



Environmental  
Defenders Office

**Submission to the Economics and Governance Committee:  
Inquiry into the Queensland Government's economic  
response to COVID-19**

**30 June 2020**

## 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](http://www.edo.org.au)

## Submitted to:

Queensland Parliament Economic and Governance Committee  
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## Introduction

The Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to this inquiry into the Queensland Government's response to COVID-19.

We should start by congratulating the Queensland government on its timely and evidence-based response to COVID-19 which has seen Queensland avoid the scale of tragedy that is still unfolding in some other countries. We also commend its efforts to, in cooperation with other states/territories and the Commonwealth through National Cabinet, cushion individuals and small businesses from the economic impact of the "lockdown" and other restrictions put in place under Part 7A of the *Public Health Act 2005 (Qld)*.

We **recommend** that the following principles be used to inform Queensland's approach to its post-COVID economic recovery:

**Principle 1: Laws passed for economic and social recovery must put us on a path to a safe and healthy climate and restore the natural environment.**

**Principle 2: Ensure environmental protection, transparency and accountability standards are maintained or improved in economic stimulus measures, including access to justice.**

We also make the following, more detailed, **recommendations**:

- Short-term changes to environmental and planning laws during the COVID lockdown must end as currently scheduled.<sup>1</sup>
- The lack of transparency and lack of consultation which occurred before changes were made to environmental and planning laws during the peak of the crisis should not be extended to the recovery phase. Proactive consultation should occur in relation to any future changes to the law and any new laws should contain obligations to ensure that the new powers are used in a transparent and accountable manner.
- The need for economic stimulus should be used as an opportunity to hasten Queensland's transition to a low carbon economy, create jobs in low emission industries and solve existing problems created by past regulatory failure (such as our legacy of abandoned mines).
- Decisions about the third stage of Queensland's economic stimulus, following on from the first two stages under the current stimulus plan, should be future-focused, reflect input from a broad range appropriate expertise and be made transparently.
- The Queensland government should resist suggestions that the economy can be stimulated through the removal of protections for the environment and the community and should instead focus on alternative ways of ensuring that major projects are assessed efficiently, such as through ensuring that the relevant government agencies are appropriately staffed and resourced.

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<sup>1</sup> We note that the applicable event period during which the powers under the Planning Act 2016 and Economic Development Act 2012 was recently extended to 31 October 2020: <https://www.statedevelopment.qld.gov.au/resources/policy/applicable-event-extension-notice.pdf>

## The response so far to COVID-19

### COVID-related changes to environmental protections

The notable changes to environmental protections that have been put in place by the Queensland government as part of the response to the COVID crisis were contained in:

- The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (**Public Health Amendment Act**) (which contained amendments to the *Planning Act 2016* and the *Economic Development Act 2012*); and
- The *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (**Justice Amendment Act**) (which contained amendments to the *Environmental Protection Act 1994* (**EP Act**)).

The Public Health Amendment Act contained amendments largely directed to allowing business hours or similar restrictions to be changed on a short-term basis to address shortages and similar effects of the COVID crisis. This was an early and timely response to issues such as shortages in supermarkets. However, the new powers do lack some of the protections we would ordinarily expect, such as transparency requirements, to ensure that the powers are used in an accountable way.

The Justice Amendment Act, by contrast, was passed in late May 2020 – past the peak of the crisis – and includes powers such as the power to exempt polluting activities from obligations to comply with conditions of approval or to temporarily increase in scale or intensity without a thorough assessment. Such powers have the potential to result in unnecessary environmental harm and, while these powers are temporary in nature, the environmental harm that could result from their use may not be so short term. Further, some of the powers are excessively broad in nature (eg. the power to allow increases in scale or intensity unnecessarily extends to the resources sector which has not needed to change in response to COVID in the same way as, for example, distilleries that switched from beverage to hand-sanitiser production). Considerable improvements, to minimise the risks of long-term damage, could have been made through consultation with all stakeholders.<sup>2</sup>

These changes to law have been characterised by:

- Lack of consultation with stakeholders, or consultation with a limited range of stakeholders, before the laws were made;
- The creation of truncated processes or exemption processes that (temporarily) remove protections for the community or the environment, which could have longer term consequences; and
- Lack of transparency in how some of these powers are being used (for example, decisions made under the new powers contained in the EP Act need not be placed on the public register)

While there may be some justification for this approach at the peak of the crisis, there is no justification for such approaches to be taken in the recovery phase.

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<sup>2</sup> The explanatory notes to the Bill indicated that consultation occurred with industry. There was no consultation with the EDO.

It is also important that these measures remain time-limited and are not extended beyond the end of the current crisis. While it may be reasonable to, for example, allow supermarket deliveries outside of normal hours for the limited duration of the crisis, such conditions are generally imposed for reasons such as traffic safety or the acoustic amenity of nearby residences – neither of which should be compromised by ill-advised extensions to emergency laws. It may have been reasonable to ask the residents of such locations to tolerate additional noise during an emergency situation, but it is quite a different thing to ask them to accept such noise on an ongoing basis.<sup>3</sup>

### Current stimulus package

The Queensland Government's current stimulus package is outlined in the document *Unite and Recovery for Queensland Jobs – An overview of Queensland's economic recovery strategy*<sup>4</sup> and its supporting reports.<sup>5</sup>

This strategy is expressed to outline the first and second stages of Queensland's economic stimulus, with stage one containing the initial response to the crisis and stage two focused on building back traditional industries. The content of the **third stage** of the stimulus package has not yet been released.

While the strategy identifies Queensland's emerging strengths as including new economy industries such as renewable energy, non-fossil fuel minerals, hydrogen and advanced manufacturing, the stimulus announced to date includes very little spending aimed at these industries,<sup>6</sup> with such spend being dwarfed by the amounts being made available for other industries.

### Recommendations:

- **Short-term changes to environmental and planning laws during the COVID lockdown must end as currently scheduled.**
- **The lack of transparency and consultation which occurred before changes were made to environmental and planning laws during the peak of the crisis should not be extended to the recovery phase. Proactive consultation should occur in relation to any future changes to the law and any new laws should contain obligations to ensure that the new powers are used in a transparent and accountable manner.**

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<sup>3</sup> The Prime Minister's comment that "*the sun came up the next day*" despite such relaxation of conditions trivialises protections that can have a real impact on people's lives and ability to enjoy their homes (<https://www.pm.gov.au/media/address-%E2%80%93-ceda%E2%80%99s-state-nation-conference>).

<sup>4</sup> Found here: [https://www.covid19.qld.gov.au/\\_data/assets/pdf\\_file/0027/128358/Economic-Recovery-Strategy.PDF](https://www.covid19.qld.gov.au/_data/assets/pdf_file/0027/128358/Economic-Recovery-Strategy.PDF)

<sup>5</sup> Found here: <https://www.covid19.qld.gov.au/government-actions/our-economic-recovery-strategy>

<sup>6</sup> A \$50 million industry attraction fund for advanced manufacturing, \$14.8 million to investigate the feasibility of the Copperstring project (which would join the North West Minerals province to the NEM), the \$10 million new economy minerals initiative and the \$23 million dollar renewable energy.

### Principle 1: Laws passed for economic and social recovery must put us on a path to a safe and healthy climate and restore the natural environment.

The need to stimulate Queensland's economy following the COVID-19 crisis should be used as an opportunity to recover from the other, less visible, crises currently in progress – the climate crisis and the biodiversity crisis – and to rapidly up-scale our response to those challenges.

The unprecedented bushfire season of 2019/2020 demonstrated just one of the ways in which climate change will affect the economy, as well as livelihoods and lives. The ongoing loss of Queensland's biodiversity through drivers including land use change and climate change<sup>7</sup> will continue to affect our quality of life and the tourism and other industries that rely on our natural environment.

The science tells us that the next 10 years are critical to ensure we have a safe climate and an environment that will provide for future generations. It is imperative that any laws passed to stimulate the economy seize that opportunity.

The pathway to economic recovery is an opportunity to shift our economy toward a safe climate and better environmental future through well-designed regulation. Governments must resist the temptation to pass laws with adverse long-term implications, or to entrench our economic recovery in industries without a long-term sustainable future. Government should also resist the suggestion that deregulation (ie. the removal of protections for the community and the environment) is the path to economic recovery.

#### What does this mean for Queensland?

Queensland should use this opportunity to hasten the shift to a low carbon economy and to remedy defects in past regulation. This should be done without making the mistake of withdrawing funding for existing environmental programs.

The third stage of stimulus should be future-focused and address the need for Queensland's economic transition to a low carbon economy to address the risks and embrace the opportunities of our export markets changing in response to the need reduce greenhouse gas emissions in accordance with the Paris Agreement.<sup>8</sup> This transition would ideally occur through long-term planning under the structure of a Climate Change Act in terms similar to those in effect in Victoria, New Zealand and the United Kingdom, however, there are certainly immediate steps that could be taken in advance of such a

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<sup>7</sup> For example, the loss of the Bramble Cay Melomys and the successive bleaching events on the Great Barrier Reef

<sup>8</sup> The *Paris Agreement* is an agreement, to which Australia is a party, made under the *United Nations Framework Convention on Climate Change*. The *Paris Agreement*, among other things, commits parties to the goal of holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels (see Article 2.1(a)).

framework through existing programs, new programs based on existing expert advice<sup>9</sup> or the use of existing statutory levers.<sup>10</sup>

There may also be stimulus potential for regional areas in solving existing problems, created by past regulatory failures, such as the need to rehabilitate some of Queensland's 120 medium to large-scale abandoned mines.<sup>11</sup>

### Recommendations:

- **The need for economic stimulus should be used as an opportunity to hasten Queensland's transition to a low carbon economy, create jobs in low emission industries and solve existing problems created by past regulatory failure (such as our legacy of abandoned mines).**

### Principle 2: Ensure environment protection, transparency and accountability standards are maintained or improved in economic stimulus measures, including access to justice.

A key risk of short-term economic stimulus measures is that governments will introduce laws to facilitate development that will weaken environmental protections, lock in long term environmental damage and weaken public rights to participate in environmental decision-making.

Another key risk is that decision-making in relation to stimulus funds will be occur behind closed doors, without adequate input from the diversity of views and experience in the community.

### A deregulation agenda has long-term risks

The Federal Government (including in the Prime Minister's recent speech<sup>12</sup>) has flagged that a deregulation agenda, including an increased role for the 'Deregulation Taskforce',<sup>13</sup> will form part of its approach to economic recovery. It has also flagged that changes to Commonwealth Environmental protections may be made even in advance of the current inquiries relevant to such laws.<sup>14</sup>

<sup>9</sup> The opportunity to build new industries (including hydrogen and steel production) based on our abundant renewable resources is reflected in the Queensland Government's existing Hydrogen Industry Strategy (<http://dsdmip.qld.gov.au/resources/strategy/queensland-hydrogen-strategy.pdf>) and has been considered in such analysis as CSIRO's Hydrogen Roadmap and the Grattan Institutes 'Start with Steel' Report (Grattan Institute Report No. 2020-06, May 2020, found at: <https://grattan.edu.au/wp-content/uploads/2020/05/2020-06-Start-with-steel.pdf>)

<sup>10</sup> The Queensland Government's ownership of electricity generation, transmission and distribution companies would allow it to use powers under the *Government Owned Corporations Act 1993 (Qld)* to, for example, change the investment mandate of such companies to hasten the transition to renewable generation.

<sup>11</sup> See, for example, Queensland Treasury's Discussion Paper on Achieving improved rehabilitation for Queensland: addressing the state's abandoned mines legacy (found here: [https://s3.treasury.qld.gov.au/files/8243\\_Abandoned-Mines-Discussion-Paper\\_v61.pdf](https://s3.treasury.qld.gov.au/files/8243_Abandoned-Mines-Discussion-Paper_v61.pdf)), which includes discussion of the employment benefits for the local community that can be generated from mined land rehabilitation.

<sup>12</sup> <https://www.pm.gov.au/media/address-%E2%80%93ceda%E2%80%99s-state-nation-conference>

<sup>13</sup> <https://treasury.gov.au/review/deregulation-taskforce/TOR>

<sup>14</sup> The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* is currently undergoing a statutory review (<https://epbcactreview.environment.gov.au/>), and the Commonwealth Productivity Commission is currently undertaking a review of resource sector regulation (<https://www.pc.gov.au/inquiries/current/resources#draft>) which was placed on hold following the release of the draft report. While these reviews are not without their flaws, they are at least public processes with some degree of transparency.

Such an approach not only has the potential to decrease protections for the environment, natural resources (such as land and water) and the community while the need for stimulus remains, but creates the risk that such protections will be permanently weakened without the benefit of even a transparent policy process or a thorough evaluation of the benefits created by such regulations. Any decision to make changes to environmental laws should be informed by a thorough evaluation of the performance of the regulation against the objectives set by Parliament in the legislation itself.

Such appropriate evaluations may not be feasible within timeframes necessary for stimulus, with the result that it may be necessary to look to other options for ensuring that major projects undergo assessment in an efficient manner, without compromising environmental and community standards, such as through ensuring environment and natural resource focused Departments are appropriately staffed and resourced.

### Deployment of stimulus should be transparent

Decisions made now to deploy stimulus funds will have long term implications, both for the public purse and for the direction our economy will take in the next critical decade. In that regard, the decision-making process should involve input from diverse expertise relevant to the challenge, be made transparently and be made within a process explicitly directed to leveraging this opportunity to solve other problems.

The National COVID-19 Coordination Commission (**NCCC**) established by the Federal government may unfortunately serve as an object lesson for the many ways in which this principle is important. There have been concerns expressed from the outset that the NCCC lacks transparency both in appointments to the Commission and in its decision-making processes. Serious concerns have also been raised about potential conflicts of interest between the business interests of the Commissioners and their role on the NCCC. The leaked report<sup>15</sup> of the NCCC also raises questions about the lack of diversity in experience and expertise represented on the Commission and the lack of ambition inherent in its terms of reference, in that:

- the report focuses on gas as the key to cheaper energy in Australia, without any real analysis of other options for firming variable renewable generation, such as pumped hydro or battery storage, and apparently without input from experts in renewable energy;
- the report fails to have regard to the land use, climate and biodiversity impacts of gas extraction, which are likely to have negative impacts in the long term including for our economy;
- the report creates the impression in the community that a group largely comprising gas executives wrote about what they knew, instead of considering the full range of potentially available options; and

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<sup>15</sup> <https://www.theguardian.com/environment/2020/may/21/leaked-covid-19-commission-report-calls-for-australian-taxpayers-to-underwrite-gas-industry-expansion>

- the report may reflect that the Commission wasn't asked, in its terms of reference,<sup>16</sup> to be innovative and to use this opportunity to solve other problems (such as the urgent need to transition away from fossil fuels).

#### What does this mean for Queensland?

Decisions about the third stage of Queensland's economic stimulus should be future-focused, reflect input from a broad range of appropriate expertise and be made transparently.

Queensland should resist calls to 'fast-track' approvals for major projects with changes to the law and should instead ensure that agencies responsible for assessing applications for environmental and land use approvals and applications for allocations of resources (such as water and minerals) have the resources and staff they need to make decisions efficiently without compromising environmental standards. This has the co-benefit of continuing the Queensland government's role as a direct creator of jobs.

#### Recommendations:

- **Decisions about the third stage of Queensland's economic stimulus should be future-focused, reflect input from a broad range of appropriate expertise and be made transparently.**
- **The Queensland government should resist suggestions that the economy can be stimulated through the removal of protections for the environment and the community and should instead focus on alternative ways of ensuring that major projects are assessed efficiently, such as through ensuring that the relevant government agencies are appropriately staffed and resourced.**

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<sup>16</sup> <https://pmc.gov.au/nccc/terms-reference>