Environmental Defenders Office

Key legal solutions to safeguard Queensland's natural environment

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About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

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Introduction and summary

The Environmental Defenders Office offers a list of proposals to tackle Queensland's most pressing environmental problems, in particular climate change and biodiversity loss, while recovering from the COVID-19 crisis.

At the outset Queensland must commit to **build back better** with stimulus measures that prepare Queensland to thrive in a carbon-constrained economy and don't rely on the removal of critical environmental protections (**solution 1**).

We must also put in place the structures to make, and commit to, the long-term plans that are urgently needed to allow our community to **mitigate greenhouse gas emissions and adapt to the unavoidable impacts of climate change**, such as last summer's unprecedented bushfire season (**solution 2**). Failing to plan creates the high risk that communities and workers, particularly in the regions, will be left behind in the necessary transition to a low carbon economy. This must be complimented by reforms to **modernise our mining industry** (**solution 9**).

Taking a more **proactive approach to biodiversity protection and recovery** will not only ensure that Queensland's outstanding natural environment is safeguarded for future generations but provides businesses and landholders with greater certainty to plan for the future (**solution 3**).

We must also stay the course on **protections for the Great Barrier Reef** (**solution 4**), for **preserving pristine rivers in the Channel Country and Gulf** (**solution 5**), on providing a **national parks network** that complies with our international obligations and supports our tourism industry (**solution 6**) and on **fixing our offset laws** to ensure that environmental offsets genuinely compensate for impacts in a timely manner (**solution 7**). We need to make the needed overdue changes to our **cultural heritage laws** to provide better protections for the irreplaceable cultural heritage of Aboriginal and Torres Strait Islander people (**solution 10**).

Queensland must also continue to take steps to enhance our democracy with measures to ensure that our **publicly-owned natural resources are managed in the long term public interest** (**solution 8**), with changes to planning laws that **facilitate community involvement and confidence in planning schemes** (**solution 11**), continuing **donation reform** to avoid the perception that money can buy influence in this state (**solution 12**), reform of our **lobbying laws** to ensure that influence isn't being exercised in secret (**solution 13**) and **funding for the community legal centres** which do so much to ensure that access to justice isn't just for the wealthy (**solution 14**).

Finally, any future Queensland government must commit not to re-making the mistakes of the past with a commitment to **no regression** on measures to protect our environment and enhance our democracy (**solution 15**). This includes the big achievement of legislating the protection of human rights in Queensland, which is something we can all be proud to have recognised.

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COVID recovery and stimulus

SOLUTION 1. Build back better

Ensure that any stimulus or other measures put in place to recover from the COVID crisis:

- *don't remove or reduce protections for our environment*
- *have co-benefits to meet our most pressing problems (such as the climate and biodiversity crisis); and*
- *are aimed at building jobs and industries that will thrive in and support a carbon-constrained world.*

Queensland, and Australia, appear to be coming through the COVID crisis with much less tragedy than may otherwise have been the case. For this, we can be grateful that our leaders listened to the experts and put in place evidence-based measures to keep us safe.

This same approach should be applied to rebuilding our economy to ensure that Queenslanders have secure jobs in industries with a future, while ensuring that the natural environment we rely upon for our industries, our quality of life and our wellbeing can thrive.

This point in time must be viewed as an opportunity to rebuild our economy, using our strategic advantages, to thrive in the carbon-constrained world economy that is coming, whether we are ready for it or not.

Stimulus spending and other programs should be aimed at:

- facilitating industries such as manufacturing that can provide secure, skilled employment while taking advantage of our abundant, cheap renewable energy; and
- tackling expensive problems such as our abandoned mines legacy, other degraded land or ageing public infrastructure that are overdue for action and would create jobs in regional Queensland.

There are many examples of existing programs that might be expanded to provide the necessary stimulus. Queensland's existing publicly-owned electricity companies are well-placed to take forward preliminary work outlined in the Finkel review and the Powering North Queensland Plan, to establish renewable energy hubs to stimulate public and private investment in new electricity generation and transmission infrastructure, particularly in regional Queensland. Spending committed to through the Land Restoration Fund could be brought forward to create jobs while delivering greenhouse gas abatement and biodiversity benefits. The Communities in Transition pilot program could be scaled-up to help regional communities realise their own vision for their economy in a carbon-constrained world.

A short-sighted government might double-down on industries (such as fossil fuels) that have created jobs in the past or be tempted to remove critical environmental protections. A visionary government would continue to listen to the experts to create an economy that will produce long-term industries and jobs, while restoring the environment that provides Queensland with its natural advantages and quality of life.

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Real climate action

SOLUTION 2. Act on climate change and support vulnerable and regional communities

Within the first year of the next term of Government, pass a Climate Change Act to:

- *establish an independent Climate Change Commission to provide independent advice on, and oversee, climate change mitigation and adaptation*
- *re-commit in statute to the Government's current target of net zero emissions by 2050 and set interim targets for emission reductions on the advice of the Climate Change Commission;*
- *require the Premier to table annual reports on progress against emissions targets and adaptation plans;*
- *create mitigation and adaptation plans for each sector, including export-focused sectors for example resources sector, on the advice on the Climate Change Commission;*
- *require all government decisions to be consistent with achieving the Paris Agreement emissions reduction goal of limiting climate change to 1.5 degrees above pre-industrial levels and with mitigation and adaptation plans;*
- *create, and fund, transition plans to empower regional communities to transition to the new global economy; and*
- *prohibit new or expanded fossil fuel projects as science shows this is inconsistent with achieving emission reduction goals*[1]

Summary

What will this do?

- Create clear plans to achieve necessary emission reductions and help our society – particularly regional and vulnerable communities – to both transition to the new economy and manage the unavoidable impacts of climate change, without leaving anyone behind.
- This Act will create an independent Climate Change Commission to provide governments with independent advice and to hold them to account on delivering the emissions reduction and economic transition we need.

Why do we need it?

- Climate mitigation needs cool-headed, long-term planning from an independent, expert commission.
- Adapting to climate change and transitioning our economy will take long-range planning and the perseverance to stick to and deliver those plans over years or even decades.

The Federal Government has failed to deliver evidence-based laws to guide our climate transition. The most pressing challenge of this century must, therefore, be taken up by the states.

The large-scale bleaching of our Great Barrier Reef for the third time in 5 years and the unprecedented bushfire season of 2019/2020 have clearly shown us that climate change is happening now and that urgent action is required to minimise our greenhouse gas emissions to the greatest possible extent.

Extreme fire seasons

The 2019/2020 bushfire season was unprecedented in both scale and harm.

The effects of the bushfires were felt across Australian rural and urban areas through:

- Loss of lives and many homes, businesses and farms;

[1] http://www.climatecouncil.org.au/uploads/a904b54ce67740c4b4ee2753134154b0.pdf

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- Loss of livestock, pasture and permanent plantings by agricultural communities already struggling with the extreme drought conditions;
- Millions of hectares of forest burnt, with the associated loss of over a billion animals;
- Smoke pollution causing hazardous air quality in even our largest cities;
- The release of further carbon dioxide into the atmosphere – contributing to higher likelihood of extreme fire seasons in the future.

As the impacts of climate change are increasingly felt, we are likely to experience more longer and more intense fire seasons.

Great Barrier Reef

Mass bleaching of coral reefs is driven by heat stress driven by climate change.

The Great Barrier Reef suffered its third mass bleaching event in 5 years over the summer of 2019/2020. This latest mass bleaching event has, for the first time, seen mass bleaching across all three sections of the Great Barrier Reef.1[2]

The first recorded mass bleaching event on the GBR was in 1998, which was then the hottest year on record. Mass bleaching events have since occurred in 2002, 2016, 2017 and now 2020.

The 2016 mass bleaching event saw more than half of the shallow water corals in the northern section of the reef die.

The global economy and the market for our exports is changing, whether we change or not, as are the ways we generate and use energy.

These changes and impacts will create challenges and opportunities, especially for regional communities and workers in sectors such as mining and tourism. Some regional communities will be particularly vulnerable and need support to transition to the new economy (such as coal communities), while others will need support to deal with the unavoidable impacts of climate change that are already occurring (such as agricultural communities and tourism hubs). Action is needed now to make sure that these vulnerable communities don't bear a disproportionate burden of climate change or of mitigation.

The Queensland government has started to take action on climate change through:

- the commitment to achieving 50% renewables by 2030 and the related actions to transition our energy sector under the Powering Queensland Plan;[3]
- the Queensland Climate Transition Strategy,[4] which commits to achieving net zero emissions by 2050 and a 30% reduction in emissions (from a 2005 baseline) by 2030;
- the Queensland Climate Adaptation Strategy[5]; and
- the pilot transition planning and other activities occurring under the Queensland Government's Communities in Transition Program.[6]

These are necessary and positive changes, but more is needed. The cost of doing nothing outweighs the cost of action.

[2] https://www.coralcoe.org.au/media-releases/climate-change-triggers-great-barrier-reef-bleaching
[3] https://www.dnrme.qld.gov.au/energy/initiatives/powering-queensland
[4] https://www.qld.gov.au/__data/assets/pdf_file/0026/67283/qld-climate-transition-strategy.pdf
[5] https://www.qld.gov.au/__data/assets/pdf_file/0017/67301/qld-climate-adaptation-strategy.pdf
[6] https://www.cleangrowthchoices.org/

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The Queensland government is also taking actions, such as the proposed exploitation of Australia's Galilee Basin coal deposits in central Queensland, that are incompatible with effective action on climate change and inconsistent with any government policy attempting to address and mitigate climate change impacts.

The Climate Council of Australia concluded[7] that over 90% of Australia's remaining coal reserves must be left in the ground, unburned, if we are to have any hope of meeting the Paris Commitment of holding the increase in global temperatures to well below 2°C and pursuing efforts to limit temperature increase to 1.5°C[8].

A Climate Change Act in similar terms to those either in effect or contemplated in other jurisdictions,[9] would:

- Enshrine an emissions reduction goal consistent with limiting climate change to 1.5 degrees;
- Set interim emission reduction targets that will create an achievable pathway to the final goal;
- A risk assessment to ensure that mitigation and adaptation planning work from the best available information;
- Create mitigation plans to ensure that all sectors of our economy are transitioning to the new economy as a pace that accords with the established targets;
- Creating adaptation plans to ensure that no community bears a disproportionate burden of either mitigation or adaptation and that communities have an opportunity to create and realise their own visions for their future in the new economy;
- Ensure that communities, in particular regional, Aboriginal and Torres Strait Islander communities, are meaningfully consulted and empowered in the design of adaptation and mitigation plans for their communities;
- Establish an independent Climate Change Commission to ensure that emissions reduction targets are set on best available science and to publicly report on the government's progress against mitigation and adaptation plans to ensure that those plans are implemented in a way that transcends political cycles.

Independent Agencies prevent climate funding from being used on coal-fired power station

The Emissions Reduction Fund (ERF) is the Commonwealth government's 'flagship' – though inadequate – climate change intervention. It provides funding for projects that will reduce greenhouse gas emissions, such as carbon farming.

The two independent agencies[10] charged with administering the ERF stood firm to protect the integrity of the fund.[11] [12]Despite considerable political pressure [13][14]they did not allow funds set aside for climate action to be used to fund upgrades to the Vale's Point coal-fired power station.

[7] Climate Council of Australia Ltd, 2015, Unburnable Carbon: Why we need to leave fossil fuels in the ground, found at: **http://www.climatecouncil.org.au/uploads/a904b54ce67740c4b4ee2753134154b0.pdf**
[8] *Paris Agreement*, Article 2.1(a)
[9] For example, the *Climate Response Act 2002* (New Zealand), *Climate Change Act 2017* (Victoria), *Climate Change Act 2008* (UK), *Climate Change (National Framework for Mitigation and Adaptation) Bill 2020* (proposed by the independent member for Warringah, Zali Steggall MP, similar elements are found in California's approach to climate change.
[10] The Clean Energy Regulator established under the *Clean Energy Regulator Act 2011 (Cth)* and the Emissions Assurance Committee established under the *Carbon Credits (Carbon Farming Initiative) Act 2011*
[11] **https://www.pmc.gov.au/sites/default/files/foi-log/foi-2019-004%202.0.pdf**
[12] **https://www.environment.gov.au/system/files/pages/772ff212-8532-4f08-8f60-89e24d8c6a61/files/facilities-method-review-report.pdf**
[13] **https://www.pmc.gov.au/sites/default/files/foi-log/foi-2019-004%201.0.pdf**
[14] **https://www.pmc.gov.au/sites/default/files/foi-log/foi-2019-004%203.0.pdf**

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Proactively plan to protect our biodiversity, so nature thrives

SOLUTION 3. Landscape-scale biodiversity conservation

Link threatened species protections to land use planning laws to more effectively protect biodiversity and to make trade-offs between protection of biodiversity and other goals transparent, by requiring that public, landscape-scale environmental assessments across Queensland be undertaken to inform all land use planning, including:

- *Regional Plans and local planning schemes under the Planning Act 2016;*
- *State Development Areas under the State Development and Public Works Organisation Act 1971 (SDPWO Act); and*
- *Priority Development Areas under the Economic Development Act 2012 (ED Act);*

These plans must provide assessment of native species population and habitat health, and be connected to recovery plans available for all species, as well as providing an assessment of the health of ecosystems and resources such as water catchments, coastal zones and soil.

The regulatory framework must require that all regional plans achieve biodiversity objectives, including net gain of native species, preservation of representative samples of the region's biodiversity and preservation of ecosystem functions, with no legislation being able to override this obligation, including the SDPWO Act and the ED Act, except for truly essential infrastructure.

Linking our development planning to clear understanding of the health of our environment creates better protections for biodiversity and threatened species protected under the Nature Conservation Act 1992, more certain goal-posts for proponents and accountability for government.

Further, koala habitat across Queensland must be mapped and protected, not just in South-East Queensland.

Summary

What will this do?

- Ensure that we are proactively planning to protect our biodiversity.
- Ensure that decisions to make trade-offs between biodiversity and other goals (such as economic development) are made openly and through a discussion with the local community.
- Make the goal-posts for development approvals clearer to make approvals processes easier and shorter.

Why do we need it?

- We've been listing and attempting to regulate our impacts on threatened species for decades but our biodiversity is still in decline. Unless we plan to protect their habitat more effectively, they will continue to decline.

It is often assumed that the government is under a legal obligation to protect all threatened species, however, this is far from correct.

Habitat destruction and fragmentation are some of the most significant threats to our biodiversity.[15] If our laws don't address these threats, we will continue to lose species – that means our land use planning laws must be properly linked to our nature conservation laws.

[15] Commonwealth of Australia, Australia: State of the Environment 2016, found at: **https://soe.environment.gov.au/**

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The key tool to protect species is the listing of threatened species under the *Nature Conservation Act 1992* (**NCA**). If the NCA was an effective piece of legislation it would be properly linked to the legislation that governs land use change and vegetation clearing to ensure that the habitat our threatened species depend on is preserved. Unfortunately, those links are either tenuous or non-existent.

Protecting koalas

The iconic koala is now listed as vulnerable under the NCA, with the combined koala population of Queensland, NSW and the ACT also listed as vulnerable under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act).

Queensland's koala population has, despite such listing, actually decreased by 50% since 2001 and the rate of habitat loss has actually increased since the species was listed under the EPBC Act.1[16]

Proactive protection needed for cassowaries

The KUR-world development was a proposed resort near Kuranda in North Queensland.

The development would have removed areas that provided important connectivity between habitat areas for iconic species such as the Southern Cassowary.

There should have been proactive protections in place to give landholders certainty and ensure that the preservation of North Queensland's unique biodiversity isn't left to iterative project-by-project assessment.

Threatened species and vegetation clearing

The *Vegetation Management Act 1999* (**VMA**) could be used to identify and protect habitat necessary for the survival of our threatened species, but does it really?

The VMA does provide for vegetation to be mapped as 'essential habitat',[17] which creates some degree of protection for the habitat of threatened species. However, the Act does not require that all habitat necessary to protect a threatened species be mapped as 'essential habitat' and generally allows a high, and inappropriate, level of discretion about what land is mapped as 'essential habitat'. It is also possible to clear essential habitat either under a development approval, as exempt clearing work[18] (for which approval is not required) or under an Accepted Development Clearing Code.[19]

Threatened species and regional planning

The *Regional Planning Interests Act 2014* (**RPIA**) contains some protections for 'strategic environmental areas' (**SEAs**). SEAs are those areas identified[20] in either a regulation or a regional plan made under the *Planning Act*

[16] https://www.smh.com.au/environment/conservation/destruction-of-habitat-sped-up-after-koalas-were-listed-as-vulnerable-20200412-p54j6p.html
[17] S20AC VMA
[18] Planning Regulation 2017, schedule 21
[19] Clearing for Extractive Industry, Managing Fodder Harvesting (within certain limits and if an exchange area is provided), Managing Regulated Regrowth Vegetation (ibid) , Managing a Native Forest Practice (some habitat protections but no reference to essential habitat mapping), Clearing for Infrastructure, [Managing for Weeds makes no mention of essential habitat mapping]
[20] *Regional Planning Interests Act 2014*, s11

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2016 (**PA**). There are no other requirements in either the RPIA or the PA[21] that a regional plan address threatened species and no requirement that regional plans include any SEAs.[22]

South-East Queensland Regional Plan

The current Regional Plan for South East Queensland[23] does not identify any SEAs for the purposes of the Regional Planning Interests Act 2014.

While the Queensland government has undertaken Bioregional Planning Assessments to inform regional planning,[24] it is not under a legal obligation to do so, nor is it under a legal obligation to achieve particular outcomes (such as no loss of species or the preservation of representative samples of biodiversity) in regional plans. More importantly, the process for making a regional plan does not include publicly available information about the trade-offs it makes between the needs of biodiversity and development that are inherent in a regional plan.

What would it take to link threatened species protections to land use planning?

The Queensland government must take steps to ensure that our biodiversity laws are properly linked to land use planning so that:

- threats to our biodiversity identified under the *Nature Conservation Act 1992* are effectively addressed;
- there is transparent disclosure, and public discussion, about the trade-offs that are being made in regional plans (and other large-scale planning instruments) between protecting our biodiversity and other goals.

As a consequence, the *Planning Act 2016* (in relation to regional plans), *State Development and Public Works Organisation Act 1971* (in relation to state development areas) and the *Economic Development Act 2012* (in relation to priority development areas) should be amended to:

- Require eah plans to achieve biodiversity objectives, including net gain of native species, preservation of representative samples of the region's biodiversity and preservation of ecosystem functions;
- Require the process for making a regional plan to include a public landscape-scale environmental assessment that provides the public the information about, and the opportunity to have input into, the process by which decisions are made to protect (or not protect) the region's biodiversity (ie. trade-offs are explicit).

SOLUTION 4. End unsustainable land and sea practices in the Great Barrier Reef

Implement and enforce the Great Barrier Reef Protection Measures, and fund complementary landscape restoration measures and extension officers, to achieve end of catchment targets by 2025 at the latest. Implement the sustainable fishery reforms and create a net free zone in the northern Great Barrier Reef to protect Reef marine life from unsustainable fishing and netting practices.

[21] The *Planning Act 2016*, in s4, rather vaguely defines Regional Plans as setting out integrated planning and development assessment policies for matters of 'state interest' (which is similarly vaguely defined and, while it would allow consideration of threatened species, contains no obligation to do so).
[22] For example, the SEQ Regional Plan does not identify any SEAs.
[23] Shaping SEQ: South East Queensland Regional Plan 2017: **https://dsdmipprd.blob.core.windows.net/general/shapingseq.pdf**
[24] **https://www.qld.gov.au/environment/plants-animals/biodiversity/planning**

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Summary

What will this do?

- Ensure that farmers in reef catchments are properly supported through their transition to reef-friendly farming practices.
- Ensure that farmers doing the right thing are not at a competitive disadvantage to those who might avoid their legal obligations.
- Provide for the long-term protection of our vulnerable marine life by ensuring fishing practices are sustainable.

Why do we need it?

- The biggest threat to our Great Barrier Reef, after climate change, is sediment and nutrient flowing into the lagoon as a direct result of land use in the catchment.
- Passing the legislation to require reef-friendly farming was a great achievement but it's only the first step. The real challenge is to make sure that legislation is fully implemented through education, support and, if necessary, enforcement.
- Fish and shark populations have been plummeting for decades - better regulation is needed to ensure our fish populations and fishing industries can both flourish into the future and to provide

The passage of legislation[25] to protect the Great Barrier Reef from poor water quality from its catchments was an important achievement, but it is only the first step.

Environmental legislation fails, easily and often, at the implementation stage.[26]

Great Barrier Reef protection measures have been enacted before,[27] and have failed before – because the government of the day failed to fund them and failed to enforce them

"Policy decision" not to enforce previous regulations

The Great Barrier Reef Protection Act 2009 put in place the first attempt at regulation to protect Great Barrier Reef water quality from activities in the catchment.

A policy change in 2012 under the Newman Government led to a decision not to enforce those regulations,[28] with the result that farming practices largely remained non-compliant with the law and water quality entering the Great Barrier Reef failed to improve.

Achieving the end-of-catchment sediment and nutrient targets that will remove one key stressor from our fragile Great Barrier Reef must remain a key commitment of the Queensland Government – that means continued funding and staffing for enforcement of the laws and continued funding for complementary measures to restore and revegetate the catchment (such as protections for Great Barrier Reef Wetlands and vegetation, existing and new Major Integrated Projects[29] and co-benefits under the Land Restoration Fund).

Further, a review process has been underway over recent years to Queensland's fisheries laws to strengthen their sustainability by better regulating commercial fishing. The reform outcomes have been productive, however the reforms have not yet all been implemented into law; the second round of amendments to the

[25] *Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019*
[26] UNEP, 2019, Environmental Rule of Law: First Global Report, found at: https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y
[27] *Great Barrier Reef Protection Amendment Act 2009*
[28] See Explanatory Notes to Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019, p2
[29] https://www.qld.gov.au/environment/agriculture/sustainable-farming/reef/reef-major-projects

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Fisheries Regulation 2008 have not yet been passed. This reform package is an important part of the process to help create sustainable fisheries now and into the future. Action is needed to protect Queensland's remaining fish stocks, including by:

- improving reporting through requiring all sharks to be brought back to port with fins attached, and requiring electronic monitoring in high risk fisheries.
- implementing Harvest Strategy Policies to control fishing effort, and Bycatch Management Strategies to increase fisher accountability and reduce capture of endangered and protected wildlife;
- providing area closures in critical habitats to protect threatened species and improve their recovery; and
- commit funding to remove dangerous fishing waste such as discarded nets.

Further, the use of commercial gill net fishing in critical habitat areas is threatening the northern Great Barrier Reef's vulnerable marine wildlife. While some nets were removed in recent years, there are still 240 active gill net licences held along Queensland's east coast that can move in and start fishing in this precious area. Queensland needs to create one of the world's largest dugong havens and largest net-free zone on the Great Barrier Reef - an 85,000 km2 refuge for dugongs and other precious marine wildlife to flourish.

SOLUTION 5. Pristine Rivers

Our rivers are the lifeblood of Queensland - they need our protection to ensure they remain healthy and sustainable long into the future for all peoples and species which rely on them. To ensure the protection of Queensland's healthy rivers, action must be taken to work with Traditional Owners and communities to::

- *ensure Channel Country floodplains are effectively protected from further gas exploration or production;*
- *introduce new measures to protect pristine rivers in the Gulf country by the end of the second year of the Parliamentary term; and*
- *protecting Cape York rivers by the end of the Parliamentary term.*

Summary

What will this do?

- Ensure adequate levels of protection for the few rivers in Queensland that remain in a healthy and relatively undeveloped condition.

Why do we need it?

- Uncertainty about protections for rivers previously protected by the repealed *Wild Rivers Act 2005* has been adversely impacting communities and project proponents since the repeal of that Act by the Newman Government
- New laws are needed to ensure that our few remaining pristine rivers are protected, while providing clear rules for landholders, communities and industry.

The Newman-era saw the repeal of the *Wild Rivers Act 2005* and its replacement with reduced protections over smaller areas under the inadequate *Regional Planning Interests Act 2014*.

It's time to deliver catchment-scale management for our few remaining pristine rivers to preserve their riparian functions, hydrology and biodiversity for generations to come.

Commitments have been made to Queenslanders for two terms of government that pristine river protections would be restored, yet these commitments have not been fulfilled. The next term of government must deliver the certainty and finality of new protections for all pristine rivers.

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The scope and nature of the new protections must be developed in close consultation with Traditional Owners and other key stakeholders.

SOLUTION 6. National Parks and other protected areas

Implement and adequately fund a Protected Areas Strategy that will meet the targets under the Convention on Biological Diversity (1992) (CBD) for a comprehensive, adequate and representative system of protected areas by 2030. This Strategy should bridge at least 50% of the gap between Queensland's current, inadequate protected area network and the CBD targets by the end of the next term of government and commit $135 million per year in new funding for national parks and private protected areas annually. Further funding for 200 new Indigenous land and sea ranger positions over the next 10 years would greatly assist land management and the provision of employment for First Nations people on country.

Summary

What will this do?

- Ensure that we plan, and fund, a well-managed protected area network that contains a comprehensive, adequate and representative sample of Queensland's biodiversity.

Why do we need it?

- Protected areas ensure that representative samples of our biodiversity will remain for future generations to enjoy. Queensland's current network of protected areas is well below international standards in terms of area and many key pieces are missing.
- We need a fully funded plan to ensure that Queensland's biodiversity is preserved for future generations.

Australia's, and Queensland's, biodiversity is in a poor condition and is continuing to decline, despite Queensland establishing its first national park in 1908 and despite our current national parks legislation having been in place since 1992.

Our existing network of national parks and other protected areas currently sits at less than 50% of the area goal set under the *Convention on Biological Diversity (1992)*, and fails to meet a number of other benchmarks that are intended to ensure that our natural environment is preserved for future generations.

Queensland badly needs a strategy to guide the establishment of new national parks and other protected areas to ensure that a representative sample of our natural environment is preserved and will persist indefinitely for the benefit of future generations. The strategy must be funded by annual budget commitments that are adequate to secure, and properly manage, the extended protected area estate.

Providing meaningful funding for 200 new Indigenous land and sea ranger positions over the next 10 years is an important complimentary initiative to assist in sustainable land management and the provision of employment for First Nations people on country.

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SOLUTION 7. An Environmental Offsets Act that is fit for purpose

Within the first year of the next term of government, pass amendments to the Environmental Offsets Act 2014 which will ensure that:

- *Offset ratios are evidence-based;*
- *Offsets are provided in advance of the impact;*
- *Financial contributions reflect the true cost of providing offsets;*
- *All applications are meaningfully subject to the three-step process of avoid, then minimise, then offset;*
- *Inappropriate restrictions on the use of offsets are removed;*
- *Impacts on protected areas can only be offset through enhancing the biodiversity values affected by the impact;*
- *All impacts on prescribed environmental matters are offset;*
- *Offsets are permissible only if there is evidence that it is possible to offset the relevant impact, determined prior to impact approval.*

Summary

What will this do?

- Ensure that environmental offsets genuinely compensation for the impacts of the approved development.

Why do we need it?

- The limitations of the current *Environmental Offsets Act 2014* mean that some impacts are not being offset adequately or at all and that others can be offset with a payment of money that is not sufficient to provide the required offset.

Environmental offsets are often required as a condition of development approval or environmental approval to compensate for the negative impacts of the proposed development or project. For example, a development that will involve clearing native vegetation might provide offsets by protecting and enhancing an area of vegetation of the same type that would otherwise be cleared.

Offsets can have a role to play in ensuring that our natural environment is preserved while allowing our communities to thrive, but only if it is possible to offset the impact, if the offset is provided in a timely manner and if all impacts are offset (not just significant impacts). Activities proposing inappropriate impacts on our threatened environmental values must simply not be allowed, truly implementing the first stage of the mitigation hierarchy requiring that the impact is avoided.

Our *Environmental Offsets Act 2014* is currently hampered at least by unnecessary restrictions and by financial settlement offsets that don't represent the true cost of providing the offset. For example, the Act does not allow an offset condition to be imposed if the Commonwealth has considered the same environmental impact – even if the Commonwealth has chosen not to impose a condition requiring an offset under the differing criteria and triggers of the federal laws.[30]

Reform of the Act is urgently needed.

The Queensland Government has been undertaking a review of *Environmental Offsets Act 2014*[31] that will evaluate the outcomes being delivered by the Act and is likely to identify further reforms needed to the Act. This work must be finished and reform commenced urgently to avoid any further loss through the current ineffective framework.

[30] *Environmental Offsets Act 2015*, s15

[31] **https://www.qld.gov.au/__data/assets/pdf_file/0018/94131/qld-enviro-offsets-framework-discuss-paper.pdf**

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Is the Offsets Act actually delivering offsets?

Project proponents have been making payments into offset funds since the Act commenced in 2014, with the option of delivering their offset obligations through land-based offsets or through payment into a fund (allowing the government to deliver offsets).

However, the Queensland Audit Office found in 2018 that only 3 land-based offsets had been delivered and, of the 97% of offsets delivered as a financial payment, not one had been fully implemented.[32] That means the impacts of many projects occurred without being offset over the first four years of operation of the Act.

Restoring trust in the management of publicly owned natural resources

SOLUTION 8. Independent oversight of publicly-owned natural resources

Establish an independent Natural Resources Commission, to provide oversight and auditing of government decisions about natural resource management, and a mandate to publicly report on whether resources are being managed in the long-term public interest and in line with statutory objectives and process of accountable and transparent governance, including:

- *Water: Periodic review of water plans, water sharing rules and other instruments that create rules for how water is shared under the Water Act 2000;*
- *Vegetation, including forests: Periodic review of the management of vegetation under the Forestry Act 1959 and under the Vegetation Management Act 1999;*
- *Land: Oversight of the management of land listed on the contaminated land and environmental management registers under the Environmental Protection Act 1994, of the management of abandoned mines and of protections for strategic cropping land and priority agricultural areas under the Regional Planning Interests Act 2014;*
- *Fisheries: Oversight and review of harvest strategies under the Fisheries Act 1994;*
- *Mining and petroleum: Oversight of decisions to release exploration tenements, around ongoing production licences and rehabilitation requirements.*

Summary

What will this do?

- Provide independent oversight and auditing of publicly owned resources, to ensure that they are being managed lawfully and in the interests of the public and empower citizen participation in environmental decision-making.

Why do we need it?

- The public should be included in the discussion about whether natural resources are being managed appropriately and in their long-term interests. Currently it is very difficult for the public to know whether resources are being managed lawfully, or well, or on the basis of adequate science and monitoring.

[32] Queensland Audit Office, 2018, Conserving Threatened Species: Report 7: 2018 – 2019, found at: https://www.qao.qld.gov.au/sites/default/files/reports/conserving_threatened_species_.pdf

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Natural resources, including minerals, water, fisheries, significant amounts of land and some timber, are owned and managed by the Queensland government on behalf of the people of Queensland.

Decisions about how those resources are used and managed should be made in the long-term interests of the people and species of Queensland and in line with outcomes set by Parliament in the governing legislation.

The management of natural resources is almost always a contested space in which the interests of different sectors, or the interests of industry and the community, can come into conflict. Unfortunately, the process for managing natural resources is often complex and difficult for stakeholders other than well-resourced vested interests to engage in. This makes it very difficult for vulnerable communities to know whether their local resources are being managed appropriately and to participate in natural resource management in an informed way.

Further, our current laws often allow an inappropriate level of discretion to decision-makers, conflicting mandates on decision makers to both protect and exploit resources, and almost inevitably allows the person making the decisions to also review the outcomes of their own decision-making.

As a consequence, there has been a loss of trust that government is managing our natural resources in the long-term interests of our community.

That trust could be restored by an independent Natural Resources Commission, staffed by appropriately skilled experts in natural resource management, that periodically evaluates and reports to the public on the outcomes of government planning and decision-making about the use and sharing of natural resources, and whether those decisions are being made in the long-term public interest.

The NSW Natural Resources Commission (**NRC**) established under the *Natural Resources Commission Act 2003* (NSW) was created as an independent body with broad investigative and reporting functions for the purposes of establishing a sound evidence basis for the properly informed management of natural resources, including reviewing water sharing plans and forestry management.

NSW Natural Resources Commission

The NSW Natural Resources Commission (NRC) established under the Natural Resources Commission Act 2003 (NSW) has a role in reviewing the plans that govern how water is managed and shared in New South Wales.

In 2019 the NRC withstood considerable political pressure[33] to release a report[34] that highlighted significant failures, and potential unlawfulness, in the water sharing plan for the Barwon-Darling River. The NRC's thorough and expert analysis of the outcomes being created by the plan will help to empower the community to hold government to account and to ensure more sustainable and fair long-term management of water resources in the state.

Queensland needs a similar organisation to provide independent oversight to ensure that reviews of natural resource management outcomes are undertaken on good evidence and by an entity independent of the agency who made the decision.

[33] See, for example: https://www.theguardian.com/australia-news/2019/aug/26/coalition-splits-over-water-policy-in-wake-of-barwon-darling-report ; https://www.theguardian.com/australia-news/2019/sep/27/irrigators-could-be-banned-from-pumping-from-barwon-murray-when-river-is-very-low ; https://www.smh.com.au/politics/nsw/water-minister-melinda-pavey-shooting-the-messenger-nrc-claims-20190827-p52l81.html ; https://www.smh.com.au/politics/nsw/water-fight-minister-attacks-river-scientists-20190825-p52kir.html

[34] Natural Resources Commission, 2019, Final Report: Review of the Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources, found at: https://www.nrc.nsw.gov.au/publications

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Water

Under the *Water Act 2000,* water resources (ie. generally aquifers, surface watercourses and overland flow) are managed, and rights to take water under water entitlements are governed, by a variety of statutory instruments.[35] Understanding these instruments, the outcomes they are capable of achieving and even whether they are based on adequate evidence is a highly technical assessment which is very difficult for the community (other than well-resourced vested interests) to engage in.

Water plans, which set the primary management intent for the water resource, are made by the Minister and reviewed on a five-yearly basis, also by the Minister. As a consequence, the Minister effectively 'marks their own work'. There is no statutory review required for other instruments that govern water sharing under the Act.

An independent Natural Resources Commission could provide a well-informed external review of instruments made under the *Water Act 2000* to ensure that they are based on sound evidence, avoid unsustainable water practices and are achieving the objectives of the Act.

Water management threatens biodiversity

The Water Act 2000 has, since its commencement, included objectives relating to the protection of biological diversity, ecosystem health and water quality, which should have been delivered through water plans and water sharing rules.[36]

Despite that, the major threats that put fauna species at risk of extinction in Queensland include a number of activities regulated under the Water Act 2000, including groundwater extraction, water quality, flow regime, impoundments and surface water extraction.[37]

Further, major flaws have been highlighted in the poor level of regulatory oversight of water use in Queensland through investigations into the major issues facing the Murray Darling Basin.

Land

Land is one of our most valuable resources. Land that is contaminated (or potentially contaminated) not only limits future use of that land, but also has the potential to harm surrounding land and waters, as do the roughly 120 large abandoned mines and 15,000 other abandoned mine workings being managed under the Abandoned Mine Lands Program. [38]

To date there has been very little scrutiny of how these legacy sites are being managed.

The *Regional Planning Interests Act 2014* is also intended play a role in protecting our most valuable agricultural land through protections for strategic cropping land and priority agricultural areas. However, it lacks any statutory requirement for an evaluation of whether it is achieving its intended outcomes. The community needs to know whether protections for agricultural land are effective.

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[35] Including water plans and water sharing rules contained in water management protocols, resource operations licence operations manuals or regulations.

[36] See *Water Act 2000* (as commenced, s10, found at: **https://www.legislation.qld.gov.au/view/pdf/asmade/act-2000-034**

[37] Queensland State of the Environment Report 2017, found at: **https://www.stateoftheenvironment.des.qld.gov.au/biodiversity/species-and-habitat/major-threats-to-fauna-species**

[38] Which manages around 120 complex medium to large abandoned mines and 15,000 other mine workings (primarily small to very small) across approximately 10,300 ha of disturbance (see: Queensland Treasury, Achieving improved rehabilitation for Queensland: Addressing the state's abandoned mine legacy, found at: **https://s3.treasury.qld.gov.au/files/8243_Abandoned-Mines-Discussion-Paper_v61.pdf**)

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An independent Natural Resources Commission could have a key role to play in eliminating unsustainable land practices and holding government to account in its management of already degraded land. It could therefore have a key role to place in reducing threats to biodiversity and ecosystems from land management.

Fisheries

The *Fisheries Act 1994 (Qld)*, under which fisheries in state waters are managed, was recently amended to allow 'harvest strategies' to be made for fisheries to facilitate the management of the fishery in a way that achieves the main purpose of the Act.[39] Such strategies are made by the chief executive of DAFF,[40] approved by the Minister[41] and then implemented primarily by the chief executive of DAFF.[42] The chief executive is then also responsible for assessing the performance of the fishery against the harvest strategy[43] and for reviews of harvest strategies.[44] While this is a positive reform, once again, the regulator is 'marking their own work' without any requirement for an independent review or at least an independent peer review.

Vegetation, including forests

Native forestry in Queensland occurs under both the *Forestry Act 1959* (on state land) and as private native forestry under an accepted development code under the *Vegetation Management Act 1999*.

Neither type of forestry regulation requires a statutory review.

An independent review should look not only at the management of forestry activities but also at the extent to which our state forests are under pressure from other activities, such as petroleum exploration and production.

Further, our vegetation is a hotly contested resource that has been subject to significant regulatory reforms over decades. Independent oversight into the sustainable management of our vegetation will assist in easing the politics around the regulation of vegetation and finding ways to manage this prime resource and biodiversity function sustainably in the long term.

Minerals

Decisions to grant exploration tenure under the *Mineral Resources Act 1989* and *Petroleum & Gas (Production and Safety) Act 2004* are almost entirely at the discretion of the relevant Minister and are made under legislation which appears to be based on an implicit assumption that any exploitation of minerals and petroleum will be in the public interest.

The release of exploration tenements can, if an economic resource is found, have long-term ramifications for a region through exploration for, and production of, minerals and through the subsequent rehabilitation of disturbed land.

An independent evaluation is called for about how these decisions are being made, whether they have adequate regard to other policy imperatives (such as climate change and biodiversity preservation) and whether alternative uses of such areas would be in the greater long-term public interest.

Further, existing production licences have often been unchanged for many decades, while scientific understanding, regulatory sophistication and community expectations have moved on. Conditions and decisions around expansion of existing licences would greatly benefit from auditing to ensure they are best practice and in line with the best interests of the public.

[39] *Fisheries Act 1994*, s19
[40] Ibid ss17 and 18
[41] Ibid s16
[42] Ibid s23
[43] S25
[44] S26

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SOLUTION 9. Modernise our mining laws

Bring our mining laws into the 21st century and ensure that Queensland has a sustainable and viable mining industry in a world transitioning to net zero emissions, with limited water resources by:

- *amending the Mineral Resources Act 1989 and Petroleum and Gas (Production and Safety) Act 2004 to require the preparation of a strategic plan to guide the release of exploration tenements, that is consistent with the Paris Agreement objectives and with Queensland achieving net zero emissions by 2050;*
- *amending the Mineral Resources Act 1989 to provide that the 'public interest' includes limiting global warming in line with the Paris Agreement;*
- *restoring water laws to require that all water resources – including aquifers affected by mining – are managed within limits that can be sustained indefinitely - removing the unlimited right to water provided uniquely to the resource sector and ensuring all resource sector water take is included transparently in water planning;*
- *streamline the Land Court objections hearing process to make it consistent with appeal rights that are available for environmental authorities for petroleum leases.*

Summary

What will this do?

- Ensure that decisions to grant rights to mine are consistent with achieving the goal of the Paris Agreement and net zero emissions by 2050.
- Ensure that our groundwater resources are managed within limits that allow them to be sustained indefinitely.
- Ensure that an independent Court has the final say on environmental approvals for mining, to protect citizen participation in environmental decision making.

Why do we need it?

- The Queensland government is currently funding emissions reductions with one hand, while actively allowing greater emissions with the other. The Queensland government must take a consistent response to climate change across all sectors.
- Our groundwater resources are precious and must be managed to ensure they remain available into the future. There is no reason why groundwater affected by mining should be any different.
- The current Land Court objections hearing process for environmental authorities for mining is an historical relic. Final recourse to an independent Court ensures that governments, and the public service, are making good decisions based on good evidence.

Our mining laws are old, clunky and out of step with other government policy in many ways.

Most importantly, they are out step with the need to protect our Great Barrier Reef by achieving net zero emissions by 2050.[45] Coral reefs worldwide are projected to decline by a further 70 – 90% at 1.5° of warming, with larger losses of over 99% at 2° of warming.[46] The Great Barrier Reef Marine Park Authority's recent

[45] Queensland Government Climate Transition Strategy – Pathway to a clean growth economy, found at: https://www.qld.gov.au/__data/assets/pdf_file/0026/67283/qld-climate-transition-strategy.pdf

[46] IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press.

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position statement[47] on climate change emphasises that 'only the strongest and fastest possible action to decrease global greenhouse gas emissions' will reduce the risks and limit the impacts of climate change on our reef.

While the Queensland government has made a policy commitment to achieving net zero emissions by 2050, it is at the same time taking actions – such as the release of coal exploration tenements – that are inconsistent with achieving this goal.

Decision-making consistent with climate change policy

Decisions to release exploration tenements for coal and petroleum can be the first step towards decades of greenhouse gas emissions. Such decisions shouldn't be left at the Minister's absolute discretion – they should instead be guided by a strategic plan that leads our mining industry into a sustainable future in a way that is consistent with other government policy and the need to play our part in reaching the Paris Agreement goals.

Release of coal-mining exploration tenements

Despite committing to net zero emissions by 2050 in 2017,[48] the Queensland Government has continued to release rights to explore for coal in 2018[49] and 2020.[50]

As a consequence, the Queensland government is simultaneously committing to combat climate change while also encouraging companies to invest time, money and resources in exploring for coal resources – the exploitation of which is inconsistent with combatting climate change.

The concept of 'public interest' which guides key decisions under the *Mineral Resources Act 1989*,[51] should similarly be updated to reflect that mitigating climate change is in the public interest, and made a mandatory consideration on the same terms for decisions under the Petroleum and Gas (Production and Safety) Act 2004.

Managing water within limits that can be sustained indefinitely

The majority of our water resources are managed under the *Water Act 2000* with the objective of 'sustainable management'[52] which includes allowing for the allocation and use of water resources ***within limits that can be sustained indefinitely.***[53] The exception is groundwater taken during mining or petroleum extraction for which the objective is to manage the ***impacts*** of the take of the water. The holders of mining leases and mineral development licences have a statutory right to take groundwater that is not limited by volume.[54]

This Newman-era reform needs to be reversed to ensure that short-term gains from mining aren't allowed to compromise aquifers that could supply water indefinitely.

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[47] Found at: **http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3460/5/v1-Climate-Change-Posistion-Statement-for-eLibrary.pdf**

[48] Queensland Department of Environment and Heritage Protection, 2017, Pathways to a Clean Growth Economy: Queensland Climate Transition Strategy, found at: **https://www.qld.gov.au/__data/assets/pdf_file/0026/67283/qld-climate-transition-strategy.pdf**

[49] **https://www.dnrme.qld.gov.au/__data/assets/pdf_file/0008/1397699/queensland-exploration-program-report.pdf**

[50] **https://www.dnrme.qld.gov.au/__data/assets/pdf_file/0005/1472090/2020-queensland-exploration-program.pdf**

[51] see Mineral Resources Act 1989, ss74, 82 and 93 (in relation to mining claims), ss136S and 147A (in relation to exploration permits), ss186, 194, 194AC, 197A, 208, 231, 231AA, 231E, 231G and 231H (in relation to mineral development licences) and ss267, 276, 286A, 286C, 294, 298, 317, 318AAH and 318AAT (in relation to mining leases)

[52] *Water Act 2000,* s2(1) (Main purpose of the Act), s37 (Planning for the management of water), s41 (What is a water plan) and s58 (What is a water use plan) and 182 (Deciding applications for resource operations licences)

[53] *Water Act 2000,* s2(2)(b)

[54] Mineral Resources Act 1989, s334ZP

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Land Court reform

The decision to grant an environmental authority under the *Environmental Protection Act 1994* can have significant implications for the surrounding community, as well as more broadly through greenhouse gas emissions particularly from coal mines. A decision of this magnitude should have an associated right of appeal to an independent Court – instead objectors have a right to have their objections heard by the Land Court which makes a recommendation to the final decision-maker, who is under no obligation to follow that recommendation. There is no reason why this should be the case. The Land Court objections hearing process should be reformed to create an ordinary right to appeal the final decision to an independent Court on the merits of the decision.

Create real protection of First Nations Cultural Heritage

SOLUTION 10. Protect Cultural Heritage

Strengthen protections of Aboriginal and Torres Strait Islander cultural heritage in Queensland through better resourcing, compliance and enforcement activities and ensuring that cultural heritage matters are addressed prior to approval and alongside major development assessment processes. Any amendments to these frameworks should be undertaken through meaningful engagement with First Nations peoples.

Summary

What will this do?

- Ensure that our cultural heritage legislation is functioning to properly protect the cultural heritage of First Nations peoples.

Why do we need it?

- Our current laws do not provide adequate protection of the cultural heritage of First Nations peoples, due to their disconnection from other development laws, lack of awareness of and respect for these laws, lack of power of First Nations peoples to adequately enforce protection of and appropriate consultation around proposed impacts to their cultural heritage and the failure of the government to adequately enforce these laws.

The *Aboriginal Cultural Heritage Act 2003 (Qld)* and *Torres Strait Islander Cultural Heritage Act 2003 (Qld)* (Cultural Heritage Acts) require substantial review, along with a review of the development frameworks that interact with these Acts, to ensure that the purposes of the Cultural Heritage Acts can be achieved.

The Queensland Government has commenced a review of the Cultural Heritage Acts. This review has not yet led to the necessary regulatory amendments, however, we understand that the government's intention is to proceed with a reform process in a staged manner. This reform process must lead to real action to address the significant lack of compliance and enforcement of Cultural Heritage Acts, for example, through improving awareness, resourcing enforcement activities and reforming development laws to ensure cultural heritage matters are addressed prior to any key development approval being granted. We ask that the government commit to improving resourcing and effectiveness of compliance activities, along with meaningfully considering and implementing all other recommendations made by First Nations people during the review of the Cultural Heritage Acts in 2019.

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Karingbal people's sacred site

Sacred trees and artefacts that had formed part of a site sacred to the Karingbal people were destroyed or disturbed during the operation of a quarry in 2015.

The harm to this cultural heritage occurred without a cultural heritage management plan under the Act and without consultation with the Karingbal people, despite the quarry operator having had foreknowledge of the cultural heritage significance of the site.

Defects in the Duty of Care Guidelines and the uncertainty around the 'last man standing rule' to identify who to consult with under the Act are likely to have contributed to the operator's decision to proceed with quarry works without a cultural heritage management plan or consultation with the traditional owners.

While the quarry operator was ordered by a Magistrate, in 2018, to pay over $400,000 in fines and restoration costs,55 Karingbal elders have said that no amount of money will ever be able to repair the destruction of the land or the hurt caused to their people.56

Providing clear and certain development laws with meaningful community involvement

SOLUTION 11. Protecting the integrity of planning schemes

- *Amend the Planning Act 2016 to allow local governments to prescribe mandatory assessment benchmarks where necessary to do so in order to protect the integrity of their planning schemes.*
- *Provide for more meaningful community involvement in development decision-making, as a check and balance on a developer approval focused planning framework.*

Summary

What will this do?

- Help ensure that the local governments can deliver the planning intent contained in their planning schemes and that communities have a voice in important planning decisions.

Why do we need it?

- The rules governing planning decisions have become so flexible that communities and businesses can no longer rely on their area changing in the way the planning scheme envisages. We need to return power to local government plan makers and ensure that the community has a voice in significant decisions.

Delivering planning intent

The decision rules contained in section 60 of the *Planning Act 2016* allow an excessively broad discretion to approve development, notwithstanding conflicts with assessment benchmarks prescribed in the planning scheme (such as building height or density). This section further places a requirement on decision-makers to

[55] *Dunn v Ostwald Construction Materials Pty Ltd* [2018] QMC 23, found at: https://archive.sclqld.org.au/qjudgment/2018/QMC18-023.pdf

[56] https://www.sbs.com.au/nitv/article/2019/03/13/elder-says-construction-company-who-destroyed-sacred-land-should-have-known.

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approve a development if any non-compliance with an assessment benchmark could be ameliorated through conditions.

This allows, and also places pressure upon, Councils, and the Planning and Environment Court on appeal, to approve development that may undermine the planning intent for an area and the confidence the community should be able to have that their area will evolve in line with the vision established in the planning scheme. Councils and the Court are therefore weakened in their ability to interpret a planning scheme more strictly where desirable to maintain the integrity of the planning scheme. We are aware that Councils struggle to have planning schemes approved by Ministerial review where they provide for assessment benchmarks that are specific and clear in restricting the development outcomes on a site in their jurisdiction, as this is seen as contrary to 'performance based' planning.

Councils should have the ability to identify some 'non-negotiable' limits, if they are needed to protect the planning intent for an area.

Protecting threatened turtles from light pollution

The Bundaberg Planning Scheme contained assessment benchmarks which recommended that development at a site in Bargara be limited to five storeys, for the purposes of protecting a turtle nesting site on beaches adjacent from the site from light pollution.[57]

Despite that, the 'Esplanade Jewel' development was proposed to include a huge nine storeys.

The development application was code assessable, which removed the public's rights to be involved and meant that the Council's failure to decide the development application within time resulted in the development being deemed to be approved, despite its failure to accord with the intent of the planning scheme.

Only the Minister's decision[58] to call in the development application and impose conditions limiting its height prevented the damaging nine storey development from proceeding. The need for this intervention could have been avoided if the planning scheme had simply been followed by the assessment manager.

The substantial number of community members concerned about the development lacked the right to have their views considered by the Council and to challenge the decision in the independent Planning and Environment Court, because the development application was only code assessable.

Genuine community involvement

The introduction of deemed approvals; the developer having control over whether extensions are allowed on the assessors request; the developer being empowered to choose to waive the information request stage; and planning schemes increasingly designating development as code assessable such that the community is locked out of the decision making processes on development applications – all of these initiatives are causing communities to lose faith in the planning system leading to decisions being made in the public interest.

Community participation assists in ensuring the best quality decisions are made for an area with all the knowledge available, the social licence of the development is improved and any risks of corruption or decisions not being made in the public interest are reduced.[59] However, community participation in

[57] https://www.news-mail.com.au/news/breaking-minister-reveals-bargara-high-rise-decisi/3576314/
[58] http://statements.qld.gov.au/Statement/2018/12/21/bargara-jewel-development-called-in
[59] This has been found in the Independent Review of the EPBC Act (2009) (Hawke Review); NSW Independent Commission Against Corruption (2012) (ICAC), Anti-Corruption Safeguards and the NSW Planning System.; Administrative Review

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Queensland has been slowly eroded in development decision-making, and there is little demonstration through the current planning framework that community input is valued and considered beneficial to development and planning decisions. To improve community involvement in the decisions around development of concern to the community, applications should be required to be impact assessable where development is above triggered thresholds, for example specified gross floor area or height in comparison to surrounding developments. Further, submission rights should be available on code assessable applications with these submissions required to be taken into account in decision criteria. A trigger could also be set to make code assessable development impact assessable if a certain threshold of public submissions are received on the development which demonstrates community concern.

Community protects character of Greenmount Beach

The Gold Coast City Council approved the proposed Komune Development at Greenmount Beach.[60] The development, at 27 storeys and a site cover of 99%, was inconsistent with the planning scheme intent which called for a limit of 10 storeys and 50% site coverage.

The community's concerns about the development degrading the character of their area, and not delivering the vision contained in the planning scheme, were expressed through a well-attended community rally and an appeal against the Council's decision to the Planning and Environment Court.

The Court ultimately refused the proposed development – an outcome that would not have been possible for the huge number of developments that go through the planning system as code assessable development applications (which do not allow a community right of objection or appeal). This outcome both shows the critical importance of third-party submission and appeal rights and the significant outlay of resources that could have been avoided had the planning scheme been followed.

Enhance our democracy

SOLUTION 12. Donation reform

Remove actual and perceived corruption risk by banning political donations from people and organisations whose business relies on rights granted by the government, including casino and other gaming licences, liquor licences and rights to explore for or extract minerals and petroleum.

Summary

What will this do?

- Remove a significant corruption risk and restore the community's faith that money can't buy influence in Queensland.

Why do we need it?

- Businesses that rely on rights granted by government (such as mineral rights or gaming licences) or operate in highly regulated sectors should not be political donors. Such donations create the risk, or at least the perception, that laws will be made or administered in the interests of donors, rather than in the public interest.

Council, Federal Judicial Review in Australia, (2012); and Productivity Commission: Major Project Development Assessment Processes (2013).

[60] https://www.abc.net.au/news/2018-12-04/queensland-court-overrules-council-planning-approval/10581410

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Donation reform is needed to restore trust in our democracy.

Political donations create the real or perceived risk that an elected representative will serve the private interests of their donors instead of the public interest.

The Queensland government has taken the first step towards addressing the perception that influence can be purchased in Queensland – by banning developer donations.[61]

However, the ban on developer donations stemmed from the findings of the Crime and Corruption Commission (**CCC**) in Operation Belcarra which identified developer donations as a particular risk at the ***local government level***. The risks are different at the state government level.

At the ***state government level***, the corruption risk is particularly acute for businesses that are either highly regulated or which rely on rights granted by the government (or both) – including liquor licences, casino and gaming licences and rights to explore for or extract resources.

Political donations from entities reliant on rights granted under the *Casino Control Act 1982, Gaming Machine Act 1991, Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004, Petroleum Act 1923* and *Liquor Act 1992* must be banned.

Donations by the resources industry

The register of political donations[62] maintained by the Queensland Electoral Commission reveals that many mining and resources companies and resource industry peak bodies are making donations of similar amounts to both major political parties.

Donations of similar amounts won't provide either party with an electoral advantage, which might make one question the purpose of such donations.

SOLUTION 13. Lobbying reform

Change the current, limited and ineffective, definition of 'lobbying' in the Integrity Act 2009 to capture all lobbying by corporations and industry associations to ensure that:

- *the same cooling-off period minimises the risk of former politicians and senior public servants misusing their connections or confidential information, or from being subject to inducements while in office, regardless of who pays them to lobby;*
- *all paid lobbyists are subject to the same code of conduct obligations, including truthfulness, regardless of how they are paid.*

Summary

What will this do?

- Make sure that the same rules apply to all lobbyists in Queensland, including to prevent former politicians and senior public servants from misusing information and access to government.

[61] State of Queensland (Crime and Corruption Commission), 2017, Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government, found at: **https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf**

[62] Electronic Disclosure System at: **https://disclosures.ecq.qld.gov.au/**

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Why do we need it?

- Our current lobbying laws only capture a fraction of the lobbying that occurs in this state. We need comprehensive lobbying laws that apply the same rules to all lobbyists, no matter how they are paid.

Lobbying of government takes many forms – including lobbying by consultant lobbyists on behalf of third-party clients, lobbying by in-house lobbyists who are employees of for-profit corporations and lobbying by peak industry bodies on behalf of their members.

The *Integrity Act 2009* currently ***only regulates*** consultant lobbyists (ie. lobbyists for hire).[63] It does not regulate the in-house lobbyists of corporations or lobbying by peak industry bodies.

The former Integrity Commissioner, David Solomon, estimated that the current regulation captures only about 20% of lobbying. The 2015 strategic review of the Integrity Commissioner similarly found that the Act captures such a modest proportion of lobbying as to undermine the intent of the Act.

That means only a 'modest proportion' of those lobbying government are subject to the code of conduct obligations (including truthfulness). It also means that Members of Parliament, ministerial staffers and senior public servants can move directly from their roles in government into lobbying roles in-house for corporations or for peak industry bodies, without acting unlawfully.[64]

In order to provide the community with confidence that corporations aren't having improper influence over elected members of parliament or the public service:

- the public must know who is lobbying, who they are lobbying on behalf of and who is being lobbied – regardless of whether the lobbying is by a consultant lobbyist, an in-house lobbyist or an industry association; and
- all lobbyists must be covered by the same code of conduct (including obligations of truthfulness); and
- there must be an adequate 'cooling-off' period for all lobbyists – regardless of how they are paid – to ensure that former Members of Parliament, ministerial staffers and senior public servants aren't perceived to be, and aren't, misusing either information or connections gained in government and subject to inducements while in office.

SOLUTION 14. Fund Community Legal Centres

Continue and expand government funding of the activities in Queensland of community legal centre, the Environmental Defenders Office, in order to continue to provide non-profit environmental frontline services to rural and urban Queenslanders.

Summary

What will this do?

- Ensure that the Environmental Defenders Office can continue to provide the community with advice and representation to defend their legal rights, and can continue to scrutinise and provide helpful feedback on existing and proposed changes to environmental laws in the public interest.

Why do we need it?

- Environmental laws, and the way in which they are implemented, have real effects on people's lives. They are also complex and difficult to navigate without the assistance of experienced environmental

[63] Integrity Act 2009, ss41 and 71
[64] *Integrity Act 2009*, s70

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lawyers. The private sector can afford lawyers to help them navigate environmental laws; the community usually cannot.

Community legal centres such as the EDO provide critical services to communities trying to understand and protect their rights under complex statutory regimes, as well as providing a much-needed voice for the community in law reform processes.

A commitment to access to justice means that access to legal services should not be restricted to those who can afford to pay.

Current Queensland government funding to EDO offices in Queensland is approximately $382,000. This level of funding should be maintained, if not increased, to provide the community with greater access to environmental justice.

No roll backs on existing environmental protections

SOLUTION 15. No regression

Commit to:

- *Not rolling-back vegetation protections;*
- *Not removing any third-party submission and/or appeal rights for environmental and planning decisions;*
- *Not removing the general rule that each party pays their own costs in the Planning and Environment Court, to support citizen participation in planning and environmental decision-making;*
- *Continuing the Land Restoration Fund to deliver the full $500 million committed;*
- *Not sacking, or placing arbitrary caps on numbers of, public servants working on climate change or biodiversity conservation;*
- *No repeal or backwards steps in the Human Rights Act 2019;*
- *Not rolling-back, or failing to enforce, Great Barrier Reef protection measures;*
- *Not returning lethal drum lines to the Great Barrier Reef;*
- *Not entering into 'approvals bilaterals' with the Commonwealth under the Environment Protection and Biodiversity Conservation Act 1999 (Cth);*
- *No discounts or deals on royalties, or subsidies, for fossil fuel projects;*
- *No cancellation, or roll-back, on programs to incentivise renewable energy generation;*
- *No roll-back of political donation reform including real-time disclosure;*
- *Respect rights of public assembly and protest;*
- *Continuing to improve access to information on environmental decision making.*

Summary

What will this do?

- Ensure that environmental protections and community rights don't go backwards in Queensland.

Why do we need it?

- The Newman government's roll-back of environmental protections and removal of community rights was emphatically rejected by the people of Queensland. All parties should commit to moving Queensland forward into a sustainable future.

All parties must commit to no regression on environmental protections.

Queenslanders have made it clear that they don't want our capacity to protect biodiversity, protect the Great Barrier Reef and transition to affordable renewable energy to be reduced through the removal of basic

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protections or a diminished public service. They also see the EPBC Act as an important level of protection for our most valued natural assets.

All parties should commit to at least maintaining the current levels of protection for vegetation and the Great Barrier Reef, the capacity of the public service to work on our most important issues, the rights of citizens to participate in environmental decision-making, the tools needed to ensure our transition to clean energy and to maintaining Commonwealth level protections.

All parties must also commit to maintaining protections that enhance our democracy and that ensure we are paid a fair price for publicly owned resources.

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