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The Research Director
Environment, Agriculture, Environment, Resources and Energy Committee
Parliament House
George Street
BRISBANE QLD 4000

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

Dear Research Director

EDO Qld Submission on Water and Other Legislation Amendment Bill 2011

This is the submission of the Environmental Defender's Office Queensland ("EDO") on the Water and Other Legislation Amendment Bill 2011 (**WOLA Bill 2011**).

The EDO is a community legal centre which specialises in public interest environmental law in Queensland. The primary goal of the EDO is to protect and enhance the environment in the public interest through the use of the law, by and on behalf of the community. The EDO is active in law reform and we welcome the opportunity to comment on this Bill.

KEY RECOMMENDATIONS FOR WATER ACT AMENDMENTS

- Amend proposed s.38A(2) so that the 'long process' applies in all cases where there is likely to be significant changes to the allocation and sustainable management of water in a plan area. The preferred approach is to use the standard (short) process only where the changes to the plans are 'minor' (as is the case under the Sustainable Planning Act 2009 in relation to changes to development applications and planning schemes).
- Delete clause 89 of the Bill. There should be no more exemptions from the requirement to get a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring.

DETAIL

Our submission is confined to three key concerns that arise from the proposed changes to the Water Act 2000 (Qld) ('the Act'), namely:

- That an unfettered discretion has been given to the Minister to determine the level of public consultation in relation to water resource planning in catchments where there are existing plans.
- That scope of s.814 has been extended by removing the requirement for a riverine protection permit to 'destroy vegetation, excavate or place fill' related to development that is self-assessable under the *Sustainable Planning Act 2009*

Before addressing those concerns, we welcome the initiative to provide for the concurrent development of new, or amendments to existing, water resource plans and resource operation plans. We agree that this will assist interested community members in understanding the strategic and practical effects of changes to the water regimes.

a. Ministerial discretion to choose level of public participation

However, under the new single-process for preparing water resource plans, in catchments where there are existing WRP/ROPs (which includes most of Queensland) the Minister has an unfettered discretion to determine the process for making anew or amending an existing plan. The amendments establish two processes for developing new or making changes to existing plans. The long process includes a statutory requirement for public input at the statement of proposals stage, in addition to the publication of the draft WRP/ROP. The standard process, on the other hand, is shorter. It only requires public input at the draft stage.

Where there are significant changes to water allocations in a plan area, the involvement of community at an early stage is an essential requirement. The current system allows for that early participation. Rights of public participation should not be easily removed. Where the proposed reforms to a WRP/ROP do not substantially change allocations (and truly represent a continuation of the existing framework) then the standard process is appropriate.

To ensure that rights of public participation are not removed, we recommend that the standard (short) process only apply where the changes to the plans are 'minor' (as is the case under the *Sustainable Planning Act 2009* in relation to changes to development applications and planning

schemes). The long process should be followed in all cases where the changes to water allocations in a plan area are not ‘minor’.

The proposed new section 38A(2) (introduced through clause 13 of the Bill) should be amended so that it reads:

“(2) This subdivision applies if-

- (a) The proposed draft water resource plan is likely to significantly change arrangement for the allocation, and sustainable management, of water in the proposed plan area; or
- (b) ...; or
- (c) ...

Alternatively, if the Minister is to retain a discretion to choose the long or standard process for a particular plan region, the Act must include clear criteria setting out what factors the Minister must take into account in exercising her/his discretion. It is not enough that decisions under this part of the Act are required to advance the purposes of Chapter 2, being the allocation and sustainable management of water and the principles of ecological sustainable development. The Minister should, in any event, be required to publish her/his decision justifying the choice of the long over the standard process, or vice-versa.

EDO client has raised concerns in relation to the removal of the statutory Community Reference Panels. The Department has indicated that these Panels have not always functioned as best they could. There are examples where the Panels have been considered a success. A community member who participated in one of the Panels indicated that in his experience the panel played an important role in improving the technical assessment that formed the skeleton of the WRP.

b. Extending exemptions from the need for a Riverine Protection Permit

Riverine Protection Permits should be required for all activities that destroy vegetation, excavate or place fill in a watercourse, lake or stream. The proposed amendment introduces a new category of exemption – where works are a necessary and unavoidable part of construction works that are self-assessable under the *Sustainable Planning Act 2009*. The *Sustainable Planning Regulation 2009* in Schedule 3, Part 2, Table 4 sets out the situations when operational works for taking or interfering with water are self-assessable. The categories of works are extensive.

Clause 89 should be deleted.

CONCLUSION

If you wish to discuss any aspect of this advice please contact EDO Qld.

Yours faithfully,

Environmental Defenders Office (Qld) Inc.

A handwritten signature in blue ink, appearing to read "S. Sellwood".

Scott Sellwood

Solicitor

Environmental Defenders Office (Qld) Inc

To provide feedback on EDO services, write to us at the above address.