EDO Qld.
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Using the law to protect our environment.

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State Development, Infrastructure and Industry Committee
Queensland Parliament
By email only: sdiic@parliament.qld.gov.au

Dear Chair and Committee Members

EDO Qld submission on the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014

Thank you for the opportunity to make a submission on the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014 ('the Bill').

Who we are

The Environmental Defenders Office Qld Inc (EDO Qld) is a non-profit community legal centre which helps disadvantaged people in coastal, rural and urban areas understand and access their legal rights to protect the environment. EDO Qld has over 20 years of experience in interpreting environmental and planning laws to deliver community legal education and to inform law reform.

Rushed legislation without government public consultation on the Bill

We note with concern the lack of public consultation on these important amendments. Public consultation by the Government can also provide valuable, early input into the reform process for the Government to consider. If public consultation had occurred on the current proposed reforms, the below criticisms might have been cooperatively addressed prior to the Bill coming to Parliament.

EDO Qld requested an extension of time to provide written submissions on the Bill, due to our limited resources available to scrutinise new legislation. That request was rejected on the basis of the expedited reporting period. A Committee normally has six months in which to prepare a report, and a bipartisan Committee System Review Committee was "satisfied that six months is an appropriate timeframe" for a committee to report and gave unanimous, bipartisan findings to this effect.[1] Given the significance of the reforms proposed by this Bill, we are unaware of any justification to expedite the reporting date. An expedited reporting

[1] Review of the Parliamentary Committee System Committee, December 2010, https://www.parliament.qld.gov.au/documents/committees/CSRC/2010/QldParlCtteeSystemReview/rpt-15Dec2010.pdf

period, especially for significant changes such as those contained in this Bill, is of serious concern not only to EDO Qld but to many other community groups.[2]

EDO Qld strongly submits that there should be a public hearing on the Bill, especially in circumstances of an expedited reporting period, the importance and significance of the proposed reforms, and the lack of public consultation to date.

As time to prepare our submission was very tight, we request an opportunity to speak to the Committee to enlarge on this submission.

Summary of key concerns

A summary of our main points of concern are set out below.

1. Amendments to EIS process for coordinated projects

1.1. Clause 34 of the Bill introduces a 'staged EIS' process to the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**).

1.2. We note that coordinated projects for which an EIS is required often involve significant damage to the environment.[3] All environmental impacts of a coordinated project should be assessed in their totality. If a project is assessed in stages, the cumulative impact of the various stages will not be caught by each EIS. Additionally, it is difficult for the public and landowners to make contributions to the EIS without being fully apprised of the environmental impacts of a later stage.

1.3. By way of comparison, section 74A *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) allows the Commonwealth Minister to request a larger action be referred, to ensure that the impacts of the proposal in their totality are considered.[4]

1.4. Components or stages that are essential to the project should be considered in one EIS. For example, it would be inappropriate to evaluate a staged EIS for CSG extraction but leave the assessment of water treatment and storage at a later stage. Or an EIS for 20,000 CSG wells if it is not economically feasible unless there are 40,000 wells.

1.5. A staged, piecemeal approach to environmental impact assessment may also avoid consideration of matters of national environmental significance (**MNES**) if the discrete stages do not trigger a 'significant impact' on MNES, however the project in its totality does. This highlights the need for an assessment of the project as a whole.

1.6. The criteria for the Coordinator General to approve a staged EIS request are not strong, clear criteria. The proposed new s.32B(2)(a) simply requires the Coordinator General to only "*consider*", "if there is to be more than 1 EIS for the project, whether the environmental effects of the project could be properly

[2] Daniel Hirst, *We need to talk: 40 groups highlight rushed consultation,* 3 October 2012, Brisbane Times, retrieved from here: http://www.brisbanetimes.com.au/queensland/we-need-to-talk-40-groups-highlight-rushed-consultation-20121002-26wp3.html

[3] Coordinated projects for which an EIS is required or completed are found here, which all identify significant environmental risks: http://www.dsdip.qld.gov.au/assessments-and-approvals/coordinated-projects-map.html

[4] We note that are currently amendments before the Commonwealth Senate which if passed, would suspend the operation of the Referral mechanism in the EPBC Act where a Queensland Approval Bilateral Agreement is in place.

taken account of." (At the very least, this definition should import the words "including all cumulative impacts" before the word "could".)

1.7. EDO Qld is concerned that assessment by way of staged EIS will result in piecemeal assessment of what are the most environmentally risky projects in Queensland. We need to maintain safeguards in the legislation to ensure that projects as a whole that have unacceptable impacts, are not approved.

2. New IAR process for coordinated projects

2.1. Clauses 29 and 37 of the Bill introduce a new environmental impact assessment process, called an Impact Assessment Report (**IAR**). This is essentially a weaker, less transparent, less accountable process than the EIS process by removing public notification and input into the draft Terms of Reference and the draft EIS.

2.2. EDO Qld is concerned that instead of projects being assessed using the EIS process, there will be an increased reliance on the IAR process which does not mandatorily require public participation, scrutiny and input into the environmental impact assessment.

2.3. The criteria for determining that an EIS is not required and that the IAR process is to be used instead, is set out in the proposed new s.26(2), which provides that if the Coordinator General is satisfied the environmental effects of the project do not, having regard to their scale and extent, require assessment through the EIS process. The decision under the proposed new s.26(2) requires the Coordinator General to *de facto* assess the environmental impacts and we note such a decision that is not open to statutory judicial review. The Explanatory Notes provide clearer criteria at page 27 than that at the new s.26(2).

2.4. An IAR requires no public notification (s.34F). The public notification requirement (s.34H(2)) for notifiable approvals (s.34G(2)(c)) is mandatory, which is supported. However s.34H(4) suggests a discretion and we submit the words 'may be publically notified' should be removed from s.34H(4).

2.5. EDO Qld submits that if a project is significant enough to require a coordinated project status, with special powers for the Coordinator General to exercise that power and remove it from the normal assessment processes, it must be open to public scrutiny and transparency.

2.6. We note that NSW's Independent Commission Against Corruption recently noted that "The limited availability of third party appeal rights under [NSW legislation] means that an important check on executive government is absent… The absence of third party appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is absent from the planning system."[5]

2.7. If such amendments pass, which EDO Qld does not support, there should be statutory judicial review of the Coordinator General's decision in respect of the IAR requirement.

[5] ICAC Report, February 2012, *Anti-Corruption Safeguards and the NSW Planning System*, available here: http://www.icac.nsw.gov.au/documents/doc_download/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012

3. Removal of the requirement for an EIS for broadscale clearing

3.1. Clause 29 of the Bill proposes to remove the current prohibition on the Coordinator General declaring that an EIS is not required if the project will result in broadscale clearing for agricultural purposes (removal of section 26(2)(b) SDPWO Act) as well as removing any definition of a project resulting in broadscale clearing (removal of 26(3) SDPWO Act).

3.2. The Explanatory Notes are silent as to the removal of this prohibition. There is a potential for broadscale clearing for agricultural purposes to require an EIS when the Coordinator General considers it necessary under the proposed new s.26(2), however this is discretionary. If an IAR is used then notification *might* be required under the proposed new s.34H, however even then such a process would still cut out public notification, scrutiny and transparency of the draft TOR.

3.3. EDO Qld does not support the removal of such a prohibition, especially in circumstances where the Coordinator General's decisions are not open to statutory judicial review.

4. Public notification should be required for additional information requests

4.1. Where a draft EIS does not have the requisite information about the environmental impacts, the Coordinator General can request further information from the proponent (s.34C(2)). However the new s.34B(2)(c) indicates a discretion on whether additional information requests are publically notifiable and there are no requirements to publish the s.34C notice to indicate that a further information request has been made.

4.2. EDO Qld submits that further information in response to the information request should be publically notifiable in order to ensure greater public transparency and scrutiny of the material. Additionally, the notice under s.34B(2) should be published at an appropriate location on the internet.

4.3. The above submissions in this paragraph 4 also apply to the equivalent sections regarding the IAR process.

5. Wild Rivers repeal is not met with an appropriate level of protection

5.1. This Bill proposes to repeal the *Wild Rivers Act 2005* (Qld) in its entirety. It amends the *Regional Planning Interests Act 2014* (Qld) (**RPI Act**) to the extent that will allow regulations to be made under the RPI Act effectively importing wild rivers declarations.[6] Wild rivers areas, if imported under these regulation making powers, will qualify as 'strategic environmental areas' (**SEAs**) under the RPI Act.[7] To this extent, a consideration of the RPI Act is relevant to considerations of this Bill.

5.2. EDO Qld submits that the RPI Act has a lower standard of protection than the Wild Rivers Act. EDO Qld's written submissions and oral evidence to this Committee in respect of the deliberations on the Regional Planning Interests Bill 2014 are relevant to the present inquiry.

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[6] *State Development, Infrastructure and Planning (Red Tape Reduction) And Other Legislation Amendment Bill* 2014 (Qld) Clause 124

[7] *State Development, Infrastructure and Planning (Red Tape Reduction) And Other Legislation Amendment Bill* 2014 (Qld) Clause 121

5.3. In summary, our concerns with the legislation that seeks to replace protections afforded under the Wild Rivers Act are inadequate for the following reasons:

- The maps under the RPI Act are simply 'held by DSDIP and published on its website' (s.4(2) RPI Regulation 2014), which means the process for amending or revoking SEAs is not transparent (in stark contrast to the process for amending Wild River areas);
- The RPI Act does not provide for 'public interest' appeal rights, thereby reducing accountability and public scrutiny;
- Unlimited discretion is given to the Chief Executive of DSDIP (rather than the Queensland Environment Minister under Wild Rivers) to grant a regional interests development approval;
- The exemptions for not requiring regional interests development approval are far too broad and lenient towards the resource industry;
- The RPI Act does not capture impacts of resource activities on regional interest areas, where those resource activities do not occur in a regional interest area;
- The co-existence criteria for SEAs do not provide adequate protection;
- The RPI Act undermines legal procedures and protections afforded by the *Environmental Protection Act 1994* (Qld) by allowing a regional interests development approval to override an Environmental Authority;
- There RPI Act has weak provisions for public access to information (open government).

5.4. EDO Qld is aware that the Wilderness Society intends to make a submission to the Committee on Bill concerning the repeal of the Wild Rivers Act and the consequential amendments to the RPI Act 2014, and EDO Qld endorses those submissions.

6. New regulation-making power for SPA to be accredited under a Cth bilateral

6.1. Clause 79 of the Bill amends s.763(2) *Sustainable Planning Act 2009* (Qld) to provide a new regulation-making power for SPA to be accredited under a Commonwealth-Queensland approval bilateral agreement.

6.2. This evidences a clear intent (already expressed in the Draft Queensland Approval Bilateral Agreement)[8] to accredit SPA under the forthcoming approval bilateral agreement. Given that SPA is about to be repealed in favour of an entirely new act,[9] it appears very premature to include a regulation-making power without open, public consultation (or even targeted consultation) on such a proposal. EDO Qld strongly submits that the Queensland Government should undertake a proper consultation in respect of such a proposal (and not just rely on a statutory consultation period with the Commonwealth).

Due to time restrictions and limited resources, EDO Qld has not yet addressed other matters in the Bill, such as:

[8] Specifically, at Schedule 4, Item 2.1 of the Qld draft approval bilateral agreement, which is available here: http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/qld

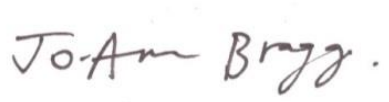
[9] DSDIP, Planning Reform website, available here: http://www.dsdip.qld.gov.au/about-planning/planning-reform.html

7. **Changes to SPA and EP Act re EAs for ERAs;**
8. **Changes for State Development Areas;**
9. **Changed criteria to declare a provisional PDA; and**
10. **In respect of master planning provisions, EDO Qld does not support:**
    10.1. Changes to third party appeal rights for master planning provisions;
    10.2. Amendments to remove the requirement for public notification for any development that is consistent with the structure plan area code and any master plan area code.

We reiterate our request to appear before the Committee to enlarge on our submissions.

If you wish to discuss any aspect of these submissions, please contact Rana Koroglu or Jo Bragg on (07) 3211 4466.

Yours faithfully
Environmental Defenders Office (Qld) Inc



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