



New South Wales

# Environment Legislation Amendment Act 2022 No 3

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Contaminated Land Management Act 1997 No 140</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendment of Land and Environment Court Act 1979 No 204</b>	<b>13</b>
<b>Schedule 3</b>	<b>Amendment of Pesticides Act 1999 No 80</b>	<b>14</b>
<b>Schedule 4</b>	<b>Amendment of Protection of the Environment Administration Act 1991 No 60</b>	<b>19</b>
<b>Schedule 5</b>	<b>Amendment of Protection of the Environment Operations Act 1997 No 156</b>	<b>26</b>
<b>Schedule 6</b>	<b>Amendment of Protection of the Environment Operations (General) Regulation 2021</b>	<b>43</b>
<b>Schedule 7</b>	<b>Amendment of Radiation Control Act 1990 No 13</b>	<b>44</b>
<b>Schedule 8</b>	<b>Amendment of the Radiation Control Regulation 2013</b>	<b>47</b>
<b>Schedule 9</b>	<b>Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58</b>	<b>49</b>

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New South Wales

# **Environment Legislation Amendment Act 2022 No 3**

Act No 3, 2022

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An Act to amend environment protection legislation for particular purposes. [Assented to 4 March 2022]

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Environment Legislation Amendment Act 2022*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## Schedule 1 Amendment of Contaminated Land Management Act 1997 No 140

### [1] Section 4 Definitions

Omit the definitions of *approved use* and Chairperson of the EPA from section 4(1).

### [2] Section 4(1)

Insert in alphabetical order—

*approved use* of land means—

- (a) a use to which the subject land may be put without planning approval, or
- (b) a use to which the subject land may be put under an existing planning approval and for which no further planning approval is required.

*Board of the EPA* means the Board within the meaning of the *Protection of the Environment Administration Act 1991*.

*CEO of the EPA* means the Chief Executive Officer within the meaning of the *Protection of the Environment Administration Act 1991*.

*Chairperson of the EPA Board* means the Chairperson within the meaning of the *Protection of the Environment Administration Act 1991*.

*monetary benefits* means monetary, financial or economic benefits.

*planning approval* means—

- (a) development consent under the *Environmental Planning and Assessment Act 1979*, Part 4, or
- (b) an approval under the *Environmental Planning and Assessment Act 1979*, Division 5.2, or
- (c) an approval under the *Environmental Planning and Assessment Act 1979*, Part 3A when that Part was in force or continued in operation.

*related body corporate* has the same meaning the *Corporations Act 2001* of the Commonwealth.

*relevant order, restriction or covenant*—see section 42A(1).

### [3] Section 6 Responsibility for contamination of land

Omit “an approval under Part 3A, or for development consent under Part 4, of the Environmental Planning and Assessment Act 1979” from section 6(4).

Insert instead “planning approval”.

### [4] Section 10 Preliminary investigation orders

Omit the penalty from section 10(5). Insert instead—

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

### [5] Section 14 Management orders

Omit “\$66,000” from section 14(6), penalty, paragraph (a). Insert instead “\$120,000”.

### [6] Section 14(6), penalty, paragraph (b)

Omit “\$33,000”. Insert instead “\$60,000”.

**[7] Section 28 Ongoing maintenance orders**

Omit the penalty from section 28(4). Insert instead—

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[8] Part 3, Division 6A, heading**

Omit “management orders”.

Insert instead “relevant orders, restrictions and covenants”.

**[9] Section 42A Application of Division**

Omit section 42A(1). Insert instead—

- (1) This Division applies in relation to requirements under the following (each a *relevant order, restriction or covenant*) to provide financial assurance to secure or guarantee funding for or towards the carrying out of actions required under the relevant orders, restrictions or covenants—
  - (a) management orders,
  - (b) ongoing maintenance orders,
  - (c) restrictions or public positive covenants imposed under section 29.

**[10] Section 42B Restriction on requiring financial assurance**

Insert after section 42B(c)—

- (c1) the financial capacity of the person, or

**[11] Section 42C Form of financial assurance**

Omit “management order” wherever occurring in section 42C(1)(c) and (2).

Insert instead “relevant order, restriction or covenant”.

**[12] Section 42D Amount of financial assurance**

Omit section 42D(2). Insert instead—

- (2) However, the EPA must not require a financial assurance of an amount that exceeds the total cost of carrying out the action.
- (2A) For the purposes of subsection (2), the total cost is the amount that, in the EPA’s opinion, represents a reasonable estimate of the total likely costs and expenses that may be incurred in carrying out the action, including the likely costs and expenses of the EPA in directing and supervising the carrying out of the action.

**[13] Section 42E**

Omit the section. Insert instead—

**42E Guidelines about financial assurances**

The regulations may provide for guidelines to be observed in relation to—

- (a) the content of requirements for financial assurances under relevant orders, restrictions or covenants, and

- (b) the calculation of the amount of financial assurances required.

**[14] Section 42F Carrying out of action when assurer fails to do so**

Omit section 42F(1). Insert instead—

- (1) If a person to whom a relevant order, restriction or covenant is directed fails, in the opinion of the EPA, to carry out an action covered by a financial assurance required under a relevant order, restriction or covenant in accordance with the relevant order, restriction or covenant, the EPA may—
  - (a) carry out the action, or
  - (b) direct or supervise the carrying out of the action by another person.

**[15] Section 42I Liability of EPA, State and others**

Insert “the CEO of the EPA,” after “Board of the EPA,” in section 42I(2).

**[16] Section 45 Obstruction of persons**

Omit the penalty from section 45(1). Insert instead—

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[17] Section 46**

Omit the section. Insert instead—

**46 EPA may give clean-up and prevention notices**

- (1) This section applies in relation to the following land—
  - (a) significantly contaminated land,
  - (b) land in relation to which the EPA has been given notice under section 60.
- (2) The EPA may give a notice or direction in accordance with the *Protection of the Environment Operations Act 1997*, Part 4.2 or 4.3 in relation to the land—
  - (a) as if the EPA were the appropriate regulatory authority within the meaning of that Act, and
  - (b) despite any order or approved voluntary management proposal relating to the land.
- (3) The notice or direction is taken to have been given under the *Protection of the Environment Operations Act 1997*.

**[18] Section 48 Statutory site audits**

Omit the penalty from section 48(1). Insert instead—

Maximum penalty—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[19] Section 48(2)**

Omit the penalty. Insert instead—

Maximum penalty—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

**[20] Section 57 Holding out**

Omit the penalty from section 57(1). Insert instead—

Maximum penalty—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[21] Section 57(1A)**

Omit the penalty. Insert instead—

Maximum penalty—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[22] Section 57(2)**

Omit the penalty. Insert instead—

Maximum penalty—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

**[23] Section 60 Duty to report contamination**

Omit the penalty from section 60(1). Insert instead—

Maximum penalty—

- (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

**[24] Section 60(2)**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

**[25] Section 69 Proof of certain matters not required**

Omit “Chairperson of the EPA” from section 69(a).

Insert instead “Chairperson of the EPA Board, the CEO of the EPA,”.

**[26] Section 71 Certificate evidence of certain matters**

Omit “Chairperson” from section 71(1), wherever occurring. Insert instead “CEO”.

**[27] Section 72 Evidence of analysts**

Omit section 72(3). Insert instead—

- (3) A certificate of an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—
  - (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the sample obtained by the authorised officer or other person, and

- (c) that the sample had not been tampered with since the time the container was sealed by the authorised officer or other person.

**[28] Sections 95AAA–95AAF**

Insert before section 95A—

**95AA Operation of Division**

- (1) This Division applies where a court finds an offence against this Act or the regulations proved.
- (2) Without limiting the generality of subsection (1), a court finds an offence proved if—
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.
- (3) In this Part—

*the court* means the court that finds the offence proved.  
*the offender* means the person who is found to have committed the offence.

**95AB Orders generally**

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed, or other action that may be taken, in relation to the offence.
- (3) Orders may be made under this Division regardless of whether a penalty is imposed, or other action is taken, in relation to the offence.

**95AC Orders for restoration and prevention**

The court may order the offender to take steps specified in the order, within a time specified or a further time that the court on application may allow—

- (a) to investigate, manage or remediate any contamination caused by the commission of the offence, or
- (b) to address the risk of harm from the contamination, or
- (c) to prevent the continuance or recurrence of the offence.

**95AD Orders for costs, expenses and compensation at time offence proved**

- (1) This section applies if the court is satisfied that—
  - (a) a public authority has incurred costs and expenses in connection with—
    - (i) investigating, managing or remediating any contamination caused by the commission of an offence, or
    - (ii) addressing the risk of harm from the contamination, or
  - (b) a person, including a public authority, has—
    - (i) by reason of the commission of an offence, suffered loss of or damage to property, or
    - (i) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, the loss or damage.
- (2) The court may order the offender to pay to the public authority or person an amount, fixed by the order, representing—
  - (a) compensation for the loss or damage suffered, or



- (b) the costs and expenses incurred.
- (3) An order made by the Land and Environment Court under subsection (2) is enforceable as if it were an order made by the Land and Environment Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (4) The Local Court may not make an order under subsection (2) for the payment of an amount that exceeds the amount for which an order may be made by the Local Court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (5) An order made by the Local Court is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the *Civil Procedure Act 2005*.

**95AE Recovery of costs, expenses and compensation after offence proved**

- (1) This section applies if, after the court finds the offence proved—
  - (a) a public authority has incurred costs and expenses in connection with—
    - (i) investigating, managing or remediating any contamination caused by the commission of an offence, or
    - (ii) addressing the risk of harm from the contamination, or
  - (b) a person, including a public authority, has—
    - (i) by reason of the commission of an offence, suffered loss of or damage to property, or
    - (ii) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, the loss or damage.
- (2) The person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (3) The amount of any costs and expenses, but not the amount of any loss or damage, may be recovered as a debt.

**95AF Orders regarding costs and expenses of investigation**

- (1) If the court is satisfied that the EPA has reasonably incurred costs and expenses during the investigation of an offence, the court may order the offender to pay to the EPA an amount, fixed in the order, representing the costs and expenses incurred.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Land and Environment Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (4) In this section—

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses of—

  - (a) taking a sample or conducting an inspection, test, measurement or analysis during the investigation of the offence, or
  - (b) transporting, storing or disposing of evidence during the investigation of the offence.

**[29] Section 95A Orders regarding monetary benefits**

Omit section 95A(4), definition of *monetary benefits*.

**[30] Section 95B Additional orders**

Insert after section 95B(1)(c)—

- (c1) order the offender to carry out a specified environmental audit of activities carried on by the offender,
- (c2) order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified organisation for—
  - (i) the purposes of a specified project for the restoration or enhancement of the environment, or
  - (ii) general environmental purposes,
- (c3) order the offender to attend, or to cause employees or contractors of the offender to attend, a training or other course specified by the court,
- (c4) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,

**[31] Section 95B(1)**

Omit “The Local Court is not authorised to make an order referred to in paragraph (c) or (d).”.

**[32] Section 95B(2)**

Omit “However, the Local Court is not authorised to make an order under this subsection.”.

**[33] Section 95B(2A)**

Insert after section 95B(2)—

- (2A) The Local Court is not authorised to make an order referred to in subsection (1)(c), (c1), (c2) or (d) or (2).

**[34] Section 95B(6)**

Omit “management order”. Insert instead “relevant order, restriction or covenant”.

**[35] Part 10, Division 2B**

Insert after Division 2A—

**Division 2B Civil proceedings to recover particular monetary benefits**

**95C Recovery of monetary benefits from related persons after offence proved**

- (1) This section applies if a court convicts a corporation of an offence against this Act or the regulations.
- (2) The prosecutor for the offence may apply to the court for an order (a *monetary benefits order*) that any of the following persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation—
  - (a) a person who is, or was, at the time of the commission of the offence, a director of the corporation,

- (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the offence, a director of a related body corporate.
- (3) The court may make a monetary benefits order in relation to a person only if the court is satisfied, on the balance of probabilities, that the person acquired, accrued, or will accrue the monetary benefits as a result of the commission of the offence by the corporation.
- (4) When making a monetary benefits order, the court may order that the person pay the amount—
- (a) into the Environment Protection Authority Fund or another fund the court considers appropriate, or
  - (b) to an entity the court considers appropriate in the circumstances.
- (5) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the person or accrued or accruing to the person.
- (6) A monetary benefits order made by the court is enforceable as if it were an order made by the court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (7) A reference in subsection (2) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.
- (8) In this section—
- Environment Protection Authority Fund*** means the Environment Protection Authority Fund established under the *Protection of the Environment Administration Act 1991*, section 34A.
- prosecutor***, for an offence, means the person that instituted the proceedings for the offence.
- the court*** does not include the Local Court.

**[36] Section 103 False or misleading information(1), penalty, paragraph (b)**

Omit the penalty from section 103(1). Insert instead—

Maximum penalty—

- (a) for a corporation—
  - (i) in relation to a requirement under section 10, 14, 28 or 53B—\$1,000,000, or
  - (ii) in relation to another requirement—\$137,500, or
- (b) for an individual—
  - (i) in relation to a requirement under section 10, 14, 28 or 53B—\$250,000 or imprisonment for 18 months, or both, or
  - (ii) in relation to another requirement—\$66,000 or imprisonment for 18 months, or both.

**[37] Section 103A**

Insert after section 103—

**103A Receiving monetary benefits**

- (1) Any of the following persons who receives, acquires or accrues a monetary benefit as a result of the commission by a corporation of a proved offence

under this Act or the regulations (the *underlying offence*) is guilty of an offence—

- (a) a person who is, or was, at the time of the commission of the underlying offence, a director of the corporation,
- (b) a related body corporate,
- (c) a person who is, or was, at the time of the commission of the underlying offence, a director of a related body corporate.

Maximum penalty—

- (a) for a corporation—the maximum penalty that applies to a corporation for the underlying offence, or
  - (b) for an individual—the maximum penalty that applies to an individual for the underlying offence.
- (2) Proceedings for an offence under this section may be commenced—
- (a) after the date on which the underlying offence is alleged to have been committed, but
  - (b) despite section 93, no later than the later of the following—
    - (i) the date that is 12 months after the date on which a court finds the underlying offence proved,
    - (ii) the date by which the proceedings may be commenced under section 93(2).
- (3) Despite section 92, proceedings for an offence under this section may not be dealt with before the Local Court.
- (4) Without limiting subsection (1) or (2)(b), a court finds an offence proved if—
- (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.
- (5) A reference in subsection (1) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.

**[38] Section 107 Disclosure of information**

Omit “100 penalty units” from section 107(1), penalty. Insert instead “200 penalty units”.

**[39] Section 112 Regulations**

Omit “200 penalty units” from section 112(3)(a). Insert instead “400 penalty units”.

**[40] Section 112(3)(b)**

Omit “100 penalty units”. Insert instead “200 penalty units”.

**[41] Schedule 2 Savings and transitional provisions**

Insert after Schedule 2, Part 7—

## **Part 8 Provisions consequent on enactment of Environment Legislation Amendment Act 2022**

### **30 Definition**

In this Part—

*amended*, in relation to a provision, means the provision as in force on and from the date this Part commences.

**31 Extended powers to give clean-up notices**

A reference in amended section 46 to land in relation to which the EPA has been given notice under section 60 extends to land in relation to which the EPA was given notice under section 60 before the date this clause commences.

**32 Court orders in connection with offences**

Sections 95AA–95AF and amended 95B extend to proceedings commenced, but not finally determined, before the date this clause commences.

## **Schedule 2      Amendment of Land and Environment Court Act 1979 No 204**

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

Insert after section 20(1)(caa)—

- (cab) proceedings under the *Contaminated Land Management Act 1997*, section 95AE or 95C,

**[2] Section 20(1)(cc)**

Insert after section 20(1)(cbb)—

- (cc) proceedings under the *Pesticides Act 1999*, section 99(6) or 112C,

**[3] Section 20(1)(cib)**

Insert after section 20(1)(cia)—

- (cib) proceedings under the *Protection of the Environment Operations Act 1997*, section 251A,

**[4] Section 20(1)(co)**

Omit the paragraph. Insert instead—

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

## Schedule 3 Amendment of Pesticides Act 1999 No 80

### [1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

*Chairperson of the EPA Board* means the Chairperson within the meaning of the *Protection of the Environment Administration Act 1991*.

*monetary benefits* means monetary, financial or economic benefits.

*related body corporate* has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

### [2] Section 38 Making of pesticide control order

Omit “, with the approval of the Minister,” from section 38(1).

### [3] Section 38(1), note

Omit “Section 43 (3) of that Act also requires the Authority to obtain the approval of the Minister before amending or repealing an order under this section.”.

### [4] Section 38(5B)

Omit the subsection.

### [5] Section 44A

Insert after section 44—

#### 44A Receiving monetary benefits

- (1) Any of the following persons who receives, acquires or accrues a monetary benefit as a result of the commission by a corporation of a proved offence under this Act or the regulations (the *underlying offence*) is guilty of an offence—
  - (a) a person who is, or was, at the time of the commission of the underlying offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the underlying offence, a director of a related body corporate.Maximum penalty—
  - (a) for a corporation—the maximum penalty that applies to a corporation for the underlying offence, or
  - (b) for an individual—the maximum penalty that applies to an individual for the underlying offence.
- (2) Proceedings for an offence under this section may be commenced—
  - (a) after the date on which the underlying offence is alleged to have been committed, but
  - (b) despite section 72, no later than the later of the following—
    - (i) the date that is 12 months after the date on which a court finds the underlying offence proved,
    - (ii) the date by which the proceedings may be commenced under section 72(3).
- (3) Despite section 71, proceedings for an offence under this section may not be dealt with before the Local Court.

- (4) Without limiting subsection (1) or (2)(b), a court finds an offence proved if—
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.
- (5) A reference in subsection (1) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.

**[6] Section 93 Orders generally**

Insert after section 93(2)—

- (3) Orders may be made under this Part regardless of whether a penalty is imposed, or other action taken, in relation to the offence.

**[7] Section 97 Orders regarding costs and expenses of investigation**

Omit section 97(3), definition of *costs and expenses*. Insert instead—

*costs and expenses*, in relation to the investigation of an offence, means the costs and expenses—

- (a) incurred in taking any sample or conducting any inspection, test, measurement or analysis during the investigation of the offence, or
- (b) of transporting, storing or disposing of evidence during the investigation of the offence.

**[8] Section 99**

Omit section. Insert instead—

**99 Additional orders**

- (1) The court may do 1 or more of the following—
  - (a) order the offender not to use a particular pesticide or a pesticide of a particular class,
  - (b) order the offender to take specified action to publicise 1 or more of the following—
    - (i) the offence, including the circumstances of the offence,
    - (ii) the environmental and other consequences of the offence,
    - (iii) any other orders made against the person in relation to the offence,
  - (c) order the offender to take specified action to notify specified persons, or specified classes of persons of 1 or more of the following—
    - (i) the offence, including the circumstances of the offence,
    - (ii) the environmental and other consequences of the offence,
    - (iii) orders made against the person in relation to the offence,

**Examples of specified action to notify specified persons—** Publishing of the information in an annual report or other notice to the shareholders of a company, or giving written notice to persons aggrieved or affected by the offender's conduct.
  - (d) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,
  - (e) order the offender to carry out a specified environmental audit of activities carried on by the offender,



- (f) order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified organisation, for—
    - (i) the purposes of a specified project for the restoration or enhancement of the environment, or
    - (ii) general environmental purposes,
  - (g) order the offender to attend, or to cause employees or contractors of the offender to attend, a training or other course specified by the court,
  - (h) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
  - (i) if the Environment Protection Authority is a party to the proceedings and the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment—order the offender to provide a financial assurance, of a form and amount specified by the court, to the Environment Protection Authority.
- (2) Without limiting subsection (1)(d), the court may order the offender to carry out a social or community activity for the benefit of the community or persons that are adversely affected by the offence (a *restorative justice activity*) that the offender has agreed to carry out.
- (3) The Local Court is not authorised to make an order referred to in subsection (1)(d), (e), (f) or (i) or (2).
- (4) The court may, in an order under this section—
- (a) fix a period for compliance with the requirements under the order, and
  - (b) impose other requirements the court considers necessary or expedient for enforcement of the order.
- (5) If the offender fails to comply with an order under subsection (1)(b) or (c), the prosecutor, or a person authorised by the prosecutor, may take action to carry out the order as far as practicable, including action to publicise or notify—
- (a) the original contravention, the environmental and other consequences of the contravention, and any other penalties imposed on the offender, and
  - (b) the failure of the offender to comply with the order.
- (6) The reasonable cost of taking action referred to in subsection (5) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

**[9] Section 102 Definitions**

Omit “Chairperson” from section 102, definition of *designated officer*. Insert instead “CEO”.

**[10] Section 105 Proof of certain things not required**

Omit section 105(1). Insert instead—

- (1) In any proceedings under this Act, no proof is required, until evidence is given to the contrary, of the appointment of any of the following persons—
  - (a) the Chairperson of the Board of the Environment Protection Authority,
  - (b) the CEO of the Environment Protection Authority,
  - (c) another member of the staff of the Environment Protection Authority.

**[11] Section 106 Certificate evidence of certain matters**

Omit “Chairperson” from section 106(1). Insert instead “CEO”.

**[12] Section 107 Evidence of analysts**

Omit section 107(3). Insert instead—

- (3) A certificate of an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—
  - (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the sample obtained by the authorised officer or other person, and
  - (c) that the sample had not been tampered with since the time the container was sealed by the authorised officer or other person.

**[13] Section 112C**

Insert after section 112B—

**112C Recovery of monetary benefits from related persons after offence proved**

- (1) This section applies if a court convicts a corporation of an offence against this Act or the regulations.
- (2) The Environment Protection Authority may apply to the court for an order (a *monetary benefits order*) that any of the following persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation—
  - (a) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the offence, a director of a related body corporate.
- (3) The court may make a monetary benefits order in relation to a person only if the court is satisfied, on the balance of probabilities, that the person acquired, or accrued or will accrue, the monetary benefits as a result of the commission of the offence by the corporation.
- (4) When making a monetary benefits order, the court may order that the person pay the amount—
  - (a) into the Environment Protection Authority Fund or another fund the court considers appropriate, or
  - (b) to an entity the court considers appropriate in the circumstances.
- (5) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the person or accrued or accruing to the person.
- (6) A monetary benefits order made by the court is enforceable as if it were an order made by the court in Class 4 proceedings under the *Land and Environment Court Act 1979*.

- (7) A reference in subsection (2) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.
- (8) In this section—  
*Environment Protection Authority Fund* means the Environment Protection Authority Fund established under the *Protection of the Environment Administration Act 1991*, section 34A.  
*the court* does not include the Local Court.

**[14] Schedule 2 Savings, transitional and other provisions**

Insert after Part 3—

**Part 4 Provision consequent on enactment of  
Environment Legislation Amendment Act 2022**

**20 Court orders in connection with offences**

- (1) Amended sections 93, 97 and 99 extend to proceedings commenced, but not finally determined, before the date this clause commences.
- (2) In this clause—  
*amended*, in relation to a provision, means the provision as in force on and from the date this clause commences.

## Schedule 4 Amendment of Protection of the Environment Administration Act 1991 No 60

### [1] Section 3 Definitions

Omit “Authority” from section 3(1), definition of *Chairperson*. Insert instead “Board”.

### [2] Section 3(1)

Insert in alphabetical order—

*Chief Executive Officer* or *CEO* means the person employed in the Public Service as the Chief Executive Officer of the Authority.

### [3] Section 3(1), definition of “environment protection legislation”

Omit the definition.

Insert instead—

*environment protection legislation* means the following Acts, and the regulations and other instruments made under the following Acts—

- (a) this Act,
- (b) *Contaminated Land Management Act 1997*,
- (c) *Dangerous Goods (Road and Rail Transport) Act 2008*,
- (d) *Environmental Trust Act 1998*,
- (e) *Environmentally Hazardous Chemicals Act 1985*,
- (f) *Ozone Protection Act 1989*,
- (g) *Pesticides Act 1999*,
- (h) *Protection of the Environment Operations Act 1997*,
- (i) *Radiation Control Act 1990*,
- (j) *Recreation Vehicles Act 1983*,
- (k) *Waste Avoidance and Resource Recovery Act 2001*,
- (l) any other Act, or part of an Act, prescribed by the regulations for the purposes of this definition.

**Note—** A regulation prescribing an Act, or part of an Act, for the purposes of paragraph (l) may only be made with the concurrence of the Minister responsible for the administration of the Act or part—see section 3(1A).

### [4] Section 3(1A)

Insert after section 3(1)—

- (1A) A regulation prescribing an Act, or part of an Act, for the purposes of subsection 3(1), definition of *environment protection legislation*, paragraph (l) may only be made with the concurrence of the Minister responsible for administering the Act, or part, to be prescribed.

### [5] Section 13

Omit section 13. Insert instead—

#### 13 General directions by Minister

- (1) The Minister may give the Authority a written direction in relation to the functions of the Authority if the Minister is satisfied that, after consulting the Authority about the proposed direction, it is necessary to do so in the public interest.

- (2) A direction by the Minister—
  - (a) must, unless the Authority agrees otherwise, be of a general nature only, and
  - (b) must not relate to a specific matter being considered or determined by the Authority.
- (3) In particular, a direction by the Minister under this section must not be made in relation to the following—
  - (a) a report or recommendation made to the Minister,
  - (b) a state of the environment report under section 10, other than directions for the inclusion of additional information in a report,
  - (c) any decision to institute criminal or related proceedings.
- (4) The Authority must ensure that a direction by the Minister is complied with.
- (5) A report of each of the following must be tabled by or on behalf of the Minister in each House of Parliament within 14 sitting days of that House and be included in the next available annual report of the Authority—
  - (a) a direction by the Minister for the inclusion of additional information in a state of the environment report under section 10,
  - (b) a direction by the Minister under section 13A and the determination of the Minister in relation to the exercise of the licensing function concerned.
- (6) The Authority must publish each direction by the Minister, other than a direction mentioned in subsection (5), on the Authority’s website as soon as practicable after the direction is given.

**[6] Part 5, Division 1A**

Insert before section 14—

**Division 1A Chief Executive Officer of the Authority**

**[7] Section 14**

Omit section 14. Insert instead—

**14 Chief Executive Officer of the Authority**

The Chief Executive Officer—

- (a) is a member of the Board, but
- (b) is not entitled to vote on a matter considered by the Board.

**14A Chief Executive Officer to manage and control affairs of Authority**

- (1) The Chief Executive Officer is to manage and control the affairs of the Authority, subject to—
  - (a) the policies determined by the Board and other decisions of the Board under this Act, and
  - (b) the directions of the Minister under this Act.
- (2) An act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer is taken to have been done by the Authority.

**[8] Section 15 Establishment of Board**

Omit section 15(2) and (3). Insert instead—

- (2) The Board is to consist of at least 5, but not more than 7 members, being—
  - (a) the Chairperson, and
  - (b) the Chief Executive Officer, and
  - (c) at least 3, but not more than 5, part-time members appointed by the Governor on the recommendation of the Minister.
- (3) The Chairperson and the part-time members recommended by the Minister are, in the Minister’s opinion, to collectively have the skills and experience relevant to the functions of the Board.
- (3A) In deciding whether to recommend a person as a part-time member, the Minister must have regard to the desirability that the Board collectively has skills and experience in the following—
  - (a) environmental science or engineering,
  - (b) environmental law,
  - (c) corporate, financial and risk planning and management,
  - (d) business,
  - (e) human health,
  - (f) compliance and regulation,
  - (g) Aboriginal cultural values,
  - (h) other skills or experience determined by the Minister and published on the Authority’s website.
- (3B) A person may only be recommended by the Minister as a person with skills and experience in Aboriginal cultural values if the person is—
  - (a) an Aboriginal person within the meaning of the *Aboriginal Land Rights Act 1983*, section 4(1), and
  - (b) recognised as a cultural knowledge holder, and
  - (c) willing to represent Aboriginal cultural values.

**[9] Section 16 Functions of Board**

Insert “, including policies and plans relating to organisational governance and risk management” after “Authority” in section 16(1)(a).

**[10] Part 5, Division 3, heading**

Omit “Authority” from Part 5, Division 3, heading. Insert instead “Board”.

**[11] Section 18, heading**

Omit “Authority” from section 18, heading. Insert instead “Board”.

**[12] Section 18(1)**

Omit “Authority”. Insert instead “Board”.

**[13] Section 18(2)**

Omit “may be appointed on a full-time or”. Insert instead “must be appointed on a”.

**[14] Section 18(4)**

Omit “Schedule 2A”. Insert instead “Schedule 1, Part 2”.

**[15] Section 19 Chairperson to manage and control affairs of Authority**

Omit the section.

**[16] Section 21 Delegation of functions**

Insert after section 21(1A)—

- (1B) The CEO may delegate to an authorised person any function, other than this power of delegation, conferred or imposed on the CEO by or under the environment protection legislation or any other legislation.

**[17] Section 21(2)(c)**

Insert at the end of section 21(2)(b)—

, or

- (c) by the CEO, if the delegate is authorised in writing to do so by the CEO.

**[18] Section 34A Environment Protection Authority Fund**

Insert after section 34A(3)(b3)—

(b4) amounts ordered to be paid into the Fund under the following—

- (i) the *Contaminated Land Management Act 1997*, section 95C,
- (ii) the *Pesticides Act 1999*, section 112C,
- (iii) the *Protection of the Environment Operations Act 1997*, section 251A,
- (iv) the *Radiation Control Act 1990*, section 27A, and

**[19] Section 35**

Omit the section. Insert instead—

**35 Exclusion of personal liability**

- (1) An act or omission of a protected person does not subject the protected person to any action, liability, claim or demand if the act or omission was done, or omitted to be done or made, in good faith for the purpose of carrying out a function conferred or imposed under the environment protection legislation or other legislation.
- (2) In this section—  
*protected person* means any of the following—
  - (a) the Minister,
  - (b) the Authority,
  - (c) the Board,
  - (d) an advisory committee,
  - (e) the Chief Executive Officer,
  - (f) the Chairperson or another member of the Board or of an advisory committee,
  - (g) a member of staff of the Authority,
  - (h) a person acting under the direction of a person referred to in paragraphs (a)–(g).

**[20] Section 36 Seal of Authority**

Omit “Chairperson”, wherever occurring in section 36.

Insert instead “Chief Executive Officer”.

**[21] Schedule 1 Provisions relating to members and procedure of the Board**

Insert before clause 1—

## **Part 1 Preliminary**

**[22] Schedule 1, clause 1, definition of “appointed member”**

Insert “or the CEO” after “Chairperson”.

**[23] Schedule 1, Part 2**

Insert after clause 1—

## **Part 2 Provisions relating to Chairperson of the Board**

### **2 Term of office**

- (1) The Chairperson holds office for the term, of not more than 5 years, specified in the instrument of appointment.
- (2) However, the Chairperson is eligible, if otherwise qualified, for re-appointment.

### **2A Remuneration and allowances**

The Chairperson is to be paid remuneration and allowances decided by the Minister, from time to time, in consultation with the Public Service Commissioner.

### **2B Vacancy in office**

- (1) The office of Chairperson becomes vacant if the holder—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by written instrument addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the holder’s creditors or makes an assignment of the holder’s remuneration for the creditors’ benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more or is convicted outside of New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is removed from office under clause 2C.
- (2) If the office of Chairperson becomes vacant, a person must, subject to this Act be appointed to fill the vacancy.



**2C Removal from office**

- (1) The Governor may remove the Chairperson from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Chairperson cannot be removed from office under the *Government Sector Employment Act 2013*, Part 6.

**2D Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to the Chairperson.
- (2) The office of Chairperson is not, for the purposes of any Act, an office or place of profit under the Crown.

**[24] Schedule 1, Part 3**

Insert before Schedule 1, clause 3—

**Part 3 Provisions relating to appointed members**

**[25] Schedule 1, clause 5, heading**

Insert “and allowances” after “remuneration”.

**[26] Schedule 1, Part 4**

Insert after clause 6—

**Part 4 Provision relating to all members**

**[27] Schedule 1, clauses 8 and 9**

Relocate to Part 3 as inserted by this Act and renumber as clauses 6A and 6B, respectively.

**[28] Schedule 1, Part 5**

Insert before clause 10—

**Part 5 Provisions relating to procedure**

**[29] Schedule 1, clause 11**

Omit “members (one of whom must be the Chairperson).”. Insert instead—

members, of whom—

- (a) 1 must be the Chairperson, and
- (b) 2 must be appointed members.

**[30] Schedule 2A Provisions relating to Chairperson of Authority**

Omit the Schedule.

**[31] Schedule 4 Savings, transitional and other provisions**

Insert after Part 5—

## Part 6 Provisions consequent on enactment of Environment Legislation Amendment Act 2022

### 11 Definitions

In this Part—

**amended**, in relation to a provision, means the provision as in force on and after the commencement date.

**commencement date** means the date the *Environment Legislation Amendment Act 2022*, Schedule 4 commenced.

### 12 Chairperson of Authority continues as Chairperson of Board

- (1) This clause applies to the person who, immediately before the commencement date, holds the appointment as Chairperson of the Authority.
- (2) On the commencement date—
  - (a) the person's appointment as Chairperson of the Authority ends, and
  - (b) the person is taken to have been appointed as Chairperson of the Board under amended section 18(1).
- (3) For the purposes of amended section 18(2), the person is taken to be appointed as Chairperson on a part-time basis on the same terms and conditions as applied in relation to the person's appointment as Chairperson of the Authority immediately before the commencement date.
- (4) For the purposes of Schedule 1, clause 2, the person is taken to have been appointed as Chairperson of the Board for the term that ends on the day on which the person's appointment as the Chairperson of the Authority would have ended other than because of subclause (2)(a).
- (5) For the purposes of amended Schedule 1, clause 2A, the Minister is taken to have decided that the remuneration and allowances payable to the person as Chairperson of the Board are the same as the remuneration and allowances that were payable to the person as Chairperson of the Authority.
- (6) Subclause (5) does not affect the Minister's power to otherwise determine the remuneration and allowances payable to the Chairperson of the Board from time to time under amended Schedule 1, clause 2A.

### 13 Continuation of existing Board

- (1) This clause applies in relation to appointed members of the existing Board.
- (2) Despite amended Part 5, Division 2, from the commencement date—
  - (a) each appointed member of the existing Board continues as a part-time member of the Board under amended Part 5, Division 2 on the same terms and conditions as applied in relation to the appointed member's appointment immediately before the commencement date, and
  - (b) the continuing part-time members of the Board are taken to collectively have the skills and experience stated in amended section 15(3).
- (3) In this clause—

**appointed member**, of the existing Board, means a person who, immediately before the commencement date, holds an appointment as a part-time member of the Board.

**existing Board** means the Board as constituted immediately before the commencement date.

## **Schedule 5      Amendment of Protection of the Environment Operations Act 1997 No 156**

- [1] **Section 29 Implementing PEPs—action under Environmental Planning and Assessment Act 1979**  
Omit “Director-General of the Department of Urban Affairs and Planning” from section 29(b).  
Insert instead “Secretary of the Department of Planning, Industry and Environment”.
- [2] **Section 29(c)**  
Omit “section 117”. Insert instead “section 9.1”.
- [3] **Section 50 Timing of licensing of development requiring consent under EP&A Act**  
Omit “Part 5.1” from section 50(4), definition of *development consent*.  
Insert instead “Division 5.2”.
- [4] **Section 50(4), definition of “existing use”**  
Omit “Division 10 of Part 4”. Insert instead “Division 4.11”.
- [5] **Section 51 Integrated development**  
Omit “section 91” from section 51(1). Insert instead “section 4.46”.
- [6] **Section 51(1)**  
Omit “Division 5 of Part 4”. Insert instead “Division 4.8”.
- [7] **Section 53 Application for issue of licence**  
Omit “An” from section 53(2). Insert instead “The”.
- [8] **Section 54 Application for transfer of licence**  
Omit “An application for the transfer of a licence” from section 54(2).  
Insert instead “The application”.
- [9] **Section 55 Grant or refusal of application**  
Omit section 55(1). Insert instead—  
    (1) The appropriate regulatory authority may—  
        (a) in relation to an application for the issue of a licence—  
            (i) grant the application by issuing the licence, or  
            (ii) refuse the application, and  
        (b) in relation to an application for the transfer of a licence—  
            (i) grant the application by transferring the licence, or  
            (ii) refuse the application.
- [10] **Section 55(2)**  
Omit “such an”. Insert instead “the”.
- [11] **Section 55(3)**  
Insert after section 55(2), before the note—

- (3) If the appropriate regulatory authority grants an application for the transfer of a licence, the licence is, subject to any variation of the conditions of the licence under section 58(4), transferred subject to the conditions to which the licence is subject at the time of the transfer.

**[12] Section 58 Variation of licences**

Omit “licence (including the conditions of a licence)” from section 58(1).

Insert instead “licence, including the conditions of the licence”.

**[13] Section 58(2)**

Omit the subsection. Insert instead—

- (2) A variation includes the following—
- (a) attaching a condition to a licence, whether or not conditions are already attached to the licence,
  - (b) substituting, omitting or amending a condition of a licence.

**[14] Section 64 Failure to comply with condition**

Omit section 64(3). Insert instead—

- (3) This section extends to conditions to which the suspension, revocation or surrender of a licence is subject under section 81, including a condition varied under section 81A.
- (4) For the purposes of subsection (3), a reference to the holder of the licence includes a reference to—
- (a) the former holder of the licence, and
  - (b) another person required to comply with the condition or to whom the condition applies.

**[15] Section 66 Conditions requiring monitoring, certification or provision of information, and related offences**

Omit the penalty from section 66(4). Insert instead—

Maximum penalty—

- (a) for a corporation—\$500,000, or
- (b) for an individual—\$250,000.

**[16] Section 66(6)**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$20,000, or
- (b) for an individual—\$10,000.

**[17] Section 66(7)**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$20,000, or
- (b) for an individual—\$10,000.

**[18] Section 81A**

Insert after section 81—

**81A Variation of conditions of suspension, revocation or surrender to require other persons to carry out works, programs or activities**

- (1) This section applies if a condition of the suspension, revocation or surrender of a licence requires the holder, or former holder, of the licence to do any of the following—
  - (a) carry out work or programs, including remediation work or pollution reduction programs,
  - (b) provide a financial assurance under Part 9.4,
  - (c) otherwise do an activity or thing.
- (2) A person other than the holder, or former holder, of the licence may apply to the appropriate regulatory authority to vary the condition to require the person, instead of or in addition to the holder, or former holder, of the licence to do any of the following—
  - (a) carry out the work or programs,
  - (b) provide the financial assurance,
  - (c) do the activity or thing.
- (3) The application must be made with the written consent of the holder, or former holder, of the licence unless it is not reasonably practicable to obtain the consent of the holder, or former holder, of the licence.
- (4) The application must—
  - (a) be made in the form approved by the appropriate regulatory authority, and
  - (b) include or be accompanied by the information indicated in the form, or in material accompanying the form, as being required by the appropriate regulatory authority, and
  - (c) be accompanied by the fee prescribed by the regulations.

**[19] Section 83 Fit and proper persons**

Omit “if the person is a body corporate, a director of the body corporate” from section 83(2)(b).

Insert instead “if the person is a corporation, a current or former director of the corporation or of a related body corporate”.

**[20] Section 83(2)(d)**

Omit “a body corporate, the record of compliance with the environment protection legislation of any director or other person concerned in the management of the body corporate”.

Insert instead “a corporation, the record of compliance with the environment protection legislation of any current or former director of the corporation or of a related body corporate”.

**[21] Section 83(2)(g)**

Omit “a body corporate, whether, in the opinion of the appropriate regulatory authority, a director or other person concerned in the management of the body corporate”.

Insert instead “a corporation, whether, in the opinion of the appropriate regulatory authority, a current or former director of the corporation or of a related body corporate”.

**[22] Section 83(2)(i)**

Omit “a body corporate, whether a director or other person concerned in the management of the body corporate”.

Insert instead “a corporation, whether a current or former director of the corporation or of a related body corporate”.

**[23] Section 83(2)(j1)**

Insert after section 82(2)(j)—

- (j1) if the person is a corporation, whether a current or former director of the corporation or of a related body corporate, during the previous 3 years and while a director of the corporation or related body corporate, was—
  - (i) an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, or
  - (ii) compounded with the director’s creditors or made an assignment of the director’s remuneration for the benefit of the creditors,

**[24] Section 83(2)(n1)**

Insert after section 82(2)(n)—

- (n1) if the person is a corporation, whether a related body corporate is a person whom the appropriate regulatory authority does not consider to be a fit and proper person under this section.

**[25] Section 91 Clean-up by occupiers or polluters**

Omit “either or both” from section 91(1). Insert instead “1 or more”.

**[26] Section 91(1)(c)**

Insert after section 91(1)(b)—

- (c) direct a person who is reasonably suspected by the authority of contributing, to any extent, to a pollution incident,

**[27] Section 91(1A) and (1B)**

Insert after section 91(1)—

- (1A) The appropriate regulatory authority may give a clean-up notice to a person under subsection (1)(c)—
  - (a) whether or not another person has been given a clean-up notice in relation to the pollution incident, and
  - (b) whether or not another person contributed to the pollution incident.
- (1B) Without limiting subsection (1), a clean-up notice given to a person under subsection (1)(c) may require the person to carry out clean-up actions to completely prevent, minimise, remove, disperse, destroy or mitigate pollution resulting or likely to result from the incident irrespective of the nature or extent of the person’s contribution to the incident.

**[28] Section 91(4)**

Omit the subsection. Insert instead—

- (4) If the person given a clean-up notice complies with the notice but was not the person who caused, or solely caused, the pollution incident, the cost, or part of the cost, of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from any person who caused or contributed to the pollution incident.

**[29] Section 91(5)**

Omit the subsection.

**[30] Section 91, note**

Omit the note.

**[31] Sections 91A and 91B**

Insert after section 91—

**91A Clean-up notices may be given to directors and related bodies corporate**

- (1) This section applies if—
- (a) the appropriate regulatory authority has given a clean-up notice under section 91 (the *previous clean-up notice*) to a corporation, and
  - (b) the corporation has not complied with the previous clean-up notice within the period specified in the notice.
- (2) The appropriate regulatory authority may, by written notice (the *supplementary clean-up notice*), direct 1 or more of the following to carry out, or ensure the carrying out of, the clean-up action specified in the notice within the period specified in the notice—
- (a) a current director of the corporation,
  - (b) a former director of the corporation,
  - (c) a related body corporate.
- (3) The supplementary clean-up notice may require the person to whom the notice is given to provide reports to the appropriate regulatory authority about progress on the carrying out of the clean-up action.
- (4) If the EPA considers it necessary for the purposes of responding to an emergency, the EPA may give a supplementary clean-up notice under this section regardless of whether the EPA is the appropriate regulatory authority in relation to the pollution incident.
- (5) If the person given a supplementary clean-up notice complies with the notice but was not the person who caused, or solely caused, the pollution incident, the cost, or part of the cost, of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from another person who caused or contributed to the pollution incident.
- (6) A reference in subsection (2) to a director of a corporation extends to a person involved in the management of the affairs of the corporation.

**91B Offence**

A person who, without reasonable excuse, does not comply with a clean-up notice given to the person is guilty of an offence.

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**Note—** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**[32] Section 96A**

Insert after section 96—

**96A Prevention notices may be given to directors and related bodies corporate**

- (1) This section applies if —
  - (a) the appropriate regulatory authority has given a prevention notice under section 96 (the *previous prevention notice*) to a corporation in relation to an activity, and
  - (b) the corporation has not complied with the previous prevention notice within the period specified in the notice.
- (2) The appropriate regulatory authority may, by written notice (the *supplementary prevention notice*), direct 1 or more of the following to take the action specified in the notice within the period, if any, specified in the notice to ensure that the activity is carried on in future in an environmentally satisfactory manner—
  - (a) a current director of the corporation,
  - (b) a former director of the corporation,
  - (c) a related body corporate.
- (3) Without limiting subsection (2), the action to be taken may include any of the actions specified in section 96(3).
- (4) When determining the action to be specified in the supplementary prevention notice, the appropriate regulatory authority must consider the matters specified in section 96(3A).
- (5) The supplementary prevention notice may require the person to whom the notice is given to provide reports to the appropriate regulatory authority about progress on the carrying out of the clean-up action.
- (6) A reference in subsection (2) to a director of a corporation extends to a person involved in the management of the affairs of the corporation.

**[33] Section 101 Prohibition on activities**

Omit “where the EPA recommends to the Minister that a notice be given under this section because it is of the opinion that the emission or discharge of pollutants from (or within) any premises in which any activity” from section 101(1).

Insert instead “if the EPA recommends to the Minister that a notice be given under this section because, in the EPA’s opinion, the emission or discharge of pollutants from or within a premises, or class of premises, in which an activity”.

**[34] Section 101(2)**

Omit the subsection. Insert instead—



(2) **Notice**

The Minister may, by written notice, direct, for the period, if any, specified in the notice—

- (a) the occupier of the premises, or occupiers of a class of premises, to cease carrying on the activity, or a specified aspect of the activity, at the premises or at premises of the class of premises, or
- (b) direct the person, or persons of a class of persons, carrying on the activity to cease carrying on the activity, or a specified aspect of the activity, at any premises.

**[35] Section 101A**

Insert after section 101—

**101A Prohibition notices may be given to directors and related bodies corporate**

- (1) This section applies if—
  - (a) the Minister has given a prohibition notice under section 101 to a corporation, and
  - (b) the corporation has not complied with the prohibition notice.
- (2) If the EPA remains satisfied of the matters stated in section 101(1), the EPA may recommend to the Minister that a notice be given under this section to any of the following persons—
  - (a) a current director of the corporation,
  - (b) a former director of the corporation,
  - (c) a related body corporate.
- (3) On the EPA’s recommendation, the Minister may, by written notice, direct the current or former director, or the related body corporate, to do 1 or more of the following—
  - (a) cease carrying on the activity, or a specified aspect of the activity, for the period, if any, specified in the notice,
  - (b) take all available steps to end the carrying on of the activity, or a specified aspect of the activity, for the period, if any, specified in the notice.
- (4) A reference in subsection (2) to a director of a corporation extends to a person involved in the management of the affairs of the corporation.

**[36] Section 104 Compliance cost notices**

Omit “under section 91” from section 104(1).

**[37] Section 104(2)**

Omit the subsection. Insert instead—

(2) **Clean-up by public authority**

A public authority that takes clean-up action under section 92 may, by written notice, require 1 or more of the following persons to pay all or part of the reasonable costs and expenses incurred by the public authority in connection with the clean-up action—

- (a) the occupier of the premises at or from which the authority reasonably suspects the pollution incident occurred,

- (b) a person who is reasonably suspected by the authority of having caused or contributed to the pollution incident.

**[38] Section 113 False or misleading statements in reports**

Insert “or imprisonment for 18 months, or both” after “\$250,000” in the penalty, paragraph (b).

**[39] Section 143 Unlawful transporting or depositing of waste**

Omit section 143(1)(b). Insert instead—

- (b) if the person is not the owner of the waste—the owner of the waste, and
- (c) if the waste is transported in a vehicle and the person is not the owner of the vehicle—the owner of the vehicle,

**[40] Section 144AA False or misleading information about waste**

Omit the penalty from section 144AA(1). Insert instead—

Maximum penalty—

- (a) for a corporation—\$500,000, or
- (b) for an individual—\$250,000.

**[41] Section 144AA(2)**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a corporation—\$1,000,000, or
- (b) for an individual—\$500,000 or imprisonment for 18 months, or both.

**[42] Section 144AB Repeat waste offenders**

Insert before section 144AB(1)(a)—

- (aa) section 115(1),

**[43] Section 144AB(1)(g)**

Insert after section 144AB(1)(f)—

- (g) section 144AA(1) or (2).

**[44] Section 148 Pollution incidents causing or threatening material harm to be notified**

Omit “any of” from section 148(8), definition of *relevant authority*.

**[45] Sections 167A and 167B**

Insert after section 167—

**167A False or misleading information**

- (1) A person who gives information to the EPA that is false or misleading in a material respect is guilty of an offence.

Maximum penalty—

- (a) for a corporation—\$500,000, or
- (b) for an individual—\$250,000.

**Note—** An offence under this subsection committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

- (2) It is a defence in proceedings against a person for an offence under subsection (1) if the person establishes that the person took all reasonable steps to ensure the information was not false or misleading in a material respect.
- (3) A person who gives information to the EPA that the person knows is false or misleading in a material respect is guilty of an offence.  
Maximum penalty—
  - (a) for a corporation—\$1,000,000, or
  - (b) for an individual—\$500,000 or imprisonment for 18 months, or both.
- (4) If the court is satisfied that a person charged with an offence under subsection (3) is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1), the court may find the person guilty of the offence under subsection (1), and the person is liable to punishment accordingly.
- (5) Proceedings for an offence against this section may be instituted only by the EPA.
- (6) Despite section 215, proceedings for an offence under subsection (3) may not be dealt with before the Local Court.
- (7) In this section—  
*information* includes a record containing information.  
*supply information* includes cause or permit information to be supplied.

#### **167B Receiving monetary benefits**

- (1) Any of the following persons who receives, acquires or accrues a monetary benefit as a result of the commission by a corporation of a proved offence under this Act or the regulations (the *underlying offence*) is guilty of an offence—
  - (a) a person who is, or was, at the time of the commission of the underlying offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the underlying offence, a director of a related body corporate.Maximum penalty—
  - (a) for a corporation—the maximum penalty that applies to a corporation for the underlying offence, or
  - (b) for an individual—the maximum penalty that applies to an individual for the underlying offence.
- (2) Proceedings for an offence under this section may be commenced—
  - (a) after the date on which the underlying offence is alleged to have been committed, but
  - (b) despite section 216, no later than the later of the following—
    - (i) the date that is 12 months after the date on which a court finds the underlying offence proved,
    - (ii) the date by which the proceedings may be commenced under section 216(2).
- (3) Despite section 215, proceedings for an offence under this section may not be dealt with before the Local Court.

- (4) Without limiting subsection (1) or (2)(b)(i), a court finds an offence proved if—
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.
- (5) A reference in subsection (1) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or body corporate.

**[46] Section 169A Liability of directors etc for offences by corporation—offences attracting executive liability generally**

Omit “91(5)” from section 169A(1)(d). Insert instead “91B”.

**[47] Section 169A(1)(u)**

Insert after section 169A(1)(t)—

- (u) section 167A(1).

**[48] Section 177 Offences**

Omit the penalty.

**[49] Section 177(1)–(4)**

Insert at the end of subsections(1), (2), (3) and (4), respectively—

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 or imprisonment for 18 months, or both, and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[50] Section 177(5)**

Insert at the end of the subsection—

Maximum penalty—

- (a) for a corporation—\$250,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$120,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

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

Insert before section 186(c)—

- (b6) any other environment protection legislation prescribed by the regulations for the purposes of this paragraph,

**[52] Section 211 Offences**

Omit the penalty.

**[53] Section 211(1) and (4)**

Insert at the end of the subsections, respectively—

Maximum penalty, subject to sections 204 and 208—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[54] Section 211(2)**

Insert at the end of the subsection—

Maximum penalty, subject to sections 204 and 208—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 or imprisonment for 18 months, or both, and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**[55] Section 211(3)–(3B)**

Omit section 211(3). Insert instead—

- (3) A person who delays, obstructs, assaults, threatens or intimidates an authorised officer in the exercise of the authorised officer’s powers under this Chapter is guilty of an offence.

Maximum penalty, subject to sections 204 and 208—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

- (3A) A person who wilfully delays, obstructs, assaults, threatens or intimidates an authorised officer in the exercise of the authorised officer’s powers under this Chapter is guilty of an offence.

Maximum penalty, subject to sections 204 and 208—

- (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

- (3B) If the court is satisfied that a person charged with an offence under subsection (3A) is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under subsection (3), the court may find the person guilty of the offence under subsection (3), and the person is liable to punishment accordingly.

**[56] Section 213 Application of Chapter**

Insert at the end of section 213(2), with appropriate paragraph numbering—

any other environment protection legislation prescribed by the regulations for the purposes of this paragraph.

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

Insert after section 216(6), definition of *prescribed offence*, paragraph (c1)—

- (c1a) an offence under section 167A (False or misleading information), or

**[58] Section 216(6), definition of “prescribed offence”**

Omit “against section 47(1), 48(2) or 144AA(1)” from paragraph (c6).

Insert instead “referred to in paragraphs (a)–(c3)”.

**[59] Section 230 Application of Division**

Insert at the end of section 230(1)(b)—

, or

- (c) proceedings have been commenced against a person for an offence against this Act or the regulations and, as a result of the proceedings, the person may be required to pay an amount that represents the amount of monetary benefits referred to in section 167B or 249, or
- (d) proceedings have been commenced against a person under section 251A and, as a result of the proceedings, the person may be required to pay an amount that represents the amount of monetary benefits referred to in section 251A.

**[60] Section 230(2), definition of “the defendant”**

Omit “subsection (1) (a) or (b)”. Insert instead “subsection (1)(a), (b), (c) or (d)”.

**[61] Section 231 Nature of restraining order**

Insert at the end of section 231—

- (2) For the purposes of this section, the property of the defendant includes the amount that represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender.

**[62] Section 249 Orders regarding monetary benefits**

Omit section 249(3), definition of *monetary benefits*.

**[63] Part 8.3A**

Insert after Part 8.3—

### **Part 8.3A Civil proceedings to recover particular monetary benefits**

**251A Recovery of monetary benefits from related persons after offence proved**

- (1) This section applies if a court convicts a corporation of an offence against this Act or the regulations.
- (2) The prosecutor for the offence may apply to the court for an order (a *monetary benefits order*) that any of the following persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation—
  - (a) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the offence, a director of a related body corporate.
- (3) The court may make the monetary benefits order in relation to a person only if the court is satisfied, on the balance of probabilities, that the person acquired, accrued or will accrue the monetary benefits as a result of the commission of the offence by the corporation.

- (4) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the person or accrued or accruing to the person.
- (5) When making a monetary benefits order, the court may order that the person pay the amount—
  - (a) into the Environment Protection Authority Fund or another fund the court considers appropriate, or
  - (b) to an entity the court considers appropriate in the circumstances.
- (6) A monetary benefits order made by the court is enforceable as if it were an order made by the court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (7) A reference in subsection (2) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.
- (8) In this section—

***Environment Protection Authority Fund*** means the Environment Protection Authority Fund established under the *Protection of the Environment Administration Act 1991*, section 34A.

***prosecutor***, for an offence, means the person who instituted the proceedings for the offence.

***the court*** does not include the Local Court.

**[64] Section 254 Definitions**

Omit “Chairperson” from section 254, definition of *designated officer*.  
Insert instead “CEO”.

**[65] Section 259 Proof of certain appointments not required**

Insert “, the CEO” after “the Chairperson” in section 259(a).

**[66] Section 261 Certificate evidence of certain matters**

Omit “Chairperson” from section 261(1). Insert instead “CEO”.

**[67] Section 261(2)(u)**

Omit “the EPA or Chairperson” from section 261(2)(u).  
Insert instead “the EPA, Chairperson or CEO”.

**[68] Section 262 Evidence of analysts**

Omit section 262(3). Insert instead—

- (3) A certificate of an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—
  - (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the sample obtained by the authorised officer or other person, and
  - (c) that the sample had not been tampered with since the time the container was sealed by the authorised officer or other person.

**[69] Section 281 Powers of police after entry by warrant**

Omit the penalty from section 281(3). Insert instead—

Maximum penalty—

- (a) for an offence against paragraph (a)—
  - (i) for a corporation—\$20,000, or
  - (ii) for an individual—\$10,000, and
- (b) for an offence against paragraph (b)—
  - (i) for a corporation—\$40,000, or
  - (ii) for an individual—\$20,000 or imprisonment for 18 months, or both.

**[70] Section 287 Appeals regarding licence applications and licences**

Omit “Section 93B” from the note to the section. Insert instead “Section 4.52”.

**[71] Section 299 Restriction on requiring financial assurance**

Insert after section 299(c)—

- (c1) the financial capacity of the holder or former holder of the licence or proposed holder of the licence, or

**[72] Section 305 Liability of appropriate regulatory authority, State and others**

Insert “the CEO,” after “the EPA,” in section 305(2).

**[73] Part 9.4A**

Insert after Part 9.4—

## **Part 9.4A Restrictions and covenants on land**

### **307A Ongoing maintenance—restrictions and covenants**

- (1) This section applies to land on which is located premises to which—
  - (a) a licence or suspended licence applies, or
  - (b) a revoked or surrendered licence applied where—
    - (i) the revocation or surrender was subject to conditions, and
    - (ii) the conditions have not been satisfied or revoked.
- (2) The EPA may, under the *Conveyancing Act 1919*, section 88E—
  - (a) impose restrictions on the use of, or impose public positive covenants on the land for the purpose of enforcing a condition of—
    - (i) the licence, or
    - (ii) the suspension, revocation or surrender of the licence, and
  - (b) release or vary a restriction or covenant imposed under this section.
- (3) A restriction or covenant imposed under this section may require the owner of the land to do 1 or more of the following in relation to the land—
  - (a) to inform the EPA of a change in the ownership or occupancy of the land, to the extent that the person is aware of the change,
  - (b) to not carry out, and to not allow other persons to carry out, specified activities on the land,



- (c) to not use, and to not allow other persons to use, the land for specified purposes,
- (d) to otherwise do, or not do, a thing that may be required to be done, or that must not be done, under a condition of—
  - (i) the licence, or
  - (ii) the suspension, revocation or surrender of the licence.
- (4) Despite the *Conveyancing Act 1919*, section 88E—
  - (a) the memorandum or deed by which the restriction or covenant referred to in subsection (2) is imposed, released or varied—
    - (i) must be executed by the EPA and does not need to be executed by any other person, and
    - (ii) does not require the agreement of any other person, and
  - (b) where a restriction or covenant imposed under this section takes effect, the EPA may enforce the restriction or covenant against any of the following—
    - (i) an owner of the land,
    - (ii) a lessee of the land,
    - (iii) a mortgagee of the land.
- (5) The EPA may impose, vary or remove a restriction or covenant under this section whether or not the EPA is the appropriate regulatory authority.

**[74] Section 320A False representations as to EPA approval, use or recommendation and licences**

Omit the penalty from section 320A(1). Insert instead—

Maximum penalty—

- (a) for a corporation—\$1,000,000, or
- (b) for an individual—\$250,000 or imprisonment for 18 months, or both.

**[75] Schedule 1 Scheduled activities**

Omit the matter relating to “electricity works (wind farms)” from clause 17, Table, Column 2.

Insert instead—

is the subject of an approval under the *Environmental Planning and Assessment Act 1979*, Division 5.2, or

is the subject of an approval granted under the *Environmental Planning and Assessment Act 1979*, Part 3A, when that Part was in force or continued in operation, or

is the subject of a development consent relating to State significant development granted by—

- (a) the Minister under the *Environmental Planning and Assessment Act 1979*, Part 4, including by operation of that Act, former Schedule 6, clause 89 before the repeal of that clause, or

**Note—** This criteria covers—

- (a) development consent granted before 1 August 2005, being development consent granted before the commencement of the *Environmental Planning and Assessment Act 1979*, Part 3A, and
- (b) development consent granted after 1 October 2011, being development consent granted after the repeal of Part 3A.

(b) the Independent Planning Commission as a consent authority under the *State Environmental Planning Policy (State and Regional Development) 2011*, clause 8A, or

was being carried out immediately before 1 December 2012 with a capacity to generate more than 30 megawatts of electrical power

**[76] Schedule 2 Regulation-making powers**

Insert after clause 10—

**10A National environment protection measures**

Giving effect to, and enforcing compliance with, a national environment protection measure made under the *National Environment Protection Council Act 1994* of the Commonwealth, section 14(1).

**[77] Schedule 2A, clause 1, definition of “petroleum authority”, paragraph (b1)**

Insert after clause 1, definition of *petroleum authority*, paragraph (b)—

(b1) an approval under the *Environmental Planning and Assessment Act 1979*, Division 5.2 to the extent that it authorises the carrying out of development for the purposes of petroleum activities, or

**[78] Schedule 2A, clause 1, definition of “petroleum authority”, paragraph (c)**

Omit “under Part 3A of the *Environmental Planning and Assessment Act 1979*”.

Insert instead “under the *Environmental Planning and Assessment Act 1979*, Part 3A, when that Part was in force or continued in operation,”.

**[79] Schedule 2A Enforcement of gas and other petroleum legislation**

Omit “section 125 of the *Environmental Planning and Assessment Act 1979*” from clause 1, definition of *petroleum offence*, paragraph (b).

Insert instead “the *Environmental Planning and Assessment Act 1979*, including the regulations under that Act,”.

**[80] Schedule 5 Savings, transitional and other provisions**

Insert after Part 17—

## **Part 18 Provision consequent on enactment of Environment Legislation Amendment Act 2022**

### **48 Definition**

In this Part—

*amended*, in relation to a provision, means the provision as in force on and from the date this clause commences.

### **49 Extended powers to issue clean-up notices**

- (1) Amended section 91 extends to pollution incidents that occurred, or were occurring, before the date this clause commences.
- (2) A reference in section 91A(1) to a previous clean-up notice extends to a clean-up notice given before the date this clause commences.

**50 Extended powers to issue prevention notices**

A reference in section 96A(1) to a previous prevention notice extends to a prevention notice given before the date this clause commences.

**51 Extended powers to issue prohibition notices**

- (1) Amended section 101 extends to activities in relation to which the EPA has, before the date this clause commences, recommended to the Minister that notice be given under section 101.
- (2) A reference in section 101A(1) to a prohibition notice extends to a prohibition notice given before the date this clause commences.

**52 Court orders in connection with offences**

Amended section 230 extends to proceedings commenced, but not finally determined, before the date this clause commences.

**[81] Dictionary**

Omit the definition of *Chairperson*.

**[82] Dictionary**

Insert in alphabetical order—

***CEO*** means the Chief Executive Officer within the meaning of the *Protection of the Environment Administration Act 1991*.

***Chairperson*** means the Chairperson within the meaning of the *Protection of the Environment Administration Act 1991*.

***monetary benefits*** means monetary, financial or economic benefits.

***related body corporate*** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

## **Schedule 6      Amendment of Protection of the Environment Operations (General) Regulation 2021**

**[1]      Schedule 6 Penalty notice offences**

Omit the matter relating to *Protection of the Environment Operations Act 1997*, section 91.

**[2]      Schedule 6**

Insert in appropriate order in the matter relating to the *Protection of the Environment Operations Act 1997*—

Section 91B	1, 2, 12, 13, 14	\$4,000 if the penalty notice is issued by a class 1 enforcement officer, or \$7,500 in any other case	\$8,000 if the penalty notice is issued by a class 1 enforcement officer, or \$15,000 in any other case
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## Schedule 7 Amendment of Radiation Control Act 1990 No 13

[1] **Section 4 Definitions**

Omit section 4(1), definition of *Chairperson of the Authority*.

[2] **Section 4(1)**

Insert in alphabetical order—

*CEO of the Authority* means the CEO within the meaning of the *Protection of the Environment Administration Act 1991*.

*monetary benefits* means monetary, financial or economic benefits.

*related body corporate* has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

[3] **Section 5A Certain persons and public bodies may exercise certain functions of Authority**

Omit “Chairperson” wherever occurring in section 5A(2) and (3). Insert instead “CEO”.

[4] **Section 5A(2) and (2A)(a)**

Omit “the Department of Planning and Environment” wherever occurring.

Insert instead “Regional NSW”.

[5] **Section 23A Orders regarding monetary benefits**

Omit section 23A(4), definition of *monetary benefits*.

[6] **Section 25 Proceedings for offences**

Omit “Chairperson” from section 25(4). Insert instead “CEO”.

[7] **Section 27A**

Insert after section 27—

**27A Recovery of monetary benefits from related persons after offence proved**

- (1) This section applies if a court convicts a corporation of an offence against this Act or regulations.
- (2) The prosecutor for the offence may apply to the court for an order (a *monetary benefits order*) that any of the following persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation—
  - (a) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the offence, a director of a related body corporate.
- (3) The court may make a monetary benefits order in relation to a person only if the court is satisfied, on the balance of probabilities, that the person acquired, accrued or will accrue the monetary benefits as a result of the commission of the offence by the corporation.
- (4) When making a monetary benefits order, the court may order that the person pay the amount—

- (a) into the Environment Protection Authority Fund or another fund the court considers appropriate, or
  - (b) to an entity the court considers appropriate in the circumstances.
- (5) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the person or accrued or accruing to the person.
- (6) A monetary benefits order made by the court is enforceable as if it were an order made by the court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (7) A reference in subsection (2) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.
- (8) In this section—
- Environment Protection Authority Fund*** means the Environment Protection Authority Fund established under the *Protection of the Environment Administration Act 1991*, section 34A.
- prosecutor***, for an offence, means the person that instituted the proceedings for the offence.
- the court*** does not include the Local Court.

**[8] Section 28D Restriction on requiring financial assurance**

Insert after section 28D(c)—

- (c1) the financial capacity of the holder or former holder of the licence or proposed holder of the licence, or

**[9] Section 28J Liability of Authority, State and others**

Insert “the CEO of the Authority” after “Board of the Authority,” in section 28J(2).

**[10] Section 29 Radiation Advisory Council**

Omit “Chairperson of the Authority” in section 29(2)(a).

Insert instead “CEO of the Authority”.

**[11] Section 33B**

Insert after section 33A—

**33B Receiving monetary benefits**

- (1) Any of the following persons who receives, acquires or accrues a monetary benefit as a result of the commission by a corporation of a proved offence under this Act or the regulations (the ***underlying offence***) is guilty of an offence—
- (a) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the offence, a director of a related body corporate.
- Maximum penalty—
- (a) for a corporation—the maximum penalty that applies to a corporation for the underlying offence, or

- (b) for an individual—the maximum penalty that applies to an individual for the underlying offence.
- (2) Proceedings for an offence under this section may be commenced—
  - (a) after the date on which the underlying offence is alleged to have been committed, but
  - (b) despite section 25(5), no later than the later of the following—
    - (i) the date that is 12 months after the date on which a court finds the underlying offence proved,
    - (ii) the date by which the proceedings may be commenced under section 25(5).
- (3) Despite section 25(1), proceedings for an offence under this section may not be dealt with before the Local Court.
- (4) Without limiting subsection (1) or (2)(b)(i), a court finds an offence proved if—
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.
- (5) A reference in subsection (1) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.

**[12] Section 36 Evidentiary matters**

Omit “Chairperson” in section 36(2). Insert instead “CEO”.

## **Schedule 8 Amendment of the Radiation Control Regulation 2013**

- [1] **Clause 3 Definitions**  
Omit “Chairperson of the” from clause 3(1), definition of *approved*.
- [2] **Clause 28 Radiation management plan**  
Omit “Chairperson of the” from clause 28(1).
- [3] **Clause 29 Personal monitoring devices**  
Omit “Chairperson of the” from clause 29(3).
- [4] **Clause 31 Area monitoring devices**  
Omit “Chairperson of the” wherever occurring in clause 31(1) and (3).
- [5] **Clause 34 Disposal of regulated material**  
Omit “Chairperson of the” from clause 34(1).
- [6] **Clause 34(3)**  
Omit the subclause. Insert instead—  
(3) The consent of the Authority may be—  
(a) given generally or in a particular case, and  
(b) subject to any conditions the Authority considers appropriate.
- [7] **Clause 38 Duty to report and investigate apparent radiation accidents**  
Omit “Chairperson of the” from clause 38(1).
- [8] **Clause 43 Appointment of radiation safety officers and committees**  
Omit “Chairperson of the” from clause 43(1).
- [9] **Clause 44 Loss or theft of regulated material**  
Omit “Chairperson of the” from clause 44(1).
- [10] **Clause 47, heading**  
Omit “**Department of Planning and Environment**”. Insert instead “**Regional NSW**”.
- [11] **Clause 47(1)**  
Omit “Chairperson”. Insert instead “CEO”.
- [12] **Clause 47(2)(a) and (3)(a)**  
Omit “*Work Health and Safety (Mines) Act 2013*” wherever occurring.  
Insert instead “*Work Health and Safety (Mines and Petroleum Sites) Act 2013*”.
- [13] **Clause 47(3) and (4)**  
Omit “the Department of Planning and Environment” wherever occurring.  
Insert instead “Regional NSW”.



**[14] Clause 48 Actions by incorrect public body**

Omit “Chairperson” from clause 48(1). Insert instead “CEO”.

**[15] Clause 50 Destruction or disposal of records**

Omit “Chairperson of the” wherever occurring in clause 50(2)–(5).

**[16] Clause 50(5)**

Omit “the Chairperson”. Insert instead “the Authority”.

## **Schedule 9      Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58**

- [1] Section 44 Offence to claim refund for containers not subject to Scheme**  
Omit “the commencement of this Part” wherever occurring in section 44(1)(b) and (2)(b).  
Insert instead “1 December 2017”.
- [2] Section 44(2), penalty**  
Omit the penalty from section 44(2).
- [3] Section 44, penalty**  
Insert at the end of the section—  
Maximum penalty for subsections (1) and (2)—  
(a) for a corporation—4,000 penalty units, or  
(b) for an individual—1,000 penalty units.

[Second reading speech made in—  
Legislative Assembly on 24 November 2021  
Legislative Council on 24 February 2022]