on these items at this time.

3 End of Waste framework amendments

The following section provides comment on the proposed amendments as outlined in the Bill and how this relates to the issues raised in section 2.

3.1 TRANSITION ARRANGEMENTS

The Bill includes a new section 173L, which allows the holder of an EOW Approval to apply to the Chief Executive, on one occasion, to extend the Approval. QRC can only assume that Specific BUAs, which have been transitioned to an EOW Approval, are eligible for the extension.

The Committee should note that on 28 June 2017, EHP provided a response to QRC on this matter, confirming two avenues by which an EOW Approval, including former Specific BUAs transitioned to EOW Approvals, may be extended to facilitate continued resource use until a planned Code comes into effect:

- Under section 173L, holders of EOW Approvals can apply for one extension to an Approval; or
- Under section 173Z, the Department can initiate the amendment of an EOW Approval, which may include extending the period of the Approval.

EHP advised that this position would be reflected in the Explanatory Notes to the Act amendments.

QRC supports the extension avenues afforded, however, does not consider these have been at all stated in the Explanatory Notes as suggested by EHP. As such, QRC recommends that section 173L and 173Z of the Explanatory Notes be amended to outline the intent for extension provisions to apply to EOW Approvals, including former Specific BUAs transitioned to EOW Approvals.

In the absence of EHP confirming a position on the applicability of the trial, QRC maintains the above recommendation, that EOW Approval holders that have transitioned from a Specific BUA should be granted consent by EHP for ongoing operations without the requirement to conduct a trial and that this intent be stated in the Bill, Explanatory Notes and/or the Regulation.

3.2 TRIAL FOR EOW APPROVAL

For new EOW Approvals, the new section 173I of the Bill provides that a person may apply to the Chief Executive for an Approval to conduct a trial for one kind of waste to demonstrate whether or not the waste is suitable to be used as a resource.

While QRC understands the need for EHP to test a new waste as a resource, it must be acknowledged that in some cases significant financial investment and infrastructure development is required to facilitate a trial. As described above, proponents are seeking greater certainty in process to allow ongoing operation and provide sound grounds to invest.

If EHP, and Government more broadly, is seeking to encourage the development and ongoing use of innovative practices that can reduce waste disposal and costs, facilitate new market opportunities and minimise environmental impacts, QRC recommends that the resources sector and others should be afforded incentives, such as grants or waiving EOW Approval application fees, if a permanent approval pathway cannot be assured.

3.3 REPEAL

The Bill includes a new section 173M, which affords processes and timeframes reflective of major and minor amendments to an EOW Approval. However, one of the criteria for defining a minor amendment could be interpreted as either a minor or major amendment depending on the circumstance.

For example, section 173M(5)(b)(ii) of the Bill notes that a minor amendment is a change that does not 'relate to the use of the resource'. However, if the user changes the location of where the resource is applied, such as placement of the resource in an area adjacent to that currently approved and the user is able to demonstrate no material change in the risk of causing environmental harm, then it is suggested that this is a minor not a major amendment.

Understandably, if the resource was proposed to be applied for an entirely different use to that stipulated in the Approval, which may also have a different risk profile, then this would be recognised as a major amendment.

As such, QRC recommends the drafting of section 173M of the Bill be amended to provide flexibility to accommodate minor amendments that relate to the use of the resource where the user can demonstrate no material change in the risk of causing environmental harm.

3. E F R A T A D A R D F E R E T A A R

In deciding whether to grant an EOW Approval, as provided in the new section 173J of the Bill, the Chief Executive must consider whether the management or use of the resource is likely to cause serious environmental harm, material environmental harm or environmental nuisance.

QRC recommends that the drafting of this provision be amended to only consider environmental harm at a sensitive place or receptor, which remains consistent with the EP Act. Environmental nuisance is subjective and has the potential to act as grounds for frivolous claims against proponents and/or users seeking approval for a valid beneficial use.

Recommendations

QRC submits the following recommendations to the AEC as detailed in the body of this submission:

- Recommendation 1: The Committee recommend EOW Approval holders that have transitioned from a Specific BUA be granted consent by EHP for ongoing operations without the requirement to conduct a trial and that this intent be stated in the Bill, Explanatory Notes and/or the Regulation;
- Recommendation 2: The Committee recommend EHP commence the preparation of EOW Codes or, at a minimum, publicly document the Department's intent to prepare Codes for EOW Approvals that have transitioned from a Specific BUA;
- Recommendation 3: The Committee recommend that section 173L and 173Z of the Explanatory Notes be amended to outline the intent for extension provisions to apply to EOW Approvals, including former Specific BUAs transitioned to EOW Approvals;
- Recommendation 4: The Committee recommend that incentives, such as grants or waiving EOW Approval application fees, be afforded by Government to encourage proponents to invest in a trial under a new EOW Approval;
- Recommendation 5: The Committee recommend the drafting of section 173M of the Bill be amended to provide flexibility to accommodate minor amendments that relate to the use of the resource where the user can demonstrate no material change in the risk of causing environmental harm; and
- Recommendation 6: The Committee recommend section 173J of the Bill be amended to only consider environmental harm at a sensitive place or receptor.

5 conclusion

Overall, QRC does not oppose the Bill, however, the intent of the amendments should be more clearly specified in the Bill, the supporting Explanatory Notes or other form, particularly on matters pertaining to transitional arrangements and EOW Approval amendments. QRC therefore seeks recommendations from the AEC, which will see certainty of process for the resources sector, in consideration of the issues raised in this submission.

QRC would welcome the opportunity to discuss our submission further with the AEC during its consideration of the Bill.

QRC's Policy Manager, Environment, Chelsea Kavanagh, and Policy Director, Environment, Frances Hayter have carriage of waste policy matters and can be contacted at

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