

Queensland



**ENVIRONMENTAL
PROTECTION AMENDMENT
ACT 1996**

Act No. 10 of 1996

Queensland



ENVIRONMENTAL PROTECTION AMENDMENT ACT 1996

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Queensland



Environmental Protection Amendment Act 1996

Act No. 10 of 1996

An Act to amend the *Environmental Protection Act 1994*

[Assented to 23 May 1996]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Environmental Protection Amendment Act 1996*.

Act amended

2. This Act amends the *Environmental Protection Act 1994*.

Commencement

3. Sections 13 and 24 commence on 1 June 1996.

Amendment of s 14 (Environmental harm)

4. Section 14, after ‘value’—

insert—

‘, and includes environmental nuisance.’.

Amendment of s 23 (Preparation of draft policies)

5. Section 23, after ‘to’—

insert—

‘enhance or’.

Amendment of s 35 (Application date)

6. Section 35(1), after ‘for, or’—

insert—

‘amendment or’.

Amendment of s 39 (Level 1 environmentally relevant activities to be licensed)**7. Section 39—***insert—*

‘(2) Subsection (1) has effect subject to section 61A.¹’.

Replacement of s 44 (Criteria for deciding application)**8. Section 44—***omit, insert—***‘Criteria for deciding application**

‘**44.** In deciding whether to grant or refuse an application for an environmental authority or what should be the conditions of the authority, the administering authority—

- (a) must comply with any applicable environmental protection policy requiring it to—
 - (i) follow stated procedure in evaluating an application for an environmental authority; or
 - (ii) grant or refuse to grant an application for an environmental authority or to impose conditions on an environmental authority; and
- (b) subject to paragraph (a), must also consider the following—
 - (i) the standard criteria;
 - (ii) additional information given in relation to the application;
 - (iii) any report about the applicant’s suitability to hold, or continue to hold, an environmental authority;
 - (iv) the views expressed at a conference held in relation to the application.’.

¹ Section 61A (Special provisions for environmental authorities to carry out new environmentally relevant activities)

Amendment of s 46 (Conditions of environmental authority)

9.(1) Section 46, ‘subsection (1)’—

omit, insert—

‘subsection (2)’.

(2) Section 46(2) and (3)—

renumber as section 46(3) and (4).

(3) Section 46—

insert—

‘**(2)** The conditions must include any the administering authority is required to impose under an applicable environmental protection policy.’.

Insertion of new s 47A

10. After section 47—

insert—

‘Provisional licensee may apply for new licence

‘47A.(1) A licensee under a provisional licence may apply to the administering authority to have the licence cancelled and a new licence under section 45² issued if the licensee is able to give it the information the licensee was previously unable to give to permit the issue of a licence under section 45.

‘(2) This division (other than section 47³) applies to the application with all necessary changes and any changes prescribed under a regulation.

‘(3) If the administering authority issues a new licence, it must cancel the provisional licence.’.

Amendment of s 49 (Amendment of licence on application of licensee)

11. Section 49(7), ‘its receipt’—

² Section 45 (Grant of application for environmental authority)

³ Section 47 (Provisional licence)

omit, insert—

‘the application date’.

Insertion of new s 61A

12. After section 61—

insert—

‘Special provisions for environmental authorities to carry out new environmentally relevant activities

‘61A.(1) This section applies if—

- (a) an activity first becomes an environmentally relevant activity on or after 1 July 1996; and
- (b) immediately before the activity became an environmentally relevant activity, a person was carrying out the activity; and
- (c) within 4 months after the day the activity becomes an environmentally relevant activity, the person applies under this Act for an environmental authority to carry out the activity.

‘(2) A provision of this Act that creates an offence for carrying out the activity without an environmental authority does not apply to the person until—

- (a) if the application is granted—the day the environmental authority issued to the person for the activity takes effect; or
- (b) if the application is refused—the day after notice of the decision to refuse it is given to the applicant; or
- (c) if, under section 67,⁴ the application is taken to have been refused—the end of the time within which it was required to be decided.

‘(3) Despite section 43(1),⁵ the administering authority must decide the application within 3 months after the application date.

‘(4) For this section, an activity does not first become an environmentally

⁴ Section 67 (Failure to decide applications taken to be refusal)

⁵ Section 43 (Administering authority to decide application for authority)

relevant activity on a day if, immediately before the day, an environmental authority could be issued to a person to carry out the activity.’.

Amendment of s 68 (Annual licence fee and return)

13. Section 68(1), ‘of issue of a licence’—

omit, insert—

‘a licence takes effect’.

Amendment of s 88 (Administering authority to consider draft programs)

14. Section 88(2), ‘the administering authority requires public notice’—

omit, insert—

‘public notice is required’.

Replacement of s 89 (Criteria for deciding draft program)

15. Section 89—

omit, insert—

‘Criteria for deciding draft program

‘89. In deciding whether to approve or refuse to approve the draft program or the conditions (if any) of the approval, the administering authority—

- (a) must comply with any applicable environmental protection policy requiring it to—
 - (i) follow stated procedure in evaluating an application for approval of an environmental management program; or
 - (ii) grant or refuse to grant an application for approval of an environmental management program or to impose conditions on an approval of an environmental management program; and
- (b) subject to paragraph (a), must also consider the following—

- (i) the standard criteria;
- (ii) additional information given in relation to the draft program;
- (iii) the views expressed at a conference held in relation to the draft program.’.

Amendment of s 92 (Extensions of time for decisions on submission of draft programs)

16. Section 92, after ‘extend the time’—

insert—

‘in which’.

Amendment of s 196 (Devolution of powers)

17.(1) Section 196(3)—

omit, insert—

‘(3) To remove any doubt, the local government may—

- (a) make a resolution or local law (not inconsistent with this Act) about the fees payable to it for the devolved matter; and
- (b) make a local law (not inconsistent with this Act) about any matter for which it is necessary or convenient to make provision for carrying out or giving effect to the devolved matter.’.

(2) Section 196(4)—

omit, insert—

‘(4) Despite subsection (3)(a), a local government may make a resolution or local law prescribing a lower, but not a higher, fee for something for which a fee is prescribed under a regulation.’.

Amendment of s 200 (Dissatisfied person)

18. Section 200(1)—

insert—

‘(f) if the decision is a decision under an environmental protection

policy or a regulation that the policy or regulation declares to be a decision to which this part applies—the person declared under the policy or regulation to be a dissatisfied person for the decision.’.

Amendment of s 202 (Procedure for review)

19.(1) Section 202(2)(a)(ii), ‘not later than the review date’—

omit.

(2) Section 202(2)(b), before ‘supported’—

insert—

‘be’.

(3) Section 202(3), ‘The applicant must give’—

omit, insert—

‘On or before making the application, the applicant must send’.

(4) Section 202(5), after ‘must’—

insert—

‘, within 14 days after receiving the application’.

(5) Section 202(5)(b)—

omit, insert—

‘(b) consider any submissions properly made by a recipient of the review notice; and

(c) make a decision (the “**review decision**”) to—

(i) confirm or revoke the original decision; or

(ii) vary the original decision in a way the administering authority considers appropriate.’.

(6) Section 202(10)—

omit, insert—

‘**(10)** If the administering authority does not comply with subsection (5) or (8), the authority is taken to have made a decision confirming the original decision.’.

Amendment of s 220 (Regulations)

20.(1) Section 220, heading—

omit, insert—

‘Regulation-making power’.

(2) Section 220(2)(a), from ‘payable,’—

omit, insert—

‘payable, the recovery of unpaid amount of fees, and the exemption from payment of fees or the waiver of fees;’.

Amendment of ch 8 heading (Repeals, savings and transitional)

21. Chapter 8, heading, ‘and transitional’—

omit, insert—

**‘, TRANSITIONAL, VALIDATIONS AND
RELATED PROVISIONS’.**

Amendment of s 224 (Definitions)

22. Section 224, definition ‘commencing day’—

omit, insert—

‘**“commencing day”** means 1 March 1995.’.

Insertion of new ss 236 to 237

23. After section 235—

insert—

**‘Extension of period for consideration of applications for
environmental authorities**

‘236.(1) This section applies to an application for an environmental authority—

- (a) made, but not decided, before the commencement of this section;
or

(b) made on or after the commencement but before 1 July 1996.

‘(2) Despite section 43(1),⁶ the administering authority must decide the application within 3 months after the application date.

‘(3) This section has effect subject to section 249.⁷

‘Postponement of requirement for environmental authorities to carry out certain existing environmentally relevant activities

‘236A.(1) In this section—

“**exempt person**” means a person who—

- (a) on 30 June 1996—is carrying out an environmentally relevant activity; and
- (b) before 1 July 1996—makes application for an environmental authority to carry out the activity; and
- (c) on 1 July 1996—continues to carry out the activity.

‘(2) A provision of this Act that creates an offence for carrying out the activity without an environmental authority (the “**offence provision**”) does not apply to an exempt person until—

- (a) if the application is granted—the day the environmental authority issued to the person for the activity takes effect; or
- (b) if the application is refused—the day after notice of the decision to refuse it is given to the applicant; or
- (c) if, under section 67,⁸ the application is taken to have been refused—the end of the time within which it was required to be decided.

‘(3) Subsection (2) has effect despite the offence provision.

⁶ Section 43 (Administering authority to decide application for authority)

⁷ Section 249 (Reconsideration of applications refused during suspension period)

⁸ Section 67 (Failure to decide applications taken to be refusal)

‘Application of ch 2

‘237. Sections 26 and 27⁹ do not apply to the preparation of a draft environmental protection policy about noise or waste.’.

Insertion of new s 240

24. After section 239—

insert—

‘Transitional provision for change in anniversary days

‘240.(1) This section applies if—

- (a) the anniversary of the day of issue of a licence is on or after the commencement of this section; and
- (b) before the commencement, a notice was given under section 68¹⁰ for the licence.

‘(2) Section 68 continues to apply to the licence for the anniversary for which the notice was given.

‘(3) In this section—

“section 68” means section 68 before its amendment by the *Environmental Protection Amendment Act 1996*.’.

Amendment of s 238 (Special transitional provision for agricultural industry)

25. Section 238—

insert—

‘(2) This section expires on 1 September 1997.’.

⁹ Sections 26 (Notice of proposal to prepare draft policy) and 27 (Preparation of draft policy)

¹⁰ Section 68 (Annual licence fee and return)

Replacement of s 241 (Expiry of division)

26. Section 241—

omit, insert—

‘Expiry of division

‘241. This division (other than section 238¹¹) expires on the second applicable day.’.

Insertion of new ch 8, pt 3

27. After section 241—

insert—

‘PART 3—VALIDATIONS AND RELATED PROVISIONS***‘Division 1—Interpretation*****‘Definitions for pt 3**

‘242. In this part—

“amending regulation” means—

- (a) the *Environmental Protection (Interim) Amendment Regulation (No. 2) 1996* (1996 SL No. 38); or
- (b) the *Environmental Protection (Interim) Amendment Regulation (No. 3) 1996* (1996 SL No. 43).

“invalid past act” means a past act that—

- (a) was done or omitted to be done by the administering authority; and
- (b) was invalidly done or omitted to be done, but would have been validly done or omitted to be done if the *Environmental*

¹¹ Section 238 (Special transitional provision for agricultural industry)

Protection (Interim) Regulation 1995, section 64A,¹² had not commenced.

“past act” means something done or omitted to be done during the suspension period.

“suspension period” means the period 1 March 1996 to 7 March 1996.

“unlawful past act” means a past act that—

- (a) caused serious or material environmental harm or an environmental nuisance; and
- (b) would have been authorised to be done or omitted to be done under an environmental authority if the *Environmental Protection (Interim) Regulation 1995*, section 64A, had not commenced.

‘Division 2—Validations

‘Validation of fees

‘243.(1) It is declared that the power to make regulations under section 220¹³ has always included power to make regulations about the waiver of fees payable under this Act.

‘(2) This section expires on the day it commences.

‘Validation of amending regulations

‘244. To remove any doubt, it is declared that the amending regulations are, and always have been, valid.

‘Validations for invalid past acts

‘245.(1) An invalid past act is taken to be, and always to have been, valid.

¹² *Environmental Protection (Interim) Regulation 1995*, section 64A (Suspension of operation of section 4 and schedule 1)

¹³ Section 220 (Regulations)

‘(2) Subsection (1) applies to the following invalid past acts—

- (a) the issue or amendment of an environmental authority;
- (b) the issue of a notice for the payment of an annual licence fee or the giving of an annual return;
- (c) the approval of a draft environmental management program;
- (d) the issue of an environmental protection order.

‘(3) Subsection (2) does not limit the application of subsection (1).

‘Validation of certain notices

‘246. If the anniversary of the day of issue of a licence falls during the suspension period, a notice given under section 68¹⁴ for the licence is taken to have been validly given.

‘Division 3—Miscellaneous

‘Unlawful past acts authorised

‘247. An unlawful past act is taken to be, and always to have been, authorised to be done or omitted to be done under this Act.

‘Applications made during suspension period

‘248. An application made during the suspension period for, or for the amendment or transfer of, an environmental authority is taken to have been made on 8 March 1996.

‘Reconsideration of applications refused during suspension period

‘249.(1) This section applies if—

- (a) during the suspension period—
 - (i) the administering authority was taken to have decided to

¹⁴ Section 68 (Annual licence fee and return)

refuse an application for, or for the amendment or transfer of, an environmental authority because of section 67;¹⁵ or

- (ii) the administering authority would, if the *Environmental Protection (Interim) Regulation 1995*, section 64A,¹⁶ had not commenced, have been taken to have decided to refuse an application for, or for the amendment or transfer of, an environmental authority because of section 67; and

- (b) under this Act, the applicant did not apply for a review of the decision.

‘(2) The administering authority must treat the application as if it were a fresh application properly made to it on the commencement of this section and accompanied by the appropriate application fee.

‘(3) Despite section 35,¹⁷ the application date for the application is taken to be the commencement of this section.

‘(4) Despite sections 43(1), 49(7) and 56,¹⁸ the administering authority must decide the application within 3 months after the application date.

‘Anniversary day for environmental authorities taking effect during suspension period

‘**250.(1)** This section applies to an environmental authority—

- (a) issued before 1 March 1996; and
- (b) stated to take effect on a day during the suspension period (the “**stated day**”).

¹⁵ Section 67 (Failure to decide applications taken to be refusal)

¹⁶ *Environmental Protection (Interim) Regulation 1995*, section 64A (Suspension of operation of section 4 and schedule 1)

¹⁷ Section 35 (Application date)

¹⁸ Sections 43 (Administering authority to decide application for authority), 49 (Amendment of licence on application of licensee) and 56 (Administering authority to decide application for transfer of licence)

‘(2) For section 68,¹⁹ the authority is taken as having taken effect on the stated day.

‘Special regulation-making power

‘**251.(1)** A regulation may be made about any matter of a savings, transitional or validating nature for which—

- (a) it is necessary or convenient to make provision because of an amending regulation; and
- (b) this part does not make provision or enough provision.

‘(2) The regulation may be given retrospective operation to a date not earlier than the date of commencement of the amending regulation for which it is made.

‘(3) The regulation has effect despite any other provision of this Act.

‘Expiry of part

‘**252.** This part (other than section 243²⁰) expires on 1 March 1997.’.

¹⁹ Section 68 (Annual licence fee and return)

²⁰ Section 243 (Validation of fees)