



QUEENSLAND  
FARMERS'  
FEDERATION

# Independent Review of Powers and Penalties Provisions Under the Environmental Protection Act 1994

## Prepared by:

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The united voice of  
Queensland agriculture



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<https://environment.des.qld.gov.au/management/policy-regulation/independent-review> and  
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## Our members

- Canegrowers
- Cotton Australia
- Queensland Fruit & Vegetable Growers
- Nursery & Garden Industry Queensland
- eastAUSmilk
- Australian Cane Farmers Association
- Queensland United Egg Producers
- Turf Queensland
- Queensland Chicken Meat Council
- Pork Queensland
- Bundaberg Regional Irrigators Group
- Burdekin River Irrigation Area
- Central Downs Irrigators Ltd
- Fairburn Irrigation Network
- Mallowa Irrigation
- Pioneer Valley Water Co-operative Ltd
- Theodore Water Pty Ltd
- Eton Irrigation
- Queensland Oyster Growers Association
- Lockyer Water Users Forum

# About the Queensland Farmers' Federation



## The Queensland Farmers' Federation (QFF) is the united voice of agriculture in Queensland.

We are a member-based organisation representing the interests of peak agriculture industry organisations, both state and national. Through our members QFF represents more than 13,000 primary producers across the cotton, sugarcane, horticulture, dairy, nursery and garden, poultry, eggs, pork, and intensive animal industries.

We unite the sector to engage in a broad range of economic, social, environmental, and regional issues through advocacy, policy development, and project activity. We work with the government of the day on behalf of industry, farmers, and the community to provide powerful representation and contribution to the policy direction, sustainability, and future growth of Queensland's agriculture sector.

Our Council of member representatives and policy committees set the strategic priorities for policy development and advocacy, while our Executive Board ensures our corporate governance.

QFF draws on the expertise and industry knowledge of our members and through our commitment to collaboration and considered policy development, we lead Queensland's agriculture sector towards a strong future, ensuring our members are ahead of the game and have a voice at the table on the issues that matter to their members.

## Submission

QFF welcomes the opportunity to provide comment on Independent review of powers and penalties provisions under the EP Act 1994.

We provide this submission without prejudice to any additional submission from our members or individual farmers.

### Overview

The proposed changes to the Environmental Protection Act 1994 have raised several important concerns and considerations for Queensland business owners. While QFF expresses support for the majority of the 18 proposed recommendations, it is also cognizant of the potential unintended consequences that these changes may have across industry, in light of the forecasted growth of the region over the next 10-25 years.

The overarching concern centres around the influence urban expansion and encroachment may have on nuisance breaches for preestablished businesses. Further conversations are needed around what constitutes nuisance under the new proposed conditions, in particular the widening of the scope for 'impact on human mental health and well-being'. Ultimately this recommendation may allow for businesses to constitute a nuisance without being in breach of any actual 'emission' limits. How the department will handle complainants and potentially administer compliance in this context remains a critical point of discussion. QFF emphasises the importance of developers and landowners acknowledging pre-existing land uses during the approval of major urban and residential developments. Agriculture, in particular poultry farms, will face considerable hurdles balancing

expansion to accommodate the ever-growing demand for food production, and navigating these somewhat ambiguous regulations. QFF underlines the importance of considering reasonable operating practices when dealing with future mental health and wellbeing nuisance complaints. To address the proposed recommendations of the EP Act, in particular recommendation 2, QFF provides the below feedback.

## Review recommendations

### Recommendation 1

QFF supports the introduction of the 4 principles and acknowledges it is consistent with federal and other state government legislation.

- QFF acknowledges the polluter pays principle will hold large polluters (e.g. mining and gas) accountable for their impacts and rehabilitation.
- QFF supports the proportionality principle and understands it will ensure EA holders cannot be unfairly punished or restricted over minor issues.
- Primacy of prevention will put more weight on upfront assessment as post-approval regulation hasn't been successful in dealing with amenity issues. QFF highlights the need for robust and up to date data to backup applications for expansion or amendment.
- QFF supports the precautionary principle should provide greater protection to agricultural land in relation to CSG, mining or emerging technology like carbon capture and storage.

### Recommendation 3

QFF acknowledges this recommendation is appropriate if implemented properly. However, this adjustment does expand the potential for the Department of Environment and Science (DES) to action penalties, even on small businesses with a long history of compliant operations.

### Recommendation 12

QFF supports recommendation 12 to provide additional powers to the minister, if the additional caveats are maintained throughout the Act. QFF supports section 223 which outlines various limitations to this power. It is critical these caveats are not removed throughout the legislative process. Delegating powers to officers to amend conditions of an environmental authority reduces the certainty of legally operating businesses and allows for constant change to operating and regulatory conditions. This same delegation of powers inadvertently facilitates urban sprawl and incursion on legally operating 'emitting' businesses which may cause possible nuisance complaints in the future.

### Recommendation 15

This recommendation pertains to penalties related to the general environmental duty (GED) and extends their applicability to any business, irrespective of their environmental authority (EA) status. In principle, this is acceptable, however QFF urges the department to assess these 'breaches' against best practice of each activity. To adhere, many industries will move to introduce robust best practice guidelines, in an attempt to create some kind of defence against accusations of breaching the GED.

## Review recommendation 2

The EP Act addresses human health and wellbeing in multiple sections (i.e. 8 and 9) however the department has deemed it necessary to introduce recommendation 2 to address mental health and wellbeing more clearly throughout the Act. Recommendation 2 suggests:

*“Sections 8 and 9 of the EP Act should be amended to include the concept of “human health, safety and wellbeing” in the definitions of environment and environmental value.”*

While this may seem a relatively minor amendment to the existing Act, it may have significant implications across nuisance conflicts across both residential and rural industries throughout Queensland. The issue lies within the ambiguous nature of these terms and how they may be interpreted and used in future nuisance legal proceedings. Currently, any impacts from noise, dust and odour are determined by a quantitative set of criteria with objective scientific methods and apparatus. Mental health and well-being have no quantitative procedure to detect a breaching of criteria and capturing impact is subjective from person to person. Widening the scope of mental health and wellbeing throughout these sections may allow complainants to simply state that an odour impacts on their mental wellbeing, moving away from what the actual level or limit of ‘emission’ is and towards how it makes a complainant feel. Given the recent increase of animal and climate activists post-Covid, QFF also expresses concern over how these changes to legislation could be used by an activist to claim that the existence of an industry, and its potential impacts on climate change, is impacting on their mental health.

Whilst QFF understand the catalyst behind these legislated changes is the large community response to the Swanbank Industrial Odour, the government needs to understand that these policy changes have flow-on impacts to areas outside the intended scope. Sufficient forethought and forward-thinking planning is needed when amending policy that impacts shared land use, and it is not enough to turn a blind eye to potential unintended impacts these changes may have.

## QFF recommendations

Clearer criteria and caveats around the mental health and wellbeing recommendation is crucial. The department needs to elaborate on exactly how the scale of complainant's claims will be measured, as this moves away from a more quantifiable approach to nuisance and will make it more difficult for small businesses, including producers, to navigate this legislation. Further, due to the somewhat immeasurable conditions of human health and wellbeing, it is critical that nuisance criteria is restricted to ‘direct impact’ nuisance and is not carried to second or third parties. Neighbouring nuisance complaints can be directly connected to potential noise, dust or odour irritants and can be logically linked to a potential disturbance. However, the scale of potential mental health and wellbeing nuisance complainants could be exponential if criteria and guiding policies are not well developed and regulated.

The proportionality principle can aid in this aspect by scaling the impact of nuisance. If a stakeholder (or producer) receives a nuisance complaint but is conducting their business in line with best

management practice, and are not in breach of noise or particulate limits, the complaint must be taken in regards to proportionality. For example, if a business is in-line with emission limits and the scale of complaints is 1-2 stakeholders, as opposed to thousands, the owner/producer should not be liable for penalties or corrective action. If the response to nuisance is larger than anticipated, similar to the scale of the recent Swanbank Industrial Area response (frequency, extended time frame and intensity), despite legislated limits being met, QFF understands the need for intervention on a case-by-case basis. QFF appreciates the proportionality principle will ensure EA holders cannot be unfairly restricted or penalised over minor issues.

QFF further requests that these new recommendations are not legislated or do not go into effect before the supporting policy and guiding documents are drafted. There is a need for further consultation on the details on how both the principles and recommendations of this review will be implemented across various industries. It is crucial industry is consulted in the drafting of these supporting documents, as this legislation will have legal implications to all operating businesses, not only those who tend to capture more obvious nuisance issues (i.e. waste facilities). Consultation needs to capture a wide range of stakeholders including agriculture, engineering, construction, automotive, manufacturing and mining.

## Summary

There is often a disconnect between Queensland state's legislation and planning. In an attempt to rectify a lack of action in the ongoing Swanbank situation and clarify conditions around odour, some recommendations the department have implemented in the EP Act may instead make it even more difficult to enforce or find solutions to nuisance complaints. The reality is many new legislative changes, despite not being targeted towards particular industries, will impact a wide range of users and have 'unintended' legal implications. As such, these reviews can generate significant frustration as they often arise in response to situational events, and as a result the legislation can be perceived as hastily conceived and lacking careful planning in terms of its impact on both the community and industries. QFF highlights the need for further consultation on the review and welcomes further discussion on the supporting documents and policy of the EP Act.

Yours sincerely

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**This submission is provided by the Queensland Farmers' Federation**

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