

# ENVIRONMENTAL LEGISLATION AMENDMENT BILL (NO. 2) 1995

## EXPLANATORY NOTE

### **Policy objectives and reasons for it**

The objective of this Bill, is to transfer the legislative responsibility for waste management from the *Health Act 1937* to the *Environmental Protection Act 1994*. This would then make the Department of Environment and Heritage the lead agency for waste in Queensland in line with the recommendation of the Queensland Public Sector Management Commission (PSMC).

The other objectives of this Bill include amendments to the *Wet Tropics World Heritage Protection and Management Act 1993* so that the Wet Tropics Management Authority will have the ability to delegate decision making powers to other state agencies and local governments. This amendment will assist in placing the Wet Tropics Plan in line with the principles of the Integrated Development Approval System (IDAS).

The amendments to the *Sewerage and Water Supply Act 1949* will address the issues raised in the Criminal Justice Commission inquiry into the improper disposal of liquid waste in South East Queensland. The proposed increase in penalties to a maximum of 1000 penalty units for a prohibited discharge into the sewerage or stormwater systems will prevent such actions becoming a means for circumventing environmental protection legislation. Included in these amendments will be an increase in the maximum penalties allowed in the Sewerage and Water Supply Laws under this Act from 40 penalty units to 165 penalty units.

### **Way in which policy objective is achieved**

The Bill includes amendments to the *Health Act 1937* repealing those sections that relate to waste management and transferring the intent of some of those sections into the *Environmental Protection Act 1994*

Part of this waste management legislation transfer will include a later repealing of the *Refuse Management Regulation 1983* and the *Sanitary Conveniences and Nightsoil Disposal Regulation 1976* and simultaneously amending and transferring these regulations to become subordinate legislation under the *Environmental Protection Act 1994*

Amendments to the *Wet Tropics World Heritage Protection and Management Act 1993* will provide the Wet Tropics Management Authority with the ability to delegate decision making to other state agencies and local government.

Amendments to the *Sewerage and Water Supply Act 1949* will increase the penalties for illegal discharges into the sewerage and stormwater systems.

### **Alternatives to the Bill**

The amendments to the *Health Act 1937* and the *Environmental Protection Act 1994* will transfer the responsibility for waste management from Queensland Health (QH) to the Department of Environment and Heritage (DEH). The Bill in relation to waste management will be for an interim period until the Environmental Protection Policy (EPP) for Waste is developed. This policy is anticipated to be completed by 1 January 1997. This Bill will achieve the recommendation of the PSMC to transfer the responsibility for waste from QH to DEH. The alternative would be to wait until the EPP for Waste is implemented and then repeal the relevant sections of the *Health Act 1937*. This alternative would mean that two State Government departments would be duplicating approvals and licences for waste activities until then.

The policy objectives in relation to the *Wet Tropics World Heritage Protection and Management Act 1993* and the *Sewerage and Water Supply Act 1949* can only be achieved by statutory amendments.

### **Administrative cost to government**

There will be an increase in administrative costs to the government as waste activities managed under the *Environmental Protection Act 1994* will be environmentally relevant activities. As QH have no funds available to accompany the transfer of responsibility, funding arrangements will need to be made before the Act is given effect.

The proposed amendments to the *Wet Tropics World Heritage Protection and Management Act 1993* will bring about long term cost savings by using established approval systems.

The proposed amendments to the *Sewerage and Water Supply Act 1949* will increase penalties for illegal discharges to the sewerage and stormwater systems. There are no increases in administrative costs to the government.

### **Consistency with fundamental legislative principles**

The Bill is consistent with fundamental legislative principles. However, the transfer of the intent of some of the relevant sections of the *Health Act 1937* to the *Environmental Protection Act 1994* may not be fully in accordance with fundamental legislative principles. This transfer for the responsibility of waste management was agreed to by state and local government for an interim period only, pending the EPP for Waste being completed.

### **Consultation**

Consultation was carried out with the Department of Housing Local Government and Planning (DHLG&P), Office of the Cabinet, Queensland Health, Queensland Treasury (National Competition Policy Unit), Office of Major Projects, Local Government Association of Queensland and some Queensland local governments, industry and Brisbane City Council in relation to the amendments to the *Health Act 1937* and the *Environmental Protection Act 1994*.

DHLG&P was consulted on the proposed amendment to the *Wet Tropics World Heritage Protection and Management Act 1993*.

The Office of the Cabinet, Department of Primary Industries, DHLG&P and Brisbane City Council were consulted on the proposed amendments to the *Sewerage and Water Supply Act 1949*.

## **PART 1—PRELIMINARY**

1. This Act will be entitled the *Environmental Legislation Amendment Act (No.2) 1995*.
2. This Act will commence by proclamation on a day to be determined.

## **PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994**

3. Part 2 of this Bill amends the *Environmental Protection Act 1994*.

4. This new definition of “waste” is warranted. This new definition is required in light of a recent court case where the defendants successfully argued that the material alleged to be illegally stored on their property was not a waste.

5. *Clause 118A(1)(a)* This clause allows the State Government the ability to when required to direct local government to carry out the listed works.

*Clause 118A(1)(b)* The local government when served with a notice from the chief executive must provide a place, containers or equipment for depositing or disposing of waste.

*Clause 118(2)* The notice must state whether the works be carried out for all or part of the local government area that the relevant local government is responsible for.

*Clause 118(3)* The notice may state the method of disposal of waste.

*Clause 118(4)* The notice may apply for a defined time period or without a time limit.

*Clause 118(5)* The local government when served with a notice under this clause must comply with the notice.

*Clause 118B(1)(a)* A person must not carry out any waste management works in a local government area unless they have a written contract with the local government.

*Clause 118B(1)(b)* A person must not carry out any waste management works in a local government area unless they have written approval from the local government.

*Clause 118B(2)* An application for an approval to carry out waste management works in a local government area must be made to the relevant local government in the approved form.

*Clause 118B(3)* A local government must promptly consider any application to carry out waste management works.

*Clause 118B(4)* Where a local government fails to make a decision on an application within 60 days, then the failure to make a decision is then taken to be a refusal. Such refusal is an original decision under Schedule 1 of the *Environmental Protection Act 1994* and is subject to Part 3—Review of Decisions and Appeals of this Act.

*Clause 118B(5)* The local government in granting approval for a person to perform waste management works may impose conditions as part of the approval.

*Clause 118B(6)(a)(b)(c)* A local government that has issued a written approval to a person to perform waste management works, may by written notice revoke the approval to perform such waste management works. The local government may impose conditions or vary the conditions on the approval after it has been granted.

*Clause 118B(7)* A local government in serving a notice to a holder of an approval to revoke it, impose stated conditions or vary the conditions of an approval, must detail in the notice the reasons for such action.

*Clause 118B(8)* A local government that has issued an approval under clause 118(B) can only revoke this approval when the person to whom the approval was issued, fails to comply with the conditions of the approval.

**6.** *Clause 200(1)* Any person who has made an application under clause 118B of this Act and is not satisfied with the decision is a dissatisfied person under clause 200(1) of the Act.

**7.** *Clause 220(2)(h)* The intent of clause 99A of the Health Act is included in this clause to provide a head of power for the making of regulations in relation to the removal, collection, transport, deposit, storage or disposal of waste.

**8. Clause 233A(1)** Any order issued under clause 95 of the *Health Act 1937* is an order issued under clause 118A of the *Environmental Protection Act 1994*.

*Clause 233A(2)* Any approval given under clause 98A of the *Health Act 1937* is an approval issued under clause 118B of the *Environmental Protection Act 1994*.

*Clause 233A(3)* Clause 233A(1)(2)(3) expires the day after it commences.

**9. Clause 234** By inserting “other than clause 233A” into this clause means that clause 233A expires the day after it commences, but the remainder of Division 5 of the *Environmental Protection Act* will not expire until the first applicable day.

**10. Schedule 1** Any decision made under clauses 118B(3), 118B(5) and (6) will be original decisions under the *Environmental Protection Act 1994*.

**11. Schedule 4** A definition of “sanitary convenience” and “waste management works” is required as they do not exist in the *Environmental Protection Act 1994*.

### **PART 3—AMENDMENT OF HEALTH ACT 1937**

**12.** Part 3 of this Bill amends the *Health Act 1937*.

**13. Clause 5** Omits the definitions of “disposal” and “nightsoil” from clause 5 of the *Health Act 1937*.

**14. Part 3 Division 13** The words “sanitary provisions” are removed from this heading.

**15. Clauses 95-99A** These clauses of the *Health Act* are to be repealed, as the intent of some of these clauses will be transferred to the *Environmental Protection Act 1994* to effect the transfer of the responsibility for waste from Queensland Health to the Department of Environment and Heritage.

**16. Clause 183A(I)** This clause validates an order served under section 95 of the *Health Act* for the Brisbane City Council to maintain the hazardous industrial facility at Willawong.

183A(2) The order has taken effect from 23 December 1982.

183A(3) This clause expires the day it commences.

## **PART 4—AMENDMENT OF WET TROPICS WORLD HERITAGE PROTECTION AND MANAGEMENT ACT 1993**

17. This part of the Bill will amend the *Wet Tropics World Heritage Protection and Management Act 1993*.

18. *Clause 35(1)* This amendment will expand the Wet Tropics Management Authority's ability to delegate decision making powers to other state agencies and local government for activities occurring within the Wet Tropics Area, within the principles of the Integrated Development Approval System.

## **PART 5—AMENDMENT OF SEWERAGE AND WATER SUPPLY ACT 1949**

19. This part of the bill amends the *Sewerage and Water Supply Act 1949*.

20. *Clause 5(3)(c)* This amendment increases the penalty units from 40 penalty units to 165 penalty units.

21. *Clause 6(3)(c)* This amendment increases the penalty units from 40 penalty units to 165 penalty units.

22. *Clause 16(1)* This amendment will increase the maximum penalty units from 1 penalty unit to 165 penalty units.

23. *Clause 17(2)* This amendment confirms the general penalty provision which was contained in clause 18(2) of the Act.

**24.** This clause creates two new parts in the Act. The first makes it an indictable offence to discharge:

- prohibited substances into sewerage or stormwater drainage;
- trade waste into stormwater drainage; and
- trade waste into sewerage without the local government's permission.

The second part sets out the procedure for prosecutions for offences under the Act.

**25.** *Clause 18(1)to(3)* This amendment omits clause 18(1) to (3), including the provision of a general penalty.

**26.** Given the omission of Clause 18(2), a specific maximum penalty of 4 penalty units has been inserted in clause 18A(2).

**27.** When this Act is reprinted the clauses must be correctly numbered and renumbered accordingly.