

2014

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ENVIRONMENT PROTECTION AMENDMENT BILL 2014

GOVERNMENT AMENDMENT

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
Mr Simon Corbell
Minister for the Environment**

SUPPLEMENTARY EXPLANATORY STATEMENT

This explanatory statement relates to a Government amendment to the Environment Protection Amendment Bill 2014 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

This explanatory statement provides information about why a Bill is proposed together with an explanation about the proposed legislative amendments.

In its *Scrutiny Report 24* of 14 October 2014 the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) queried proposed clause 33 of the bill which inserts a new part 14A of the Act creating enforceable undertakings. The Committee queried the appropriateness of including a strict liability offence in proposed section 136K.

Proposed Part 14A (Enforceable undertakings), which includes proposed section 136K, is an important introduction to the Territory's environmental laws, which provides an alternative to criminal prosecutions for an offence against division 15.1 of the *Environment Protection Act 1997*.

Proposed section 136K creates an offence if a person fails to take all reasonable steps to comply with a court order. This follows having entered voluntarily into an enforceable undertaking and the court being satisfied that the undertaking has been contravened. It is limited to specific circumstances.

Based on the Committee's query of the appropriateness of proposed section 136K being a strict liability offence, the Government has reconsidered the proposed section. The Government has decided to remove the strict liability offence from this provision in response to comment made by the Scrutiny of Bills Committee (See clause 182A(c) of the ACT Legislative Assembly Standing Orders).

It was through the Scrutiny of Bills process and investigation into enforceable undertakings that it became evident that an important principle had not been included in the Bill, namely the "polluter pays principle". This principle was omitted erroneously during the drafting stage of the process. It is therefore proposed to be moved as a Government amendment that is urgent as well as minor or technical in nature.

The 'polluter pays principle' is essential to the underlying premise of the bill.

Outline of Provision – Government amendment

Amendment 1

Clause 6

Proposed new section 3D(1)(e)

Page 5, line 24

This amendment inserts the important principle that is present in all modern environment protection laws – the “polluter pays principle”. A person administering the Act must have regard to, in addition to those included in section 3D(1), the “polluter pays principle”.

Amendment 2

Clause 6

Section 3D(2), proposed new definition of *polluter pays principle*

Page 6, line 5

This amendment inserts a new definition of “polluter pays principles” which means that “that polluters should bear the appropriate share of the costs that arise from their activities”.

Amendment 3

Clause 33

Proposed new section 136K(4)

Page 19, line 9

This amendment omits proposed new section 136K(4) from clause 33 of the bill. The effect of the amendment is to remove the strict liability nature of the offence in proposed section 136K.

This amendment is in response to the Scrutiny of Bill’s query about the appropriateness of proposed section 136K being deemed a strict liability offence.