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2 July 2013

VIA EMAIL (sdiic@parliament.qld.gov.au)

The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane QLD 4000



Dear Sir/Madam,

Re: Energy and Water Legislation Amendment Bill 2013

The Environmental Defenders Office of Queensland ("EDO Qld") and the Environmental Defenders Office of Northern Queensland ("EDO NQ"), (collectively, the "Queensland EDOs"), are 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 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.

Each of the Queensland are entirely separate organisations. EDO NQ is based in Cairns and provides service to the public from Sarina north to the Torres Strait and west to the state border. EDO Qld is based in Brisbane and serves the entirety of the State south of Sarina.

Yours faithfully,

Jo-Anne Bragg.

Jo-Anne Bragg
Principal Solicitor
Environmental Defenders Office (Qld) Inc.

Fergus Power

Fergus Power
Principal Solicitor
Environmental Defenders Office of
Northern Queensland Inc.

THE ENERGY AND WATER LEGISLATION AMENDMENT BILL 2013(*EWAB*)

EDO NQ SUBMISSION 1 JULY, 2013

Re: SECTION 34: Repeal of the Clean Energy Act 2008

The Queensland Government Position:

Following a review of the operation of the Smart Energy Savings Program (*SESP*), under the Clean Energy Act 2008, the Queensland Government announced that the SESP would be discontinued to reduce the regulatory burden on Queensland businesses.

- 1) "The SESP was intended to encourage firms to understand their energy use and identify and implement cost-effective energy management strategies. However, in the current policy and regulatory context, there are sufficient drivers for businesses to undertake energy management activities. The Energy and Water Legislation Amendment Bill 2013 will cease all requirements under the SESP." *EWAB Explanatory Notes*

Consistent with the platform of red tape reduction, the government decided to cease the SESP and repeal its enabling legislation, the Clean Energy Act 2008.

Reduction of the regulatory burden is the only reason provided for the proposed repeal of the Clean Energy Act 2008. (*CEA*)

- 2) "Cessation of the SESP will remove the costs associated with SESP compliance for government, making resources available for other government business." *EWAB Explanatory Notes*
- 3) "In relation to the repeal of the Clean Energy Act 2008 the Energy and Water Legislation Amendment Bill 2013 is generally consistent with FLPs of the Legislative Standards Act 1992. (*LSA*)" *EWAB Explanatory Notes*
- 4) "Consistency with legislation of other jurisdictions: not applicable. The Energy and Water Legislation Amendment Bill 2013 is specific to the State of Queensland, and is not uniform with, or complementary to, legislation of the Commonwealth or another state." *EWAB Explanatory Notes*

EDO NQ Response:

We say the CEA should not be repealed, as it provides many benefits to Queensland including encouraging businesses to reduce costs and greenhouse gas emissions through Smart Energy Savings Plans.

1) & 3) & 4) The QLD Government has a legislative onus under the *LSA* to ensure that according to fundamental legislative principles their legislation has sufficient regard to—

(a) rights and liberties of individuals; and

(b) the institution of Parliament.

It is submitted that although the doctrine of parliamentary supremacy acknowledges parliament's power to legislate unfettered provided the legislation is constitutionally valid and is in accordance with legislative standards, the institution of parliament is more than just a means for effecting 'red tape reduction.' The institution of parliament in a representative democracy involves the balancing of short term cost benefit analysis against long term commitments to state, federal and international obligations. The proffered reason for the necessity for this Bill (red tape reduction) is disingenuous for several reasons:

- i) The **CEA** is more than just an administrative scheme for registering Smart Energy Savings. Conservation measures are measures that result in a reduction of energy used, while efficiency measures are measures that result in a reduction of energy used for the same or a higher output. The requisite energy savings plans mandated performance criteria for participating businesses. Section 16 (3) requires participating businesses to include a copy of a report about the energy audit carried out and to set out the measures the participating business intends to implement from the energy audit the requisite efficiency and conservation measures.
- ii) The **CEA** was a QLD response to the national commitment to the Kyoto Protocol obligations¹. The Kyoto Protocol's first round

¹ The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty that sets binding obligations on industrialised countries to reduce emissions of greenhouse

commitments were the first detailed step taken within the UN Framework Convention on Climate Change. The Protocol established a structure of rolling emission reduction commitment periods. It set a timetable starting in 2006 for negotiations to establish emission reduction commitments for a second commitment period. The first period emission reduction commitments expired on 31 December 2012. Australia has committed to the second Kyoto Protocol commitment period which requires further Greenhouse gas emission reductions by 2020.²

- iii) It is submitted that winding back the **SESP** is similar to Canada's withdrawal from the protocol under the Harper government. Having greatly increased emissions over the target, the Harper Government cited their intent to create a made-in-Canada solution.³ Climate change is a planetary issue which has arisen from anthropogenic interference with the climate, hence the UN Intergovernmental response. Faced with a 2 degree temperature increase as a surety, it is no longer tenable for parliaments to renege on their responsibilities to current and future generations.
- iv) Australia is the twelfth largest world consumer of electricity at 225 billion kw per annum,⁴ with coal fired power plants generating 75% of the total electricity. Due to Australia's reliance on coal and gas for energy, in 2000 the country was the highest emitter of greenhouse gases per capita in the developed world, irrespective of whether or not emissions from land clearing were included. It is also one of the countries most at risk from climate change according to the Stern Review on the Economics of Climate Change released in 2006.⁵

gases. The UNFCCC is an environmental treaty with the goal of preventing "dangerous" anthropogenic (i.e., human-induced) interference of the climate system. There are 192 parties to the convention, including 191 states (all UN members, except Andorra, Canada, South Sudan and the United States) The Protocol was adopted by Parties to the UNFCCC in 1997, and entered into force in 2005.[6]

² The Doha amendment from December 2012 provided for developed nations to commit to greater reduction measures in order to provide some intermediate relief to developing nations

³ Canada withdrew from the Kyoto Protocol on April 30, 2012

⁴ The World bank sources listed Australia's electricity consumption per capita in 2010 at 10285kw, almost twice the UK figures but less than the USA and Canadian consumption.

⁵ The Stern Review on the Economics of Climate Change was a 700-page report released for the British government on 30 October 2006 by economist Nicholas Stern

- v) in order to fulfill their obligations to their constituents it is therefore incumbent on all governments to encourage and mandate suitable **SESPs**.

2) The **LSA** defines costs as including:

- (a) burdens and disadvantages; and
- (b) direct and indirect economic, environmental and social costs.

Thus the costs to the QLD community from this reduction in red tape must consider not merely the direct cost savings from the repeal of the **CEA** obligations but the greater indirect economic, environmental and social costs.

Energy efficiency has been widely recognised as one of the lowest cost solutions to reducing energy costs and greenhouse gas emissions. This is particularly important to businesses.⁶

In relation to the **SESP**, the Government incurred administration costs of \$2.5 million over the five years from 2007 associated with registering, and reviewing companies for compliance purposes in the administration of the **SESP** - a trivial amount compared to the associated reductions in overall electricity consumption for that period.

It is incorrect to blame electricity cost hikes on **CEA** requirements (as the Queensland Government has done), without also accounting for externalities from increasing greenhouse emissions and the resulting environmentally destructive disasters and their associated costs to the community. The **CEA** was a legislative response which recognized and attempted to reduce these indirect economic, environmental and social costs.

The alleged economic cost benefits resulting from repealing the **CEA** will be far outweighed by the continuing rise in indirect costs. It makes not only economic sense for large energy consumers to be required to enact **SESPs**; it also makes environmental and social sense and from a longer term perspective removes further financial burdens from the government when

⁶ See the Stern Report

called upon to address increasingly costly recurring environmental disasters.⁷

This Bill fails to account for the true future costs associated with its enactment.

⁷ Stern Report and The World Bank and the Green Bank