

## Environmental Protection and Other Legislation Amendment Bill 2022

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**Submitted by:** Healthy Land & Water  
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25 October 2022

Committee Secretary  
Health and Environment Committee  
Parliament House QLD 4000  
By Email: [hec@parliament.qld.gov.au](mailto:hec@parliament.qld.gov.au)

Dear Committee Secretary

**Re: Healthy Land & Water Submission to The Health and Environment Committee of the 57th Parliament of Queensland – Environmental Protection and Other Legislation Amendment Bill 2022.**

Healthy Land and Water appreciates the opportunity to provide a submission to the Health and Environment Committee regarding the Environmental Protection and Other Legislation Amendment Bill 2022. Our response has been guided by the details contained within the Explanatory Notes accompanying the Bill.

Healthy Land and Water (HLW) is an independent not-for-profit organisation and the natural resource management body formally recognised by all levels of government for South-East Queensland (SEQ).

The natural environments of SEQ sustain globally unique and diverse ecosystems, hold significant cultural values and perform a variety of ecosystem services. Our natural systems provide the foundation for sustainability, prosperity and liveability. Rapid population growth and climate change pose a range of challenges to these values.

HLW works in partnership with Traditional Owners, government, private industry, utilities and the community to deliver innovative and science-based solutions to address the challenges that put these values at risk. Specifically, HLW implements innovative and science-based projects and initiatives, training and workshops, and amplify our impact by collaborating across sectors and tenures to improve and protect landscapes, farmland, waterways, coastal environments, cultural landscapes, and biodiversity.

The delivery of the SEQ Natural Resource Management Plan (SEQ NRM Plan) is a critical strategic aim of HLW and drives the focus of our actions across the region. The SEQ NRM Plan is also a key delivery mechanism in *ShapingSEQ: The South East Queensland Regional Plan 2017* as part of the regulatory framework which gives effect to the *Planning Act 2016*.

HLW coordinates the SEQ Report Card, an assessment of the health of each of South East Queensland's major catchments, river estuaries, and Moreton Bay zones. The Report Card is released each year in collaboration with the Department of Environment and Science and the Local Governments of South East Queensland. The Report Card reflects progress towards achieving the targets in the SEQ NRM Plan which unfortunately demonstrate a trend of environmental decline.



The Acts targeted in the Bill are important mechanisms to supporting delivery of the whole of community targets detailed in the SEQ NRM Plan.

To this end, Healthy Land and Water (HLW) broadly supports the intent of the Environmental Protection and Other Legislation Amendment Bill 2022 to improve administrative efficiency and ensure the regulatory frameworks within the Environment portfolio remain contemporary, effective and responsive.

In particular HLW supports the intent of the Bill to amend the:

- *Environmental Protection Act 1994* (EP Act) to support industry, streamline and clarify regulatory processes, better protect the environment and improve community input and transparency; and
- *Waste Reduction and Recycling Act 2011* (WRR Act) to make minor, technical refinements related to administrative processes and interpretation.

In relation to the WRR Act, HLW supports initiatives to reduce waste, particularly any effort to reduce litter and waste in the environment.

The proposed amendments under the Bill to the *Wet Tropics World Heritage Protection and Management Act 1993* (Wet Tropics Act) and *Land Title Act 1994* relate to matters outside of HLW's focal geographic scope; however, HLW support the general intent of the Bill to enhance the protection and management of World Heritage Areas.

In direct relation to the EP Act, HLW strongly supports amendments to enhance the achievement of the Act's following objectives:

- providing that EIS assessment reports lapse after three years to ensure that, for the purposes of an environmental authority application, the assessment reports reflect contemporary environmental legislation, policies and standards;
- allowing the chief executive to refuse an EIS from proceeding if it is unlikely the project could proceed under the EP Act or another law; and
- enabling courts to order persistent offenders to stop carrying out particular activities and making it an offence to breach such an order.

HLW supports the following proposed amendments in particular as they are described in the Bill:

- Legislation must have sufficient regard to rights and liberties of individuals – Legislative Standards Act 1992, s 4(2)(a)
- Amendment of s 41 (Submission)
- 41B Proponent may resubmit draft terms of reference
- Amendment of s 49 (Decision on whether EIS may proceed)
- Omission of s 50 (Ministerial review of refusal to allow to proceed)
- Amendment of s 225 (Amendment application cannot be made in particular circumstances)
- Amendment of s 230 (Administering authority may require public notification for particular amendment applications)
- Amendment of s 320A (Application of div 2)



- Amendment of s 326BA (When environmental investigation required – contamination of land)
- Amendment of s 363B (Authorised person may issue a direction notice)
- Insertion of new ch 7, pt 8, div 2, sdiv 2A
- Amendment of s 493 (Executive officers must ensure corporation complies with Act)
- Insertion of new s 506A Orders against persistent offenders
- Amendment of s 540A (Registers to be kept by chief executive)
- Amendment of s 574M (False or misleading information about reports or certification)

HLW has particular concerns about the potential negative or perverse outcomes as a result of the following proposed amendments:

- Amendment of s 16 (Material environmental harm)
- Amendment of s 17 (Serious environmental harm)
- 41A Decision on draft terms of reference
- Amendment of s 51 (Public notification)
- Amendment of s 125 (Requirements for applications generally)

This submission will now expand on these preliminary observations:

**HLW supports the following proposed amendments in particular as they are described in the Bill:**

**Legislation must have sufficient regard to rights and liberties of individuals – Legislative Standards Act 1992, s 4(2)(a)**

HLW supports the insertion of new s 486A into the EP Act that allows authorised persons to use a body-worn camera to record images or sounds while exercising a power under chapter 9 of the EP Act.

**Amendment of s 41 (Submission)**

HLW support this amendment particularly the statement “This amendment will require a proponent for an EIS to submit, with the draft terms of reference, a summary of the potential adverse environmental impacts of the project and proposed measures to be taken to avoid or minimise these impacts”.

**41B Proponent may resubmit draft terms of reference**

HLW support this insertion and its intent to prevent constant resubmissions of EIS's.

**Amendment of s 49 (Decision on whether EIS may proceed)**

HLW supports this amendment as it is inefficient to continue an EIS assessment process where it is evident to the chief executive that it is unlikely that the project would be able to gain all necessary approvals.

**Omission of s 50 (Ministerial review of refusal to allow to proceed)**

HLW support this amendment to remove the proponent's ability to apply to the minister to review a chief executive's decision under s 49 to refuse to allow an EIS to proceed. The chief executive's decision to refuse to allow an EIS to proceed should be an 'original decision' to provide review and appeal rights for proponents.

**Amendment of s 225 (Amendment application cannot be made in particular circumstances)**

HLW support the amendment to ensure a new environmental authority is applied for when the existing environmental authority expires.

**Amendment of s 230 (Administering authority may require public notification for particular amendment applications)**

HLW support the directive that public notification is required for all amendment applications for an environmental authority for a resource activity where the assessment level decision is that the amendment is a major amendment.

**Amendment of s 320A (Application of div 2)**

HLW is supportive of the "event" being defined as clearly as possible.

**Amendment of s 326BA (When environmental investigation required – contamination of land)**

HLW support the recognition that many contaminants have the potential to cause serious environmental harm or material environmental harm irrespective of their "concentration". It is understood that this would allow a contaminated site which is not being investigated because it is not above some threshold amount to now be investigated.

**Amendment of s 363B (Authorised person may issue a direction notice)**

HLW supports this amendment.

**Insertion of new ch 7, pt 8, div 2, sdiv 2A**

HLW supports these insertions.

**Amendment of s 493 (Executive officers must ensure corporation complies with Act)**

HLW supports this amendment.

**Insertion of new s 506A****506A Orders against persistent offenders**

HLW supports this insertion.

**Amendment of s 540A (Registers to be kept by chief executive)**

HLW supports this amendment to provide more transparency regarding EISs.

**Amendment of s 574M (False or misleading information about reports or certification)**

HLW supports this amendment to ensure auditors are held to account.

**HLW has particular concerns about the potential negative or perverse outcomes as a result of the following proposed amendments:****Amendment of s 16 (Material environmental harm)**

HLW supports increasing the threshold amount for material environmental harm to \$10,000. HLW understands that this would mean that a person would need to cause \$10,000 worth of damage before they could be penalised with an offence.

However, this needs to be carefully considered as to whether an exception needs to be included in circumstances where a threshold amount may not be able to be determined, or the nature of the harm is significant even though it is not valued at \$10,000.



### **Amendment of s 17 (Serious environmental harm)**

HLW supports increasing the threshold amount for serious environmental harm to \$100,000.

This needs to be carefully considered as to whether an exception needs to be included in circumstances where a threshold amount may not be able to be determined, or the nature of the harm is significant even though it is not valued at \$100,000.

A stratified series of thresholds for penalties based on profit margin could also add incentives for parties to conform with environmental regulations and legislation.

### **Insertion new ss 41A and 41B**

#### **41A Decision on draft terms of reference**

HLW supports this insertion, however this would benefit from more detailed definition around what constitutes unacceptable adverse impact under both stated circumstances (environmental and cultural heritage).

HLW are supportive of the list of examples in paragraphs (i)-(iv) of subsection (3)(a) not being exhaustive so that other matters can be considered.

HLW recommend that if a threshold for these subsections is reached an EIS should be denied.

While these sections list things a Minister could consider, it also suggests that a project could cause an unacceptable adverse impact on cultural heritage but still be allowed to proceed. The Juukan Gorge findings highlight that this is likely to be inappropriate.

A clear threshold should be set beyond which a project would be denied.

In respect to "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"; this should require a cultural heritage assessment involving the Cultural Heritage Party, among other assessments. Such cultural heritage loss would likely not be mitigatable.

### **Amendment of s 51 (Public notification)**

HLW support this initiative but would like to see newspapers retained where local papers are still in distribution. This is particularly the case in geographic areas where internet connectivity or where there remains a strong culture of traditional communication via newspapers and other physical formats.

HLW support the extension from one to two years to increase transparency and enhance public access.

### **Insertion of new s 59A**

#### **59A Lapsing of EIS assessment report**

HLW asks the Committee to consider whether it is appropriate for the chief executive to extend the period at any time before the EIS assessment report lapses. HLW supports a validity period of three years for any EIS; and believes that this period of time should be sufficient. Longer periods of time for an EIS could impact upon the suitability of the terms of reference set for an EIS at commencement as well as the validity and relevance of data.

### **Amendment of s 125 (Requirements for applications generally)**

This amendment should highlight a definition of 'trial', 'research', or 'innovative' activities. It is suggested this be included to limit potential for abuse of this provision. It is expected that this provision would only be suitable for activation where there was a detailed research methodology with the involvement and oversight of a research institution and the corresponding ethics considerations.



Thank you for the consideration and the opportunity to provide a submission to the Committee. Healthy Land & Water hopes that this supports the Committee with its considerations and work to further the protection and enhancement of Queensland's environmental values.

Should the Committee seek further comment or evidence from Healthy Land & Water that relates to the Bill considerations please don't hesitate to get in contact with Strategic Partnerships Manager, Joel Bolzenius on [REDACTED].

Yours sincerely

A handwritten signature in blue ink, appearing to read "A O'Neill".

Dr Andrew O'Neill  
Acting Chief Executive Officer  
[REDACTED]