

AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE
REPORT NO. 49

ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2014

RESPONSE FROM MINISTER FOR ENVIRONMENT AND HERITAGE PROTECTION

Response in order of recommendations/points for clarification

Committee comment recommendation/ point for clarification	Response
<p>Recommendation 1— The committee recommends that the Environmental Protection and Other Legislation Bill 2014 be passed</p>	No response required
<p>Recommendation 2— As part of implementation, the committee recommends that the department provide further information to stakeholders to confirm the intent of the <i>Environment Offsets Act 2014</i>, and in support of the amendments in this Bill.</p>	The government supports this recommendation. A guideline will be prepared to clarify the intent and interpretation of key aspects in the <i>Environmental Offsets Act 2014</i> including the intent of "same, substantially the same" provisions in relation to prescribed environmental matters and prescribed activities.
<p>Recommendation 3— The committee recommends that the Bill be amended at clause 16 to retain a definition for Matters of Local Environmental Significance (MLES) and that the wording of the definition be amended to recognise the role of local matters in the framework and clarify for industry the scope of matters which may be considered Matters of Local Environmental Significance (MLES).</p>	<p>The government supports this recommendation in principle but does not believe that a detailed definition for MLES is appropriate in the <i>Environmental Offsets Act 2014</i>.</p> <p>The <i>Environmental Offsets Regulation 2014</i> generally describes a matter of local environmental significance as an environmental value for which an offset may be required under a local planning instrument. A MLES may be any value of local importance providing it is not a matter of State or national environmental significance. This definition is designed to allow MLES to be defined by local government in consultation with the community during existing planning processes under the <i>Sustainable Planning Act 2009</i>. The State government will oversee the identification of MLES during this process to ensure that duplication with matters of state and national environmental significance is prevented.</p>
<p>Recommendation 4— The committee recommends that the Bill amends section 24 'Requirements for financial settlement offsets' of the <i>Environmental Offsets Act 2014</i> to allow administering authorities' flexibility to determine a suitable financial</p>	The government will amend section 24 (Requirements for financial settlement offsets) of the <i>Environmental Offsets Act 2014</i> to allow administering authorities that are local governments to decide an amount up to the amount determined in accordance with the environmental offsets policy.

<p>settlement amount. The committee notes that the department may wish to reach agreement with local government as to a method for calculating an appropriate range for financial settlement to ensure offsets deliver an equivalent environmental outcome, and liability should a lower financial settlement be accepted.</p>	<p>Local governments will still be required to deliver a conservation outcome for the environmental offsets that it delivers using the financial settlement offset payments. To ensure that this can still be achieved, section 89 of the <i>Environmental Offsets Act 2014</i> will also be amended to allow other amounts to be paid into local government offset trust funds – presently only financial settlement offset payments can be held in the trust funds.</p>
<p>Recommendation 5— The committee recommends that clause 102 of the Bill be amended to replace 'State' with 'administering authority', to correct the inconsistency in the terms used in this section.</p>	<p>The government will amend the Bill to make the change recommended.</p>
<p>Recommendation 6— The committee recommends that the department consider making a statutory guideline in the first instance, rather than non-statutory guidelines initially, so as to support greater certainty and adoption of enforceable undertakings as an alternative to prosecution.</p>	<p>The government supports this recommendation and will commence the enforceable undertakings amendments by proclamation to ensure that the statutory guideline can be developed in consultation with key stakeholders prior to gazettal.</p>
<p>Point for clarification— The committee invites the Minister and department, as part of implementation planning, to consider its approach and business system requirements in support of effective monitoring, auditing and evaluation of the implementation of enforceable undertakings.</p>	<p>The Department of Environment and Heritage Protection is already considering its approach and business system requirements for effective monitoring, auditing and evaluating the full range of approvals under the <i>Environmental Protection Act 1994</i> as part its Compliance Renewal Program. For example, the Compliance Renewal Program includes the Compliance Framework Project which will redesign the department's compliance framework to ensure state-wide consistency in compliance activities and enable the effective and efficient utilisation of compliance resources. In the longer term, the Compliance Framework Project will also be increasing the department's interactions with the community through the provision of real time information about the environmental performance of customers and the outcomes of our compliance and enforcement activities. This will be achieved</p>

	through an enhanced contemporary online presence and communication strategy.
<p>Recommendation 7— The committee recommends that the Minister consider an amendment to clause 2 of the Bill to provide that the introduction of enforceable undertakings commence by proclamation, when the Minister and department are fully confident that the guidelines and related business processes and systems are in place.</p>	The government will amend the Bill to make the recommended changes required for the enforceable undertakings amendments to commence by proclamation.
<p>Point of clarification— The committee invites the Minister to advise the House when regulations and end of waste guidelines will be finalised and when these will be made available for industry stakeholders.</p>	The Minister for Environment and Heritage Protection advises that the Department of Environment and Heritage Protection is aiming to make the regulation and guidelines in the first half of 2015. Industry will be directly engaged to contribute to the development of the draft documents during this period.
<p>Recommendation 8— The committee recommends that the department consider whether:</p> <ul style="list-style-type: none"> • section 155 could be amended to clarify the point at which a resource ceases to be a waste and becomes a resource; and • section 156 to amended to differentiate between an 'end of waste user' and 'resource user'. 	<p>The government does not support amending section 155. The department has considered section 155 and considers that the current drafting in the Bill is sufficiently clear. The end of waste code and end of waste approval itself will define the point at which the waste ceases to be a waste and becomes a resource. The point will be different for different types of waste/resource and therefore cannot be made clearer in the Bill.</p> <p>The government supports amending the Bill to differentiate between an 'end of waste user' and a 'resource user' and will amend the Bill to make these changes.</p>
<p>Recommendation 9— The committee recommends that sections 173P and 173Q(1) and 173Q(2) be retained in the Bill as originally drafted and introduced to the House, as it maintains an appropriate policy position with respect to chain of responsibility for persons acting under end of waste approvals.</p>	<p>The government supports the policy intent of this recommendation, but does not support the amendments recommended.</p> <p>The government will amend the Bill to clarify that conditions of an end of waste approval can only impose obligations on the holder. Section 173P will then ensure that those people who acting under the approval (for example, an employee or subcontractor) must also comply with the conditions of the approval. Section 173Q</p>

	will be deleted as the combination of the amendments to section 173N and section 173P will ensure that appropriate chain of responsibility is maintained.
Recommendation 10— The committee recommends that the Bill be amended to remove sections 173Q(3) and 173Q(4) specifically, to preserve the general principal that the legal onus or burden of proof lies with the party which brings an action, and the approved holder is 'innocent until proven guilty'. The approved holder, if accused, must still satisfy the evidential onus of proof for any defence or excuse they raise.	The government supports the policy intent of this amendment, but will delete section 173Q in its entirety. The amendments to section 173N referred to above and section 173P will ensure that the appropriate chain of responsibility is maintained without altering the burden of proof.