



Mr Andrew Doig
Chief Executive Officer
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Dear Mr Doig

Amendments to environment protection legislation

I am writing to inform you of proposed changes to the Protection of the Environment Operations Act 1997 (POEO Act), the Protection of the Environment Administration Act 1991 (POEA Act), the Contaminated Land Management Act 1997 (CLM Act) and its regulation, and the Radiation Control Act 1990 (RC Act) and its Regulation.

These changes are needed:

- a) to align the provisions under the CLM Act and CLM Regulation for regulating land owner/occupier-initiated contaminated land management proposals with the regime in place for EPA imposed management orders, and to ensure those operating within the contaminated land regulatory framework remain accountable for their actions, by for example providing appropriate penalties for not meeting obligations under the CLM Act
- b) to ensure that the EPA notifies the public of upcoming licence reviews in the most effective and cost efficient manner;
- c) to account for the complexities specific to determining groundwater pollution and radiation offences by increasing the time allowed for these investigations;
- d) to delete an obsolete class of licence; lose a potential loophole for avoiding installing a GPS tracking device on a vehicle; and remove obsolete consultation fora;
- e) to ensure the efficient administration of legislation administered by the EPA;
- f) to align penalties under the RC Act and RC Regulation with those in other environmental legislation; enable prosecutions and appeals to be heard in the LEC
- g) to align investigation powers, penalties and appeal rights across EPA-administered legislation.

Specifically, the EPA is proposing to:

- a) Amend the CLM Act and the CLM Regulation to create an instrument called a 'management agreement', to make it an offence not to comply with a management agreement and to align the regulatory approaches available for management agreements with the existing provisions for management orders. A management agreement will be similar to a voluntary management proposal (VMP) but it will be an offence not to comply with a management agreement. The EPA will not enter into any new VMPs once the legislation commences.
- b) Amend the POEO Act to replace the requirement for newspaper advertising of licence reviews with a requirement to publish details of licence reviews on the Environment Protection

Authority's (EPA) website. EPL review dates will also be included on the EPA's Public Register.

- c) Amend POEO Act to provide a regulatory regime that reflects the complexities of groundwater regulation and enforcement, by extending the limitation period for groundwater offences from 1 to 3 years.
- d) Amend POEO Act to explicitly provide for the use of unmanned aerial vehicles to collect evidence and to enable that evidence to be used in proceedings in all courts.
- e) Update the CLM Act investigation powers to adopt Chapter 7 of the POEO Act.
- f) Remove the class of 'supervisory licence' from the POEO Act and make consequential changes to the Protection of the Environment (Waste) Regulation 2014 (POEO (Waste) Regulation).
- g) Amend the POEO Act to ensure that Global Positioning System (GPS) devices can be installed on trailers attached to, as well as to, motor vehicles including prime movers and other trucks.
- h) Remove no longer necessary community consultation forums (the Hunter and the Illawarra Region Environment Protection Community Consultation Forms as well as the NSW Council on Environmental Education) from the Protection of the Environment Administration Act 1991 (POEA Act).
- i) Amend the Radiation Control Act 1990 (RC Act) to allow prosecutions to be heard in the Land and Environment Court (LEC) instead of the Supreme Court, consistent with prosecutions under other environmental legislation. It is also proposed to remove the requirement for the Minister's consent to Supreme Court prosecutions.
- j) Amend the RC Act to allow the LEC to hear appeals against EPA decisions under the RC Act and the Radiation Control Regulation 2013 (RC Regulation) instead of the District Court.
- k) Increase the maximum penalty, from 100 penalty units to 200 penalty units, that may be imposed by Local Courts for offences under the RC Act and the RC Regulation. This aligns it with penalties for similar offences under the Pesticides Act.
- l) Remove the statutory cap on penalty notice amounts set in the RC Act. This is inconsistent with the approach used in other environmental legislation where there is no legislative cap on penalty notice amounts.
- m) Extend the limitation period for offences under the RC Act from one year to two years.

The EPA is currently working with Parliamentary Counsel's Office to finalise the Bill. If you have any comments on the proposed changes please send them to POELAmendmentBill@epa.nsw.gov.au by 3 August 2016.

Yours sincerely



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