

## Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024

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**Submitted by:** Sandy Bolton MP  
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**Submitter Comments:**



4 March 2024

Health, Environment and Agriculture Committee  
Inquiry into the Environmental Protection (Powers and Penalties) and Other Legislation  
Amendment Bill 2024  
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### **Submission by Sandy Bolton MP, Independent Member for Noosa**

Noosa electorate and shire residents respect and are passionate about the environment, reflected by its Biosphere Reserve status, and the efforts over decades to protect its unique natural assets dotted with close-knit communities.

Yet over the last 3 years we have seen a catastrophic increase in noise, dust, damage to infrastructure and wildlife, and danger to road users and residents through an inappropriate volume of heavy haulage through these Noosa villages.

Our environmental protection system should provide mechanisms to address all of these yet has not. The very system that is supposed to protect, is failing at every step.

An example is Environmental Authority's (EA's) issued for a small development that allows for an unacceptable expansion if it is the same type of development without triggering a review of the EA. An EA should also deal with all impacts of a development and not just those inside the permit area, including wildlife carnage, social and economic impacts, and the mental and physical health of communities.

We have been advocating for improved environmental regulation for many years including for an Independent Environmental Protection Authority since 2021, and thus we welcomed Queensland Government commissioning a review of environmental regulation enforcement powers conducted by retired Judge Richard Jones and Barrister Susan Hedge.

This resulted in a [report](#) released September 2022 making 18 recommendations to improve environmental regulation that were all supported by the Government (with one "supported-in-principle").



The Government subsequently released a discussion paper on some recommendations including how the Government was considering implementing them. In some cases, the implementation was different to what the review recommended, and this is deeply concerning.

We now have the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024, which does not reflect what was recommended, and what is needed to address the inadequacies of our current processes.

Throughout the bill development process, there have been three recommendations of particular relevance to the environmental catastrophe being experienced in the Noosa electorate. These are:

- creating an offence for breaching the General Environmental Duty
- providing a power to the Minister to revise an Environmental Authority (EA), and
- recognising human health and safety in the definition of environment.

For the first two of these, the implementation in the Bill substantially ‘waters down’ the recommendations from the review and is not acceptable. Further discussion on these three recommendations is provided below.

### **General Environmental Duty**

*Review recommendation No 15: Consideration should be given to creating an offence for breaching the General Environmental Duty (GED).*

The GED provides a ‘catch-all’ power to address adverse environmental impacts, for when all else fails. In its current form there are no penalties attached to the GED, making it ‘toothless’.

By creating an offence for the GED, the recommendation will give the GED credibility and make it much more effective, which we support.

However, the Bill potentially waters down the GED as a catch-all provision by limiting the offence associated with it such that it doesn’t apply in certain situations. As stated in the Explanatory Note:

*A person will not have committed the offence where the act from which the contravention arises was authorised under an instrument identified in section 493A(2) (for example, an environmental authority), and that instrument provides for the reasonably practicable measures to be taken in relation to the act. Alternatively, a person will not have committed the offence if, in doing the act that gives rise to the contravention, they complied with a code of practice that applied to the relevant act (EN, Page 15)*

It is unclear how these provisions would operate to limit the effect of the GED in practice. However, by exempting specific instruments, the universality of the GED is broken. The Committee must consider the Victorian legislation which has a simple and comprehensive GED:

*(1) A person who is engaging in an activity that may give rise to risks of harm to human health or the environment from pollution or waste must minimise those risks, so far as reasonably practicable.*

*(2) A person commits an offence if the person contravenes subsection (1) in the course of conducting a business or an undertaking. Penalty: In the case of a natural person, 2000 penalty units; In the case of a body corporate, 10 000 penalty units (Environment Protection Act 2017 - Sect 25)*

## **Power to revise EAs**

*Recommendation No 12: The power to amend EA conditions be expanded to allow the Chief Executive or the Minister to amend conditions where the Minister or Chief Executive considers the environmental impact of the activity is not being appropriately avoided, mitigated or managed.*

With some EA's granted decades earlier, the size, scale, nature, and impact of the activity can change dramatically over time, and it is important that a mechanism be available to amend the authority when that occurs.

The Government's discussion paper rejected the recommendation provided by the review (even though the initial response was to support in principle) and instead proposed two technical amendments to be implemented in this Bill:

*amends section 219 to allow the administering authority to make revisions to a proposed amendment to an environmental authority (EA) or Progressive Rehabilitation and Closure Plan (PRCP) schedule within the notice of proposed amendment (NOPA) process (EN, p 14).*

*clarifies that the administering authority may issue an EEO to a holder of an environmental authority in relation to an activity even if the person is a holder of an environmental authority that authorises, or purportedly authorises, the activity. The EEO replaces and consolidates the functions of environmental protection orders, direction notices and clean-up notices under the pre-amendment EP Act (EN, p25)*

Neither of these amendments represents an implementation of the recommendation or even the principle of the recommendation as represented by the Government's "support in principle" response.

By providing a response of "support in principle" the Government indicated its support for the principle of allowing the Chief Executive or the Minister to amend conditions of an EA but may wish to implement it a different way.

The Bill must remain consistent to that specific Government response and provide a mechanism for the Chief Executive or Minister to reopen an EA even if it constrained in some limited way to mitigate stakeholder concerns, and address the failings being experienced in communities such as Noosa where other mechanisms such as Quarry Management Plans do not in any way address the serious health, economical and physical trauma emanating from activities that an EA should.

## **Human health and safety**

*Recommendation No 2: Amend the Act to include the concept of "human health, safety and wellbeing" in the definitions of environment and environmental value.*

The kind of activities that trigger regulation under the Act not only impact on the environment they also impact on the people within and around them, often with devastating consequences on residents health and mental wellbeing. These impacts must be addressed by the Act. The Act amends:

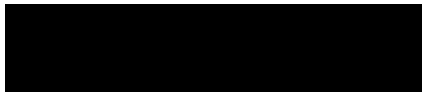
*section 8 to include human health, well-being and safety more clearly in the definition of 'environment'. This is achieved by specifying that the 'physical characteristics of locations places and areas', and 'physical surroundings of people' are part of the environment. (EN, p12)*

In this case the Bill fully implements the recommendation, and we support this.

The benefits to the Queensland community from these original recommendations in the review are many and abundantly clear. However, these many benefits are partially lost with recommendations being diluted in the implementation.

We request that the Committee address these concerns directly and consider how best the original recommendations can be implemented in full in this Bill in efforts to remedy the many failings impacting Queenslanders, that is costing the whole state financially, physically and mentally.

Yours sincerely

A solid black rectangular box used to redact the signature of Sandy Bolton.

**SANDY BOLTON MP**  
**Member for Noosa**