



New South Wales

Protection of the Environment Operations (Savings and Transitional) Regulation 1998

under the

Protection of the Environment Operations Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

PAM ALLAN, M.P.,
Minister for the Environment

Explanatory note

The object of this Regulation is to make savings and transitional provisions consequent on the commencement of the *Protection of the Environment Operations Act 1997* with respect to the following matters:

- (a) the continuation of existing licences granted under Acts (and parts of Acts) repealed by that Act and their revision to give effect to:
 - (i) the changes in legislative requirements effected by that Act, and
 - (ii) the savings and transitional arrangements prescribed by that Act and this Regulation, and
 - (iii) the objects of section 44 of that Act (Integration of licensing), and
 - (iv) the licence fee arrangements prescribed by the proposed *Protection of the Environment Operations (General) Regulation 1998*.

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- (b) other licensing matters (including the disposal of pending licence applications on the commencement of that Act and the licensing of activities under that Act that did not previously require a licence),
- (c) miscellaneous matters (including pending inquiries and references and existing exemptions under Acts repealed by that Act).

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including clause 2 of Schedule 5.

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Clause 1 Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 1 Preliminary

Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Savings and Transitional) Regulation 1998*.

2 Commencement

This Regulation commences on the commencement of the Act.

3 Definitions

In this Regulation:

existing licence means any of the following licences or approvals that is in force on the commencement of the Act:

- (a) licences under the *Pollution Control Act 1970* or the *Waste Minimisation and Management Act 1995*,
- (b) pollution control approvals under the *Pollution Control Act 1970*.

pending licence application means an application pending on the commencement of the Act for or in respect of the following:

- (a) a licence under the *Pollution Control Act 1970* or the *Waste Minimisation and Management Act 1995*,
- (b) a pollution control approval under the *Pollution Control Act 1970*.

repealed Act means the *Clean Air Act 1961*, the *Clean Waters Act 1970*, the *Environmental Offences and Penalties Act 1989*, the *Noise Control Act 1975*, the *Pollution Control Act 1970*, the provisions of the *Ozone Protection Act 1989* omitted by Schedule 4.14 to the Act or the provisions of the *Waste Minimisation and Management Act 1995* omitted by Schedule 4.19 to the Act.

the Act means the *Protection of the Environment Operations Act 1997*.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Clause 5 Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 2 Existing licences

Part 2 Existing licences

5 Purpose of Part

The purpose of this Part is to make provision in connection with existing licences and, in particular, to enable existing licences to be revised to give effect to:

- (a) the changes in legislative requirements effected by the Act, and
- (b) the savings and transitional arrangements prescribed by the Act and this Regulation, and
- (c) the objects of section 44 of the Act (Integration of licensing), and
- (d) the licence fee arrangements prescribed by the Protection of the *Environment Operations (General) Regulation 1998*.

6 Continuation of existing licences

- (1) An existing licence is taken to be an environment protection licence issued under the Act, except as provided by this Part.

Note. Clause 4 of Schedule 5 to the Act provides that, subject to the regulations, a licence issued under a repealed Act is taken to be a licence issued under the Act.

- (2) If an existing licence is terminated by or in accordance with this Part, the licence ceases to continue in force by virtue of clause 4 of Schedule 5 to the Act and this Part.
- (3) An existing licence does not expire at the end of the term of the licence and any provision of the licence that is inconsistent with section 77 of the Act has no force or effect.

Note. Section 77 of the Act provides that a licence remains in force until it is suspended, revoked or surrendered. Section 78 of the Act provides for triennial reviews of licences. In the case of triennial reviews, clause 7 of Schedule 5 to the Act requires the first review of existing licences to be undertaken (subject to the regulations) within 3 years after the commencement of the Act.

7 EPA may require information from existing licensees

- (1) The EPA may, by notice in writing given to the licensee of an existing licence, require the licensee to supply to the EPA such information as the EPA considers necessary for the purposes of this Part and specifies in the notice.

- (2) If the licensee fails to supply that information within the time required by the notice, the licence is suspended by this subclause until the information is supplied.
- (3) Despite subclause (2):
- (a) a suspension under that subclause applies only if the notice states that the licence will be suspended if the information is not supplied, and
 - (b) the notice may delay the time when a suspension under that subclause takes effect, and
 - (c) a suspension under that subclause ceases when the information required by the notice is supplied (but only if it is supplied before the licence is terminated by subclause (4)).
- (4) An existing licence that is suspended by this clause:
- (a) at the end of the period of 6 months after the licence would have expired (but for clause 6 (3)), or
 - (b) at the end of the period of 1 month after it is suspended.
- whichever is the later, is terminated by this subclause.
- (5) A notice of the kind referred to in subclause (1) that was given by the EPA before the commencement of the Act is taken to be a notice under this clause.
- (6) Information supplied under this clause is taken, for the purposes of the Act and the Regulations under the Act, to be information supplied in or in connection with a licence application.

8 Existing licences no longer required (other than PCA)

- (1) In this clause:

existing licence does not include an existing licence that is a pollution control approval under the *Pollution Control Act 1970*.

existing water licence means a licence granted under the *Pollution Control Act 1970* for the purposes of the *Clean Waters Act 1970*.

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Clause 8 Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 2 Existing licences

- (2) If the EPA is satisfied that an existing licence (other than an existing water licence relating to non-scheduled activities) relates to an activity or work for which a licence is not required under the Act, the EPA may terminate the existing licence.
- (3) If the EPA is satisfied that an existing licence relates to an activity or work to which another licence extends (including by virtue of a variation of that other licence), the EPA may terminate the existing licence.
- (4) The EPA may, under section 79 of the Act, revoke an existing licence (being an existing water licence relating to non-scheduled activities) if the EPA is of the opinion that the licence is not necessary in order to continue the activities to which the licence relates in accordance with the Act.
- (5) The EPA may terminate or revoke an existing licence under this clause at any time within the period of 2 years after the commencement of the Act.
- (6) This clause does not prevent the suspension, revocation or surrender of an existing licence in accordance with the Act.
- (7) While an existing licence referred to in this clause continues in force, the EPA is the appropriate regulatory authority for the activities to which the licence relates.

Note. If the existing licence ceases to be in force, the EPA and not the local authority remains the appropriate regulatory authority if the premises are occupied by, or the activities are carried on by, the State or a public authority—see section 6 of the Act.

9 Existing PCA licences

- (1) In this clause
existing PCA licence means an existing licence that is a pollution control approval under the *Pollution Control Act 1970*.
- (2) An existing PCA licence that, on the commencement of the Act, relates to work for which a licence is not required under the Act is terminated by this subclause.

- (3) The EPA may terminate an existing PCA licence, at any time within the period of 2 years after the commencement of the Act, if the EPA is satisfied that it relates to work to which another licence extends (including by virtue of a variation of that other licence).
 - (4) Unless it is sooner terminated or has sooner ceased to be in force, an existing PCA licence is terminated by this subclause at the end of the period of 2 years after the commencement of the Act.
 - (5) An existing, PCA licence is taken not to be an existing licence for the following purposes:
 - (a) the review of licences under section 78 of the Act.
 - (b) the payment of licence fees under the Act.
 - (c) the defence provided by section 122 or 129 of the Act.
- Note.** Clause 18 provides that details of an existing licence to which this clause applies are not required to be included in the public register under Part 9.5 of the Act.
- (6) This clause does not prevent the suspension, revocation or surrender of an existing PCA licence in accordance with the Act.
 - (7) While an existing PCA licence continues in force, the EPA is the appropriate regulatory authority for the activities to which the licence relates.

10 Replacement of existing licences

- (1) The EPA may, for the purposes of this Part, replace an existing licence or licences with a licence expressed in terms of the Act, whether with or without any variation.
- (2) The replacement licence takes effect when a copy of the licence is served on the licensee. At that time, the existing licences being replaced are terminated by this subclause.
- (3) To the extent that the authority conferred by the replacement licence differs from the authority conferred by the existing licences it replaces, the existing licences are taken to be varied under section 58 of the Act and the Act applies accordingly.

Note. Section 287 of the Act provides for appeals against variations of a licence.
- (4) This clause does not limit the power of the EPA to vary an existing licence under the Act.

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Clause 11 Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 2 Existing licences

11 Prescribed conditions applying to existing licences

- (1) This clause applies to an existing licence (other than an existing licence that is a pollution control approval under the *Pollution Control Act 1970*) until its first variation or its replacement under the Act or this Regulation.
- (2) Any such existing licence is subject to the following conditions (despite any condition to the contrary in the licence):
 - (a) The licensee must, within 60 days after the end of each reporting period for the licence, provide the EPA with an annual return for the reporting period that consists of a statement of compliance and a monitoring summary report.
 - (b) The statement of compliance is to be a statement, in the form provided by the EPA for the purpose and certified as required by that form, relating to compliance (as referred to in section 66 (3) of the Act) with respect to the licensed activity during the reporting period.
 - (c) The monitoring summary report is to be a statement, in the form provided by the EPA for the purpose and certified as required by that form, relating to a summary of the results of monitoring (as referred to in section 66 (1) of the Act) with respect to the licensed premises during the reporting period, including a report on the number of complaints to the licensee in relation to pollution from or on the premises.
 - (d) The licensee must retain a copy of each annual report for at least 4 years from the date it was provided to the EPA.
- (3) An existing licence is not subject to any such condition if the EPA, on the application of the licensee, so determines.
- (4) For the purpose of this clause, the reporting periods for a licence are the licence fee periods for the licence within the meaning of Part 2.1 of the *Protection of the Environment Operations (General) Regulation 1998*. However, if the licence is transferred, the reporting period for the previous licensee ends immediately before the transfer takes effect and the first reporting period for the new licensee commences when the transfer takes effect.

- (5) This clause does not affect any reporting requirements under an existing licence for a period occurring before the first reporting period under this clause.

12 Granting of licence on appeal in connection with application made before Act

- (1) If the Land and Environment Court grants a licence after the commencement of the Act as a result of an appeal in connection with an application made before the commencement of the Act, the licence is an existing licence to which this Part applies.
- (2) This clause is subject to the order of that Court in the appeal.

13 Existing licences subject to suspension

- (1) This Part extends to existing licences that are suspended on the commencement of the Act.
- (2) The balance of the period of suspension continues to apply to the licence as continued in force under this Part.

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Clause 14 Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 3 Other licensing matters

Part 3 Other licensing matters

14 Pending licence applications

- (1) A pending licence application is to be dealt with in accordance with the Act and the regulations under the Act.

Note. Clause 5 of Schedule 5 to the Act provides that, subject to the regulations, an application for or in respect of a licence or other approval under any repealed Act is taken to be an application for or in respect of a corresponding licence or other approval under the Act.

- (2) A pending licence application need not be dealt with by the appropriate regulatory authority if the authority determines that the activity to which it relates does not require a licence under the Act. This subclause does not apply to an application for the grant of a licence under the *Pollution Control Act 1970* for the purposes of the *Clean Waters Act 1970*.

- (3) if the appropriate regulatory authority decides under this clause not to deal with a pending licence application, the application is taken to have been refused for the purposes of the Act.

Note. Section 287 of the Act provides a right of appeal against the refusal of an application for a licence.

- (4) A pending licence application may be withdrawn by the applicant or may, with the approval of the appropriate regulatory authority, be amended by the applicant.

- (5) The appropriate regulatory authority may, under section 60 of the Act, require the applicant under a pending licence application to provide further information by means of the completion of the relevant form approved by the authority under the Act for the matter to which the pending application relates.

- (6) The 60-day period referred to in section 287 (3) of the Act is to be calculated as if the pending application was not duly made until the commencement of the Act.

Note. Section 287 (3) provides, for the purposes of an appeal, that a licence application is taken to be refused if the application is not granted within 60 days after the application was duly made.

15 Initial licence applications under Act made before commencement of Act

- (1) This clause applies to a licence application made for the purposes of the Act but before its commencement, being an application made in accordance with the requirements approved or prescribed under the Act and having effect on that commencement.
- (2) Any such licence application is taken, for the purposes of the Act, to have been made on the commencement of the Act.
- (3) Any such application may be granted or refused after the commencement of the Act. If the application was granted or refused before the commencement of the Act, the application is taken to have been granted or refused on that commencement.
- (4) A requirement for further information with respect to any such application (as referred to in section 60 of the Act) that is made before the commencement of the Act is taken, on the commencement of the Act, to have been duly made under that section.

16 Licences under Act for activities not previously required to be licensed

- (1) This clause applies to a licence referred in section 52 (1) of the Act.

Note. Section 52 (1) of the Act postpones the need for a licence that is required by the enactment or amendment or replacement of Schedule 1 to the Act (Schedule of EPA-licensed activities) in order for a person to continue to carry out any work or activity. The need for the licence is postponed until the end of the prescribed period after the requirement for a licence arises or until a licence application made before the end of that period is determined, whichever is the later. The *Protection of the Environment Operations (General) Regulation 1998* prescribes a period of 9 months.

- (2) The local authority, and not the EPA, is the appropriate regulatory authority for the activities to which such a licence would apply (but not with respect to determining an application for the licence) until such time as an application for the licence is determined. After the application is determined, the appropriate regulatory authority for the activity is to be determined in accordance with the Act.

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Clause 17 Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 4 Miscellaneous

Part 4 Miscellaneous

17 Criminal and other proceedings

- (1) Parts 8.2 and 8.4 of the Act extend (subject to this clause) to proceedings in connection with a repealed Act in respect of offences committed against a repealed Act or regulation under a repealed Act before its repeal or in respect of any related matter that continues to have force or effect.
- (2) Parts 8.2 and 8.4 of the Act apply with such modifications as are necessary for the purposes of applying those Parts to any such proceedings. In particular, the following references in those Parts are to be read as follows:
 - (a) a reference to an offence arising under Part 5.2 is to be read as including a reference to a Tier 1 offence under the *Environment Offences and Penalties Act 1989*.
 - (b) a reference to a prescribed offence for the purposes of section 216 is to be read as including a reference to a prescribed offence within the meaning of section 12 of the *Environmental Offences and Penalties Act 1989*,
 - (c) a reference in section 218 to an authority or officer entitled to institute proceedings is to be read as including a reference to an authority or officer entitled under section 13 of the *Environmental Offences and Penalties Act 1989* to institute the proceedings.
- (3) The provisions of a repealed Act relating to the orders that a court may make when it finds an offence proved continue to have effect in respect of any such proceedings.

18 Public register

Details of the following matters are not required to be included in a public register for the purposes of Part 9.5 of the Act:

- (a) a pending licence application that is taken to have been refused under clause 14.
- (b) an existing licence that is a pollution control approval under the *Pollution Control Act 1970*.

- (c) anything done in respect of an existing licence before the commencement of the Act.
- (d) information supplied under clause 7,
- (e) conditions of existing licences prescribed by clause 11.

19 Existing analysts and their certificates

- (1) A person who, immediately before the commencement of the Act, held office as an analyst under section 27 of the *Environmental Offences and Penalties Act 1989* is taken to have been appointed as an analyst under section 262 of the Act.
- (2) The repeal of section 27 of the *Environmental Offences and Penalties Act 1989* does not affect the operation of a certificate given by an analyst under that section before its repeal.

20 Pending inquiries and references

- (1) In this clause, *pending inquiry* means any of the following inquiries or references that are pending on the commencement of the Act:
 - (a) an inquiry under section 23 of the *Pollution Control Act 1970*.
 - (b) a reference under section 26 (2) of the *Clean Air Act 1961*,
 - (c) a reference under section 72 of the *Noise Control Act 1975*,
 - (d) an inquiry under section 69, or a reference under section 78, of the *Waste Minimisation and Management Act 1995*.
- (2) A pending inquiry may be continued after the commencement of the Act and, for that purpose, the provisions of the repealed Acts relating to the inquiry continue to have effect.

21 Existing exemptions under Clean Air Act 1961

- (1) In this clause, *existing clean air exemption* means an exemption under section 15, 15B, 19 or 19A of the *Clean Air Act 1961* that is in force immediately before the commencement of the Act.

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Clause 21 Protection of the Environment Operations (Savings and Transitional) Regulation 1998

Part 4 Miscellaneous

- (2) An existing clean air exemption is taken, on the commencement of the Act, to be an exemption granted under section 284 of the Act from the corresponding provision of the Act or regulations. subject to this clause.
- (3) If an existing clean air exemption has an expiry date, the exemption expires on that date. The period during which the exemption had effect before the commencement of the Act is to be taken into account for the purposes of the application of the maximum 5-year period referred to in section 284 (8) of the Act.
- (4) If an existing clean air exemption does not have an expiry date. the exemption expires on the fifth anniversary of the commencement of the Act. The exemption cannot be renewed and a further exemption that is the same in substance cannot be granted.

22 Other existing exemptions, notices, directions, orders or requirements

- (1) A notice, direction, order, requirement or exemption that:
 - (a) is given, issued or made under a repealed Act, and
 - (b) is in force on that repeal.continues to have effect for the purposes of the repealed Act.
- (2) Any such notice, direction, order, requirement or exemption does not have effect for the purposes of a corresponding provision of or made under the Act, unless this Regulation or any other regulation under the Act so provides.

23 Existing authorised officers

- (1) This clause applies to persons appointed or authorised as authorised officers under a repealed Act and holding office on the repeal.

Note. Clause 9 of Schedule 5 to the Act provides that such persons are taken to be appointed as authorised officers under the Act, subject to the regulations under the Act.
- (2) Any such person is taken to be an authorised officer for the purposes of the Act. but only in respect of a matter that the person commenced to investigate before the commencement of the Act.

- (3) Any such person ceases to be an authorised officer for the purposes of the Act, by the operation of clause 9 of Schedule 5 to the Act and this clause, at the end of the period of 3 years after the commencement of the Act.
- (4) Until its replacement under section 189 of the Act, an identification card or certificate of authority issued to any such person under a repealed Act is taken to be the person's identification card for the purposes of that section.
- (5) This clause does not affect any separate appointment of such a person, on or after the commencement of the Act, as an authorised officer under the Act.

24 Transfer of certain documents to new regulatory authority

- (1) This clause applies to any documents relating to an activity that are held by the EPA in connection with the administration or execution of a repealed Act.
- (2) If a regulatory authority, other than the EPA, becomes the appropriate regulatory authority after the commencement of the Act in respect of any such activity, the EPA may provide any of the documents relating to the activity (or a copy of them) to that regulatory authority.
- (3) Documents or copies of documents may be provided under this clause at any time within the period of 2 years after the commencement of the Act.

25 General savings provision for repealed regulations

Any thing done under the *Pollution Control Regulation 1985* or the *Noise Control (General) Regulation 1995* that has any force or effect immediately before its repeal is taken to have been done under the corresponding provision of the regulations under the Act, subject to any express or implied provision to the contrary in the Act or the regulations under the Act.

Note. A similar general saving applies to repealed Acts—see clause 14 of Schedule 5 to the Act.