



New South Wales

Sydney Water Catchment Management (Environment Protection) Regulation 2001

under the

Sydney Water Catchment Management Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Sydney Water Catchment Management Act 1998*.

BOB DEBUS, M.P.,

Minister for the Environment

Explanatory note

The object of this Regulation is to confer on the Sydney Catchment Authority various functions under the *Protection of the Environment Operations Act 1997*.

The Regulation gives the Authority the same powers as the Environment Protection Authority (*the EPA*), or a regulatory authority, under certain provisions of the *Protection of the Environment Operations Act 1997*. The powers that are conferred may be exercised by the Sydney Catchment Authority only in relation to non-scheduled activities carried out within a catchment area or carried out outside a catchment area but being of such a nature as to affect the catchment area. (Non-scheduled activities are activities that do not require an environment protection licence under the *Protection of the Environment Operations Act 1997*.) The powers may be exercised for the purposes of protecting catchment areas or protecting and enhancing the quality of water in catchment areas.

The Regulation also gives the Sydney Catchment Authority power to institute proceedings for littering offences.

2001 No 20

Sydney Water Catchment Management (Environment Protection) Regulation 2001

Explanatory note

The Regulation provides for other matters that are consequential on the conferral of environment protection powers on the Authority. For example, it requires the Authority to keep a public register in relation to its activities under the *Protection of the Environment Operations Act 1997*.

This Regulation repeals and remakes the *Sydney Water Catchment Management (Environment Protection) Regulation 2000*, which was published in the Gazette (with pages missing) on 22 December 2000 and published again on 29 December 2000, in order to resolve any confusion about which version of the Regulation has effect.

This Regulation is made under the *Sydney Water Catchment Management Act 1998*, including section 19 and section 74 (the general regulation-making power).

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Notes	4
Part 2 Environment protection functions to be exercised by Authority	
5 Authority may exercise powers of EPA and other regulatory authorities	5
6 Purposes for which functions may be exercised	6
7 Limitations on Authority's functions	6
8 Inconsistency with directions given by other regulatory authorities (other than EPA)	6
9 Inconsistency with directions given by EPA	7
10 Resolution of disputes with other authorities	7
Part 3 Littering	
11 Authority may prosecute littering offences	8
Part 4 Miscellaneous	
12 Register	9
13 Public availability of register	9
14 Repeal	10

Part 2 Environment protection functions to be exercised by Authority

5 Authority may exercise powers of EPA and other regulatory authorities

- (1) The Authority has the same functions as the EPA or any other regulatory authority (including the functions of the appropriate regulatory authority) under the following provisions of the *Protection of the Environment Operations Act 1997* in relation to relevant non-scheduled activities:
- (a) Part 4.2 (Clean-up notices),
 - (b) Part 4.3 (Prevention notices),
 - (c) Part 4.5 (Compliance cost),
 - (d) Part 4.6 (Miscellaneous),
 - (e) Part 7.2 (Authorised officers),
 - (f) Part 7.3 (Powers to require information or records),
 - (g) Part 7.4 (Powers of entry and search of premises),
 - (h) Part 7.5 (Powers to question and to identify persons),
 - (i) Part 7.7 (General),
 - (j) Division 2 of Part 8.2 (Proceedings for offences).

Note. Non-scheduled activities are activities that do not require an environment protection licence under the *Protection of the Environment Operations Act 1997*.

- (2) The Authority has the same functions as the EPA under Part 4.4 of the *Protection of the Environment Operations Act 1997* in relation to relevant non-scheduled activities.
- (3) The following activities are **relevant non-scheduled activities** for the purposes of this clause:
- (a) non-scheduled activities carried out or proposed to be carried out within a catchment area,
 - (b) non-scheduled activities carried out or proposed to be carried out outside a catchment area but being of such a nature as affect or may affect a catchment area.

2001 No 20

Clause 5 Sydney Water Catchment Management (Environment Protection) Regulation 2001

Part 2 Environment protection functions to be exercised by Authority

- (4) If the Authority exercises a function of the EPA or another regulatory authority (including the appropriate regulatory authority) under the *Protection of the Environment Operations Act 1997* that Act (including any provisions relating to the exercise of those functions, any offences under that Act, any provisions relating to proceedings for offences and any appeal provisions) applies in respect of the exercise of that function. For that purpose, references in that Act to the EPA or another regulatory authority (including the appropriate regulatory authority) are taken to include the Authority.

Note. Section 19 (3) of the *Sydney Water Catchment Management Act 1998* gives the Authority power to delegate any function conferred or imposed on it by the regulations to an officer of the Authority.

6 Purposes for which functions may be exercised

The Authority may exercise the functions conferred on it by this Part only for the purposes of:

- (a) protecting catchment areas, or
- (b) protecting and enhancing the quality of water in catchment areas.

7 Limitations on Authority's functions

The Authority may not exercise the functions of a regulatory authority in relation to the following:

- (a) premises defined in an environment protection licence as the premises to which the licence applies, and all activities carried on at those premises,
- (b) non-scheduled activities that are authorised or controlled by an environment protection licence,
- (c) activities carried on by the Sydney Catchment Authority.

Note. The appropriate regulatory authority in respect of the activities listed in this clause will generally be the EPA.

8 Inconsistency with directions given by other regulatory authorities (other than EPA)

- (1) This clause applies if the Sydney Catchment Authority, when exercising the functions conferred by this Part, and another regulatory authority (other than the EPA) both give an environment protection notice in respect of the same pollution incident, premises or activity.

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- (2) If it is not possible to comply with the requirements of both notices:
- (a) the notice given by the Sydney Catchment Authority prevails, and
 - (b) the notice given by the other regulatory authority does not have to be complied with, to the extent that it is not possible to comply with that notice and the notice given by the Sydney Catchment Authority.

Note. The powers conferred on the Authority by this Regulation overlap with the powers of local authorities (such as local councils) under section 6 (3) of the *Protection of the Environment Operations Act 1997*. If, for example, both the Sydney Catchment Authority and a local council issue clean-up notices in respect of the same premises, and it is not possible for the recipient to comply with both notices, then under this clause the notice given by the Sydney Catchment Authority prevails.

9 Inconsistency with directions given by EPA

- (1) This clause applies if the Sydney Catchment Authority, when exercising the functions conferred by this Part, and the EPA both give an environment protection notice in respect of the same pollution incident, premises or activity.
- (2) If it is not possible to comply with the requirements of both notices:
- (a) the notice given by the EPA prevails, and
 - (b) the notice given by the Sydney Catchment Authority does not have to be complied with, to the extent that it is not possible to comply with that notice and the notice given by the EPA.

10 Resolution of disputes with other authorities

Section 316 of the *Protection of the Environment Operations Act 1997* applies to the Sydney Catchment Authority in the same way as it applies to the EPA.

Note. The effect of this clause is, if a dispute arises between the Sydney Catchment Authority and a public authority with respect to a decision of the Sydney Catchment Authority against which an appeal lies under Part 9.2 of the *Protection of the Environment Operations Act 1997*, the Sydney Catchment Authority or the public authority may refer the dispute to the Premier in accordance with that section, and that section applies accordingly.

2001 No 20

Clause 11 Sydney Water Catchment Management (Environment Protection)
Regulation 2001

Part 3 Littering

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11 Authority may prosecute littering offences

- (1) The Authority has the same functions as the EPA under Part 8.2 of the *Protection of the Environment Operations Act 1997* with respect to an offence against section 145, 145A, 146, 146A, 146B or 146C of that Act that is committed or alleged to have been committed in a catchment area.

Note. Sections 145 to 146C of the *Protection of the Environment Operations Act 1997* are littering offences.

- (2) Accordingly, the Authority may institute proceedings for any such offence in the same way as the EPA.
- (3) This clause, in so far as it relates to sections 146A, 146B and 146C of the *Protection of the Environment Operations Act 1997*, does not take effect until the commencement of those sections.

Part 4 Miscellaneous

12 Register

- (1) The Authority is required to keep a public register in accordance with this clause.
- (2) The Authority must record in the register the following:
 - (a) details of each environment protection notice given by the Authority,
 - (b) details of convictions in prosecutions under the *Protection of the Environment Operations Act 1997* instituted by the Authority,
 - (c) the results of civil proceedings before the Land and Environment Court under the *Protection of the Environment Operations Act 1997* by or against the Authority,
 - (d) such other matters as the Authority considers appropriate, having regard to the purposes of the *Protection of the Environment Operations Act 1997*.
- (3) The register may be kept in any form determined by the Authority. Different parts of the Register may be kept in different forms.
- (4) For the purposes of this clause, *details* of a matter means:
 - (a) particulars of the matter, or
 - (b) a copy of the matter, or
 - (c) any electronic or other reproduction of the matter.

13 Public availability of register

- (1) A copy of the public register is to be available for inspection at the principal office of the Authority and at such other places as the Authority thinks fit.
- (2) A copy of any part of the register may be obtained by members of the public from the Authority.
- (3) The register can be inspected or copies can be obtained during ordinary office hours, and on payment of fees determined by the Authority.
- (4) The Authority is also to make a copy of the public register available for inspection on the Internet site maintained by the Authority.

