

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

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EHA COMMENTS ON ENVIRONMENTAL PROTECTION (POWERS AND PENALTIES) AND OTHER LEGISLATION AMENDMENT BILL 2024.

EHA (QLD) INC would like to thank you for the opportunity to provide comment on the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024*.

EHA (Qld) Inc. acknowledges the 'Independent review' report (1 Sept. 2022) (https://environment.des.qld.gov.au/data/assets/pdf_file/0016/311902/independent-review-ep-act-reportpdf) into the adequacy of existing powers and penalties available under the *Environmental Protection Act 1994* (EPAct) that was, in many ways, the foundation of the *Environmental Protection Powers and Penalties) and Other Legislation Amendment Bill 2024* (<https://documents.parliament.qld.gov.au/tp/2024/5724T169-A23Cpdf>), and the initial 'Government response: Independent review of environmental regulator's powers and penalties' (https://environment.des.qld.gov.au/data/assets/pdf_file/0015/311901/govt-response-independent-review-environmental-regulators-powers-penaltiespdf) – both of which were published in May 2023.

EHA understands that the independent review was initiated due to 'increasingly complex regulatory challenges' often linked to growing communities with changing land uses over time, resulting in co-existence of urban and industrial areas with increased risks associated with dust, odour and noise', reflected in the assertion that the review was 'initiated, in part, due to the significant odour nuisance issues in the Swanbank industrial area and surrounds' (while other case studies were noted).

EHA (Qld) Inc. acknowledges that several of the independent review report recommendations have already been delivered through the *Environmental Protection and Other Legislation Amendment Act 2023* that was passed by the Queensland Parliament in March 2023. Furthermore, the EHA (Qld) Inc. acknowledges that the State Government supported all the recommendations (except one supported in principle) from the independent review report, as articulated in the State Government's initial response to the review, and that both these outcomes were essentially encapsulated in the release of the 'Improving the powers and penalties provisions of the Environmental Protection Act 1994 Consultation paper' in September 2023 (https://environment.des.qld.gov.au/data/assets/pdf_file/0021/321924/independent-review-ep-act-consultation-paper.pdf) and the subsequent 'Improving the powers and penalties provisions of the Environmental Protection Act 1994 Consultation report' (https://environment.des.qld.gov.au/data/assets/pdf_file/0025/335743/consultation-report-improving-powers-penalties-provisions-ep-act.pdf).

EHA (Qld) Inc. acknowledges that the earlier processes fostered further considerations by the State Government, as reflected in the latter consultation paper and report. A particular example was the proposal to replace EPOs, DNPs and CNs with a single statutory notice (EEO).

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EHA (Qld) Inc. supports the policy objectives of the impending reforms and how they are to be achieved and how these reforms will align with FLPs, as described in the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill Explanatory Notes (<https://documents.parliament.qld.gov.au/tp/2024/5724T170-7C7A.pdf>).

In light of the above point, EHA (Qld) Inc. supports the reframing of the EPAct (augmented by the impending consequential amendments to the *Environmental Protection Regulation 2019* and the *State Penalties Enforcement Regulation 2014*) with respect to nuisance matters, the focus shifting to proactive prevention of environmental impacts with the added emphasis on ensuring operators are actively preventing harm to the community, and the more explicit emphasis on human health, wellbeing and safety in the EPAct, while enhancing the clarity, consistency and enforceability of the legislation.

EHA (Qld) Inc. further supports the additional administrative amendments articulated in page 3 of the Explanatory Notes.

As the peak body representing environmental health professionals in Queensland, EHA (Qld) Inc supports the need for certainty and clarity to be given to devolved and delegated powers pursuant to commencement of the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Act 2024, particularly with respect to local government where most EHA (Qld) Inc. members (Environmental Health Officers [EHOs]) administering the EPAct are employed.

EHA (Qld) Inc. supports the need for DESI to:

- update guidance material and other implementation tools and training and provide adequate lead in times for administering authorities – particularly local government – to prepare for the commencement of EP(P&P) OLA 2024.
- actively work with co-regulators as appropriate in preparedness for the commencement of the EP(P&P)OLA 2024 reforms in order to further advance the aims of the reforms and effectively aid authorities/officers in their implementation of same.
- ensure that its administration of the EPAct pertaining to relevant essential public services continues to give due regard to the public interest. Most attention here is given to the expansion of 'disqualifying events' regarding 'registered suitable operators'.

Premised on the review of each of the above processes and documentation, and its understanding of the State Government rationale for each individual reform, EHA (Qld) Inc generally supports the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 (<https://documents.parliament.qld.gov.au/tp/2024/5724T169-A23C.pdf>).

EHA (Qld) Inc. received feedback from Members on the proposed amendments to the Act. The feedback referred specifically to the operational impacts for local government in the way that the Act is administered. This feedback includes:

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The amendments retain a restriction on the ability for local governments to issue certain notices, specifically directing responsible persons to undertake clean up, and cost recovery notices.

- It is requested that consideration be given for allowing local governments to issue environment enforcement orders for clean-up directions and issue cost recovery notices where the local government undertakes clean-up of incidents in circumstances where immediate action is needed to reduce harm to the environment and/or where the responsible person cannot or will not do the work.
- In making this request it is acknowledged that local governments do not have devolution for serious or material environmental harm.
- However, in the practical application of the law, local governments are often the first responders to pollution events and need to take immediate action or give immediate instructions to prevent further environmental harm and achieve the best possible environmental outcome. The extent of the clean-up and recovery costs are often realised after the clean-up has commenced, to be beyond the threshold amounts.
- Some Councils have incurred significant costs (in excess of \$120,000) in undertaking such clean-ups in recent years, and has not had any legislative mechanism to seek to recover these costs (acknowledging that in not all cases the responsible person could be established).

The amendments will necessitate operational changes for local governments.

- It is requested that a reasonable period or time be allowed for implementation of these changes, should the proposed amendments be made.
- The changes will include changes to enforcement processes, the development of new officer tools and associated training, changes to systems, creation of new infringement offence codes, and a significant number of new sub-delegations.
- It is estimated that this may require up to 3 months lead time.

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