EDO Qld.
Environmental Defenders Office
Using the law to protect our environment.

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29 September 2014

The Research Director
Agriculture, Resources and Environment Committee
Parliament House
Brisbane QLD 4000
By email only: AREC@parliament.qld.gov.au

Dear Research Director,

EDO Qld's submission on the *Environmental Protection and Other Legislation Amendment Bill 2014*

Thank you for the opportunity to make a submission on the *Environmental Protection and Other Legislation Amendment Bill 2014* (**EPOLA Bill**). The Environmental Defenders Office (Qld) Inc (**EDO Qld**) is a non-profit community legal centre which helps Queenslanders living in coastal, rural and urban areas understand and access their legal rights to protect the environment. EDO Qld has over 20 years of experience in interpreting environmental laws to deliver community legal education and to inform law reform.

Many of the concerns we raised in our previous submission remain relevant to the current EPOLA Bill. We therefore **enclose** our previous submission to the exposure draft of this bill, dated 21 July 2014, and rely on our submissions therein as far as they remain applicable to the EPOLA Bill.

In addition to these submissions, we raise the following concerns to your attention with respect to clause 102 of the EPOLA Bill, which introduces the ability of an administering authority to accept an enforceable undertaking in relation to a contravention or alleged contravention of the *Environmental Protection Act 1994* (**'EP Act'**).

1. We recommend that proposed section 510(1) be broadened to allow third parties standing to apply for an order if a person contravenes an enforceable undertaking. This will alleviate pressure on the administering authorities to monitor and enforce all enforceable undertakings and better ensure compliance. As recent audits of the Queensland[1] and Federal Governments[2] have stated, adequate monitoring and enforcement of activities is essential to limit environmental harm and these activities have reportedly not been undertaken adequately by the Queensland Government to

[1] Queensland Audit Office (April 2013), *Environmental regulation of the resources and waste industries*, Report 15: 2013 – 2014.
[2] Australian National Audit Office (18/07/14) *Managing compliance with Environmental Protection and Biodiversity Conservation Act 1999 Conditions of Approval*, Report 43.

date. It is advisable to allow open standing to third parties to ensure that potential environmental harm is limited.

2. We recommend that proposed section 510(4) be clarified to state that the limitation period for proceedings that may be taken for contravention or alleged contravention of the EP Act, which are prevented by an enforceable undertaking, recommences from the date on which the contravention of the enforceable undertaking takes place. This will ensure that the subsection is given full effect and the opportunity to commence proceedings is not lost where limitation periods have passed prior to any contravention of an enforceable undertaking.

Should you require any further information, please contact Rana Koroglu or Revel Pointon on (07) 3211 4466 or at edoqld@edo.org.au. We would welcome the opportunity to present to the Committee at the public hearing of the bill.

Yours faithfully
Environmental Defenders Office (Qld) Inc

Jo-Anne Bragg
Principal Solicitor

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21 July 2014

Attention: Ms Sarah Hindmarsh
Team Leader
Reform and Innovation
Environmental Policy and Planning
Department of Environment and Heritage Protection
By email only: sarah.hindmarsh@ehp.gov.au

Dear Ms Hindmarsh,

EDO Qld's submission on the *Environmental Protection and Other Legislation Amendment Bill 2014*

Thank you for the opportunity to make a submission on the exposure draft of the draft *Environmental Protection and Other Legislation Amendment Bill 2014* (**EPOLA Bill**). The Environmental Defenders Office (Qld) Inc (**EDO Qld**) is a non-profit community legal centre which helps Queenslanders living in coastal, rural and urban areas understand and access their legal rights to protect the environment. EDO Qld has over 20 years of experience in interpreting environmental laws to deliver community legal education and to inform law reform.

We **enclose** our table of submissions on the EPOLA in the template requested.

Outline of EDO Qld's concerns and key reforms needed

Our submissions set out 17 main points we raise with respect to the EPOLA Bill. The key points we raise are summarised as follows:

1. We note that inadequate procedures are provided for through these amendments to ensure monitoring and enforcement of beneficial use activities under codes or approvals. Many of these activities could entail significant risk of environmental harm, including the use of coal seam gas water for irrigation. We recommend clearly expressed provisions be included to provide for monitoring and enforcement activities.

2. The omission of the annual return requirements for activities permitted under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) is unsatisfactory and unwarranted. Activities under this act have a high potential for environmental harm and reporting requirements for environmental incidents must be maintained to ensure adequate accountability for environmental harm. Further, the annual reporting requirements for coal seam gas operations under an environmental authority should not be limited to only ineligible ERA activities.

3. We note that the provisions introducing de-amalgamation should ensure that environmental management procedures provided for under the amalgamated authorities do not become piecemeal in the de-amalgamation process. Provisions should be provided for which ensure that cumulative impacts are interlinking environmental management procedures provided for in the amalgamated authorities are considered in the de-amalgamation process.

4. We commend the initiative to increase penalties associated with environmental harm. Too often environmental harm has not been adequately penalised to reflect the extent of the damage that was undertaken. These increases will hopefully better deter environmental harm from being undertaken, ensure better compliance with conditions generally, as well as demonstrating that the State Government values our environment.

5. We commend the provisions which require that annual returns under chapter 5, part 12, division 3 and s 309 be listed on a register. We further commend the creation of a register of users of end of waste codes. We recommend that the later register be made publically available to ensure transparency and assistance by the public in monitoring activities.

Should you require any further information, please contact Rana Koroglu or Revel Pointon on (07) 3211 4466 or at edoqld@edo.org.au. We would welcome the opportunity to present to the Committee at the public hearing of the bill.

Yours faithfully
Environmental Defenders Office (Qld) Inc

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Principal Solicitor

EPOLA Bill 2014 comments on:

- proposed penalty increases and administrative amendments to the *Environmental Protection Act 1994*, and
- proposed amendments to chapter 8 of the *Waste Reduction and Recycling Act 2011*.

Stakeholder: ENVIRONMENTAL DEFENDERS OFFICE (Qld) Inc

Clause number(s)	Comments
32	**Insertion of Division 4 – De-amalgamating environmental authorities** We do not criticise the introduction of the ability to apply for de-amalgamation of environmental authorities (**EAs**) and note the usefulness of this ability for developers. We do, however, recommend that there should be specified elements of this new division which ensure that environmental management procedures provided for in amalgamated authorities do not become piecemeal in the separation of the amalgamated EAs. We recommend that there should be provision for an obligation specified in proposed s 250C which states that the administering agency must consider the cumulative impacts of the amalgamated authority, and the interaction of the environmental management conditions placed on the project through the amalgamated authority, to ensure that these are not lost in the de-amalgamation process.
33	**Amendment of s278 (Cancellation or suspension by administering authority)** We commend the introduction of the ability to cancel or suspend an environmental authority where the increased financial assurance amount is not paid. Financial assurances are an important element in ensuring that proponents are held accountable and take responsibility in ensuring that they prevent, minimise or rehabilitate environmental harm from their project. If a proponent is not willing to prove that they are going to be responsible for any possible environmental harm they may cause, it is right that their environmental authority should be cancelled or suspended to ensure that they are not able to continue with their activities.
40	**Amendment of s307 (Replenishment of financial assurance)** We commend the proposal to exemption of resource activities, other than mining activities, from the obligation to replenish realised financial assurance funds. There is no reason why any project should be exempt from the requirement to provide financial assurance for environmental harm their project may cause, particularly in instances where the financial assurance is being realised for the project.
41	**Amendment of s 309 (Particular requirement for annual return for CSG environmental authority)** We note that this clause purports to limit the current s 309 to only activity that is an ineligible ERA. This limitation does not currently exist. We do not see the benefit in limiting the requirements for coal seam gas operators operating under ineligible ERAs to provide details of the effectiveness of their management of CSG water. The nature of CSG water can be high in contaminants. Every opportunity should be provided for to monitor and enforce effective management of CSG water to ensure that it in no way contaminants any

	environment or is used or disposed of irresponsible. We recommend that this proposed clause should not be included in the EPOLA Bill as it potentially weakens management and monitoring of the management of CSG water.
42	**Omission of s 309A (Particular requirement for annual return for existing petroleum tenure under P&G Act** We urge that the existing s 309A requiring an annual return for incidents which have occurred in respect of an existing petroleum tenure be maintained. This is essential to ensure the adequate monitoring and enforcement of environmental harm that may arise as a result of an existing petroleum tenure. There is no reason for omitting this section. Activities which are permitted under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) (**PG Act**) can involve a high risk of significant environmental damage. All reporting obligations necessary in respect of environmental incidents should be maintained or strengthened to ensure adequate environmental management, not weakened. We recommend that it be maintained as it stands in the EP Act.
44	**Replacement of ch 5A, pts 1 and 2** We commend the proposal to ensure that the chief executive publishes and seeks public submissions for any ERA standard made under the proposed s 318, as well as the requirement that the chief executive considers these submissions under proposed s318B. We note that the proposed s318DA(3)(d) gives the chief executive discretion to determine when an amendment of an ERA standard is minor. We recommend that this discretion is not provided for, as discretions such as this create uncertainty.
45 and 46	**Amendment of s320A (Application of div 2) / Insertion of new Ch 7, pt 1, div 2, sdiv 3A** We commend the proposal to extend the parties who have a duty to notify of environmental harm to the owner or occupier of land or an auditor. This will help ensure better monitoring of environmental impacts being undertaken by a proponent.
49, 54, 56, 59-70, 72-74, 77-81	We commend the proposal to increase penalties for environmental harm. Too often environmental harm has not been adequately penalised to reflect the extent of the damage that was undertaken. These increases will hopefully better deter environmental harm from being undertaken, ensure better compliance with conditions generally, as well as demonstrating that the State Government values the environment.
55	**Amendment of s 358 (When order may be issued)** We commend the proposal to extend the ability of an authority to issue an order to when environmental harm is or may be caused by 'an event relating to land, or a change in the condition of the land, of which the person is the owner of occupier'
75	**Replacement of s 443 (Offence of releasing prescribed contaminant)** We commend the proposal to clarify the offences in this section, as well as the increase in the penalties associated with these offences.
82	**Amendment of s 540 (Registers to be kept by administering authority)** We commend the inclusion of annual returns required under chapter 5, part 12, division 3 and other documents under s 309 on the register that may be inspected by the public. This ensures greater transparency of environmental management procedures and is likely to result in better monitoring and enforcement of related activities.
167 & 168	We commend the obligation to open draft end of waste codes for public submissions and the consideration of these submissions. It is essential that end of waste codes provide for adequate regulation and enforcement of beneficial use of waste material, to ensure that

	any contamination that may occur as a result of the reuse is avoided or sufficiently minimised. Codes must be clear, coherent and easily understandable, with sufficient detail to ensure adequate management of the wastes is undertaken in line with the code. Allowing for public submissions which will be considered by the chief executive in the approval process will help ensure that the end of waste codes are effective and adequate in limiting environmental harm and being most useful and coherent for the industries who will use them.
173	**Procedures for amending, cancelling or suspending end of waste code** As for 167 & 168, we commend the proposal to oblige the chief executive to open amendments, cancellations or suspensions of end of waste codes for public submissions, for the same reasons as stated in the above section.
173G	**Register of users of end of waste code** We commend the requirement that a register of users of end of waste codes be maintained by the chief executive. We recommend that provisions be inserted to ensure that the register is open to public scrutiny. This will help to ensure better monitoring and enforcement of the beneficial reuse of waste materials undertaken and may assist the Department in this facet of its work.
173V	**Amendment of end of waste approval – general** We recommend that amendments to end of waste approvals be not just notified to the approval holder, but be also publically notified and a public submission period be provided for, particularly in relation to reuse activities which may relate to contaminated materials.
173X	**Cancellation or suspension of end of waste approval** We commend the proposal to provide a power to cancel or suspend an end of waste approval where it has not been complied with, where environmental harm has occurred or where the approval was granted on false or misleading information.
Beneficial reuse codes – CSG water	We note that there is little information with the EPOLA Bill and the *Waste Reduction and Recycling Act 2011* (**WRR Act**) as it stands that provides for the adequate monitoring and enforcement of reuse activities. This is particularly important for potentially highly contaminating activities such as activities under the PG Act and the reuse of coal seam gas produced water, which may be very high in salt or other minerals which could contaminant an Australian environmental already suffering from highly degraded soils. Further, while reporting obligations have been provided for in s 309 of the EP Act, the reporting obligations for activities under the PG Act have been lessened in this bill under amendments in clause 42. As recent audits of the Queensland[1] and Federal Governments[2] have stated, adequate monitoring and enforcement of activities is essential to limit environmental harm. We recommend adequate environmental monitoring and enforcement provisions be detailed for beneficial reuse activities under codes and approvals.

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