

26 October 2022

Committee Secretary  
Health and Environment Committee  
PARLIAMENT HOUSE QLD 4000

By email [hec@parliament.qld.gov.au](mailto:hec@parliament.qld.gov.au)

Dear Committee Secretary,



Environment  
Institute of  
Australia and  
New Zealand  
SOUTH EAST QLD DIVISION

### **Submission: Environmental Protection and Other Legislation Amendment Bill 2022**

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to make a submission on the Environmental Protection and Other Legislation Amendment Bill 2022 (the Bill). This submission has been prepared by our south-east Queensland divisional committee.

The EIANZ is a non-profit, multi-disciplinary association of environmental practitioners. Its membership is represented by a diverse range of technical disciplines including scientists, policy makers, engineers, lawyers and economists. We advocate for environmental knowledge and awareness and advancing ethical and competent environmental practice. The EIANZ SEQ Division comprises over 600 professionals working across industry and government with diverse environmental qualifications, experience and expertise.

Given the extensive nature of the amendments and new provisions proposed by the Bill, a consultation period of less than two weeks is insufficient to provide a detailed response to the Bill and its accompanying Explanatory Notes. In those circumstances, this submission outlines feedback on selected elements and broader observation on the Bill's alignment with the Regulatory Strategy and consultation process. EIANZ welcomes the opportunity to contribute further in future rounds of consultation.

### **Selected Feedback**

The following feedback is provided on a number of proposed amendments to the *Environmental Protection Act 1994* noting again that in the limited time available more constructive consideration of all provisions has not been possible.

- Amendment of Section 320A – we welcome greater clarity with respect to the duties to notify and to remove ambiguity surrounding what constituted an “event”.
- Amendment of Section 465 – further guidance with respect to what the administering authority is investigating and the nature of the questions likely to be asked is recommended. This will be relevant to companies determining who might be the appropriate executive officer or employee to be nominated. It is queried whether this power intended to be used in circumstances where the administering authority is investigating potential offences where executive officer liability arises – if so, a corporation may be reluctant to nominate any executive officer/s.

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- Amendment of Section 490 – this amendment appears to any give map, chart or plan prepared by an authorised person the force conclusive evidentiary proof of the matters to which they relate. While sub-section (b) is acknowledged, it places the onus on any defendant to disprove any matters set out in the map, chart or plan. The Explanatory Notes suggest that it might be used where there is a need to put basic matters before the Court, however there is no such limitation on the amendment. For instance, if an authorised officer draws a map indicating that vegetation of a specific species or extent was cleared, the amendment would result in that state of affairs being considered accurate unless able to be disproved (noting that in circumstances of clearing, evidence to the contrary may not be readily available). This amendment is not consistent with the Department needing to prove elements of an offence beyond reasonable doubt. We also raise for consideration the effect of this provision in circumstances where such maps, charts or plans are inconsistent with other documents/ aspects of the Department's evidence?
- Amendment of Section 491 – It is unclear what is meant by the reference in the Explanatory Notes to the need for the amendment to ensure the enforcement of section 430 “remains practical” when there are existing enforcement provisions for Environmental Authorities.  
A new definition of “relevant condition” is introduced that does not require any qualitative or quantitative measurement of an emission, nor its impact to the environment to determine that an environmental nuisance has occurred.
- On our reading this change effectively states that an authorised officer may determine a contravention of an Environmental Authority has occurred by way of environmental nuisance without the requirement for any measurement of the nuisance nor its impacts to environmental values where an environmental authority does not specify a quantifiable measure. Under the proposed amendment, there is no requirement for an authorised person to hold any particular qualifications with respect to the assessment of environmental nuisance such as air quality or acoustic engineering nor does there appear to be relevant experience requirements for authorised officers. The amendments give the subjective (and potentially unqualified) views of an authorised officer credibility. The proposed amendments may result in widespread updating of environmental authority conditions to provide quantifiable measures and certainty to holders with respect to nuisance emissions and condition compliance. This would in turn generate a significant administrative demand on the Department and it is unclear whether this amendment is consistent with the outcomes-based focus as stated in the Strategy: *“Conditions will be proportionate to risk, clear and enforceable. Where outcome-focussed conditions do not adequately address the risks posed by the activity, prescriptive conditions will be imposed.”*
- Amendment of Section 493A – It is queried whether the conversation is intended to apply. That is, if a defendant complies with the risk management measures under the ICEMR Act, does that point towards compliance with the general environmental duty?

### **Alignment with the Regulatory Strategy 2022-2027**

The EIANZ recognises the important role that effective regulation has in the delivery and execution of the Department of Environment and Science's (the Department) core functions and acknowledges the policy objectives that underpin the Bill.

However, it is notable that the Explanatory Notes to the Bill make no reference to the Department's recently published "Regulatory Strategy 2022-2027" (the Strategy) particularly as the Strategy provides a clear framework with respect to the Department's and Queensland Government's regulator model approach:

- Regulation is proportionate to risk and minimises unnecessary burden
- Consult and engage meaningfully with stakeholders
- Provide appropriate information and support to assist compliance
- Commit to continuous improvement
- Be transparent and accountable in actions.

As the scope of the Strategy covers the three Acts associated with the Bill, it is curious that the Bill has not been presented and consulted within the framework of the Strategy.

### **Regulatory Impact Statement**

The Explanatory Notes state that the regulatory impact of the Bill has been undertaken. It would be useful for stakeholders to have access the regulatory impact statement to assist in the review and practical consideration of the proposed amendments.

### **Consultation**

Whilst the SEQ Division of the EIANZ has participated in a number of recent consultation processes of relevance to the Bill and has actively maintained a profile and presence in this regard, it is disappointing that the EIANZ was not invited as a key stakeholder for the consultation process on the Bill which commenced back in August 2021.

In our opinion, consultation on the Bill would have benefited from and been enhanced by the involvement of a multi-disciplinary individual member-based organisation for environmental professionals such as the EIANZ.

As stated above, these general comments are provided in the context of the very short timeframe afforded to stakeholders to prepare a submission against the wide-ranging amendments proposed in the Bill. That curtailed period has restricted the ability of the EIANZ, and likely many others, from providing considered and comprehensive feedback.

Yours sincerely,



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SEQ Division of the Environment Institute of Australia and New Zealand