



Resourcing Queensland's future

13 March 2019

Committee Secretary  
Innovation, Tourism Development and Environment Committee  
Parliament House  
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Brisbane Qld 4000  
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**Re: *Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019***

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Innovation, Tourism Development and Environment Committee (the Committee) on the *Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019* (the Bill) introduced into the Queensland Parliament on 27 February 2019.

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The resources sector has a very strong interest in preserving the biodiversity of the iconic Great Barrier Reef (GBR), and QRC recognises that the health of both the Reef and the resources sector are intertwined.

While recognising the Government's imperative to focus on the environmental protection of the GBR, QRC must express its strong disappointment with the exceptionally short timeframe afforded for making a submission to the Committee on the Bill. It is critical that submission periods provide adequate time to collate genuine stakeholder contributions.

Notwithstanding the above, before further commenting on the Bill, QRC would like to express support for the Office of the Great Barrier Reef's (OGBR) ongoing engagement with QRC on the development of Government policy for these measures, including being afforded the opportunity to provide feedback on an early draft of the Bill in October 2018.

QRC understands that the new legislation will provide for the staged roll-out of strengthened Reef protection regulations to apply to all commercially produced cane, bananas, horticulture, grains and grazing as well as direct sources of pollution from

industrial land uses (for example, sewage and water treatment plants, aquaculture, mining or intensive animal industries) across all Reef regions – Cape York, Wet Tropics, Burdekin, Mackay Whitsunday, Fitzroy and Burnett Mary. This means it is all inclusive of industries operating in these catchments, capturing the agricultural sector for the first time under the sorts of requirements that have been required of the resources sector for many years.

This submission does not provide views on the amendments affecting industries other than the resources sector. Instead it focuses on the proposed amendments in Part 5 Great Barrier Reef water quality offsets, section 87 and 88 of the Bill pertaining to the amendments of the *Environmental Protection Act 1994* (EP Act), and the relevant linkages to the *Environmental Offsets Act 2014* (EO Act). These sections use the *Environmental Offsets Act 2014* (EO Act) to provide a head of power for the water quality offset framework. Specifically, QRC is seeking clarity on:

- The potential retrospectivity of the Bill for existing operations; and
- The design, application and operation of the offsets framework, including the need to accommodate event-based releases in the offsets framework.

#### Offsets

QRC understands that new and expanding prescribed and resource Environmentally Relevant Activities (ERAs), alongside the new agricultural ERA, are proposed to be regulated under a 'no net decline' position (Explanatory Notes – Pages 5 and 6).

Under section 87(2)(b), the Bill provides that a residual impact (i.e. any additional loading), whether temporary or permanent, will require offsetting in GBR catchments where it cannot be avoided or mitigated. Section 88(1)(c) therefore makes a critical shift from the 'significant' residual impact threshold currently afforded under the EO Act. While QRC recognises the state of the Reef and the need to minimise sediment and nitrogen loading, there is also a need for a consistent approach to calculating offsets, and the concept and acceptability of offsetting for a significant residual impact has long been the model.

When the EO Act was developed, one of the key aims was to establish a State offsets system that was consistent with the Commonwealth. The proposed amendments do not align with the long-standing, risk-based principles of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) and its demonstrated testing of 'significant' impact.

By defining a 'significant' threshold it allows Government to effectively manage and condition development with the highest residual impact on the environment. It also enables the allocation of resources for minimising environmental impact where it is most needed, while at the same time providing the community with the financial and social benefits of development.

In addition, the basic premise of the EP Act is minimisation of 'environmental harm', and appropriated penalties based on different levels of harm where this occurs above authorised levels. It is difficult to see how a temporary non-significant release to GBR catchments could result in harm to the Reef.

The move to this complete risk adverse approach has the potential to require any minor modification to an approved development to be reassessed, despite it having been previously determined to have no 'significant' residual impact. This makes the commitment to 'no retrospectivity' of the Bill's impact unclear for current Environmental Authority (EA) holders.

#### **Offsets Policy and defining the offsets framework**

Of particular interest to QRC is the Bill provisions to enable the making of GBR water quality offsets under the EO Act. While the Bill draws upon the existing framework of the EO Act, QRC has consistently sought clarity from Government as to how water quality offsets would operate, including how offsets are to be calculated. To date, OGBR has been unable to provide a clear line of sight other than:

- Water quality offsets will be required to represent the total volume of the contaminant that enters the water in a year; and
- Offset delivery options will remain flexible.

The uncertainty lies with what method for calculating the offset OGBR will consider acceptable and what baseline the offset requirements will be measured against. While QRC understands that the OGBR has not formed a firm position regarding implementation, the Office has indicated that an offset for release events over the life of an operation could be determined based on modelling for the purposes of granting an approval.

QRC is interested in engaging further with OGBR to come to an agreed approach, accompanied by key considerations, as to how an offset for release events over the life of an operation will be determined. QRC is of the view that this consultation should occur prior to the commencement of the Act (should the Bill pass). In addition, QRC raises concerns with section 87(4), which gives an apparently unfettered opportunity for the Minister to prescribe a contaminant to be a 'restricted contaminant', that is:

*"The Minister may recommend to the Governor in Council the making of a regulation prescribing a contaminant to be a restricted contaminant only if satisfied that, if released into water entering the Great Barrier Reef, the contaminant is likely to—*  
*(a) have an adverse impact on the quality of the water entering the reef; and*  
*(b) be contrary to achieving the purpose of this chapter".*

QRC requests information as to how the Government will be 'satisfied' that such a contaminant will 'have an adverse impact on the quality of the water entering the reef' (e.g. scientific method, monitoring and reporting) and how stakeholders will be consulted ahead of a restricted contaminant being determined.

#### Event-based releases

Following on from the above, a key issue for the resources sector (and other industries) is how event-based releases (i.e. those releases that do not occur all of the time, but only in extreme situations such as flood conditions) will be appropriately incorporated, and allowed for, in the water quality offsets framework. This scenario is generally the only

time when resource operations would release to GBR catchments. As for any release, whether ongoing or event-based, the quality and quantity of the releases are conditioned through a company's EA and have been heavily assessed against the assimilative capacity of the receiving water. There is no evidence that any such releases have caused harm to the GBR, nor should this be the case in the future. In addition, there are stringent reporting requirements associated with these events, which focus on the quality of the water released.

QRC strongly suggests that the Committee seek an explanation from OGBR as to how the Bill will accommodate event-based releases, which can also be enabled through the use of a Temporary Emissions License under Part 4A of the *Environmental Protection Act 1994*. Without explicit allowance in the Bill for event-based releases, and the need to obtain an offset prior to release, the resources sector and others could find themselves in a position where they be not able to, for example, meet safety requirements or be able to account for an unintentional uncontrolled release. The Bill's stringent approach means that any additional load into the system could be considered as not meeting the requirements proposed in the Bill.

### **Exemptions**

Despite assurances from OGBR that the Bill, in particular water quality offsets, will not apply to existing operations retrospectively, the Explanatory Notes for section 87 and 88 fails to make this clear. The reference on page 6 of the Explanatory Notes to 'existing resource activities', does not assist at all in meeting the required transitional clarity.

Consistent with that described by the OGBR in October 2018, prior to receiving the draft Bill for review, QRC proposes that the Explanatory Notes be amended to make very clear that existing prescribed and resources ERAs will be exempt from the proposed regulations.

QRC understands that only new projects or expanding operations will be required to comply with the new requirements of the water quality offsets framework. For expanding operations, the application will not result in a review of existing conditions, however, proposals must not result in an increase in the allowable nitrogen or sediment discharge unless an offset is afforded to compensate for the additional impact. However, QRC maintains the position that offsets should only be required for any 'significant' residual impact (as provided above).

Further, the Explanatory Notes should provide that marine dredging (ERA16) will be exempt (or at least confirmed that this will be addressed in the Regulation).

QRC along with the Queensland Ports Association has long called for OGBR to clearly distinguish what activities are captured or exempt from the proposed regulations, in particular for ports given operations occur in the marine environment but may also interact with GBR catchments. Previously, ports have been described by OGBR as being exempt from the proposed regulations. However, QRC understands that, as at October 2018, the scope for which such exemptions apply has been narrowed to marine dredging and will be clearly distinguished by ERA16. All other port activities will be captured by the proposed regulations.



### Recommendations and clarification

QRC submits the following recommendations and clarification to the Committee as detailed in the body of this submission:

- **Recommendation 1:** That the Committee ask OGBR why they have removed the offsets threshold of 'significant residual impact' thus misaligning the Bill with the Queensland EO Act and the Commonwealth EPBC Act, and for the Explanatory Notes to include this reasoning.
- **Recommendation 2:** That the Government include specific recognition in the Bill of the different circumstances that apply for offsetting event-based releases.
- **Recommendation 3:** The Committee seeks the insertion into the Explanatory notes under the section titled 'Measures to achieve a 'no net decline' to Reef water quality from new development' clear statements on exemptions to the Bill, including:
  - Existing prescribed and resources ERAs will be exempt from the proposed regulations; and
  - Marine dredging (ERA16) will be exempt (or at least confirmed that this will be addressed in the Regulation).
- **Clarification:** The Committee seek clarity that the delivery calculations and options for the delivery of offsets will be provided in Regulation and/or operational guidance material and that QRC will be consulted on this material prior to the commencement of the Act (should the Bill pass).

### Conclusion

In summary, QRC does not oppose the Bill. However, all facets of the proposed regulations need to be well defined and understood by impacted stakeholders prior to the Bill passing and subsequently implemented (this includes the accompanying Regulations and guidance materials). This is in addition to the need for specific differences in the operation of the resources sector to be recognised in the offsetting provisions.

QRC's Manager, Environment Policy, Chelsea Kavanagh, and Director, Environment Policy, Frances Hayter, have carriage of environment policy matters and can be contacted at [REDACTED] and [REDACTED]

Yours faithfully



Ian Macfarlane  
Chief Executive

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