

# **ENVIRONMENTAL AND OTHER LEGISLATION AMENDMENT BILL 1997**

## **EXPLANATORY NOTES**

The *Environmental and Other Legislation Amendment Bill 1997* has been drafted to be consistent with current 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 and Other Legislation Amendment Bill 1997*.

### **Policy Objectives of the Bill**

The *Environmental and Other Legislation Amendment Bill 1997* (the Bill) integrates the provisions of the *Contaminated Land Act 1991* (CLA) into the *Environmental Protection Act 1994* (EP Act). This provides a central piece of legislation to protect the environment in Queensland in accordance with the principles of ecologically sustainable development.

The Bill distinguishes between sites which are likely to be contaminated but have a low probability of risk to human health or the environment under the current land use (low-risk sites) and those which constitute a risk to the environment and require clean-up (risk sites). Low-risk sites will be recorded on an Environmental Management Register (EMR). Risk sites will be recorded on a Contaminated Land Register (CLR). The vast majority of sites currently recorded on the Contaminated Sites Register of the CLA, will be recorded on the EMR, removing the “stigma” associated with contamination for low-risk sites.

The Bill also limits financial institution liability, making finance more accessible for low-risk sites. It also encourages the management of

contamination through site management plans with particular benefits to commercial and industrial land by ensuring that development capital is not wasted on unwarranted clean-up. The Bill also includes appeal provisions for affected land owners.

The Bill provides local government with the extra-territorial jurisdiction to administer Environmentally Relevant Activities (ERAs) which extend below high water mark and provides for the Minister for Environment to approve a Code of Practice (CoP) under the EP Act, without the Office of the Queensland Parliamentary Counsel drafting the Code. It also permits an administering authority to decide when a licence is no longer required for an ERA and when a level 1 approval applies.

The Bill also provides for future implementation of the Environmental Protection (Waste Management) Policy and associated Environmental Protection (Waste Management) Regulation in regard to litter on all land, not just public places as currently, and for amendments to approvals of waste management works by local governments.

### **How the Policy Objectives will be Achieved**

The Bill minimises red tape for protection of the environment, reduces costs to business and provides the legislative framework to manage environmental impacts under the principles of ecologically sustainable development. The Bill supports economic development by limiting lender liability for contaminated land and reduces overall costs in the development of industrial and commercial property by preventing unnecessary remediation.

### **Administrative Cost of the Bill**

In most cases, the amendments proposed in this Bill will have little or no effect on costs.

### **Consistency with the Fundamental Legislative Principles**

The Bill is consistent with fundamental legislative principles.

## **Consultation**

Government Departments, key stakeholders and the Local Government Association of Queensland support the integration of the CLA and EP Act amendments. No consultation was considered necessary in regard to the approval of CoPs, as the amendment only allows the original intent of the provision to be achieved. Local government requested and supports the amendment regarding extra-territorial jurisdiction. Level 1 approvals were consulted through the Ministerial Advisory Committee and endorsed by Cabinet in Decision No. 01579 of 17 June 1996.

## **Notes on the Provisions**

*Clause 1* states the short title of the Act.

*Clause 2* indicates when this Act commences.

*Clause 3* indicates that this part of the Bill will amend the *Environmental Protection Act 1994* (the Act).

*Clause 4* amends section 20 to update the legislative list where the *Pollution of Waters by Oil Act 1973* is replaced by the *Transport Operations (Marine Pollution) Act 1995*.

*Clause 5* amends section 35 of the Act which establishes the application dates for licences and environmental management programs. The new provision simply establishes application dates for level 1 approvals.

*Clause 6* amends section 39 to provide that a person may carry out a level 1 environmental authority without a licence, if they have received a level 1 approval from the administering authority.

*Clause 7* amends section 40 to clarify that an approval means a level 2 approval.

*Clause 8* amends section 41 and sets the three criteria which persons carrying out a level 1 activity must meet to be eligible to apply for a level 1 approval.

*Clause 9* amends section 44 to provide five separate criteria that an administering authority must assess in deciding an application for a level 1 approval.

*Clause 10* amends section 45 to require an administering authority to cancel the applicant's existing licence when it grants an application for a

level 1 approval. The provision also establishes the day a level 1 approval takes effect.

*Clause 11* amends section 46 to provide that the conditions of a licence are carried over when a level 1 approval is issued. Further, any additional conditions on a level 1 approval imposed under existing subsection (4) may be no more stringent than were imposed under the cancelled licence.

*Clause 12* amends section 50 to make it consistent with balance of the Act, by replacing the reference to the ‘holder of a licence’, with the term ‘licensee’.

*Clause 13* amends section 60 to make it consistent with balance of the Act, by replacing the references to the ‘holder of a licence’ and ‘a person’, with the term ‘licensee’.

*Clause 14* inserts two new subdivisions relating to the amendment, cancellation and suspension of level 1 approvals. Subdivision 1 provides the criteria, process and appeal rights for amendment of a level 1 approval. Similarly, subdivision 2 provides the criteria, process and appeal rights for cancellation or suspension of a level 1 approval. Both are consistent with the processes for existing environmental authorities.

*Clause 15* amends section 70 of the Act to set the penalty for a breach of conditions of a level 1 approval. The penalty is the same as for a breach of the conditions of the cancelled licence.

*Clause 16* amends section 115 of the Act to allow the administering authority to require financial assurances for site management plans in relation to contaminated land.

*Clause 17* amends section 116 of the Act to include site management plans in the provisions where a person may show cause why financial assurance should not be required.

*Clause 18* amends section 117 to provide that where a licence has been cancelled, a level 1 approval has been granted and where the licensee applies to the administering authority, any financial assurance held over the cancelled licence shall be discharged immediately.

Section 117 is also amended to include provisions for site management plans in relation to financial assurances.

*Clause 19* amends section 118 of the Act to include costs born by the administering authority in taking action in relation to site management

plans.

*Clause 20* inserts a new section 118(2A) which sets a maximum fee, to be prescribed in a regulation, that local governments may charge for an approval to carry out waste management works in their respective local government areas.

New section 118(2B) removes the ability of local governments to charge a fee for waste management works that only involves the transport of waste through a local government area.

Clause 20(2) inserts a new section 118B(5A) which removes the ability of local government to impose conditions on waste management works that are also an environmentally relevant activity (and therefore avoiding duplications of conditions of approval).

Clause 20(3) inserts a new section 118B(9) which exempts waste management works that are carried out on land subject to a mining authority from the requirements of section 118B only for the purpose of dealing with waste generated on the site subject to the mining authority.

*Clause 21* inserts a new Chapter 3, Part 9 B - Contaminated Land.

New section 118C defines owner (through 118D) and the repealed Act for this Part.

New section 118D defines “owner” for this Part to clarify the person responsible for the land in connection with Part 9B. It also provides a definition of mortgagee of land for this part.

New section 118E requires an owner or occupier of land to notify the administering authority (the Department of Environment) when they become aware that the land is being used for a notifiable activity (a list of which appears in Schedule 3), or has been, or is being contaminated by a hazardous contaminant.

New section 118F requires a local government to notify the administering authority if it becomes aware of land within its jurisdiction has been, or is being used for a notifiable activity, or contaminated by a hazardous contaminant.

New section 118G outlines the responsibilities of the administering authority to notify the owner of land, when they have received notification,

or have reason to believe that the land has been used for a notifiable activity or has been contaminated, and it is considering entering the land in the Environmental Management Register (EMR).

The administering authority is not required to give a notice to the owner of the land where the land has already been investigated, has not consequently been used for a notifiable activity and the administering authority is satisfied that the land is not contaminated by a hazardous contaminant.

New section 118H outlines the process to be followed by the administering authority when deciding to record land on the EMR.

New section 118I enables a person to conduct or commission an investigation of land for which particulars are recorded on the EMR to scientifically assess the risk to human health and the environment and voluntarily submit a report about the investigation to the administering authority.

New section 118J enables the administering authority to require a site investigation of land that has been recorded on the EMR, to scientifically assess the risk to human health and the environment. The site investigation may be conducted or commissioned by the person who released the contaminant, the owner or the local government for the area in which the land is located.

New section 118K states the contents which must be contained in a written notice issued by the administering authority to the person 'the recipient' required to conduct or commission a site investigation.

New section 118L provides for the recipient of a notice (issued under section new section 118K) to apply to the administering authority for a waiver of the requirement to conduct or commission a site investigation. The administering authority may waive the requirement on the basis of financial hardship, or on grounds of reasonableness.

New section 118M provides a deemed refusal if the administering authority fails to make a decision about an application for it to waive the requirement for the recipient to conduct or commission a site investigation within the specified time.

New section 118N applies if the recipient of a notice (issued under section new section 118K) is not the owner of the land. The owner and any occupier of the land must consent to the entry of the land by the recipient

and the investigator to conduct the investigation. The recipient must also meet any costs incurred by the owner as a result of the site investigation being conducted.

New section 118O requires that a site investigation must be conducted by a person who is a member of an organisation prescribed in a schedule to be included in the *Environmental Protection Regulation* and has qualifications and experience relevant to the site investigation report. This ensures that the investigation is conducted by suitably qualified professionals and protects the public from unqualified operators.

New section 118P requires a site investigation report submitted to the administering authority for consideration to be accompanied by the fee prescribed under a regulation for this section.

New section 118Q requires a site investigation report submitted to the administering authority to be accompanied by a statutory declaration by the recipient or other person submitting the report.

New section 118R outlines the procedure to be followed by the administering authority after considering a site investigation report and deciding if the land is contaminated land. The administering authority must, within 10 days of making its decision about the site investigation report, give written notice of the decision to the land owner, the person who submitted the report and the local government for the area. The administering authority must also notify any registered mortgagee if the land is being recorded on the Contaminated Land Register (CLR).

Also, if the administering authority removes the particulars of the land from the EMR, the notice to the land owner and person who submitted the report must be accompanied by a suitability statement about the land.

New section 118S enables the administering authority to request, in writing, additional relevant information if the site investigation report does not adequately address relevant matters for the site investigation to which the report relates.

New section 118T requires the recipient of a notice (new section 118K) to provide a copy of the site investigation report to the owner of the land within 10 days of submitting the report to the administering authority.

New section 118U requires the recipient of a notice to meet the costs of conducting or commissioning a site investigation report and the costs of providing any additional relevant information.

New section 118V enables the administering authority to extend the time it requires to consider and make a decision about a site investigation report.

New section 118W states that if the administering authority fails to make a decision about a site investigation report within the specified time, the failure is taken to be a decision to leave the particulars of the land on the EMR.

New section 118X enables a person, after submitting a site investigation report, to conduct or commission work to remediate land for which particulars are recorded on the EMR or (CLR) and submit a report about the remediation to the administering authority.

New section 118Y enables the administering authority to issue a “remediation notice” to remediate land for which particulars are recorded on the CLR and submit a validation report about the work to the administering authority.

New section 118Z enables the administering authority to waive the requirement for a recipient of a notice issued under new section 118Y to remediate land if the administering authority is satisfied that carrying out the remediation would cause the recipient financial hardship, or if the recipient complied with the *general environmental duty* or if the contamination occurred before the commencement of the repealed Act (the *Contaminated Land Act*) and it would not be reasonable for the recipient to remediate the land, or if the recipient is the land owner and does not have control over the environmental management of the land.

New section 118ZA provides a deemed refusal if the administering authority fails to make a decision about an application for it to waive the requirement for the recipient to conduct remediation work within the time required.

New section 118ZB states the recipient of a notice and the person conducting the work ‘the contractor’, may only enter the land to conduct the work with the consent of the owner and occupier of the land, or by providing at least seven days written notice to the owner and occupier.

New section 118ZC describes the requirements of a ‘validation report’ to be submitted to the administering authority. The person required to conduct work to remediate contaminated land must be a member of a professional organisation prescribed by regulation.

New section 118ZD outlines the procedures for the administering



authority to follow when considering a ‘validation report’. After considering the validation report, the administering authority may remove land from the CLR, record land on the EMR and require the preparation of a site management plan, continue to record the land on the EMR or require land to be recorded on the CLR.

New section 118ZE states the administering authority must, within 10 days of making its decision about the validation report, give written notice of the decision to the land owner, the person who submitted the report and the local government for the area. The administering authority must also give the land owner and the person who submitted the report a ‘suitability statement’ about the use of the land, based on the validation report. The suitability statement states the administering authority’s assessment of the remediation work, whether the land is to be recorded on the CLR or EMR and if a site management plan is required - the conditions of the plan. The administering authority must notify any registered mortgagee of the land, if the particulars of the land are being recorded on the CLR.

New section 118ZF enables the administering authority to request additional relevant information about the validation report from the person who submitted the report if the validation report does not adequately address the relevant matters about the remediation.

New section 118ZG enables the administering authority to extend the time it requires to consider and make a decision about a validation report.

New section 118ZH provides for the particulars of the land to continue to be recorded on either the EMR or CLR if the administering authority does not make a decision in the specified time.

New section 118ZI explains what a site management plan is. The plans are developed to manage environmental harm that may be caused by activities on a particular parcel of land (identified by its real property description) subject to a level of land contamination. The plans are submitted to the administering authority for approval and developed in consultation with the owner or occupier of the land.

Site management plans enable land to be managed within the principles of ecologically sustainable development by minimising the environmental harm that may be caused by certain land use activities and protecting public health.

New section 118ZJ explains what a site management plan does, how the objectives are to be achieved and who is responsible for monitoring and reporting compliance with the plan.

New section 118ZK enables an owner or occupier of land that is recorded on the EMR, or the person who caused the contamination, after submitting a site investigation report, to submit a draft site management plan to the administering authority for approval.

If a person other than the land owner submits the plan for approval, they must obtain the consent of the land owner before submitting the plan.

New section 118ZL outlines the information to accompany a site management plan for it to be considered by the administering authority.

New section 118ZM explains when the administering authority may prepare or require a draft site management plan for land that is recorded on the EMR or CLR to be prepared and submitted to it for approval.

New section 118ZN requires the administering authority to issue a written notice requiring a site management plan to be prepared or commissioned by the recipient of the notice issued under 118ZM.

New section 118ZO enables the administering authority to waive the requirement for a recipient of a notice issued under section 118ZM to prepare a site management plan.

New section 118ZP provides a deemed refusal if the administering authority has not made a decision on the application for a waiver of the requirement to prepare a draft site management plan within the required time.

New section 118ZQ requires the recipient, or person preparing a site management plan 'the consultant', to obtain the consent of the owner and occupier of the land, or provide at least 7 days written notice to the owner and occupier before entering the land to prepare a site management plan.

New section 118ZR requires that a site management plan must be prepared by a person who is a member of an organisation prescribed by regulation in a schedule.

New section 118ZS enables the administering authority to request additional information when considering a draft site management plan that has been submitted for approval. The administering authority may also request any information in the draft plan be verified in a statutory

declaration.

New section 118ZT outlines the time period (28 days) in which the administering authority must decide whether to approve a draft site management plan.

New section 118ZU applies when the administering authority approves a draft site management plan as submitted, or prepares a site management plan. The administering authority must give the person who submitted the plan, and the land owner notice of the plan being approved, and record the details of the plan on the EMR within 10 days.

New section 118ZV applies when the administering authority refuses to approve a draft site management plan. The administering authority is required to provide the applicant and the land owner written notice of the reason for the decision within 10 days of the decision being made.

New section 118ZW requires the administering authority to provide written notice to the applicant and the land owner, if, it extends the time taken to approve a draft site management plan, before the period of extension commences.

New section 118ZX applies when the administering authority does not approve a draft site management plan within the specified time, for the failure to be taken as a refusal to approve the plan at the end of the time.

New section 118ZY requires a person to comply with the conditions and requirements of a site management plan. A local government must not allow the use or development of an activity to be carried out that contravenes a site management plan for the land.

New section 118ZZ provides for the applicant to amend site management plans as per the provisions of subdivision 2 (other than sections 118ZM to 118ZO).

New section 118ZZA enables the administering authority to amend a site management plan with the agreement of the land owner and the occupier of the land.

Also, the administering authority may require a draft amendment to a site management plan to be prepared and submitted to it for approval by the person who released the contaminant, local government or the land owner.

New section 118ZZB requires the owner of land which is recorded on the CLR to give any occupier or proposed occupier notice that the land is recorded in the register, prior to entering into an occupancy agreement, or when the particulars are recorded in the CLR.

New section 118ZZC requires anyone selling or otherwise disposing of land (whether or not for a price) that is recorded on either the EMR or CLR to give written notice of the land's listing on the EMR or CLR, including details of any site management plan and particulars of any outstanding notices given under the EP Act in relation to the land, to the prospective purchaser.

New section 118ZZD requires the administering authority to notify the Registrar of Titles in writing within 10 business days of land being recorded on or removed from the CLR.

New section 118ZZE permits the administering authority to erect signs on contaminated land regulating access to the land. This requirement is necessary from time to time to protect public health and safety.

New section 118ZZF requires a person transporting and disposing of contaminated soil from land that is recorded on the EMR or CLR to apply to the administering authority for a disposal permit. The permit specifies the conditions of transport and disposal that apply to the person.

*Clause 22* inserts new section 135 enables an authorised person to enter a place if the occupier and the owner give consent. The new section permits entry of an authorised person to land mentioned in chapter 3, Part 9B, if an order has been granted.

*Clause 23* inserts new section 136 to enable an authorised person to enter land if the administering authority reasonably believes that the land is contaminated to conduct a "preliminary investigation" to find out whether the land is contaminated land. This power may only be exercised if the administering authority has given at least seven days written notice about the proposed entry to the owner and occupier of the land, or with the agreement of the owner and any occupier.

*Clause 24* inserts a new section 138 to provide for an authorised person to apply to a magistrate for an order to enter land to conduct an investigation or to perform remediation work.

*Clause 25* inserts a new section 140 to limit the powers of authorised persons entering a place under section 138A. The person is not permitted to

take extracts from, or make copies of any documents in or on the place or vehicles.

*Clause 26* replaces the heading ‘division’ with ‘part’.

*Clause 27* inserts new section 179A to recover the costs incurred by the administering authority in conducting a site investigation or remediating land from the recipient of the notice.

*Clause 28* amends section 180 to provide evidentiary provisions for level 1 approval.

*Clause 29* amends section 196 to state the administering authority will not devolve powers relating to contaminated land to local government.

*Clause 30* amends section 200 to include contaminated land provisions in the definition of ‘dissatisfied person’. This includes owners of land recorded on the EMR and CLR, and the recipients of notices to perform site investigations or remediation work, or prepare site management plans.

*Clause 31* allows appeals against decisions relating to level 1 approvals to be heard in a similar way to appeals relating to licences.

*Clause 32* amends section 213 to enable the administering authority (the Department of Environment) to maintain the Environmental Management Register and Contaminated Land Register for its administration of matters about contaminated land under chapter 3, Part 9B.

*Clause 33* amends section 214 to provide for public searches of the EMR and CLR. The CLR and EMR are databases that can be accessed electronically and extracts can be taken from them. In this way they differ from other registers that are maintained under the EP Act and thus require special provisions for conducting searches. The fee for searching the Registers is to be prescribed in a schedule of a regulation.

Section 214 (12) does not apply to the Contaminated Land Register or the Environmental Management Register.

*Clause 34* amends section 219 to provide that the Minister for Environment may approve Codes of Practice by Gazette Notice rather than by making them subordinate legislation in their own right. This removes the legislative burden of having the Office of the Queensland Parliamentary Counsel draft all codes of practice. It also reflects the original intent of the Act and provides recognition of ownership of the codes by the industry organisations that developed them.

Clause 35 new section 220(2)(k) allows a regulation to be made about litter. The regulation making power is not limited to littering on public places.

New section 220(2)(l) enables a regulation to be made about the administration of the CLR and EMR including the information that may be included in the registers, and made available to people searching the registers.

*Clause 36* inserts new section 237 and 237A

New section 237 contains the transitional provisions for transferring land recorded on the Contaminated Sites Register as “probable” or “restricted” sites to the EMR. Land that is recorded as a “restricted” site on the Contaminated Sites Register will be recorded on the EMR with the conditions being transferred to the site management plan.

New section 237A contains the transitional provisions for transferring land recorded on the CSR as “confirmed” sites to the CLR.

*Clause 37* amends Schedule 1 - original decisions to which review and appeal rights apply.

*Clause 38* inserts new Schedule 3 - Notifiable Activities.

*Clause 39* amends Schedule 4 - Dictionary by providing new or amended definitions.

*Clause 40* This part amends the *Mineral Resources Act 1989*.

*Clause 41* inserts a new definition for ‘hazardous contaminant’ in the *Mineral Resources Act 1989* to replace the existing ‘hazardous substance’ definition.

*Clause 42* inserts a new definition of ‘contaminated land’ in the *Mineral Resources Act 1989* to replace the existing ‘hazardous substance’ definition.

*Clause 43* This part amends the *Nature Conservation Act 1992*.

*Clause 44* This amendment ensures the original intention of the legislation prevails by providing jurisdiction in relation to protected plants on all land in Queensland.

*Clause 45* repeals the *Contaminated Land Act 1991*.