

Australian Network of Environmental Defender's Offices



Australian Network of Environmental
Defender's Offices Inc

Submission on Reef 2050 Long Term Sustainability Plan

27 October 2014

The Australian Network of Environmental Defender's Offices (**ANEDO**) is a network of independently constituted and managed community legal centres across Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, an expert role in environmental law reform and policy formulation, and a significant community legal education program designed to facilitate public participation in environmental decision making.

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Executive Summary

The Australian Network of Environmental Defender's Offices (**ANEDO**) welcomes the opportunity to make a submission on the Reef 2050 Long-Term Sustainability Plan (the **Plan**).

As public interest environmental lawyers, ANEDO believes strong Reef protection laws are necessary to protect the Outstanding Universal Value (**OUV**) of the Reef, which by the Government's own admission has rapidly declined since its listing in 1981.¹ It is evident that the most damaging impacts on the Reef have to date been caused by (and will continue to deteriorate due to)² human activities in the Reef catchments and on the Reef coastline,³ in the jurisdiction of Queensland.

ANEDO has therefore undertaken an analysis of existing Queensland legislation including recent and proposed legislative changes (**Appendix A**).

In respect of specific changes to the drafting of the Plan, ANEDO supports and endorses the submissions of WWF-Australia (see **Appendix B** for a summary).

ANEDO's three key recommendations are:

Recommendation 1

The Reef 2050 Plan will not meet its objectives as it fails to outline action on improving the current laws which provide weak protection of the Reef's OUV.

The Plan needs to include strong commitments from the Queensland and Commonwealth governments that they will amend the various laws which ultimately regulate impacts (details including 29 actions in Appendix A).

Recommendation 2

The Plan expresses current, non-binding policy direction. Making the Plan enforceable by implementing it in legislation would be an effective means of giving long-term certainty, which otherwise runs the risk of becoming rhetoric.

The Plan should also include a clear timeframe for completing an implementation plan.

Recommendation 3

There should be caution in relying on the Jacobs Review which concluded that existing legislation is comprehensive and robust.

The Jacobs Review overlooks a multiplicity of significant legislative failures in its analysis. This needs to be addressed before the Review is comprehensive for the purposes of UNESCO's request.

1. Plan needs strong commitments to review and amend Qld legislation

The Plan needs unequivocal commitments to change Queensland's environment and planning laws to give effect to the objectives and targets in the Reef 2050 Plan. Without such commitments, it represents a highly risky 'business as usual' approach.

In response to a World Heritage Committee request (see also section 3 below), the Commonwealth Department of the Environment commissioned consultancy company Jacobs to conduct a review of Reef legal and institutional mechanisms (**the Jacobs Review**). The Jacobs Review noted that "[g]iven the scientific uncertainty regarding the interactions between catchment, coastal and marine environments, it is essential that these features of the legislative...framework overseeing the protection and management of land and coastal areas adjacent to the GBRWHA remain constant, strong, visible, continuously reviewed and improved".⁴

Impacts of recent legislative changes in Queensland

Despite the obvious need to consider the role of legislation in achieving the Plan's objectives, like the Strategic Assessment Program Report for the Coastal Zone,⁵ the Reef 2050 Plan fails to take into account any of the impacts of recent legislative changes and existing dysfunction in existing laws. In so doing, the Plan fails to establish the important link in 'adaptive management', that science-based information informs the 'management responses', which 'are adapted to reflect changes in all components of the system'.⁶ An obvious example is the fact that the OUV is not defined or considered in most of the key pieces of Queensland legislation relating to the Reef.⁷

Reviewing and amending Queensland's legislation to prioritise Reef health is especially important in the context of a recent Queensland Government reform agenda of 'cutting green tape'. Most of the recent reforms are expected to have major impacts on Reef catchments (e.g. reduced regulation for vegetation, water, coastal development, regional planning, climate change adaptation), which have been vigorously opposed by environment groups and the scientific community. ANEDO has identified 10 best practice standards and principles for effective environmental legislation, which appear at Appendix B.

Results of the ANEDO analysis of Queensland's laws

Our analysis at Appendix A indicates that there are clear defects in the Queensland legislative framework which directly contradict and undermine the Plan's objectives and outcomes. These shortcomings have also been largely disregarded in Jacobs' (formerly SKM) recent review of institutional and legal mechanisms regarding the Reef.⁸ The results of our analysis include that:

- the Queensland Government is consistently removing ecologically sustainable development (**ESD**) principles from planning and environmental legislation, in direct contradiction to the decision-making principles of the Plan;

- the weakening of Queensland land use and planning laws (including removal of climate change and sea level rise from the State Planning Policy) will see greater impacts on the OUV of the Reef from coastal and catchment development;
- the weakening of Queensland’s vegetation and water management laws will reduce water quality in Reef catchments, with those impacts likely to be exacerbated by the Queensland Government policy to double agricultural production by 2040;
- the Queensland Ports Strategy and proposed legislation do not go far enough to protect the OUV of the Reef from the adverse impacts of port-related development;
- the Queensland Government is making it increasingly difficult for the community to challenge environmental decision making, contrary to the governance arrangements of the Plan being ‘transparent and accountable’; and
- Queensland’s legislative deficiencies must be addressed to reduce direct, indirect and cumulative impacts on the OUV of the Reef, and particularly so if there is to be any delegation of Federal approval powers to Queensland (which we do not support).

Failing to address the wide range of recent legislative reform is a significant gap in the Reef 2050 Plan and the result is that the Plan does not comprehensively address the source of cumulative impacts.

Recommendation 1: The Reef 2050 Plan will not meet its objectives as it fails to outline action on improving the current laws which provide weak protection of the Reef’s OUV.

The Plan needs to include strong commitments from the Queensland and Commonwealth governments that they will amend the various laws which ultimately regulate impacts (details including 29 actions in Appendix A).

2. The Reef 2050 Plan needs to be made enforceable and have a statutory basis for compliance

There is no statutory basis for the Plan and it is not enforceable. The Plan is proposed to be a schedule to the Intergovernmental Agreement on the Great Barrier Reef, however when in isolation from legislation, intergovernmental agreements are unenforceable through the courts.⁹ If one or both of the Commonwealth and Queensland Governments failed to take action on the objectives and targets, there are no legal consequences or implications for either one of them. The community has no recourse to hold government to account for failing to properly act on the Plan.

The provisions of an intergovernmental agreement could have legal effect when implemented by statute, for example by creating Queensland and Commonwealth Acts of Parliament that allow the Plan to be enforced against the relevant Government. The Plan does not outline this as an option.

One option is for the Plan to be legislatively based in a similar way to the Murray-Darling Basin Plan (**MDBP**) under the *Water Act 2007* (Cth), but instead utilising the *Great Barrier*

Reef Marine Park Act 1975 (Cth). This could involve a greater role and powers for the Great Barrier Reef Marine Park Authority (**GBRMPA**) in overseeing the Plan. While the MDBP is a potential model, ANEDO does note that the MDB is yet to be effectively implemented. A further model that could be considered is the National Water Initiative, where Commonwealth funding to Queensland could be contingent on Queensland making the necessary legislative changes to address shortcomings in protecting the Reef's OUV. Again, the GBRMPA could have an enhanced role regarding the Plan in such a scenario.

For example, in the Decision Making Principles at Figure 5, p.20 of the Plan, it states that, "Decisions are underpinned by ESD principles and in line with the precautionary principle".¹⁰ However, the Qld Parliament is consistently removing ESD principles from major pieces of planning and environmental legislation protecting the Reef and catchments, such as the *Water Act 2007* (Qld),¹¹ *Regional Planning Interests Act 2014* (Qld), *Environmental Offsets Act 2014* (Qld) and the *Sustainable Planning Act* (Qld).¹² Figure 5 of the 2050 Plan also states that "Decisions are based on the best available science, with consideration to current and emerging risks associated with climate change".¹³ This statement ignores the fact that the Queensland Government has removed sea level rise projections for the year 2100 and all references to climate change from its statutory mapping and assessment instruments used to decide coastal development.¹⁴ The Queensland Government needs to be held to account on implementing these Decision Making Principles in its legislative framework.

Recommendation 2: The Plan expresses current, non-binding policy direction. Making the Plan enforceable by implementing it in legislation would be an effective means of giving long-term certainty, which otherwise runs the risk of becoming rhetoric.

The Plan should also include a clear timeframe for completing an implementation plan.

3. Jacobs Review of legal and institutional arrangements does not meet UNESCO's requirements

In 2012, UNESCO's Reactive Monitoring Mission recommended that the Commonwealth:

*Commission an independent review, undertaken by internationally recognized and widely respected scientific experts, of the overall institutional and legal mechanisms that provide coordinated planning, protection and management of the Great Barrier Reef World Heritage Area as a whole. The results of the review should be reported to the Great Barrier Reef Ministerial Forum and provide input to the Strategic Assessment to which the State Party has committed. The review should address enhancement of the implementation of the Great Barrier Reef Intergovernmental Agreement, assessment of the effectiveness of legal protection, institutional and management planning arrangements for the property, and include specific attention to the areas of the property which are not managed by the Great Barrier Reef Marine Park Authority, as well as all adjacent marine, coastal and land areas. This review should be provided for consideration at the 37th session of the World Heritage Committee and subsequently lead to the implementation of concrete measures to address identified weaknesses, under the scrutiny of the Great Barrier Reef Ministerial Forum.*¹⁵

As the Jacobs Review was released in September 2014, its results would not have been incorporated into the Strategic Assessment finalised on 11 August 2014; this is contrary to UNESCO's recommendation.

The Jacobs Review:

- acknowledges key Queensland legislation furthers economic development, not environmental protection, but does directly not address the erosion of ESD principles in ongoing legislative amendments;¹⁶
- raises the recent changes to Queensland's land use planning, vegetation and coastal legislation, but simply concludes that "[i]t is too early to assess the effects"¹⁷ of the changes, and without any analysis of the likely or potential impacts;
- incorrectly asserts that the Queensland's State Planning Policy provides 'explicit consideration of the OUV';¹⁸
- appropriately identifies legislative gaps in climate change adaptation and agriculture, but excludes the need for climate change mitigation by stating that any significant Commonwealth action would be futile without global action;¹⁹
- does not address the wide discretionary powers of decision-makers under Queensland environmental and planning legislation, which have been further increased by recent changes to the law that have removed strong decision-making criteria;
- does not address the recently increased restrictions on the public seeking to legally challenge environmental decisions;
- does not analyse the inherent failures of the Queensland Ports Strategy to protect the Reef's OUV; and
- over-emphasises the benefits of the proposed approval bilateral, without a critical analysis of the adequacy of Queensland legislation in protecting matters of national environmental significance.

Therefore, ANEDO does not support the findings that "legislation for the protection and management of the Great Barrier Reef is generally comprehensive" and that current legislation is "robust".²⁰

The World Heritage Committee requested the review be undertaken by "internationally recognized and widely respected scientific experts."²¹ ANEDO notes that the firm who undertook the review, Jacobs, is an engineering and infrastructure services corporation, and has not demonstrated that it alone has the necessary skills and expertise.

Appendix E of the Plan indicates that, "The Plan will receive key input from an independent review of the institutional and management arrangements for the property" and that the review will inform the Plan. Given the problems with the Jacobs Review, ANEDO does not support an exclusive reliance on the Jacobs Review.

Recommendation 3: There should be caution in relying on the Jacobs Review which concluded that existing legislation is comprehensive and robust.

The Review overlooks a multiplicity of significant legislative failures in its analysis. This needs to be addressed before the Review is comprehensive for the purposes of UNESCO's request.

Appendix A: Analysis of legislative problems expected to impact on the Reef that are not addressed in the 2050 Plan

Recent / proposed legislative changes	Description of change and analysis of potential impacts on the GBR WHA and catchments	Impacts on Reef 2050 Objectives	Impacts on Reef 2050 Targets	Recommended actions	Referenced in Jacobs Review of Legal / Institutional Arrangements
<p>Port development – proposal to prohibit future capital dredging outside PPDAs²²</p>	<ul style="list-style-type: none"> • Qld Ports Strategy and proposed legislation will not prohibit dredge spoil dumping in the GBR WHA²³ • It does not promote the need to avoid and/or minimise dredging in Priority Port Development Areas. • Will not alter existing proposals and approvals outside the Priority Ports, such as Cairns dredging • Does not include objective tests for ecologically sustainable outcomes nor independent assessment of the impacts. 	<p>WQO2, EHO1, EHO2, EHO3, BO1-BO4, CBO1, CBO2, HO2, EBO1, EBO2, GO2</p>	<p>WQT3, WQT5, EHT1, EHT2, EHT5, BT1, BT2, EBT1, GT2</p>	<ul style="list-style-type: none"> • Include criteria in proposed Ports legislation to minimise the amount of capital dredging within PPDAs, and minimise maintenance dredging outside PPDAs. • Ban on dumping in the WHA (currently a Bill in Federal Parliament for this ban, but not supported by the Federal Government). • EHA3 should reflect these stronger commitments. 	<p>Ports strategy described, without noting its shortcomings.²⁴</p>
<p>Increase in agriculture in Qld impacting water quality</p>	<ul style="list-style-type: none"> • The Queensland Government policy to double agricultural production in Queensland by 2040²⁵ is likely to put additional pollution pressure on GBR water quality. • BMPs on their own are still unlikely to see decreases in run off needed. 	<p>WQO1, EHO1, EHO3, EBO2, GO2</p>	<p>WQT1, WQT2, WQT5, EHT2, EHT3, EHT5, EBT1, GT2</p>	<ul style="list-style-type: none"> • Undertake an integrated analysis for how to manage agricultural run-off in light of the Queensland Government plan to "double agricultural production by 2040" and implement necessary changes to the regulatory regime. • Refer to WWF-Australia's submission for additional actions. 	<p>Section on agricultural impacts fails to make any mention of the impact of a significant increase in agriculture.²⁶</p>
<p>Delegation of powers from Federal to Qld</p>	<ul style="list-style-type: none"> • Expect more impacts to be approved, and without sufficient conditions due to:²⁸ - No direct accountability for ensuring compliance 	<p>Objectives listed elsewhere</p>	<p>Targets listed elsewhere</p>	<ul style="list-style-type: none"> • Strengthen assessment bilateral agreement for improved efficiency 	<ul style="list-style-type: none"> • Yes: supportive of the handover of powers to Qld³⁰; but recognises that experts

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Govt to approve impacts on the Reef ²⁷	with the World Heritage Convention, as the community is unable to bring appeals under the Bilateral Agreement itself; - Qld having a conflict of interest as it receives significant revenue from development, also as the owner of ports; - public sector cuts mean less expertise in assessment and less enforcement; - Public interest appeal rights under the State legislation proposed to be accredited is weaker, with no recognition of standing of environment groups; - The 'safeguards' do not include objective tests for ecologically sustainable outcomes nor independent assessment of the impacts.	in this table, but particularly EHO3, CBO4, EBO1, GO1, GO2	in this table, but particularly EHT2, CBT2, EBT1, GT1, GT2	measures. ²⁹ • Strengthen Commonwealth environmental laws to ensure the Commonwealth Government retains strong powers and responsibilities for the Reef.	consider strengthening of assessment bilateral agreements is preferred. ³¹ • Correctly notes the Approval Bilateral does not require science-based decision-making. ³² • Fails to address reduced third party appeals in Community Involvement.
Cumulative impacts need to be adequately assessed	Cumulative impact guidelines are proposed, without any indication of their enforceability ³³ or how they will be implemented.	EHO3, HO2, BO1, BO2, BO3, BO4, EBO1, GO2	EHT2, EBT1, HT2, BT1, BT2, GT2	• Enforceable statutory requirements for assessing cumulative impacts into all relevant Qld and Commonwealth legislation, plus a timeframe for implementing. • Stronger action needed in e.g. EHA2 and BA5	Yes, but does not address how the guidelines will be enforced. ³⁴
Vegetation changes in the <i>Vegetation Management Act 1999</i> (Qld) ³⁵	• Significant weakening of protection for vegetation broadly in all five GBR catchments and thus protection of the GBR water quality. ³⁶ • Many hundreds of thousands of hectares of regrowth vegetation are now vulnerable to clearing. ³⁷	WQO1, EHO1, EHO3, GO2	WQT1, WQT2, WQT5, EHT2, EHT3, EHT5, GT2	Reinstate critical provisions of the <i>Vegetation Management Act</i> e.g. riverine protection permits, regrowth protection, and undertake a review of the self-assessable clearing code for GBR catchments.	• States “too early to assess the effects of recent changes” to veg laws. ³⁸ • Partially acknowledges changes but not the full extent of impacts. ³⁹ • Does not attempt to discuss potential and/or likely impacts.
Changes to water laws in	• Removal of riverine protection permit requirement to clear vegetation in watercourses. ⁴¹	WQO1, EHO1,	WQT1, WQT2,	• Reinstate critical provisions of the Water	• Partially acknowledges changes but does analyse

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the <i>Water Act 2000</i> (Qld) ⁴⁰	<ul style="list-style-type: none"> • Removal of a prohibition on clearing vegetation in northern Reef catchments (removal of Riverine Protection Permits in wild river catchments).⁴² • Current Bill proposes less regulation of surface and ground water use and as-of water rights for resources projects: will adversely affect hydrology in GBR catchments.⁴³ 	EHO3, EBO1, GO2	WQT5, EHT2, EHT3, EHT5, GT2	<p>Act, e.g. riverine protection permits in all GBR catchments and wild river areas.</p> <ul style="list-style-type: none"> • Amend or withdraw the Water Bill to avoid decreased regulation. 	<p>the impacts.⁴⁴</p> <ul style="list-style-type: none"> • Fails to consider impacts of proposed Water Act changes.⁴⁵
Northern Reef catchments – loss of statutory protections	<ul style="list-style-type: none"> • Legislation protecting northern reef catchments (Wild Rivers) has been repealed with prohibitions on damaging development now removed.⁴⁶ • Damaging resource development in Northern Reef catchments now decided in the discretion of the Qld Minister for Development Infrastructure and Planning, with no public interest appeal rights or public consultation.⁴⁷ • Regional Plan for Northern Reef catchment (Cape York) fails to mention or address impacts on the OUV of the Reef.⁴⁸ • Policy commitments from the Commonwealth Government to open up northern Australia for more intensive development, without any consideration of impacts on the Reef.⁴⁹ 	WQO1, WQO2, EHO3, BO1-BO4, EBO1, GO2	WQT3, EHT2, EHT5, GT2, GT3	<ul style="list-style-type: none"> • Amendments to the Regional Planning Interests Act to protect areas of HES (wild rivers) especially in Northern reef catchments. • Include stronger protections in regional plans, especially plans for Cape York, Far North Qld, Central Qld, and the Mackay, Isaac and Whitsunday Regional Plan. 	<ul style="list-style-type: none"> • Partially acknowledges removal of wild river declarations but not the full extent of impacts.⁵⁰ • Does not address the failures of the Cape York Regional Plan to protect the OUV of the Reef.⁵¹
Land use planning and development laws are becoming weaker	<ul style="list-style-type: none"> • Recent changes to planning legislation mean that the Department of Environment has lost power to refuse coastal development.⁵² • Proposed changes to planning legislation remove principles of ESD⁵³ and reduce public participation rights.⁵⁴ • Recent changes allow Ministerial discretion to approve impacts on sensitive ecosystems in Reef catchments⁵⁵ • Existing deficiencies in the legislation allow a senior public servant to effectively approve impacts,⁵⁶ which have recently been exacerbated by removing public appeal rights to challenge decisions.⁵⁷ • The State Planning Policy simply requires local 	WQO1, WQO2, EHO3, EBO1, GO1, GO2	WQT1, EHT2, EHT3, EBT1, EBT2, GT2	<ul style="list-style-type: none"> • Qld Department of the Environment and Heritage needs a stronger role and empowered to refuse development. • Review of major projects legislation to remove unaccountable decision making by the Coordinator General. • Strengthen statutory requirements in the Planning Act for regional plans, cumulative impacts 	<ul style="list-style-type: none"> • States “it is too early to assess the effects of recent changes” for land use planning.⁵⁹ • Does not attempt to discuss potential and/or likely impacts. • Incorrectly asserts that the SPP provides ‘explicit consideration of the OUV’.⁶⁰ • Recognises that “there is a danger of a disconnect between public consultation and decision making.”⁶¹

Recent / proposed legislative changes	Description of change and analysis of potential impacts on the GBR WHA and catchments	Impacts on Reef 2050 Objectives	Impacts on Reef 2050 Targets	Recommended actions	Referenced in Jacobs Review of Legal / Institutional Arrangements
	plans to 'consider' MNES, but not protect the OUV of the Reef ⁵⁸			on the Reef of smaller developments, and public notification and objections.	• Recommends using master planning for urban development to manage run-off, ⁶² but this would exclude public participation (no public notification and objections).
New regional planning for Reef catchments do not protect the OUV of the Reef	<ul style="list-style-type: none"> • The recent Cape York Regional Plan⁶³ fails to protect or mention OUV of the Reef, despite setting the regional development outcomes for the northern Reef catchments. • The recent Central Qld Regional Plan⁶⁴ does not prioritise Reef health, is not based on the principles of ESD, does not recognise the interconnectedness of land use and Reef health. • Regional plans are not required by law to consider the OUV or water quality impacts in setting out land use intentions and priorities. 	WQO1, WQO2, EHO3, EBO1, GO2	WQT1, WQT2, WQT3, EHT2, EHT5, EBT2, GT2, GT3	<ul style="list-style-type: none"> • Review and update all regional plans which have GBR catchments to prioritise protection. • Amendments to the Planning Act to require regional plans prioritise Reef health. • Stronger actions (e.g. EHA1, BA5) is needed. 	Recommends including Reef Plan, and priorities for protection, into SPP and regional plans ⁶⁵ - this is supported by ANEDO.
Coastal development changes allow more coastal development with less assessment of impacts	<ul style="list-style-type: none"> • Removal of Sea Level Rise projections for the year 2100 are about to be removed from the Coastal Management District maps,⁶⁶ meaning there will be no requirement to assess climate change impacts. • The new Coastal Management Plan⁶⁷ no longer regulates land use planning and coastal development, weakens the protection offered to biodiversity in coastal areas.⁶⁸ • Regional Coastal Management Plans were repealed with minimal detail now in the State Planning Policy.⁶⁹ • The new State Planning Policy has fewer restrictions on development in erosion prone and coastal hazard areas, and delegates more responsibility to local governments to determine coastal hazard areas and acceptable levels of risk. 	EHO1, CBO1, EBO1, GO2	EHT2, CBT4, EBT1, GT2	A comprehensive review of coastal development regulation is needed, to improve climate change adaptation and resilience for the coast, and reduce impacts of development.	Removal of regional coastal plans was noted. ⁷⁰
Principles of ESD missing from main Qld	<ul style="list-style-type: none"> • Bill before Qld Parliament removes ESD principles from Qld's Water legislation.⁷² • Proposed amendments remove ESD as the 	EHO3, BO1-BO4, CBO1,	EHT2, BT1-BT3, EBT2, GT1, GT2	• Amend all relevant Qld legislation (including new Ports Bill) to require	• Fails to recognise and address the systematic removal of ESD principles

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legislation, despite ESD principles being cited as underpinning the 2050 plan ⁷¹	<p>objective of Qld Planning legislation.⁷³</p> <ul style="list-style-type: none"> Recent changes to the <i>Nature Conservation Act</i> remove ESD as the purpose of the legislation.⁷⁴ ESD is being removed from all regional plans and the main tool to identify and assess the most important matters for Qld - the State Planning Policy.⁷⁵ ESD and the precautionary principle have been replaced with a heavy emphasis on the 'avoid mitigate offset' hierarchy.⁷⁶ Risk assessment however does not necessarily include an application of the precautionary principle. 	CBO2, EBO1, EBO2, GO2, GO3		principles of ESD not only as the object and purpose of the Act, but include clear requirements to apply the principles in decision making.	<p>from Qld's legislation.</p> <ul style="list-style-type: none"> Acknowledges key legislation furthers economic development and not environmental protection.⁷⁷
Reduced public participation	<ul style="list-style-type: none"> For impacts on the Reef, including significant and cumulative impacts, there has been reduced public participation (removal of public appeal rights for major mining activities,⁷⁸ proposed narrowing of appeal rights for public interest litigation on significant impacts to the Reef).⁷⁹ There was no public consultation on the legislative replacement for Wild Rivers for the Northern Reef catchments,⁸⁰ which fails to adequately protect them. Changes to the <i>Nature Conservation Act</i> mean there is no statutory requirement to consult with the public on changes to management plans for Qld's protected areas. No ability to challenge decisions of Coordinator General in a merits or statutory judicial review.⁸¹ 	CBO4, GO1, GO2	CBT2, GT1, GT2	<ul style="list-style-type: none"> Introduce transparency and criteria for decision making on damaging impacts, including how community concerns and scientific evidence are applied. Reinstate public interest merits appeals and judicial review for accountability, including for the Coordinator General. 	<ul style="list-style-type: none"> Notes that if legislative changes generate community concern, they are consulted on⁸² – this is incorrect and has not happened (e.g. <i>Regional Planning Interests Act</i>). Review fails to note the recent reduced public consultation requirements in the NCA, but notes the importance of management plans⁸³
Offsets can be applied indiscriminately, contrary to the precautionary principle	<ul style="list-style-type: none"> New offsets legislation promotes the use of restoration offsets, for which there is little scientific evidence to demonstrate outcomes will be achieved.⁸⁴ Development assessment criteria in Qld allow the use of offsets for listed species and ecosystems without considering whether the impact should occur at all⁸⁵ and with no independent assessment. 	WQO2, EHO2, EHO3, BO1-BO4, EBO1, GO2	WQT2, EHT2, EHT3, BT1-BT3, EBT1, GT2, GT3	<ul style="list-style-type: none"> Strengthen the assessment of avoidance and mitigation measures. Ensure unacceptable impacts are not made acceptable with the use of offsets. 	Partially acknowledges the new Act which allows the use of financial payments as offsets. ⁸⁶
Repeal of laws	<ul style="list-style-type: none"> The new State Planning Policy has removed all 	EHO1,	EHT2, BT1,	Climate change adaptation	Review identifies there is a

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regulating climate change adaptation	<p>explicit references to climate change and sea level rise, and the Queensland coastal hazard area maps no longer include climate change impacts such as sea level rise.⁸⁷</p> <ul style="list-style-type: none"> • Imminent removal of sea level rise from coastal management district maps,⁸⁸ meaning less regulation and assessment of sea level rise. • Changes to the State Planning Policy mean that local councils (some of which have insufficient resources) need to identify coastal hazards associated with climate change through their own risk assessment processes, rather than using Qld Govt data. • Contrary to the Great Barrier Reef Intergovernmental Agreement, in which Qld and the Commonwealth said they were committed to “coordinated action to ... adapt to climate change”.⁸⁹ 	BO1-BO4, CBO1, EBO1, GO2	CBT4, GT2, GT3	needs to be embedded into Qld laws, especially planning and EIA requirements.	significant gap in climate change adaptation regulation. ⁹⁰
Repeal of laws regulating climate change mitigation	<ul style="list-style-type: none"> • Mitigation measures such as carbon pricing, clean energy technology financing, and the Climate Change Authority, have been repealed by the Commonwealth Government.⁹¹ • Article 6(3) of the World Heritage Convention could require all States Parties to the Convention to ensure, both individually and in co-operation with other States Parties, that emissions of greenhouse gases are reduced.⁹² • Development of major coal mines in the Galilee Basin is ongoing, which is the purported justification for port development on the GBR coastline. • Failure to act on mitigation is contrary to the IGA on the GBR: <i>Reducing carbon-emissions is primarily a matter for international and national action and is critical to securing the long term health of the Great Barrier Reef World Heritage Area.</i>⁹³ 	EHO1, BO1-BO4, CBO1, EBO1, GO2	EHT2, BT1, CBT4, EBT1, GT2, GT3	<ul style="list-style-type: none"> • Climate change mitigation (e.g. reducing scope 1, 2 and 3 emissions) needs to be clearly embedded into Qld laws, especially planning and EIA requirements. • Commonwealth must take effective action to address climate change, and also champion international agreement. 	<ul style="list-style-type: none"> • States that “Significant action at a Commonwealth scale to reduce GHG emissions from Australia would make little contribution to improved management of the GBR without broader global action.”⁹⁴ • Review ignores the fact that the biggest coal mines in the southern hemisphere are being built in Qld, which is the purported justification for port expansions on the Reef.

Appendix B: Summary of WWF-Australia's submission endorsed by ANEDO

WWF-Australia's 10 point plan to save the Reef

To restore the Reef's health and give it the best chance of being resilient to climate change:

1. Ban dumping and minimise dredging in the Reef World Heritage Area.
2. Cut pollution and reduce Crown of Thorns starfish outbreaks by supporting farmers reduce erosion and fertiliser runoff.
3. Permanently protect the most sensitive coastal habitats from development, including on Cape York, the Greater Fitzroy Delta, and nationally significant wetlands like the Caley Valley.
4. Strengthen the laws that protect the Reef and retain Australian government oversight of development approvals.
5. Strengthen the Great Barrier Reef Marine Park Authority's role as a champion for the Reef by increasing its independence and ensuring adequate funding.
6. Reverse the decline in numbers of turtles and dugongs and give Indigenous communities a greater role in the management of their sea-country.
7. Restore degraded rivers, wetlands and bushland in Reef catchments to provide cleaner water and improve wildlife habitat.
8. Ensure the optimisation and best practice management of existing ports over expansion.
9. Control the number of ships crossing the Reef, ban high risk ships from entering Reef waters and limit anchorages, ship-based pollution and marine pests.
10. A healthy Reef is essential for the Queensland economy. Invest billions not millions to help farmers cut pollution; communities restore river catchments; and fishers operate more sustainably.

ENDNOTES

¹ See for example, Great Barrier Reef Marine Park Authority, *Great Barrier Reef Outlook Report 2014*, p.20.

² “Biodiversity is critical to the outstanding universal value of the world heritage property. While both criteria are assessed as being in good condition, the current trends for 14 of the 27 components are assessed as deteriorated since 2009. This has meant that the grade of ‘good’ is borderline with ‘poor’ and is likely to deteriorate further in the future.” Great Barrier Reef Marine Park Authority, *Great Barrier Reef Outlook Report 2014*, p.37.

³ See for example, Great Barrier Reef Outlook Report 2014, p.25, 28.

⁴ *Independent review of institutional and legal mechanisms that provide coordinated planning, protection and management of the Great Barrier Reef World Heritage Area*, p.29.

⁵ The Strategic Assessments for the marine and coastal zones were both endorsed on 11 August 2014, available here:

<http://www.environment.gov.au/protection/assessments/strategic/great-barrier-reef>

⁶ *The Reef 2050 Long-Term Sustainability Plan*, p. 44.

⁷ Also noted in the Commonwealth Government’s own *Independent review of institutional and legal mechanisms*, p. 62.

⁸ *Independent review of institutional and legal mechanisms*, p.3.

⁹ *South Australia v Commonwealth* (1962) 108 CLR 130; Saunders, C., “Intergovernmental agreements and the executive power,” (2005) 16 *Public Law Review* 294.

¹⁰ *The Reef 2050 Long-Term Sustainability Plan*, p. 20, Figure 5.

¹¹ *Water Reform and Other Legislation Amendment Bill 2014* (Qld).

¹² Draft Planning and Development Bill 2014. For further details on the draft legislation and its removal of ESD, see Schedule 1 of EDO Qld’s submission on the draft Bill, available here: <http://www.edoqld.org.au/wp-content/uploads/2014/09/2014-09-26-EDO-Qld-submission-on-the-draft-PDB-and-PECB.pdf>

¹³ *The Reef 2050 Long-Term Sustainability Plan*, p. 20, Figure 5.

¹⁴ All references to climate change have been removed from the Queensland State Planning Policy and the State Development and Assessment Provisions, the two main statutory instruments governing planning and development for the Reef coastline and catchments. Sea Level Rise projections for the year 2100 are proposed to be removed from the Coastal Management District Maps: <http://www.edoqld.org.au/news/sea-level-rise-from-climate-change-dismissed-by-the-qld-govt/>

¹⁵ Mission Report, Reactive Monitoring Mission to Great Barrier Reef, Australia, 6th to 14th March 2012

WHC.12/36.COM/, available here: <http://whc.unesco.org/en/documents/117104>

¹⁶ *Independent review of institutional and legal mechanisms*, p. 67.

¹⁷ *Independent review of institutional and legal mechanisms*, p. 3.

¹⁸ Rather, it simply requires MNES (including world heritage properties) are considered, not explicitly the OUV or the Convention: *Independent review of institutional and legal mechanisms*, p. 28.

¹⁹ *Independent review of institutional and legal mechanisms*, p.47.

²⁰ *Independent review of institutional and legal mechanisms*, p.1.

²¹ Mission Report, Reactive Monitoring Mission to Great Barrier Reef, Australia, 6th to 14th March 2012

WHC.12/36.COM/, available here: <http://whc.unesco.org/en/documents/117104>

²² The *Queensland Ports Strategy* is available here: <http://www.dsdp.qld.gov.au/queensland-ports-strategy/infrastructure-and-planning/infrastructure-planning-and-reform/queensland-ports-strategy.html>.

²³ EDO Qld made a lengthy submission on the *Draft Queensland Ports Strategy* highlighting various failures of the draft. See our submission for further details: <http://www.edo.org.au/edoqld/wp-content/uploads/2013/12/EDO-Qld-Submission-on-Draft-Ports-Strategy-13.12.13.pdf>

²⁴ *Independent review of institutional and legal mechanisms*, p.30

²⁵ Queensland Department of Agriculture, Fisheries and Forestry, *Queensland’s agriculture strategy - A 2040 vision to double agricultural production* (2013) is available here: <http://www.daff.qld.gov.au/business-trade/development/queenslands-agriculture-strategy>

²⁶ *Independent review of institutional and legal mechanisms*, p. 48-51.

²⁷ *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), s 46. A section 45(3) EPBC Act ‘notice of intent’ to develop a draft approval bilateral agreement was signed by the Commonwealth Minister for the Environment on 29 October 2013, available here: <http://www.environment.gov.au/system/files/pages/b44206bc-d8e5-450b-a05e-4d7c26d8afa1/files/notice-draft-bilateral-agreement-qld-env-approval.pdf> Whilst not strictly a legislative change, there has been an exercise of the Commonwealth Environment Minister’s powers under the EPBC Act to enter into bilateral agreements, which govern how assessment and approvals of actions impacting MNES and the GBR are undertaken.

²⁸ For further details, see the submission by the Australian Network of Environmental Defender’s Offices on the Draft Queensland Approval Bilateral Agreement (2014), available here: <http://www.edoqld.org.au/law-reform/anedos-submission-on-draft-approval-bilateral-agreement-between-the-queensland-and-and-australian-governments/>

²⁹ For further details, see the submission by the Australian Network of Environmental Defender’s Offices on the Draft Queensland Approval Bilateral Agreement (2014), available here: <http://www.edoqld.org.au/law-reform/anedos-submission-on-draft-approval-bilateral-agreement-between-the-queensland-and-and-australian-governments/>

³⁰ *Independent review of institutional and legal mechanisms*, pp.3, 32-33. For a critical analysis of the purported ‘safeguards’, see the ANEDO submission by the Australian Network of Environmental Defender’s Offices on the Draft Queensland Approval

Bilateral Agreement (2014), available here: <http://www.edoqld.org.au/law-reform/anedos-submission-on-draft-approval-bilateral-agreement-between-the-queensland-and-and-australian-governments/>

³¹ *Independent review of institutional and legal mechanisms*, p.22.

³² *Independent review of institutional and legal mechanisms*, p. 35.

³³ *The Reef 2050 Long-Term Sustainability Plan*, p.14.

³⁴ *Independent review of institutional and legal mechanisms*, p. 45.

³⁵ As amended by the *Vegetation Management Framework Amendment Act 2013* No. 24. Most provisions commenced on 2 December 2013 and others on 23 May 2013.

³⁶ For further details, see the 2014 Report to the UNESCO World Heritage Committee by WWF-Australia and Australian Marine Conservation Society, available here:

http://awsassets.wwf.org.au/downloads/mo032_fight_for_the_reef_report_to_the_unesco_world_heritage_committee_30jan14.pdf at p.43

³⁷ See, for instance, the analysis of vegetation management framework changes by Taylor, M.F.J. 2013. *Bushland at risk of renewed clearing in Queensland*. WWF-Australia, Sydney. Available at:

http://awsassets.wwf.org.au/downloads/f1012_bushland_at_risk_of_renewed_clearing_in_queensland_9may13.pdf

³⁸ *Independent review of institutional and legal mechanisms*, p. 3.

³⁹ *Independent review of institutional and legal mechanisms*, p. 29.

⁴⁰ *Water Reform and Other Legislation Amendment Bill 2014* (Qld).

⁴¹ *Vegetation Management Framework Amendment Act 2013*, Act No. 24 of 2013. One of the change makes large quantities of vegetation throughout Queensland vulnerable to clearing and consequently will also affect water quality in some GBR catchments.

⁴² *Water Reform and Other Legislation Amendment Bill 2014* (Qld).

⁴³ *Ibid.*

⁴⁴ *Independent review of institutional and legal mechanisms*, p. 29.

⁴⁵ *Water Reform and Other Legislation Amendment Bill 2014* (Qld).

⁴⁶ The *Wild Rivers Act 2005* (Qld) was repealed on 1 October 2014 under the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014*, which came into effect on 1 October 2014.

⁴⁷ *Regional Planning Interests Act 2014* (Qld).

⁴⁸ The *Cape York Regional Plan* (August 2014) is available here: <http://www.dsdip.qld.gov.au/regional-planning/cape-york-regional-plan.html>

⁴⁹ Joint Select Parliamentary Committee on Northern Australia, *PIVOT NORTH Inquiry into the Development of Northern Australia: Final Report*, available here:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/Inquiry_into_the_Development_of_Northern_Australia/Tabled_Reports. For a critical analysis of the policy, see the submission to the Senate Inquiry by the Australian Network of Environmental Defender's Offices, available here: <http://www.aph.gov.au/DocumentStore.ashx?id=c113c1f9-bfa3-431f-876f-338d0ffc8333&subId=206692>

⁵⁰ *Independent review of institutional and legal mechanisms*, p.29.

⁵¹ *Independent review of institutional and legal mechanisms*, p.46-47.

⁵² *Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012*.

⁵³ There is no ESD either in the State Planning Policy, <http://www.dsdip.qld.gov.au/resources/policy/state-planning/state-planning-policy.pdf> at p.4, despite a 'requirement' that the SPP advance the purposes of SPA which includes 'ecological sustainability': *Sustainable Planning Act 2009* (Qld) s 22(b) and s 5.

⁵⁴ For further details on the impact on third party appeal rights to development, see EDO Qld's submission on the new planning laws (2014), available here: <http://www.edoqld.org.au/wp-content/uploads/2014/09/2014-09-26-EDO-Qld-submission-on-the-draft-PDB-and-PECB.pdf>

⁵⁵ The *Regional Interests Planning Act 2013* (Qld) denies third parties right to appeal on land use decisions. The new law only allows 'affected landholders' to appeal against a decision under this Act to allow mining activities in the region, even if acting to protect a Strategic Environment Area, such as a GBR catchment.

⁵⁶ *State Development and Public Works Organisation Act, 1971* (Qld).

⁵⁷ *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld), Act No. 47 of 2014.

⁵⁸ The *State Planning Policy* is available here: <http://www.dsdip.qld.gov.au/about-planning/state-planning-policy.html>

⁵⁹ *Independent review of institutional and legal mechanisms*, p. 3.

⁶⁰ Rather, it simply requires MNES (including world heritage properties) are considered, not explicitly the OUV or the Convention: *Independent review of institutional and legal mechanisms*, p. 28.

⁶¹ *Independent review of institutional and legal mechanisms*, p. 38.

⁶² *Independent review of institutional and legal mechanisms*, p. 44.

⁶³ See *Cape York Regional Plan* (August 2014), available here: <http://www.dsdip.qld.gov.au/regional-planning/cape-york-regional-plan.html>

⁶⁴ The new *Central Queensland Regional Plan* was approved and took effect in October 2013 and is available here: <http://www.dsdip.qld.gov.au/regional-planning/the-central-queensland-regional-plan.html>

⁶⁵ *Independent review of institutional and legal mechanisms*, pp. 44, 47.

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- ⁶⁶ Queensland Department of Environment and Heritage (2014), *Proposal to abolish the existing coastal management districts and declare a new Coastal Management District*, available here: https://www.ehp.qld.gov.au/coastal/development/assessment/coastal_management_districts.html
- ⁶⁷ The Coastal Management Plan is available here: <http://www.ehp.qld.gov.au/coastalplan/>
- ⁶⁸ The new Coastal Management Plan is significantly weaker than the Coastal Plan in respect of erosion, protection of areas of high ecological significance, climate change adaptation and removes planning requirements of management plans.
- ⁶⁹ Queensland State Planning Policy, July 2014.
- ⁷⁰ *Independent review of institutional and legal mechanisms*, p. 30.
- ⁷¹ *The Reef 2050 Long-Term Sustainability Plan*, p. 20, Figure 5.
- ⁷² *Water Reform and Other Legislation Amendment Bill 2014* (Qld).
- ⁷³ There are strong indications that the new planning legislation will not integrate the principles of ESD nor place environment at the forefront of decision making. In relation to the new Act, the Government has said: "The purpose of the new legislation will be to enable development. We need to drive a major transformation of the state's planning system and culture from its current approach, which is actually stifling development" (http://www.lgnews.com.au/new-laws-needed-to-deliver-queensland-planning-reform/#.UuH_4P1- Vg). The draft Bill for public comment failed to include principles of ESD as the purpose of the planning legislation. For an analysis, see: <http://www.edoqld.org.au/wp-content/uploads/2014/09/2014-09-22-PD-Bill-Factsheet-4-Development-4-ESD-final.pdf>
- ⁷⁴ The *Nature Conservation Act 1992* (Qld) appears here: <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/N/NatureConA92.pdf>. The Act bypassed 'ecologically sustainable use' of nature to allow for "the use and enjoyment of protected areas" and the social, cultural and commercial use of protected areas (national parks). See EDO Qld's analysis of the Bill at the time for further information: <http://www.edo.org.au/edoqld/wp-content/uploads/2013/12/2013-09-13-FINAL-EDO-submission-on-NCOLA-No.2.pdf>
- ⁷⁵ The *State Planning Policy* is available here: <http://www.dsdip.qld.gov.au/about-planning/state-planning-policy.html>
- ⁷⁶ In this context, "mitigate" refers to the development assessment process where conditions are placed on individual development approvals to minimise impacts. There are serious concerns over Queensland developing conditions without Commonwealth oversight.
- ⁷⁷ *Independent review of institutional and legal mechanisms*, p. 67.
- ⁷⁸ *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld), Act No. 47 of 2014.
- ⁷⁹ Contrary to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) *Standards for Accreditation*, the Queensland legislation proposed to be used to approve impacts on the Reef (in place of the Commonwealth EPBC Act), does not confer extended standing for judicial review akin to s.487 EPBC Act: see *State Development and Public Works Organisation Act 1971* (Qld), Part 4A.
- ⁸⁰ Replaced with the *Regional Planning Interests Act 2014* (Qld).
- ⁸¹ *State Development and Public Works Organisation Act 1971* (Qld), section 27AD.
- ⁸² *Independent review of institutional and legal mechanisms*, p. 29.
- ⁸³ *Independent review of institutional and legal mechanisms*, p. 31.
- ⁸⁴ *Environmental Offsets Act 2014* (Qld). For a critical analysis of the draft Bill, see EDO Qld's submission (2014), available here: <http://www.edoqld.org.au/law-reform/edo-qlds-submission-on-the-environmental-offsets-bill-2014/>
- ⁸⁵ State Development Assessment Provisions under the *Sustainable Planning Act 2009* (Qld), available here: <http://www.dlg.qld.gov.au/resources/policy/sdap/state-development-assessment-provisionsv1-5.pdf>
- ⁸⁶ *Independent review of institutional and legal mechanisms*, p. 29.
- ⁸⁷ Queensland Department of Environment and Heritage Protection, "Proposal to abolish the existing coastal management districts and declare a new coastal management district" (2014), available here: <http://www.ehp.qld.gov.au/coastal/development/assessment/declare-new-coastal-management-district.html>
- ⁸⁸ Ibid.
- ⁸⁹ *Great Barrier Reef Intergovernmental Agreement*, Schedule D, p. 2, available here: <http://www.environment.gov.au/marine/gbr/protecting-the-reef/intergovernmental-agreement>.
- ⁹⁰ *Independent review of institutional and legal mechanisms*, pp. 1, 12, 24, 55.
- ⁹¹ *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth).
- ⁹² Sydney Centre for International and Global Law, University of Sydney (2004) *Global climate change and the Great Barrier Reef: Australia's obligations under the World Heritage Convention*. Sydney Centre for International and Global Law, University of Sydney Discussion Paper. Sydney Centre for International and Global Law, University of Sydney, Sydney, available here: http://sydney.edu.au/law/scigl/SCIGLFinalReport21_09_04.pdf p.5.
- ⁹³ *Great Barrier Reef Intergovernmental Agreement*, Schedule D, p. 1, available here: <http://www.environment.gov.au/marine/gbr/protecting-the-reef/intergovernmental-agreement>.
- ⁹⁴ *Independent review of institutional and legal mechanisms*, p.47.