




Speech By
Hon. Leanne Linard

MEMBER FOR NUDGE

Record of Proceedings, 13 February 2024

**ENVIRONMENTAL PROTECTION (POWERS AND PENALTIES) AND OTHER
LEGISLATION AMENDMENT BILL**

Introduction

 **Hon. LM LINARD** (Nudgee—ALP) (Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation) (11.50 am): I present a bill for an act to amend the Environmental Protection Act 1994, the Environmental Protection Regulation 2019 and the State Penalties Enforcement Regulation 2014 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Health and Environment Committee to consider the bill.

Tabled paper: Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 [169](#).

Tabled paper: Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024, explanatory notes [170](#).

Tabled paper: Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024, statement of compatibility with human rights [171](#).

I am pleased to introduce the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024. The bill further demonstrates our government's commitment to protect the community as well as Queensland's unique and much loved natural environment. It does so by ensuring the powers and penalties available to regulators are contemporary, effective and responsive and by removing impediments to their efficient use.

The bill will support regulators to be responsive and proactive to changes in industry practices and community expectations. The bill also amends the Environmental Protection Act 1994 to ensure environmental values continue to be protected, including the health, wellbeing and safety of all Queensland communities. The amendments, through this bill, will facilitate a more proactive approach to environmental risk management to prevent the community from being exposed to harm. It will remove existing barriers to timely and effective regulatory responses to manage and restore environmental harm that has occurred.

The bill recognises that the goal of environmental protection is inextricably linked to safeguarding the health and wellbeing of our communities. In recent years, environmental impacts from a number of industries have presented increasingly complex regulatory challenges. These are often linked to growing communities resulting in coexistence of housing and industrial areas. Effective regulation is critical to minimise and prevent harm to the community and environment from the increased risks from dust, odour and noise.

The bill will implement the government's response to the 2022 independent review undertaken by retired judge Richard Jones and barrister Susan Hedge. The review, which looked into the powers and penalties under the Environmental Protection Act, was initiated in part due to the significant odour nuisance issues that have arisen in communities in the vicinity of existing waste management activities, most notably in Ipswich.

I would like to acknowledge the advocacy of the members for Bundamba, Jordan and Ipswich as well as the former member for Ipswich West on this important issue. These members have listened to their communities and brought their issues and concerns, and the need for solutions, to our government's attention. They have been passionate, persistent and relentless in their advocacy on behalf of their communities, and I and our government have listened.

The odour issues being experienced by residents in Swanbank, New Chum and nearby suburbs are completely unacceptable, and the government's clear message to the companies causing the odour is simple: take action to stop the odours now. The Department of Environment, Science and Innovation is taking strong action. This action has included seeking a restraining order in the Planning and Environment Court, seeking to stop one company's activities in order to bring relief to the local community. The application was heard in the Planning and Environment Court over two days from 31 January this year, with the decision reserved. The department is committed to continuing to work with the community and using every tool in its regulatory toolbox to resolve the odour issue as soon as possible.

The review aimed to identify whether the tools available under the EP Act, particularly in relation to environmental nuisance, are sufficiently contemporary to address the challenges of the future and make any recommendations for the improvement of the act for the regulation of Queensland's environment. The review considered the environmental legislation of other jurisdictions as well as other Queensland legislation. The review found that the act generally has an adequate range of powers and penalties to enforce environmental obligations and reduce the risk of environmental harm; however, Judge Jones and Ms Hedge identified areas where the powers could be enhanced. For example, the focus of existing powers and penalties tends to be reactive rather than proactive, and there is a need to prevent harm occurring, which was reinforced through a recommendation for a new offence for a breach of the general environmental duty. The review also found that the introduction of clearer policy principles such as the precautionary principle, polluter pays, primacy of prevention and proportionality principles would be beneficial. Other key recommendations included enhancing the effectiveness of available compliance tools with a particular focus on addressing nuisance issues and protecting human and community health and wellbeing.

Judge Jones and Ms Hedge made 18 recommendations on how Queensland's laws could be updated to better protect the community and environment. Our government supported, or supported in principle, all recommendations made. Several of the recommendations have already been delivered through the Environmental Protection and Other Legislation Amendment Act 2023, which was passed by the Queensland parliament in March of last year. The bill I am introducing today will finalise the government's response to the recommendations. It will make enhancements to the processes under the Environmental Protection Act. This will help ensure the tools available to the environmental regulators are efficient and proportionate to address current and future challenges, particularly those in relation to persistent environmental nuisance.

The bill will improve existing tools and regulatory processes, allowing for firmer and faster action against polluters, ensuring we are better protecting both the environment and community's health and wellbeing. The bill will promote proactive action to prevent environmental harm. It will introduce an offence for the existing general environmental duty, placing emphasis on prevention and removing barriers to timely and effective regulatory responses. This will mean action can be taken before environmental harm occurs where there is failure to take all reasonably practicable measures to prevent or minimise harm that will or is likely to occur.

The bill also introduces a new duty to restore. Where a person's actions can cause harm or environmental contamination, the duty will require that, as far as reasonably practicable, the environment is restored to the condition it was before the incident occurred. This introduces a proactive obligation, replacing the existing requirement to rehabilitate or restore in response to a compliance notice. The duty is underpinned by the 'polluter pays' principle and reinforces and complements the general environmental duty which has the objective of harm prevention and mitigation, whereas the duty to restore applies where environmental harm nevertheless occurs. The duty clarifies that a person should not wait for the administering authority to issue a notice to commence clean-up or remediate and is intended to encourage quicker responses to incidents involving contamination to ensure they are remedied before they cause greater harm.

A new type of compliance notice, called an environmental enforcement order, will replace existing provisions for environmental protection orders, direction notices and clean-up notices. This will streamline statutory notices and reduce regulatory complexity, enabling a more efficient and responsive compliance approach. The bill will clarify that an environmental authority is not a barrier to issuing an environmental enforcement order or notice requiring environmental evaluation when responding to an environmental harm incident where the harm is not clearly authorised or conditioned for under the

environmental authority, EA. This will provide comfort to the community that the amendment will counter EA holders seeking to delay or block action in relation to the harm or nuisance being experienced by the community by using legal proceedings reliant on an existing EA condition. Following the action in response to harm that has occurred, there may be a need to amend an environmental authority to ensure the harm does not reoccur.

The issuing of the notice also means that the administering authority may initiate an amendment to the environmental authority under the existing provisions of the act. This maintains the status quo for most environmental authority holders, with impacts limited to operators causing unacceptable harm. There are a range of other enhancements and minor amendments included in the bill that will support a greater emphasis on the concepts of human health, wellbeing and safety, further supporting a proactive approach.

The bill includes minor amendments that are not related to the independent review, including clarifying the operation of information privacy provisions that were introduced in the Environmental Protection and Other Legislation Amendment Act 2023 but are yet to come into effect. Consultation on the amendments included in the bill occurred with the release of a public consultation paper in September 2023. The consultation paper outlined proposals for amendments to implement enhancements and efficiencies to existing powers and penalties under the Environmental Protection Act, as well as to introduce a new statutory obligation—the duty to restore. Prior to the consultation paper's release, the government released the report outlining the independent review findings and the government response to the review recommendations in May 2023. Key stakeholders—including the resources sector, regulated industry, local government, community, environmental and conservation groups and First Nations groups such as registered native title bodies corporate—were also consulted on the potential amendments, with a series of presentations held in October last year.

The Department of Environment, Science and Innovation has published a conservation report which details the feedback received and the stakeholders who provided submissions. Not surprisingly, views on the government's proposed changes were mixed, with strong support from some and reservations and opposition from others. All of the feedback that was received was considered in preparing the bill, which strikes a balance between improving the protection of the environment and the community as well as providing the right conditions for investment in sustainable industries.

The effective operation of environmental legislation with adequate powers and penalties for regulators is essential to the protection of our natural environment and the wellbeing of our communities. This bill represents a move to managing risks before they cause environmental harm and nuisance. It will ensure the appropriate tools are in place to manage environmental harm, including persistent nuisance issues, before and as they arise. Introducing this bill continues our government's commitment to safeguarding the health and wellbeing of all Queensland communities and to protecting our unique natural environment.

First Reading

Hon. LM LINARD (Nudgee—ALP) (Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation) (12.02 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Health and Environment Committee

Mr DEPUTY SPEAKER (Mr Hart): In accordance with standing order 131, the bill is now referred to the Health and Environment Committee.