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The Research Director
Environment, Agriculture, Resources and Energy Committee
Parliament House
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By email: earec@parliament.qld.gov.au

Dear Research Director

Submission on the *Environment Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011*

The following submission on the *Environment Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011* has been prepared by the Queensland Law Society's Planning and Environmental Law Committee. The QLS has previously provided a submission to the Greentape Reduction Project team within the Department of Environment and Resource Management, broadly supporting the objectives of the review, while commenting on a series of unintended consequences of particular proposals. The QLS remains broadly supportive of the objectives of the Bill, while noting that there appear to be numerous drafting errors and other unintended consequences of particular provisions.

As this is a very lengthy and complex Bill, this submission is not intended to constitute a thorough review, but merely to point out some examples of the drafting issues and apparent unintended consequences of particular sections. We did this just by selecting a few pages of the Bill for review. A thorough legal review by specialists in the area would be recommended.

Clause 5 Section 51 (Public notification)

The QLS supports the new requirement for website publication by the proponent. However, subsection (4) appears to be incomplete as there is no provision for the EIS to be withdrawn from a website upon withdrawal of the application or the EIS. It could become misleading if the same EIS is still required to be published, even though it has been withdrawn, particularly if it has been replaced.

Clause 8 Section 110 (What is a mining activity)

While the QLS supports simplification of the definitions so as to avoid unnecessary duplication of information set out in the *Mineral Resources Act 1989*, the simplification of the definition of 'mining activity' in Section 110 may appear to revoke a current important rights in the current Section 147, which is the extension of the 'mining activity' under the environmental authority to cover private access land that

is not part of the mining tenement itself under Section 147(1)(b). This is important because the use of that private land for access purposes would be characterised under planning law as a purpose ancillary to the principal use, which is the mining activity. Given that mining activities under the EP Act/MR Act are exempt from planning schemes, current planning schemes obviously do not cover this issue.

Section 113 (Single integrated operations)

The QLS supports the concept of a single approval for single integrated operations (at the option of the proponent), but there are some drafting oddities with this section:

- One of the criteria is: *'(c) the activities are, or will be, carried out at 1 or more places'*. This provision appears to be a pointless waste of space. Logically, it is not possible for any activity to fail to be carried out at either one place or more places. The only other possible option would be for it to be carried out at zero places.
- The QLS questions the practicability of the requirement in paragraph (a) that the activities must be carried out under the management of 'a single responsible individual'. It would be more workable if the requirement referred to a single entity, rather than an individual. Is the intention to prevent flexible working arrangements such as part-time work? If a husband and wife run an operation, do they need to cease being jointly responsible? Carried to its logical conclusion, this requirement is absurd.
- Paragraph (d), referring to 'distances short enough' appears to be an invitation to litigation, as it is open to widely varying interpretations in this modern electronic era. For example, if an integrated mining project contains numerous mining leases, some of which have other land between, involving driving long distances over dirt roads, are the distances short enough? If an industrial project is located partly on one side of a river and partly on the other, with no bridge directly between, is that close enough?

Section 115 Relationship with Planning Act

The following typographical errors appear in this section:

- (2) – 'taken to also be' should be 'taken to be also', unless there is a new rule in OQPC encouraging split infinitives.
- (3) – 'parts 2' should be 'part 2'; 'other than division 2, to 4' should be 'other than divisions 2 to 4'.

If the new rule is proposed to be that the prescribed ERA component of a development application is to be processed as an environmental authority application, it would be simpler just to make this the rule and not have supporting deeming provisions about the situation where someone forgets to lodge the environmental authority component of the application. The deeming provisions do not entirely work, for example, just because someone has lodged supporting information for the development application does not necessarily mean that it will tick all the boxes as a 'properly made submission' for the non-existent environmental authority application. The community may have some concerns about that backdoor route. Also, for subsection (5), just because an element of the development application is changed, it does not necessarily follow, in practical terms, that this should impact on the ERA component of the application.

Part 1 Division 4 and Part 2 – Some general comments

Leaving aside the drafting errors, the QLS has not been convinced that the reintroduction of environmental authorities for 'prescribed ERAs' is necessarily a reduction in greentape. Back when environmental authorities were abolished for prescribed ERAs, as part of the 'roll-in' to the *Integrated Planning Act 1997* (repealed), that step was supposed to have been a reduction in greentape. Logically, it cannot be a reduction in 'greentape' both ways. We do have a concern that the numerous frequent changes to the names of approvals for prescribed ERAs in recent years have led to widespread confusion. In the experience of our members, it is difficult enough to explain to international or interstate investors the current series of deeming provisions which mean that older approvals for ERAs have one name but are now deemed to have another name and that the descriptions of the ERAs shown on the front cover are now superseded by other descriptions in a regulation; it is going to become one step more difficult with the latest round of changes.

Section 117

The requirement should be for the person to be either the applicant or the holder of the tenement. The application for the environmental authority could be for a replacement environmental authority.

Sections 118 and 119 Single application/environmental authority required

The QLS has never supported a compulsion for a single application for all relevant activities forming a project, but only the option of being able to make a single application. There are many sound commercial reasons why an applicant may prefer to make more than one application, for example, the applicant only proposes to carry on the operation for a short time before splitting it to sell or lease to different parties, or would like to keep that option open.

Similarly, in many cases it may be simpler for activities on one parcel of land to be processed as one application, and for related activities on another parcel of land to be processed separately, for regulatory reasons. For example, while it may be easier in some situations for resources activities and off-site infrastructure activities to be processed together, in other cases, the need for the off-site infrastructure (such as an airstrip with associated ERAs such as fuel storage) only arises later and could be more easily processed separately and in the normal way. If the true aim is 'greentape reduction', the simpler options should be kept open.

Planning law has a better way of dealing with this issue, with principles preventing 'piecemeal and misleading applications' (so as to protect the community from misleading applications), but at the same time allowing considerable flexibility for development applications to be structured in whatever way best suits the commercial context.

Section 120

The QLS has previously made a separate submission to the former Scrutiny Committee about North Stradbroke Island. We remain of the same view.

This concludes our sample of detailed analysis.

In more general terms, the QLS strongly supports:

- (a) The inclusion of a formal information stage with timeframes, for resource activity applications as well as prescribed ERAs; and
- (b) The proposed deletion of EM Plan requirements.

However, similar to the sampled sections, there are drafting errors and unintended consequences in these sections too.

The QLS would welcome the opportunity in 2012 to advise further on this Bill.

Yours faithfully

Bruce Doyle
President