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# Queensland's greentape reduction reforms take important step with passage of EPOLA

Stage 2 of the Queensland Government's greentape reduction reforms has been completed with the passage of the Environmental Protection and Other Legislation Amendment Bill 2014 (EPOLA) on Tuesday by the Queensland Parliament.

The final form of EPOLA however is different to the version originally introduced into Parliament, with some important amendments being made to the Bill in committee, including amendments to the definition of "serious environmental harm" to include the harm caused to an area of high conservation value or an area of special significance, such as the Great Barrier Reef World Heritage Area. Further amendments in committee related to the enforceable undertakings, environmental offsets, contaminated land and the duty to notify.

### The Acts affected by the Environmental Protection and Other Legislation Amendment Bill 2014

EPOLA makes a number of significant amendments to the Environmental Offsets Act 2014 (Offsets Act), the Environmental Protection Act 1994 (EP Act) and the Waste Reduction and Recycling Act 2011 (Waste Act).

### Contaminated land regime

EPOLA has made significant changes to the notification obligations for contaminated land.

A new duty to notify will apply to a person who is:

- the owner or occupier of contaminated land; or
- an auditor performing the function of evaluating a site investigation report, validation report, draft site management plan (SMP) or draft amendment of an SMP under section 568(b) of the EP Act.

Where the person becomes aware of:

- the happening of an event involving a hazardous contaminant on the contaminated land, or a change in the condition of the contaminated land, that is causing or is reasonably likely to cause serious or material environmental harm—written notice must be given to the administering authority within **24 hours** (unless the person has a reasonable excuse).
- a notifiable activity having been carried out, or being carried out, on the contaminated land, that is causing or is reasonably likely to cause serious or material environmental harm—written notice of the activity must be given to the administering authority within **20 business days** (unless the person has a reasonable excuse).

There are also new notification duties for local governments.

The contaminated land provisions in chapter 7, part 8 of the EP Act have also been replaced, with a number of amendments in relation to the grounds and process for including land on the environmental management register (EMR) and contaminated land register (CLR) and obligations to notify lessees and purchasers where contaminated land is leased or to be sold

### Offences and penalties in the EP Act

Increased penalties will be introduced for a range of offences under the EP Act, and a number of current misdemeanours will become indictable offences.

Penalty increases are significant in some cases. For example, the maximum financial penalty for the offence of wilfully causing serious environmental harm increases from \$474,185.25 (or about \$2.4m for a corporation) to \$711,562.50 (or about \$3.5m for a corporation).

### Enforceable undertakings

EPOLA introduces enforceable undertakings where a person has contravened, or allegedly contravened, a provision of the EP Act. An enforceable undertaking is an agreement which specifies actions that the person agrees to undertake in return for the administering authority not seeking prosecution. Such an undertaking is available for all contraventions, or alleged

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contraventions, other than for an indictable offence. Contravention of an enforceable undertaking is an offence.

Amendments made in committee to the Bill now provide that provisions in relation to enforceable undertakings will commence upon proclamation rather than assent to allow for statutory guidelines to be drafted and released prior to commencement.

#### Assessment process changes

EPOLA inserts a new provision into the EP Act which is intended to separately recognise resource activities and other prescribed ERAs that may be carried out as part of that resource activity. A resource activity is comprised of ancillary activities and other activities carried out under the authority as a resource activity. Ancillary activities are taken to be prescribed ERAs for the purpose of the power to impose conditions on, and fees applied to, the EA.

A number of amendments have also been made to the EIS process, including changes to allow resubmission of an EIS within 3 months after receiving notice that the original EIS has been refused. A similar new provision exists for refusal following public notification.

#### Beneficial use approvals

EPOLA has replaced the existing beneficial use approvals in the Waste Act with new end of waste codes and approvals. End of waste codes will be outcome focused, by specifying the outcomes that need to be achieved in order for a waste to be deemed a resource. End of waste approvals, on the other hand, are intended to be used when a potential market does not already exist for the resource or when environmental harm parameters are unknown.

#### Environmental offsets

The amendments to the Offsets Act make it mandatory for an administering agency to consider any relevant offset conditions that are already imposed on an authority issued under another Act for the same or substantially the same prescribed impact and prescribed environmental matter. The amendments clarify when a local government, as the administering agency, can impose an environmental offset condition and provides a process for removing duplicate offset conditions.

New provisions also clarify the process of how offsets are to be delivered and now provide that an agreed delivery arrangement may be entered into with an administering agency before or after an authority for a prescribed activity has been granted. This is aimed at providing greater flexibility in offset delivery, including staged offsets.

Under the amendments, until an agreed delivery arrangement has been entered into, no works that impact on the prescribed environmental matter to which the offset condition relates can start.

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