5 April 2013

The Secretary
Agriculture, Resources and Environment Committee
Parliament of Queensland
arec@parliament.qld.gov.au

Dear Secretary

I write to make a submission in a private capacity, as Adjunct Research Fellow, Griffith University.

It is with great sadness that I have read the documents explaining the reasons for the numerous amendments proposed in the *Land, Water and Other Legislation Amendment Bill 2013* (the Bill). There are several major defects in the Government's proposals that I wish to draw to the Committee's attention.

"Public interest" as a justification is missing

The first is that the justification for the amendments in many or most cases is presented as streamlining for the benefit of the mining or gas tenure holder / landholder / applicant. Nowhere in the paper is the *public interest* presented as the guiding force to drive the amendments. Yes, it is in the public interest for the tenure and regulatory regimes to be efficient and simple, but that does not seem to be the justification for these changes. Many or most of these regulatory provisions were originally crafted in order to protect the public interest from the unintended consequences of imprudent development or resource extraction. To remove these protections requires a modern analysis grounded in consideration of the public interest, not applicants' interest.

Removing some pillars without strengthening the remainder

The second concern is that each of the legislative regimes was crafted within a statutory context of the other statutes. One cannot now remove one and pretend that another piece of legislation dealing with the same subject will adequately cover the purpose of the first. For example, the origins of the vegetation protection legislation and the Water Act prohibition on interfering with vegetation in a watercourse were very different and separated in time. It is not valid to argue that because there is an apparent overlap, one can now remove the other and still have the same coverage for this dual purposes. For another example, the Sustainable Planning Act was not designed to achieve NRM objectives; the government of the day in 1997 opted to exclude them because of their coverage in the natural resource legislation. For another example, to revoke provisions in the Water Act on the grounds that there is a parallel power in the Environmental Protection Act is invalid unless the scope of that Act is adequate, the environmental protection regime is fully resourced and legacy responsibilities are adequately covered.

In several cases, the explanatory materials do not describe how the remaining regime will be amended to ensure that the intent of the overlapping regime will now be achieved.

Environmental regulation exists to protect the environment
The third point is that nowhere in the materials does the protection of the natural resources and environment appear to be a motivating force. The entire purpose of resource and environmental regulation is to protect the public interest in natural resources and the environment. Natural resources are the foundation of all economic and business activity. Laws to protect them from waste and to ensure fair access by all stakeholders are very much in the economic interests of Queensland.

Inappropriate gift of tenure from citizens
The fourth point is a specific one. The extension of water licences for 98 years would appear to be a gift of secure tenure from the State to the holders of these instruments. One looks in vain for a provision that would extract a commercial return for this gift, which in effect is a creation of a property right granted by the community to private individuals or firms without effort on their part. Furthermore, there is a wide difference between a permit that expires after 20 years (even if then renewed several times) and one that does not expire for another 98 years. The onus changes: from the applicant to justify why a renewal should be granted, to the State to justify withdrawal or alteration. Furthermore, the renewal period gives an opportunity to consider circumstances obtaining at that time. Given climate change and given the progress made in water resource planning in the past 10 years, it would be a service to both licence holders and the State to have a regular opportunity to review these conditions without needing to pay compensation.

In summary, I recommend that the Committee send the bill back to the Government to start from two foundations: the public interest and resource / environment protection; and to recraft the provisions with those very different objectives centre of mind.

Yours faithfully

(*Signed*)

Geoff Edwards B.Sc.(Hons.); M.Pub.Ad.; PhD
Adjunct Research Fellow, Centre for Governance and Public Policy, Griffith University
Member, Independent Scholars Association of Australia