

## Changes to the Environment Protection Act

### Key changes which came into operation on 1 July 05:

- **Ceased Activities of Environmental Significance**  
This amendment clarifies the EPA's power to continue controlling and supervising sites that pose an ongoing environmental risk, even though the activities which require a licence are no longer taking place on that site.
- **Administering Agencies**  
Local councils will be able to volunteer as 'administering agencies' and enforce the Act for non-licensed activities. New cost recovery tools are included in the Act to financially support councils who volunteer to become administering agencies.
- **Environmental Authorisations**  
The EPA will be able to issue licences for longer periods, while still being able to annually vary licence conditions concerning testing, monitoring and auditing. The EPA will be able to specify conditions of licence relating to the training and instruction of employees and agents, and require licensees to provide certificates of compliance. The EPA will also be able to require public consultation in the development of an Environment Improvement Program.
- **Protection against self-incrimination**  
The protection against self-incrimination for corporations that operate a licensed activity, is to be limited for most purposes in the Act.

### Key changes which come into operation on 1 July 06:

- **Civil Penalties**  
The EPA will be empowered to negotiate a civil penalty, or apply to the Environment, Resources and Development Court for an order directing a person to pay an amount to the EPA as a civil penalty. If the EPA seeks to apply to the Court for a civil penalty, the person may choose not to be subject to a civil penalty. Currently no other Australian States or Territories adopt this valuable tool.
- **Environmental Nuisance Offences**  
The environmental nuisance offence will include a strict liability offence.

## New civil penalty system

South Australia will become the first Australian State to introduce civil penalties of up to \$120,000, after amendments to the *Environment Protection Act 1993* come into force on 1 July 2006.

The new system, which has been successfully used in the United States for over 25 years, will provide South Australia with a more efficient system to deal with less serious environmental offences.

The system will make it easier for the EPA to penalise polluters, enabling them to negotiate a civil penalty directly with a person who has breached the Act.

This will reduce the cost for both the Government and the polluter by avoiding taking the case to court.

Under the system, the EPA can apply to the Environment, Resources and Development Court for an order directing a person to pay an amount to the EPA as a civil penalty.

If the EPA seeks to apply to the Court for a civil penalty, the person may choose to be prosecuted rather than be heard in the civil jurisdiction of the Court. However, the burden of proof is lower than the 'beyond reasonable doubt' burden of proof applied to criminal penalties.

The introduction of a civil penalty system was an election pledge by the Labor Government and was recommended by the bi-partisan Environment, Resources and Development Committee of Parliament.

## Industries can now be ordered to clean up after closure

Under recent amendments to the *Environment Protection Act 1993*, the EPA can now introduce a post closure Environment Protection Order (EPO) for certain industrial sites which have closed.

If the licence holder ceases to be the occupier of the site, then the owner or, if applicable, any new owner of the site can be issued with a post closure environment protection order requiring them to undertake specified actions. This will allow the EPA to require the site owner to test and monitor the land if there are environmental concerns.

A person issued with a post closure EPO may apply to the EPA for the order to be removed if they fulfil all of the requirements.

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## Prosecution for environmental nuisance easier

The EPA will be able to penalise more environmental nuisance breaches under the *Environment Protection Act 1993*, once amendments come into effect on 1 July 2006.

The EPA has experienced significant difficulty in prosecuting polluters under the category of environmental nuisance because of the high level of proof required.

Environmental nuisance is where pollution, such as noise, smoke, dust, fumes or odour unreasonably interferes with the enjoyment of an area by persons.

Changes under the Act will put the proof required for this offence in line with other environmental offences under the Act, making it a strict liability offence.

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## Powers to protect the environment for councils

Local councils will be able to volunteer as 'administering agencies' and enforce the Act for non-licensed activities. This will assist local government's role to provide environment protection using the compliance and enforcement provisions in the Act for activities on domestic and non-licensed premises that cause environmental nuisance.

This legislative system has been developed as a result of an 18-month trial in 2001-2002 on sharing of EPA environmental responsibilities with the Adelaide City Council, Adelaide Hills Council and City of Port Adelaide Enfield.

New cost recovery tools are also included to financially support councils who volunteer to become administering agencies.

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## Improved authorisation of EPA licences

Amendments to the *Environment Protection Act 1993* will improve the authorisation of EPA licences and assist industry to minimise environmental risk.

The EPA will be able to issue licences for longer periods, while still being able to annually vary licence conditions concerning testing, monitoring and auditing.

The EPA will have broader powers to specify conditions of licence relating to the training and instruction of employees and agents, and requiring licensees to provide certificates of compliance. This will assist industry in minimising the risk of causing an offence under the Act.

Increased community consultation will be implemented from 1 July 2006 for the issuing of new environmental authorisations and for the relaxation of conditions required by authorisations. This change is in response to the recommendations of the Environment, Resources and Development Committee Parliamentary inquiry.

The EPA will also be able to require as a condition of licence that a licensee undertake public consultation when developing an Environment Improvement Program.