

I hereby certify that this PUBLIC BILL has finally passed the Legislative Assembly of Queensland.

Markis

Legislative Assembly Chamber,
Brisbane,

The Clerk of the Parliament.
18th June 2024

In the name and on behalf of the King, I assent to this Bill.

Government House,

Brisbane, 18th June

John Long

2024.



Queensland

No. 30 of 2024

A BILL for

An Act to amend the Environmental Protection Act 1994, the Environmental Protection Regulation 2019 and the State Penalties Enforcement Regulation 2014 for particular purposes



Queensland

Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024

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2024

A Bill

for

An Act to amend the Environmental Protection Act 1994, the Environmental Protection Regulation 2019 and the State Penalties Enforcement Regulation 2014 for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Act 2024*.

2 Commencement

Sections 49 and 50 commence immediately after the commencement of the *Environmental Protection and Other Legislation Amendment Act 2023*, section 121.

Part 2 Amendment of Environmental Protection Act 1994

3 Act amended

This part amends the *Environmental Protection Act 1994*.

Note—

See also the amendments in schedule 1.

4 Amendment of s 4 (How object of Act is to be achieved)

Section 4(6)(b), ‘all reasonable and practicable measures’—
omit, insert—

all reasonably practicable measures

5 Amendment of s 6 (Community involvement in administration of Act)

Section 6, ‘Aborigines and Torres Strait Islanders’—
omit, insert—

Aboriginal peoples and Torres Strait Islander peoples

6 Insertion of new s 6A

After section 6—

insert—

6A Principles of environmental protection

(1) This Act is to be administered having regard to—

(a) the following principles of environmental policy as set out in the Intergovernmental Agreement on the Environment—

(i) the precautionary principle;

(ii) intergenerational equity;

(iii) conservation of biological diversity and ecological integrity;

(iv) improved valuation, pricing and incentive mechanisms (which includes the principle known as the principle of polluter pays); and

(b) the principle (known as the principle of proportionality) that a decision, action or thing directed towards minimising harm or a risk of harm to the environment should be proportionate to the harm or risk of harm that is being addressed; and

(c) the principle (known as the principle of primacy of prevention) that prevention of harm to the environment is preferred to remedial or mitigation measures.

- (2) If a provision of this Act requires the chief executive or administering authority to consider, or have regard to, the standard criteria, the chief executive or administering authority—
 - (a) must consider, or have regard to, the standard criteria; and
 - (b) need not but may consider, or have regard to, any other principle mentioned in subsection (1).

7 Amendment of s 8 (Environment)

Section 8(c) and (d)—

omit, insert—

- (c) the physical characteristics of locations, places and areas, however large or small; and
- (d) the physical surroundings of people, including the land, waters, atmosphere, climate, sound, odours and tastes; and
- (e) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (d).

8 Amendment of s 9 (Environmental value)

- (1) Section 9(a), ‘or public amenity or safety’—

omit.

- (2) Section 9(b)—

omit, insert—

- (b) a quality or physical characteristic of the environment that is conducive to public health, safety or amenity; or

- (c) a quality or physical characteristic of the environment that contributes to its biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; or
- (d) another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.

9 Amendment of s 16 (Material environmental harm)

Section 16(1), '(other than environmental nuisance)'—
omit.

10 Amendment of s 17 (Serious environmental harm)

Section 17(1), '(other than environmental nuisance)'—
omit.

11 Amendment of s 24 (Effect of Act on other rights, civil remedies etc.)

Section 24(3), after 'duty'—
insert—

or the duty to restore the environment

12 Amendment of s 219 (Decision on proposed amendment)

(1) Section 219—

insert—

(2A) In making the amendment decision, the administering authority—

- (a) may change the proposed amendment as a result of written representations given to it by the holder; and
 - (b) is not required to obtain any further written representations from the holder before making the change mentioned in paragraph (a).
- (2) Section 219(2A) and (3)—
renumber as section 219(3) and (4).

13 Amendment of s 319 (General environmental duty)

- (1) Section 319(1), ‘all reasonable and practicable measures’—
omit, insert—
all reasonably practicable measures
- (2) Section 319(2)—
renumber as section 319(4).
- (3) Section 319—
insert—
- (2) A person commits an offence if—
 - (a) the person contravenes the general environmental duty in relation to an activity; and
 - (b) the contravention causes, or is likely to cause, serious or material environmental harm.
- Maximum penalty—
- (a) if the offence is committed wilfully—4,500 penalty units or 2 years imprisonment; or
 - (b) otherwise—1,655 penalty units.
- (3) However, a person does not commit an offence against subsection (2) for a contravention of the

general environmental duty in relation to an activity if—

- (a) the contravention arises only because the person does an act that causes, or is likely to cause, environmental harm; and
- (b) either—
 - (i) a thing mentioned in section 493A(2) authorises the act to be done and provides for reasonably practicable measures to be taken in relation to the doing of the act; or
 - (ii) in doing the act, the person complies with a code of practice that applies in relation to the doing of the act.

(4) Section 319—

insert—

- (5) Also, in deciding whether the general environmental duty is contravened regard may be had to whether a person fails, for example, to do any of the following in carrying out an activity—
 - (a) install, use and maintain plant, equipment, processes or systems in a way that minimises risks of environmental harm that may arise in connection with the activity;
 - (b) use and maintain systems for the identification, assessment and control of risks of environmental harm that may arise in connection with the activity, and for the evaluation of the effectiveness of controls;
 - (c) use and maintain systems to ensure that all substances are handled, stored, used or transported in a way that minimises risks of environmental harm that may arise in connection with the activity;

- (d) use and maintain systems to ensure that information, instruction, supervision and training is provided to any person engaging in the activity in a way that minimises risks of environmental harm that may arise in connection with the activity.
- (6) A reference in subsection (3) to an act includes an omission and a reference to doing an act includes making an omission.

14 Amendment of s 319A (Special provision for activities involving relevant industrial chemicals)

Section 319A(3)(b), ‘all reasonable and practicable measures’—

omit, insert—

all reasonably practicable measures

15 Insertion of new s 319B

After section 319A—

insert—

319B Prosecutions for contravention of general environmental duty

- (1) This section applies if—
 - (a) a person engages in conduct that constitutes a relevant act mentioned in section 493A(1) (the *relevant conduct*); and
 - (b) the person is charged with an offence in relation to the relevant conduct (the *relevant offence*); and
 - (c) the person is intending to rely on the defence under section 493A(3) in relation to the relevant offence.
- (2) In a proceeding for the relevant offence, the

person may not be charged with an alternative offence against section 319(2) in relation to the same, or substantially the same, conduct as the relevant conduct.

- (3) Any information obtained from the person in relation to the defence under section 493A(3) in a proceeding for the relevant offence can not be used against the person in a proceeding for an offence against section 319(2) that is constituted by the same, or substantially the same, conduct as the relevant conduct.

16 Insertion of new ch 7, pt 1, div 1A

Chapter 7, part 1—

insert—

Division 1A Duty to restore the environment

319C Duty to restore the environment

- (1) This section applies to a person causing or permitting, or who caused or permitted, an incident involving contamination of the environment to happen that results in unlawful environmental harm.
- (2) The person must, as soon as reasonably practicable after the incident happens, take measures, as far as reasonably practicable, to rehabilitate or restore the environment to its condition before the harm (*the duty to restore the environment*).
- (3) A person commits an offence if—
 - (a) the person contravenes the duty to restore the environment; and

- (b) the contravention relates to harm that is serious or material environmental harm.

Maximum penalty—

- (a) if the offence is committed wilfully—4,500 penalty units or 2 years imprisonment; or
 - (b) otherwise—1,655 penalty units.
- (4) In deciding the measures required to be taken under subsection (2), regard must be had to, for example—
- (a) the nature and extent of the environmental harm caused by the contamination; and
 - (b) the sensitivity of the receiving environment to remedial measures that might be taken in relation to the environmental harm; and
 - (c) the current state of technical knowledge for remedial measures that might be taken in relation to the environmental harm; and
 - (d) the likelihood of successful application of the different measures that might be taken in relation to the environmental harm; and
 - (e) the financial implications of the different measures that might be taken in relation to the environmental harm.

17 Amendment of s 320A (Application of div 2)

- (1) Section 320A(1)(a) and (b), (2)(b) and (3), after ‘aware’—
insert—

, or ought reasonably to have become aware,

- (2) Section 320A(4)(c), ‘protection order’—
omit, insert—

enforcement order

18 Amendment of s 320B (Duty of particular employees to notify employer)

Section 320B(3), after ‘aware of the event’—

insert—

, or the time when the person ought reasonably to have become aware of the event,

19 Amendment of s 320C (Duty of other persons to notify particular owners and occupiers)

Section 320C(2) and (3), after ‘aware of the event’—

insert—

, or the time when the person ought reasonably to have become aware of the event,

20 Amendment of s 320D (Duty of employer to notify particular owners and occupiers)

Section 320D(2) and (3), after ‘aware of the event’—

insert—

, or the time when the person ought reasonably to have become aware of the event,

21 Amendment of s 320DA (Duty of owner, occupier or auditor to notify administering authority)

(1) Section 320DA(1), after ‘aware of the matter’—

insert—

, or the time when the person ought reasonably to have become aware of the matter,

(2) Section 320DA(3), after ‘aware of an activity’—

insert—

, or the time when the person ought reasonably to have become aware of an activity,

22 Amendment of s 320DB (Duty of local government to notify administering authority)

Section 320DB, after ‘becoming aware’—

insert—

, or the time when the local government ought reasonably to have become aware,

23 Amendment of s 326B (When environmental investigation required—environmental harm)

(1) Section 326B—

insert—

(3A) To remove any doubt, it is declared that the administering authority may give an investigation notice under this section to a person in relation to an activity even if the person is the holder of an environmental authority that authorises, or purportedly authorises, the activity.

(2) Section 326B(3A) and (4)—

renumber as section 326B(4) and (5).

24 Amendment of s 326BA (When environmental investigation required—contamination of land)

Section 326BA—

insert—

(4) To remove any doubt, it is declared that the administering authority may give an investigation notice under this section to a prescribed responsible person for land even if the person is the holder of an environmental authority that authorises, or purportedly authorises, activities carried out on the land.

25 Insertion of new ch 7, pt 3, div 3, sdiv 1, hdg

After chapter 7, part 3, division 3, heading—

insert—

Subdivision 1 Application for amendment by holder

26 Insertion of new ch 7, pt 3, div 3, sdivs 2 and 3

After section 344—

insert—

Subdivision 2 Amendments by administering authority

344AA Corrections

The administering authority may amend a transitional environmental program to correct a clerical or formal error if—

- (a) the amendment does not adversely affect the interests of the holder of the program or anyone else; and
- (b) the holder of the program has been given written notice of the amendment.

344AB Other amendments

- (1) The administering authority may amend a transitional environmental program, or a condition imposed on a transitional environmental program, at any time if—
 - (a) it considers the amendment is necessary or desirable for the purpose of the program achieving compliance with this Act for the activity to which the program relates and the

- procedure under subdivision 3 is followed;
or
 - (b) the holder of the program has agreed in writing to the amendment.
- (2) In deciding whether to amend a transitional environmental program or a condition imposed on a program, the administering authority—
- (a) must consider whether the program as affected by the amendment—
 - (i) will result in increased environmental harm being caused by the carrying out of the activity under the program; and
 - (ii) will achieve full compliance with the Act for the matters dealt with by the program under section 349; and
 - (b) must comply with any relevant regulatory requirement; and
 - (c) subject to paragraph (b), must also consider the standard criteria.
- (3) Also, the administering authority must consider—
- (a) the period under the original program; and
 - (b) the period that remains under the original program; and
 - (c) any change to the period under the original program; and
 - (d) the nature of the risk of environmental harm being caused by the activity.

344AC Steps to be taken after amendments

- (1) This section applies if the administering authority amends a transitional environmental program under this subdivision.
- (2) The administering authority must, within the

relevant period—

- (a) amend the transitional environmental program to give effect to the amendment; and
 - (b) issue the amended transitional environmental program to the holder; and
 - (c) include a copy of the amended transitional environmental program in the relevant register.
- (3) In this section—

relevant period means—

- (a) if the administering authority gives a notice under section 344AA—10 business days after the notice is given; or
- (b) if the administering authority amends the transitional environmental program with the holder's agreement—10 business days after the agreement is given; or
- (c) if the administering authority gives notice of an amendment decision under section 344AG—10 business days after the notice is given.

Subdivision 3 Procedure for particular amendments

344AD Application of subdivision

This subdivision applies if the administering authority proposes to amend a transitional environmental program, other than—

- (a) to make an amendment under section 344AA; or

- (b) with the written agreement of the holder of the program.

344AE Notice of proposed amendment

- (1) The administering authority must give the holder of the transitional environmental program a written notice (the *proposed amendment notice*) stating the following—
 - (a) the amendment (the *proposed amendment*) the administering authority proposes to make;
 - (b) the grounds for the proposed amendment;
 - (c) the facts and circumstances that are the basis for the grounds;
 - (d) that the holder may, within a stated period, make written representations to show why the proposed amendment should not be made.
- (2) The stated period must end at least 20 business days after the holder is given the proposed amendment notice.
- (3) The proposed amendment notice must be accompanied by a copy of the transitional environmental program showing the changes.

344AF Considering representations

The administering authority must consider any written representation made within the period stated in the proposed amendment notice by the holder of the transitional environmental program.

344AG Decision on proposed amendment

- (1) If, after complying with section 344AF, the administering authority still believes a ground

exists to make the proposed amendment, it may make the amendment.

- (2) The decision under subsection (1) is the ***amendment decision***.
- (3) In making the amendment decision, the administering authority—
 - (a) may change the proposed amendment as a result of written representations given to it by the holder; and
 - (b) is not required to obtain any further written representations from the holder before making the change mentioned in paragraph (a).
- (4) If the administering authority at any time decides not to make the proposed amendment, it must promptly give the holder written notice of the decision.

344AH Notice of amendment decision

The administering authority must, within 10 business days after the amendment decision is made, give the holder of the transitional environmental program an information notice about the decision.

27 Amendment of ch 7, pt 5, hdg (Environmental protection orders)

Chapter 7, part 5, heading, ‘protection orders’—

omit, insert—

enforcement orders

28 Replacement of ch 7, pt 5, div 1 (General)

Chapter 7, part 5, division 1—

omit, insert—

Division 1 Interpretation

358 Definitions for part

In this part—

contamination incident see section 360.

enforcement ground, in relation to an environmental enforcement order, see section 359.

place, in relation to a contamination incident, means premises, another place on land or a vehicle.

prescribed person, for a contamination incident, see section 361.

related person, of a company, see section 369N.

relevant matter, for an environmental enforcement order, means—

- (a) for an order issued on an enforcement ground—the matter forming the basis for the ground; or
- (b) otherwise—the matter forming the basis for the issuing of the order.

359 Meaning of *enforcement ground*

Each of the following is a ground (an ***enforcement ground***) on which to issue an environmental enforcement order to a person—

- (a) the person has not complied with a requirement to conduct or commission an environmental evaluation and give or submit a report about the evaluation to the administering authority;

- (b) the person has not complied with a requirement to apply for the issue of a transitional environmental program;
- (c) it is necessary to issue an environmental enforcement order to secure the person's compliance with the general environmental duty;
- (d) it is necessary to issue an environmental enforcement order to secure the person's compliance with the duty to restore the environment;
- (e) it is necessary to issue an environmental enforcement order to secure the person's compliance with—
 - (i) an environmental protection policy; or
 - (ii) a condition of an environmental authority; or
 - (iii) a development condition of a development approval; or
 - (iv) a prescribed condition for carrying out a small scale mining activity; or
 - (v) a condition of a site management plan for relevant land; or
 - (vi) a PRCP schedule; or
 - (vii) an audit notice; or
 - (viii) a surrender notice for an environmental authority; or
 - (ix) a rehabilitation direction; or
 - (x) a regulation; or
 - (xi) an agricultural ERA standard; or
 - (xii) a transitional environmental program;or

- (xiii) a condition of a temporary emissions licence;
- (f) the person is contravening any of the following provisions, or has contravened any of the following provisions in circumstances that make it likely the contravention will continue or be repeated—
 - (i) section 426;
 - (ii) section 440;
 - (iii) section 440Q;
 - (iv) section 440ZG;
 - (v) a provision of chapter 8, part 3E or 3F.

360 Meaning of *contamination incident*

A *contamination incident* is—

- (a) an incident involving contamination of the environment that the administering authority is satisfied has caused or is likely to cause serious or material environmental harm; or
- (b) the carrying out of an activity on contaminated land, the happening of an event on contaminated land, or a change in the condition of contaminated land that the administering authority is satisfied has caused or is likely to cause other land to become contaminated land; or
- (c) a combination of matters mentioned in paragraph (a) or (b).

361 Who is a *prescribed person* for a contamination incident

For this part, each of the following persons is a *prescribed person* for a contamination incident—

- (a) a person causing or permitting, or who caused or permitted, the incident to happen;
- (b) a person who, at the time of the incident, is or was—
 - (i) the occupier of a place at or from which the incident is happening or happened; or
 - (ii) the owner, or person in control, of a contaminant involved in the incident;
- (c) for a contamination incident under section 360(b)—a prescribed responsible person for the land to which the incident relates;
- (d) if an environmental enforcement order is issued to a corporation (the *first corporation*) in relation to the incident and the corporation fails to comply with the order—
 - (i) a parent corporation of the first corporation; and
 - (ii) an executive officer of the first corporation.

Division 1A Environmental enforcement orders

Subdivision 1 General provisions

362 When environmental enforcement order may be issued

- (1) The administering authority may issue an order (an *environmental enforcement order*) to a person if the authority believes an enforcement ground exists for the person.
- (2) Also, the administering authority may issue an environmental enforcement order to a person—
 - (a) whom the authority believes to be a prescribed person for a contamination incident; or
 - (b) in the circumstances stated in division 4.
- (3) To remove any doubt, it is declared that the administering authority may issue an environmental enforcement order to a person in relation to an activity even if the person is the holder of an environmental authority that authorises, or purportedly authorises, the activity.

363 Standard criteria to be considered before issue of environmental enforcement order

- (1) Before deciding to issue an environmental enforcement order, the administering authority must consider the standard criteria.
- (2) However, the administering authority is not required to consider the standard criteria before issuing an environmental enforcement order—
 - (a) on an enforcement ground mentioned in section 359(a), (b) or (f); or
 - (b) under section 362(2)(a).

364 Matters to consider before issuing environmental enforcement order relating to particular emissions

- (1) This section applies to a contravention of section 440 involving an emission of aerosols, fumes, light, noise, odour, particles or smoke.
- (2) Before deciding to issue an environmental enforcement order in relation to the contravention, the administering authority must—
 - (a) consider the general emission criteria stated in subsection (3); and
 - (b) if the emission is of noise, consider the noise emission criteria stated in subsection (4); and
 - (c) having regard to those criteria, consider whether it would be appropriate to issue the order or to first try to resolve the matter in another way.
- (3) The general emission criteria, for a particular emission, are as follows—
 - (a) the emission's characteristics or qualities;
 - (b) the emission's amount or rate;
 - (c) the duration and time of the emission;
 - (d) whether the emission is continuous or fluctuating;
 - (e) the characteristics and qualities of the receiving environment, including the types of emissions that could reasonably be expected in the receiving environment;
 - (f) the emission's impact on the receiving environment;
 - (g) in relation to each affected person for the emission—

- (i) any views of the affected person about the emission of which the administering authority is aware, including views about the degree of interference caused, or likely to be caused, by the emission to lawful activities at the place occupied by the affected person; and
 - (ii) the order of occupancy between the person causing the emission and the affected person; and
 - (iii) for the period during which the person causing the emission has occupied the place from which the emission is generated and the affected person has occupied the place affected by the emission—
 - (A) any structural or other changes to either of those places; and
 - (B) any change to the activities conducted at either of those places by the person causing the emission or the affected person;
 - (h) any mitigating measures that have been taken or could reasonably have been taken by the person causing the emission.
- (4) The noise emission criteria are as follows—
- (a) if the administering authority has measured a sound pressure level for the noise—that level;
 - (b) the audibility of the noise;
 - (c) whether the noise is continuous at a steady level or whether it has a fluctuating, intermittent, tonal or impulsive nature;
 - (d) whether the noise has vibration components.

(5) In this section—

affected person, for an emission, means a person who the administering authority knows to be affected by the emission.

Subdivision 2 Form, content and other matters

365 References to taking action

A reference in this subdivision to taking an action includes achieving an outcome.

Example—

An environmental enforcement order may state, as an action that must be taken, that the recipient must ensure contaminated water does not reach the aquifer.

366 Form and content of environmental enforcement order

- (1) An environmental enforcement order must—
- (a) be in the form of a written notice; and
 - (b) specify the person to whom it is issued; and
 - (c) state details about the relevant matter for the order; and
 - (d) if the order is issued under section 362(2)(a), state—
 - (i) a description of the contamination incident; and
 - (ii) the place at or from which the administering authority believes the incident is happening or has happened; and

- (e) state the actions the recipient must take to remedy or otherwise address the relevant matter for the order; and

Note—

See also section 367.

- (f) for each action stated under paragraph (e)—state the time by which the action must be taken; and

Note—

See also section 368.

- (g) state the review or appeal details; and

- (h) state that it is an offence to fail to comply with the order unless the person has a reasonable excuse; and

- (i) state the name, address and contact details of the administering authority; and

- (j) be served on the recipient.

- (2) The order may include any other information the administering authority considers appropriate.

Example—

The order may state how the administering authority proposes to monitor compliance with the order, including through the exercise of powers under chapter 9.

367 Actions stated under environmental enforcement order

- (1) This section applies in relation to the requirement under section 366(1)(e) for an environmental enforcement order to state the actions the recipient must take under the order.
- (2) Without limiting the actions that may be stated, an environmental enforcement order may—

- (a) require the recipient to not start, or stop, a stated activity indefinitely, for a stated period or until further notice from the administering authority; or
- (b) require the recipient to carry out a stated activity only during stated times or subject to stated conditions; or
- (c) state the reasonable steps the administering authority considers necessary to—
 - (i) remedy or otherwise address the relevant matter, including, for example, requiring a person to clean up, fix or rectify environmental harm; or
 - (ii) avoid contravention or further contravention of a provision of this Act; or
- (d) if the order is issued on an enforcement ground mentioned in section 359(d) in relation to an incident involving contamination or under section 362(2)(a)—require the recipient to take stated action to do all or any of the following—
 - (i) prevent or minimise contamination;
Example—
 - action to contain, remove, disperse or destroy the contaminants
 - (ii) rehabilitate or restore the environment because of the incident, including by taking steps to mitigate or remedy the effects of the incident;
 - (iii) assess the nature and extent of the environmental harm, or the risk of further environmental harm, from the incident, including by inspecting,

sampling, recording, measuring,
calculating, testing or analysing;

- (iv) keep the administering authority informed about the incident or the actions taken under the order, including by giving to the administering authority stated reports, plans, drawings or other documents.

368 Time for taking action must be reasonable

- (1) This section applies in relation to the requirement under section 366(1)(f) for an environmental enforcement order to state a time for taking a stated action.
- (2) The time stated in the environmental enforcement order must be reasonable having regard to—
- (a) the nature of the action that must be taken; and
 - (b) the risk to human health or the environment, or risk of loss or damage to property, posed by the relevant matter; and
 - (c) how long the person has been aware of the relevant matter, for example, because an authorised person has previously made an oral requirement that the relevant matter be remedied or otherwise addressed.

369 Other provisions relating to issuing environmental enforcement orders

- (1) If an environmental enforcement order is issued to 2 or more recipients, a copy must be given to each recipient.
- (2) If, for any reason, it is not practicable to make a requirement of a person to remedy or otherwise address an enforceable matter by issuing an

environmental enforcement order, the requirement may be made orally and confirmed by an environmental enforcement order as soon as practicable.

Note—

Whether an oral requirement is made before issuing an environmental enforcement order may be relevant to the time by which the person may be required to remedy or otherwise address the relevant matter for the order. See section 368(2)(c).

(3) In this section—

enforceable matter means a matter that could form the basis for the issuing of an environmental enforcement order.

Subdivision 3 Offence relating to environmental enforcement orders

369A Offence not to comply with environmental enforcement order

(1) The recipient of an environmental enforcement order must not wilfully contravene a requirement of the order unless the person has a reasonable excuse.

Maximum penalty—

- (a) if the order was issued on a prescribed ground or under section 362(2)(a)—6,250 penalty units or 5 years imprisonment; or
- (b) otherwise—1,655 penalty units.

(2) The recipient of an environmental enforcement order must not contravene a requirement of the order unless the person has a reasonable excuse.

Maximum penalty—

- (a) if the order was issued on a prescribed ground or under section 362(2)(a)—4,500 penalty units; or
 - (b) otherwise—600 penalty units.
- (3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).
- (4) In this section—
- prescribed ground* means—
- (a) an enforcement ground mentioned in section 359(c) or (d) involving serious or material environmental harm; or
 - (b) an enforcement ground mentioned in section 359(e)(ii), (iii), (iv), (v), (vi), (xii) or (xiii) or (f)(i).

369B Defences for particular proceedings

- (1) This section applies in relation to an environmental enforcement order issued under section 362(2)(a).
- (2) In a proceeding for an offence against section 369A(1) or (2), it is a defence for the recipient of the environmental enforcement order to show—
 - (a) that the recipient is not a prescribed person for the contamination incident; or
 - (b) that—
 - (i) the contamination incident was caused by a natural disaster; and
 - (ii) the recipient had taken all measures it would be reasonable for the recipient to have taken to prevent the incident,

having regard to all the circumstances including the inherent nature of the risk and the probability of the natural disaster; or

- (c) that—
 - (i) the contamination incident was caused by a terrorist act or other deliberate act of sabotage by someone other than the recipient; and
 - (ii) the recipient had taken all measures it would be reasonable for the recipient to have taken to prevent the incident, having regard to all the circumstances including the inherent nature of the risk and the nature of the recipient's connection with the incident; or
- (d) if the recipient is a prescribed person mentioned in section 361(d)(i), that the person took all reasonable steps to ensure the first corporation complied with the notice served on the first corporation; or
- (e) if the recipient is a prescribed person mentioned in section 361(d)(ii), that—
 - (i) the person took all reasonable steps to ensure the first corporation complied with the notice served on the first corporation; or
 - (ii) the person was not in a position to influence the conduct of the first corporation in relation to its compliance with the notice served on the first corporation.

(3) In this section—

first corporation see section 361(d).

Subdivision 4 Other provisions

369C Notice of disposal by recipient in particular circumstances

(1) This section applies if the recipient of an environmental enforcement order proposes to dispose of the place or business to which the order relates to someone else (the *buyer*).

(2) Before agreeing to dispose of the place or business, the recipient must give written notice to the buyer of the existence of the order.

Maximum penalty—50 penalty units.

(3) If the recipient does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the recipient before the completion of the agreement or possession under the agreement, whichever is the earlier.

(4) On rescission of the agreement under subsection (3)—

(a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and

(b) the buyer must return to the recipient any documents about the disposal (other than the buyer's copy of the agreement).

(5) Subsections (3) and (4) have effect despite anything to the contrary in the agreement.

(6) Within 10 business days after agreeing to dispose of the place or business, the recipient must give written notice of the disposal to the administering authority.

Maximum penalty for subsection (6)—50 penalty units.

369D Notice of ceasing to carry out activity

- (1) This section applies if—
 - (a) the relevant matter for an environmental enforcement order relates to the carrying out of an activity; and
 - (b) the recipient of the order ceases carrying out the activity.
- (2) Within 10 business days after ceasing to carry out the activity, the recipient must give written notice of the ceasing to carry out the activity to the administering authority.

Maximum penalty—50 penalty units.

369E Procedure if recipient is not the owner of land on which action is required

- (1) This section applies if an environmental enforcement order requires the recipient to take action on land that the recipient does not own.
- (2) The recipient, or person taking the action for the recipient (the *contractor*), may enter the land to take the action only—
 - (a) with the consent of the owner and occupier of the land; or
 - (b) if the recipient or contractor has given at least 2 business days written notice to the owner and occupier.

Note—

See also section 369G.

- (3) The notice under subsection (2)(b) must inform the owner and occupier of—
 - (a) the intention to enter the land; and
 - (b) the purpose of the entry; and

- (c) the days and times when the entry is to be made.
- (4) Nothing in this section authorises the recipient or contractor to enter a building used for residential purposes.

369F Taking action in place of recipient

- (1) This section applies if—
 - (a) the recipient of an environmental enforcement order fails to take an action stated in the order within the time stated in the order; or
 - (b) the operation of the decision to issue an environmental enforcement order is stayed under section 539A or 539B.
- (2) An authorised person, or person acting under the direction of an authorised person (the *contractor*), may take the action stated in the order.
- (3) For subsection (2), the authorised person or contractor may enter land on which the action is required to be taken—
 - (a) with the consent of the owner and occupier of the land; or
 - (b) if the authorised person or contractor has given at least 2 business days written notice to the owner and occupier.

Note—

See also section 369G.

- (4) The notice under subsection (3)(b) must inform the owner and occupier of—
 - (a) the intention to enter the land; and
 - (b) the purpose of the entry; and

- (c) the days and times when the entry is to be made.
- (5) Subsection (3) does not limit another provision of this Act under which an authorised person may enter land.

Note—

See also sections 452 and 458 for other powers to enter a place to take the action.

- (6) Nothing in this section authorises the authorised person or contractor to enter a building used for residential purposes.

369G Provision about taking action on land

- (1) This section applies in relation to—
 - (a) a recipient or contractor who, under section 369E(2), enters land on which action is required to be taken; or
 - (b) an authorised person or contractor who, under section 369F(3), enters land on which action is required to be taken.
- (2) In taking the action, the recipient, authorised person or contractor must take all reasonable steps to ensure the recipient, authorised person or contractor causes as little inconvenience, and does as little damage, as is practicable in the circumstances.
- (3) If a person incurs loss or damage because of action taken by the recipient, authorised person or contractor, the person is entitled to be paid by the recipient, authorised person or contractor reasonable compensation for the loss or damage—
 - (a) as agreed between the recipient, authorised person or contractor and the person; or

- (b) failing agreement under paragraph (a), as decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.
- (4) Subsection (3) does not apply to loss or damage incurred by a company of whom a recipient is a related person.
- (5) The court may make an order about costs it considers just.

369H Cost recovery by recipient of environmental enforcement order in particular circumstances

- (1) This section applies in relation to an environmental enforcement order issued under section 362(2)(a).
- (2) To the extent that the recipient of the environmental enforcement order complies with the order but did not cause or permit the contamination incident to happen, the recipient may recover as a debt, from another person who caused or permitted the contamination incident to happen, the amount of loss or expense incurred by the recipient in complying with the order.

369I Obstruction of recipient complying with environmental enforcement order

- (1) A person must not obstruct the recipient of an environmental enforcement order in the taking of action to comply with the order, unless the person has a reasonable excuse.

Maximum penalty—165 penalty units.

- (2) In this section—
recipient, of an environmental enforcement order, includes a person acting for the recipient of the order.

Division 1B Cost recovery notices

369J Administering authority may issue cost recovery notice

- (1) The administering authority may issue a written notice (a *cost recovery notice*)—
 - (a) to the recipient of an environmental enforcement order if—
 - (i) the recipient fails to comply with the order; and
 - (ii) an authorised person or contractor acts under section 369F in relation to the order; or
 - (b) to the recipient of an environmental enforcement order if—
 - (i) the operation of the decision to issue the order is stayed under section 539A or 539B; and
 - (ii) during the period of the stay, an authorised person or contractor acts under section 369F in relation to the order; and
 - (iii) the appeal ends and—
 - (A) there is no decision under section 530 or 539; or
 - (B) the effect of the decision under section 530 or 539 is to confirm the decision to issue the order to the extent the order required the recipient to take the action that was ultimately taken by the authorised person or contractor under section 369F; or

- (C) the effect of the decision under section 530 or 539 is to issue an environmental enforcement order requiring the recipient to take action for the same purpose as the action that was ultimately taken by the authorised person or contractor under section 369F; or
 - (c) to a person whom the administering authority believes to be a prescribed person for a contamination incident, if an authorised person, or person authorised under section 467(1)(b), acts under section 467 in relation to environmental harm caused or likely to be caused by the incident.
- (2) A cost recovery notice may claim an amount for costs or expenses reasonably incurred in—
- (a) for a notice issued under subsection (1)(a) or (b)—
 - (i) taking an action stated in the environmental enforcement order; or
 - (ii) monitoring compliance by the recipient with the environmental enforcement order; or
 - (b) for a notice issued under subsection (1)(c)—taking the action under section 467.
- (3) A cost recovery notice must state the following matters—
- (a) the name of the recipient of the notice;
 - (b) the reasons why the administering authority is issuing the notice;
 - (c) if the notice relates to a contamination incident—the place at or from which the

- administering authority is satisfied the incident happened;
- (d) the amount claimed;
 - (e) a description of costs and expenses giving rise to the amount claimed;
 - (f) that, if the recipient does not pay the amount claimed to the administering authority within 30 days after the day the notice is issued, the administering authority may recover the amount from the recipient as a debt;
 - (g) the name, address and contact details of the administering authority;
 - (h) the review or appeal details.
- (4) Subject to section 369K, if the recipient of the cost recovery notice does not pay the amount to the administering authority within 30 days after the day the notice is issued, the administering authority may recover the amount from the recipient as a debt.
- (5) A reference in this section to an authorised person includes a person acting under the direction of an authorised person.
- (6) In this section—
costs and expenses includes labour, equipment and administrative costs and expenses.

369K When amount claimed under cost recovery notice is not payable

- (1) This section applies if a cost recovery notice is issued to the recipient of an environmental enforcement order that was issued under section 362(2)(a).
- (2) The amount claimed under the cost recovery

notice is not payable—

- (a) if the recipient is not a prescribed person for the contamination incident; or
- (b) if both of the following apply—
 - (i) the contamination incident was caused by a natural disaster;
 - (ii) the recipient had taken all measures it would be reasonable for the recipient to have taken to prevent the incident, having regard to all the circumstances including the inherent nature of the risk and the probability of the natural disaster; or
- (c) if both of the following apply—
 - (i) the contamination incident was caused by a terrorist act or other deliberate act of sabotage by someone other than the recipient;
 - (ii) the recipient had taken all measures it would be reasonable for the recipient to have taken to prevent the incident, having regard to all the circumstances including the inherent nature of the risk and the nature of the recipient's connection with the incident; or
- (d) for a recipient who is a prescribed person mentioned in section 361(d)(i), if the recipient took all reasonable steps to ensure the first corporation paid the amount claimed under the notice served on the first corporation; or
- (e) for a recipient who is a prescribed person mentioned in section 361(d)(ii), if—
 - (i) the recipient took all reasonable steps to ensure the first corporation paid the

amount claimed under the notice served on the first corporation; or

- (ii) the recipient was not in a position to influence the conduct of the first corporation in relation to its paying the amount claimed under the notice served on the first corporation.
- (3) To the extent that the recipient pays an amount in compliance with the cost recovery notice but did not cause or permit the contamination incident to happen, the recipient may recover the amount as a debt from another person who caused or permitted the contamination incident to happen.
- (4) In this section—
first corporation see section 361(d).

369L Several recipients of a cost recovery notice

If a cost recovery notice is issued to 2 or more recipients—

- (a) a copy of the notice must be given to each recipient; and
- (b) the amount claimed under the notice is payable by the recipients jointly and severally.

29 Renumbering of ch 7, pt 5, divs 1A–2

Chapter 7, part 5, divisions 1A to 2—

renumber as chapter 7, part 5, divisions 2 to 4.

30 Amendment and renumbering of s 363AA (Definitions for division)

- (1) Section 363AA, definition *related person*—
omit.

- (2) Section 363AA—
renumber as section 369M.

31 Renumbering of s 363AB (Who is a *related person* of a company)

- Section 363AB—
renumber as section 369N.

32 Amendment and renumbering of s 363ABA (Decision whether to issue an order)

- (1) Section 363ABA, from ‘environmental’ to ‘363AD’—
omit, insert—
environmental enforcement order to a related person of a company under section 369P or 369Q
- (2) Section 363ABA—
renumber as section 369O.

33 Amendment and renumbering of s 363AC (Order may be issued to related person)

- (1) Section 363AC(1)—
omit, insert—
- (1) When issuing an environmental enforcement order to a company under division 2, or if an environmental enforcement order issued to a company under division 2 is in force, the administering authority may also issue an environmental enforcement order under division 2 to a related person of the company.
- (2) Section 363AC—
insert—
- (1A) However, subsection (1) does not apply if the

environmental enforcement order is issued to the company under section 362(2)(a).

- (3) Section 363AC(1A) and (2)—
renumber as section 363AC(2) and (3).
- (4) Section 363AC—
renumber as section 369P.

34 Amendment and renumbering of s 363AD (Order may be issued to related person of high risk company)

- (1) Section 363AD(1)—
omit, insert—
 - (1) The administering authority may issue an environmental enforcement order under division 2 to a related person of a high risk company, whether or not an environmental enforcement order is being issued, or has been issued, to the high risk company.
- (2) Section 363AD(2), ‘division 1’—
omit, insert—
division 2
- (3) Section 363AD—
renumber as section 369Q.

35 Amendment and renumbering of s 363AE (Order may provide for joint and several liability)

- (1) Section 363AE, ‘protection order’—
omit, insert—
enforcement order
- (2) Section 363AE—
renumber as section 369R.

36 Omission of ss 363AF–363AJ

Sections 363AF to 363AJ—

omit.

37 Omission of ch 7, pts 5A–5C

Chapter 7, parts 5A to 5C—

omit.

38 Insertion of new s 440A

After section 440—

insert—

440A Court may find defendant guilty of causing environmental nuisance if charged with causing serious or material environmental harm

In a proceeding for an offence against section 437 or 438, if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against section 440(1) or (2), the court may find the defendant guilty of the offence against section 440(1) or (2).

39 Amendment of s 458 (Order to enter land to conduct investigation or conduct work)

(1) Section 458(1)(b)—

omit, insert—

(b) if the land is land to which an environmental enforcement order issued under section 362(2)(a) applies and the recipient of the order has failed to comply with the order—to take the action required under the order; or

(2) Section 458(2)(d)—

omit, insert—

- (d) if the application is for an order to take the action required under an environmental enforcement order issued under section 362(2)(a)—the recipient of the order.

(3) Section 458(5)(b)—

omit, insert—

- (b) for an order to take the action required under an environmental enforcement order issued under section 362(2)(a), the entry sought is reasonable and necessary to take the action;
or

(4) Section 458(6)(a), ‘actions’—

omit, insert—

action

(5) Section 458(8), definition *land*, ‘a clean-up notice’—

omit, insert—

an environmental enforcement order issued under section 362(2)(a)

40 Amendment of s 478 (Failure to comply with authorised person’s direction in emergency)

Section 478(b), ‘all reasonable and practicable precautions’—

omit, insert—

all precautions, so far as they are reasonably practicable,

41 Amendment of s 490 (Evidentiary provisions)

(1) Section 490(6)(a), ‘the prosecutor produces a certificate’—

omit, insert—

a certificate is produced

(2) Section 490(8), from ‘The’ to ‘a certificate’—

omit, insert—

A certificate

42 Amendment of s 491 (Special evidentiary provision—particular emissions)

Section 491(1), ‘proceeding for’—

omit, insert—

proceeding, whether criminal or civil, relating to

43 Amendment of s 491A (Further special evidentiary provisions for noise)

Section 491A(1), ‘proceeding for’—

omit, insert—

proceeding, whether criminal or civil, relating to

44 Amendment of s 516 (Delegation by chief executive)

Section 516(2), from ‘power to’—

omit, insert—

following powers—

- (a) the power to ask the rehabilitation commissioner to provide guidance under section 444I(c);
- (b) a power under a regulation prescribed by regulation as a power that cannot be delegated.

45 Amendment of s 539D (Stay of particular decisions if unacceptable risk of environmental harm)

Section 539D(1)(c)—

omit, insert—

- (c) to issue an environmental enforcement order under section 362, other than an environmental enforcement order to which section 539E applies.

46 Amendment of s 539E (Stay of decision to issue a clean-up notice)

- (1) Section 539E, heading, ‘a clean-up notice’—

omit, insert—

an environmental enforcement order in particular circumstances

- (2) Section 539E(1), ‘a clean-up notice’—

omit, insert—

an environmental enforcement order under section 362(2)(a)

47 Amendment of s 548A (Guidelines about issuing particular environmental protection orders)

- (1) Section 548A, heading, ‘protection orders’—

omit, insert—

enforcement orders

- (2) Section 548A(1)(a), ‘section 363AB’—

omit, insert—

section 369N

- (3) Section 548A(1)(b), ‘section 363AC or 363AD’—

omit, insert—

section 369P or 369Q

- (4) Section 548A(1)(b)(i), ‘protection orders’—
omit, insert—
enforcement orders

48 Amendment of s 551 (Codes of practice)

Section 551(2), from ‘the Minister’—

omit, insert—

the Minister—

- (a) must have regard to the matters mentioned in section 319(4); and
(b) need not but may have regard to the matters mentioned in section 319(5).

49 Amendment of s 579D (Confidentiality of information—generally)

- (1) Section 579D—

insert—

- (2A) The person must not disclose the information to anyone else, or use the information, other than under this section.

Maximum penalty—100 penalty units.

- (2) Section 579D(3)—

omit, insert—

- (3) The person may disclose or use the confidential information—
(a) to the extent the disclosure or use is—
(i) necessary for the administration of this Act or to perform the person’s

- functions or exercise the person's powers under this Act; or
 - (ii) otherwise required or permitted under this Act or another law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal.
- (3) Section 579D(2A) to (4)—
renumber as section 579D(3) to (5).

50 Insertion of new ch 12, pt 4D

Chapter 12—

insert—

Part 4D Exchange of information

579E Exchange of information with relevant entity

- (1) The chief executive may enter into an arrangement (an *information-sharing arrangement*) with a relevant entity for the purposes of sharing or exchanging information—
- (a) held by the chief executive or the relevant entity; or
 - (b) to which the chief executive or the relevant entity has access.
- (2) An information-sharing arrangement may relate only to information that helps—
- (a) the chief executive or an authorised person in the administration of, or the performance

- of functions or exercise of powers under, this Act; or
- (b) the relevant entity, or a person employed or engaged by the entity, in the administration of, or the performance of functions or exercise of powers under, a law of the State, another State or the Commonwealth.
- (3) Under an information-sharing arrangement, the chief executive and the relevant entity are, despite another Act or law, authorised to—
- (a) ask for and receive information held by the other party to the arrangement or to which the other party has access; and
- (b) disclose information to the other party.
- (4) However, the information may be used by the chief executive or the relevant entity only for the purpose for which it was given under the arrangement.
- (5) In this section—
- relevant entity* means—
- (a) the chief executive of a department; or
- (b) a local government; or
- (c) an entity of, or representing, the Commonwealth or another State.

51 Insertion of new ch 13, pt 32

Chapter 13—

insert—

Part 32 Transitional provisions for Environmental Protection (Powers and Penalties) and Other Legislation Amendment Act 2024

809 Definitions for part

In this part—

amending Act means the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Act 2024*.

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

unamended Act means this Act as in force from time to time before the commencement.

810 Unamended Act continues to apply in relation to particular instruments

- (1) The unamended Act continues to apply in relation to any of the following (each a *relevant instrument*) issued under the unamended Act before the commencement, as if the amending Act had not been enacted—
 - (a) an environmental protection order;
 - (b) a direction notice;
 - (c) a clean-up notice;
 - (d) a cost recovery notice.
- (2) For subsection (1)—

- (a) a review or appeal may be continued or started in relation to the relevant instrument under the unamended Act as if the amending Act had not been enacted; and
 - (b) any stay of a decision relating to the relevant instrument continues in effect under the unamended Act as if the amending Act had not been enacted.
- (3) Also—
- (a) a cost recovery notice may be issued in relation to a relevant instrument mentioned in subsection (1)(a) or (c) under the unamended Act as if the amending Act had not been enacted; and
 - (b) the unamended Act applies in relation to the cost recovery notice as if the amending Act had not been enacted.

811 Proceedings for particular offences relating to particular instruments

- (1) This section applies in relation to an offence committed by a person—
 - (a) before the commencement, against a relevant offence provision; or
 - (b) after the commencement, against a relevant offence provision as continued under section 810.
- (2) A proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the amending Act had not been enacted.
- (3) Subsection (2)—
 - (a) does not limit the *Acts Interpretation Act 1954*, section 20; and

- (b) applies despite the Criminal Code, section 11.
- (4) In this section—
 - relevant offence provision* means any of the following provisions of the unamended Act—
 - (a) section 361;
 - (b) section 362;
 - (c) section 363;
 - (d) section 363E;
 - (e) section 363I;
 - (f) section 363L.

812 Registers of particular documents to be kept

- (1) The administering authority must continue to keep a register of the following instruments issued under the unamended Act before the commencement—
 - (a) environmental protection orders;
 - (b) direction notices;
 - (c) clean-up notices.
- (2) A reference in this Act to a register kept under section 540 is taken to include a reference to a register kept under subsection (1).

813 References to environmental protection orders, direction notices and clean-up notices

A reference in an instrument to any of the following may, if the context permits, be taken to be a reference to an environmental enforcement order—

- (a) an environmental protection order;

- (b) a direction notice;
- (c) a clean-up notice.

814 Environmental enforcement order may be issued in relation to particular conduct

- (1) The administering authority may issue an environmental enforcement order for conduct engaged in before the commencement.
- (2) Subsection (1)—
 - (a) applies even if the administering authority was aware of the conduct, or had started considering taking action under the unamended Act in relation to the conduct, before the commencement; but
 - (b) does not apply in relation to conduct for which an order or notice mentioned in section 810(1) was issued before the commencement.

815 Application of s 319C

Section 319C applies only in relation to an incident involving contamination of the environment that happens after the commencement.

816 Application of s 440A to proceedings for offences

Section 440A applies only in relation to a proceeding for an offence that is started after the commencement.

817 Continuation of particular guideline

- (1) This section applies in relation to the guideline called ‘Issuing ‘chain of responsibility’

environmental protection orders under chapter 7, part 5, division 2 of the *Environmental Protection Act 1994* approved under section 548A(2) before the commencement.

- (2) The guideline continues in effect under this Act—
 - (a) for an environmental protection order issued before the commencement, for the purposes of section 810; and
 - (b) for an environmental enforcement order, as provided under subsection (3), until a new guideline for environmental enforcement orders is approved under section 548A(2).
- (3) For applying the guideline for an environmental enforcement order—
 - (a) the guideline is taken to have been approved under section 548A(2) for environmental enforcement orders; and
 - (b) a reference in the guideline to an environmental protection order is taken to be a reference to an environmental enforcement order; and
 - (c) a reference in the guideline to a provision of former chapter 7, part 5, division 2 is taken to be a reference to the corresponding provision of chapter 7, part 5, division 2, 3 or 4.

- (4) In this section—

corresponding provision, for a provision of former chapter 7, part 5, division 2, means the provision of chapter 7, part 5, division 2, 3 or 4 dealing with the same subject matter as the provision of former chapter 7, part 5, division 2.

52 Amendment of sch 2 (Original decisions)

- (1) Schedule 2, part 1, division 5, entries for sections 363AB, 363AC or 363AD, 363AI and 363AI(3)—

omit.

- (2) Schedule 2, part 1, division 5—

insert—

369J decision to issue a cost recovery notice relating to a resource activity EEO

369J(2) decision about an amount of costs or expenses claimed under a cost recovery notice relating to a resource activity EEO

369N decision that a person is a related person of a company, in relation to the issuing of a resource activity EEO to the person

369P or 369Q decision to issue a resource activity EEO

- (3) Schedule 2, part 2, division 4, entries for sections 358, 363AB, 363AC or 363AD, 363AI, 363AI(3), 363B, 363H, 363N, and 363N(2)—

omit.

- (4) Schedule 2, part 2, division 4—

insert—

344AG amendment decision for a transitional environmental program

362 issue of environmental enforcement order

369J decision to issue a cost recovery notice relating to an environmental enforcement order other than a resource activity EEO

- 369J(2) decision about an amount of costs or expenses claimed under a cost recovery notice relating to an environmental enforcement order other than a resource activity EEO
- 369N decision that a person is a related person of a company, in relation to the issuing of an environmental enforcement order other than a resource activity EEO to the person
- 369P or 369Q decision to issue an environmental enforcement order other than a resource activity EEO
- (5) Schedule 2, part 2, division 6, entry for section 451(1), ‘section 363AB’—
omit, insert—
section 369N

53 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definitions *amendment decision, clean-up notice, contravention, direction notice, environmental protection order, place, prescribed person, prescribed provision, proposed amendment, proposed amendment notice* and *resource activity EPO*—
omit.
- (2) Schedule 4—
insert—
amendment decision—
(a) for chapter 5, part 6—see section 219(2); or
(b) for chapter 7, part 3, division 3, subdivision 3—see section 344AG(2).
duty to restore the environment see section 319C.
enforcement ground, for an environmental enforcement order, for chapter 7, part 5, see section 359.

environmental enforcement order see section 362.

place, in relation to a contamination incident, see section 358.

prescribed person, for a contamination incident, see section 361.

proposed amendment—

- (a) for an environmental authority or PRCP schedule, for chapter 5, part 6—see section 217(1)(a); or
- (b) for a transitional environmental program, for chapter 7, part 3, division 3, subdivision 3—see section 344AE(1)(a).

proposed amendment notice—

- (a) for chapter 5, part 6—see section 217(1); or
- (b) for chapter 7, part 3, division 3, subdivision 3—see section 344AE(1).

relevant matter for chapter 7, part 5, see section 358.

resource activity EEO means an environmental enforcement order that imposes a requirement related to the carrying out of a resource activity.

- (3) Schedule 4, definition *environmental offence*, paragraph (a), after second dot point—

insert—

- section 319(2)
- section 319C(3)

- (4) Schedule 4, definition *environmental offence*, paragraph (a), fifth dot point—

omit, insert—

- section 357I

- section 369A

Part 3 **Amendment of Environmental Protection Regulation 2019**

54 **Regulation amended**

This part amends the *Environmental Protection Regulation 2019*.

Note—

See also the amendments in schedule 1.

55 **Amendment of s 130 (Environmental nuisance)**

Section 130—

insert—

- (2) Subsection (1) applies in relation to an activity being carried on by a person unless the chief executive gives the local government a written notice stating the activity involves serious or material environmental harm.
- (3) For section 516(2)(b) of the Act, the chief executive may not delegate the power to give a written notice under subsection (2).

56 **Amendment of s 137 (Issuing particular notices and orders)**

Section 137(2), definition *relevant provision—*

omit, insert—

relevant provision means—

- (a) section 362(2)(a) of the Act; or
- (b) chapter 7, part 5, division 3 of the Act; or

(c) chapter 7, part 5, division 4 of the Act.

57 Omission of s 187 (Approval of guidelines about issuing particular environmental protection orders—Act, s 548A)

Section 187—

omit.

58 Amendment of sch 8 (Environmental objective assessment)

Schedule 8, part 2, section 3, ‘reasonable and practical’—

omit, insert—

reasonably practicable

Part 4 Amendment of State Penalties Enforcement Regulation 2014

59 Regulation amended

This part amends the *State Penalties Enforcement Regulation 2014*.

60 Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

(1) Schedule 1, entry for *Environmental Protection Act 1994*, entries for sections 361(2), 362(2), 362(6), 363, 363E and 363I(1)—

omit.

(2) Schedule 1, entry for *Environmental Protection Act 1994*—

insert—

s 369A(2)	in the circumstances in paragraph (a) of the penalty	20	100
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s 369A(2)	in the circumstances in paragraph (b) of the penalty	15	75
s 369C(2)		3	10
s 369C(6)		3	10
s 369D(2)		3	10

Part 5 **Other amendments**

61 **Legislation amended**

Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

section 61

Environmental Protection Act 1994

1 Particular references to reasonably—

Each of the following provisions is amended by omitting ‘reasonably’—

- section 48(1)
- section 126C(1)(j)
- section 161(5)
- section 286(d)
- section 298(2)(d)
- section 299(1)
- section 309(3)(b)
- section 312(2)(d)
- section 318YM(1)
- section 318YV(1)
- section 322(2)
- section 322A(2)
- section 326(2)
- section 344(3)
- section 391(1)
- section 452(3)(b)
- section 454(4)(a)
- section 455(2)

- section 460(1)(f) and (g)
- section 507(4)
- schedule 4, definition *prescribed responsible person*, paragraph 2(a).

2 Sections 215(2)(j), 226A(1)(h) and 493A(2)(c), ‘protection order’—

omit, insert—

enforcement order issued under section 362(1)

3 Section 323(1)(b)(i)—

omit.

4 Section 323(1)(b)(ii) to (iv)—

renumber as section 323(1)(b)(i) to (iii).

5 Sections 326H(1)(c) and 520(1)(k) and schedule 4, definitions *recipient*, paragraph (b) and *standard criteria*, paragraph (g)(iii), ‘protection order’—

omit, insert—

enforcement order

6 Section 332(2)(e), ‘protection order issued to the person or public authority’—

omit, insert—

enforcement order issued to the person or public authority under section 362(1)

7 Sections 388(1)(b) and 408(1)(b)(iii), ‘a clean-up notice’—

omit, insert—

an environmental enforcement order issued under

section 362(2)

8 Section 452(1)(a) and (k), ‘chapter 7, part 5B’—

omit, insert—

chapter 7, part 5

9 Section 520(1)(n), ‘direction notice, clean-up notice or’—

omit.

10 Section 521(14), ‘a clean-up notice’—

omit, insert—

an environmental enforcement order under
section 362(2)(a)

11 Section 540(1)(f) to (h)—

omit, insert—

(f) environmental enforcement orders;

12 Schedule 4, definitions *associated entity, financial interest, high risk company, interest and relevant activity*, paragraph (d), ‘division 2, see section 363AA’—

omit, insert—

division 4, see section 369M

13 Schedule 4, definition *contamination incident*, ‘section 363F’—

omit, insert—

section 360

2 Section 148, from ‘protection orders’ to ‘protection order’—

omit, insert—

enforcement orders the following documents or information for each environmental enforcement order

3 Section 148(b), before ‘the activity’—

insert—

if applicable,

4 Section 148(e)—

omit, insert—

(e) the relevant matter, within the meaning given by section 358 of the Act, for the order;

5 Section 165(4), definition *compliance action event*, paragraph (b), ‘protection order’—

omit, insert—

enforcement order

6 Section 165(4), definition *compliance action event*, paragraph (e)—

omit.

7 Section 165(4), definition *compliance action event*, paragraph (f), ‘section 363E, 363I or 363L of the Act,’—

omit, insert—

section 369I of the Act

8 Section 165(4), definition *compliance action event*, paragraph (g), ‘paragraph (f)’—

omit, insert—

paragraph (e)

9 Section 165(4), definition *compliance action event*, paragraphs (f) and (g)—

renumber as section 165(4), definition *compliance action event*, paragraphs (e) and (f).

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