

**PROTECTION OF THE ENVIRONMENT ADMINISTRATION
ACT 1991 No. 60**

NEW SOUTH WALES



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**PROTECTION OF THE ENVIRONMENT ADMINISTRATION
ACT 1991 No. 60**

NEW SOUTH WALES



Act No. 60, 1991

An Act to constitute the Environment Protection Authority and to make provision with respect to its general responsibilities and management; to amend various Acts; and for other purposes. [Assented to 12 December 1991]

The Legislature of New South Wales enacts:**PART I—PRELIMINARY****Short title**

1. This Act may be cited as the Protection of the Environment Administration Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation,

Definitions

3. (1) In this Act:

“**Authority**” means the Environment Protection Authority constituted by this Act;

“**Board**” means the Board of the Authority established under this Act;

“**criminal or related proceedings**” means any proceedings for an offence against the environment protection legislation or any proceedings under section 16 or 25 of the Environmental Offences and Penalties Act 1989;

“**Director-General**” means the Director-General of the Authority;

“**environment**” means components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a)—(c);

“**environment protection**” includes anything which furthers the objectives of the Authority as set out in section 6;

“**environment protection legislation**” means the following Acts (and the regulations and other instruments made under those Acts):

- This Act;
- Clean Air Act 1961;
- Clean Waters Act 1970;

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Dangerous Goods Act 1975 (Division 2 of Part 3);
 Environmental Education Trust Act 1990;
 Environmental Offences and Penalties Act 1989;
 Environmental Research Trust Act 1990;
 Environmental Restoration and Rehabilitation Trust Act 1990;
 Environmentally Hazardous Chemicals Act 1985;
 Noise Control Act 1975;
 Ozone Protection Act 1989;
 Pollution Control Act 1970;
 Radiation Control Act 1990;
 Recreation Vehicles Act 1983;
 Unhealthy Building Land Act 1990;
 Waste Disposal Act 1970;

“public authority” means a public or local authority constituted by or under any Act and includes:

- (a) a government department or administrative office; and
- (b) a member of staff or other person who exercises functions on behalf of a public authority.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority, responsibility and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Objects of Act

4. The objects of this Act are as follows:

- (a) to constitute the Environment Protection Authority;
- (b) to provide integrated administration for environment protection;
- (c) to require the Authority to perform particular tasks in relation to the quality of the environment, environmental audit and reports on the state of the environment;
- (d) to continue for the time being the existing regulatory framework for environment protection pending its review and rationalisation.

**PART 2—CONSTITUTION OF THE ENVIRONMENT
 PROTECTION AUTHORITY**

Constitution of Authority

5. (1) There is constituted by this Act a body corporate with the corporate name of the Environment Protection Authority.

(2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

PART 3—OBJECTIVES OF THE ENVIRONMENT PROTECTION AUTHORITY

Objectives of the Authority

6. (1) The objectives of the Authority are:
- (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development; and
 - (b) to reduce the risks to human health and prevent the degradation of the environment, by means such as the following:
 - promoting pollution prevention;
 - adopting the principle of reducing to harmless levels the discharge into the air, water or land of substances likely to cause harm to the environment;
 - minimising the creation of waste by the use of appropriate technology;
 - regulating the transportation, collection, treatment, storage and disposal of waste;
 - encouraging the reduction of the use of materials, encouraging the re-use and recycling of materials and encouraging material recovery;
 - adopting minimum environmental standards prescribed by complementary Commonwealth and State legislation and advising the Government to prescribe more stringent standards where appropriate;
 - setting mandatory targets for environmental improvement;
 - promoting community involvement in decisions about environmental matters;
 - ensuring the community has access to relevant information about hazardous substances arising from, or stored, used or sold by, any industry or public authority;
 - conducting public education and awareness programs about environmental matters.

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(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- (a) The precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (b) Inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- (c) Conservation of biological diversity and ecological integrity.
- (d) Improved valuation and pricing of environmental resources.

PART 4—GENERAL RESPONSIBILITIES ETC. OF THE ENVIRONMENT PROTECTION AUTHORITY

General functions of Authority

7. (1) The Authority has such environment protection and other functions as are conferred or imposed on it by or under the environment protection legislation or any other legislation.

- (2) The Authority has general responsibility for the following:
- (a) ensuring that the best practicable measures are taken for environment protection in accordance with the environment protection legislation and other legislation;
 - (b) co-ordinating the activities of all public authorities in respect of those measures;
 - (c) inquiring into and reporting on the efficacy of those measures;
 - (d) reviewing the regulatory framework for environment protection and advising on its rationalisation and simplification;
 - (e) investigating and reporting on alleged non-compliance with environment protection legislation for the purposes of prosecutions or other regulatory action;
 - (f) establishing a database on the state of the environment;

- (g) advising persons engaged in industry and commerce and other members of the community on environment protection;
- (h) advising the Government on methods to ensure the integration of the Authority's pollution approvals and licensing processes with the development consent process so that the importance of environment protection is recognised.

(3) The first review of the regulatory framework for environment protection is to be completed within 1 year after the commencement of this section.

General powers of Authority

8. The Authority may:
- (a) formulate and promote plans for environment protection; and
 - (b) publish reports and information on any aspect of environment protection; and
 - (c) carry out or commission research into environment protection; and
 - (d) co-ordinate the collection of information on environment protection which is published or supplied by public or other authorities; and
 - (e) provide or promote the development of specialist guidance and technical advisory services relating to environment protection; and
 - (f) invite and consider public submissions when it formulates environment protection plans, when it develops objectives, guidelines or policies under section 9 or when it issues, renews or amends licences under the environment protection legislation; and
 - (g) make any register of particulars of any such licences in force available for public inspection and provide (on payment of any reasonable fee demanded by the Authority) copies of or extracts from any such register, and
 - (h) make grants to industry, commerce, public authorities, educational institutions and such other persons who the Authority considers are acting in the public interest for the purpose of funding projects which assist or advance environment protection; and
 - (i) make grants to groups of citizens incorporated for the purpose of representing the public interest in environment protection to enable them to obtain technical assistance in making submissions referred to in paragraph (f) or on other environment protection matters.

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Powers of Authority relating to environmental quality

9. (1) The Authority is required to:

- (a) develop environmental quality objectives, guidelines and policies to ensure environment protection; and
- (b) monitor the state of the environment for the purpose of assessing trends and the achievement of environmental quality objectives, guidelines, policies and standards.

(2) The Authority is required to develop a comprehensive scheme of environmental audit with respect to industry, commerce and public authorities.

State of the environment reports

10. (1) The Authority is required to make a report on the state of the environment every 2 years.

(2) Each such report is to be given to the Minister and tabled in both Houses of Parliament.

(3) A report on the state of the environment is to include the following matters:

- (a) an assessment of the status and conditions of the major environmental resources of New South Wales;
- (b) an examination of environmental trends, including the implications for the environment and human health;
- (c) a review of the programs and activities of public authorities and of the private sector related to environment protection;
- (d) an examination of trends in economic analysis and of the costs and benefits (including economic evaluation) of environment protection;
- (e) any general recommendations for future legislative or other action which the Authority considers appropriate to discharge its responsibilities with respect to environment protection.

(4) The first report on the state of the environment is to be made not later than 31 October 1993.

(5) The Authority is required to make, in its annual report in 1992 and in each alternate year thereafter, a statement on any relevant matters concerning the state of the environment.

Performance targets for public authorities

11. (1) The Authority may advise public authorities on performance targets for those public authorities relating to environment protection.

(2) When exercising its public reporting functions under this or any other Act, the Authority may report on the achievement of performance targets set by public authorities, and is required to do so in respect of any public authority which has failed to publicly report on its achievement of those performance targets.

Directions to public authorities

12. (1) The Authority may (subject to subsection (2)) from time to time:

- (a) direct any public authority to do anything within the powers of the public authority which will, in the opinion of the Authority, contribute to environment protection; or
- (b) direct any public authority to cease doing anything which, in the opinion of the Authority, adversely affects environment protection.

(2) The Authority is required to consult with the public authority about any such direction.

(3) If a dispute arises about any such direction, the Minister and the Minister responsible for the public authority (or, in the case of a local government authority, the Mayor or President concerned) is to be notified of the dispute and given an opportunity to resolve the dispute.

(4) If the dispute is not resolved, it may be referred by the Authority or the public authority to the Premier for settlement. The Premier must, before making any decision on the matter, appoint a person to make an assessment of or conduct a public inquiry into the matter. The report of that assessment or public inquiry is to be made available to the public by the Premier and, if the decision of the Premier on the dispute does not follow the recommendations in that report, the terms of the decision of the Premier are to be tabled by or on behalf of the Premier in each House of Parliament (within 14 sitting days of that House) and are to be included in the next available annual report of the Authority.

(5) The decision of the Premier on a dispute is to be given effect to by the Authority and the public authority concerned.

(4) If a public authority that is a local government authority fails to give effect to the decision of the Premier on a dispute, the Authority may give effect to the decision and may for that purpose carry out any work

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and give any directions as if it were the local government authority. The Authority is taken to be the local government authority when carrying out that work or giving those directions.

(7) Any costs or expenses incurred by the Authority in giving effect to a decision as referred to in subsection (6) may be recovered by the Authority from the local government authority as a debt in a court of competent jurisdiction.

(8) Any provision of any other Act for the settlement of disputes between public authorities by the Premier or a Minister does not apply to the settlement of a dispute to which this section applies.

**PART 5—MANAGEMENT OF THE ENVIRONMENT
PROTECTION AUTHORITY**

Division 1—The Minister

Ministerial control

13. (1) The Authority is, in the exercise of its functions, subject to the control and direction of the Minister.

(2) However, the Authority is not subject to the control and direction of the Minister in respect of:

- (a) any report or recommendation made to the Minister; or
- (b) a state of the environment report under this Act (other than directions for the inclusion of additional information in any such report); or
- (c) any decision to institute or approve of the institution of criminal or related proceedings.

(3) A report of:

- (a) any direction of the Minister for the inclusion of additional information in a state of the environment report under this Act; or
- (b) any direction of the Minister with respect to the issue, renewal or amendment by the Authority of any licence under the environment protection legislation,

is required to be tabled by or on behalf of the Minister in each House of Parliament (within 14 sitting days of that House) and is to be included in the next available annual report of the Authority.

Ministerial departmental support services

14. (1) The Minister may make use of the services of the Director-General and staff of the Authority for providing departmental advice on government policy and other matters relating to the administration of the environment protection legislation.

(2) The exercise of the functions of the Director-General and staff of the Authority under this section is not subject to the control or direction of the Board.

Division 2—The Board of the Authority**Establishment of Board**

15. (1) There is to be a Board of the Authority.

(2) The Board is to consist of 9 members, being:

(a) the Director-General; and

(b) 8 part-time members appointed by the Governor on the recommendation of the Minister.

(3) Of the part-time members:

(a) 2 are to have experience in, or knowledge of, nature conservation or environment protection and are to be selected by the Minister from a panel of at least 6 nominees provided to the Minister by the Nature Conservation Council of New South Wales; and

(b) 2 are to have experience in, or knowledge of, environmental aspects of agriculture, industry or commerce and are to be selected by the Minister from panels of nominees provided to the Minister by peak industry and employer organisations; and

(c) 1 is to have expertise in the area of environmental science; and

(d) 1 is to have expertise in the area of environmental protection policy; and

(e) 1 is to have expertise in the area of regional environmental issues; and

(f) 1 is to have expertise in environmental law and is to be an academic employed at a New South Wales tertiary institution.

(4) Schedule 1 has effect with respect to the members and procedure of the Board.

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Functions of Board

16. The functions of the Board are as follows:

- (a) to determine the policies and long-term strategic plans of the Authority;
- (b) to oversee the effective, efficient and economical management of the Authority;
- (c) to develop, and make available for public information, guidelines relating to the institution of criminal and related proceedings;
- (d) to determine whether the Authority should consent to the institution of proceedings for serious environment protection offences referred to in section 17;
- (e) to advise the Minister on any matter relating to the protection of the environment (at the request of the Minister or on its own initiative).

Environmental Counsel to Board

17. **(1)** An Environmental Counsel to the Board is to be engaged by the Authority.

(2) The Environmental Counsel is to be a practising barrister approved by the Minister and engaged for a period determined by the Minister.

(3) The Environmental Counsel may advise the Board on any matter (whether or not in connection with the institution of criminal or related proceedings) referred to the Environmental Counsel.

(4) The Board may not determine that the Authority consent to the institution of proceedings for a serious environment protection offence unless the Environmental Counsel has advised the Board that (on the evidence disclosed in the brief to Counsel) there is evidence capable of establishing the commission of the offence.

The Authority is to ensure that any such brief to the Environmental Counsel contains all relevant evidence available to the Authority.

(5) Nothing in this section prevents the Board from obtaining legal advice from any person. In particular, the Board may, if there is any dispute about the advice of the Environmental Counsel, obtain advice from the Attorney General and act on that advice for the purposes of subsection (4).

(6) The determination of whether the Authority should consent to the institution of proceedings for serious environment protection offences may not be delegated under this Act, and a member of the staff of the

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Authority may not be authorised under the environment protection legislation to consent to the institution of those proceedings.

(7) Criminal or related proceedings may not be challenged on the ground that they were instituted in contravention of this section.

(8) In this section, “**serious environment protection offence**” means:

- (a) a Tier 1 offence (being an offence arising under Division 1 of Part 2 of the Environmental Offences and Penalties Act 1989); or
- (b) a Tier 2 offence (being an offence arising under Division 2 of Part 2 of that Act) which is designated as a serious environment protection offence for the purposes of this section by the prosecution guidelines developed by the Board under this Division.

Division 3—The Director-General of the Authority

Director-General

18. (1) The Governor may appoint a Director-General of the Authority.

(2) The employment of the Director-General is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

(3) The Minister may, from time to time, appoint a person to act in the office of the Director-General during the illness or absence of the Director-General (or during a vacancy in the office of Director-General) and the person, while so acting, has all the functions of the Director-General and is taken to be the Director-General.

(4) The Minister may, at any time, remove a person from office as acting Director-General.

(5) An acting Director-General is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Director-General to manage and control affairs of Authority

19. (1) The affairs of the Authority are to be managed and controlled by the Director-General in accordance with the policies determined by the Board and any other decisions of the Board, but subject to any directions of the Minister under this Act.

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Director-General is taken to have been done by the Authority.

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Division 4—Miscellaneous provisions relating to management

Staff of Authority

20. (1) The staff of the Authority is (subject to this section) to be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a public authority. Any staff of whose services the Authority makes use is taken to be the staff of the Authority for the purposes of the environment protection legislation.

(3) The Authority may employ staff for any special purpose approved by the Minister. Part 2 of the Public Sector Management Act 1988 does not apply to the employment of any such staff.

(4) The Authority may engage consultants.

Delegation of functions

21. (1) The Authority may delegate to an authorised person any of the functions of the Authority, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.

(3) In this section, “authorised person” means:

- (a) a member of the staff of the Authority; or
- (b) a member of the staff of a Government agency of Victoria, Queensland, South Australia or the Australian Capital Territory which administers environment protection legislation; or
- (c) a person of a class prescribed by the regulations.

PART 6—CONSULTATION FORUM AND ADVISORY COMMITTEES

Division 1—Preliminary

Definitions

22. In this Part:

“**advisory committee**” means an advisory committee established under Division 4;

“Consultation Forum” means an Environment Protection Community Consultation Forum established under Division 2;

“Education Committee” means the Environmental Education Committee established under Division 3.

Division 2—Environment Protection Community Consultation Forums

Establishment of Consultation Forums

23. There is established by this Act:

- (a) a State Environment Protection Community Consultation Forum; and
- (b) the West/South West Sydney Region Environment Protection Community Consultation Forum; and
- (c) the Hunter Region Environment Protection Community Consultation Forum; and
- (d) the Illawarra Region Environment Protection Community Consultation Forum.

Membership and procedure of Consultation Forums

24. (1) A Consultation Forum is to consist of the Director-General or his or her nominee, who is to be the Chairperson of the Consultation Forum, and:

- (a) in the case of the State Environment Protection Community Consultation Forum—16 members appointed by the Minister, of whom:
 - (i) 4 are to be representatives of industry (including 1 representative of the rural sector chosen from a panel of nominees provided to the Minister by the New South Wales Farmers’ Association); and
 - (ii) 4 are to be representatives of non-government organisations whose charters include, as a primary aim, environment protection (including at least 1 representative chosen from a panel of nominees provided to the Minister by the Nature Conservation Council of New South Wales); and
 - (iii) 4 are to be representatives of authorities of the State; and
 - (iv) 4 are to be representatives of local government authorities or associations; and

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- (b) in the case of any other Consultation Forum—12 members appointed by the Minister, of whom:
- (i) 3 are to be representatives of industry (including for the purposes of section 23 (c) 1 representative of the rural sector chosen from a panel of nominees provided to the Minister by the New South Wales Farmers' Association); and
 - (ii) 3 are to be representatives of non-government organisations whose charters include, as a primary aim, environment protection (including at least 1 representative chosen from a panel of nominees provided to the Minister by the Nature Conservation Council of New South Wales); and
 - (iii) 3 are to be representatives of authorities of the State; and
 - (iv) 3 are to be representatives of local government authorities or associations.

(2) The Minister may seek from relevant authorities or organisations nominations of persons for appointment as members of a Consultation Forum.

(3) Schedule 2 has effect with respect to the members and procedure of a Consultation Forum.

Function of Consultation Forums

25. (1) The function of a Consultation Forum is to advise the Authority on community concerns and attitudes about environmental protection.

(2) Any advice given to the Authority by a Consultation Forum may be given either at the request of the Authority or without any such request.

Division 3—Environmental Education Committee

Establishment of Education Committee

26. There is established by this Act an Environmental Education committee.

Function of Education Committee

27. The function of the Education Committee is to advise the Authority on the development of effective environmental education and public awareness programs.

Membership and procedure of Education Committee

28. (1) The members of the Education Committee are to be appointed by the Minister after consultation with the Minister for School Education and Youth Affairs and the Minister for Further Education, Training and Employment.

(2) The Education Committee is to consist of:

- (a) a representative of the Authority, who is to be the Chairperson of the Committee; and
- (b) representatives of educational authorities, organisations concerned with the protection of the environment, industry, local government authorities, or associations, other public authorities and the general community.

(3) The representatives of educational authorities are to include at least 1 representative nominated by the Minister for School Education and Youth Affairs and at least 1 representative nominated by the Minister for Further Education, Training and Employment.

(4) The Education Committee may invite other authorities or organisations to nominate additional members of the Committee or may allow other persons to be observers at its meetings.

(5) Schedule 2 has effect with respect to the members and procedure of the Education Committee.

Division 4—Advisory committees**Establishment of advisory committees**

29. The Authority may from time to time, establish advisory committees and dissolve any such advisory committee.

Function of advisory committee

30. The function of an advisory committee is to advise the Authority on such matters as the Authority determines.

Membership and procedure of advisory committees

31. (1) An advisory committee is to consist of such number of members as the Authority determines, but is not to consist of more than 9 members without the approval of the Minister.

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(2) The Authority is to ensure that the persons appointed as members of an advisory committee represent a range of interests and expertise appropriate to the functions of the committee.

(3) Schedule 2 has effect with respect to the members and procedure of an advisory committee.

PART 7—MISCELLANEOUS

Act binds the Crown

32. This Act binds the Crown.

Powers of Authority relating to property

33. (1) The Authority may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.

(2) The Authority must not, except with the approval of the Minister, alienate, mortgage, charge or demise any of its land.

(3) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the Authority has agreed.

Financial year

34. (1) The financial year of the Authority is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Personal liability of members etc.

35. (1) A matter or thing done or omitted to be done by the Authority, the Board, an advisory body, a member of the Board or an advisory body, the Director-General or any person acting under the direction of the Authority, the Board, an advisory body or the Director-General does not, if the matter or thing was done or omitted in good faith for the purpose of executing the environment protection legislation, subject the member, Director-General or a person so acting personally to any action, liability, claim or demand.

(2) In this section, “**advisory body**” means the Environment Protection Community Consultation Forum, the Environmental Education Committee or an advisory committee established under Part 6.

Seal of Authority

36. The seal of the Authority is to be kept by the Director-General and may be affixed to a document only:

- (a) in the presence of the Director-General or a member of the staff of the Authority authorised in that behalf by the Director-General; and
- (b) with an attestation by the signature of the Director-General or that member of the fact of the affixing of the seal.

Service of documents on Authority

37. (1) A document may be served on the Authority by leaving it at, or by sending it by post to:

- (a) the office of the Authority; or
- (b) if it has more than one office—anyone of its offices.

(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 the Authority in any other manner.

Recovery of charges etc. by Authority

38. Any charge, fee or money due to the Authority may be recovered by the Authority as a debt in a court of competent jurisdiction.

Regulations

39. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Amendment of other Acts

40. The Acts specified in Schedule 3 are amended as set out in that Schedule.

Savings, transitional and other provisions

41. Schedule 4 has effect.

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE BOARD

(Sec. 15 (4))

Definitions

1. In this Schedule:

“**appointed member**” means a member of the Board other than the Director-General;

“**member**” means any member of the Board.

Chairperson and Deputy Chairperson of the Board

2. (1) An appointed member is to be appointed by the Governor as chairperson of the Board. Such an appointment may be made at the time the person is appointed as a member or after that appointment.

(2) The Governor may at any time remove an appointed member from the office of Chairperson.

(3) A person who is an appointed member and Chairperson of the Board vacates the office of Chairperson if the person:

- (a) is removed from that office by the Governor; or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be an appointed member.

(4) The Director-General is to be the Deputy Chairperson of the Board.

Deputies

3. (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.

(2) In the absence of an appointed member, the member’s deputy:

- (a) may, if available, act in the place of the member; and
- (b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) The deputy of an appointed member who is Chairperson of the Board does not (because of this clause) have the member’s functions as Chairperson.

(4) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Terms of office of appointed members

4. Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF THE BOARD—*continued*

Remuneration

5. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of appointed member

6. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence 80 punishable.

(2) The Governor may remove an appointed member from office at any time.

(3) Without limiting subclause (2), the Governor may remove an appointed member from office on the address of both Houses of Parliament or for a contravention of clause 7.

Disclosure of pecuniary interests

7. (1) If.

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF THE BOARD—*continued*

- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Disclosures of the interests of members of the Board are required to be made in accordance with the regulations. For that purpose, the regulations may apply, with modifications, the provisions of the regulations under section 14A of the Constitution Act 1902 relating to the disclosure of the interests of members of Parliament.

(4) If.

- (a) a matter being considered or about to be considered at a meeting of the Board relates to the institution of criminal or related proceedings against a person; and
(b) a member has any personal or financial interest in the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(5) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Board.

(6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter, or
(b) take part in any decision of the Board with respect to the matter.

(7) For the purpose of the making of a determination by the Board under subclause (5), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
(b) take part in the making by the Board of the determination.

(8) A contravention of this clause does not invalidate any decision of the Board.

Filling of vacancy in office of appointed member

8. If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF THE BOARD— *continued*

- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

- (3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

Quorum

11. The quorum for a meeting of the Board is 5 members, of whom one must be the Chairperson or Deputy Chairperson of the Board.

Presiding member

12. (1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

13. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone etc.

14. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
(b) a meeting held in accordance with subclause (2),

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF THE BOARD—*continued*

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

First meeting

15. The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

SCHEDULE 2—MEMBERS AND PROCEDURE OF CONSULTATION
FORUM, EDUCATION COMMITTEE AND ADVISORY COMMITTEES

(Secs. 24 (3), 28 (5), 31 (3))

Definitions

1. In this Schedule:

“**advisory body**” means a Consultation Forum, the Education Committee or an advisory committee established under Part 6;

“**Consultation Forum**” means a Consultation Forum established under Part 6;

“**Education Committee**” means the Environmental Education Committee established under Part 6;

“**ex-officio member**” means a person who is a member of an advisory body by virtue of being the holder of a particular office;

“**member**” means any member of an advisory body.

Chairperson of advisory body

2. (1) This clause does not apply to a Consultation Forum or the Education Committee.

(2) One of the members of an advisory body is to be appointed by the Authority as Chairperson of the advisory body. Any such appointment may be made at the time the person is appointed as a member or after that appointment.

(3) The Authority may at any time remove a member from the office of Chairperson of an advisory body.

(4) A person who is a member and Chairperson of an advisory body vacates the office of Chairperson if the person:

- (a) is removed from that office under this clause; or
- (b) resigns that office by instrument in writing addressed to the Authority; or
- (c) ceases to be a member.

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SCHEDULE 2—MEMBERS AND PROCEDURE OF CONSULTATION FORUM,
EDUCATION COMMITTEE AND ADVISORY COMMITTEES—*continued*

Deputies of members

3. (1) The Minister may, from time to time, appoint a person to be the deputy of a member of a Consultation Forum or the Education committee, and the Minister **may** revoke any such appointment.

(2) The Authority may, from time to time, appoint a person to be the deputy of a member of an advisory body (other than a Consultation Forum or the Education Committee), and the Authority may revoke any such appointment.

(3) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member, and

(b) while so acting, has all the functions of the member and is to be taken to be a member.

(4) The deputy of a member who is Chairperson of an advisory body does not (because of this clause) have the member's functions as Chairperson.

(5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office

4. 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.

Allowances

5. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of member

6. (1) The office of a member (other than an ex-officio member) becomes vacant if the member:

(a) **dies; or**

(b) **completes a term of office and is not re-appointed; or**

(c) **resigns the office by instrument in writing addressed to the Minister or the Authority; or**

(d) **is removed from office under this clause; or**

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SCHEDULE 2—MEMBERS AND PROCEDURE OF CONSULTATION FORUM,
EDUCATION COMMITTEE AND ADVISORY COMMITTEES—*continued*

- (e) is absent from 4 consecutive meetings of the advisory body of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the advisory body or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the advisory body for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member (other than an ex-officio member) of the Consultation Forum or Education Committee from office at any time and the Authority may remove a member of any other advisory body from office at any time.

Filling of vacancy in office of member

7. If the office of a member (other than an ex-officio member) becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

9. The procedure for the calling of meetings of an advisory body and for the conduct of business at those meetings is, subject to this Act and the regulations and to any direction of the Minister or the Authority, to be as determined by the advisory body.

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SCHEDULE 2—MEMBERS AND PROCEDURE OF CONSULTATION FORUM,
EDUCATION COMMITTEE AND ADVISORY COMMITTEES—*continued*

Quorum

10. The quorum for a meeting of an advisory body is a majority of the members for the time being of the advisory body.

Presiding member

11. (1) The Chairperson of an advisory body or, in the absence of the chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the advisory body.

(2) The person presiding at any meeting of an advisory body has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

12. A decision supported by a majority of the votes cast at a meeting of an advisory body at which a quorum is present is the decision of the advisory body.

Minutes of meetings of Consultation Forum

13. The Consultation Forum is required to keep minutes of proceedings at its meetings and to furnish to the Minister a copy of the minutes of each meeting within 14 days after the meeting was held.

SCHEDULE 3—AMENDMENT OF OTHER ACTS

(Sec. 40)

Clean Air Act 1961 No. 69

(1) The whole Act (except any provision or expression omitted by this Act or in the expression “Electricity commission”):

Omit “Commission” and “commission’s” wherever occurring, insert instead “Authority” and “Authority’s” respectively.

(2) sections 4, 5, 10, 15A:

Omit “State Pollution Control Commission Act 1970” wherever occurring, insert instead “Pollution Control Act 1970”.

(3) Section 5 (**Definitions**):

(a) In alphabetical order, insert:

“**Authority**” means the Environment Protection Authority;

(b) Omit the definition of “Commission”.

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SCHEDULE 3—AMENDMENT OF OTHER ACTS— *continued*

Clean Waters Act 1970 No. 78

- (1) The whole Act (except any provision or expression omitted by this Act or in the expression “Electricity Commission”):
 - Omit “Commission” and “Commission’s” wherever occurring, insert instead “Authority” and “Authority’s” respectively.
- (2) Sections 4, 5, 18:
 - Omit “State Pollution Control Commission Act 1970” wherever occurring, insert instead “Pollution Control Act 1970”.
- (3) Section 5 (**Definitions**):
 - (a) In alphabetical order, insert:
 - “**Authority**” means the Environment Protection Authority;
 - (b) Omit the definitions of “Commission” and “Committee”.
- (4) Part 2 (**Clean Waters Advisory Committee**):
 - Omit the Part.

Dangerous Goods Act 1975 No. 68

Section 7A:

After section 6, insert:

Delegation of certain licensing functions to Environment Protection Authority

7A. (1) The Chief Inspector may delegate to the Environment Protection Authority any of the Chief Inspector’s powers, authorities, duties and functions under this Act or the regulations.

(2) The Chief Inspector is required to delegate under this section the powers, authorities, duties and functions relating to licences authorising the carriage of dangerous goods if the Minister administering the Protection of the Environment Administration Act 1991 so directs.

(3) Any power, authority, duty or function delegated under this section may be delegated by the Environment Protection Authority under the Protection of the Environment Administration Act 1991.

(4) The Chief Inspector and the Environment protection Authority may enter into an arrangement for the payment into the Consolidated Fund (instead of the WorkCover Authority Fund) of fees paid under this Act or the regulations in connection with licences to which delegations under this section apply. Any such arrangement has effect according to its tenor.

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SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

Environmental Education Trust Act 1990 No. 26

- (1) Section 5 (**Membership and procedure of the Trust**):
 - (a) Omit “State Pollution Control commission Act 1970” wherever occurring, insert instead “protection of the Environment Administration Act 1991”.
 - (b) Omit section 5 (2) (c), insert instead:
 - (c) the Chairperson of the Board of the Environment protection Authority;
 - (c) Omit section 5 (2) (g), insert instead:
 - (g) the Director-General of the Environment Protection Authority.
- (2) Section 8 (**Committees of the Trust**):
 - (a) From section 8 (1) (a), omit “Director of the Ministry for the Environment”, insert instead “Director-General of the Environment Protection Authority”.
 - (b) Omit section 8 (1) (d).
- (3) Schedule 1, clause 2 (**Nomination of panels for appointment as members**), clause 3 (**Deputies of members**):

From clauses 2 (1) and 3 (2), omit “State Pollution Control Commission Act 1970” wherever occurring, insert instead “Protection of the Environment Administration Act 1991”.

Environmental Offences and Penalties Act 1989 No. 150

- (1) Sections 4 (Definition of “pollution control authority”), 8G (8) (b), 25 (3) and (4), 27 (1), Schedule 2 (Part 1):

Omit “State Pollution Control Commission” wherever occurring, insert instead “Environment Protection Authority”.
- (2) Section 8D, Schedule 1 (Part 4), Schedule 2, Schedule 3 (Part 2):

Omit “State Pollution Control commission Act 1970” wherever occurring, insert instead “Pollution Control Act 1970”.
- (3) Section 8G (**Penalty notices**):
 - (a) After section 8G (1), insert:
 - (1A) A penalty notice may be served personally or by ~~post~~
 - (b) Omit section 8G (9), insert instead
 - (9) The power of the Environment Protection Authority to give a direction under subsection (8) (b) may not be exercised by a delegate of the Authority.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(4) Section 13 (**Consent to institution of proceedings**):

(a) Omit section 13 (1), insert instead:

(1) Proceedings for an offence against this Act may be instituted only with the written consent of

- (a) the Environment Protection Authority; or
- (b) a member of the staff of that Authority authorised in writing by that Authority for the purposes of this subsection.

(b) Omit section 13 (2) (b), insert instead:

(b) a member of the Board of the Environment Protection Authority authorised in writing by the Minister for the purposes of this subsection.

(c) After section 13 (2), insert:

(2A) Subsection (1) does not apply to the institution of proceedings in the Land and Environment Court for an offence against this Act by a person if the Court grants the person leave to bring the proceedings. The **Court** is not to grant leave unless satisfied that:

- (a) the Environment protection Authority has decided not to take any relevant action (as defined in subsection (2B)) in respect of the act or omission constituting the alleged offence against this Act or has not made a decision as to whether to take such action within 90 days after the person applied to the Authority for consent to institute the proceedings; and
- (b) the Environment Protection Authority has been notified of the proceedings; and
- (c) the proceedings are not an abuse of the process of the Court; and
- (d) the particulars of the offence disclose, without any hearing of the evidence, a prima facie case of the commission of the offence against this Act.

(2B) Relevant action for the purposes of subsection (2A) is not limited to the institution of criminal proceedings, but includes action under any Act to require the defendant to prevent, control, abate or mitigate any harm to the environment caused by the alleged offence against this Act or to prevent the continuance or recurrence of that alleged offence.

(d) At the end of the section, insert:

; or

(c) by a police officer.

(6) This section does not apply to the issue of penalty notices under section 8G or to proceedings referred to in section 8G (6).

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SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(5) Section 25 (**Restraint of breaches of an Act or statutory rule which harm the environment**):

Omit section 25 (1), (2), (3) and (4), insert instead:

(1) Any person may bring proceedings in the Land and Environment Court for an order to restrain a breach (or a threatened or apprehended breach) of this or any other Act, or any statutory rule under an Act, if the breach (or the threatened or apprehended breach) is causing or is likely to cause harm to the environment.

(2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).

(3) Any such proceedings may only be brought with the leave of the Court. Before granting leave, the Court must be satisfied that:

- (a) the proceedings are not an abuse of the process of the Court; and
- (b) there is a real or significant likelihood that the requirements for the making of an order under this section will be satisfied; and
- (c) it is in the public interest that the proceedings should be brought.

(4) A person (other than the Environment Protection Authority or a member of the staff of that Authority) who brings any such proceedings is required to serve a copy of the application on that Authority as soon as practicable after the application is made. The Environment Protection Authority is entitled to become a party to those proceedings.

(6) Section 27A:

After section 27, insert:

Exemption for Fire Brigades and other emergency services

27A. Despite anything to the contrary in this Act, a person is not guilty of an offence against this Act for anything done or not done in good faith as a member of the Fire Brigade, a bush fire brigade, the State Emergency service or other officially accredited rescue unit.

Environmental Research Trust Act 1990 No. 25

(1) Section S (**Membership and procedure of the Trust**):

(a) Omit section 5 (2) (c), insert instead:

(c) the Chairperson of the Board of the Environment Protection Authority;

(b) Omit section 5 (2) (g), insert instead:

(g) the Director-General of the Environment protection Authority.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (2) Section 6 (**Object of the Trust**):
Omit “within the geographical area of operations of the Water Board”, insert instead “within any part of New South Wales”.
- (3) Section 8 (**Committees of the Trust**):
From section 8 (1), omit “Director of the Ministry for the Environment”, insert instead “Director-General of the Environment Protection Authority”.

Environmental Restoration and Rehabilitation Trust Act 1990 No. 24

- (1) Section 5 (**Membership and procedure of the Trust**):
- (a) Omit “State Pollution Control Commission Act 1970” wherever occurring, insert instead “Protection of the Environment Administration Act 1991”.
 - (b) Omit section 5 (2) (c), insert instead
 - (c) the Chairperson of the Board of the Environment protection Authority;
 - (c) Omit section 5 (2) (g), insert instead:
 - (g) the Director-General of the Environment Protection Authority.
- (2) Section 6 (**Object of the Trust**):
Omit “within the geographical area of operations of the Water Board”, insert instead “within any part of New South Wales”.
- (3) Section 8 (**Committees of the Trust**):
From section 8 (1), omit “Director of the Ministry for the Environment”, insert instead “Director-General of the Environment protection Authority”.
- (4) Schedule 1, clause 3 (**Deputies of members**):
From clause 3 (2), omit “State Pollution Control Commission Act 1970”, insert instead “Protection of the Environment Administration Act 1991”.

Environmentally Hazardous Chemicals Act 1985 No. 14

- (1) The whole Act (except any provision or expression omitted by this Act):
Omit “Commission” and “commission’s” wherever occurring, insert instead “Authority” and “Authority’s” respectively.
- (2) Section 3 (**Definitions**):
- (a) In alphabetical order in section 3 (1), insert:
 - “Authority” means the Environment Protection Authority;
 - (b) Omit the definition of “commission”.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (3) Section 6 (**Constitution of the Committee**):
From section 6 (I), omit “16 members”, insert instead “17 members.”
- (4) Section 44 (**Disclosure of information**):
Omit “State Pollution Control Commission Act 1970” wherever occurring, insert instead “Pollution Control Act 1970”.
- (5) Schedule 1 (**Provisions relating to Committee**):
- (a) Omit clause 2 (a), insert instead
 - (a) two shall be persons nominated by the Authority, being members of the Board of the Authority or members of the staff of the Authority;
 - (b) omit clause 2 (f), insert instead:
 - (f) one shall be a person nominated by the Waste Recycling and Disposal Corporation;
 - (f1) one shall be a person nominated by the Water Board;

Noise Control Act 1975 No. 35

- (1) Section 4 (**Definitions**):
- (a) Insert in alphabetical order in section 4 (**1**):
“Authority” means the Environment **Protection Authority**;
 - (b) Omit the definitions of “commission” and “Director”.
- (2) The whole Act (except any provision or expression omitted by this Act):
Omit “State Pollution Control Commission Act 1970” wherever occurring, insert instead “Pollution Control Act 1970”.
- (3) The whole Act (except any provision or expression omitted by this Act):
Omit “Commission” and “Commission’s” wherever occurring, insert instead “Authority” and “Authority’s” respectively.

Ozone Protection Act 1989 No. 208

- (1) Section 4 (**Definitions**):
- (a) Insert in alphabetical order in section 4 (1):
“**Authority**” means the Environment Protection Authority;
 - (b) Omit the definition of “commission”.
- (2) The whole Act (except any provision or expression omitted by this Act):
Omit “Commission” wherever occurring, insert instead “Authority”.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS— *continued*(3) Section 23 (**Proceedings for offences**):

- (a) From section 23 (3), omit “and may not be taken in the Land and Environment Court except with the consent of the Minister”.
- (b) From section 23 (S), omit “or the Minister” and “or consent” wherever occurring.

(4) Section 28 (**Delegation**):

Omit the section.

Public Finance and Audit Act 1983 No. 152(1) Schedule 2 (**Statutory Bodies**):

Insert, in alphabetical order:

Environment Protection Authority.

(2) Schedule 3 (**Departments**):

Omit the matter relating to the State Pollution Control Commission.

Public Sector Management Act 1988 No. 33(1) Schedule 1 (**Departments**):

Omit the matter relating to the Ministry for the Environment.

(2) Schedule 2 (**Administrative offices**):

- (a) Insert, in alphabetical order:

Environment Protection Authority Director-General of the Authority.

- (b) Omit the matter relating to the State Pollution Control commission.

(3) Schedule 3 (**Declared Authorities**):

Omit “Waste Management Authority of New South Wales”, insert instead “Waste Recycling and Processing Service of New South Wales”.

(4) Schedule 3A (**Chief Executive Positions**):

- (a) Insert in Part 2, in alphabetical order of public authorities:

Director-General of the Environment Protection Authority

- (b) From Part 2, omit “Director of the State Pollution Control Commission”.

- (c) From Part 3, omit “Managing Director of the Waste Management Authority of New South Wales”, insert instead “Managing Director of the Waste Recycling and Processing Service of New South Wales”.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(5) Schedule 3B (**Senior Executive Positions**):

- (a) From Part 1, omit the positions relating to the Ministry for the Environment, the State Pollution Control Commission and the Waste Management Authority (except the position of “Project Manager, High Temperature Incineration Project”), and insert those positions in the Schedule under the heading “Environment Protection Authority”.
- (b) Insert in Part 1, in appropriate alphabetical order, the following positions:
 - Waste Recycling and Processing Service*
 - Deputy Managing Director
 - Project Manager, High Temperature Incineration Project”.
- (c) From Part 2, omit “Deputy Managing Director of the Waste Management Authority of New South Wales”.

Radiation Control Act 1990 No. 13

(1) Section 4 (**Definitions**):

- (a) insert in alphabetical order in section 4 (1):
 - “Authority”** means the Environment protection Authority;
- (b) Omit the definitions of “Department” and “Director-General”.

(2) The whole Act (except a provision or expression omitted by this Act):

Omit “Director-General” and “Director-General’s” wherever occurring, insert instead “Authority” and “Authority’s” respectively.

(3) Section 21 (**Decontamination and acquisition of premises**):

In section 21 (2), before “Health Administration corporation”, insert “Authority or the”.

(4) Section 25 (**Proceedings for offences**):

In section 25 (4), after “signed by”, insert “the Director-General of”.

(5) Section 29 (**Radiation Advisory Council**):

- (a) Omit section 29 (2) (a), insert instead:
 - (a) the Director-General or a member of staff of the Authority, who is to be the Chairperson of the Council; and
- (b) Omit section 29 (2) (k), insert instead:
 - (k) an officer of the Department of Health; and

(6) Section 32 (**Appointment of inspectors**):

Omit “officer of the Department of Health”, insert instead “member of the staff of the Authority”.

(7) Section 37 (**Delegation**):

Omit the section.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(8) Section 38 (**Consultation and co-operation between Ministers**):

Omit section 38 (c), insert instead:

- (c) the Minister administering the Public Health Act 1902 on matters relating to protection of public health from radiation.

Radioactive Substances Act 1957 No. 5

Section 11 (**Licences**)

- (a) From section 11 (1), omit “Secretary of the Department of Health”, insert instead “Environment Protection Authority**.”
- (b) From section 11 (1) and (2), omit “Secretary” (except where firstly occurring), insert instead “Authority”.

Recreation Vehicles Act 1983 No. 136

(1) Section 4 (**Definitions**):

Omit the definitions of “Authority” and “Director”.

(2) The whole Act (except a provision or expression being omitted by this Act):

Omit “Director” and “State Pollution Control commission” wherever occurring, insert instead “Environment Protection Authority”.

(3) The whole Act (except a provision or expression being omitted or inserted by this Act):

Omit “Authority” wherever occurring, insert instead “Roads and Traffic Authority”.

State Pollution Control Commission Act 1970 No. 95

(1) Long title:

Omit the long title, insert instead:

An Act relating to licences and approvals issued or given by the Environment Protection Authority; and for other purposes.

(2) Section 1 (**Short title and commencement**):

Omit “State Pollution Control Commission Act”, insert instead “Pollution Control Act”.

(3) Section 5 (**Definitions**):

- (a) From the definition of “authorised officer”, omit “Commission”, insert instead “Authority”.
- (b) After the definition of “authorised officer”, insert:
“Authority” means the Environment Protection Authority;
- (c) Omit the definitions of “Chairman”, “Commission”, “Director” and “Technical Advisory Committee”.

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SCHEDULE 3—AMENDMENT OF OTHER ACTS— *continued*

- (4) Part 2 (**Constitution of the State Pollution Control Commission**):
Omit the Part.
- (5) Part 3 (**Responsibilities, powers, authorities, duties and functions of the State Pollution Control Commission**):
Omit the Part.
- (6) Part 3A (**Licences and approvals**):
Omit “Commission” wherever occurring, insert instead “Authority”.
- (7) Part 4 (**Advisory Committees**):
Omit the Part.
- (8) Section 23 (**Inquiries**):
- (a) Omit section 23 (l), insert instead:
 - (1) An inquiry into any matter relating to environment protection may be conducted by the Commission and, if required by the Minister, must be conducted by the Commission or any committee established under the Protection of the Environment Administration Act 1991 or by any member of the Board of the Authority or of any committee or by any person appointed by the Authority.
 - (b) Omit section 23 (1A) (a), (b) and (c), insert instead:
 - (a) a committee established under the Protection of the Environment Administration Act 1991; or
 - (b) a member of the Board of the Authority or of any such committee; or
 - (c) any other person.**
- (9) Sections 23, 24, 25, 26, 27, 27A, 28A, 30C:
Omit “Commission” wherever occurring (except in an expression omitted by this Act), insert instead “Authority”.
- (10) Section 24 (**Power of entry**):
At the end of the section, insert:
- (4) In this section, a reference to this Act includes a reference to the Protection of the Environment Administration Act 1991.
- (11) Section 27 (**Proof of certain matters not required**):
Omit section 27 (1) (a)–(c), (d) and (e), insert instead:
- (a) the appointment of the Director-General of the Authority or any member of the staff of the Authority;
- (12) Section 27A (**Evidence**):
- (a) Omit “, a member of the Commission” wherever occurring.**
 - (b) Omit “Director” wherever occurring, insert instead “Director-General of the Authority”.**

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SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (13) Section 28 (**Service of notice of proceedings on Commission**):
Omit the section.
- (14) Section 29 (**Documents—how authenticated**):
Omit the section.

Unhealthy Building Land Act 1990 No. 122

- (1) Section 3 (**Definition**):
Omit the definition of “Commission”, insert instead:
“Authority” means the Environment Protection Authority.
- (2) Sections A:
Omit “Commission” wherever occurring, insert instead “Authority”.

Waste Disposal Act 1970 No. 97

- (1) Long title:
Omit “Waste Management Authority of New South Wales”, insert instead “Waste Recycling and Processing Service of New South Wales”.
- (2) Section 4 (**Effect of this Act on other Acts**):
Omit “State Pollution Control Commission Act 1970” wherever occurring, insert instead “protection of the Environment Administration Act 1991, Pollution Control Act 1970”.
- (3) Section 5 (**Definitions**):
- (a) Omit the definitions of “Authority”, “depot”, “Deputy Managing Director”, “Managing Director” and “regional depot”.
 - (b) In alphabetical order in section 5 (1), insert:
 - “**Authority**” means the Environment protection Authority constituted under the Protection of the Environment Administration Act 1991;
 - “**depot**” means any premises to which waste is transported from any other premises for treatment, storage or disposal, and includes a depot established or operated by the Service;
 - “**Service**” means the Waste Recycling and Processing Service of New South Wales constituted under this Act;
 - (c) From the definition of “incineration facility”, omit “Authority”, insert instead “Service”.
- (4) Parts 3 and 4, headings:
Omit “WASTE MANAGEMENT AUTHORITY” wherever occurring, insert instead “WASTE RECYCLING AND PROCESSING SERVICE”.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (5) Section 7 (**Constitution of Service**):
- (a) From section 7 (1), omit “Waste Management Authority”, insert instead “Waste Recycling and Processing Service”.
 - (b) From section 7 (2), omit “Authority”, insert instead “Service”.
- (6) Sections 8 (1), 8A (1), 8C, 8D:
Omit “Waste Management Authority Board” wherever occurring, insert instead “Waste Recycling and Processing Service Board”.
- (7) Sections 8 (2) (a), 8C (1), 8C (2):
After “Managing Director” wherever occurring, insert “of the Service”.
- (8) Section 8B:
Omit the section, insert instead:
Managing Director of Service
8B. (1) The Governor may appoint a Managing Director of the Service.
(2) Schedule 3 has effect with respect to the Managing Director.
- (9) Section 8C (**Functions of Managing Director**):
Omit section 8C (3) and (4).
- (10) Sections 8C (1), 11, 12, 13, 15, 16:
Omit “the Authority” wherever occurring, insert instead “the Service”.
- (11) Section 8D (**Ministerial control**):
Omit “, the Managing Director or the Deputy Managing Director”, insert instead “and the Managing Director of the Service”.
- (12) Section 17 (**Responsibilities etc. of Service**):
Omit section 17 (1) and (2), insert instead:
- (1) The Service has the following functions:
 - (a) the establishment and operation of depots, including:
 - (i) aqueous waste treatment facilities to process **industrial** liquid waste; and
 - (ii) facilities relating to the disposal of liquid, sludge and intractable waste; and
 - (iii) solid waste disposal, handling, treatment and storage facilities for domestic and Industrial waste;
 - (b) the construction and **operation** of a high temperature waste incineration facility in accordance with Part 4A.
- (13) Sections 18, 19, 20, 21, 21B, 21C, 21D, 21E
Omit “Authority” wherever occurring, insert instead “Service”.

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SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (14) Section 18 (**Establishment of depots**):
Omit “regional depots for the reception, treatment, storage or disposal of waste”, insert instead “depots”.
- (15) Section 21 (**Delegation**):
(a) Omit section 21 (a).
(b) From section 21 (c), omit “or a regional depot is established.”.
- (16) Section 21D (**Advisory Board to monitor operation of incineration facility**):
(a) From section 21D (1) (a) and (g), omit “Waste Management Authority Board” wherever occurring, insert instead “Waste Recycling and Processing Service Board”.
(b) In section 21D (1) (a1), after “Managing Director”, insert “of the Service”.
(c) Omit section 21D (1) (h), insert instead:
(h) the Director-General of the Authority, or the Director-General’s nominee;
- (17) Section 22 (**Offences relating to depots or transportation or creation of waste**):
At the end of the section, insert:
(9) The Service is subject to the requirements of this section.
- (18) Sections 23 (7), 26:
Omit “State Pollution Control commission” wherever occurring, insert instead “Land and Environment Court”.
- (19) Section 27 (**Disputes between Authority and public authority**):
At the end of the section, insert:
(9) A reference in this section to a public authority includes a reference to the Service.
- (20) Section 28 (**Authority to maintain register**):
From section 28 (2), omit “Managing Director or Deputy Managing Director”, insert instead “Director-General of the Authority”.
- (21) Section 29 (**Contributions to Authority**):
After section 29 (4), insert:
(5) Interest is payable on any unpaid contribution under this section at such rate and calculated in such manner as may be prescribed by the regulations. Any such interest may be recovered in the same way as the contribution may be recovered.
(6) The Service is subject to the requirements of this section.
- (22) Sections 30–33, 57:
Omit the sections.

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

- (23) Sections 43, 44, 47, 52, 56:
Omit “Authority” wherever occurring, insert instead “Service”.
- (24) Section 45 (**Inquiries**):
- (a) From section 45 (1), omit “or the State Pollution Control commission”, “but subject to subsection (2)” and “or that Commission”.
 - (b) Omit section 45 (2).
- (25) Section 46 (**Charges and fees**):
- (a) In section 46 (1), after “Authority” wherever occurring, insert “or Service”.
 - (b) From section 46 (1) (a), omit “regional”.
 - (c) Omit section 46 (2).
- (26) Section 47 (**Property in, and sale of, waste**):
Omit “regional depot” wherever occurring, insert instead “depot of the Service”.
- (27) Sections 53, 54:
After section 52, insert:
Seal of the Service
53. The seal of the Service is to be kept by the Managing Director of the Service and may be affixed to a document only:
- (a) in the presence of the Managing Director or a member of the staff of the Service authorised in that behalf by the Managing Director; and
 - (b) with an attestation by the signature of the Managing Director or that member of the fact of the affixing of the seal.
- Financial year of Service**
54. (1) The financial year of the Service is the year commencing 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.
- (28) Section 55 (**Proceedings for offences**):
From section 55 (2), omit “written consent of the Managing Director or Deputy Managing Director”, insert instead “consent of the Authority”.
- (29) Section 58 (**Regulations**):
- (a) From section 58 (1) (a), omit “, regional depots”.
 - (b) From section 58 (1) (b), omit “and regional depots”.
 - (c) From section 58 (1) (b1), omit “Authority’s”, insert instead “Service’s”.
 - (d) Omit section 58 (2) (b).

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SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

(30) Schedule 2 (**Constitution and Procedure of the Board**):

From the definition of “Board” in clause 1, omit “Waste Management Authority Board”, insert instead “Waste Recycling and Processing Service Board”.

(31) Schedule 3 (**Provisions Relating to Managing Director of Service**):

From the definition of “executive officer” in clause 1, omit “or the Deputy Managing Director”, insert instead “of the Service”.

(32) At the end of Schedule 4, insert:

PART 3—PROVISIONS CONSEQUENT ON
ENACTMENT OF PROTECTION OF THE
ENVIRONMENT ADMINISTRATION ACT 1991

Continuity of Waste Management Authority

7. The Waste Recycling and Processing Service is a continuation of, and the same legal entity as, the Waste Management Authority of New South Wales.

Dissolution of Waste Management Authority Board

8. (1) On the commencement of this clause, the Waste Management Authority Board becomes the Waste Recycling and Processing Service Board.

(2) The change in the name of that Board does not affect the persons holding office as members of that Board immediately before that commencement.

Existing executive officers

9. (1) The person who, immediately before the commencement of this clause, held office as Managing Director of the Waste Management Authority is taken, on that commencement, to have been appointed as Managing Director of the Service for the balance of the person’s term of office as Managing Director of that Authority.

(2) The person who, immediately before the commencement of this clause, held office as Deputy Managing Director of the Waste Management Authority ceases to hold office as such on that commencement.

(3) The **person** who so ceases to hold office as Deputy Managing Director is not entitled to any remuneration or compensation because of the loss of that office, except as provided by Part 2A of the Public Sector Management Act 1988. For the purposes of that Part of that Act, the Deputy Managing Director is taken to have been removed from office under section 42Q of that Act.

Certain existing staff transferred to Authority

10. (1) The persons employed by the Waste Management Authority immediately before the commencement of this clause and designated by the Minister as transferred employees are, on the commencement of this

Protection of the Environment Administration 1991

SCHEDULE 3—AMENDMENT OF OTHER ACTS—*continued*

clause, taken to be employed by the Environment Protection Authority (otherwise than under Part 2 of the Public Sector Management Act 1988).

(2) A person who is taken under this clause to be employed by the Environment Protection Authority is to be employed as a salaried employee on the same terms and conditions as applied to the person immediately before the commencement of this clause, until those terms and conditions are duly changed in accordance with law.

Construction of references

11. In any other Act, in any instrument made under an Act or in any document of any kind, a reference to the Managing Director or Deputy Managing Director of the Waste Management Authority of New South Wales is to be read as a reference to the Managing Director of the Waste Recycling and Processing Service.

Existing licences

12. A licence or certificate granted by the Waste Management Authority of New South Wales and in force on the commencement of this clause is taken to have been granted by the Environment Protection Authority.

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 41)

PART 1—SAVINGS AND TRANSITIONAL REGULATIONS

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or**
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.**

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SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

**PART 2—GENERAL PROVISIONS CONSEQUENTIAL ON ENACTMENT OF
THIS ACT**

Abolition of the State Pollution Control Commission

2. (1) The State Pollution Control Commission is abolished.

(2) All public service staff attached to that Commission (and any other staff employed by that Commission), immediately before the abolition of that Commission, become public service staff attached to (and other staff employed by) the Authority.

(3) On the abolition of that Commission, the following provisions have effect:

- (a) the assets of that Commission vest in the Authority by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance;
 - (b) the rights and liabilities of that Commission become by virtue of this clause the rights and liabilities of the Authority;
 - (c) all proceedings by or against that Commission that are pending immediately before the abolition are taken to be proceedings pending by or against the Authority;
 - (d) any act, matter or thing done or omitted to be done before the abolition by, to or in respect of that Commission is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Authority.
- (4) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (5) No attornment to the Authority by a lessee from that Commission is required.

Replacement of State Pollution Control Commission before its abolition by Board of Authority

3. (1) This clause applies during any period after the commencement of section 15 and before the abolition of the State Pollution Control Commission.

(2) During the period to which this clause applies the State Pollution Control Commission is to be constituted by the members of the Board of the Authority. When acting as members of that Commission, Schedule 1 applies as if they were acting as members of the Board of the Authority.

(3) A person who, immediately before the commencement of section 15, held office as a member of that Commission:

Protection of the Environment Administration 1991

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- (a) ceases to hold that office; and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.
- (4) On the commencement of section 15, the following provisions of the State Pollution Control Commission Act 1970 cease to have effect:
- section 6 (except subsection (1));
 - sections 7, 8 and 9.

Abolition of Ministry for the Environment

- 4. (1) The Ministry for the Environment is abolished.
- (2) All branches of that Ministry are removed from that Ministry and added to the group of public service staff attached to the Authority

Dissolution of advisory committees

- 5. (1) The following committees are dissolved:
 - (a) the Technical Advisory Committee and any other Committee established under Part 4 of the State Pollution Control Commission Act 1970;
 - (b) the Clean Waters Advisory Committee established under Part 2 of the Clean Waters Act 1970.
 - (2) A person who, immediately before the dissolution of any such committee, held office as a member of the committee:
 - (a) ceases to hold that office; and
 - (b) is not entitled to any remuneration or compensation because of the loss of that Office.
- On the dissolution of any such committee, the assets, rights, liabilities and obligations of the Committee become the assets, rights, liabilities and obligations of the Authority.

Construction of certain references

6. In any other Act, in any instrument made under any Act or in any document of any kind:
- (a) a reference to the State Pollution Control Commission or the Ministry for the Environment is to be read as a reference to the Authority; and
 - (b) a reference to the Director of the State Pollution Control Commission or of the Ministry for the Environment is to be read as a reference to the Director-General of the Authority; and
 - (c) a reference to a member of the State Pollution Control Commission is to be read as a reference to a member of the Board of the Authority; and

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**SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***

- (d) a reference to an officer or employee of the State Pollution Control Commission or the Ministry for the Environment is to be read as a reference to a member of the staff of the Authority.

Radioactive Substances Act 1957

7. Until the repeal of the Radioactive Substances Act 1957 by section 43 of the Radiation Control Act 1990, the environment protection legislation includes the Radioactive Substances Act 1957 and the regulations and other instruments made under that Act.

*[Minister's second reading speech made in—
Legislative Assembly on 21 August 1991
Legislative Council on 10 December 1991]*