

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

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Your reference  
Our reference  
Contact Officer  
Telephone

Brett Davey



**Ipswich City Council**

1 Nicholas Street  
PO Box 191  
IPSWICH QLD 4305

Phone (07) 3810 6666

Fax (07) 3810 6731

Email [council@ipswich.qld.gov.au](mailto:council@ipswich.qld.gov.au)

[ipswich.qld.gov.au](http://ipswich.qld.gov.au)

Department of Environment and Science  
Queensland Government



10 November 2023

To whom it may concern,

**Re: Ipswich City Council – Submission on Review of Government Response: Independent review of environmental regulator’s powers and penalties” and “Improving the powers and penalties provisions of the Environmental Protection Act 1994”.**

### **Executive Summary**

Ipswich City Council, like all other local governments in Queensland, has been actively involved in administering the *Environmental Protection Act 1994*. Council appreciates the opportunity to review and provide comment on this important piece of legislation. The following represents some of the key comments regarding the proposed legislation:

1. Making it an offence to breach the general environmental duty (GED) in certain cases.
2. Introducing a new duty (and offence) related to environmental harm.
3. Expanding the triggers for notifying the regulator of environmental harm.
4. Consolidating a range of current statutory notices into one new enforcement tool known as an ‘environmental evaluation order’ (EEO).

### **Introduction**

Ipswich City Council appreciates the opportunity to provide a submission to you in regard to the recently released documents titled “Government Response: Independent review of environmental regulator’s powers and penalties” and “Improving the powers and penalties provisions of the *Environmental Protection Act 1994*”. As you are aware, Local Government shares the responsibility in administering the *Environmental Protection Act 1994* with the State Government and upholds strong commitments to protecting the environment and the community’s lifestyle.

### **Context of this Submission**

This submission is a compilation of comments provided by officers of Ipswich City Council. Owing to the timeframe for review and provide comment on these papers, it has not been possible to present these documents to Council for consideration and decision. Therefore, these views do not necessarily represent the views of the Council. It is intended that these comments will be submitted to Council for consideration. Following this, endorsed comments will be provided to you as a supplementary submission.

### Overall Intentions of the Bill

Council supports in principle, the proactive approach to environmental risk management to minimisation exposure of harm to the community. Council also supports in principle, the removal of barriers to the timely regulatory response to manage harm. Further, Council supports the Act's key underlying principles (e.g., User pays, polluter pays etc.).

In general, the following overall intentions of the "Government Response: Independent review of environmental regulator's powers and penalties" and "Improving the powers and penalties provisions of the *Environmental Protection Act 1994*" are supported:

- making it an offence to breach the GED in certain cases;
- introducing a new duty (and offence) related to environmental harm;
- expanding the triggers for notifying the regulator of environmental harm; and
- consolidating a range of current statutory notices into one new enforcement tool known as an 'EEO).

Notably, while the Independent Review recommended the regulator be given broader discretion to amend environmental authority conditions where environmental harm has not been avoided or mitigated, the Government only supported this recommendation in-principle. The relevant proposals that have been put forward by the Government in the Consultation Paper are focused on clarifying and refining its existing powers to amend EAs, rather than introducing broad new powers.

### Improving the quality of information

It is strongly held that the current lack of clear, concise, and plain language guidance for regulators, industry and the community need to be addressed and improved. The following initiatives are considered vital in this process so to support the effective implementation of the papers:

- the development of a contemporary and well researched Operators Compliance Guide (or similar) that has been based on contemporary scientific research, practicability, financial and social considerations (note, as previously supported by the Environmental Protection Partnerships Forum, DES should fund cooperatively with Local Government a review process similar to that undertaken by Brisbane City Council in reviewing some OCG's);
- provision of guidance about the best time for information and level of detail of information to be provided;
- templates fact sheets, guidelines, flow charts etc.;
- advice about selecting consultants and the expectations of such services; and
- information and clarification about the land use – environmental licensing relationship.

### Implementation Impacts on Local Government

Council may need to increase the necessary skill sets and experience required to effectively and efficiently manage environmental protection within our community.

The improvements to include amenity and linking that with human health are supported by ICC, but the evidentiary tests for demonstrating an offence are not quantitative and are therefore going to be extremely challenging from a regulatory perspective, especially in circumstances where the release may be 'lawful' (i.e., meets EA / ERA levels or standards) but still generates community concerns.

The further costs borne by the Administering Authorities can be minimised by a strong commitment by DES in providing the necessary support, training, and resources as part of the implementation of the Act. This would include, but not be limited to the following: interpretation tools, flow charts, template documents and letters, transitional understandings / fact sheets, identification of likely system changes, officer training etc.

#### Additional Comments

It is recommended that DES consider introducing 4 additional elements to the penalties system in order to increase the tools available to compel compliance and to ensure compliance with regulatory approvals.

1. Facility Production Limits: The ability to reduce the production capacity or throughput of facilities until compliance has been achieved or until EEO's, TEP's or EPO's to reinforce the need for compliance swiftly;
2. Strike System: Consider the introduction of a formal points or strike system which would mean that following several clear breaches, either a site or an operator would lose their suitable operator status or lose the ability to operate an ERA;
3. Material Change of Use: It is apparent that the application of the defined term of 'Material Change of Use' differs between applications under the *Environmental Protection Act 1994* and the planning regime. This needs to be aligned to avoid changes to EA's which deviate from land use rights conveyed through Planning Schemes and Development Approvals; and
4. Local Government as referral agency: The Local Government should be given formal status as a referral agency for both EA's and changes to EA's. This should operate similar to the referral requirements of the *Planning Act 2016*, *Planning Regulation 2017* and MGR (planning regime). Like a referral agency under the planning regime, local government could seek a fee for this service, and be provided the opportunity to seek additional information and recommend conditions or a specific decision in respect to changes. This would help to avoid the regulatory confusion that currently exists. This process could also support item 3.

#### Ongoing Support

Council looks forward to the open and ongoing effective engagement with DES, industry and the community on this legislation and the implementation of the new framework. This is expected that this will commence with Regulation changes, site specific assessment processes and Guideline development. As part of the implementation of these changes, Council will be looking to the State to show their leadership and significantly assist the Council effectively and efficiently implement the legislation.

#### Comments regarding Specific Provisions of the papers.

The following are comments relevant to specific sections of the paper:

Recommendation 1 – The principles underpinning the *Environmental Protection Act 1994* (Qld) should be amended to include:

- (a) The principle of polluter pays;
- (b) The proportionality principle;
- (c) The principle of primacy of prevention;
- (d) The precautionary principle.

A new section will be introduced to Chapter 1, Part 2 of the EP Act identifying the principles which should be had regard to in administering the EP Act. As the identified environmental policy principles are to be applied to the general administration of the EP Act, this will flow through to the making of regulations, Environmental Protection Policies, guidelines, and codes of practice.

**Council Comments** – Supported - It is expected that if well implemented, this will result in a shift in regulatory compliance approaches from reactive to proactive.

Recommendation 2 – Sections 8 and 9 of the EP Act should be amended to include the concept of “human health, safety and wellbeing” in the definitions of environment and environmental value

A new section will be introduced to Chapter 1, Part 2 of the EP Act identifying the principles which should be had regard to in administering the EP Act. As the identified environmental policy principles are to be applied to the general administration of the EP Act, this will flow through to the making of regulations, Environmental Protection Policies, guidelines, and codes of practice.

Section 9 will be amended to more clearly incorporate human health, by stating an environmental value is ‘a quality or physical characteristic of the environment that is conducive to public health, public amenity or public safety’

It is also proposed that the reference in section 8(c) to qualities and characteristics of the environment contributing to biological diversity and integrity, intrinsic or attributed scientific value or interest, or amenity, harmony, and sense of community, be relocated to the definition of ‘environmental value’ in section 9. It is considered that section 9 is the more proper placement as it already functions to describe qualities and characteristics that meet some beneficial end or purpose.

Sections 8 and 9 will be amended to more clearly state that human health, wellbeing, and safety are included in ‘environment’ and ‘environmental value’.

The definition of ‘environment’ in section 8 will be amended to include, and make clear that, physical factors of the surroundings of human beings – including land, waters, atmosphere, climate, sound, odours, and tastes – are part of the environment. This would reinforce aspects of the environment conducive to human health, wellbeing and safety that are already prescribed as environmental values through EPPs, while limiting the amendment such that human health is only protected by the EP Act to the extent it is affected by the environment. This approach to the amendments is important for maintaining clarity and avoiding duplication or overlap across Queensland statutes, with particular regard to the *Public Health Act 2005 (Qld)* given its object to protect and promote the health of the Queensland public.

**Council Comments** – Supported- Ipswich is particularly familiar with uses that may impact amenity and support considered, well drafted and well implemented improvements that balance the need to protect the community and their lifestyle. The Act must ensure that the definition of what the physical factors or values related to human *health, wellbeing and safety* are clearly defined so that an investigation of an issue related to this does not increase the regulatory burden, and that the relevant provisions are able to be implemented.

Recommendation 3 – Section 15 or sections 16 and 17 of the EP Act should be amended to make clear that environmental harm that may constitute a nuisance at low levels, may also constitute material and serious environmental harm if it meets the definitions of those terms.

Sections 15, 16 and 17 will be amended to ensure that despite contaminants having the prescribed characteristics of environmental nuisance stated in section 15 – for example, the release of aerosols, fumes, light, noise, odour, particles, or smoke – the release may constitute material and serious environmental harm. Section 15 will specify that an unreasonable interference or likely interference with an environmental value caused by a matter listed in the section (e.g., fumes, noise, odour) is not environmental nuisance if it is serious or material environmental harm. That is, the interference is no longer to be regarded as nuisance once it meets the definitions for either material or serious

environmental harm set out in sections 16 and 17. Sections 16 and 17 will be amended to remove the exclusionary words 'other than environmental nuisance'.

[Council Comments – Supported](#)

Recommendation 4 – The threshold amounts for material and serious environmental harm should be reviewed and increased.

Changes to the threshold amounts for material and serious environmental harm in the EP Act were made through the *EPOLA Act 2023* (sections 4 and 5).

No further proposals for this recommendation are being considered.

[Council Comments - Delivered by EPOLA Act 2023](#)

Recommendation 5 – Section 319 of the EP Act be amended by omitting the words “reasonable and practicable” and inserting in lieu thereof “reasonably practicable”

Section 319(1) of the EP Act be amended by omitting the words ‘reasonable and practicable’ and replacing them with ‘reasonably practicable’.

In addition, other existing instances in the EP Act of ‘reasonable and practicable’ will be similarly amended consistent with the rationale for amending section 319 under Recommendation 5, and to avoid creating further inconsistencies of terms in the legislation. This affects only two sections: section 4(6) and section 478.

[Council Comments – Supported](#)

Recommendation 6 – Direction notice provisions should be amended as follows:

6(a) amend section 363D(1) to make clear that the remedying of the contravention of a prescribed provision includes the obligation to carry out any remedial work that might be required to remedy the contravention;

THIS RECOMMENDATION HAS BEEN DELIVERED. Clarification that a notice may require a person to clean up, fix or rectify environmental harm in remedying a matter relating to a contravention was delivered through the *EPOLA Act 2023* (sections 82 and 83). No further proposals for this recommendation are being made.

[Council Comments - Delivered by EPOLA Act 2023](#)

6(b) extend the power to issue an Environmental Protection Order (EPO) for contravention of an offence under section 358(e) to all offences under the EPA (Qld) which relate to acts that have caused or might cause environmental harm;

The recommendation will be given effect through the proposal to replace EPOs, DNAs and CNs with a single statutory notice, the EEO. Provisions enabling the administering authority to recover costs from the notice recipient for remedial works it undertakes will be a feature of the EEO

[Council Comments – Supported](#) - Should reduce environmental harm. Will assist Local Government with powers to conduct remedial work and or clean up to aid in dealing with environmental nuisance and other matters. Also then recover the costs.

6(c) rationalise the powers to step in to undertake remedial works and recover the costs thereof in respect of EPOs issued pursuant to section 358 of the EPA (Qld)

The recommendation will be given effect through the proposal to replace EPOs, DNAs and CNs with a single statutory notice, the EEO. The proposed EEO will feature the securing of compliance with the Page | 24 GED and contraventions that cause or risk environmental harm as grounds on which a notice can be issued.

Recommendation 7 –

7(a) The Environmental Protection Order provisions should be amended to: (a) remove the need to consider the standard criteria in deciding whether to issue an EPO under section 358(a)-(c) and (e) of the EPA (Qld)

The recommendation will be given effect through the proposal to replace EPOs, DN and CNs with a single statutory notice, the EEO. The new provisions for the EEO will reflect the recommendation such that consideration of the standard criteria will not be required in certain circumstances.

**Council Comments – Supported - Should reduce regulatory burden.**

7(b) The Environmental Protection Order provisions should be amended to: (b) extend the power to issue an EPO for contravention of an offence under section 358(e) to all offences under the EPA (Qld) which relate to acts that have caused or might cause environmental harm

The recommendation will be given effect through the proposal to replace EPOs, DN and CNs with a single statutory notice, the EEO. While it may be unnecessary to identify specific offence provisions relating to environmental harm as grounds for issuing the EEO, the new provisions establishing the combined notice will ensure that environmental harm is a basis for which the administering authority can issue the notice

**Council Comments – Supported - Should reduce regulatory burden.**

7(c) The Environmental Protection Order provisions should be amended to: (c) rationalise the powers to step in to undertake remedial works and recover the costs thereof in respect of EPOs issued pursuant to section 358 of the EPA (Qld)

The recommendation will be given effect through the proposal to replace EPOs, DN and CNs with a single statutory notice, the EEO. The EEO will make provision for the administering authority to recover costs from any person the notice was issued on where it has stepped in to undertake remedial works to give effect to the notice.

**Council Comments - Supported - Should reduce environmental harm.**

Recommendation 8 – Unless dealt with elsewhere in the Act, consideration be given to introducing an offence provision to capture obstruction of compliance with an EPO issued pursuant to section 358 of the EPA (Qld) or an offence provision that captures both related persons and persons issued an EPO pursuant to section 358.

The recommendation will be given effect through the proposal to replace EPOs, DN and CNs with a single statutory notice, the EEO. The EEO provision will align offences between a person and a related person.

**Council Comments – Supported - Should reduce regulatory burden.**

Recommendation 9 – The raft of requirements that are provided for pursuant to section 360(2) be included in the requirements that might be contained in a clean-up notice (section 363H).

The recommendation will be given effect through the proposal to replace EPOs, DN and CNs with a single statutory notice, the EEO. Amendments for the EEO will include provision for the notice to stipulate requirements that are aligned with the existing section 360(2) to enable improved environmental outcomes following contamination incidents, such as an express power to stop or restrict any activity that is the cause of a contamination incident.

**Council Comments – Supported - Should reduce environmental harm.**

Recommendation 10 – The power to amend a Transitional Environmental Program be expanded to:

10(a) allow the administering authority to amend without consent of the operator

It is proposed that an amendment be made to insert new provisions into Chapter 7, Part 3, and amend existing provisions as necessary, to provide for the power of the administering authority to initiate and decide amendments to TEPs having regard to any submission by the existing holder. This approach would ensure any use of the power by the administering authority to make amendments to TEPs is exercised in the same way as the power to make the instrument. For example, the administering authority must have regard to the decision-making criteria in s 338, and the decision to amend the TEP is reviewable and subject to appeal.

**Council Comments – Supported - Should reduce regulatory burden.**

It is further considered that the legislation should also be modified to include clear offences for non-compliance with an EPO.

10(b) The power to amend a Transitional Environmental Program be expanded to: (b) allow the administering authority to refuse an amendment of a TEP if it is not also satisfied that the amendment would be likely to achieve advancement of compliance with the Act

This recommendation was delivered through the *EPOLA Act 2023* (section 68).

No further proposals for this recommendation are being made.

**Council Comments - Delivered by *EPOLA Act 2023***

Recommendation 11 – In the event that a general environmental duty offence was not preferred, consideration might be given to including the general environmental duty within the scope of operation of section 505 of the EPA (Qld), by way of example, by introducing the words “a contravention of the general environmental duty or...” after the words “or restrain” and “or anticipated” and before the word offence” in section 505(1).

Delivered by recommendation 15

A GED offence, proposed under Recommendation 15 in the Report, was the Government’s preferred option for enhancing enforcement actions in the event a person contravenes the GED. Therefore, there is no proposal made to give effect to Recommendation 11, to include the GED under section 505 of the EP Act.

**Council Comments – Supported - Should reduce regulatory burden.**

Recommendation 12 – The power to amend Environmental Authority conditions be expanded to allow the Chief Executive or the Minister to amend conditions where the Minister or Chief Executive considers the environmental impact of the activity is not being appropriately avoided, mitigated, or managed.

Support in Principle

The Government supports this recommendation in principle and the proposed response is outlined below. When the EP Act was passed by Parliament, it sought to balance the need for certainty for business with the need for EAs to adapt to changing circumstances. The legislative framework recognised that the understanding of environmental impacts would change over time and that technology and management systems would improve. Accordingly, the legislative framework provided for circumstances and a process for amending licences and provisions found in section 215.

Proposal 1: Amend the provisions relating to issuing an environmental protection order or an environmental evaluation requirement to clarify that a notice may be issued to address concerns of environmental harm even if there is a condition of an EA appearing to authorise the relevant harm. However, a relevant ground or grounds under the EPO or environmental evaluation provisions for issuing the notice would still have to be otherwise satisfied (e.g., to secure compliance with the general environmental duty)

Proposal 2: Amend section 219 or insert further provisions into Division 2 of Chapter 5A, Part 6 to allow the administering authority to, upon considering written submissions from the EA holder pursuant to section 218, make revisions to the proposed amendment in response to the EA holder’s submissions.

**Council Comments - Supported in principle - The justification for the broader discretion to amend EA conditions where environmental harm has not been avoided or mitigated must be clearly defined. An EA by definition is a licence to pollute.**

In addition, it is recommended that other directions be investigated, including, for example, the ability to reduce facility throughput or production until amendments have been made to the EA.



Recommendation 13 – The provisions regarding continuing obligations under cancelled or suspended Environmental Authorities be clarified to ensure that an operator must continue to comply with conditions regarding management of the site to reduce environmental risk and rehabilitation.

Delivered by *EPOLA Act 2023* - Amendments regarding continuing obligations under cancelled or suspended EAs were addressed via the *EPOLA Act 2023* (section 36).

No further proposals for this recommendation are being made.

[Council Comments](#) - Delivered by *EPOLA Act 2023*

Recommendation 14 – Schedule 4 of the EPA (Qld) be amended to include a contravention of sections 357I and 363E as disqualifying events for the purposes of section 318K of the EPA (Qld).

The definition of ‘environmental offence’ in Schedule 4 is proposed to be amended to include the contraventions under sections 357I and 363E so they may be regarded as disqualifying events.

However, given the proposal to rationalise certain statutory notices the amendment will be made to include contravention of the new notice provision as a relevant environmental offence, rather than section 363E as that section is proposed to be repealed.

The proposed amendment to the definition of ‘environmental offence’ is not proposed to be limited such that the additional offences can only be considered for the purposes of disqualifying events under section 318K. This is because the sections which use the term ‘environmental offence’ throughout the EP Act are few – it is otherwise used in sections 215(2)(a), 278(2)(d), 318R and 318V only – and there is relatively limited effect in broadening the definition for these sections. For example, section 215(2)(a) states a trigger for amending EA conditions as ‘a contravention of this Act or an environmental offence committed by the holder’. As such, even without amending the definition of environmental offence to include additional offences, any offence under the EP Act would still be available for the purposes of section 215(2)(a) as a contravention. Further, where the offences are included in the definition for the purposes of section 318K, a consistent definition would need to apply to sections 318R and 318V for the provisions to be workable as the provisions relate to the same matters under Chapter 5A, Part 4.

[Council Comments – Supported](#)- No impacts to Local government

Recommendation 15– Consideration should be given to creating an offence for breaching the general environmental duty

Provisions will be inserted, likely in Chapter 8, Part 3, to specify that failure to comply with the GED is an offence. However, the offence will not apply to an aspect of minimising environmental harm that is currently addressed through an environmental requirement, for example, an EA. A provision Page | 36 will also make clear that where the person has complied with a Code of Practice, the person is taken to have complied with the GED

[Council Comments – Supported](#) - Should reduce environmental harm.

Recommendation 16 – The duty to notify of environmental harm provisions (Chapter 7, Division 2) be amended to include a duty to notify to a similar effect, as that provided for in section 74B of the EMPCA (Tas).

Section 320A is proposed to be amended such that the duty of a person to notify of actual or threatened serious or material environmental harm includes circumstances where the person ‘reasonably believes’ or ‘should in the circumstances reasonably believe’ that a notifiable event under section 320A has occurred.

[Council Comments – Supported](#) - Should reduce environmental harm.

Recommendation 17 & 18- Chapter 10, Part 1 of the EPA (Qld) be amended to expand the evidentiary aids limited to criminal proceedings to be available in civil proceedings. The words “by the prosecutor” be deleted from section 490(7).

Sections 491(1) and 491A(1) will be amended to specify the sections also apply to ‘a proceeding in relation to’ the relevant offences to which the provisions apply (sections 430, 440 and 440Q). This will make clear those evidentiary provisions are available in civil proceedings.

Section 490(8) will be amended to remove the words 'by the prosecutor' to make the provision available in civil proceedings

Council Comments – Supported - Should reduce environmental harm.

Yours sincerely,

Brett Davey  
GENERAL MANAGER, PLANNING AND REGULATORY SERVICES