

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

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Every Queensland
community deserves
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4 March 2024

Aaron Harper MP
Member for Thuringowa
Health, Environment and Agriculture Committee
Parliament House
Brisbane QLD 4000

Via: heac@parliament.qld.gov.au

Dear Mr. Harper,

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

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide feedback to the Health, Environment and Agriculture Committee on the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 (the Bill).

The Bill is of considerable interest to local government given the scope of the reform, and councils support the aim of the Bill to better prevent environmental harm from occurring, providing appropriate tools for nuisance matters and to take effective action against polluters to better protect our precious environment and community wellbeing.

Councils operate both as the administering authority for delegated powers under the *Environmental Protection Act 1994* and as holders of environmental authorities (EA) and are therefore reliant on regulation being both economically and environmentally workable and streamlined in its application across the state.

Overall, the LGAQ supports a number of changes made through the Bill and wants to thank the Department of Environment, Science and Innovation (the Department) for retaining provisions relating to operator right of objection when changing EA conditions.

However, the LGAQ is concerned that many recommendations made to the Department in our submission on the *Consultation paper 'Improving the powers and penalties provision of the Environmental Protection Act 1994'* (in November 2023), have not been appropriately reflected in the final Bill. This includes concerns regarding:

1. the unilateral changes of Transitional Environmental Programs;
2. a lost opportunity to provide a streamlined option for councils to recover costs incurred when cleaning up illegally dumped material;
3. a lack of clarity regarding the liability of councils under the newly introduced 'duty to restore'; and
4. the expansion of evidentiary aids to civil proceedings.

Therefore, while the Bill makes many changes that will streamline and clarify the environmental legislation, the LGAQ believes that select clauses of the Bill need to be reconsidered to ensure appropriate, environmentally and economically sustainable operations of services on behalf of Queensland communities, remain possible.

Please see attached LGAQ's submission, containing 7 recommendations, compiled based on the LGAQ Policy Statement, LGAQ Annual Conference resolutions and direct feedback provided by our members.

Yours sincerely,



Alison Smith
Chief Executive Officer



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Submission to the Health, Environment and
Agriculture Committee

March 2024

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About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their needs. The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

Partners in Government Agreement

The LGAQ on behalf of all 77 Queensland local governments is a signatory to a three-year partners-in-government-agreement with the State of Queensland.

The Agreement details the key principles underlying the relationship between the state and local governments and establishes the foundation for effective negotiation and engagement between both levels of government.

The agreement acknowledges that local government is the closest level of government to the community, affecting the lives of everyday Queenslanders and acknowledging Local Government as a genuine partner in the Australian government system.

The intent of the agreement was to continue the tradition of working in genuine partnership to improve the quality of life for all Queenslanders to enjoy. By identifying the roles and responsibilities of each party, it provides a solid foundation for effective negotiation and engagement between both levels of government.

The LGAQ is committed to working with the Queensland Government and will continue to be a passionate advocate for councils, to serve our joint jurisdiction for the people of Queensland.

Rural and Remote Councils Compact

The Rural and Remote Councils Compact¹ signed on 25 June 2021, complements the existing Partnership in Partners-in-Government agreement in place between the LGAQ and the Queensland Government to provide a platform to ensure issues of priority for these communities are properly considered by the Government when developing policies, programs, and legislation.

The Rural and Remote Councils Compact, pledges to amplify the voice of and improve outcomes for the state's 45 rural and remote councils and their local communities by enhancing engagement between both levels of government.

¹ [Rural and Remote Councils Compact](#)

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

1.0 Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the Health, Environment and Agriculture Committee (the Committee) on the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024.

It is understood that the Bill aims to deliver on the remainder of the recommendations of the independent review² into the adequacy of powers and penalties available under the *Environmental Protection Act 1994* (the EP Act), and follows several recommendations already addressed through passage of the *Environmental Protection and Other Legislation Amendment Act 2023*, in March 2023.

This Bill is of considerable interest to local government given the scope of the proposed reforms which are aimed at better preventing environmental harm from occurring, providing appropriate tools for nuisance matters to take effective action against polluters and better protecting community health and wellbeing.

Overall, the LGAQ generally supports the proposed changes and welcomes the clarifications provided throughout the Bill to avoid confusion between the jurisdiction of councils and the State Government.

However, the LGAQ does not support all elements within the Bill.

As both operators of environmentally relevant activities and as the administering authority for a range of matters under the EP Act, some of these proposed changes will have significant impact on local government operations as they do not properly take into consideration the social, economic and environmental needs of local communities and perpetuate a source of cost-shifting to local government.

Key concerns include:

1. The introduction of additional powers for the administering authority to amend transitional environmental programs (TEP) without the approval of the TEP holder introduces further uncertainty and potential costs for holders of environmental authorities (EAs) in situations that already are out of the ordinary. (Clause 26 of the Bill)
1. The Bill fails to acknowledge the call for local government to be able to issue cost recovery notices for environmental offences where a clean-up currently often has to be financed by council, with limited ability to recover these costs from the perpetrator or the State Government. (Clause 56 of the Bill)
2. While councils welcome the introduction of the new 'duty to restore' offence, the Bill fails to provide certainty that councils will not become liable for certain environmental harm

² [Independent Review of the Environmental Protection Act 1994 \(Old\) Report \(September 2022\)](#)

when the original 'polluter' is hard to identify, or pollution is the result of collective action (such as spillages from diffuse sources). (Clause 16 of the Bill)

3. The expansion of the evidentiary aids to civil proceedings has the potential to increase legal liability and insurance costs for councils due to the lack of control for inputs into council operated activities such as wastewater treatment plants or landfills. (Clauses 41, 42, and 43 of the Bill).

The LGAQ and our member councils have recently identified through extensive research the unsustainable impact that cost-shifting from the Federal and State government and the private sector is having on our sector and local communities. Cost-shifting is diverting vital funds away from delivering the core council infrastructure and services communities not only need but rely on.

Research conducted by the LGAQ revealed cost-shifting on to Queensland councils has increased over the last 20 years from \$47 million a year to \$360 million a year.³ We seek a correction to decades of cost-shifting, and we will not accept changes that will further worsen this situation.

The LGAQ previously made a submission to the former Department of Environment and Science in November 2023 on the Consultation paper '*Improving the powers and penalties provision of the Environmental Protection Act 1994*', as a precursor to this Bill.

The LGAQ's previous submission contained 15 recommendations and it is disappointing many of those recommendations have not been addressed in the Bill before the Committee for consideration.

In preparing this submission, the LGAQ has considered the proposed changes in the Bill with regards to the LGAQ Policy Statement, resolutions carried at previous LGAQ Annual Conferences and direct feedback provided by several Queensland councils through consultation undertaken for the preparation of the response to the original Consultation Paper.

1.1 Recommendations

In total, the LGAQ has made 7 recommendations in relation to the Bill, summarised below:

- **Recommendation 1:** The LGAQ recommends the Committee rejects the recommendation in clause 4 of the Bill to change the wording from 'reasonable and practicable' to 'reasonably practicable', considering the potential legal complications faced by environmental authority holders.
- **Recommendation 2:** The LGAQ recommends the State Government works with the LGAQ and councils to develop guidance materials to provide assurance for councils on their legal requirements both as administrative authorities and operators of environmentally relevant activities.
- **Recommendation 3:** The LGAQ recommends the Committee rejects clauses 17 and/or 22 of the Bill in order to provide councils with certainty that the administrative burden of holding environmental authorities does not increase.
- **Recommendation 4:** The LGAQ recommends the Committee rejects clause 26 of the Bill, as the unilateral amendment of a TEP is counter-productive to the intent that a TEP and would eliminate certainty for EA holders who are under strain to rectify an already extreme situation.

³ [LGAQ Cost Shifting Report \(2024\)](#)

- **Recommendation 5:** The LGAQ recommends the Committee supports further amendments to the Bill to include provisions to expand access to land to conduct investigations to allow authorised council officers to access land to fully investigate complaints where necessary and deemed appropriate by the relevant authority.
- **Recommendation 6:** The LGAQ recommends the Committee rejects the expansion of evidence currently limited to criminal proceedings, to civil proceedings, as proposed through clauses 41 to 43 of the Bill, to avoid opening up public service providers to a wave of vexatious legal proceedings.
- **Recommendation 7:** The LGAQ recommends the Committee supports amending section 137 (2) of the Environmental Protection Regulation 2019, as amended through clause 56 of the Bill, to allow councils to issue cost-recovery notices for illegal dumping incidences.

Please do not hesitate to contact Rudolf Pretzler, Lead – Public Health & Waste via email [REDACTED] or phone [REDACTED] should you wish to discuss any aspect of this submission.

2.0 Introduction

The LGAQ welcomes the opportunity to provide feedback to the Health, Environment and Agriculture Committee (the Committee) on the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024.

The LGAQ understands the Bill enacts recommendations from the independent review into the adequacy of powers and penalties available under the EP Act initiated in 2022, with a final report and State Government response published in May 2023.

Local government is a strong partner with the State Government in protecting and restoring our environment, both as the responsible entity for environmentally relevant activities (ERAs) and through delegated powers under the EP Act.

As such, local government is supportive of reform that empowers the regulator to react agilely to public and environmental health concerns that arise from individual or industrial action, some of which inspired the independent review of the EP Act in the first place.

As the level of government closest to the community, councils strive to achieve environmentally sustainable, socially conscious and contemporary environmental management and not only have a legal, but also a social, obligation to deal with environmental degradation in an expeditious, thorough and economically sensitive manner.

Therefore, both as responsible entities for ERAs and when acting on behalf of the State Government as delegated administrative authority under the EP Act, councils are dependent on regulation to be administratively and operationally unambiguous, fit-for-purpose within their specific environment and financially sustainable.

Given the above, the LGAQ is concerned that the Bill in its current form does not provide sufficient certainty for local governments both as administering authority for delegated powers and as operators of ERAs. In addition, it is critical that any reforms to the EP Act do not shift costs onto councils and local communities.

In January 2024, the LGAQ launched a landmark piece of research⁴ which quantifies the impact of cost shifting onto councils and the communities they serve. It found that local governments across Queensland are stepping in to provide extra services to ensure our communities remain liveable – and in many cases are using their limited resources to fund services that are not their responsibility to fund. This, of course, jeopardises their ability to delivery core council infrastructure and services.

The survey, completed by 75 per cent of councils across Queensland and analysed by leading research consultancy AEC Group, found that cost shifting onto councils has increased by 378 percent over the past two decades.

As the level of government that is funded the least – earning around three cents in every dollar of taxation revenue compares to 80 cents for the Federal Government and almost 17 cents for the State – councils cannot continue to shoulder further cost burdens.

Section 3 of this submission, outlines a number of proposed improvements to the current Bill that would ensure that the reform remains workable, responds to social, economic and

⁴ [LGAQ Cost Shifting Research Report \(2024\)](#)

environmental needs appropriately and ensures councils remain able to operate ERAs on behalf of their communities legally and economically sustainable.

The recommendations and feedback provided in this submission are consistent with the agreed positions of Queensland councils reflected in the LGAQ Policy Statement and previous LGAQ Annual Conference resolutions, outlined below.

2.1 LGAQ Policy Statement

The LGAQ Policy Statement⁵ is a definitive statement of the collective voice of local government in Queensland. The relevant policy positions of local government in the context of the EP Act and the Bill, are as follows:

Environment Protection

- 5.1.1.1 Local government seeks State Government regional support to assist in the administration of the *Environmental Protection Act 1994*, *Biosecurity Act 2014* and other environmental reforms.

Environmental Health

- 5.5.1.1 The State Government should be encouraged to work in consultation and cooperation with local governments to avoid duplication of inspectorial and other activities in the provision of environmental health services.
- 5.5.1.2 Where local governments enforce State health legislation, provision should be made for the reimbursement of costs incurred by local governments by way of direct reimbursement from the State or other equitable cost recovery mechanisms.

2.2 LGAQ Annual Conference Resolutions

In the context of the EP Act and the Consultation Paper, the following LGAQ Annual Conference resolutions passed by Queensland councils, are relevant:

- **Resolution 47 (2022) – Illegal Dumping – Cost Recovery Notices:** *The LGAQ calls on the State Government to amend relevant legislation under the Environmental Protection Regulation 2019 to enable local government to recover costs involved in the management of illegal dumping offences.*
- **Resolution 74 (2023) – Impact of State Environmental targets and Environmental Authority compliance on rural and remote local government for landfills and waste:** *The LGAQ calls on the State Government to provide greater differentiation for rural and remote councils in meeting increasing environmental compliance costs for landfill and waste by increasing timeframes, funding and adopting a tiered level of compliance standards in recognition of smaller councils' inability to pay and the relatively low impact per square kilometre of environmental impact of waste on small populations.*

⁵ [LGAQ Policy Statement \(2023\)](#)

3.0 LGAQ Response to the Bill

Overall, local government is supportive of reforms to the EP Act to become more responsive and allow administering authorities to react more agilely to environmental harm, whether it arises from individual or industrial action.

As such, many of the proposed changes in the Bill can be supported in-principle by the LGAQ as they provide clarity and contemporise the powers of the EP Act. These include the following provisions contained in the Bill that address key concerns raised by the LGAQ in our previous submission on Consultation Paper *'Improving the powers and penalties provision of the Environmental Protection Act 1994'*, in November 2023:

- **Clauses 7 and 8** - The amendment to the EP Act through clauses 7 and 8 of the Bill, provides greater clarity that the EP Act only protects human health to the extent that it is directly affected by the environment, acting on a recommendation of the LGAQ submission to the original discussion paper in November 2023.

The concern voiced by local government was the inclusion of 'human health, well-being and safety' in the definition of 'environment and environmental values', as it overlaps with responsibilities of local government under the *Public Health Act 2005*. This has been addressed by the Bill.

- **Clause 12** – Local government considers the current approach, where both the State Government and the holder of an EA have to agree to any substantial change, is in line with democratic and economic principles and appreciates that this recommendation of the independent review has not been included in the Bill.

The independent review of the EP Act, as highlighted previously, did however propose the EP Act should be changed to include the powers for the State Government to retrospectively change conditions on an EA to contemporise environmental harm prevention. While the intention is understood, in reality conditions set provide a certainty for operators on how to remain compliant. A power to change these without approval from the operator (which is currently required) would remove this certainty and potentially require significant, costly upgrades in regional and remote locations.

As such, the limited changes to the 'Decision on proposed amendments' process as proposed in Clause 12 of the Bill, are therefore generally supported as they require written representation by the authority holder.

- **Clause 55** - The Bill, through clause 55, alleviates some concerns as it provides clarity that nuisance events are generally managed by local government until such a time that the State Government officially declares them serious.

This provides for a clear distinction that only if the chief executive of the relevant department provides notice in writing to the relevant local government that a nuisance event constitutes serious environmental harm delegation for this event transfers back to the State Government.

Currently environmental nuisance management is delegated to local government. A key concern of local government was the distinction between environmental nuisance that constitutes serious environmental harm and therefore would be prosecuted by the State and less serious nuisance that remains with local government.

While the above amendments are in line with previous recommendations made by the LGAQ, a number of concerns have not been translated into amendments within the Bill. If these concerns are not addressed, they have the potential to impede the power of councils to operate legally and economically sound services on behalf of their communities.

Concerns relating to specific clauses within the Bill are highlighted as follows.

3.1 Clause 4 – Interpretational concerns

The intent of changing ‘reasonable and practicable’ to ‘reasonably practicable’, to avoid unintentionally requiring a two-tier test as noted in the independent review of the EP Act, is understood.

However, the LGAQ remains concerned – as raised in our previous submission on the Consultation Paper – that this change could have unintended consequences, by removing the need for a test to be ‘reasonable’. There is an interpretational difference between mitigation measures being ‘reasonable and practicable’ or being ‘reasonably practicable’ in that changing the wording to ‘reasonably practicable’ would arguably allow solutions that are practicable in any circumstance, while retaining the need for a test to ‘reasonable and practicable’ also considers the reasonable circumstance of the location.

While it is understood that the change is not intended to change the intent of the section, councils hold concern about the potential for legal challenges that might utilise the linguistic difference going forward.

Recommendation 1: The LGAQ recommends the Committee rejects the recommendation in clause 4 of the Bill to change the wording from ‘reasonable and practicable’ to ‘reasonably practicable’, considering the potential legal complications faced by environmental authority holders.

3.2 Clause 16 – Duty to restore the environment

While it is acknowledged that the proposed new ‘duty to restore’ requirement is meant to encourage proactive management of environmental harm and to put stronger onus on the perpetrator to follow the ‘polluter pays’ principle, the LGAQ is concerned that the addition might lead to unintended consequences.

While councils supported the concept of a ‘duty to restore’, for it to be successfully implemented the EP Act needs further safeguards to protect public service providers, such as councils, from having increased risk of litigation.

In reality, councils often need to respond to environmental harm where a clear polluter cannot be identified, either due to a diffuse source of the pollutant or as a result of other administrative or regulatory burdens that make investigations difficult. In these often-costly cases, councils step in as the providers of last resort to resolve issues. The broad definition of the word ‘permit’ as used in clause 16 of the Bill (proposed section 319C) opens it up to potential accusations and vexatious claims against operators, including councils.

Therefore, the addition of a ‘duty to restore’ without the necessary clarification regarding how this impacts councils in these specific circumstances, cannot be supported.

Recommendation 2: The LGAQ recommends the State Government works with the LGAQ and councils to develop guidance materials to provide assurance for councils on their legal requirements both as administrative authorities and operators of environmentally relevant activities.

3.3 Clauses 17/22 – Duty to notify

The LGAQ considers the ‘duty to notify’ as currently provided under the EP Act, is sufficient for environmental protection. In the current environment, if an operator becomes aware of circumstances that would likely lead to environmental harm, in most cases these are rectified before any harm occurs.

The proposed changes contained in clauses 17 and 22 of the Bill would require operators to also report these ‘misses’, and potentially be held accountable for not doing so. The additional administrative burden, combined with the ill-defined nature of ‘ought reasonably to have become aware’ should be considered in supporting these clauses.

Recommendation 3: The LGAQ recommends the Committee rejects clauses 17 and/or 22 of the Bill in order to provide councils with the certainty that the administrative burden of holding environmental authorities does not increase.

3.4 Clause 26 – Amendments to transitional environmental programs

While it is acknowledged that the proposed changes under clause 26 are intended to create equal powers for the administering authority in the creation and amendment of transitional environmental programs (TEPs), the logic behind this is rejected.

TEPs are intended as short-term measures to allow compliant operations during extreme situations outside of the control of the EA holder. In this already strained environment, it is essential that any EA holder operating under a TEP has the certainty that the conditions agreed on would not be changed without their approval. The changes proposed would eliminate this certainty and cannot be supported. The State Government should much rather increase communication and cooperation with TEP holders to ensure that ordinary compliance with the approved EA can be re-instated as soon as possible.

Recommendation 4: The LGAQ recommends the Committee rejects clause 26 of the Bill, as the unilateral amendment of a transitional environmental program (TEP) is counter-productive to the intent of a TEP and would eliminate certainty for EA holders who are under strain to rectify an already extreme situation.

3.5 Clause 39 – Access to land

The LGAQ understands the intent of clause 39 of the Bill, is to bring parts of the legislation in line with the newly introduced Environmental Enforcement Order (EEOs) which consolidates currently available environmental protection orders, direction notices and clean up notices. However, the LGAQ would like to see this provision further clarify access to land for authorised officers during investigations of environmental contamination or nuisance.

Councils have noted that the current legislative framework does not easily allow council officers to access private land to fully investigate contamination or nuisance events. The need to apply to the magistrate, as continued through this clause, provides for access time for perpetrators to reduce or eliminate evidence.

Recommendation 5: The LGAQ recommends the Committee supports further amendments to the Bill to include provisions to expand access to land to conduct investigations to allow authorised council officers to access land to fully investigate complaints where necessary and deemed appropriate by the relevant authority.

3.6 Clauses 41/42/43 – Evidentiary provisions

Councils have raised concerns that the expansion of evidentiary aids to civil proceedings would potentially increase the legal liability and cost of insurance for the provision of public services, as the inputs to these (e.g. sewerage, waste) are not controllable by the council.

The ability to allow the production of certificates, opinion evidence, and opinion evidence related to noise, to be given in civil proceedings has the potential to encourage vexatious complaints and legal proceedings against councils, which would increase the financial burden on councils.

Recommendation 6: The LGAQ recommends the Committee rejects the expansion of evidence currently limited to criminal proceedings, to civil proceedings, as proposed through clauses 41 to 43 of the Bill, to avoid opening up public service providers to a wave of vexatious legal proceedings.

3.7 Clause 56 – Issuing particular notices and orders

At the 2022 LGAQ Annual Conference, Queensland councils supported a resolution to provide the power to issue cost recovery notices under the current EP Act, Chapter 7, Part 5c. The current section has been criticised by local government as it hinders them from fully recovering costs incurred when having to clean up illegal dumping incidences where the perpetrator is unwilling to do so.

While councils could request a cost-recovery notice to be issued by the State Government, the administrative burden, and timeliness of action in doing so often exceeds the cost incurred. A simple change to this section of the EP Act would allow for faster, more streamlined action on littering and also reduce the administrative burden on the department.

The LGAQ has been advocating for this change since October 2022 and seeks the Committee's support for local government to be able to issue cost recovery notices for illegal dumping clean up offences.

Recommendation 7: The LGAQ recommends the Committee supports amending section 137 (2) of the Environmental Protection Regulation 2019, as amended through clause 56 of the Bill, to allow councils to issue cost-recovery notices for illegal dumping incidences.

4.0 Conclusion

Overall, the LGAQ generally supports a majority of the proposed changes contained within the Bill such as the clarifications provided throughout it to avoid confusion between jurisdiction of councils and the State Government.

However, as noted in this submission, the Bill fails to make amendments to sections of the EP Act that would create a more streamlined, easy to manage and economically sustainable framework. Serious consideration must be given to the potential unintended consequences of on local government as providers of key environmental services to their local community.

The LGAQ urges the Committee to take on board the recommendations contained in this submission to deliver a robust, clear framework for powers and penalties under the EP Act and ensure local governments, as providers of essential environmental services to their communities, are not adversely impacted.