

# ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL AMENDMENT BILL 2012

## Fact Sheet

The *Environmental Management and Pollution Control Act 1994* [EMPCA] is Tasmania's principal pollution control legislation. The Act establishes the Board of the Environment Protection Authority and the statutory role of the Director.

The Act also confirms a duty of care for local government in the prevention of pollution from level 1 activities and others that are not level 2 or level 3 activities.

The EPA Division has kept the Act under review since it was last amended in 2007. Late in 2010, a Statement of Intent, proposing new amendments, was submitted to key industry and community stakeholder groups and local government for comment.

In August 2011, Cabinet approved the drafting of a Bill to give effect to the recommended amendments. A copy of the consultation draft of the Bill has been reviewed by the key stakeholder groups and local government, and changes made wherever appropriate.

For ease of review, the amendments may be grouped as follows –

### General amendments

There are a number of “machinery” changes of a minor nature, designed to improve the effectiveness of the Act, to better deliver or clarify its intent, to take account of changes to other legislation, or to correct errors or anomalies.

### Substantial amendments

The Bill also includes a range of more significant amendments, some of which constitute substantial progression in the administration and enforcement of pollution control policy. In summary -

- Section.3 [Interpretation]: The definition of “environmental nuisance” is amended to clarify that nuisance may be caused by the discharge, depositing or disturbance of pollutants, and is not restricted to the “emission” of pollutants.
- Section 9 [Interaction with other Acts]: Subsection 9(2) is deleted to allow action to be taken under EMPCA in relation to oil spills in Tasmanian coastal waters, instead of under the *Pollution of Waters by Oil and Noxious Substances Act 1987* [PWONSA], where appropriate. The amendment will allow EMPCA to apply to such incidents, particularly those of a very minor scale, and those involving smaller boats and recreational vessels, which is not what PWONSA is intended to focus on.
- Section 27A [Classes of assessment] is substituted, and a new Schedule 5 is inserted to clarify the criteria that the EPA Board uses to determine the appropriate environmental impact assessment class for applications. The amendment does not change what needs to be assessed, only the criteria used to determine the time frame it is required to be assessed in.
- Section 27B [Notice of Intent] is amended to clarify that the information included in a Notice of Intent must be to the satisfaction of the Board.

- Section 27C [Board to advise of assessment class] is amended to confirm that notification by the Board of its choice of assessment class is linked to receipt of a satisfactory Notice of Intent.
- Section 27E [Board may require further information] is amended to provide that where the Board requires further information from an applicant to assist it in the compilation of site and project specific guidelines, the time limit for provision of those guidelines is suspended, for all three assessment classes, not just Class C assessments as the current section allows.
- Section 28 [Environmental Agreements] is amended to delete subsection (6), thereby removing the requirement for the EPA Board to seek Ministerial approval before entering into an environmental agreement to reward industry that operates beyond the basic environmental performance requirements of the Act.
- Section 43A is inserted into Part 4, Division 1 [Information to be supplied] to provide that it is an offence to submit false or misleading information.
- Section 43B is inserted to confirm the existing intent that, for the purposes of Environment Protection Notices, “environmentally relevant activities” can include activities that are no longer being conducted, but that may have caused, or still be causing environmental harm.
- Section 44 is amended in respect of notices issued under(1)(d)/(2)(d) [EPNs to vary permit conditions]. The amendments clearly set out what “vary” may include, and confirm that a single such EPN may be issued to vary the operating conditions of multiple permits, where these relate to activities that function as an integrated whole, provided that the variation and consolidation does not compromise any of the activities authorised by the individual permits [eg a sawmill and a woodchip mill, or a quarry and a crusher].
- Section 45 [Duties arising under an EPN] is amended to clarify the notification obligation where a person ceases to be responsible for, or ceases to conduct, an activity that is subject to an environment protection notice.
- Section 45A is inserted to provide that an EPN may be transferred from one person to another where a notification is received under section 45.
- Section 46 is amended to clarify the intent of section 44(6) in relation to an owner of land that is subject to an EPN that has been registered on the land title.
- Section 51B is inserted into Part 4 - [Enforcement Provisions], Division 4 – [General Offences] to create an offence provision for contravention of conditions or restrictions that the Board has required to be imposed on a permit, or that the Director has varied by EPN under s.44(1)(d).
- Section 95A is inserted into Part 7, Division 1 [Powers of authorised officers]. The section provides that it is not an excuse for a person to refuse or fail to answer a question or provide information when required by an authorized officer or council officer under section 92 on the grounds that to do so might incriminate the person.

The need for the amendment results from recent Magistrate Court decisions that have effectively challenged section 95, which makes it an offence to refuse or fail to comply with a requirement under section 92.

The policy intent does not seek to override the privilege against self-incrimination for natural persons [although it certainly challenges the “right to silence”], but to ensure that an officer can readily gather sufficient information to enable an informed and accurate assessment to be made of the potential for environmental harm resulting from an incident.

The provision upholds the common law privilege against self incrimination in respect of individuals, in that it states that the answer or document or information, is not admissible in evidence against a natural person. This protection does not extend to corporations, which is consistent with s187 of the *Evidence Act 2001*.

- Section 102 [Regulations]: Subsection (7)(d) is amended to allow more substantial fines to be applied to offences under Regulations

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Consequential Amendment to PWONSA

During the course of considering the amendment to section 9 to allow EMPCA to deal with minor marine oil spills, a serious error was discovered in the offence provision [s.8] of the *Pollution of Waters by Oil and Noxious Substances Act 1987* [PWONSA], relating specifically to oil spills from vessels under 400 tonnes. The Amendment Bill therefore includes a consequential amendment to PWONSA to rectify the problem, as follows –

- Section 8 of the *Pollution of Waters by Oil and Noxious Substances Act 1987* [PWONSA] is amended to correct a major error in the provisions that establish a defence against the offence provision, and to bring the provisions of that section into line with the corresponding section of the current version of the Commonwealth *Protection of the Sea [Pollution from Ships] Act 1983*. [for which PWONSA is “mirror” legislation for the purposes of Tasmanian waters];
  - The wording of subsection 8(4)(i) of PWONSA is seriously deficient. Unlike the corresponding provision in the Commonwealth Act [s9(4)(c)], it does not limit the defence to a maximum concentration [15 parts per million] of oil in any discharge from small vessels. This means that the protection of the defence could be claimed, regardless of volume or concentration of oil in any discharge or spill, and the defence could also be claimed in any action taken under EMPCA. The consequential amendment rectifies this by inserting the concentration limit;
  - In addition, the Commonwealth Act has been progressively amended over the years to significantly clarify and simplify the provisions relating to the offence of discharging oil, and to the defences.
  - Consequently, the Bill substitutes the original wording of section 8 of PWONSA, with wording and form that closely mirrors section 9 of the current version of the Commonwealth Act.
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