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VIA EMAIL (sdiic@parliament.qld.gov.au**)**
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam,

Re: Economic Development Bill 2012 – Joint Submission of the Queensland Environmental Defenders Offices

The Environmental Defenders Office of Queensland (**EDO Qld**) and the Environmental Defenders Office of Northern Queensland (**EDO-NQ**), (collectively, **Queensland EDOs**), are separate, not-for-profit, non-government, community legal centres specialising in public interest environmental law. Like other EDOs located in each of Australia's states and territories, each of the Queensland EDOs provides specialised legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. The offices also take an active role in environmental law reform and policy formulation, and offer community legal education programs designed to facilitate public participation in environmental decision making. EDO-NQ, based in Cairns, serves communities from Sarina north; EDO Qld, based in Brisbane, provides services south of Sarina. The Queensland EDOs have helped thousands of Queenslanders understand and access their legal rights over the last 20 years.

SUBMISSION TO THE COMMITTEE

1.0 GENERAL COMMENTS

Due to the nature of the proposals contained in the Bill, the lack of time to adequately review and comment upon the Bill's proposals, and the extremely attenuated consultation undertaken in preparation of the Bill, the Queensland EDOs cannot support the Bill and urge its rejection in order to allow meaningful review and input from the public and affected stakeholders. This is particularly the case for the proposed amendments to the *State Development and Public Works Organisation Act 1971* (**SDPWO Act**) and the *Environmental Protection Act 1994* (**EP Act**).

In the event that the Committee nevertheless recommends approval of the Bill, the Queensland EDOs recommend that a number of proposed amendments to the SDPWO Act and the EP Act be substantially amended in accordance with the comments below.

A. Inadequate Time To Review And Comment

While the Queensland EDOs appreciate the opportunity afforded them to make oral and written submissions to the Committee regarding the Economic Development Bill 2012 (**Bill**), and are mindful of Parliament's charge to the Committee that it provide its report to the House by 22 November 2012, there is simply inadequate time afforded to the public to meaningfully review and comment upon the Bill.

The Bill was only introduced on 1 November 2012. The volume of material that members of the public had to review, analyse, digest and comment upon was considerable. For example, the Explanatory Notes consist of 152 pages, while the Bill itself consists of 245 pages. Moreover, the Bill proposes to enact entirely new legislation, the *Economic Development Act* and establish the Minister for Economic Development Queensland (MEDQ), a corporation sole, to facilitate economic development and development for community purposes in Queensland and ensure policy priorities can be responded to in a timely manner. Similarly, the Bill proposes the repeal of two (2) other pieces of legislation entirely, namely the *Industrial Development Act 1963* and the *Urban Land Development Authority Act 2007*. Finally, the Bill substantially amends four (4) other pieces of legislation, namely: *South Bank Corporation Act 1989*, the *State Development and Public Works Organisation Act 1971*, the *Environmental Protection Act 1994*, and the *Disaster Management Act 2003*.

Affording the public merely seven (7) days to review the Bill, given the extent and scope of the changes in law the Bill effects is simply unreasonable and grossly inadequate to permit meaningful public input on the wisdom or merits of the proposals contained in the Bill.

B. Inadequate Consultation

Beginning at page 20 of the Bill's Explanatory Notes, details of the consultation undertaken in preparation of the Bill are provided. From those details, it is obvious that the broader public and affected communities have been entirely excluded from the consultation process. Likewise, stakeholders from the environmental and conservation sectors have not been included in the consultation process, which is a particularly glaring omission given the proposals to substantially amend the SDPWO Act and the EP Act.

Instead, consultation has largely been confined within government agencies, as is the case with the new Economic Development Act and the proposed amendments to the SDPWO Act, or limited to the business community, as was the case with the proposed amendments to the EP Act.[1] In light of the extremely limited consultation undertaken in preparation of the Bill, it is unsurprising that there was broad support – from the business and industrial sector – for the Bill's proposals.

[1] The Bill's Explanatory Notes lists the groups consulted with in the preparation of the Bill as follows: Australian Industry Group; Chamber of Commerce & Industry Queensland; Queensland Farmers Federation; Queensland Resources Council (QRC); Australian Petroleum Production and Exploration Association; Waste Contractors & Recyclers Association of Queensland Inc; the Local Government Association of Queensland; and Queensland Government departments. Such a narrowly focused consultation is unlikely to produce a broader, objective view of the proposed amendments to the EP Act.

C. The Focus Should Be On Prevention

Broadly speaking the Bill appears misconceived, at least with respect to the proposed amendments to the EP Act to allow the relaxation or modification of environmental authority conditions in response to "emergencies" or "emergent events". The Queensland EDOs believe that – rather than relaxing conditions after the approval of a proposed environmental activity – the better course is to require more rigorous assessment of proposed activities to ensure that adequate engineering standards and other operational safeguards are established – and complied with – to properly account for potential flooding or other extreme weather events. In addition, the State Government should consider other alternatives to the proposed TEL program, such as increased bonding or surety requirements to enable potential discharges to be addressed. Similarly, the State Government should consider the wisdom of continuing to approve large-scale open cut mines and other developments in flood-prone areas or, at the least, adopt provisions (such as those utilised in the United States) that limit the area of active mine works and surface disturbance to a relatively small portion of the permitted area (for example, 10% of the permit area), and require reclamation to be completed before the holder of the environmental authority is permitted to begin working in previously undisturbed areas.

2.0 PROPOSED AMENDMENTS TO THE EP ACT

The Bill introduces a new Part 4A which is quite problematic.

A. Section 357A

New section 357A to the EP Act, defines an "emergent event" as something quite broader than the term "emergency" and overly and improperly expands the scope of the proposed Temporary Emissions Licence (**TEL**) to address something more than emergencies. As written, s. 357A defines an "emergent event" as:

> An emergent event is an event, or series of events, either natural or caused by sabotage, that was not foreseen when—
> (a) particular conditions were imposed on an environmental authority; or
> (b) particular development conditions were imposed on a development approval.

"Emergent event" is clearly not consistent with the commonly understood meaning of an "emergency", which is generally defined as "a sudden state of danger, conflict, etc. requiring immediate action".[2] The QFCI Report noted that agency practice in the past had allowed for the issuance of temporary directions in the event of an "emergency", which involved "circumstances where there is an imminent risk to the environment, property, human health or safety". The proposed s. 357A allows the issuance of TELs for matters that apparently go beyond sudden and imminent danger to human health or the environment and rather extends to even "anticipated" emergent, that is unforeseen, events.

While the QFCI noted that the Queensland Resources Council asserted that temporary directions could be appropriate for "economic emergencies" as well, the Queensland EDOs do not agree. It is difficult to conceive of an "economic emergency" so severe that the environment agency should be obligated to act within 24 hours. Likewise, economic

[2] *Concise Oxford Dictionary*, p 441 (Ninth Ed. 1995).

emergencies rarely if ever should justify the relaxation or modification of conditions of an environmental authority that are intended to protect human health or the environment.

The Queensland EDOs recommend that the proposed Bill utilise the term "emergency" rather than "emergent event". Moreover, appropriate criteria should be utilised in defining what constitutes an emergency. The Queensland EDOs suggest criteria such as those included in EP Act s. 467, which defines when emergency powers may be invoked by the Department, should be utilised in s. 357A.

B. Section 357D

New section 357D provides that, in granting a TEL, the Department must "have regard" to, among other things, "the likelihood of environmental harm", human "health safety or wellbeing", and the "public interest" (s. 357D(e) – (h)). These are appropriate considerations. However, as proposed, s. 357D could allow these considerations to be outweighed by "financial impacts on the applicant if the licence is not granted" (s. 357D(b)). Financial impact on the holder of an environmental authority should not be included as one of the criteria listed in s. 357D at all. Consideration of financial impacts for example is not mentioned as a consideration in the provisions of the EP Act establishing a Transitional Environmental Program (**TEP**). The inclusion of "financial impacts" could be utilised to allow holders of marginally profitable, or unprofitable, environmental authorities to obtain relaxed or modified environmental conditions.

C. Section 520(1) (and consequent ss. 520-531)

The proposed amendments to the EP Act provide no opportunity for public awareness, scrutiny, review or appeal to an application or approval of a TEL (other than the usual Judicial Review checks that the correct procedures were followed). Given the significant impacts that flow from the decision to approve a TEL, the proposed amendments should provide not only greater information to the public regarding the application for, or approval of, a TEL but also the opportunity for merits review of the decision to approve a TEL.

D. Section 357C

Section 357C of the Bill, as proposed, requires the Department to decide an application for a TEL "as soon as practicable, but no later than 24 hours after receiving it". This is simply an unreasonable and inadequate length of time within which the Department is obligated to approve, approve with conditions, or reject an application for a TEL. There is, for example, no consideration of how or when applications are received – presumably the Department may receive an application for a TEL on a weekend or holiday, outside normal business hours, etc. The notion that relatively junior-ranking Department officials will be making decisions that take into account environmental impacts, threats to human health, and (possibly) financial conditions of the applicant, and will be able to make informed decisions within 24 hours is not reasonable. Much more time must be allotted to the Department (with suitable opportunity for stakeholder input) to make decisions on TEL applications.

E. Lack of public register (refer EP Act ss. 540-542)

The proposed Bill does not require a public register of TELs to be maintained as is required for environmental authorities and Transitional Environmental Programs. At the very least,

TELs should be similarly kept on a public register, preferably published on the Department's website. This will allow the public to become aware of decisions relaxing or modifying conditions of environmental authorities and to investigate the grounds upon which a TEL was sought, and presumably granted.

F. Lack of public notice

Similarly, the Bill contains no provision for public notification of applications for, or approvals of, TELs that may very likely result in significant impacts on their local community or environment. At the very least, the Department should provide notice to the public via its website. Preferably, adjoining landowners or downstream users should be provided with direct notice of any approval of a TEL that could reasonably be expected to impact on the health or environment of such persons. Notice is required for applications for certain TEPs (*see* EP Act s. 335). The Queensland EDOs believe that some form of public notice is appropriate for TELs proposed in the Bill.

3.0 PROPOSED AMENDMENTS TO THE SDPWO ACT

A. Section 25A

Clause 284 of the Bill proposes to allow the Coordinator-General to waive or reduce fees that currently apply under s. 25A of the SDPWO Act, when he/she receives an application for evaluation of environmental effects of proposed changes to a project pursuant to s. 35C of the SDPWO Act. According to Schedule 1, Part 2 of the SDPWO Act, the fees that are currently due for the evaluation of changes to a "significant project" pursuant to s. 35C of that legislation, are only $990. Given the scale, and economic value, of projects typically included within the "significant" projects subject to the SDPWO Act, the Queensland EDOs see no justification for reducing or waiving the relevant fees.

B. Section 27

The Bill (clause 285) proposes to amend s. 27 of the SDPWO Act with regard to matter the Coordinator-General considers before making declarations regarding projects. The proposed amendment essentially moves a number of considerations that are currently mandatory (i.e., "must consider") to new subsection (2), which makes those considerations discretionary. The particular matters that the Bill proposes to move to s. 27(2), or delete altogether, consist of:

> (c) the project's potential effect on relevant infrastructure;
> (d) the employment opportunities that will be provided by the project;
> (e) the potential environmental effects of the project;
> (f) the complexity of local, State and Commonwealth requirements for the project;
> (g) the level of investment necessary for the proponent to carry out the project;
> (h) the strategic significance of the project to the locality, region or the State.

These are clearly significant matters that the Coordinator-General must be required to consider in declaring a project a "coordinated" (formerly "significant") project. The Queensland EDOs urge the Committee to recommend against this particular amendment.

C. Sections 27AE and 27AF

Clause 289 of the Bill proposes to insert two (2) new sections into the SDPWO Act – ss. 27AE (Notice of change . . .) and 27AF (Cancellation of declaration). The Queensland EDOs focus on s. 27AE. The Queensland EDOs support the requirement that proponents of "coordinated" projects provide notice to the Coordinator-General of changes in proponent, proponent contact details, or the proponent's registered office. However, to the extent the proposed section is intended to give the Coordinator-General (and public) confidence in the identity and integrity of the proponent, the section does not go far enough. The Queensland EDOs urge the Committee to add to this section the requirement that a proposnent also give notice to the Coordinator-General of Material changes in the proponent's financial condition or funding for development of the project. Inclusion of these changes in s. 27AE will enable the Coordinator-General to remain confident that the proponent indeed retains the financial and material resources to go forward with the project.

D. Section 29

The Bill proposes, at clause 292, to amend s. 29 of the SDPWO Act to remove the requirement that the Coordinator-General give the public notice that an Environmental Impact Statement (**EIS**) is required for a coordinated project and to invite comments on the draft Terms of Reference (**TOR**). The rationale for the proposed amendment is that public consultation results in "increased time and advertising costs for the proponent", and there is little benefit from public notification because TOR are "becoming increasingly generic".

Contrary to the rationale offered in the Bill, public notice of – and opportunity to comment on – proposed TOR is vital to ensuring that the potential environmental impacts of a proposed project are properly assessed. As one would expect, every project is different and the notion that a "one size fits all" TOR will always suffice simply fails to acknowledge that every project, project site and surrounding environment, is different. In the Queensland EDOs' experience, proposed TOR typically offer meaningful opportunities to submit comments on project-specific impacts and issues to be addressed. The Queensland EDOs urge rejection of this particular proposed amendment.

Yours faithfully,

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