

Passed by both Houses



New South Wales

Protection of the Environment Legislation Miscellaneous Amendments Bill 2017

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2017



New South Wales

Protection of the Environment Legislation Miscellaneous Amendments Bill 2017

Act No , 2017

An Act to make miscellaneous amendments to certain legislation relating to the protection of the environment.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Protection of the Environment Legislation Miscellaneous Amendments Act 2017*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 3 [1], [2], [4], [9], [11]–[13], [15] and [17] commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Contaminated Land Management Act 1997 No 140

[1] Section 4 Definitions

Omit the definition of *authorised officer* from section 4 (1). Insert instead:

authorised officer means a person appointed by the EPA under Part 7.2 of the *Protection of the Environment Operations Act 1997* as an authorised officer for the purposes of this Act.

[2] Section 4 (1), definition of “Department”

Omit the definition.

[3] Section 11 Declaring land to be significantly contaminated land

Omit “the Department’s website on the Internet” from section 11 (5).

Insert instead “its website”.

[4] Section 58 Record to be maintained by the EPA

Omit “Department’s internet” from section 58 (2) (b). Insert instead “EPA’s”.

[5] Section 71 Certificate evidence of certain matters

Insert “or the *Protection of the Environment Operations Act 1997*” after “Act” in section 71 (2) (a) (i).

[6] Part 9 Authorised officers

Omit the Part.

[7] Sections 96B and 96C

Insert before section 97 in Division 4 of Part 10:

96B Application of Chapter 7 of Protection of the Environment Operations Act 1997

Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends to the exercise of powers in connection with this Act and the regulations.

Note. Section 186 of the *Protection of the Environment Operations Act 1997* provides that Chapter 7 of that Act extends to the exercise of powers in connection with certain other legislation, including this Act. Chapter 7 of the *Protection of the Environment Operations Act 1997* deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons, and powers with respect to certain things such as vehicles.

96C Powers of entry

- (1) Without limiting section 96B, an authorised officer may enter:
 - (a) any land on which the authorised officer reasonably suspects that any activity that may cause contamination is being carried on—at any time during which the activity is being carried on there, and
 - (b) any land at or from which the authorised officer reasonably suspects contamination has been, is being or is likely to be caused—at any time, and
 - (c) any significantly contaminated land—at any time.

- (2) Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* applies to the exercise of functions by an authorised officer under this section in the same way as it applies to the exercise of other powers to enter premises under that Chapter.

[8] Section 108

Omit the section. Insert instead:

108 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
- (a) in the case of an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
 - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
 - (e) by email to an email address specified by the person for the service of documents of that kind,
 - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, *serve* includes give or send.

[9] Schedule 2 Savings and transitional provisions

Insert after Part 6:

Part 7 Provisions consequent on enactment of Protection of the Environment Legislation Miscellaneous Amendments Act 2017

27 Definition

In this Part:

amending Act means the *Protection of the Environment Legislation Miscellaneous Amendments Act 2017*.

28 Existing authorised officers

A person appointed as an authorised officer under Part 9 before the repeal of that Part by the amending Act is taken to be an authorised officer appointed under Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* on the commencement of sections 96B and 96C of this Act, as inserted by the amending Act.

29 Investigations—exercise of powers

Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends to the exercise of powers in connection with an investigation commenced before the commencement of sections 96B and 96C of this Act, as inserted by the amending Act.

Schedule 2 Amendment of Protection of the Environment Administration Act 1991 No 60

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

advisory committee means an advisory committee established under Part 6.

[2] Section 10 State of the environment reports

Omit section 10 (3) (f).

[3] Part 6, heading

Omit the heading. Insert instead:

Part 6 Advisory committees

[4] Part 6, Divisions 1–3

Omit the Divisions.

[5] Part 6, Division 4, heading

Omit the heading.

[6] Section 35 Personal liability

Omit “body” wherever occurring in section 35 (1). Insert instead “committee”.

[7] Section 35 (2)

Omit the subsection.

[8] Schedule 2, heading

Omit the heading. Insert instead:

Schedule 2 Members and procedure of advisory committees

[9] Schedule 2

Omit “(Sections 24 (3), 28 (5), 31 (3))”. Insert instead “(Section 31 (3))”.

[10] Schedule 2, clause 1

Omit the clause. Insert instead:

1 Definitions

In this Schedule:

ex-officio member means a person who is a member of an advisory committee by virtue of being the holder of a particular office.

member means any member of an advisory committee.

[11] Schedule 2, clause 2 (1)

Omit the subclause.

[12] Schedule 2, clauses 2, 3 (2) and (4), 6 (1) (e) and 9–12

Omit “body” wherever occurring. Insert instead “committee”.

[13] Schedule 2, clause 3 (1)

Omit the subclause.

[14] Schedule 2, clause 3 (2)

Omit “(other than a Consultation Forum or the Council),”.

[15] Schedule 2, clause 4

Omit the clause. Insert instead:

4 Terms of office

Subject to this Schedule, a member (other than an ex-officio member) holds office for such period (not exceeding 2 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

[16] Schedule 2, clause 6 (2)

Omit the subclause. Insert instead:

(2) The Authority may remove a member from office at any time.

[17] Schedule 2, clause 13

Omit the clause.

[18] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of Protection of the Environment Legislation Miscellaneous Amendments Act 2017

Existing members of Consultation Forums or New South Wales Council on Environmental Education

A person who, immediately before the repeal of Divisions 1–3 of Part 6 of this Act by the *Protection of the Environment Legislation Miscellaneous Amendments Act 2017*, held office as a member of the Hunter Region Environment Protection Community Consultation Forum, the Illawarra Region Environment Protection Community Consultation Forum or the New South Wales Council on Environmental Education:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

Schedule 3 Amendment of Protection of the Environment Operations Act 1997 No 156

[1] Sections 63 (1) and 308 (2) (c) and Schedule 2, clause 9 (1) (h) (i)

Insert “or renewed” after “issued” wherever occurring.

[2] Section 76A

Insert before section 77 in Part 3.6:

76A Application of Part

This Part does not apply to a licence to carry out any scheduled activity that involves the transportation of trackable waste.

[3] Section 78 Review of licences

Omit section 78 (2) (a) and (b). Insert instead:

- (a) not less than 1 month, and not more than 6 months, before the review is undertaken, a notice of the review of each licence is to be published on the website of the EPA,

[4] Chapter 3, Part 3.6A

Insert after Part 3.6:

Part 3.6A Duration and renewal of licences to transport trackable waste

78A Application of Part

This Part applies to a licence to carry out any scheduled activity that involves the transportation of trackable waste (*a licence to transport trackable waste*).

78B Duration of licence to transport trackable waste

- (1) Once a licence to transport trackable waste comes into force, the licence remains in force for the period specified in the licence, being a period not longer than 5 years, unless it is suspended, revoked or surrendered.
- (2) The licence is, while it remains in force, subject to any variations made to the licence under this Act.

78C Renewal of licence to transport trackable waste

- (1) The holder of a licence to transport trackable waste may apply in writing to the appropriate regulatory authority for the renewal of the licence.
- (2) An application for renewal of a licence to transport trackable waste must:
 - (a) be made in or to the effect of a form approved by the appropriate regulatory authority, and
 - (b) contain or be accompanied by such information as is required by the appropriate regulatory authority (as indicated in the form or in material accompanying the form), and
 - (c) be made within the time period prescribed by the regulations, and
 - (d) be accompanied by the fee prescribed by the regulations.

- (3) The appropriate regulatory authority may renew a licence to transport trackable waste for a period specified in the licence, being a period not longer than 5 years.
- (4) The appropriate regulatory authority must not refuse an application for renewal unless before doing so:
 - (a) it has given notice to the applicant that it intends to do so, and
 - (b) it has specified in that notice the reasons for its intention to do so, and
 - (c) it has given the applicant a reasonable opportunity to make submissions in relation to the matter, and
 - (d) it has taken into consideration any such submissions by the applicant.

Note. Section 287 enables appeals to be made in connection with licence applications within a specified period after the person is given notice of the decision concerned. The section provides that the person may appeal if the licence application is not granted within 60 days, and for the purposes of the appeal the licence application is taken to have been refused.

[5] Section 87 Putrescible waste landfill sites—licensing arrangements

Omit the section.

[6] Section 144AC Use of approved GPS tracking device required by EPA for waste transportation vehicles

Insert “or trailers, or both,” after “motor vehicles” in section 144AC (1) (a).

[7] Section 186 Extension of Chapter to other environment protection legislation

Insert after section 186 (b3):

- (b4) *Contaminated Land Management Act 1997* and the regulations under that Act,

[8] Section 196 Powers of authorised officers to enter premises

Insert “or vessel” after “aircraft” in section 196 (2).

[9] Section 196 (2A)

Insert after section 196 (2):

- (2A) If entry is effected by means of an unmanned vehicle, vessel or aircraft, the vehicle, vessel or aircraft must be operated by or under the authority of an authorised officer.

[10] Section 216 Time within which summary proceedings may be commenced

Insert after paragraph (c2) of the definition of *prescribed offence* in section 216 (6):

- (c3) an offence under section 120 (Prohibition of pollution of waters) but only in relation to underground or artesian water, or
- (c4) an offence under section 144AB (Repeat waste offenders), or

[11] Section 287 Appeals regarding licence applications and licences

Insert “or renewal” after “issue” in section 287 (2).

[12] Section 287 (2) note, Schedule 2, clause 8 (1) and (2) and Dictionary, definition of “licence application”

Insert “renewal,” after “issue,” wherever occurring.

[13] Section 308 Public register

Insert “, other than an application for the renewal of a licence to transport trackable waste within the meaning of section 78A,” after “licence application” in section 308 (2) (a).

[14] Section 308 (2) (g1)

Insert after section 308 (2) (g):

- (g1) in the case of the EPA—the date of each notice of review of a licence published in accordance with section 78 (2),

[15] Schedule 2 Regulation-making powers

Insert “, for renewal of a licence” after “application for a licence” in clause 9 (4).

[16] Schedule 5 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Protection of the Environment Legislation Miscellaneous Amendments Act 2017

Definition

In this Part:

amending Act means the *Protection of the Environment Legislation Miscellaneous Amendments Act 2017*.

Licences to transport trackable waste

- (1) A licence to transport trackable waste that was issued before the commencement of Part 3.6A of this Act, as inserted by the amending Act, expires:
- (a) if both a licence to transport trackable waste and a dangerous goods vehicle licence are in force in respect of the same motor vehicle:
 - (i) at the end of the licence fee period that comes to an end immediately following the commencement of Part 3.6A, or
 - (ii) on the date specified in the dangerous goods vehicle licence, whichever is the later, or
 - (b) in all other cases—at the end of the licence fee period that comes to an end immediately following the commencement of Part 3.6A.

- (2) In this clause:

dangerous goods vehicle licence means a licence for a road vehicle to transport dangerous goods issued under Division 4 of Part 18 of the *Dangerous Goods (Road and Rail Transport) Regulation 2014*.

licence fee period means each period of 12 months commencing from the issue of a licence to transport trackable waste.

licence to transport trackable waste means a licence to carry out any scheduled activity that involves the transportation of trackable waste.

Putrescible waste landfill sites—supervisory licences

A supervisory licence held under section 87 immediately before the repeal of that section by the amending Act ceases to be in force on the repeal of that section.

Time limits for prosecutions

The amendment to section 216 (6) by the amending Act extends to offences under section 120 or 144AB that are alleged to have been committed before the date of commencement of the amendment, but only if proceedings for the offence could have been commenced on that date.

[17] Dictionary

Insert in alphabetical order:

aircraft includes a remotely piloted aircraft, an unmanned aircraft system or a drone.

[18] Dictionary

Insert in alphabetical order:

trailer has the same meaning as in the *Road Transport Act 2013*.

Schedule 4 Amendment of Radiation Control Act 1990 No 13

[1] Sections 13 (2) (b), 18 (6) and 24A (3)

Omit “District Court” wherever occurring. Insert instead “Land and Environment Court”.

[2] Section 25 Proceedings for offences

Omit section 25 (1) and (2). Insert instead:

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily:
 - (a) by the Local Court, or
 - (b) by the Land and Environment Court in its summary jurisdiction.
- (2) Proceedings may be taken and prosecuted only by the Authority or a person acting with the authority of the Authority.

[3] Section 25 (3)

Omit “100”. Insert instead “200”.

[4] Section 25 (4)

Omit the subsection. Insert instead:

- (4) In proceedings for an offence, an authority to prosecute purporting to have been signed by the Chairperson of the Authority is evidence of that authority without proof of the signature of the Authority.

[5] Section 25 (5)

Omit “12 months”. Insert instead “2 years”.

[6] Section 25A Penalty notices

Omit section 25A (8). Insert instead:

- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

[7] Sections 25B (1) and 27 (3)

Omit “Supreme Court” wherever occurring. Insert instead “Land and Environment Court”.

[8] Section 36A

Omit the section. Insert instead:

36A Appeals to Land and Environment Court

- (1) A person may appeal to the Land and Environment Court against a decision of the Authority:
 - (a) to refuse to grant the person a licence or accreditation, or
 - (b) to impose conditions on, or vary, or vary the conditions of, a licence or accreditation granted to the person, or
 - (c) to refuse to vary a licence or accreditation granted to the person, or
 - (d) to suspend or cancel a licence or accreditation held by the person, or
 - (e) to refuse to approve the surrender of a licence or accreditation held by the person, or

- (f) to impose a condition on the suspension, cancellation or surrender of a licence or accreditation held by the person, or
 - (g) to call on or use any financial assurance provided by the person.
- (2) The appeal is to be made in accordance with the rules of the Land and Environment Court, but may not be made more than 28 days after the date on which the person is given notice of the decision.
 - (3) The lodging of an appeal (other than an appeal against a decision of the Authority to suspend or cancel a licence or accreditation) does not operate to stay action on the decision appealed against, except to the extent that the Land and Environment Court otherwise directs.
 - (4) If the Land and Environment Court directs that a decision under appeal is stayed, the decision does not operate until the stay ceases to have effect or the Land and Environment Court confirms the decision or the appeal is withdrawn, whichever first occurs.
 - (5) The appeal is to be by way of a new hearing and new evidence can be given on the appeal.
 - (6) The decision of the Land and Environment Court on the appeal is final and is to be given effect to by the Authority.

[9] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Protection of the Environment Legislation Miscellaneous Amendments Act 2017

Definition

In this Part:

amending Act means the *Protection of the Environment Legislation Miscellaneous Amendments Act 2017*.

Pending proceedings

- (1) Proceedings for offences under this Act or the regulations, or for an order to remedy or restrain a breach of this Act or the regulations, before the Supreme Court that were instituted before the amendments made to section 25 or 25B by the amending Act that had not been finally determined by the Supreme Court at the date of the commencement of the amending Act are to be determined as if the amending Act had not been enacted.
- (2) Appeals to the District Court against decisions of the Authority that were instituted before the substitution of section 36A by the amending Act that had not been finally determined by the District Court at the date of the commencement of the amending Act are to be determined as if the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings before the commencement of the amending Act continue to apply to the proceedings as if the amending Act had not been enacted.

Time limits for prosecutions

The amendment to section 25 (5) by the amending Act extends to offences under this Act or the regulations that are alleged to have been committed before the date of commencement of the amendment, but only if proceedings for the offence could have been commenced on that date.

Maximum penalty for penalty notice offences for existing offences

The substitution of section 25A (8) by the amending Act does not apply to an offence committed under this Act or the regulations before the commencement of that substitution.

Schedule 5 Amendment of other legislation

5.1 Dangerous Goods (Road and Rail Transport) Act 2008 No 95

Section 13 Regulation-making powers

Insert “, including the refund and waiver of fees, or particular types of fees, in whole or in part” after “Act” in section 13 (2) (e).

5.2 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Insert after section 17 (h):

(ha) appeals under section 18 or 36A of the *Radiation Control Act 1990*,

[2] Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Insert after section 20 (1) (cn):

(co) proceedings under section 24A, 25B or 27 of the *Radiation Control Act 1990*,

[3] Section 20 (3) (a)

Insert in alphabetical order:

Radiation Control Act 1990,

[4] Section 21 Class 5—environmental planning and protection summary enforcement

Insert after section 21 (he):

(hf) proceedings for an offence under section 25 of the *Radiation Control Act 1990*,