Environmental Protection (Efficiency and Streamlining) and Other Legislation Amendment Bill 2025

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QELA, a not for profit organisation, consults with and educates interested professionals and government representatives about planning, development and environmental laws that apply, or are proposed to apply, in Queensland.

QELA provides a collegiate forum for multi-disciplinary interaction and collaboration.

Introduction

1. The Queensland Environmental Law Association (QELA) provides this submission in response to the call for submissions for the Health, Environment and Innovation Committee's inquiry into the Environmental Protection (Efficiency and Streamlining) and Other Legislation Amendment Bill 2025.

2. QELA is grateful for the opportunity to provide this submission.

3. In summary, QELA is supportive of the intent behind the amendments, being to improve administrative efficiency and ensure contemporary, effective and responsive environmental regulatory frameworks in Queensland.

4. The purpose of this submission is to provide constructive feedback where QELA sees that the proposed amendments may not align with the overall intent of the Bill, or otherwise has particular concerns to raise about the implementation or operation of the amended legislation.

5. In particular, QELA has residual concerns about the proposed amendment to s 4 of the *Environmental Protection Act 1994* (**EP Act**) and the "relevant summary offences" for which an extended three year limitation period is proposed, though acknowledges the appropriateness of the three year period compared to the originally proposed five year period.

6. This submission also raises a number of matters for the Committee's consideration in respect of the proposed new ERA codes for low risk activities, noting its general support for the adoption of the codes to streamline approval processes.

Amendment of s 4 and s 9A – significant environmental values

7. The amendment to s 4 of the EP Act extends beyond addressing an efficiency or streamlining opportunity and represents a fundamental reform to the legislation. While the intent of the amendments is to "*provide clarity to stakeholders, applicants and those administering the legislation on the aspects of the environment that are a priority for the State government…*" practically these amendments would appear to facilitate the introduction of a new layer of regulation, rather than streamlining the existing regulatory frameworks.

8. This particular aspect of the Bill warrants further consultation and analysis of the regulatory impact to ensure that the legislation is appropriately justified and proportionate to the desired policy outcome.

ERA Codes and prescription of ERAs generally

9. QELA commends the implementation of mandatory codes for low risk ERAs, however notes the department has the discretion to decide whether the new code must be applied to every person undertaking the relevant activity, including existing authority holders, or whether a person can choose to operate under a new ERA code or an environmental authority. QELA supports an "opt-in" approach for all ERA codes.

10. The regulation which ultimately approves an ERA code should also clarify any devolved powers to local government for enforcement of that code, pursuant to s 514(1)(c) of the EP Act.

11. While ultimately a matter for submissions on each individual code in future, the inclusion of an expiry date for the operation for each code at the outset is supported, recognising that best practice environmental management is likely to change with time, whilst giving the proponent certainty regarding timeframes and commercial decision-making. An agreed mandatory notification period of likely changes to the codes would also help to avoid delays in compliance or uncertainty for operators. For example, if a code expires in 7 years, notification from the Department of likely changes after 5.5 years would allow operators to update their management practices prior to the code amendments taking effect.

12. We also suggest (and understand it to be the intent of the Bill) that any substantive changes to codes be made in consultation with operators and following the consultation process provided for by new s 551B.

13. QELA supports the implementation of a publicly available, searchable and up-to-date online register of activities operating under a code so that industry, legal professionals, financiers and landholders can continue to undertake effective due diligence. It is also important for transparency: landholders, non-government organisations and the broader community should be able to understand how and where activities are being conducted.

14. Finally, a number of potential implications of the adoption of the ERA codes are raised for general consideration by the Committee, noting that these implications ought to be taken into account but do not undermine the overall support for the streamlined approach which is proposed in the Bill. Some may also be considered in due course when each specific ERA code is drafted and publicly notified:

(a) **Residual risk and financial security** – If no financial security or residual risk payments are required for small-scale mining activities, landholders (or ultimately taxpayers) could be exposed to rehabilitation liabilities if an operator becomes insolvent or otherwise does not comply with its obligations.

(b) **Cumulative impact** – The consultation paper refers to the very large number of small-scale mining operations around the State. Consideration should be given to the potential cumulative impact of streamlining the regulation of all such operations, particularly where a specific mineral may typically be found in a similar or specific environmental setting. For example, if a particular mineral is commonly located in riverine or other sensitive environments, the aggregation of many small-scale operations - each subject only to a mandatory code and not subject to individual assessment - could potentially result in cumulative impacts on those ecosystems. While the impact of any single operation may (arguably) be more limited, the cumulative impact of numerous activities in the same type of environment around the State could be significant.

(c) **Offsets** – We assume the reform means that offsets will no longer be capable of being imposed for prescribed ERAs. The removal of the ability to impose offsets may increase the risk that significant residual impacts on environmental values are not adequately offset, particularly in sensitive or high-value environmental areas. The codes should be designed to deliver equivalent or improved environmental outcomes compared to the current system, with clear, measurable performance standards.

(d) **Compliance** – With the removal of proposal-specific assessments, there may be increased reliance on self-assessment and compliance by operators. This highlights the importance of monitoring and enforcement to ensure that the mandatory codes are being complied with. Targeted education and clear guidance for small-scale miners and other operators will be critical. Clear, accessible guidance materials and support for operators to help them understand and comply with their obligations under the new regime is recommended.

(e) **Ongoing review** – Implementing the new mandatory code regime first for small-scale mining may amplify any unexpected ‘first-mover’ issues, with potential for environmental and financial consequences. Given the potential for such unforeseen consequences, it may be prudent for the Department to commit to regular review and, if necessary, revision of the codes based on monitoring outcomes, stakeholder feedback, and emerging risks.

(f) **Transition** – Appropriate transitional provisions will be important. As a general comment, there will also be a need for clarity regarding how the codes will interact with other regulatory regimes (e.g., work health and safety, mining laws), and whether there is any risk of regulatory gaps.

Mandatory code – small scale mining activities

15. QELA has specific feedback on the transition of small scale mining activities to an ERA code, noting that the Bill presently proposes transitional provisions to continue the prescribed conditions for small scale mining activities under the Act as in force, until such time as the activity is transitioned to an ERA code or an environmental authority.

16. While QELA again appreciates the intent of streamlining regulation, we recommend care is taken to ensure that mining activities carried out within nature refuges under the *Nature Conservation Act 1994* (Qld) are not able to be subject to a mandatory ERA code, and rather require proper approval processes under the ordinary EA process. This is an important exception for the following four reasons:

(a) Mining is a threatening process, and conservation agreements specifically identify it as such. Landholders who establish nature refuges enter into binding agreements with Queensland Parks and Wildlife Services which recognise mining as incompatible with the values of these areas.

(b) Small-scale mining still has the potential to cause environmental harm. Activities such as alluvial gold mining may result in sediment runoff and erosion, undermining the ecological integrity of nature refuges. These areas are often remote and make monitoring and enforcement particularly challenging.

(c) Current objection rights are essential for site-specific protection. Landholders can presently object to environmental authority applications, enabling tailored conditions that reflect the ecological values of the nature refuge. A mandatory code would remove an avenue of objection to the Land Court, an objective avenue for ensuring environmental safeguards.

(d) Finally, requiring compliance with a uniform code may not adequately address the specific ecological values that landholders have committed to protect.

17. Excluding nature refuges from the proposed mandatory code would seem to be a proportionate measure to uphold Queensland's conservation commitments whilst still streamlining regulation where necessary and appropriate to do so.

MSES and SEPPs

18. QELA members have raised that further efficiencies could be gained by Matters of State Environmental Significance and State Environmental Planning Policies being subsumed by a single comprehensive list. QELA queries whether any consideration has been given to such an approach being taken up.

Limitation periods for prosecutions

19. QELA supports the removal of the complainant's knowledge threshold, and the adoption of a 3 year limitation period for prosecutions of some summary offences to be commenced, where those offences require investigation and the gathering of evidence where those offences may not be immediately apparent because of the nature of the environment or where the nature of the evidence to be gathered is complex.

20. However, the need for adequate time to prosecute offences must always be balanced with the need for certainty for operators and the community more broadly, and the role of appropriate limitation periods for prosecution in securing that certainty.

21. QELA raises the following matters for the committee's consideration as to how the balance has been struck in the Bill.

22. The list of "relevant summary offences" currently includes offences against section 357I (failure to comply with a temporary emissions licence) and section 369A(1) and (2) (wilfully or otherwise contravening an environmental enforcement order without reasonable excuse). These offences are would only arise in circumstances where the Department would already have undertaken a level of investigation so as to satisfy itself that enforcement action should be undertaken for a particular operation, because the relevant TEL or EEO the subject of the offending would have already been issued. The reasoning for the extended 3 year limitation period does not seem to warrant these offences being defined as relevant summary offences.

23. An offence against s 430(3) (contravening a condition of an environmental authority) is less clear cut, but may in many circumstances not be of a nature where any additional time is needed to investigate or gather technical evidence. For example, many conditions of environmental authorities relate to reporting requirements, whereby the Department should be aware of any non-compliance almost immediately. While some breaches of conditions may involve more complex investigations, consideration should be given to whether an extended 3 year period is appropriate as a blanket approach.

24. Finally, the amendment to s 267(2) of the *Waste Recycling and Reduction Act 2011* to provide a special 6 year limitation period for an offence against section 54 would appear to be unnecessary. The offences under s 54 are administrative in nature, involving a failure to properly report and have a maximum penalty of 300 penalty units. In QELA's experience, the waste levy and exemption documentation is complex and often affected by human error in coding or inputs. Defending a charge 6 years after the offence would be practically very difficult in circumstances where staff and contractors are likely to have moved on. This is an issue of fairness which warrants further consideration.

We trust this submission is of assistance to the Committee, and look forward to reviewing the Committee's report in due course.

Yours sincerely,

Queensland Environmental Law Association