3 December 2025

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: ec.sen@aph.gov.au

Dear Sir/Madam

Re: qldwater submission – Environment Protection Reform Bill 2025 and six related Bills

The Queensland Water Directorate (***qldwater***) welcomes the opportunity to make a submission to the Senate Standing Committee on Environment and Communications in relation to the *Environment Protection Reform Bill 2025* and six related Bills (**Bills**). ***qldwater*** provides this submission without prejudice to any submissions from our members or other urban water service providers.

qldwater sees the introduction of the Bills as a step forward in reducing the financial risks and delays in delivery of time-critical infrastructure under the current *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). ***qldwater*** is supportive of a reformed regime with the potential to fast-track EPBC Act approval for critical infrastructure. It is therefore essential the Bills effectively provide a mechanism for fast-tracking water infrastructure approvals.

About us

qldwater is Queensland's central advisory and advocacy body for urban water (drinking water, sanitation, wastewater, networks), working with our members to provide safe, secure and sustainable water services to Queensland communities. ***qldwater*** delivers key programs and services to the sector. We work actively with State and Federal Governments in the delivery of policy and regulation that supports Queensland's Water Service Providers (**WSPs**).

We represent all 73 Queensland WSPs with domestic connections, [these are the two Torres Strait Island Councils, the 15 Aboriginal Councils, all 52 non-Indigenous Councils, the council owned Statutory Authorities in south-east Queensland (Urban Utilities and Unitywater) and two state-government owned statutory authorities (Gladstone and Mt. Isa Water Boards].

There are 370 water supply schemes and 265 sewage schemes across Queensland. Our members currently service 1,982,442 sewerage and 2,145,835 drinking water connections. These numbers are set to substantially increase with current and projected population growth and will require expansion and optimisation of existing wastewater treatment infrastructure and the construction of new infrastructure.

The growing population is driving the delivery of critical urban water infrastructure and growing capital delivery programs. In providing these essential services, the urban water sector owns and operates sewer lines, water and wastewater treatment plants, pumping stations, dams, reservoirs, and a range of other critical water technologies/infrastructure. Much of Queensland's urban water infrastructure is also nearing end of life and requires substantial replacement. The *Infrastructure Cliff* faced by the sector is well documented.

The current *EPBC Act* processes add unnecessary financial risk to projects and unacceptable delays in the delivery of time-critical infrastructure. Assessment timeframes are not consistent with infrastructure requirements, impacting infrastructure and delivery agreements, and often resulting in interim solutions to manage the delay. Interim solutions are typically expensive and often do not provide beneficial environmental or social outcomes.

Queensland's urban water sector requires clarity that critical water infrastructure (new, expansions and replacement) projects can move through the EPBC process in a timely and orderly manner with as little cost-burden on the community as possible while protecting environmental values.

On balance, ***qldwater*** is broadly supportive of the range of measures outlined in the Bills and specifically supports the amendments set out below.

<u>Increased approval and compliance flexibility for proponents</u>
qldwater supports increased flexibility for approvals and compliance through the following measures:

- the proposed exemption from approval under Part 9 of the EPBC Act where an action is covered by a 'management or authorisation framework' accredited for the purposes of a bilateral agreement between the Commonwealth and a State;
- the concept of 'national interest proposals' allowing the approval of actions likely to result in an outcome that is in Australia's national interest, even where the action is otherwise inconsistent with requirements under the proposed reformed regime; and
- the ability for a proponent to undertake an advanced restoration action for the purpose of fulfilling a condition attached to a future approval, prior to submitting a referral for the approval.

<u>Enhanced environmental protection measures</u>
qldwater supports the following proposed measures:

- the concept of 'bioregional guidance plans' and the requirement for public consultation before making or varying a plan;
- the expanded scope for making bioregional plans with the potential to increase certainty on prohibited actions and create 'no go zones';
- the concept of 'general restoration actions' and the requirement to spend an amount on the particular listed threatened species likely to be affected by a residual significant impact of a proposed action;
- the ability to deliver an 'alternative restoration action' in combination with a 'general restoration action' to compensate for a residual significant impact of a proposed action;
- moving from a 'no net loss' test towards a requirement for all residual significant impacts of an action on nationally protected matters to be compensated to a net gain.

General reforms

qldwater supports the following proposed general matters:

- the introduction of the National Environmental Protection Agency and Head of Environment Information Australia, if implemented effectively; and
- the inclusion of indigenous knowledge as part of the advice the Scientific Committee provides to the Minister.

However, ***qldwater*** wishes to raise concerns with the following aspects of the Bills:

1. the application of the proposed reforms to water infrastructure;
2. definitions of key concepts;
3. uncertainty of 'national interest' criteria;
4. the ability for 'not a controlled action' decisions to lapse;
5. the application of increased commercial penalties to local governments;
6. the offset register requires updating to incorporate restoration and how to achieve net gain; and
7. the interaction with Queensland's current offset regime (noting that the offsets register requires updating to incorporate restoration and how to achieve net gain).

Detailed response

Application of the proposed reforms to water infrastructure

The proposed reforms create new pathways for actions to be fast-tracked through the EPBC Act approval process. ***qldwater*** understands that the purpose of these amendments is to mitigate project delays under the current EPBC Act processes while maintaining protections to environmental values. We consider the reforms to fast-track approvals to be imperative for proposed actions relating to new and existing essential water infrastructure.

qldwater supports a reformed regime which reduces assessment timeframes for essential infrastructure. We require clarity that fast-tracking mechanisms would apply to proposed actions for essential water infrastructure where projects are otherwise consistent with EPBC Act requirements.

Specifically, we require clarity that proponents of proposed actions for new and existing critical water infrastructure are able to navigate the EPBC Act approval process through the proposed 'streamlined assessment pathway' and the proposed 'bioregional plan' pathway.

The use of these pathways would allow water infrastructure to come online without unnecessary delays, while still meeting the environmental standards of the EPBC Act. Delivery of essential water infrastructure requires a number of complex assessment processes to be met, and fast-tracking approvals under the EPBC Act would ensure urgent projects could be delivered to reduce the financial burden on communities without circumventing environmental protections.

It is also imperative that the proposed accreditation of state processes apply to reduce project delays for critical water infrastructure. Avoiding unnecessary duplication of assessments through the accreditation of state processes will be critical for ensuring the reforms are fit for purpose and remove red tape for projects providing essential infrastructure, while still meeting the increased environmental standards under the reformed regime.

Currently, accreditation/bilateral applies to projects going through an Environmental Impact Statement (EIS), ***qldwater*** notes that in Queensland wastewater projects do not trigger an EIS.

Definitions of key concepts
The Bills introduce several concepts that are not defined or include imprecise definitions. We are concerned by this lack of certainty in the proposed reforms as potential outcomes and impacts for proponents are unable to be adequately assessed.

Lack of certainty around the concepts of 'unacceptable impact', 'seriously impair' and 'net gain' create a significant risk for proponents seeking to refer actions under the reformed scheme. We understand any proposed 'serious impairment' of protected matters must be managed, however, without a clear benchmark of what this test entails, proponents may be unfairly burdened by shifting assessment processes.

Uncertainty of 'national interest' criteria
qldwater's priority is ensuring the EPBC Act clearly and effectively defines the concept of 'national interest' to include water services and infrastructure.

Matters in the 'national interest' under the current EPBC Act include defence or security of the Commonwealth, and other matters the Minister may consider. Under the proposed reforms, the Minister maintains discretion to determine that a proposed action is in the 'national interest'. The term is not defined in the Bill, but it is contemplated that increase in social housing or renewable energy could be in Australia's 'national interest'.

qldwater supports the concept of 'national interest' applying more broadly to matters outside of security and defence. ***qldwater*** appreciates that the Minister retains discretion to deviate from the standards if a matter is in 'national interest'. This discretion creates some flexibility for proponents; however, the concept remains uncertain for proponents as the Bills do not disclose the matters the Minister may consider in determining whether an action is in the national interest.

Uncertainty as to whether a proposed action is in the 'national interest' raises concerns for water service providers and proponents of critical water infrastructure. Under the proposed reforms, the Minister has direction as to whether essential water projects will be subject to current EPBC Act processes. This creates financial risks for proponents of critical water infrastructure who would be required to manage potential project delays and process uncertainties.

A reformed regime which could delay critical infrastructure projects to deliver drinking water to the community would oppose the purpose of the amendments. We recommend the reformed EPBC Act as passed provides further clarification on the scope of the matters included under the 'national interest' provisions. It is imperative to ***qldwater*** that water infrastructure be included in this definition.

Clearly defining water infrastructure as a matter of 'national interest' provides certainty that:

(a) essential water projects can be undertaken, even where they do not strictly comply with EPBC Act standards; and
(b) where necessary (and in rare circumstances), an exemption from requiring approval may be granted by the Minister for the delivery of time-critical water infrastructure.

qldwater acknowledges the need for projects to prioritise the protection of environmental values at all times, even where actions may be fast-tracked under the proposed 'national interest' reforms.

Lapsing of ‘not a controlled action’ decisions
The Bills originally proposed that proponents may not rely on a ‘not a controlled action’ (**NCA**) decision if the action has not been ‘substantially commenced’ within 5-years of the decision notice being given. This amendment applies to any NCA decisions made under the reformed regime, regardless of when the action was referred.

qldwater understands this change is for the purpose of avoiding land banking. However, given the lengthy broader approval periods for many actions approved under the EPBC Act, 5-years is a relatively short period. For a proposed critical water infrastructure project, various complex approval and assessment processes are required prior to the action commencing. Allowing an NCA decision to lapse after 5-years could be detrimental to essential projects.

We are pleased to see the amendments to the Bill passed by Senate allowing the approval holder to request an extension of a "Not a controlled action" decision to a date up to 10 years from the original decision as without an extension mechanism, this would detrimentally impact critical infrastructure projects requiring lengthy lead times to account for feasibility, financing and possible staging of construction. The complexity of infrastructure projects could reasonably delay the commencement of an action beyond the proposed 5-year period despite a commitment from the proponent to undertake the project. The lapsing of an NCA for a committed project may require recommencement of the referral process, creating uncertainty in project timelines and costs.

This proposed amendment creates further uncertainty as the term ‘substantially commenced’ is not defined in the Bills. Without a clear definition, the ‘substantial commencement’ of a project will be contentious. Further guidance is required to provide clarity as to when an action is ‘substantially commenced’, and in the absence of guidance, the ability to extend a NCA decision is essential to provide certainty for proponents of critical projects.

Application of increased commercial penalties to local governments
qldwater understands the need for penalties to actively deter non-compliance. However, we are concerned that the proposed increase in penalties for body corporates will unfairly impact local governments and other essential publicly funded service providers.

The Bills propose to improve the compliance and enforcement powers in the EPBC Act, including by significantly increasing the maximum penalties that can be imposed. Under the reformed regime, the penalties imposed on body corporates for non-compliance can reach a maximum of up to 2.5 million penalty units (i.e., $825,000,000).

The current maximum penalties are not considered effective, as contraventions of the Act may be considered a ‘cost of business’ for well-resourced entities. Amendments to the maximum penalty are therefore proposed for the purpose of deterring non-compliance for breaches that are financially incentivised and corporate in nature.

The term ‘body corporate’ is not defined in the EPBC Act and local governments may be prescribed as a ‘body corporate’ under relevant legislation, allowing these entities to be captured under the increased penalty provisions proposed by the Bills.[1]

[1] For example, under section 11 of the *Local Government Act 2009* (Qld), a local government is a body corporate with perpetual succession.

While increase in penalties may be appropriate for well-resourced entities, we are significantly concerned about the application of these penalties to local governments or related entities who do not stand to gain a commercial benefit from a contravention of the EPBC Act.

In Queensland, essential water services and water infrastructure is delivered by local government and local government owned entities. If imposed, the proposed maximum penalties under the Bills would ultimately be borne by the community. For these entities, the current maximum penalty regime under the EPBC Act is effective in deterring non-compliance with the EPBC Act as there is no financial benefit to be obtained by a contravention of the Act. Imposing the increased maximum penalty provisions on local governments and related entities would create risks for the delivery for critical water infrastructure and cause financial uncertainty for these essential services captured under the Act.

We recommend the increased maximum penalties for body corporates not apply to local government and local government owned corporations who do not stand to benefit financially from a contravention of the EPBC Act.

<u>Recognition of Queensland's current offsets regime</u>

qldwater raises concerns about the interplay between Queensland's current offsets regime and the delivery of offsets under the reformed EPBC Act. The Samual Review identified the need for a National Environmental Standard for Environmental Offsets (**Standard**) to be developed. The draft Standard for Environmental Offsets has been released. The content of the Standard is not the subject of this submission.

We recognise the need for environmental offset requirements under the new Standard to be consistent with Queensland's offset regime. Currently, the offset requirements at a commonwealth level are not aligned with the standard of 'legal security' under the Queensland regime.

We recommended that the Standard operate to accredit Queensland's offset regime under the EPBC Act reforms to avoid duplication and to support strategic conservation outcomes.

We would welcome the opportunity to discuss the detail contained in this submission and answer any questions the Committee may have. ***qldwater*** provides this submission without prejudice to any submissions from our members or other urban water service providers.

If you require any further information, please do not hesitate to contact me.

Yours sincerely

Dr Georgina Davis
Chief Executive Officer