Environmental Protection and Other Legislation Amendment Bill 2022

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Environmental Defenders Office

Submission on the Environmental Protection and Other Legislation Amendment Bill 2022

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About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

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Thank you for the opportunity to provide a submission on the Environmental Protection and Other Legislation Amendment Bill 2022 (**EPOLA Bill)** and for the Department of Environment and Science's (**DES**) work to date in consulting on the proposed amendments.

This submission provides comment on those proposed amendments we had capacity to review. Silence on any proposed amendments should not be taken as either approval or dissent.

There are many proposed amendments in the EPOLA Bill which will hopefully work to improve the regulation and minimisation of environmental impacts in Queensland, we applaud these changes which are noted below. However, there are various amendments which may weaken the avoidance and mitigation of environmental impacts in Queensland, particularly by decreasing the information available to DES and the public in assessment of a project.

Our submissions are as follows:

Proposed amendment	**Comment**
Clauses 4 and 5	Increasing the threshold of material and serious environmental harm means that fewer harmful activities may reach these thresholds. It is foreseeable that environmental harm that causes loss of damage of between $5,000 and $10,000 could be significant, yet this harm may now not be as strongly enforceable against where it does not meet the tangible threshold tests provided in *Environmental Protection Act 1994* (Qld) (**EP Act**) s16(1)(b) and (c). This increase to the thresholds restricts, rather than increases the ability of DES to enforce against environmental harm. It is already apparently sufficiently difficult for DES to enforce the EP Act to protect against environmental impacts - we do not support increasing this difficulty in enforcement further.
Clause 7	**We don't support the removal of the requirement for an environmental management plan (EMP) in an EIS**. An EMP is a very useful document for understanding the overarching nature of a proposal and the proposed management of environmental impacts in amidst more detailed EIS documents. The EMP is particularly helpful to assist community members to get across the project quickly without reading the whole EIS, assisting in more informed submissions on the EIS.
Clause 8	We support these additions requiring that the terms of reference require a summary of the potential adverse environmental impacts of the project; and the measures proposed to avoid or minimise the adverse impacts. **However, much greater specificity should be provided here as to the type of information that is needed behind these**

	two areas, particularly with respect to the summary of the adverse environmental impacts of the project, for the terms of reference to be meaningfully developed for the project. Particularly more specificity as to: - the nature of the proposed activities so that it is clear to the regulator what information may be needed in the EIS to properly understand the potential impacts of the project; and - the location of the project and the location of any potential direct, indirect and downstream impacts of the project, including any sensitivity to impacts in these locations.
Clauses 9 and 10	We support the clarity provided by section 41A as to the decision stage around the review and acceptance or rejection of the draft terms of reference. **We strongly support the power this provision provides to refuse the application to proceed if the project is clearly unacceptable at this stage.** This will save considerable time and resources of the government and communities in having to assess and respond to proposals that really are completely inappropriate. **We also strongly support all references throughout the Bill to the impacts to cultural heritage as a means for refusal –** this is a great step forward for development assessment under the EP Act where there is historically a disconnect between the major approval assessments and the Aboriginal Cultural Heritage Act. **However – we also strongly recommend that the provisions in 41A(4)(b) and 41B are amended such that inappropriate projects cannot continue to resubmit draft terms of reference.** More specificity is needed as to what a 'new draft terms of reference' is in relation to the project such that it would enable further resubmission. We expect that this 'new draft' should fundamentally change the project in a way that ensures the project would not trigger the criteria in subsection (3) requiring refusal. This requirement should be written into the section so that it is clear that the project must be substantially revised prior to resubmitting. Otherwise, this provision is too vague to be clearly interpreted. Also, we suggest it may be helpful to revise s41A(4) and s41B to reduce any unnecessary duplication and confusion in how the sections should be interpreted.

Clause 11	**As above, we strongly support the ability to refuse a project at the time of deciding whether the EIS should proceed under s49.** **We also strongly support greater clarity as to the process for decision making around a draft EIS** – to move away from the currently vague process projects can be left in, such as for the Baralaba South coal mine proposal. **There is a great need for this clarity to be applied to existing projects such as Baralaba South, already having been applied for but falling through the gaps of the vagueness of the current provisions.**
Clause 13	We support the removal of s50 as an unnecessary additional process for proponents to review a decision to refusal the EIS proceeding. This is sufficiently empowered via opportunities for judicial review, making this right duplicative and unnecessary.
Clause 14	While we support the removal of the requirement for notification via a newspaper, as a largely ineffective way of notifying the public about a proposal given the decreasing use of newspapers, **we strongly suggest notification could be improved via:** - more specificity as to where the website should be held – we recommend this should be a "government website" or "a website administered by the administering department", and/or possibly a local government website. Without specificity, the EIS could be published anywhere on the internet and meet this requirement, with the community having no idea where it should expect to find the information. Having one central place administered by the government provides certainty to the community as to where to find this information. It also assists in ensuring consistency in the way the information is presented; - including reference in this section to the government maintaining an email service for the community to sign up to notifications going forward. While we are uncertain if this is currently effective, DES has made significant steps towards this service and it would be ideal if this was a legislated service going forward. It is a very helpful way of ensuring that the community can be aware of projects of interest to them and is fit for purpose with today's technological options. We support the increased time for maintaining an EIS online.
Clause 15	**We strongly support the introduction of a requirement to refuse the application to proceed at this stage, along with the earlier stages.**

	We support that this process for resubmission, under s56AA(3), does not allow consistent resubmission.
Clause 17	We support the removal of this unnecessary right to seek Ministerial review of the decision to not allow an EIS to proceed, as a duplicative provision considering judicial review powers.
Clause 19	We suggest that this provision could be made more specific such that the EIS must be assessed for the adequacy of: - mitigating and avoiding environmental impacts - baseline understandings of the environments proposed or potentially to be impacted - details as to the nature and possible impacts of the proposed project activities, including location of the activities. This should be mandatory information obtained via an EIS. **We cannot stress enough that increased focus on the integrity of information put forward by a proponent at the time of assessment, particularly with respect to the above matters, will greatly improve environmental decision making, environmental and community outcomes, trust in government and industry and reduce the likelihood of community litigation challenging the adequacy of environmental decision making in Queensland.**
Clause 20	**We strongly support the lapsing of EIS assessment reports –** this will assist in ensuring that EIS information remains current and accurate, particularly in the quickly changing environments we now face as a result of climate change and environmental degradation tipping points. **We recommend that there should be a maximum period by which the chief executive can extend the life of the report, to ensure this discretion is not misused through pressure from proponents.**
Clause 21	**We strongly do not support the reduction in information required of applications for prescribed ERAs of any kind.** Application requirements are already sufficiently adaptable to the nuances of the project proposed – there is always the ability to provide some information on the environmental values and potential impacts of a project. If no information is able to be provided about these two key facets of a project, it should not be allowed to go ahead. If no information is available, it means the proponent has done no research on the proposed site, or doesn't understand at all the activity they are proposing. Neither of these scenarios should lead to the proponent obtaining an EA to undertake the activity. **Why is DES seeking to reduce the information provided to it in applications for assessment at a time when we have consistent reports released that the**

	environment is degrading because of failures in environmental regulation of impacts?
Clause 23	**We strongly recommend that the discretion around the requirement of an EIS for site-specific resource activity applications be removed under s143, such that all site-specific resource activity applications be subject to an EIS.** These activities are the most impactful of all resource applications, posing threats to threatened species, water resources and climate change. Requiring an EIS greatly assists in ensuring a clear, accountable, quality assessment sand decision process using the best quality information. The EIS can be scaled to suit the project, so it is not accurate to suggest that this is too burdensome for proponents. The EIS process is a known process which provides opportunities for interested stakeholders to have a say on what should be considered in the assessment, through the terms of reference consultation, and provides more certainty around the kind of information required of a proponent. This comment relates to the need for reforms that are broader than offered in this clause to this section. Setting a clear standard that proponent's should expect to provide information on their proposed activities, techniques to mitigate impacts and the baseline of the surrounding environment will significantly improve environmental regulation in Queensland. Whereas currently it appears there is reticence to expect detailed information from proponents except for the largest of projects – significantly limiting the ability for government and the public to assess the appropriateness of projects proposed in Queensland.
Clause 31	**We strongly support the removal of discretion around requiring the notification of major amendment applications.** This will greatly reduce uncertainty and wasted resources in advocating for major amendment applications to be notified. If the amendment is major it is appropriate that it be open for public scrutiny. We applaud the Queensland Government for putting forward this amendment.
Clause 48	While modest, we support empowering DES with the ability to extend the period within which it can request information from the applicant. The provisions are still unfortunately restricted however and turn to the question of why DES is hindering its ability to require information from a proponent during assessment which will assist in thorough assessment of impacts in the public interest.
Clause 49, new s 299A	The language of s229A(c) is vague and discretionary – we recommend this drafting be tightened so that some certainty is given that the level of change allowed under this provision is

	tangibly inconsequential rather than being open to the whim of the office of DES.
Clause 64	We support the introduction of the power to seek further information to properly assess an application for a transitional environmental program provided for in new s 334, to ensure these applications are made on enough information to assess the potential impacts.
Clause 101	We support the introduction of broader powers to assist with ensuring greater environmental protection under the EP Act. Properly empowering DES to undertake its enforcement role helps to ensure the whole Act is better respected and upheld.
Clause 109	We support the proposed documents being provided for in the public register under s540A. We recommend that applications for estimated rehabilitation costs be provided for on the public register, as the previous version of this document was on the register and this information is in the public interest.
Clause 122	New s803, as stated above, should not apply in a way that allows current mining applications to slip through the vague process provided for under current drafting – at least putting a maximum period by which decisions can be extended for with respect to current applications / EIS submissions would greatly assist the current flaws in process.
Clause 124	We do not support the continued provision of appeal rights only for proponents unhappy with a refusal decision, and not for the general public under the various 'original decisions' referenced in schedule 2. This greatly inhibits the public from ensuring their interests are protected by the decisions of DES, while supporting the rights of proponents to challenge decisions that impact their profits and plans.