

Environmental Protection and Other Legislation Amendment Bill 2022

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Submitted by: Environment Council of Central Queensland (ECoCeQ)
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Comment on draft of the Environmental Protection and other Legislation Amendment Bill 2022 (EPOLA)

To the Members,
Health and Environment Committee
HEC@parliament.qld.gov.au

I welcome the opportunity to comment on the proposed amendments to EPOLA.

I represent the Environment Council of Central Queensland (ECoCeQ) and our mission is to protect environmental values in Central Queensland and elsewhere.

Thank you for some of the changes proposed by Dept Environment and Science, in consultation with others, that have the ambition to afford greater protection from environmental harms. I will offer our perspective on a few of the draft proposals.

Amendment of s 16 (Material environmental harm) .

Amendment of s 17 (Serious environmental harm)

ECoCeQ supports increasing financial deterrents to material environmental harms, and serious environmental harms, but if it is necessary that amounts must be made available on the department website, then annual \$ threshold amounts should be set as minimum and large enough that they cannot be absorbed as a ‘cost of doing business’.

ECoCeQ does not support using the Consumer Price Index as a guide to setting deterrents – why would this be a reasonable index to use?

Instead, ECoCeQ suggests a reversal of thinking, where the harm that is caused determines the amount of the fine above the minimum notified. Considerations might include harms to species or ecological communities, waterways etc. and the cost of repair or recovery from the harm. Some harms for instance that push a species to extinction (eg Black throated Finch on Adani mine site) can never be repaired or recovered, and in a situation such as this, ceasing operations may be the only deterrent. ECoCeQ does not consider that ‘offsetting’ harm is either reasonable or right. Offsets always lead to net loss of environmental values.

Amendment of s 39 (Other definitions)

Amendment of s 40 (Purposes)

We were a bit confused by what this means, but are of the opinion that producing an Environmental Management Plan at the early stages of the approvals process indicates that the proponent has developed some idea of how they expect to proceed. An EMP should not be deferred, as a structured plan is a very basic concept, and expected even if someone applies for a loan to open a coffee shop.

Amendment of s 41 (Submission)

41A Decision on draft terms of reference

ECoCeQ agrees that a draft Terms of Reference (ToR) for the EIS should include potential harms to the environment and ways to avoid these harms.

However, with reference to- *‘In deciding whether it is unlikely the project could proceed under some law because of some impacts or risks associated with the project, the chief executive would need to take into account whether the risks or impacts could be mitigated, for example, through a condition on the project’*. The process by which the chief executive can determine *‘being ‘satisfied’ of a specific matter. The use of this term is intended to imply a standard of reasonableness without explicitly stating that the chief executive must be ‘reasonably satisfied’* is subjective, and presumes that the chief executive is always motivated to provide environmental protection as a priority over economic development. This may not always be the case. These amendments are intended to prioritise increasing environmental protections. ECoCeQ suggests developing a clearer criteria, so that the decision by the chief executive is less subjective.

ECoCeQ supports 41B that proponent can resubmit the ToR just once and that it is substantially different from the original and addresses the identified shortcomings.

ECoCeQ supports Amendment s49, and removal of s50.

ECoCeQ supports Amendment s51 regarding notification via a website, but wants ability to ‘sign up for notifications’ included. Environmental groups such as ECoCeQ have little to no capacity to be trawling through websites looking for notifications. Public notification implies just that – stakeholders should be alerted to the notification.

ECoCeQ supports Amendment s56A to disallow an application to proceed at an early stage for better efficiency of the process. We further support a proposal to refuse repeated resubmissions.

ECoCeQ supports Amendment s56B to deny proponents ministerial appeal rights for a decision under s56A

59A Lapsing of EIS assessment report

ECoCeQ supports the lapsing of the EIS 3 (three) years after submission. The chief executive should be able to extend the period only 1(one) time and for a maximum of 1 (one) year. This legislation has no retrospective component, and the many ‘zombie’ proposals in the Galilee Basin and elsewhere do not reflect contemporary environmental legislation. For explanation, does *‘If, immediately before the end of the three year lapse period (or longer period if extended by the chief executive), the proponent has made an application for an environmental authority and that application has not yet been decided, the EIS assessment report will lapse when the application is approved or when any review and/or appeal for a refusal is decided or otherwise withdrawn’* mean that the zombies referred to earlier will need to prepare a new EIS, because *‘the environmental authority assessment is informed by the EIS assessment report, in order to better ensure that the environmental authority is contemporary, the EIS assessment report should not be significantly outdated’* ?

ECoCeQ supports amendments proposed in s143, s230, s252, s465, s476, as well as Clause 101 that allows criminal history checks and use of body cameras for enforcement agencies.

ECoCeQ does not support Amendment s125. Difficulty for the proponent in obtaining information does not constitute legitimate reason to approve an application for an Environmental Authority under any circumstance, or with any conditions.

The task of preparing comment on these large documents is onerous for all ENGO’s. We lack capacity to dedicate staff to these projects, and some groups, particularly community based volunteer groups, the task is verging on impossible. ECoCeQ members became progressively fatigued trying to work our way through the document. Generally, we considered that most of the draft amendments are made with good intent to enhance environmental protection, so our thanks for that. However, our response is incomplete, so please do not infer either unqualified support or the opposite.

Yours sincerely,

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President

Environment Council of Central Queensland (ECoCeQ)

