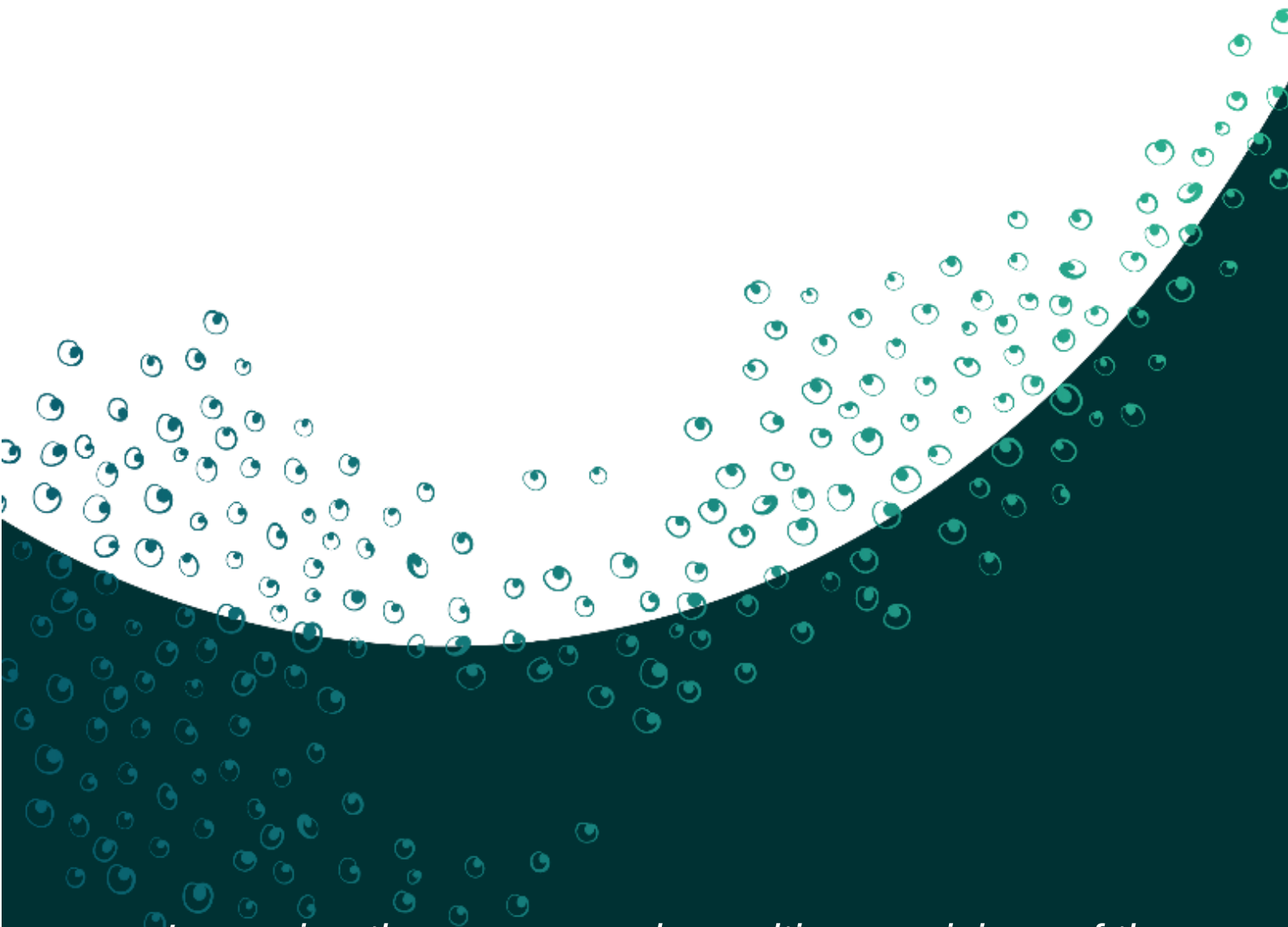

Improving the powers and penalties provisions of the Environmental Protection Act 1994

Consultation report

Queensland Government

Executive summary

The Queensland Government is committed to protecting and restoring our environment and protecting the health of our communities. It delivers this in many ways, including work to protect biodiversity, growing our protected area estate, investing to transform our energy system and cut emissions and regulating industries that have the potential for environmental harm or pollution.

In recent years, the environmental impacts from several industries have presented increasingly complex regulatory challenges. These are often linked to growing communities with changing land uses over time, resulting in increased risks associated with co-existence of industrial and residential land uses.

A key tool for responding to these issues is the *Environmental Protection Act 1994*. An independent review of the powers and penalties under the Act was completed in 2022 to consider whether they are sufficient for responding to these challenges. The independent review made 18 recommendations – supported by the Queensland Government, with one supported in principle – on how Queensland's environmental laws can better protect the community and the environment.

The Government response to the independent review noted that several of the recommendations had already been progressed, and committed to releasing a public consultation paper in the second half of 2023 on the remaining recommendations, followed by the development of the necessary amendments to legislation.

The *Improving the powers and penalties provisions of the Environmental Protection Act 1994 Consultation paper* was released in September 2023 and detailed the Government's proposals to implement the remaining recommendations. During the eight-week public consultation period, the Department of Environment, Science and Innovation (the Department) also held six stakeholder information sessions. Consultation closed 10 November 2023, with 48 submissions received.

Stakeholders' views on these proposals were mixed, with strong support from some and reservations, concerns and opposition from others.

Following this wide-ranging consultation, including reviewing written submissions from external stakeholders, the Government has prepared the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 (the Bill). The Bill includes minor amendments to drafting to clarify the intent and purpose of the EP Act and specific provisions where necessary, and is supported by Explanatory Notes which detail the purpose of the amendments. The Department will update guidelines and guidance material as part of the usual implementation of legislation change, including consulting with stakeholders where appropriate.

The aim of the Bill is to deliver on the remaining recommendations from the independent report, and thereby ensure the Department is properly able to be a modern, efficient, responsive regulator with the necessary powers to ensure compliance with legislation.

Background

In April 2022, an independent review into the adequacy of the powers and penalties available under the *Environmental Protection Act 1994* (EP Act) was conducted. The review was initiated in part due to the significant odour nuisance issues in the Swanbank industrial area but has relevance across Queensland. The review was undertaken by retired Planning and Environment Court judge Mr Richard Jones and Barrister Ms Susan Hedge.

The independent review aimed to find whether the tools available to regulators under the EP Act were suitable to deal with the challenges of the future and make any recommendations for improving the regulation of environmental harm of Queensland's natural environment. Its findings highlighted that the EP Act does have adequate powers and penalties to, in most instances, enforce environmental obligations and reduce the risk of environmental harm. It was also highlighted that enforcement tools and penalties within the EP Act were in line with other legislation within Australian jurisdictions. The review made 18 recommendations to enhance the legislation and effectiveness of the tools, with a particular focus on addressing nuisance issues and protecting the health and well-being of the community.

The Queensland Government's response to the review detailed support for all 18 recommendations, noting that several recommendations were addressed or partially addressed through the *Environmental Protection and Other Legislation Amendment Act 2023* (the EPOLA Act 2023) which commenced on 5 April 2023. Further, the Government supported recommendation 12 in principle only in consideration of the potential impacts on businesses within Queensland. The Government also committed to consulting with the wider community prior to the implementation of the recommendations. Both the independent review's report of findings and the Queensland Government response were published on the Department of Environment, Science and Innovation (the Department) website on 26 May 2023.

Following this response, the Government prepared the *Improving the powers and penalties provisions of the Environmental Protection Act 1994* consultation paper, released on 14 September 2023. Submissions closed on 10 November 2023. All submissions received were reviewed and considered in the development of the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 (the Bill).

Purpose

The purpose of this report is to summarise the results of consultation undertaken by the Government on proposed amendments to the EP Act. The proposals were presented by the Department in a consultation paper that was released and open to submissions from the community, local government, and industry.

This report outlines key themes raised through the consultation process and the Government's response.

Consultation process overview

As part of the development of the Bill, the Government undertook a public consultation process. The information informing this process included:

1. Public consultation paper (September 2023)
2. Stakeholder information sessions (October 2023)
3. Release of Frequently Asked Questions (November 2023).

Notification of the consultation process was communicated by a ministerial media statement and in an edition of the Department's Regulatory Newsletter for subscribers. Emails were also sent directly to 73 industry peak bodies, environmental and conservation groups or NGOs, the Local Government Association of Queensland, registered native title body corporates and Aboriginal and Torres Strait Islander representative bodies, and legal practitioner associations.

The Department invited stakeholders to attend information sessions on the consultation paper, and to answer questions arising from the Government's proposed response to the independent review's recommendations. During the consultation period, the Department conducted six information sessions across stakeholder groups.

Public consultation ran for a period of eight weeks and closed on 10 November 2023. All feedback submitted was reviewed and considered in finalising the proposed amendments. The Department thanks all participants for their time and contributions.

Overview of submissions received

The Department received a total of 48 submissions. Stakeholders' views on these proposals were mixed, with strong support from some and reservations, concerns and opposition from others.

Submissions were received from industry peak bodies, stakeholders in the resource, waste and recycling, agricultural and aquacultural sectors, and local governments (both through the Local Government Association of Queensland and directly from individual local governments). These submissions tended to seek further understanding on why the proposed amendments were necessary, how the provisions would be implemented, how they would operate, and what the associated impost and regulatory impacts on existing activities would be.

Submissions were also received from Queensland Members of Parliament, the Environmental Defenders Office, the North Queensland Land Council, and members of the public. These submissions focused on community impacts of environmental harm and implementation of the legislative amendment proposals.

Some submissions raised issues about, or made suggestions for improvements to, the EP Act or its administration. There were also several in which the submitter commented on recommendations made by the independent review, but not on the Government's corresponding proposed amendment.

Stakeholders views related to the independent review recommendations and legislative amendment proposals are addressed in the following sections of this report.

Key themes of the consultation

Key themes and items raised during public consultation included:

Key Consultation Theme	Government response
Regulatory guidance material - several stakeholders stressed the importance of updates to the Department's guidelines and guidance to accompany the proposed amendments.	The Department will update guidelines and guidance material as part of the usual implementation of legislation change, including consulting with stakeholders where appropriate.
Clarity of proposed amendments – submissions raised the need for additional clarity on how the proposed amendments would operate and what the implications of the proposed amendments would be.	The Bill includes minor amendments to drafting to clarify the intent and purpose of the EP Act and specific provisions where necessary and is supported by Explanatory Notes which detail the purpose of the amendments.
Purpose of minor amendments – several submissions questioned the purpose of some of the proposed amendments, and the feedback suggests a need for further clarity on the purpose of some proposed amendments, such as changing wording for 'reasonably practical' and amending the principles in the EP Act.	

Stakeholder feedback and Government responses

The following section steps through the feedback received on each proposal put forward in the consultation paper, and the Government's response to the feedback.

Independent Review Recommendation 1

Summary of recommendation	Government response
The principles underpinning the *Environmental Protection Act 1994* (EPA (Qld)) should be amended to include: (a) The principle of polluter pays; (b) The proportionality principle; (c) The principle of primacy of prevention; and (d) The precautionary principle.	**Support** The Government may also consider the need for a duty to restore environmental harm to complement the polluter pays principle.

The Government's proposed amendment

The consultation paper proposed that a new section be introduced to Chapter 1, Part 2 of the EP Act identifying the principles which should be given regard to in administering the EP Act. As the identified environmental policy principles are to be applied to the general administration of the EP Act, this will flow through to the making of regulations, environmental protection policies, guidelines, and codes of practice.

Stakeholder feedback

Stakeholders were generally supportive of the proposal. Stakeholders raised the need for additional clarification.

It was noted that the introduction of clearer principles, as well as the expansion of the definition of environment and environmental value (addressed by Recommendation 2 of the independent review), overlaps with other areas of Queensland law, i.e. the *Public Health Act 2005*, the *Queensland Human Rights Act 2019* and the *Petroleum and Gas (Production and Safety) Act 2004*.

The polluter pays principle had broad stakeholder support, including by local governments.

Submissions raised concerns on the practical implications of amending the principles. For example, while supportive of its inclusion, submissions raised concerns regarding the precautionary principle including about its diverse international definition and application, potential for subjectivity, and risk of perverse outcomes (for example, economic impacts, or impacts on technological innovation).

Some submissions supporting the proposal expressed that the precautionary principle and the principle of primacy of prevention should be heavily weighted during assessment of approvals. However, others suggested that the precautionary principle shifts the burden of proof, meaning that the person proposing the activity must also prove that the activity is not harmful.

It was suggested that the improved valuation, pricing, and incentive mechanisms principle should be omitted from the proposed amendments but incorporated into government practice.

Government response

As noted in the consultation paper, the principles of environmental policy are already embedded in the EP Act and government policy. The purpose of implementing this recommendation is to provide them with increased prominence by accounting for them in a single section of the EP Act.

The principles are compatible and do not conflict with, those covered in other legislation. The four principles recommended by the independent review will be included in the new section of the EP Act, together with, for completeness, three further principles that already have a presence in the EP Act. The full list of principles to be included are:

- The principle of polluter pays (which is in Queensland's commitment to the Intergovernmental Agreement on the Environment (IGAE));
- The proportionality principle;
- The principle of primacy of prevention;
- The precautionary principle (in the IGAE and also an existing consideration in the EP Act for specific decision-making powers such as the assessment of environmental authorities (EAs));
- The intergenerational equity principle (in the IGAE and also an existing consideration in the EP Act for specific decision-making powers);
- The conservation of biological diversity and ecological integrity principle (in the IGAE and also an existing consideration in the EP Act for specific decision-making powers); and
- The improved valuation, pricing, and incentive mechanisms principle (as per IGAE).

Independent Review Recommendation 2

Summary of recommendation	Government response
Sections 8 and 9 of the EPA (Qld) should be amended to include the concept of "human health, safety and well-being" in the definitions of environment and environmental value.	**Support** The inclusion of human health, safety and well-being will be in relation to qualities or physical characteristics of the environment

The Government's proposed amendment

The consultation paper proposed to amend section 8 and 9 of the EP Act to ensure that human health, well-being, and safety are included within the definitions of 'environment' and 'environmental value'.

Stakeholder feedback

Submissions were primarily concerned with potential overlap and regulatory duplication with other legislation, such as the *Public Health Act 2005*, *Human Rights Act 2019*, *Mining and Quarrying Safety*, *Health Act 1999* and *Work Health and Safety Act 2011*. In addition, submitters were concerned about the terms 'human health,' 'well-being' and 'safety' being used within the EP Act and that further definitions were required to ensure that this was limited to the environmental implications to reduce concerns of subjectivity.

Mental health and well-being were raised as an issue, being linked to individual well-being and not readily measurable. This may create an increased expectation on industry and cause unintended consequences on the regulation of an industry. There were also concerns about the safety aspect and that this term may be overreaching for the EP Act as safety is covered by other legislation. This issue was raised as requiring further justification on how safety will be interpreted against the environment to avoid conflict with other legislative requirements as well as further detail to fully understand the potential implications of these amendments.

Government response

The proposal acknowledged that human health, well-being, and safety are already present to some extent in the section 8 and 9 definitions, but the amendment would make the inclusion of these concepts clearer and more prominent. The proposal also stated the intention to limit the amendment such that human health is only protected by the EP Act to the extent it is affected by the environment to avoid duplication or overlap across Queensland statutes, particularly the *Public Health Act 2005* (Qld) given its object to protect and promote the health of the Queensland public.

The amendments are not altering the administering authority's ability to investigate complainants and undertake compliance inspections.

Independent Review Recommendation 3

Summary of recommendation	Government response
Section 15 or sections 16 and 17 of the EPA (Qld) should be amended to make clear that environmental harm that may constitute a nuisance at low levels, may also constitute material and serious environmental harm if it meets the definitions of those terms.	**Support** Sections 15 to 17 relate to the definitions of environmental nuisance and material and serious environmental harm. The body of the review also contained the following recommendation, which is related and also supported in principle: 'amending the Act to provide that in respect of offences under section 437 or 438, environmental nuisance is a further alternative.'

The Government's proposed amendment

The consultation paper proposed amendments to sections 15, 16 and 17 of the EP Act to ensure that, despite contaminants having the prescribed characteristics of environmental nuisance in section 15, their release may constitute material or serious environmental harm.

Stakeholder feedback

Mixed feedback was received from stakeholders in relation to this proposal from support in full to concern with the proposal in its current form.

Submissions received from the aquaculture sector raised concerns that the application of amended definitions of environmental nuisance, and material and serious environmental harm could restrict the use of sound deterrent measures enforced by Biosecurity Queensland to manage depredation by birds at aquaculture facilities. Submissions from the agriculture sector raised concerns regarding the application of environmental nuisance provisions in the context of agriculture operating in areas with increasing urban encroachment. These concerns highlighted the potential for increased nuisance complaints from nearby urban residents, particularly in consideration with the inclusion of human health and well-being in the definition of environmental value.

Submissions from resources and industry stakeholders did not support the amendment. Industry submissions included views that sections 15, 16 and 17 should remain unamended; that further defining material and serious environmental harm could provide suitable thresholds for when nuisance has reached the higher levels of environmental harm; and that concerns could be addressed through EA conditions. A submission raised that the proposal may expose these operators to enforcement actions for material or serious breaches in circumstances where environmental harm has historically been constituted as environmental nuisance.

One submission raised the concern that the changes to nuisance and harm definitions introduces some doubt into existing exclusions, whereby if the noise or interference is severe enough, the exclusion could become unapplicable.

Resources and industry stakeholders raised concerns about the practicalities of determining how to quantify instances of environmental nuisance in financial terms for the definitions of material and serious environmental harm, stating that nuisance complaints can be subjective, and that, therefore applying a monetary threshold to quantify and assess a nuisance is inappropriate due to its subjective nature.

Submissions by local government noted that the proposed amendments, coupled with the increased thresholds for material and serious environmental harm progressed in EPOLA Act 2023, would increase

the volume of devolved responsibilities for environmental nuisance.

A considerable number of submitters cited the need for guidance material to assist regulators and industry in determining when instances of environmental nuisance no longer constitute environmental nuisance and instead constitutes material or serious environmental harm. In particular local governments, as co-regulators with devolved responsibilities for environmental nuisance, expressed the need for any amendments to avoid creating uncertainty as to when environmental nuisance is material or serious environmental so it is clear which regulator is responsible.

Government response

The proposal was to ensure that an unreasonable interference or likely interference with an environmental value caused by a matter listed in section 15 (i.e. odour, noise, or fumes) can be considered to be material or serious environmental harm once it meets the definitions set out in sections 16 and 17.

The purpose of the proposed amendment is to ensure that where instances of environmental nuisance are of a magnitude or severity that they meet the definition of material or serious environmental harm, sufficient tools are available to address this harm. The proposal does not alter the scope of what constitutes environmental nuisance. While nuisance events may be subjective in nature, the definitions of material and serious environmental harm are only being changed insofar that instances of environmental nuisance that meet these definitions are not precluded from constituting either material or serious environmental harm.

The proposal also expressed the intention to avoid interfering with the existing arrangements of devolved responsibility for environmental nuisance to local government under the Environmental Protection Regulation 2019. It acknowledged it may be necessary to make amendments to provide certainty and clarity on which entity is the administering authority in relation to an environmental harm event by, for example, specifying in the EP Act or the EP Regulation that environmental harm that meets the characteristics of nuisance under section 15 continues to be a devolved matter for the purposes of sections 440 and 443A unless the Chief Executive makes a determination that the environmental harm event constitutes material or serious harm.

Where instances of environmental nuisance do not meet the definitions of material or serious environmental harm, they will continue to be dealt with under the existing framework. This means that local governments will continue to be the administering authority responsible for the administration and enforcement of environmental nuisance. In addition, local governments will continue to be the administering authority for a matter with the characteristics of nuisance unless the Chief Executive makes a decision that the matter involves material or serious environmental harm and therefore the Department will assume responsibility for administration and enforcement. This is a mechanism to ensure certainty as to the administering authority in a given matter. Recognising the potential significance of such decisions for both local and state government (e.g. resources, costs), the Chief Executive's decision-making power will not be able to be delegated.

For agricultural stakeholders who are concerned about urban encroachment and an increase in nuisance complaints, it is important to note that any nuisance must still be qualified as unreasonable before an offence of causing environmental nuisance can be enforced by an administering authority.

Monetary thresholds are not a necessary qualifier of material and serious environmental harm. For example, if environmental harm is not trivial or negligible in nature, extent, or context, it will constitute material environmental harm (regardless of the monetary threshold). By removing the exclusion of environmental nuisance from the definition of material environmental harm, unreasonable interferences with an environmental value by an emission, for example odour or fumes, which is not trivial or negligible in nature, extent or context, can constitute material environmental harm.

Existing concessions under the EP Act for relevant acts, including material and serious environmental harm, will not be amended. Under the proposed amendments, section 493A of the EP Act will continue to apply, providing that an act that causes serious or material environmental harm or an environmental nuisance will be unlawful unless it is authorised to be done under, for example, an EA or progressive rehabilitation and closure plan (PRCP) schedule. This is relevant for resource, industrial and aquaculture activities. Further,

the existing exclusions to an offence of environmental nuisance and contravening a noise standard under Schedule 1 of the EP Act for government activities and public infrastructure, including water or sewerage services, would continue to apply.

The proposed amendments are expected to have a negligible impact on local government as a co-regulator, and instead deliver a reduction in regulatory burden where environmental nuisance constitutes material or serious environmental harm. In these instances, the Department will assume responsibility. While the threshold amounts for material and serious environmental harm were increased through EPOLA Act 2023, they now align with contemporary costs and therefore it is expected that any increased responsibilities of local government from this amendment would be, in practice, negligible.

Through the normal implementation of amendments to legislation, the Department will update existing guidance materials, including the enforcement guidelines, and where appropriate develop new guidance material.

Independent Review Recommendation 4

Summary of recommendation	Government response
The threshold amounts for material and serious environmental harm should be reviewed and increased.	**Delivered by EPOLA Act 2023**

No proposal was featured in the consultation paper as this recommendation had been implemented through the EPOLA Act 2023. Submissions acknowledged the amendments being delivered.

Independent Review Recommendation 5

Summary of recommendation	Government response
Section 319 of the EPA (Qld) be amended by omitting the words “reasonable and practicable” and inserting in lieu thereof “reasonably practicable”.	**Support**

The Government’s proposed amendment

The consultation paper proposed to amend section 319(1) of the EP Act to omit the words ‘reasonable and practicable’ and replace with ‘reasonably practicable’. Other sections would be similarly amended to ensure consistency throughout the EP Act.

Stakeholder feedback

Submissions were mostly supportive of the proposed amendment. There were several concerns raised noting that the removal of the ‘and’ would impact industry as there is the possibility that ‘reasonably practicable’ could be interpreted differently to ‘reasonable and practicable.’

Submitters presented concerns that further definitions were needed to ensure consistent application of the proposed amendment. It was suggested that these definitions include the consideration of economics, capacity to deliver, applicable technology for regional areas and the environment. In addition to this, it was requested that guidelines be provided to create a more clear and consistent application.

Government response

Amendments to replace the phrase ‘all reasonable and practicable measures’ with ‘all reasonably practicable measures’ is intended to avoid a possible interpretational issue of an implied two-tier test that first, a measure must be reasonable and second, that the measure must also be practicable. Introducing the words ‘reasonably practicable’ eliminates the apparent two-tier test, providing for a single and more widely recognised test of deciding what is reasonably practicable.

It also introduces a level of consistency with the legislative approach adopted to address similar issues both in Queensland and interstate (for example, in the Queensland *Work Health and Safety Act 2011*, and under the general environmental duty in the *Environment Protection Act 2017* (Vic)).

The amendment does not affect the intent of this section, which provides that a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonably practicable measures to prevent or minimise the harm.

Rationalising notices

The Government's proposed amendment

The consultation paper proposed creating a new tool known as an Environmental Enforcement Order (EEO). The EEO, in effect, combines the existing powers and scope available under Environmental Protection Orders (EPOs), Direction Notices (DNs) and Clean-up Notices (CNs).

Stakeholder feedback

Submissions received were mostly supportive in principle or held a neutral position on the new combined statutory notice (the EEO). However, some local governments voiced concerns that the proposal may require additional training for local government officers to implement the new statutory notice. Local government submissions sought a commitment from the Department to provide support, training, and resources as part of the implementation of the amendments. Specific assistance sought included the following: interpretation tools, flow charts, template documents and letters, transitional understandings/fact sheets, identification of system changes and officer training. In addition, local government requested a significant lead time to allow for the implementation of updated enforcement tools, system changes and regulatory practices.

Other stakeholders requested clarification about specific aspects of the EEO and noted the need for supporting information such as an EEO guideline. For example, details about issuing the EEO for nuisance that is considered to constitute material or serious environmental harm. Further consultation on the EEO as well as how previously issued EPOs, DNs and CNs would function was also requested throughout the submissions.

Government response

The proposed amendment will simultaneously implement the independent review's recommendations for changes to the existing provisions for EPOs, DNs and CNs (see Recommendations 6 to 9 below), however these changes will be implemented through the new provisions for the EEO. Previously issued EPOs, DNs and CNs will continue to have effect and their requirements will still be enforceable.

Rationalising EPOs, DNs and CNs is expected to result in a simpler process for notice recipients, as well as the administering authority. It will support better environmental outcomes by enabling a more responsive compliance approach.

The Department will seek to provide supporting documentation, including enforcement guidelines, and training. In doing so, it will consult and work with local government as a co-regulator.

Independent Review Recommendation 6(a)

Summary of recommendation	Government response
Direction notice provisions should be amended as follows: (a) amend section 363D(1) to make clear that the remedying of the contravention of a prescribed provision includes the obligation to carry out any remedial work that might be required to remedy the contravention	**Support** Partially addressed in the EPOLA Act 2023

No proposal was featured in the consultation paper as this recommendation had been implemented through the EPOLA Act 2023. Submissions acknowledged the amendments being delivered.

Independent Review Recommendations 6(b) and 7(c)

Summary of recommendations	Government response
Direction notice provisions should be amended as follows: (b) provide powers for the administering authority to undertake remedial works and recover the costs thereof	**Support**
The Environmental Protection Order (EPO) provisions should be amended to: (c) rationalise the powers to step in to undertake remedial works and recover the costs thereof in respect of EPOs issued pursuant to section 358 of the EPA (Qld)	**Support**

The Government's proposed amendment

The consultation paper proposed to implement the recommendations that the respective DN and EPO provisions be amended to provide powers for the administering authority to undertake remedial works, and recover the costs, via the proposed EEO statutory notice.

Stakeholder feedback

Local governments supported this recommendation, noting that it will assist in recovering costs from a polluter where local government is required to deal with contamination that has entered local government land, waterways, and infrastructure.

Other submissions expressed concern about this proposal. One submission stated that cost recovery may be in excess or inflated if the Department takes 12 or more months to perform the work, and that the costs could potentially become inflated due to lack of Departmental knowledge and experience. It was questioned whether there would be an agreed value for works rather than a sliding scale.

Government response

Devolutions for EEOs are not expanding beyond what is currently permitted by the EP Regulation. Local governments are presently precluded from issuing CNs, which are used to address contamination incidents, and so they will also be precluded from issuing EEOs that are for the purposes of addressing contamination incidents. .

While cost recovery provisions are being expanded to be available for any ground on which an EEO was issued (i.e. any ground for which an EPO or DN could have been issued), the power to issue cost recovery notices will continue not to be devolved to local governments to maintain existing devolution arrangements. However, local governments will have the opportunity to recover costs from a person responsible for a contamination incident if they (the local government) are issued an EEO requiring them to clean-up contamination that they did not cause. Local governments, like anyone issued with an EEO requiring the clean-up of contamination, will be able to recover costs of clean-up they incur from the person responsible for the contamination.

The Department considers its resourcing requirements on an ongoing basis. All feedback has been considered and the Government has decided no changes are required to the proposed amendments.

Independent Review Recommendation 6(c)

Summary of recommendation	Government response
Direction notice provisions should be amended as follows: (c) include as a prescribed provision for the purposes of section 363A offences involving the causing or risk of environmental harm or the contravention of the general environmental duty in section 319.	**Support**

The Government's proposed amendment

The consultation paper stated the proposed EEO will be able to be used to secure compliance with the General Environmental Duty (GED), and that contraventions that cause or risk environmental harm will also be a ground on which the EEO can be issued.

Stakeholder feedback

There was minimal commentary received that was specific to this recommendation, with most comments referring to general feedback regarding the EEO.

Some submissions noted support for this recommendation without providing further detail whilst other submissions stated that they neither supported nor opposed the recommendation. One submission questioned how the clean-up and remediation actions would be agreed upon if the person has already commenced the remediation and clean-up prior to being issued the notice.

Government response

Securing compliance with the GED is presently a ground to issue an EPO, and an EEO will also be able to be issued on this ground. Concerns raised on how clean-up and remediation actions would be agreed where those works had already commenced appear to be based on a misunderstanding. Where a contamination incident has occurred, there are more appropriate tools available under the EP Act, including the new duty to restore, to address the incident. Generally, using an EEO to secure compliance with the

GED would not be the most appropriate tool in those circumstances.

Independent Review Recommendation 7(a)

Summary of recommendation	Government response
The Environmental Protection Order (EPO) provisions should be amended to: (a) remove the need to consider the standard criteria in deciding whether to issue an EPO under section 358(a)-(c) and (e) of the EPA (Qld)	**Support**

The Government's proposed amendment

The consultation paper stated the proposed EEO will not require the consideration of the standard criteria (defined in Schedule 4 of the EP Act) in certain circumstances.

Stakeholder feedback

There were mixed views received about this proposal. While some submitters stated that the application of the standard criteria had little utility and its removal would simplify the process, others raised concerns of excluding the requirement to consider the standard criteria prior to issuing an EEO, whilst questioning why the Department found the standard criteria complicated to address.

Government response

Concerns raised by submitters of omitting the requirement to consider the standard criteria in certain circumstances appears mostly to be a misunderstanding. The Bill will contain a provision that requires that before deciding to issue an EEO, the administering authority must consider the standard criteria. However, the proposal was for there to be some exceptions. The administering authority will not be required to consider the standard criteria before issuing an EEO for only the following grounds:

- the person has not complied with a requirement to conduct an environmental evaluation and submit a report to the administering authority
- the person has not complied with a requirement to apply for the issue of a transitional environmental program
- specific contraventions of the EP Act, including carrying out an activity without a required authorisation, environmental nuisance and contravening a noise standard; and
- the person is a prescribed person for a contamination incident.

The grounds contemplate circumstances where an investigation has shown that obligations under the EP Act have not been complied with, and given that the standard criteria or regulatory impact has been considered in establishing those obligations, further consideration of standard criteria does not provide an additional benefit. Removing the need to consider the standard criteria in these circumstances will support a more timely and certain response and minimise ongoing impacts on the environment and the community.

Independent Review Recommendation 7(b)

Summary of recommendation	Government response
The Environmental Protection Order (EPO) provisions should be amended to: (b) extend the power to issue an EPO for contravention of an offence under section 358(e) to all offences under the EPA (Qld) which relate to acts that have caused or might cause environmental harm	**Support**

The Government's proposed amendment

The consultation paper proposed to give effect to the recommendation to extend the power to issue an EPO to all offences that related to an act of environmental harm through the proposed EEO. The proposal noted that environmental harm would be a basis for which the administering authority can issue a notice, without necessarily having to identify every relevant offence in the provision setting out grounds for issuing an EEO.

Stakeholder feedback

Overall, there was broad support for this proposal, however clarification was sought regarding the issuing of an EEO for nuisance that is considered to constitute material or serious environmental harm. There were several requests for further clarification about how the proposal to enable issuing an EEO on a ground of the duty to restore environmental harm (see 'Duty to restore' below) will function.

Government response

The offence provisions that may trigger an EPO pursuant to section 358(e) are restrictive and may be expanded to include other offences which relate to acts that have caused or might cause environmental harm (for example, sections 437, 438 and 440). By contrast, the offences specifically listed under section 358(e), which include not complying with a DN (section 363E) and contravening a noise standard (section 440Q), are relatively low-level. However, an EPO issued in accordance with section 358 may already be issued to secure compliance with duties and regulatory requirements such the GED, an EA condition, or an environmental protection policy, and this may cover circumstances where environmental harm has been caused or threatened.

While it is unnecessary to identify all specific offence provisions relating to environmental harm as grounds for issuing the EEO, the new provisions establishing the combined notice will ensure that environmental harm is a basis for which the administering authority can issue the notice. For example, the ground to issue a notice to secure compliance with the GED is retained and is capable of being issued in relation to instances of environmental harm regardless of whether the harm can also be characterised as environmental nuisance, material or serious environmental harm. A new ground to issue an EEO will also be introduced to secure compliance with the duty to restore environmental harm, but it will also still be possible to issue an EEO to address a contamination incident and this is important to cover circumstances and persons to which the duty may not apply.

The Department will consider stakeholder feedback when reviewing supporting documentation (i.e. enforcement guidelines).

Independent Review Recommendation 8

Summary of recommendation	Government response
Unless dealt with elsewhere in the Act, consideration be given to introducing an offence provision to capture obstruction of compliance with an EPO issued pursuant to section 358 of the EPA (Qld) or an offence provision that captures both related persons and persons issued an EPO pursuant to section 358.	**Support**

The Government's proposed amendment

The consultation paper proposed to give effect to the recommendation to align offences across EPOs issued to 'persons' and 'related persons' of companies through the proposed EEO. The proposal also expressed the intention to achieve consistency for other provisions that only applied to 'related persons' issued an EPO, for example, the powers of the administering authority to step in and undertake the actions of the EPO and to recover costs (see Recommendation 7(c) above).

Stakeholder feedback

Overall, there was widespread support provided for this proposal. However, concerns were raised about the need for a definition of 'obstruction' in the Act. A submission suggested that the EP Act currently deals with the situation of obstructing compliance with an EPO through the Chain of Responsibility Amendment (CoRA) provisions (i.e. in section 363AH), and therefore this amendment is not needed. Another submission did not support the proposed amendment due to concerns that it expands the administering authorities' powers.

Government response

The Bill will utilise provisions that already exist in the EP Act for EPOs and apply them to EEOs. Furthermore, the wording of the relevant offence provision uses the word 'obstruct' which is defined in Schedule 4 of the EP Act.

The proposal will rectify an inconsistency between those EPOs which are issued to a 'person' and the EPOs which are issued to a 'related person'. The enforcement and offence provisions will apply to the new EEOs issued to both a 'person' or a 'related person'. This extends the existing provisions about the obstruction of compliance (the CoRA provisions) from only applying to a 'related person' to now applying to all EEOs (regardless of who it is issued to).

Independent Review Recommendation 9

Summary of recommendation	Government response
The raft of requirements that are provided for pursuant to section 360(2) be included in the requirements that might be contained in a clean-up notice (section 363H).	**Support**

The Government's proposed amendment

The consultation paper proposed to expand the form and content requirements that might be contained in a CN (section 363H), through the proposed EEO. This would enable improved environmental outcomes following contamination incidents through an express power to stop or restrict any activity that is the cause of a contamination incident (derived from section 360(2) for EPOs).

Stakeholder feedback

The majority of submissions received for this proposal were supportive. Where concerns were raised, these centred around the ability of the administering authority to require the recipient of an EEO to not start or to stop a stated activity either indefinitely, for a stated period, or until further notice, or to require the recipient to carry out a stated activity only during stated times or subject to stated conditions, or to require the recipient to take stated action within a stated time. Specifically, it was noted in these submissions that 'it is important that business and operators of public infrastructure can continue their operations as a whole, notwithstanding some components may need to be limited or stopped'.

Government response

As per the findings from the independent review, the provisions concerning CNs do not expressly provide for the power to stop or restrict an activity which is the cause of a contamination incident. The implementation of the proposed amendment will clarify the raft of requirements that may be contained in an EEO for clean-up of a contamination incident, to include those powers which are currently provided for an EPO under section 360(2) (e.g. to stop the activity). As these powers to stop an activity currently exist under the EP Act, expressly allowing that these requirements can be imposed to deal with a contamination incident is not an expansion of existing powers currently available to the administering authority.

The Department will review compliance guidelines to ensure officers are supported in determining when it is appropriate to issue an EEO requiring an operator to cease operating. In cases where public infrastructure is involved, then the impacts on the community of requiring an activity to stop will be weighed up against the environmental impacts of allowing it to continue to operate.

Duty to restore

The Government's proposed amendment

While not a recommendation of the independent review, a duty to restore environmental harm was proposed in the consultation paper to be introduced to complement the polluter pays principle and the GED. The proposed duty applies if a person permits or causes contamination that results in environmental harm and requires them to, as far as reasonably practicable, restore the environment to the condition it was in prior to the incident occurring. This is a continuous and proactive obligation, meaning that a person should not wait for the administering authority to issue a notice requiring clean-up or remediation before taking such action.

Stakeholder feedback

The majority of submitters who commented on the duty to restore were supportive, with only a few not supporting the proposal as presented in the consultation paper. Several submissions noted the need for reasonable rights of entry to allow polluters access to third party land, particularly state land, to restore the environment where harm has occurred. The need for a dispute resolution process in cases where parties cannot agree was also raised, as well as the need to clarify operative impacts and legal requirements for local government.

One submission recognised potential benefits in reduced complexity, scale, and cost of remediation by introducing a duty to restore, whilst stating that amendments were not supported, requesting reasons and intent be set out more clearly. Double jeopardy concerns were voiced, as well as the perceived creation of duplicate offence provisions. It was also noted that there is no suggestion that the new offence will have corresponding defences.

Government response

All feedback has been considered and the Government has decided to implement the proposal.

The duty to restore provisions in the Bill will take into account stakeholder feedback, but it is acknowledged there is likely to be continued need in practice to utilise statutory notices to ensure harm from contamination is restored if a circumstance arises where there are persons or circumstances not covered by the duty.

The Department will consider stakeholder feedback in the drafting of guidance material, to provide clarity and facilitate administration.

Independent Review Recommendation 10(a)

Summary of recommendation	Government response
The power to amend a Transitional Environmental Program (TEP) be expanded to: (a) allow the administering authority to amend without consent of the operator	**Support**

The Government's proposed amendment

The consultation paper proposed to insert new provisions into Chapter 7, Part 3 of the EP Act and amend existing provisions as necessary, to provide for the power of the administering authority to initiate and decide amendments to Transitional Environmental Programs (TEPs) having regard to any submission by the existing holder.

Stakeholder feedback

In general, submitters supported the proposal subject to TEP holders retaining the right to be consulted and having the ability to provide submissions for consideration prior to any amendment being set in force by the administering authority. Without this, submitters noted that the administering authority may not hold sufficient industry knowledge to fully understand the effects of amending a TEP, and that operators may require a transition/implementation period for amendments to take effect or come into force (i.e. for the TEP to respond to changes to risk and impact, etc). Some feedback suggested that the administering authority should be able to amend a TEP without the consent of the operator.

Submissions noted that members of the public, including neighbouring land-holders and other community members, would have an interest in TEPs, and as such suggested they should also be afforded an opportunity to make submissions for consideration as part of any amendment.

It was suggested that the ability for the administering authority to amend a TEP could reduce the level of consultation between licence holders and the administering authority that is conducive to ensuring that environmental objectives, which change over time, are met, and make voluntary entry into TEPs less appealing.

Submissions received from members of the public residing in the Ipswich area were supportive of this proposal.

Government response

The Government will implement the proposal to allow the administering authority to amend a TEP without consent of the operator. All feedback has been considered and the Government has decided no changes are required to the proposed amendments.

Independent Review Recommendation 10(b)

Summary of recommendation	Government response
The power to amend a Transitional Environmental Program (TEP) be expanded to: (b) allow the administering authority to refuse an amendment of a TEP if it is not also satisfied that the amendment would be likely to achieve advancement of compliance with the Act.	**Support** Recommendation 10(b) addressed in the EPOLA Act 2023

No proposal was featured in the consultation paper as this recommendation had been implemented through the EPOLA Act 2023. Submitters supported this recommendation.

Independent Review Recommendation 11

Summary of recommendation	Government response
In the event that a general environmental duty (GED) offence was not preferred, consideration might be given to including the general environmental duty within the scope of operation of section 505 of the EPA (Qld), by way of example, by introducing the words "a contravention of the general environmental duty or…" after the words "or restrain" and "or anticipated" and before the word "offence" in section 505(1).	**Delivered by recommendation 15** Recommendation 15 is the preferred option for providing enforcement actions to DES in the event a person contravenes the GED.

No proposal was featured in the consultation paper for this recommendation. Recommendation 11, which suggested that the power to make restraint orders under section 505 of the EP Act could be expanded to capture contraventions of the GED, was provided as an alternative if the introduction of a new offence provision for the GED was not preferred. A GED offence, proposed under Recommendation 15, was the Government's preferred option for enhancing enforcement actions in the event a person failed to comply with their GED.

Stakeholder feedback

Minimal comments were received in submissions regarding this recommendation. To the extent that submitters did provide comment, most noted either support for not implementing Recommendation 11, or support for implementing Recommendation 15 in preference to Recommendation 11. However, one submission which did not support the introduction of a GED offence provision stated their preference for Recommendation 11 even though they considered such amendment to section 505 to also be unnecessary. Another submission stated a preference for both Recommendation 11 and 15 to be implemented.

Government response

The Government maintains its preference to introduce a GED offence provision.

Independent Review Recommendation 12

Summary of recommendation	Government response
The power to amend environmental authority conditions be expanded to allow the Chief Executive or the Minister to amend conditions where the Minister or Chief Executive considers the environmental impact of the activity is not being appropriately avoided, mitigated or managed.	**Support in principle** The intent of keeping conditions fit for purpose is supported. This recommendation is supported in principle subject to the outcome of consultation and regulatory impact assessment. Consideration of the caveats mentioned in paragraph 223 of the report is also supported.

The Government's proposed amendment

Recommendation 12 was supported in-principle by the Government. The Government presented two proposals in the consultation paper that were alternative to Recommendation 12 as stated in the independent review but were designed to address the commentary in the review that gave rise to Recommendation 12 regarding the importance of swiftness of regulatory action in response to

environmental harm. They were:

- Proposal 1: Amend provisions regarding the issuing of an environmental protection order or an environmental evaluation requirement to clarify that either notice can be issued to address environmental harm even if there is a condition of an EA appearing to authorise the relevant harm; and
- Proposal 2: Amend section 219 or insert further provisions into Division 2 of Chapter 5A, Part 6 to allow the administering authority to, upon considering written submissions from the EA holder, revise a proposed amendment to an EA in response to the EA holder's submissions.

Stakeholder feedback

Support of the Government's approach via two proposals varied, from full support of both proposals to partial support of Proposal 2 and opposition to Proposal 1.

Several industry respondents expressed they did not support the Recommendation 12, referencing general concerns regarding government overreach, claimed retrospective application of the proposals and uncertainty with how industry would be impacted and associated costs of doing business. Industry submissions which did support the proposals, referred to the caveats under paragraph 223 of the independent review being placed on the exercise of power as well as procedural fairness in how the powers were applied.

Industry advocated for a Regulatory Impact Assessment (RIA) to be developed concerning Recommendation 12 and the alternative Government proposals, primarily Proposal 1. A broad reasoning for why an RIA was necessary to consider impacts was expressed only as general concerns that any proposed change would have an impact on an EA holder, rather than details of specific regulatory impacts on specific activities. Furthermore, industry pointed to the Government Response which supported Recommendation 12 of the independent review in-principle, subject to the outcome of consultation and regulatory impact assessment.

Local government feedback was primarily in relation to how the proposed powers were to be exercised, and a concern that the Department would be able to unilaterally change a council's EA conditions (noting that councils can be EA holders for services they provide, as well as the administering authority for activities they are not party to).

Submitters noted potential additional resource impacts to their operations and asked how this would be supported. Other concerns included asking how the proposals would be implemented, including whether there would be retrospective effect.

It was noted that several submissions commented only on Recommendation 12 from the independent review, which was supported in-principle by the Government, and did not comment on or respond to the Government's two proposals to alternatively give effect to the independent review's commentary underlying Recommendation 12. However, other feedback also raised concerns that the proposals in the consultation paper do not align with the 'support in-principle' response to Recommendation 12.

Government response

The Government recognises the importance of keeping EA conditions fit for purpose to protect both the environment and the community. This is important to address contemporary environmental impacts and respond to new, cost-effective technologies that reduce emissions and pollution.

When the EP Act was passed by Parliament, it sought to balance the need for certainty for business with the need for EAs to adapt to changing circumstances to ensure that approvals remained fit for purpose over the life of an activity. The legislative framework recognised that the understanding of environmental impacts would change over time and that technology and management systems would improve. Accordingly, the legislative framework provided for circumstances and a process for amending licences and these provisions are currently found in section 215.

Using the existing section 215 mechanism means that local government concerns about the Department unilaterally changing conditions on EAs held by councils will not materialise as existing processes, including the right to respond to a proposed amendment before it is made, will continue to apply.

The Government Response to Recommendation 12 included commentary on the need for consultation and regulatory impact analysis on the basis that the Government came to accept the recommendation, i.e. that the '*The power to amend Environmental Authority conditions be expanded to allow the Chief Executive or the Minister to amend conditions where the Minister or Chief Executive considers the environmental impact of the activity is not being appropriately avoided, mitigated or managed'.*

However, as the Government has proposed not to directly implement this change and has instead sought to clarify and utilise existing statutory tools to respond to and address environmental harm and associated issues with EA conditions, the requirement for an RIA has not been considered necessary.

The Department notes stakeholder concerns that the issuing of an EEO as a trigger to amend the conditions of the EA could result in impacts to the operation of an activity authorised by an EA. However, while this is a ground for amendment (which already exists under section 215(2)(j)), this does not necessarily mean that amendments will be made, and regulatory burden will be considered where it is part of the EA holder's response to a Notice of Proposed Amendment.

As noted by the Government's response to the independent review, the Government has sought to address and respond as quickly as possible to environmental harm, whilst also seeking to balance these impacts with stakeholders. The Government has sought to achieve this by utilising existing regulatory mechanisms in addition to clarifying that these processes can be utilised to amend the conditions of an EA to ensure that the conditions are suitable in managing the environmental harm.

The application of the amendments is not applied retrospectively to harm which has already been caused, but harm that occurs from the date that the proposed amendments in the Bill come into effect. As there are existing provisions under the EP Act (under section 215) which allows conditions of an EA to be amended, and as Proposal 1 clarifies that an EPO (EEO) can be used to address harm which is being caused, even when that activity is licensed by an EA, Proposal 1 does not adversely add additional burden to EA holders beyond clarifying when and how an EPO (EEO) can be issued.

Guidance material will be made available, providing clarity on how the administering authority will implement legislative changes.

All feedback has been considered and the Government has decided no changes are required to the proposed amendments.

Independent Review Recommendation 13

Summary of recommendation	Government response
The provisions regarding continuing obligations under cancelled or suspended environmental authorities be clarified to ensure that an operator must continue to comply with conditions regarding management of the site to reduce environmental risk and rehabilitation.	**Delivered by EPOLA Act 2023**

No proposal was featured in the consultation paper as this recommendation had been implemented through the EPOLA Act 2023. Submissions contained no feedback regarding this recommendation; however, some submissions noted their ongoing support for this recommendation as delivered through EPOLA Act 2023.

Independent Review Recommendation 14

Summary of recommendation	Government response
Schedule 4 of the EPA (Qld) be amended to include a contravention of sections 357I and 363E as disqualifying events for the purposes of section 318K of the EPA (Qld).	**Support** The recommendation is to amend the definition of an 'environmental offence' for a disqualifying event to include a failure to comply with conditions of a licence under section 357I and an offence not to comply with a direction notice under section 363E.

The Government's proposed amendment

The consultation paper proposed to amend the definition of 'environmental offence' in Schedule 4 to include contraventions under sections 357I and 363E as disqualifying events for the purpose of section 318K of the EP Act. The proposed amendments would also reflect other changes proposed, namely rationalising certain statutory notices in the proposed EEO.

Stakeholder feedback

Most submissions received expressed support to implement Recommendation 14. While submissions noted support for the proposed amendment, this support was on the basis that it did not apply to existing registered operators, and that the administering authority is unable to cancel or suspend an existing registered operator.

A submission relating to public entities advocated that public entities that provide public services and infrastructure should be excluded from this amendment. Similarly, it was noted in another submission from local government, that while the proposal is supported, protection is required for local governments providing essential services to their communities and undertaking activities in the public interest from being disqualified as suitable operators.

A submission received from a member of the public responded with support for the inclusion of 'environmental nuisance' as an offence under section 363E (Offence not to comply with a DN) and support contravention of sections 357I and 363E as disqualifying events for registration as a suitable operator.

One submission was received which supported the proposal and recommended including international offences in the criteria for disqualifying events.

Government response

The current provision of section 318K applies to all registered suitable operators. As operators are already exposed to disqualifying events for most offences, the proposed amendment is a minimal expansion of scope to include a small number of additional offences for completeness, which provides the option of applying the proportionality principle where appropriate.

In applying any enforcement measures, the Department assesses impacts and risks, as well as natural justice considerations. Interruption or cessation of essential services delivered by operators would be considered as part of this assessment process.

Independent Review Recommendation 15

Summary of recommendation	Government response

Consideration should be given to creating an offence for breaching the general environmental duty.	**Support**

The Government's proposed amendment

The consultation paper proposed to introduce an offence for failing to comply with the GED where a person is carrying out an activity during a business or undertaking, but not where an aspect of minimising environmental harm is already addressed through an environmental requirement or instrument, such as an EA, or where the person is compliant with a relevant code of practice.

Stakeholder feedback

Many submissions expressed support for the introduction of the GED offence. These submissions were from local government, environmental or conservation groups and members of the public. Some of these stakeholders wanted the GED offence to have broader application, noting that its effectiveness was undermined by exemptions or limits on scope.

A similar number of submissions stated that they did not support the introduction of a GED offence or expressed reservations about it. Further, among those that supported Recommendation 15, some qualified their support in relation to aspects of the proposal.

Most industry and local government stakeholders sought the development of guidance materials and codes of practice to support compliance with the GED, including in consultation with industry, which was reflective of a desire for compliance certainty.

Submissions raised that the requirement to do what is 'reasonably practicable' is a subjective test to determine compliance, and with consideration of the variations of best practice environmental management across industries and activities, there would be uncertainty as to how such a test would be enforced.

Some submissions expressed concern that the GED offence would result in over-regulation and prosecutions in circumstances where such action is not warranted. One local government submission raised that the GED offence may invite vexatious complaints about perceived risk of environmental harm.

Many submissions raised the need for clarification as to how certain aspects or elements of the GED offence would operate or how it would interact with other provisions and obligations under the EP Act. Examples of the concerns included prosecutors bearing the burden of proof and whether unique defences would apply to the GED offence.

Submissions also sought clarification on any devolved responsibilities for GED to local governments, particularly whether they would be able to enforce the GED if the breach related to environmental nuisance.

Government response

The Government has taken steps to clarify the proposal through the drafting of the Bill, while still achieving the policy intent. Overall, the changes have the benefit of simplifying drafting of the offence provision while providing greater clarity as to who the offence applies to and in what circumstances, and avoids risk that the GED itself, as expressed in section 319, is altered by the way the offence provision is expressed.

The Government has modified the proposed amendment to include stated measures to be considered when deciding if a person would be taken to have breached their duty (e.g. a failure to install and maintain plant, equipment, processes, and systems in a manner that minimises risks of environmental harm). They will not operate as triggers for the offence but appear in the provision as examples of failures to take reasonably practicable measures.

Additional clarity is achieved through removing the proposed limit on the application of the offence so it only applies when a person is carrying out the activity during a business or undertaking. The original purpose of

this limitation was to ensure a clearly defined cohort of persons to which the offence would attach, but having regard to feedback, it is preferable to have the offence apply to all persons in line with the duty itself, and this broad cohort is justifiable when comparing with how other offences are framed across the EP Act (e.g. section 437 simply says 'a person must not unlawfully cause serious environmental harm').

The proposal remains unchanged with regard to allowing for exemption from the offence provision for persons with an authorisation that already contains measures for minimising environmental harm.

As part of the usual implementation of legislative amendments the Department will review existing guidance materials (e.g. the Enforcement Guidelines) as needed, and develop new or amended guidance as required Any new codes of practice will be developed in consultation with the relevant stakeholders.

Enforcement of the GED offence is intended to be conducted in accordance with the Department's enforcement and prosecutorial guidelines. This means consideration will be given to the range of tools and actions available to address the circumstances of the contravention (e.g. pre-enforcement letter, issue of EEOs, alternative offences). A proportionate and flexible approach to enforcement actions is provided for in the Department's guidelines, rather than taking the strongest or most punitive action in the first instance.

In addition, while submissions expressed concerns as to how they will demonstrate compliance with the GED, the burden will be on the prosecutor to prove the elements of the offence where the government alleges a breach.

The Government considered whether new or unique defences were necessary or appropriate. While a defence of 'reasonable excuse' is a commonly drafted defence for offence provisions expressing an obligation, it is not necessary or appropriate where consideration of what is reasonable in the circumstances already forms part of the duty. Further, an accused person may defend an allegation of the GED offence by challenging whether the elements of the offence have been made out by the prosecution, or by relying on relevant available defences under the Criminal Code. The offence will allow for a defence where the person has complied with a relevant code of practice (which is consistent with an a defence available under section 493A for a charge of unlawful environmental harm). A defendant can seek to rely on that defence if they wish, but the burden remains on the prosecution to prove all the elements of the offence. Consequently, there are not new or unique defences for the GED offence.

It was acknowledged in the consultation paper that a conflict could arise in practice if a prosecution brought both a charge of GED offence and environmental harm offence for the same conduct. The Bill will include provisions that place limitations around prosecutions of the GED offence where other environmental harm offences are charged due to the same or similar conduct. This is to limit conflict with the defence of GED compliance under section 493A. Nonetheless, it remains the intention to be able to use the GED offence to intervene before actual harm occurs rather than to bring GED offence and other environmental harm offence charges together.

Regarding devolution of the GED offence to local governments, administration and enforcement of the GED under section 319 is not presently devolved to local governments, and the consultation paper did not propose to devolve the GED or the GED offence, in any way, to local government. Further, the offence applies to serious or material environmental harm, which is not devolved to local government. Accordingly, the approach that the GED offence not be devolved is maintained.

Independent Review Recommendation 16

Summary of recommendation	Government response
The duty to notify of environmental harm provisions (Chapter 7, Division 2) be amended to include a duty to notify to a similar effect, as that provided for in section 74B of the EMPCA (Tas).	**Support**

The Government's proposed amendment

The consultation paper proposed to amend section 320A such that the duty of a person to notify of actual or threatened serious or material environmental harm includes circumstances where the person 'reasonably believes' or 'should in the circumstances reasonably believe' that a notifiable event under section 320A has occurred.

Stakeholder feedback

Submissions received were mixed on the proposal for Recommendation 16, with several submissions supporting, several submissions raising concerns, and several submissions not supporting the proposal.

Submissions that raised concerns noted that the proposal may lead to over-reporting to the administering authority, confusion around when reporting must occur, and increased burden on reporters. Several of these submissions noted that the duty to notify already exists within the EP Act. A local government submission stated that additional administrative burden on local governments associated with Recommendation 16 should be minimised, including where environmental risks which are rectified as part of normal business procedures are not needing to be reported. In addition, some submissions noted the potential for this proposal to discourage self-reporting.

Submissions raising concerns on this proposal frequently raised the wording of 'believes' to be subjective and open to misinterpretation.

Government response

While the Government acknowledges the concerns expressed in submissions about how the amended provision would operate in practice, it ultimately considers the proposed changes to the duty to notify to be appropriate.

An enhanced duty to notify supports industry and others conducting activities potentially affecting the environment to monitor for contamination incidents more readily and respond to them more proactively. Introducing the element of reasonableness may also facilitate more consistent monitoring and notifying practices.

Explanatory Notes to the Bill and guidance material issued by the Department will address what is required to comply with the modified duty.

Independent Review Recommendations 17 and 18

Summary of recommendations	Government response
Chapter 10, Part 1 of the EPA (Qld) be amended to expand the evidentiary aids limited to criminal proceedings to be available in civil proceedings.	**Support**
The words "by the prosecutor" be deleted from section 490(7).	**Support**

The Government's proposed amendment

The consultation paper proposed that sections 491(1) and 491A(1) be amended to specify that the sections also apply to 'a proceeding in relation to' the relevant offences to which the provisions apply (sections 430, 440 and 440Q). This will make clear that evidentiary provisions are available in civil proceedings. Section 490(8) was also proposed to be amended to remove the words 'by the prosecutor' to make the provision available in civil proceedings.

Stakeholder feedback

Submissions received from some local governments did not support Recommendation 17 primarily about expanding evidentiary aids to civil proceedings as they saw this as leading to an increase in civil litigation. Specific comments included that it would increase the risk to Council-owned public infrastructure, or they should only apply in criminal proceedings with a higher standard of proof, but the usual rules of evidence should apply in civil proceedings, or that costs would be incurred in litigation where money would be better utilised on improving environmental outcomes.

A submission received from one such submitter recommended that the Government reject the proposals in relation to Recommendations 17 and 18 to avoid potential additional legal costs to public service providers, such as councils.

Submissions were also received from other local governments which supported and had no objections to these changes or believed that they required further consideration.

Submissions received from First Nations peoples' representative bodies stated that they welcomed the inclusion to bring civil action for a breach and asked for amendments to give native title holders the standing and ability to bring civil action against those who breached the Act.

Government response

Various submissions appeared to misconstrue the nature of the changes proposed by Recommendations 17 and 18. The proposed amendments do not give rise to additional grounds for civil or criminal actions. The EP Act already allows for any person to bring a prosecution against a person (including a company) for a breach of the Act. Allowing the evidentiary aids to be used in civil proceedings under the Act will allow them to be used for existing actions such as challenges to notices issued by the administering authority to a person.

Sections 490 and 491 are already limited to only apply to proceedings under or in relation to the EP Act. Broader proceedings (e.g. tortious liability) would still apply the usual evidentiary requirements.

The kind of matters which are covered by section 490 are not of a controversial nature in a legal proceeding, for example, that an authorised person is presumed to be properly appointed, or that a person was (or was not) the holder of an EA on a stated day.

The matters which are covered by section 491 are that an *authorised* person may give evidence based on their own senses. This section only applies in relation to a proceeding in relation to the offences in sections 430 (contravening a condition of EA), 440 (causing environmental nuisance) and 440Q (contravening a noise standard).

Consequently, the Government considered the feedback and determined that no changes were required to the proposed amendments.

Appendix 1: List of stakeholders that made submissions

1. AgForce Queensland Farmers Ltd
2. Association of Mining Exploration Companies (AMEC)
3. Australian Barramundi Farmers' Association (ABFA)
4. Australian Contaminated Land Consultant Association Qld Inc (ACLCA Qld)
5. Australian Council of Recycling (ACOR)
6. Australian Energy Council
7. Australian Energy Producers
8. Australian Prawn Farmers Association (APFA)
9. B-Alternative
10. Brisbane City Council
11. Bundaberg CANEGROWERS Ltd
12. Cement Concrete & Aggregates Australia (CCAA)
13. Environmental Defenders Office (EDO)
14. Gecko Environment Council
15. Gold Coast City Council
16. Holcim (Australia) Pty Ltd
17. Ipswich City Council
18. Ipswich MPs (Lance McCallum MP, Jennifer Howard, MP & Charis Mullen MP)
19. Isaac Regional Council
20. Jemena Gas Pipelines
21. Local Government Association of Queensland (LGAQ)
22. North Queensland Land Council
23. Officers at Redlands City Council
24. Queensland Water Directorate (qldwater)
25. Queensland Environmental Law Association (QELA)
26. Queensland Farmers Federation (QFF)
27. Queensland Generators Environment Forum (QGEF)
28. Queensland Resources Council (QRC)
29. Queensland University of Technology (QUT)
30. Redland City Council
31. Salisbury Moorooka Emissions Limitation Lobby (SMELL)
32. Sandy Bolton MP
33. Seqwater
34. Townsville City Council
35. Unitywater
36. Urban Utilities
37. Waste & Recycling Industry of Queensland (WRIQ)
38. Waste Management and Resource Recovery Association of Australia (WMRR)
39. West Moreton Hospital and Health Service, Queensland Health (West Moreton Health)
40. Queensland Water Regional Alliance Program (WIM Alliance)
41. WSP Australia
42. Seven submissions from members of the public were received