Submission Greentape Reduction Act 2012

QMDC's submission on the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012

Submission To:
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This submission is presented by the Chief Executive Officer, Geoff Penton, on behalf of the Queensland Murray-Darling Committee Inc. (QMDC). QMDC is a regional natural resource management (NRM) group that supports communities in the Queensland Murray-Darling Basin (QMDB) to sustainably manage their natural resources.

QMDC's activities are influenced by its member organisations with representation from a wide range of community interests e.g. Aboriginal Traditional Owners, Landcare groups, catchment management associations, conservation groups, local government and rural industries. The primary role of QMDC's member delegates is to provide strategic direction for the delivery of natural resource management in the QMDB, based on their area of interest.

1.0 Background

This submission has been updated to address the proposed 2012 amendments. QMDC is concerned that its previous submission on the Greentape Reduction Bill has not been accepted by the previous Committee as part of due process. The lack of consultation and engagement with NRM bodies is of major concern and results in a missed opportunity for legislators to develop environmental law that advances NRM principles.

QMDC is actively committed to influencing environmental legislation and policy through both community stakeholder engagement and government regulatory processes. QMDC supports environmental regulation that provides a high level of protection for the QMDB consistent with the aspirations of the Regional NRM Plan. QMDC asserts "Greentape reduction" and reforming licensing under the *Environmental Protection Act 1994* (EPA) (licensing regulatory reform) must take into consideration not only the individual impacts of each development or business licence application but also **the cumulative impacts** of both a whole industry e.g. CSG mining and the total number of businesses or industries impacting on the ecologically sustainable development of a region.

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QMDC recognizes that the health of the economy and social fabric of the people of the QMDB depends on the health of the natural resources. QMDC is committed to working towards this goal through processes that constantly seek to improve on current policy and legislation. QMDC's response to the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (the Act) is informed by its own experiences with environmental law processes and in collaboration with key regional stakeholders including the people of the region's communities whose business and interests involve managing the region's natural resources.

There is a community expectation that there is an environmental bottom line that provides a high level of protection for a set of minimum standards of environmental management.

QMDC is one of fourteen endorsed regional NRM bodies in Queensland with specific expertise to offer in regards to the strategic direction of environmental law in Queensland. None of these NRM bodies were consulted as key stakeholders during the early consultations on the proposed EPA and other legislative regulatory reform. NRM bodies therefore offer a significant opportunity to gauge relevant issues affecting their regions and the communities they work with. This lack of early recognition as key stakeholders is reflected in the flawed approach taken by the Act to environmental protection, community engagement and a number of other key areas of change.

2.0 General comments

QMDC's major concern is that industry is the driver for licensing regulatory reform and the argument for amending the current law is couched in terms such as reducing compliance and administrative costs to industry and government. The need to uphold environmental standards is an important factor for QMDC and the communities it serves. QMDC believes the Act compromises those standards in a number of its clauses, which will be discussed below as specific comments.

Please note QMDC has not been able to make all the comments it would like to on specific clauses owing to the restriction of time made available to comprehend and analyse all the proposed amendments to the legislation.

QMDC posits that businesses should not solely be viewed as what is needed to maintain a strong economy in Queensland. Particularly given the economic reliance that tourism, agriculture sectors have on the state of our natural resource assets. Economic theory informing licensing regulation must highlight the importance of ecosystems, equity and governance and have its roots in valuing natural and social capital in its economic analyses. Ecological economics that integrates natural and social capital into traditional economic theory will assist regulatory processes to improve in a manner that develops the region's future direction in a more sustainable manner. If, the maintenance of industries such as CSG and coal mining, is considered the most important currency then the market and its dominant form of capital will continue to undermine the intention of environmental law and its protective mechanisms.

QMDC in its previous submission on the *Greentape Reduction discussion paper* argued that the stated principles guiding the development of the reform initiatives were not the most appropriate ones.

QMDC considered the key aim to reduce costs and to develop reform in accordance with the 5 identified principles as contrary to the object of the EPA to improve the total quality of life, both now and in the future by maintaining ecological processes on which life depends.

QMDC asserts that greater consideration should be made to the findings of State of the Environment Report 2007, namely the successful application of the EPA. QMDC do not see the changes in public expectations of industry strongly reflected in the Act and its proposed regulatory reform.

QMDC agrees that legislation should be reviewed periodically to ensure legislation remains on par and supports best practices. However QMDC asserts the starting point for reform to the EPA must be ensuring its objectives are furthered by reform and not watered down because of industry having issues with the costs or the requirements of compliance. If there is a better way to ensure compliance with the objectives QMDC believes the protection of the environment must be the baseline from which any reform needs to start. A comprehensive understanding of the projected impacts of industry and business and compliance with the EPA in the QMDB should be explored in relation to the impact on the region's natural resources and other assets as identified in the Regional NRM Plan.

Overall QMDC is concerned that this entire legislative change is swimming against the tide of community expectations of government. In our opinion the community expectations of government to improve transparency of decision making, improve governance and safeguard environmental values and assets in balance with economic and social development have swung from development at almost any cost to genuinely seeking a balance of protecting our natural environment whilst developing a sustainable economic platform.

This Act seems to want to remove some safeguards for environmental management behind a façade of improved administrative efficiency. In our view there are other mechanisms that could improve administrative efficiency whilst not opening the door to environmental asset degradation (e.g. threshold limits that are discussed in the body of our submission).

In recent years, community awareness, concern and willingness to be directly involved in environmental and community improvement projects has dramatically increased. Events such as the Brisbane floods, the Gulf of Mexico oil disaster, the aftermath of the Victorian fires, Queensland's CSG industry development, the increased membership of Surf Lifesavers' Association, are all examples where the community's capacity to be directly involved and well informed has increased.

The overall thinking behind this Act needs further serious consideration to ensure the proposed machinery of government changes is not conflicting with good governance and community expectations.

3.0 Specific Comments

3.1 Clause 5 Amendment of s 51 (Public notification) (SEE p.23 of the Bill)

Recommendation:

1. **That a code of conduct for community engagement and disclosure of information is developed addressing:**

a. **Community expectations for a more enduring and direct role in the planning, decision-making and implementation of natural resource policies and activities as they relate to mining and energy industry impacts.**

b. **Timely and adequate notification of proposed developments, particularly to local governments and communities where the development and associated developments have the potential to impact on the planning and resourcing of supporting infrastructure, services and land use e.g. Industrial and residential zoning, refuse management, sewerage management, roads, infrastructure, services (health, police, schools), airports, and emergency services.**

c. **Engagement that is timely, meaningful and relevant and conducted appropriately for each stakeholder.**

d. **Public notification of and access to approved Environmental Authorities or Licenses and consultation with regards to any proposed changes to Environmental Authorities.**

e. **Timely and public disclosure of monitoring requirements, and subsequent results for the condition and trend of natural resource assets including site, total and cumulative impacts as they relate to the mining and energy industry.**

f. **Notification to landholders of all chemicals stored and used on the property. Further contingency planning is needed across industries for risks associated with direct contamination to livestock, food and fibre crops; failure to comply to declaration of chemicals and withholding periods by landholders; compensation for lost sales and any industry impact.**

g. **Public notification of breach of conditions and public access to complaints registers is maintained.**

3.2 Clause 8 Insertion of new chs 5 and 5A

3.2.1 Clause 112 Other key definitions for ch 5 (SEE pp.25 - 26 and other related clauses of the Act)

"*Eligibility criteria*" are a crucial component of the Act, which many other sections must be in accordance with. QMDC is concerned that this Act will be passed without public consultation on the *eligibility criteria*. Public consultation will provide industry, local government and community certainty.

At the very least QMDC recommends the inclusion of a threshold limit within the *eligibility criteria*. This would provide greater clarity and certainty because thresholds limits would help to define those natural resource assets identified as being both statewide and regionally at risk to the impacts caused by activities and infrastructure of industries and businesses.

Setting threshold limits for natural assets (water (surface and groundwater); vegetation & biodiversity; land and soils; air; nitrogen, phosphorous, carbon elements) will help the Bill to identify whether a new development or existing industries or businesses can operate without causing impacts, for example, generating or disposing of levels of waste that will cause unacceptable impacts on those assets within the defined threshold limits.

The *eligibility criteria* will then be able to define and provide:

- "no go" zones;
- clear and predetermined standard environmental practices acceptable under legislation e.g. safe effluent disposal, no net loss environmental offset programmes, defined buffer zones for activities and infrastructure against stream order classifications, set road heights on floodplains, stream water quality discharge limits etc;
- more efficient administrative processes within the Act.

Recommendations:

1. **That the inclusion of threshold limits are included within the *eligibility criteria***

2. **That a public consultation process be commenced before the Act is passed to make comment on the *eligibility criteria***

3.2.2 Clause 114 Stages of assessment process (SEE p.27 of the Act)

QMDC is concerned that when each stage does not apply, key issues may slip through the safety net and opportunities for public consultation will be lost creating a lack of transparency and confidence in the process, for example, will the public be notified or advised as to which stage each application sits and which stage it is exempt from?

3.2.3 Clause 119(4)

QMDC is concerned that the amalgamation or transfer of an authority to another authority may not result in a transparent process and serve to undermine the accountability of holder of a single EA.

3.2.4 Clause 121 Types of application (SEE p.31 of the Act) QMDC still has reservations about the designated types of applications but has not had adequate time to gain legal advice and thereby provide recommended changes on the relevant clauses.

3.2.5 Clause 124 What is a *site-specific application* (SEE p.31 of the Bill)

The Act offers a limited definition with regards to a site-specific application in comparison to the other two types of application (**SEE clauses 122 & 123 at pp. 31-32 of the Act**). QMDC is concerned that the clause's attempt to "catch all other" applications that do not fit definitions as those prescribed in **clause 122 & 123** will provide opportunities for anomalies to arise when other relevant clauses are to be implemented against the site-specific application. QMDC recommends refining the definition in line with the detail afforded the *standard* and *variation* applications.

Recommendation:

1. **That a detailed definition is provided for a site-specific application.**

3.2.6 Clause 125 Requirements for applications generally (SEE clause 125 at pp.32 – 35 of the Act)

QMDC does not believe a declaration is the most appropriate mechanism to ensure *eligibility criteria* is met. What steps will be taken if a declaration made and it is determined criteria is not actually met by the applicant. What checks are going to be in place to ascertain whether the criteria are being met by the applicant at the first instance? QMDC recommends refining this process to provide clarity and transparency. **(SEE clause 125 (1) (j) at p.32 of the Act)**

QMDC is concerned that amending this clause in 2012 so that a simple declaration can be made instead of a statutory declaration although it may enable online administration does not facilitate a full consideration of eligibility criteria . Indeed it may provide an even easier path for EA applicants to avoid due consideration of essential key criteria. See also other related clause e.g. 158,159, 164.

The exception afforded a *standard application* under **clause 125(1)(l) (SEE pp.32 – 35 of the Act** is of concern to QMDC because of the issues raised in paragraph 3.2.1.of this submission If the *eligibility criteria* are prescribed for *standard applications* how will the impacts be measured and recorded for public scrutiny.

How are the environmental values defined and measured for the description required under **clause 125(1)(l)(i)(C)**? Are values attached to water, air, biodiversity, vegetation, social and economic well-being of community addressed under this clause? Are cumulative impacts to be considered also? Where are impacts on community infrastructure and socio-economic wellbeing, air quality, water quality and quantity, biodiversity, vegetation, regional ecosystems etc clearly addressed in **Division 3** of the Act?

QMDC does not support the applicant being able to state when it "*wants*" an EA to take effect in accordance with **clause 125(1)(m)(SEE p.33 of the Act).**

Recommendations:

1. **That these issues be considered and addressed accordingly.**

2. **That the requirement for statutory declarations not be removed.**

3. **That a public record be made available recording the assessment of the standard application against matters as outlined in clause 125(1)(l) to (n).**

4. **That clause 125(1)(m) be removed from the Act.**

3.2.7 Clause 126 Requirements for site-specific applications – CSG activities (SEE pp. 34 -35 of the Act)

QMDC recommends **clause 126(1)** be expanded to include a statement regarding greenhouse gas and dust emissions, noise and lighting impacts, soil impacts, weed and pest threats/biosecurity risks, loss of biodiversity and vegetation, the quantity of water required for camp services, quantity of other types of waste (construction materials, sewage, food scraps, tyres etc

QMDC strongly disagrees with **clause 126(2)** and recommends it be removed from the Bill. Having a feasible alternative to an evaporation pond should be an essential component of the *eligibility criteria.*

Recommendations:

1. **That clause 126(1) include other identified key environmental risks and impacts.**

2. **That clause 126(2) be removed from the Act.**

3.2.8 Clause 138 When information stage applies (SEE p.41 of the Act)

This clause raises the same concerns as per **paragraph 3.2.5** of this submission.

3.2.9 Clause 139 Information stage does not apply if EIS process complete (SEE p.41 of the Act)

Who deems *environmental risks* have not changed? QMDC is concerned that if there is no formal process to require the *information stage* for an applicant's proposed project because the EIS is complete, a review of environmental risks to consider any key changes during the time that has lapsed since the EIS is necessary. This will enable the application to be assessed according to better scientific data and knowledge on more current environmental risks, best business practices, threshold limits, community aspirations and the cumulative impacts to natural resources in the region of the application.

The clause may capture substantial changes in the environment owing to natural disasters, but will it capture the risks associated with climate change, or the cumulative impacts of other development and industry. This may pose new risks not originally contemplated.

3.2.10 Clause 150 Notification stage does not apply if EIS process complete (SEE pp.46-47 of the Act)

QMDC wishes to raise the same concerns as outlined in **paragraph 3.2.9** above.

3.2.11 Division 2 Public notice (SEE pp.47 – 52 of the Act)

Please refer to recommendations made in **paragraph 3.1** of this submission.

3.2.12 Clause 157 Public access to application (SEE pp.49-50 of the Act)

Recommendation:

1. **That clause 157(1)(b) be rewritten to allow the administering authority to recover costs from the applicant for all public access requests for application documentation.**

3.2.13 Clause 161 Acceptance of submission (SEE p.53 of the Act)

Please refer to recommendations made in **paragraph 3.1** of this submission in reference to **clause 161(1)(d)**.

3.2.14 Part 5 Decision stage (SEE p.54 of the Act)

20 business days is insufficient time for a member of the public to evaluate and comment on possibly hundreds of conditions, consult local communities and key stakeholders, legal, technical and scientific experts, determine whether to give an objection notice and draft the required grounds of objection.

Once the conditions of approval are viewed by the submitter, some issues raised previously by that submitter may no longer be of concern, or the conditions raise new issues. Therefore it is important that the objector may raise extra or different issues in the objection compared to the submission. Under the *Sustainable Planning Act* 2009, submitters are not restricted in appeals to only issues raised in in their earlier submissions.

QMDC acknowledges an objection period consistent with other legislation would be 20 business days after the decision notice is given. This is consistent with the Sustainable Planning Act 2009 which, in addition to a submission period for impact assessable development, provides an appeal period for submitters of 20 business days (section 462(4) of the Sustainable Planning Act 2009). However given the many resourcing limitations experienced by community members, such as receiving legal and scientific expertise in short timeframes, and given the huge size of many

mines and the number of new or expanded mines proposed, some may be out for public objection around the same time, 30 days would be more appropriate.

Recommendation:

1. **That a minimum objection/appeal period of 30 business days is provided for both mining objections and appeals on decisions on coal seam gas environmental authorities.**

3.2.15 Division 6 Conditions QMDC assert standard conditions require greater time for community input to their constitution. Listed below are some areas that QMDC recommends being addressed within the Act.

Recommendation:

1. **That conditions at a minimum consider the below matters.**

Vegetation & Biodiversity
- Clearing
- Offsets
- Voluntary Conservation Agreements

Riverine, Floodplains and Wetlands
- Water quality
- Water diversion
- Water contamination
- Floodplain infrastructure
- Buffer zones
- Rehabilitation

Surface water, Groundwater and Associated Flow Systems
- Water quality
- Water extraction
- Water contamination
- Floodplain infrastructure
- Buffer zones
- Rehabilitation
- Aquifer interconnectivity
- Fraccing
- Drilling
- Aquifer reinjection
- “Beneficial use”
- Associated water storage & disposal

Land & Soils
- Soil disturbance
- Soil contamination
- Soil rehabilitation
- Floodplain management
- SCL

Weed & Pest Animals
- Weed & pest identification
- Weed & pest introduction
- Weed & pest spread
- Weed & pest eradication
- Weed & pest management plans
- Weed & pest management training

Air Quality (dust, noise, vibration, lighting, Greenhouse gas emissions)
- Monitoring – baseline
- Monitoring – ongoing
- Monitoring – independent
- Air Quality Management Plans
- Flaring/venting
- Operation hours
- Infrastructure
- GHG emissions & renewable energy sources

Aboriginal Interests and Cultural Assets
- Compliance with cultural heritage legislation
- Resourcing Traditional Owners & Aboriginal Communities
- Engagement with Regional advisory Aboriginal Group –Maranoa-Balonne and Border Rivers
- Inclusion of Aboriginal values
- Cultural understanding

Institutional Assets
- Public disclosure & notification
- Access to EAs
- Monitoring & transparency
- Community engagement
- Chemical storage notification
- Contingency planning
- Public notice of breaches
- Access to complaints register
- Threshold limits
- Contributing to local government costs
- Planning and studies
- Royalties

3.3 Clause 35 Replacement of s 435A (Offence to contravene standard environmental conditions)(SEE pp.183-184 of the Act)

QMDC asserts the Act must ensure very clear messages are sent to applicants that contravening environmental conditions will not be tolerated.

QMDC suggests the key is to develop a model of educating industry or businesses on environmental compliance, so that they do not see it as a burden and can efficiently work towards benefit from the savings and opportunities of sustainable practices 'beyond compliance'. This would likely require DERM and other key stakeholders such as environmental legal services, business associations, NRM or industry peak bodies to actively identify ways to assist individuals, businesses and industry interpret and implement their environmental requirements on a local or regional level.

What may also assist is the coordination of information dissemination by DERM regarding current and relevant Land and Environment Court case law as well as federal, state and local government environmental initiatives, strategies and policies, and significant international protocols, treaties best practices and standards. The education process should include as its basis the importance of compliance in terms of environmental protection, risk reduction and the advantages of sustainable business practices.

Recommendation:

1. **That the penalty for offences under section 435A is increased**.

3.4 Clause 40 Amendment of s 520 (Dissatisfied person)(SEE pp. 186 – 189)

Recommendation:

1. **That clause the definition of a "*dissatisfied person*" be expanded to include a broad inclusion of persons in the community including neighbours to the land that forms part of the application.**

3.5 Clause 41 Amendment of s 521 (Procedure for review) (SEE p.189)

Please refer to recommendations made in **paragraph 3.1** of this submission.

3.6 Clause 45 Amendment of s 531 (Who may appeal) See above discussion.

3.7 Clause 47 Replacement of ss 540 and 541(SEE p.191)

Please refer to recommendations made in **paragraph 3.1(g)** of this submission.

3.8 Clause 51 Replacement of ch12, pt 1 (Approval of codes of practice and standard environmental conditions)(SEE p.196 of the Act)

Recommendation:

1. That a public consultation process be allowed to provide input to guidelines proposed throughout the Act.

3.9 Clause 58 Insertion of new ch 12, pts 3-3A (SEE pp. 199 - 200 of the Act)

Regulations to support *suitably qualified persons* including *auditors* to *perform regulatory functions* are also dependent on adequate government resourcing to increase the availability of people who not only have the relevant skills, knowledge and experience but also have the ability to adapt and apply new products, technologies and information to their local and regional needs.
QMDC recommends the implementation of regulations which build the capacity to deliver further important knowledge and technological advances to Queensland and its regional communities. This will ensure the Act and its regulations will advance the Act's effectiveness and efficiency.

Recommendation:

1. **That the relevant regulations reflect not only *suitably qualified persons* including *auditors* whom are skilled in current best practices but are also persons that are well-informed by localised and regionalised knowledge and research.**

3.10 Clause 60 Insertion of new ch 13, pt 18

3.10.1 Clause 703 Plan of operations for environmental authority for petroleum activity that relates to petroleum lease

QMDC is concerned that **clause 703(4) (SEE p.224 of the Act)** will remove an accountability mechanism essential for the protection of the environment and public confidence in the Act's capacity.

Recommendation:

1. **That clause 703(4) be removed from the Bill.**

3.11 Clause 62 Amendment of sch 4 (Dictionary)

Measures to protect the environment from potential evaporation impacts caused by the construction and operation of frac ponds and the exploration and appraisal ponds required for pilot production testing must be as stringent as *CSG evaporation dam* constructions and operations **(SEE clause 62(2) at p.244 of the Act)**.

Recommendation:

1. **That definitions are added to the dictionary to include other types of dams, for example, exploration, appraisal, fraccing, oily water ponds etc.**

3.12 Clause 67 Amendment of s 321 (Applicant may stop decision-making period to request chief executive's assistance)

QMDC is concerned that decisions may be made behind closed doors that require public and community involvement **(see *clause 67 s 321 (1)* at pp. 259-260 of the Act)**.

Refer to discussion re public and community engagement at ***paragraph 3.1*** above.

Recommendation:

1. **That s 319, include a public process to:**

a) **Inform the public of the conflict or discrepancy and the applicant's decision making process;**

b) **Source a wide range of views from all stakeholders (landholders, rural and regional community members, agriculture and agribusinesses, environment and conservation, State and local government, mining and energy sector, research and science;**

c) **Secure feedback from organisations and individuals to inform and provide direction for the Sustainable Planning Act 2009.**

3.13 Clause 71 Replacement of s 399 (Who may carry out compliance assessment)

QMDC is concerned that the Act does not define the necessary expertise or experience that is required to carry out compliance assessments and which determines what is deemed 'suitably qualified" for a "nominated entity" **(see *clause 71 s 399 (1) & (6) at pp. 261-262* of the Act)**.

In QMDC's experience DERM and local governments are currently under-resourced to monitor current Environmental Authorities (EAs) and Operation Plans (OPs). To the best of QMDC'S knowledge there are currently 183 EAs with thousands of associated conditions.

With the CSG and coal industry and their associated support industries on the ever increase in the QMDB there is a real need to articulate clearly what skills and knowledge are needed to ensure development or work or documents comply with not only the conditions imposed in accordance with the Act and other associated legislation but also current best practices. QMDC submits that current best practices must not only be based on national and international industrial practices but also be informed by localised and regionalised knowledge and research.

This will ensure the Act and any associated legislation or regulations will serve to further the effectiveness and efficiency of environmental legislation.

Public and community confidence in the assessment process is dependent on the availability of public servants and other persons who have the relevant authority, skills, knowledge and experience and also have the ability to adapt and apply new products, technologies and information to their local and regional needs.

Recommendation:

1. **That a regulation is implemented and read alongside this section of the Act to require financial payments from applicants to build the capacity and qualification of public servants and other persons to assess development, work or documents that fall within the ambit of the Act.**

(NB:This will assist the mining and resource industry, for example, to deliver on their promises to increase the skills of the working force of Queensland and its regional communities).

3.14 Clause 78 Legislation amended in schedule

QMDC argues that on a local and regional level there is a need for proponents of industry and business requiring licenses or EAs to be provided with a clear and consistent framework for best practice and policy decision-making, risk management and responses to the specific and cumulative impacts of their industry or business on the QMDB's natural resources.

QMDC seeks a robust legislative and regulatory framework that is compatible with the protective mechanisms afforded by environmental law and regional plans, policies and strategies.

3.15 Equity and balancing community interests

QMDC notes the extensive number of licenses and EAs regulating industry, businesses and individuals in Queensland (183 as per DERM's website November 2011). The sheer volume and therefore industrial or business interest raises concern regarding equity issues and the balancing of community interests.

QMDC supports the need to have improved information and advice on regulatory requirements. QMDC would add that included in this information should be data and information documenting the key natural resource assets and values of each region and targets for their management. QMDC supports this information being made available on key government websites.

3.16 Quality of information and scientific certainty

QMDC supports the need to align legislation and administrative processes. QMDC has experienced how anomalies in water legislation, for example, create certain injustices especially when the mining and energy industry sector have inherent rights under the *Petroleum and Gas Act* to water and the farming sector are subject to water resource planning and permits.

QMDC also supports DERM's concern regarding the quality of information provided by proponents being sometimes inadequate to make informed decisions. As a submitter to a number of EA applications by CSG companies, QMDC has found that decisions are often delayed because proponents are not forthcoming with essential data. This leads to distrust in the company's integrity.

A wider concern is that the regulator is being put in a position to make decisions when there is a clear lack of scientific evidence or certainty. This may lead to impacts on natural resources, the environment or community interests that should be avoided in the first place.

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