

ENVIRONMENTAL PROTECTION AMENDMENT BILL 1996

EXPLANATORY NOTES

The Environmental Protection Amendment Act has been drafted to be consistent with current legislative drafting practice and in modern language. As a consequence particular sections, clauses and sub-clauses require little or no further explanation and in these Explanatory Notes those parts will be repeated or summarised in general terms only.

Short Title

The short title of this Bill is the *Environmental Protection Amendment Act 1996*.

Policy Objectives of the Bill

There are two main objectives of this Bill. Firstly, this Bill deals with matters arising from the *Environmental Protection (Interim) Regulation Amendment (No.2) 1996* and *Environmental Protection (Interim) Regulation Amendment (No.3) 1996*. This involves validation of certain actions taken during the periods covered by these two pieces of subordinate legislation. Secondly this Bill clarifies other matters which have arisen during the implementation of the *Environmental Protection Act 1994*.

How the Policy Objectives will be Achieved

The Bill validates the *Environmental Protection (Interim) Regulation Amendment (No.2) 1996* and *Environmental Protection (Interim) Regulation Amendment (No.3) 1996*. The Bill also validates actions taken by both administering authorities and the public during the period covered

by these two pieces of subordinate legislation. The Bill also resolves minor drafting issues, and administrative problems which have arisen as a result of the implementation of the Act. As these issues are legislative in nature, an Act of Parliament is the only option available to address them.

Administrative Cost of the Bill

In most cases, the amendments proposed in this Bill will have no effect on costs, for example, section 47A avoids more complex procedures of calculating and paying refunds for the unused portion of a cancelled provisional licence; sections 61A and 236 reduce the peak administrative load by extending the assessment period for new ERAs and at the end of the moratorium; and sections 243 to 252 validate a number of actions during the moratorium to avoid repeating these administrative actions or defending them in courts if they were challenged. Section 47A removes the possibility of collecting a duplicate application fee.

Consistency with the Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles with one exception. Section 251 provides a regulation making power able to override the provision of the Environmental Protection Act 1994. This power is limited to the making of provisions of a transitional nature which relate only to matters arising from the *Environmental Protection (Interim) Regulation Amendment (No.2) 1996* and the *Environmental Protection (Interim) Regulation Amendment (No.3) 1996*. This regulation making power is necessary as there may be matters arising from these regulation amendments which were unforeseeable at the time of drafting this amendment act.

Consultation

Comments have been sought from the following organisations; The Queensland Office of the Parliamentary Counsel, Crown Law, Department of Local Government and Planning, Department of Mines and Energy, Department of Natural Resources, Department of Primary Industries, Department of Tourism and Small Business and members of the Ministerial Advisory Committee representing local government and industry.

NOTES ON PROVISIONS

Section 1 states the short title of the Act.

Section 2 indicates which Act this Act amends.

Section 3 provides that other than section 13 and 24 which commence on 1 June 1996, the Act commences on the date of Royal Assent.

Section 4 amends the definition of environmental nuisance to remove any doubt that environmental nuisance is a type of environmental harm.

Section 5 adds the word “enhance” to section 23 of the *Environmental Protection Act 1994* (the Act) in order to make section 23 consistent with section 25.

Section 6 includes the word “amendment” so that the term “application date” applies not only to applications for and transfers of licences, but also to applications for amendment.

Section 7 amends section 39 of the Act to clarify when a licence is required for activities which become environmentally relevant activities for the first time (see section 61A).

Section 8 amends section 44 of the Act in order to remove doubt that an environmental protection policy is able to state procedures which an administering authority must follow in evaluating, granting or refusing an application for an environmental authority.

Section 9 amends section 46 of the Act. This amendment highlights the fact that there are some conditions which must be included in an environmental authority.

Section 10 inserts a new provision (s.47A) which describes the procedure for converting a provisional licence into a full licence. A provisional licence was issued on the basis of insufficient information to issue a full licence. The holder of the provisional licence may apply for it to be converted into a full licence. The decision of the administering authority is on the basis that additional information supplied is sufficient. As the application form has already been lodged and the application fee already been paid, the applicant is not required to lodge another form or pay a second application fee.

Section 11 amends section 49(7) of the Act which refers to the amendment of licences on the application of the licensee. This amendment is to ensure that statutory timelines are based on the date the application for a licence takes effect (s.35), rather than on the date of receipt of the application.

Section 12 inserts a new section (s.61A) which provides transitional timeframes for activities which become environmentally relevant activities for the first time. An operator has four months to apply for an environmental authority after an activity first becomes an environmentally relevant activity.

Despite section 43(1) of the Act under which an administering authority has 28 days to consider an application, the amendment provides three months for such consideration for those activities which have become activities for the first time.

This new section also provides that once an application has been submitted, an applicant cannot be prosecuted simply for carrying out an environmentally relevant activity without an authority until the licence takes effect or has been refused.

Section 13 changes the timing of the anniversary day in section 68. Prior to the amendment the anniversary day was based on the anniversary of the day a licence was issued. It is possible for a licence to be issued in advance but not to take effect for a substantial period of time. This amendment provides for the anniversary day to be the anniversary of the day a licence takes effect.

Section 14 amends section 88. The amendment simply removes an inconsistency in drafting, i.e. the Act requires public notice, not the administering authority.

Section 15 amends section 89 of the Act in order to remove doubt that an environmental protection policy is able to state procedures which an administering authority must follow in evaluating, granting or refusing an application for a draft environmental management program.

Section 16 amends section 92 of the Act. This clarifies a minor typographical error.

Section 17 amends section 196 of the Act to allow a local government to set “the fees payable to it for the devolved matter” by resolution as well as by local law. However a local government is not able to set a fee higher than a fee which has already been prescribed in the Regulation.

Section 18 provides that a regulation or environmental protection policy may prescribe a person to which a decision under the regulation or policy relates, to be a dissatisfied person for the purposes of review and appeal under section 200(1).

Section 19 amends section 202 to clarify the statutory timelines for consideration of an application for review and the notification of the decision. This amendment provides for 14 day period within which an

administering authority must consider an application for review and a further 14 day period within which the administering authority must notify the applicant. If the administering authority does not make a decision and notify the applicant within 28 days, the administering authority is deemed to have made a decision confirming the decision.

Section 20 simply amends section 220 of the Act to allow Regulations to be made to either reduce or waive the requirements to pay fees.

Section 21 amends the heading of Chapter 8 of the Act to indicate that this Chapter now includes validating provisions.

Section 22 amends the definition of “commencing day” in section 224 of the Act. This amendment clarifies the date of the commencing day.

Section 23 inserts three new transitional provisions, sections 236, 236A and 237. Section 236 extends the administering authority’s timeframe to decide an application made prior to 1 July 1996, from 28 days to 3 months.

Section 236A exempts a person from section 39 of the EP Act and section 5 of the Regulation, if an application was lodged before the end of the moratorium. This gives the full effect of the moratorium to continuing activities by exempting the person from the need to have a licence or an approval until the application is refused or the licence or approval takes effect.

Section 237 removes the need to repeat the first round of consultation for the noise and waste environmental protection policies already undertaken.

Section 24 inserts a new transitional provision (section 240) which simply confirms that a notice (under section 68) sent to the holder of a licence requiring them to pay their annual licence fee before the date of commencement of this Act is still valid and that the anniversary day shall be based on the day the licence was issued, rather than the day the licence took effect.

Section 25 inserts a new subsection to section 238. The transitional arrangements for the agricultural industry now expire on the 1 September 1997 rather than 1 March 1997.

Section 26 inserts a new transitional section 241. This amendment provides for the expiry of this division.

Section 27 inserts a new part 3 of Chapter 8 to validate and clarify the effect of the moratorium on licensing.

Section 242 defines various terms used in this new part.

Section 243 validates existing regulations relating to the waiver of fees.

Section 244 ensures that the amending regulations establishing the moratorium were validly made.

Section 245 ensures that any actions or omissions undertaken by the administering authority such as issuing a licence or approving a draft environmental management program, during the period 1 March 1996 to 7 March 1996 were valid.

Section 246 provides that a notice requiring payment of the annual licence fee, given between 1 March 1996 and 7 March 1996 was validly given.

Section 247 ensures that if an unlawful past act was done and unlawful environmental harm was caused because of the suspension of the licensing system between 1 March 1996 and 7 March 1996, the act that would otherwise have been illegal is authorised.

Section 248 ensures that applications for matters dealing with licences made between 1 March 1996 and 7 March 1996 are deemed to have been made on 8 March 1996. This means that calculation of the application date is based on the 8 March 1996, rather than the date the application was lodged.

Section 249 ensures that if an administering authority was deemed to have been refused an application during the suspension period (section 68), the applicant does not need to reodge the application or pay another fee. This section also provides that the application date is deemed to be on the commencement of this section, and the administering authority has 3 months from this date for consideration of the application.

Section 250 ensures that if the anniversary day for a licence fell between 1 March 1996 and 7 March 1996, the anniversary day is taken to be that date, despite the amending regulations.

Section 251 provides a regulation making power for matters arising out of the *Environmental Protection (Interim) Regulation Amendment (No2) 1996* and the *Environmental Protection (Interim) Regulation Amendment (No3) 1996*. Any regulations made under this section may apply to matters which arose before this section commenced and may refer to matters to which another provision of this Act applies.

Section 252 indicates when this part expires.