

Impact Analysis Statement

Summary IAS

Lead department	Department of Environment and Science
Name of the proposal	Environmental Protection (Powers and Penalties) Bill 2024 – Improving the powers and penalties provisions of the <i>Environmental Protection Act 1994</i> (the proposal)
Submission type (Summary IAS / Consultation IAS / Decision IAS)	Summary IAS
Title of related legislative or regulatory instrument	<i>Environmental Protection Act 1994</i> (the EP Act)
Date of issue	January 2024

For aspects of the proposal noted in table below, no regulatory impact analysis is required:

Proposal type	Details
Minor and machinery in nature	The proposal contains several aspects that are minor and machinery in nature, and do not result in substantive change to regulatory policy or new impacts on business, government, or the community. Regulatory costs for these aspects of the proposal are nil or negligible. The following aspects of the proposal are minor and machinery in nature as they are legislative updates for current drafting practice: - omitting the words 'reasonable and practicable' from the EP Act and replacing them with 'reasonably practicable'. - omitting redundant uses of the terms 'reasonable' or 'reasonably' from the EP Act. - removing the phrase 'Aborigines and Torres Strait Islanders' and replacing with 'Aboriginal peoples and Torres Strait Islander peoples' (alternative contemporary and appropriate language). The following aspects of the proposal are minor and machinery in nature as they are minor or routine legislative updates involving no substantive regulatory or policy change: - placing the environmental policy principles underpinning the EP Act in a prominent place in the EP Act. - amending definitional sections of EP Act to include the concept of 'human health, safety and wellbeing'. - amending provisions relating to Transitional Environmental Programs (TEP) to clarify the administering authority has the power to initiate amendments to a TEP.

	- amending provisions relating to the process for EA amendments initiated by the administering authority to clarify that any proposed amendment to the EA conditions presented to the EA holder can be modified, in response to submissions raised by the EA holder, before a final decision on amending the EA. - for provisions enacted under the <i>Environmental Protection and Other Legislation Amendment Act 2023</i>, but not yet commenced, making an amendment to clarify that disclosure of confidential information to other government agencies is in the performance of a function or power of the EP Act.
Regulatory proposals where no RIA is required	The proposal contains aspects relating to existing criminal laws and the administration of courts, for which no regulatory impact analysis is required under the Better Regulation Policy: - amending the environmental harm offence provisions to enable the court to make an alternative finding of guilt for the lesser offence of environmental nuisance. - amending the definition of 'environmental offence' under the EP Act to avoid unnecessary exclusion of all relevant offences, resulting in one offence being added to the definition (failure to comply with conditions of a temporary emissions licence). - amending evidentiary provisions under the EP Act so that specified forms of evidence are not limited to criminal proceedings in court but may also be used in civil proceedings.

The following aspects of the proposal may be regarded as having some, however not significant impacts that decision makers should be aware of:

- amending the EP Act to include an offence provision for non-compliance with the existing General Environmental Duty (GED).
- introduction of a duty to restore environmental harm with an associated offence for non-compliance.
- amending definitional sections of the EP Act to make clear that environmental nuisance may constitute material and serious environmental harm if it meets the definitions of those terms.
- amending provisions relating to the duty to notify of environmental harm so the duty is triggered where the person 'ought reasonably to have become aware' that the land is or is likely to be affected by a contaminant.
- amalgamating existing provisions under the EP Act for environmental protection orders, direction notices and clean-up notices.
- amending provisions relating to issuing environmental enforcement orders to clarify that a notice may be issued even if there is a condition of an EA appearing to authorise the relevant harm.
- amending provisions relating to environmental evaluation requirements to clarify a notice may be issued even if there is a condition of an environmental authority (EA) appearing to authorise the relevant harm.

The table below outlines considerations of the impacts of these aspects of the proposal:

What is the nature, size and scope of the problem? What are the objectives of government action?
In recent years, the environmental impacts from several industries have presented increasingly complex regulatory challenges. These are often linked to growing communities with changing land uses over time, resulting in co-existence of housing and industrial areas with increased risks associated with dust, odour, and noise. In this context, an independent review investigated the adequacy of powers and penalties available under the EP Act, particularly in relation to environmental nuisance, to consider if they were sufficiently contemporary to address the challenges of the future and make any recommendations for the improvement of the EP Act for the regulation of Queensland's environment. The review was initiated in part due to the significant odour nuisance issues in the Swanbank industrial area and surrounds in south-east Queensland but has relevance to all of Queensland. The review identified that, in general, the EP Act contains an adequate range of powers and penalties to enforce environmental obligations and reduce the risk of environmental harm. However, it also found there are opportunities for improvements and made 18 recommendations for changes to the EP Act. In responding to and implementing the review recommendations, the objective is to amend the EP Act to ensure it remains fit for purpose, aligned to community expectations and that regulatory tools are sufficiently contemporary to deal with the challenges of protecting Queensland's environment. The recommendations reflect improvements to the legislation to enhance the effectiveness of tools available, rather than fundamental policy changes.
What options were considered?
The findings of the independent review, provided to the Government in September 2022, were set out in the <i>Independent Review of the Environmental Protection Act 1994 (Qld) Report: Independent review into the adequacy of existing powers and penalties</i> (the Report). The Government's response to the Report detailed its support for all 18 recommendations, however, recommendation 12 was supported in-principle due to the potential impacts on businesses within Queensland. The Government also committed to consulting with the wider community prior to considering the implementation of the recommendations. Both the <u>review report's findings</u> and the <u>Government response</u> were published on the Department of

Environment and Science (the Department) [website](#) on 26 May 2023, and a [consultation paper](#) was prepared then released on 14 September 2023.

Other options including administrative arrangements were considered to deliver the recommendations of the Report. However, considering the independent review's terms of reference were to consider the provisions of the EP Act and the subsequent recommendations being to amend the EP Act, legislative amendments are the preferred option. Generally, the options were to accept or reject the recommendations of the review for amendments to the EP Act. Where required however, amendments to implement the recommendations have been modified to ensure they do not impose unreasonable impacts. For example, recommendation 12 suggested existing powers to amend EA conditions be expanded to allow the Chief Executive or the Minister to amend conditions where they consider the environmental impact of the regulated activity is not being appropriately avoided, mitigated or managed. As this would present significant impacts, the proposal instead includes the following amendments:

- ensuring that an EA is not a barrier to issuing a statutory notice or a notice requiring environmental evaluation when responding to an environmental harm incident where the harm is not clearly authorised or conditioned for under the EA. Clarifying when a notice may be issued will allow for the environmental harm to be addressed in a timely manner. Then, if amendment of EA conditions is necessary, for example to manage the harm or future risk of the harm on an ongoing basis, the existing provisions for proposing an amendment to EA conditions can be relied on to achieve this purpose.
- modifying the notice of proposed amendment (NOPA) process where the administering authority proposes to amend EA conditions without the agreement of the EA holder. The amendment enables the administering authority to make changes to its 'proposed amendment' in direct response to written representations by the EA holder without the need to start the process of notifying of proposed amendment from the beginning. This still allows the EA holder to raise concerns in response to any proposed amendment to their EA before the EA is amended but streamlines the process for finalising the amendment where the administering authority is minded to continue with making an amendment.

Further, the report recommended a range of changes to statutory notices to improve efficiency and flexibility in their use. In lieu of fulfilling these recommendations as provided in the Report, a new type of compliance notice, to be called an Environmental Enforcement Order (EEO) will replace existing provisions for environmental protection orders, direction notices, and clean up notices. This will enable a single enforcement compliance notice to be used in a variety of circumstances, covering several issues, thereby simplifying the process for operators, notice recipients and regulators. It will lead to process efficiencies and better environmental outcomes by enabling a more efficient and responsive compliance approach.

What are the impacts?

The proposal aims to facilitate a more proactive approach to environmental risk management to prevent the community from being exposed to harm and remove barriers to streamline timely and effective regulatory responses to manage and restore environmental harm that has occurred. As the proposed amendments largely relate to amending existing powers and penalties to achieve compliance with the EP Act, the amendments will not have significant regulatory impacts for operators who are acting lawfully. There are no negative environmental or social impacts resulting from the proposal that have been identified.

The GED already exists under the EP Act. The introduction of the offence for contravening the GED does not change the duty itself or impose any new compliance requirements. There will be improvements and advancements which support positive impacts due to the expected improvements in proactivity to prevent environmental harm. For example, the proposal may result in less intervention from government to compel compliance with a notice, as persons are more likely to proceed with complying with their GED proactively and prevent costly harm given the deterrent effect of a penalty for committing an offence. Further impacts are limited as the offence will not apply where the particular aspect of the activity is undertaken in compliance with an environmental authority, prescribed conditions or where the person has complied with a Code of Practice.

A duty to restore environmental harm will be introduced that requires, if a person permits or causes contamination that results in environmental harm they must, as far as reasonably practicable, restore the environment to the condition it was in before the incident occurred. This duty to restore will mean that existing obligations to rehabilitate or restore which arise through the issue of a compliance notice by a regulator would become more proactive through a general duty. A compliance notice would subsequently be used where necessary to ensure compliance with the duty. In this manner, the duty does not introduce any significant impacts on businesses and seeks to maintain proactive environmental responsibilities. The duty will deliver efficiencies for government in managing contamination incidents and incidences of material and serious environmental harm.

The proposal includes amendments to the duty to notify of environmental harm to capture situations where the person 'reasonably believes' or 'should in the circumstances reasonably believe' that the land is or is likely to be affected by a hazardous contaminant. This is not a substantive regulatory or policy change as persons are still required to notify of any occurrences of environmental harm or contamination incidents, however there are negligible impacts to businesses due to a change to the threshold of the obligation to report such incidents. However, as with the duty to restore the environment, it does not present any significant impacts and seeks to maintain proactive environmental responsibilities. Introducing the element of reasonableness also facilitates more consistent monitoring and notifying practices.

The proposal includes amendments to ensure that, despite contaminants having the prescribed characteristics of environmental nuisance in section 15, the release may constitute material or serious environmental harm. The purpose of the amendment is to ensure that where instances of environmental nuisance are of a magnitude or severity that they meet the definition of material or serious environmental harm, sufficient tools are available to address that harm. Businesses and persons who are acting lawfully and not causing or sustaining environmental nuisance will not be impacted. These amendments are expected to deliver material benefits to the environment and the community by enabling greater enforcement action to compel minimisation or elimination of environmental harm. For example, having more effective enforcement tools available to act against extreme cases of odour and air emissions will improve public health and amenity outcomes in nearby communities.

Existing powers to issue three types of statutory notice – Environmental Protection Orders, Direction Notices and Clean-up Notices – will be combined so the powers are to issue a single type of statutory notice known as an Environmental Enforcement Order. The amendments do not result in significant changes to the overall scope of these powers or associated penalties, and where the powers have been extended, it facilitates achieving consistency of notice powers and more streamlined provisions in the process of combining the existing powers. Environmental Enforcement Orders will still be based on addressing non-compliance with the EP Act so businesses and persons who are acting lawfully will not be impacted. Rationalising the three types of notice creates a simpler issuing process for notice recipients, as well as the administering authority. It will support better environmental outcomes by enabling a more responsive compliance approach by reducing considerations of which notice type ought to be issued to address the environmental concern.

The proposal includes amendments to clarify that a statutory notice or a notice requiring environmental evaluation can be issued to respond to an environmental harm incident where the harm is not clearly authorised or conditioned for under the EA. The purpose of the amendment is to clarify when a notice may be issued and will allow for the environmental harm to be addressed in a timely manner. This is not a substantive regulatory or policy change as the effect of the amendment is to clarify the operation of existing provision in the EP Act. Review and appeal rights continue to operate unchanged where a person is dissatisfied with the decision to issue a notice. While the issue of a statutory notice or the outcomes of an environmental evaluation are grounds for the administering authority to trigger amendments to an EA, the proposal makes no changes to the ability of the administering authority to amend an EA. The existing grounds and process for amending an EA under the EP Act continue to apply.

Who was consulted?

A consultation paper was published on the Department's website on 14 September 2023 for an 8 week period, coinciding with the Government's announcement of the opening of the consultation. The consultation period formally closed on 10 November 2023. All feedback submitted was reviewed and considered in finalising the proposed legislative amendments. Stakeholders' views on the amendments were mixed, with strong support from some and reservations, concerns and opposition from others. A consultation report, including stakeholders who were consulted and their feedback, will be published on the department's website.

What is the recommended option and why?

It is recommended to implement the proposals to amend the EP Act which directly respond to the recommendations made in the independent review. The proposals reflect improvements to the EP Act without causing significant interruption to business, government and communities.

Impact assessment

All proposals – complete:

	First full year	First 10 years**
Direct costs – Compliance costs*	N/A	N/A
Direct costs – Government costs	N/A	N/A

* The direct costs calculator tool (available at www.treasury.qld.gov.au/betterregulation) should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero. **Agency to note where a longer or different timeframe may be more appropriate.

Director-General Department of Environment, Science and Innovation

Date: 30/01/2024

Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation

Date: 30/01/2024