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9 October 2014

The Honourable Ian Rickuss MP
Chair of the Agriculture, Resources and Environment Committee
C/O Research Director
Agriculture, Resources and Environment Committee
Parliament House
BRISBANE
Queensland 4000

By email: AREC@parliament.qld.gov.au

Dear Mr Rickuss

Re: Submission by the Waste, Recycling Industry Association of Queensland (WRIQ) on the Environmental Protection and Other Legislation Amendment Bill 2014

The Waste, Recycling Industry Association of Queensland (WRIQ) is the premier industry association in Queensland, representing over 90 Queensland-based organisations. For the February Quarter 2014, our sector employed a recorded 7,819 persons in Queensland (ABS, Labour Force, Australia [Cat. No. 62910.58.003]) which is considered to be an underestimation as much of the sector is defined under transport and/or manufacturing industry codes.

WRIQ welcomes the direct approach (by the Committee) to provide feedback to the Agriculture, Resources and Environment Committee regarding the Environmental Protection and Other Legislation Amendment Bill 2014 (EPOLA Bill) which was introduced into Parliament on the 28 August 2014. WRIQ appreciates that the Committee must report to Parliament by 22 October 2014 on this matter and will assist to provide any additional documentation or evidence as required.

WRIQ notes that it did not submit a response to the original 'call for consultation' which closed on 29 September 2014, as it did not feel that any response provided to the Department of Environment and Heritage Protection (the Department) would be considered. WRIQ has previously submitted substantial responses based on detailed industry feedback and evidence-based research to consultation documents provided by the Department, only for this effort to be discounted as 'self-interest'.

On one occasion, WRIQ (and other stakeholders) were provided with a copy of a report on the 'Assessment of Queensland's Beneficial Use Approval Process' by SKM (prepared on behalf of the Department) for consultation. Although the consultation period closed on 30 May 2014, the Department sent out parliamentary-drafted amendments to the Beneficial Use Approval outlined in the *Waste Reduction and Recycling Act 2001* (based on the report) on 23 May, demonstrating clearly that the Department had already made critical decisions despite stakeholder feedback.

As such, WRIQ has concerns about the overall quality of the consultation process and there are items within the Bill which WRIQ has previously expressed its concerns about to the Department, yet these remain unaddressed. WRIQ strongly supports the elements of a circular economy and, as such, supports fully the policy objectives of the Bill contained in the Explanatory Notes to:

- deliver Greentape Reduction reforms to reduce costs to business and government while maintaining environmental standards;
- support firm but fair environmental regulation;
- promote the recovery and use of waste within the economy.

These policy objectives are not clearly and consistently articulated throughout the amendments noted in the Bill. The consultation process and corresponding regulatory and policy amendments have not been cohesive or productive. The regulatory amendments in particular, have appeared rushed with unrealistic timeframes given to the Officers of the Department to meet. Industries are now looking at a substantial overhaul of the regulatory system, which will have significant impacts on our sector and those working within it, yet we still have no finalised and agreed waste strategy for Queensland. Surely, it is essential to finalise the strategy direction prior to implementing the tools which are designed to get us there.

This legislation will require ongoing amendment in 2015 to take into account ongoing reviews, such as that of the Regulated Waste List/Schedule 7, which may directly impact the 'end of waste' provisions. The constant unknown and changing environment now being applied by the Department to its regulation is destabilising industry investment confidence in Queensland and will lead to an industry loss of jobs. Industry needs a stable regulatory framework in which to have the confidence to make long term business decisions.

Regulation and Tools

Previous concerns about an inconsistent licencing approach for the industry have been brought to the attention of the Department. In theory, the aim of the Department is to reduce green tape by cutting assessment times and reducing the prescription in its licence conditions, whilst aiming to maintain high environmental standards by taking strong enforcement action when operators fail to achieve the outcomes required is meritorious. In practice, the inequity this approach creates poses a significant risk to existing operators/licence holders. How 'new' licence conditions will compare to the older prescriptive conditions and how this will then translate to, and impact on current infrastructure requirements and operational conditions is yet to be seen. In an industry sector which has long experienced significant variations across their licencing conditions, differentiated by region and operator, the prospect of yet further variation and potential relaxation of conditions is confronting, particularly to those facilities operating under the 'older-style' prescriptive licences. Whilst there are opportunities to revise the conditions of an existing environmental authority, many businesses are sceptical of the process, whilst others have invested significantly into the asset value of their facilities based on those prescriptive licence conditions.

Under the Bill, Transitional Environmental Programs (TEP) will no longer be available where a company is out of compliance through its fault. At this point, TEPs will only be available if non-compliance is the result of external events, possibly changes to standards or severe weather events, but it is currently unclear in the Bill what constitutes the circumstances of where non-compliance is

fault related or what the options to the environmental approval holders are. The aim of removing the opportunity for a TEP where the company is at fault is to ensure that poor-performers or those who have underinvested in the management of their environmental risks are not rewarded. The Department is currently working on specific guidance for TEPs which should clarify the present uncertainty and WRIQ welcomes this leadership.

The EPOLA Bill inserts a series of new provisions into the EP Act relating to Enforceable Undertakings (EU). WRIQ did not see any documentation (for example, in the previous discussion paper in May 2014) or participate in dialogue regarding this tool. An EU is a binding agreement in which a person agrees to undertake specific actions in relation to a breach (or alleged breach) of the EP Act in return for the Department agreeing not to prosecute. An EU is not available for breaches that attract a potential maximum penalty of imprisonment of two years or more, for example, serious environmental harm or a wilful breach of an EA condition. WRIQ understands that the EU appears to be a more severe, higher-level regulatory tool than a TEP and there are serious consequences for not complying with an EU once accepted by the Department. It is also worth noting that whilst an EU does not appear to constitute an admission of guilt by the person making the undertaking, the current Bill does not contain a 'protection of privilege' in the same way as the TEP. Also, the Bill does not provide for the review or appeal of a decision made by the administering authority not to accept an enforceable undertaking. It is unclear if these omissions are drafting errors (as a result of the hurried timeframes) or a deliberate move to eliminate those protections.

End of Waste Codes and Approvals

The Bill makes provision for the replacement of the existing beneficial use approval (BUA) system prescribed in the *Waste Reduction and Recycling Act 2011* with 'end of waste codes and approvals'.

The aim of this amendment is to help meet the objective of increased 'resource productivity' set out in the draft 'Waste Avoidance and Resource Productivity Strategy' which is due for final release in late 2014. These changes are also as a result of the 'Assessment of Queensland's Beneficial Use Approval Process' and subsequent report produced by SKM (on behalf of the Department) in June 2013, which listed the limitations of the BUA process, (as identified through a consultation process), as including:

- Unclear which regulatory mechanism should be used by industry for managing wastes as resources i.e. BUA or Development Approval e.g. for composting
- A lack of clarity as to whether a BUA conditions the 'resource' or the waste management 'activity,' leading to fragmented approval conditions between operators. Limited clear and consistent internal guidance for applying approval conditions
- Lack of delineation between a waste and a resource in legislation and guidance. Ambiguity around when waste ceases to be waste and becomes a resource, leading to industry avoiding the BUA approval process and continuing to manage waste as waste
- Conditions limiting the exchange and use of a resource between more than two parties identified in a Specific BUA application, regardless of whether the resource can be used by a different end user in the same end market
- A higher number of Specific BUA applications submitted by industry to the department owing to a lack of confidence in General BUAs due to their 'generality'

- General BUAs are considered to be "too general" –owing to the lack of clarity and guidance around environmental limits for resources, markets and associated product standards on how to sufficiently create a resource from a waste and provide investment certainty.
- Specific BUAs are considered to be "too specific" –owing to the number and type of conditions imposed as part of an approval
- Under a specific approval, the resource stops being waste only in relation to the holder of the approval and not the end user receiving the resource (so continues to be managed as waste)
- Different conditions have applied to the same resource under multiple applications
- Unclear link between how priority products identified within the WRR Act relates to a strategy for developing BUAs
- Perception of limited commercial and technical expertise in the department to assess applications
- No data on who is operating under a general BUA

At this point, the Bill does not adequately address all of these findings from the SKM report.

WRIQ supports the articulation of the responsibility of the waste generator for their wastes (be it in sending the wastes for disposal or for beneficial reuse – under an end of waste code/approval). A necessary part of this is the registration of all users of a resource under a waste code, and WRIQ strongly supports this element in the Bill. This permits the Department to undertake appropriate compliance activities (if required), audits and also to notify the users (and generators) of any regulatory or policy amendments relating to the use of the end of waste code – in particular, if a code is cancelled or suspended. WRIQ recognises that such codes (just as in the case of beneficial use approvals) are subject to the information and technology available at that time and as information is discovered or technologies improve, codes may require amendment or cancellation. This was the rationale for end dating some of the beneficial use approvals.

Registration of users (and generators) must not be onerous or costly. WRIQ recognises that the Department has the technology-facility to create an 'open register' on-line for these purposes.

The standardisation of the beneficial use of a resource under a waste code or approval is also supported by WRIQ. Historically some licences have included the re-use or beneficial use of wastes (as a product) and the range of beneficial use approvals (and their conditions) is also subject to significant variation. The transitional arrangements for this process however, require further articulation. Without this clarity, waste generators will not provide their 'wastes' for resource use due to concern over liability and risk; and potential users of these resources will also be discouraged.

If Queensland is to increase its resource productivity and move towards a more circular economy, the end of waste codes and approvals must be accessible; and industry must be able to contribute to the development of new codes. WRIQ therefore supports the use of a 'Technical Advisory Panel' to provide advice to the Chief Executive on end of waste code preparation as there is some ambiguity in the transitional processes and steps for the creation of end of waste codes by the Chief Executive (Department of Environment and Heritage Protection). The input procedures into this process need to be clear so that industry has a voice.

WRIQ also notes on this matter that the definition of 'product' in the Bill may not be wholly appropriate for the reclassification of wastes (see Clause 164, Amendment of Schedule, Dictionary).

Other waste-related definitions also require review, and this is a fundamental aspect of the regulation and its successful reform which has not yet been addressed.

Increased Financial Penalties

The Bill proposes an increase to the uppermost maximum penalty in the *Environmental Protection Act 1994* (EP Act).

Currently	EPOLA Bill
4165 penalty units	6250 penalty units
$474,185.25 for an individual	*$711,562.50 for an individual*
$2,370,926.25 for a corporation	*$3,557,812.50 for a corporation*
5 Years Imprisonment	*5 Years Imprisonment*

A total of ten offences will attract this new maximum penalty when they are committed wilfully:

- Section 357I –failure to comply with conditions of a Temporary Emissions Licence;
- Section 361 – contravention an Environmental Protection Order;
- Section 363I – failure to comply with a clean-up notice;
- Section 430- contravention of a condition of an Environmental Authority;
- Section 432- contravention of a requirement of a Transitional Environmental Program;
- Section 432A – contravention of a condition of an approval of a Transitional Environmental Program;
- Section 434 – contravention of a site management plan;
- Section 437 – causing serious environmental harm;
- Section 478 – failure to comply with an authorised person's direction in an emergency;
- Section 357 –contravention of an order of the Court made pending the Court's decision of an application made by the administering authority to set aside the immunity from prosecution after receipt of a program notice.

Whilst WRIQ is broadly supportive of increasing environmental penalties to be commensurate with the financial profits associated with non-compliance or poor environmental performance, the industry is concerned that these offences target legitimate companies – that is, those with a licence.

Queensland's waste and recycling sector has a growing shadow industry. Such operators do not have Environmental Authorities and, as such, are not liable under the majority of these offences whilst an offence such as 'causing serious environmental harm' have been notoriously difficult to prove by the Department. Furthermore, the deregulation of the waste and recycling industry in the first round of Greentape Reduction reforms introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Greentape Reduction Act) in March 2013 removed the regulation of some fundamental waste activities such as the storage of waste tyres. These activities (which are subject to exploitation as the point of payment is 'upfront') no longer require a licence, and are also therefore not covered by most of these offences.

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Financial Assurances

WRIQ notes that the Department has worked closely with the resources sectors to develop a new financial assurance calculator for their industry – although the text associated with the Bill implies that this work is outstanding. However, the development and regulation of financial assurances for non-resource activities, including waste management activities, requires development.

In December 2012, WRIQ made a Right to Information (RTI) request (under the Right to Information Act 2009) to the Department of Environment and Heritage Protection for details of current financial assurances for waste management activities. A request was also made in relation to the methodologies used to calculate the financial assurances applied by the Department.

WRIQ were provided in the RTI response with the details of only 17 Queensland facilities with financial assurances which were undertaking selected waste management activities. Importantly, WRIQ notes that the list was not definitive, omitting numerous facilities and including substantive errors in assurances claimed to be held.

Whilst the text for calculating the Queensland financial values for landfill activities stated that the values should be proportional to the volume of waste received, there are discrepancies with some larger landfills having small financial assurances and vice versa. The values of financial assurances for other waste management activities (regulated waste treatment) ranged between AU$200,000-$3,200,000. The range of the type of financial assurance also varies, with some being linked to CPI, others linked to ongoing waste volumes and so on. Typically, private organisations are paying between 1-3% of the specified amount in costs for their financial assurance (be it cash, bank bond, bank guarantee or insurance premium) annually and this cost increases where a company is required by the Department to provide both financial assurance and specific financial insurance to cover the same activity.

WRIQ understands that financial assurances are intended to provide a guarantee that the costs of remediation, site closure and post-closure liabilities are not borne by the State/community in the event of the occupiers of a premises or operators of a facility abandoning the site, becoming insolvent, or incurring clean-up costs beyond their financial capacity. Sections 364 and 367 of the *Environmental Protection Act 1994* permit the Department to require a financial assurance through a condition of a development approval, as a security for environmental compliance and remediation costs.

WRIQ has been advocating to the Department throughout 2013 and 2014 that a standardised, clear financial assurance calculator was required for non-resource activities (requiring a financial assurance) based on sound risk methodologies and that it applies in a transparent way to all appropriate waste enterprises. Despite assurances from the Department, this body of work remains outstanding and therefore the regulation and policy in this area is underdeveloped.

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Discontinuation of Part 2A – from the repealed Environmental Protection (Waste Management) Regulation 2000

Local government collections services are being more widely developed across Queensland with, all but the remote communities now offering a kerbside recycling service to local residents, and many urban councils are now rolling out organic waste collections. According to the Department of Environment and Heritage Protection's 'State of Waste and Recycling in Queensland' Report (March 2014), for the 2012-13 year, councils provided a general waste bin service to 1,781,000 households and a dry recyclables bin service (for paper and packaging materials) to 1,498,000 households. In addition, seven councils provided optional green waste collection services to 113,000 households.

The Environmental Protection (Waste Management) Regulation 2000 expired on 1 September 2014. The Regulation provided a framework for certain types of wastes and waste management activities and included the local government administration of waste management activities. In particular, the provisions of *Part 2A—Waste management in local government areas* included specific requirements for the placement of bins for collection and the type of waste that can be placed in a waste container. Allowing this Part to expire was viewed by the Department of Environment and Heritage Protection "*to have little or no impact on current operations of some local governments or on costs to stakeholders…. It also allows local governments to develop a framework that better suits their individual needs in relation to the management of waste within the local government area*". Transitional provisions have been provided to allow local governments to implement appropriate management measures, in cases where they do not already exist. This amendment however, will ultimately result in more local governments seeking to make local laws to clarify stakeholder obligations and their role for waste management services within their area. An amending local law recently passed by a large council was effectively a 'copy-paste' of the existing State provisions, which demonstrates duplication so why repeal the provisions?

Section 28 (1) of the *Local Government Act 2009* (LGA) provides that a Local Government may make and enforce any local law that is necessary or convenient for the good rule and Local Government of its Local Government area. There are 1746 individual local laws in existence across Queensland (as on 22 September - see the Department of Local Government, Community Recovery and Resilience 'Local Laws Database'). Whilst there are currently only a few local laws specifically for 'waste management' and these are largely concerned with remote communities such as Carpentaria and Cook Shire, or larger urban areas such as Logan City Council, this trend will change as many local councils relied on the articulation of their powers through the Regulation.

There is a risk that the creation of multiple local laws pertaining to waste management between council areas will lead to different regulatory requirements and service offerings – increasing inconsistency. This may lead to confusion, not just for the domestic householder moving from one area to another, but also businesses, particularly those operating sites across different council areas; and the waste management industry itself, who will have to provide unique service offerings for each area (beyond the current variances). This may impact prospects for economies of scale, regional collaboration opportunities, as well as increasing uncertainty which is known to limit financial investment. We can also not underestimate the importance of clear and consistent regulation and policy, not just at local council level but also at state level when appropriate. The state government's Waste Avoidance and Resource Productivity Strategy should be leading this.

If there are any queries regarding this submission please do not hesitate to contact me at [redacted].

Yours sincerely,

RRalph

Mr Rick Ralph
Chief Executive Officer