

29 July 2014

The Research Director  
Agriculture, Resources and Environment Committee  
Parliament House  
BRISBANE QLD 4000

**BY EMAIL:** [AREC@parliament.qld.gov.au](mailto:AREC@parliament.qld.gov.au)

Dear Sir/Madam

### **Environment Protection and Other Legislation Amendment Bill 2014**

The Australian Petroleum Production and Exploration Association (**APPEA**) is pleased to provide a submission on the Environment Protection and Other Legislation Amendments Bill 2014 (**EPOLA Bill/the Bill**) to the Agriculture, Resources and Energy Committee (**the Committee**). This submission focusses on the aspects of the EPOLA Bill that are most significant for our members.

APPEA supports the following provisions within the Bill:

1. Amendments to allow standard applications to be applied to projects that were approved under the Coordinator General *State Development and Public Works Organisational Act 1971* (**SDPWO Act**), Clause 110 of the Bill.
2. Amendments that extend the above to exemptions for notifications for projects approved under the SDPWO Act, Clauses 116 and 117 of the Bill.
3. Amendments combining eligibility criteria and standard conditions into Environmentally Relevant Authority (**ERA**) Standards, Clause 61 of the Bill.

Taken together the above reforms have the potential to significantly reduce administrative burden for government and industry.

Our key concern with the Bill relates to the removal of the entire Chapter 8 of the *Waste Reduction and Recycling Act 2011* (Qld) (**WRR Act**), Clause 167 of the Bill. These amendments remove the current Beneficial Use Approval (**BUA**) framework and replace it with 'end of waste codes' and 'end of waste approvals'.

Beneficial Use Approvals are currently used by the petroleum industry to enable Coal Seam Gas (**CSG**) producers to provide produced water from their activities to third parties such as farmers, cattle properties or township drinking supplies. This process is mandated through the Queensland Government's CSG water management policy which places beneficial use as a priority for managing and using produced water from CSG operations.

In this regard APPEA is concerned with the following provisions in the Bill:

- **Users of CSG water that complies with a code must register and pay a fee:** As end of waste codes may be used by 'registered code users' the Bill will require all users of CSG water to first register with government by filling in the appropriate application and paying the



requisite fee. APPEA was a party to the development of the BUA framework when it was developed and it was acknowledged by all stakeholders in that process that requiring users of CSG water to comply with bureaucratic regulation would reduce the appetite for the water and therefore be inconsistent with government's objectives.

Correspondence to APPEA from DEHP since the Bill's drafting indicated it is not government's intent to require users to register. The provision may therefore be in error.

- **Suppliers of CSG water that complies with a code must register and pay a fee even if no assessment is required by government:** The Bill establishes a new framework with standard end of waste codes. APPEA contends that if a proponent is simply complying with a standard code then there is little justification for an application fee. Further, we note that given all petroleum companies produce water it would be more efficient to carry out the registration as part of the granting of an Environmental Authority.
- **Suppliers of CSG water would be required to police user compliance:** Under the new framework it would be an offence to not comply with the conditions of an end of waste approval, and the holder of an approval must ensure that everyone acting under the approval complies with the conditions of the approval. Given that once water is supplied to a user it is no longer a waste under the framework, how the water is used should be the responsibility of the user not the producer.

Should it proceed this aspect of the Bill would introduce a significant disincentive to the supply of CSG water to other users such as irrigators.

To assist the committee APPEA has prepared a table (see **Annexure 1**) comparing the operation of the current BUA provisions against the proposed end of waste codes highlighting positive and negative impacts for the petroleum industry.

APPEA is awaiting legal advice on the implications of clauses 18 - 20 and the associated proposal to change the definition of "environmentally relevant activity" in Schedule 4 as well as the implications of clause 37 and may provide a further submission on these before close of business on 3rd October.

APPEA supports the progression of the Bill subject to the comments above. If you would like to discuss any of the matters raised in this letter please contact Mr Nathan Lemire at [nlemire@appea.com.au](mailto:nlemire@appea.com.au) or 07 3231 0509.

Yours sincerely

**Matthew Paull**

Policy Director – Queensland

Australian Petroleum Production & Exploration Association Limited (APPEA)

**ANNEXUE 1: Beneficial Use Approval/End of Waste EPOLA Bill comparison table**

Item	Topic	Beneficial use approval provisions <sup>1</sup>	Proposed end of waste provisions <sup>2</sup>	Comment
<b>General BUA / End of waste code (EOWC)</b>				
1.	Procedure for approval/code making	<p>The process for making a general BUA is as follows:</p> <ol style="list-style-type: none"> <li>1. Chief executive publishes notice of proposed general BUA.</li> <li>2. Submission period of at least 28 days.</li> <li>3. Chief executive decides whether to make general BUA.</li> <li>4. Chief executive publishes general BUA in gazette notice – general BUA take effect on date of gazette notice or later date as stated in notice. (165)</li> </ol>	<p>The process for making an EOWC is as follows:</p> <ol style="list-style-type: none"> <li>1. Chief executive publishes notice inviting submissions on potential EOWC.</li> <li>2. Submission period of at least 28 days.</li> <li>5. Chief executive decides whether to proceed with EOWC (whether following submissions from public (steps 1 and 2) or at own initiative).</li> <li>3. Chief executive establishes technical panel to draft EOWC (unless chief executive is satisfied that panel is unnecessary).</li> <li>4. Technical panel drafts EOWC and gives to chief executive within 6 months.</li> <li>5. Chief executive considers draft EOWC, may ask technical panel to</li> </ol>	<p>Negative change:</p> <ul style="list-style-type: none"> <li>• The proposed process for making EOWC, as compared to the process for general BUAs, is more complicated and potentially less efficient.</li> </ul> <p>Positive change:</p> <ul style="list-style-type: none"> <li>• The proposed process for making EOWC does provide more formal recognition of industry's ability to participate in the approval-making process (through ability to make submissions on potential EOWC, and through participation in technical panel process – noting that these processes are only opened up at the chief executive's discretion).</li> </ul>

<sup>1</sup> The number in brackets after the summary of each relevant provision is a reference to the relevant section of the WRR Act as it currently stands (pre-EPOLA Bill amendments).

<sup>2</sup> The number in brackets after the summary of each relevant provision is a reference to the relevant section of the WRR Act, as proposed to be inserted by the EPOLA Bill.

**ANNEXUE 1: Beneficial Use Approval/End of Waste EPOLA Bill comparison table**

Item	Topic	Beneficial use approval provisions <sup>1</sup>	Proposed end of waste provisions <sup>2</sup>	Comment
			<p>amend draft EOWC, may refuse EOWC as drafted, or may amend draft EOWC itself.</p> <p>6. Chief executive publishes notice of proposed EOWC.</p> <p>7. Submission period of at least 28 days.</p> <p>8. Chief executive decides whether to make EOWC.</p> <p>9. Chief executive publishes EOWC in gazette notice – EOWC takes effect on date of gazette notice or later date as stated in notice or EOWC itself. (160-166)</p>	
2.	Criteria for decision on whether to make approval/code	<p>The criteria the chief executive must consider when considering whether to make a general BUA are prescriptive, including:</p> <ul style="list-style-type: none"> <li>the best practice environmental management for use of the resource; and</li> <li>the likelihood of serious or material environmental harm or environmental nuisance occurring. (164)</li> </ul>	<p>The criteria the chief executive must consider when considering whether to make an EOWC are less prescriptive. The reference to best practice environmental management is removed.</p> <p>Note that other matters may be prescribed by regulation. (163)</p>	<p>Positive change:</p> <ul style="list-style-type: none"> <li>The proposed criteria for decisions on whether to make an EOWC application are less prescriptive than those currently required for making general specific BUAs – although it remains to be seen what further criteria are prescribed by regulation.</li> </ul>

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Item	Topic	Beneficial use approval provisions <sup>1</sup>	Proposed end of waste provisions <sup>2</sup>	Comment
3.	Amendment/ cancellation/ suspension	<p>Amendment of a general BUA may only occur at the chief executive's initiative.</p> <p><u>Clerical/formal amendment</u></p> <p>Chief executive may amend a general BUA by publishing details of the amendment in a gazette notice, if the amendment corrects a clerical/formal error <u>and</u> does not adversely affect the interests of any person who has benefit of the general BUA. (170(2))</p> <p><u>Other amendments/ cancellation/ suspension</u></p> <p>Chief executive may otherwise amend, or cancel/suspend a general BUA by:</p> <ol style="list-style-type: none"> <li>1. Chief executive publishes notice of proposed action.</li> <li>2. Submission period of at least 28 days – any 'relevant person' (person acting under BUA) may make submission.</li> <li>3. Chief executive decides whether to take action.</li> <li>4. Chief executive publishes decision in gazette notice within 10 business days of making decision – decision</li> </ol>	<p>Amendment of an EOWC may occur at the chief executive's initiative or by application by a person.</p> <p><u>'Minor' amendment</u></p> <p>Chief executive may amend an EOWC by publishing details of the amendment on a website, if the amendment corrects a minor/formal error <u>or</u> makes another change that is not a change of substance and does not adversely affect the interests of a registered code user or a person who is likely to receive a resource from the registered code user. (173A)</p> <p><u>Other amendments/ cancellation/ suspension</u></p> <p>Chief executive may otherwise amend, or cancel/suspend an EOWC by:</p> <ol style="list-style-type: none"> <li>1. Chief executive gives notice of proposed action to each registered code user and publishes notice of proposed action.</li> <li>2. Submission period of at least 28 days – any registered code user or other person may make submission.</li> </ol>	<p>Negative change:</p> <ul style="list-style-type: none"> <li>• The requirement (for clerical/formal/minor amendments) that the amendment does not 'adversely affect the interests of a person acting under the approval' is removed (because of the change of terminology to 'or' rather than 'and').</li> </ul> <p>Positive change:</p> <ul style="list-style-type: none"> <li>• There is a new ability for persons to make an application to amend an EOWC (general BUAs are only been able to be amended at the chief executive's initiative).</li> </ul>

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		takes effect on date of gazette notice or later date as stated in notice. (172)	<ol style="list-style-type: none"> <li>3. Chief executive decides whether to take action.</li> <li>4. Chief executive gives notice of decision to registered code users – decision takes effect when notice is given or later day stated in notice. (172)</li> </ol>	
4.	Grounds for cancellation/suspension	<p>The chief executive may cancel or suspend a general BUA on the following grounds:</p> <ol style="list-style-type: none"> <li>1. The approval was granted because of a materially false or misleading representation or declaration.</li> <li>2. The approval was granted on the basis of certain matters or information that have changed and the change is likely to result in material environmental harm, serious environmental harm or environmental nuisance.</li> <li>3. A condition imposed on the approval has not been complied with.</li> <li>4. The chief executive considers it desirable to do so having regard to</li> </ol>	<p>The chief executive may cancel or suspend an EOWC on the following grounds:</p> <ol style="list-style-type: none"> <li>1. There is no longer a use for a particular resource under the code.</li> <li>2. The use of a resource under the code has caused, or is likely to cause, serious environmental harm or material environmental harm.</li> <li>3. The use of particular waste or a particular resource is unlawful.</li> <li>4. The chief executive considers it necessary or desirable to do so having regard to the objects of the Act. (171)</li> </ol>	<p>Negative change:</p> <ul style="list-style-type: none"> <li>• The proposal that an EOWC may be cancelled or suspended if the use of the resource under the EOWC has caused, or is likely to cause, serious environmental harm or material environmental harm is concerning. Material environmental harm, as defined under the EP Act, is environmental harm causing \$5000 damage or more. Inappropriate 'use' of a resource by a single user (eg a landholder taking associated water) therefore has the potential to put at risk all other registered code users for that EOWC.</li> </ul>

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Item	Topic	Beneficial use approval provisions <sup>1</sup>	Proposed end of waste provisions <sup>2</sup>	Comment
		the objects of the Act. (171)		
5.	Offence provision	<p>A condition of a general BUA may be expressed to apply to anyone who has the benefit of the BUA, including the producer, receiver, re-user, recycler or energy recoverer of the resource to which the BUA relates. (166(3) &amp;166(4))</p> <p>Failure to comply with a condition of a general BUA attracts a maximum penalty of 1665 penalty units. (167)</p>	<p>A registered code user for an EOWC who sells, gives away or uses the resource for the EOWC in non-compliance with the EOWC is liable to a maximum penalty of 1665 penalty units. (158)</p>	<p>We question the duplication of regulating and enforcement action in this regard considering the requirements of the use of the resources should be considered in the development of the code. Any subsequent use of the resource which is no longer a waste should be the responsibility of that user for its purpose as a resource.</p>
6.	Requirement to register	<p>There is no requirement to register to use or act under general BUA.</p>	<p>There is a requirement to become a 'registered code user' to sell, give away or use a resource under an EOWC. (157)</p> <p>To become a registered code user a person must submit a notice in the approved form to the chief executive, together with a fee (to be prescribed by regulation). (173B)</p>	<p>Negative change:</p> <ul style="list-style-type: none"> <li>• There is currently no requirement to 'register' to operate under a general BUA. The proposed new requirement to become 'registered code user' in order to operate under an EOWC will increase costs and administrative burden for industry. The cost and administrative burden associated with registration and complying with the code may also dissuade potential users of a resource under an EOWC (e.g. a landholder taking associated water) from using the end of waste processes. APPEA understands this</li> </ul>

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				<p>is a drafting error and it was never intended that users should register to enable the offtake of the resource. APPEA insists however the supplier should also be exempt on the basis of having an eligible EA in place.</p>
<b>Specific beneficial use approval (specific BUA) / End of waste approval (EOWA)</b>				
7.	Application – information required	The information required to be submitted to obtain a specific BUA is prescribed in detail. (157)	<p>The information required to be submitted to obtain an EOWA is to be prescribed in regulation.</p> <p>An application for an EOWA must be accompanied by a report prepared by a suitably qualified person (173I)</p>	<p>Negative changes:</p> <ul style="list-style-type: none"> <li>• There is no clarity on the information required to be submitted to obtain an EOWA, because it is to be prescribed by regulation.</li> <li>• The proposed requirement for an EOWA application to be accompanied by a report prepared by a suitably qualified person will impose additional cost and information burden on proponents.</li> </ul>
8.	Decision timeframe	The chief executive has 40 business days to decide a specific BUA application. The timeframe may be extended by 20 business	The chief executive has 20 business days to decide an EOWA application. The timeframe	<p>Positive change:</p> <ul style="list-style-type: none"> <li>• The proposed timeframe for a</li> </ul>



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		days. (159)	may be extended by 20 business days. (173K)	decision on an EOWA application is shorter than that currently required for a decision on a specific BUA application. <sup>3</sup>
9.	Criteria for decision on application	<p>The criteria the chief executive must consider when considering a specific BUA application are prescriptive, including:</p> <ul style="list-style-type: none"> <li>• the standard criteria under the EP Act;</li> <li>• the likelihood of serious or material environmental harm or environmental nuisance occurring; and</li> <li>• regulatory requirements under the EP Act for an application for an EA for a prescribed ERA (with necessary changes).</li> </ul> <p>Other criteria that the chief executive may consider include:</p> <ul style="list-style-type: none"> <li>• applicant's environmental record; and</li> <li>• applicant's ability to comply with any proposed conditions of the approval. (160)</li> </ul>	<p>The criteria the chief executive must consider when considering whether to make an EOWA are less prescriptive. The reference to likelihood of 'environmental nuisance' occurring is removed, as well as references to criteria and requirements under the EP Act.</p> <p>Note that other matters may be prescribed by regulation. (173L)</p>	<p>Positive change:</p> <ul style="list-style-type: none"> <li>• The proposed criteria for decisions on an EOWA application are less prescriptive than those currently required for specific BUA applications – although it remains to be seen what further criteria are prescribed by regulation.</li> </ul>
10.	Grant of approval	Applicant must be notified within 10 business	Applicant must be notified within 5 business	Positive change:

<sup>3</sup> Note however that the EPOLA Bill (clause 171) also proposed to amend the WRR Act so that a 'business day' under the Act does not include an actual business day that occurs between 20 December and 5 January (this is in line with the EP Act definition of 'business day'). This means that the timeframe on a decision stalls over the Christmas period.

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Item	Topic	Beneficial use approval provisions <sup>1</sup>	Proposed end of waste provisions <sup>2</sup>	Comment
		days if decision is to grant application. (161)	days if decision is to grant application. (173M)	<ul style="list-style-type: none"> <li>The proposed timeframe for an applicant to be notified of a decision on an EOWA application is shorter than that currently required for notification of a decision on a specific BUA application.</li> </ul>
11.	Conditions that may be imposed	<p>The chief executive may impose the conditions on a specific BUA that the chief executive considers are necessary or desirable.</p> <p>There are a number of types of conditions that may be imposed on a specific BUA prescribed in the WRR Act. (166)</p>	<p>The chief executive may impose the conditions on an EOWA that the chief executive considers are necessary or desirable.</p> <p>There are no types of conditions that may be imposed on an EOWA prescribed in the WRR Act – these may be prescribed in regulation. (173N)</p>	<p>No change from existing framework, but an issue for noting:</p> <ul style="list-style-type: none"> <li>It is concerning that there is no requirement for the conditions on an EOWA to not duplicate the conditions of any relevant environmental authority<sup>4</sup>.</li> </ul>
12.	Transfer	<p>A specific BUA may be transferred, by:</p> <ol style="list-style-type: none"> <li>The holder making application to the chief executive, together with the consent of the transferee and a fee.</li> <li>The chief executive must make a decision on the application within 40</li> </ol>	<p>An EOWA may be transferred, by:</p> <ol style="list-style-type: none"> <li>The holder making application to the chief executive, together with the consent of the transferee and a fee.</li> <li>The chief executive must make a decision on the application within 10</li> </ol>	<p>Positive change:</p> <ul style="list-style-type: none"> <li>The proposed timeframe for a decision on an EOWA transfer application is shorter than that currently required for a decision on a specific BUA transfer application.</li> </ul>

<sup>4</sup> The Explanatory Notes to the Bill state that 'to avoid duplication the department will consider existing conditions under an environmental authority when conditioning an end of waste approval. However, if there is benefit to the end of waste approval holder the approval holder may voluntarily decide to update existing conditions to their environmental authority through the amendment processes in the Environmental Protection Act 1994'.

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		<p>business days.</p> <p>3. Applicant must be notified within 10 business days if decision is to approve transfer.</p> <p>4. Transfer takes effect on day notified by chief executive. (168)</p>	<p>business days, may be extended by 20 business days.</p> <p>3. Applicant must be notified within 10 business days if decision is to approve transfer.</p> <p>4. No legislative provision for when transfer takes effect. (173S, 173V)</p>	
13.	Amendment/ cancellation/ suspension	<p>Amendment may occur at the chief executive's initiative or by application of the holder of the specific BUA.</p> <p><u>Clerical/formal amendment by chief executive</u></p> <p>Chief executive may amend a specific BUA by giving notice to its holder, if the amendment corrects a clerical/formal error and does not adversely affect the interests of the holder. (170(1))</p> <p><u>Other amendments/ cancellation/ suspension by chief executive</u></p> <p>Chief executive may otherwise amend, or cancel/suspend a specific BUA by:</p> <p>1. Chief executive gives notice of</p>	<p>Amendment may occur at the chief executive's initiative or by application of the holder of the EOWA.</p> <p><u>'Minor' amendment</u></p> <p>Chief executive may amend an EOWA by giving notice to its holder, if the amendment corrects a minor/formal error <u>or</u> makes another change that is not a change of substance and does not adversely affect the interests of the holder or a person who is likely to receive a resource from the holder. (173Z)</p> <p><u>Other amendments/ cancellation/ suspension</u></p> <p>Chief executive may otherwise amend, or cancel/suspend an EOWA by:</p> <p>1. Chief executive gives notice of</p>	<p>Negative changes:</p> <ul style="list-style-type: none"> <li>The requirement (for clerical/formal/minor amendments) that the amendment does not 'adversely affect the interests of a person acting under the approval' is removed (because of the change of terminology to 'or' rather than 'and').</li> <li>The proposed requirement for an EOWA amendment application to be accompanied by a report prepared by a suitably qualified person will impose additional cost and information burden on proponents.</li> </ul> <p>Positive changes:</p>

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Item	Topic	Beneficial use approval provisions <sup>1</sup>	Proposed end of waste provisions <sup>2</sup>	Comment
		<p>proposed action to its holder.</p> <ol style="list-style-type: none"> <li>2. Submission period of at least 28 days – holder may make submission.</li> <li>3. Chief executive decides whether to take action.</li> <li>4. Chief executive gives notice of decision to holder within 10 business days of making decision – decision takes effect when notice is given. (172)</li> </ol> <p><u>Amendments by application</u></p> <p>A specific BUA may be amended by application of the holder, by:</p> <ol style="list-style-type: none"> <li>1. The holder making application to the chief executive, together with a fee.</li> <li>2. The chief executive must make a decision on the application within 40 business days.</li> <li>3. Applicant must be notified within 10 business days if decision is to approve amendment.</li> <li>4. Amendment takes effect on day</li> </ol>	<p>proposed action to its holder.</p> <ol style="list-style-type: none"> <li>2. Submission period of at least 28 days – holder may make submission.</li> <li>3. Chief executive decides whether to take action within 20 business days, may be extended by 20 business days.</li> <li>4. Chief executive gives notice of decision to holder within 10 business days of making decision – decision takes effect when notice is given or later day stated in notice. (173Y)</li> </ol> <p><u>Amendments by application</u></p> <p>An EOWA may be amended by application of the holder, by:</p> <ol style="list-style-type: none"> <li>1. The holder making application to the chief executive, together with a report on the amendment by a 'suitably qualified person' and a fee.</li> <li>2. The chief executive must make a decision on the application within 10 business days, may be extended by 20 business days.</li> <li>3. Applicant must be notified within 5</li> </ol>	<ul style="list-style-type: none"> <li>• There is proposed to be a timeframe imposed on the chief executives decision to amend/cancel/suspend an EOWA (there is currently no timeframe for the decision to amend/cancel/suspend a specific BUA).</li> <li>• The proposed timeframe for a decision on an EOWA amendment application is shorter than that currently required for a decision on a specific BUA amendment application.</li> </ul> <p>No change from existing framework, but an issue for noting:</p> <ul style="list-style-type: none"> <li>• There is no provision for renewal or extension of an EOWA.</li> </ul>

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		<p>notified by chief executive. (168)</p>	<p>business days if decision is to approve amendment.</p> <p>4. Amendment takes effect on day notified by chief executive. (173S, 173U)</p>	
14.	Grounds for cancellation/suspension	<p>The chief executive may cancel or suspend a specific BUA on any of the following grounds:</p> <ol style="list-style-type: none"> <li>1. The approval was granted because of a materially false or misleading representation or declaration.</li> <li>2. The approval was granted on the basis of certain matters or information that have changed and the change is likely to result in material environmental harm, serious environmental harm or environmental nuisance.</li> <li>3. A condition imposed on the approval has not been complied with.</li> <li>4. The chief executive considers it desirable to do so having regard to the objects of the Act. (171)</li> </ol>	<p>The chief executive may cancel or suspend an EOWA on any of the following grounds:</p> <ol style="list-style-type: none"> <li>1. There is no longer a use for a particular resource under the approval.</li> <li>2. The management of a particular waste or the use of a particular resource under the approval has caused, or is likely to cause, serious environmental harm or material environmental harm.</li> <li>3. The use of particular waste or a particular resource is unlawful.</li> <li>4. The approval was granted because of a materially false or misleading representation or declaration.</li> <li>5. The approval was granted on the basis of particular matters or</li> </ol>	<p>Negative changes:</p> <ul style="list-style-type: none"> <li>• The grounds on which an EOWA may be cancelled/suspended are proposed to be expanded. The proposal that the chief executive can cancel an EOWA for failure to comply with an information request is particularly concerning.</li> <li>• The proposal that the chief executive can cancel an EOWA and force the holder to move onto an EOWC is also concerning , because the provisions of the EOWC may be more onerous on the EOWA holder and (because of their generality) potentially more difficult to comply with. There is already a provision for an EOWA to lapse if the EOWA becomes a registered code user for an EOWC for the same waste or resource (173E). This 'voluntary'</li> </ul>

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			<p>information that have changed and the change is likely to cause material environmental harm or serious environmental harm.</p> <p>6. A condition imposed on the approval has not been complied with.</p> <p>7. A request for information about the approval under section 173ZB has not been complied with. (173X(1))</p> <p>The chief executive may also cancel an EOWA if an EOWC for the resource the subject of the EOWA has come into effect; and the chief executive reasonably believes the holder of the EOWA may operate under the EOWC. (173X(2))</p>	<p>process should be sufficient to manage the interaction between EOWA and EOWC in respect of the same waste or resource.</p>
15.	Surrender	There is no provision for surrender of a specific BUA by its holder.	An EOWA holder may surrender its EOWA by giving notice written notice to the chief executive. (173ZA)	For noting.
16.	Offence provision	<p>A condition of a specific BUA may be expressed to apply to anyone who has the benefit of the BUA. (166(3))</p> <p>Failure to comply with a condition of a specific BUA attracts a maximum penalty of</p>	<p>A condition of an EOWA applies to any person who is the holder of, or acting under, an EOWA. (173P)</p> <p>Failure to comply with a condition of an EOWA attracts a maximum penalty of 1665</p>	<p>Negative change:</p> <ul style="list-style-type: none"> <li>The proposed new deemed liability provision is very concerning, because industry potentially becomes liable for breaches of approvals once it has disposed of</li> </ul>

## ANNEXUE 1: Beneficial Use Approval/End of Waste EPOLA Bill comparison table

Item	Topic	Beneficial use approval provisions <sup>1</sup>	Proposed end of waste provisions <sup>2</sup>	Comment
		1665 penalty units. (167)	<p>penalty units. (173P)</p> <p>The holder of an EOWA is responsible for ensuring that everyone acting under the approval complies with the conditions of the approval. If a person acting under an EOWA breaches the EOWA, the holder of the EOWA is also deemed to have breached the EOWA (which attracts a maximum penalty of 1665 penalty units), unless the holder can prove:</p> <ol style="list-style-type: none"> <li>1. the holder issued appropriate instructions and used all reasonable precautions to ensure compliance with the conditions; <u>and</u></li> <li>2. the offence was committed without the holder's knowledge; <u>and</u></li> <li>3. the holder could not by the exercise of reasonable diligence have stopped the commission of the offence. (173Q)</li> </ol>	<p>the resource (eg environmental harm caused by a landholder taking associated water). It is also concerning that the defences to the deemed liability must be proved cumulatively (and therefore may be very difficult to prove). Note that the fine of 1665 penalty units is equivalent to \$189,560.25 for an individual and \$947,801.25 for a corporation (the value of a single penalty unit is currently \$113.85).<sup>5</sup></p>
17.	Information request	There is no provision allowing chief executive to make information request about specific	The chief executive may issue a notice to the holder of an EOWA requiring the holder to provide the chief executive with information	<p>Negative change:</p> <ul style="list-style-type: none"> <li>• The proposed new information</li> </ul>

<sup>5</sup> The Explanatory Notes to the EPOLA Bill state that 'approval holders may choose to discharge obligations for conditions being met through private contractual arrangements'. However, private contractual arrangements will not be sufficient to protect an EOWA holder from this deemed liability provision.

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		BUA.	about the approval. (173ZB)  If the requirement is not complied with the chief executive may cancel the holder's EOWA. (Item 14, above, and 173X(1)(g))	request requirement may increase costs and administrative burden for industry. As noted above, it is also concerning that the chief executive may be able to cancel an EOWA for failure to comply with an information request. <sup>6</sup>
18.	Register	The chief executive must keep a register of all specific BUAs (as well as general BUAs) and must keep the register open to the public. (173)	There is no provision for a register of EOWAs to be kept.  The chief executive must maintain a register of registered code users for each EOWC, but there is no requirement to keep this register open to the public. (173F)	For noting.

<sup>6</sup> The Explanatory Notes to the EPOLA Bill state that '*the intention of this section is to enable the chief executive to seek information about a particular waste and end use that has received the benefit of an approval. This information could be used by the chief executive for any suitable purpose. For example, it could be used to inform the development of a new end of waste code or to monitor activities carried out under an approval. However, this section does not preclude the conditions of the approval also requiring the holder to report, for example on any monitoring or impacts of the end of waste approval.*'