

[Act 1997 No 156]



New South Wales

Protection of the Environment Operations Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are as follows:

- (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development,
- (b) to reduce the risks to human health and prevent the degradation of the environment,
- (c) to rationalise, simplify and strengthen the regulatory framework for environment protection,
- (d) to improve the efficiency of administration of the environment protection legislation,
- (e) to assist in the achievement of the objectives of the *Waste Minimisation and Management Act 1995*.

* Amended in committee—see table at end of volume.

The Bill repeals and replaces the following Acts:

Clean Air Act 1961

Clean Waters Act 1970

Pollution Control Act 1970

Noise Control Act 1975

Environmental Offences and Penalties Act 1989

The principal reforms effected by the Bill are as follows:

Protection of the environment policies (PEPs)

The Bill introduces PEPs for the purposes of setting environmental goals, standards, guidelines and protocols for government decision-makers (including the EPA).

Integrated environment protection licensing

The Bill replaces the different licences and approvals under the existing separate legislation relating to air pollution, water pollution, noise pollution and waste management with a single licensing arrangement that covers all relevant forms of pollution and that covers both the development and operational stages of controlled activities.

Environment protection licensing—general

The Bill makes a number of changes to the environment protection licensing regime to rationalise, simplify and strengthen the regulatory controls, including:

- (i) clearly requiring the consideration of ecologically sustainable development,
- (ii) providing an on-going licence with at least 3-year reviews (instead of annual renewal),
- (iii) providing public participation through integration with the development control process under the *Environmental Planning and Assessment Act 1979*,

- (iv) clarifying the regulatory responsibility of the EPA for listed activities (including water pollution licensing) and the regulatory responsibility of local authorities for certain other activities,
- (v) providing for pollution load-based licence fees,
- (vi) providing for economic measures (such as tradeable permit schemes) to provide economic incentives for the reduction of pollution.

Environment protection notices

The Bill introduces a comprehensive system of clean-up, prevention and prohibition notices to enable speedy and effective action to protect the environment. The Bill imposes a duty to notify pollution incidents that cause material harm to the environment.

Environmental offences

The Bill maintains and revises existing pollution offences and doubles the maximum penalty for tier 2 offences, namely the offences not carrying the existing maximum penalty of \$1,000,000 or 7 years imprisonment.

Environmental audits

The Bill introduces a scheme for voluntary as well as mandatory environmental audit. Information obtained by licensees in the course of voluntary audits are protected from official inspection or use in proceedings, but those obtained in the course of mandatory audits directed by the EPA are not so protected.

Investigation

The Bill revises and rationalises the various investigative powers of the regulatory authorities and their authorised officers.

Proceedings

The Bill strengthens the existing rights for civil enforcement by third parties to restrain unlawful actions that harm the environment. It extends the range of orders available to a court in sentencing an environmental offender, including confiscating profits, publicising the offence, recovery of costs and restoration of the damage caused.

Outline of provisions

Chapter 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 provides that certain expressions used in the proposed Act have meanings set out in the Dictionary at the end of the proposed Act.

Clause 5 provides that the activities listed in Schedule 1 are *scheduled activities*. Such activities are required to be licensed under the proposed Act and are generally the responsibility of the Environment Protection Authority (the EPA).

Clause 6 defines the *appropriate regulatory authority* for the purposes of the proposed Act. The EPA is generally that regulatory authority, but a local council or other local authority is that regulatory authority for non-scheduled activities (with certain exceptions).

Clause 7 provides that the proposed Act will generally prevail to the extent of any inconsistency with other Acts or statutory rules (except the *Marine Pollution Act 1987*).

Clause 8 provides that notes do not form part of the proposed Act.

Chapter 2 Protection of the environment policies

Part 2.1 Introduction

Clause 9 defines certain words and expressions used in this Chapter.

Clause 10 sets out the purpose of protection of the environment policies (PEPs).

Clause 11 provides a list of the subject-matters in respect of which PEPs may be made, and also provides that such a policy must specify an environment protection goal, standard, guideline or protocol.

Part 2.2 Draft policies

Clause 12 provides that the EPA must prepare draft PEPs if it is so directed by the Minister. The EPA may also prepare draft PEPs of its own accord.

Clause 13 sets out the general considerations which must be taken into account by the EPA when it is preparing a draft PEP.

Part 2.3 General procedure for preparing draft policies

Clause 14 provides that this Part applies to the preparation of a draft policy, except where the next Part applies.

Clause 15 provides that the EPA must give notice of its intention to prepare any draft PEP.

Clause 16 provides that the EPA may prepare a draft of the PEP and must prepare an impact statement relating to that draft PEP. The clause also lists factors which must be included in the impact statement.

Clause 17 provides that the EPA must invite submissions from the public on any draft PEP and impact statement.

Clause 18 provides that during the preparation of a draft policy, the EPA is to consult with any public authorities, organisations or persons as directed by the Minister, or with anyone else as the EPA considers appropriate.

Clause 19 provides that in proceeding with any draft PEP, the EPA must take into consideration the impact statement and any submissions received which relate to that draft PEP.

Clause 20 provides that a copy of any draft PEP is to be submitted to the Minister, accompanied by an EPA report about all relevant submissions made to and any consultation undertaken by the EPA in relation to the draft PEP.

Part 2.4 Special procedure for preparing draft policies

Clauses 21–24 enable PEPs to be prepared and made without the procedures in Part 2.3 being followed in limited circumstances.

Part 2.5 Making policies

Clauses 25 and 26 provide that the Minister may recommend to the Governor the making of a policy in accordance with a submitted draft PEP or in accordance with an altered draft PEP, and the Governor may make a policy in accordance with such a recommendation.

Part 2.6 Interim policies

Clause 27 deals with interim policies. An *interim policy* is defined as a policy that is based on a draft policy that is the subject of a Ministerial direction under clause 22 (3) for the urgent preparation of a policy. Those policies have a maximum term of 12 months.

Part 2.7 Implementing policies

Clauses 28–32 provide that the EPA, certain regulatory authorities, councils, heads of departments, Ministers, consent authorities, determining authorities and other public authorities must take relevant policies into account when making certain decisions or determinations. *Public authority* is defined as including a Minister and the EPA.

Part 2.8 Miscellaneous

Clause 33 provides that PEPs may be amended or repealed by other policies prepared and made in accordance with this Chapter.

Clause 34 sets out the requirements for the publication, commencement and validity of a PEP.

Clause 35 sets out matters in relation to the machinery of the policy for which the PEP may make provision.

Clause 36 provides that a PEP is not to create offences for any contravention of the PEP.

Clause 37 provides that judicial notice is to be taken of a PEP.

Clause 38 provides that a failure to comply with procedural requirements under this Chapter does not invalidate a PEP so made.

Clause 39 provides that copies of PEPs are to be made available to the public.

Clause 40 provides that the EPA may decide not to proceed with a draft PEP and the Minister may decide not to recommend the making of a PEP submitted to the Minister.

Clause 41 provides that a PEP is not a statutory rule for the purposes of the *Subordinate Legislation Act 1989*.

Chapter 3 Environment protection licences

Part 3.1 Introduction

Clause 42 provides that environment protection licences may be issued and otherwise dealt with in accordance with this Chapter.

Clause 43 outlines the purposes for which environment protection licences are issued. Generally, they are issued to authorise the carrying out of scheduled activities or work designed to permit scheduled activities to be carried out, or to control non-scheduled activities that result in water pollution (such a licence being a defence to the offence of polluting waters).

Clause 44 provides that licences may be issued or varied so as to cover either scheduled development work or scheduled activities, or both. The clause also provides that licences may regulate all forms of pollution.

Clause 45 outlines the matters that the appropriate regulatory authority is required to take into consideration in exercising its functions under this Chapter. These include the pollution being or likely to be caused by the carrying out of the activity or work concerned and the likely impact of that pollution on the environment.

Clause 46 states that this Chapter has effect in addition to and does not derogate from the requirements of any other Act.

Part 3.2 Licences required for scheduled development work and scheduled activities

Clause 47 makes it an offence for the occupier of any premises to carry out scheduled development work (being work that will enable scheduled activities to be carried on) unless the occupier holds a licence that authorises that work to be carried out at those premises.

Clause 48 makes it an offence for the occupier of any premises to carry on a scheduled activity unless the occupier holds a licence that authorises that activity to be carried on at those premises. The proposed section applies to those scheduled activities where Schedule 1 indicates that a licence is required for premises at which the activity is carried on.

Clause 49 makes it an offence to carry on a scheduled activity unless the person is the holder of a licence that authorises that activity to be carried on. The proposed section applies to those scheduled activities where Schedule 1 indicates that a licence is required to carry on the activity, but not for the premises at which the activity is carried on.

Clause 50 provides that a licence that relates to controlled development must not be granted, unless development consent has been granted for the controlled development. The proposed section describes controlled development as development that cannot be carried out without development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*.

Clause 51 indicates that licences for works or activities are subject to the proposed integrated development provisions of the *Environmental Planning and Assessment Act 1979*.

Clause 52 provides for the situation where a person is in the process of carrying out any work or activity at the time that work or activity is deemed, by amendment or replacement of Schedule 1, to be an activity requiring authorisation by a licence.

Part 3.3 Issue, transfer and variation of licences

Clauses 53 and **54** provide that an application may be made to the appropriate regulatory authority for the issue or transfer of a licence.

Clause 55 gives the appropriate regulatory authority the power to grant or refuse an application for the issue or transfer of a licence.

Clause 56 provides for the description of the premises to which a licence applies.

Clause 57 requires the holder of a licence to pay an annual licence fee to the appropriate regulatory authority.

Clause 58 gives the appropriate regulatory authority the power to vary a licence, including the conditions of a licence.

Clause 59 provides that specified applications may only be made with the consent of specified persons. For example, an application for the variation of a licence may be made only with the written consent of the licence holder.

Clause 60 allows the appropriate regulatory authority to require a licence applicant to supply such further information as the authority considers necessary and relevant to the application.

Clause 61 allows any person to request the reasons for the grant or refusal of a licence application. The appropriate regulatory authority is required to provide a written statement of reasons to the person.

Clause 62 provides that a licence applicant, if not entitled to copyright, is taken to have indemnified all persons using the application and supporting documents against any claim or action for breach of copyright,

Part 3.4 Licence conditions

Clause 63 provides that a licence may be issued subject to conditions or unconditionally. However, a condition cannot be attached if compliance with the condition would result in a breach of a requirement made by or under the proposed Act.

Clause 64 makes it an offence to contravene any condition of a licence. It also provides that it is a defence if the holder of the licence establishes that the contravention of the condition was caused by another person, who was not associated with the holder at the time the condition was contravened, and that the holder took all reasonable steps to prevent the contravention.

Part 3.5 Particular licence conditions

Clause 65 makes it clear that the types of conditions set out in the Part are not the only conditions that may be attached to a licence.

Clause 66 provides that the conditions of a licence may require monitoring by the holder of the licence of the work or activity authorised or controlled by the licence. The proposed section also provides that it is an offence to furnish information to the appropriate regulatory authority under the conditions of a licence that is false or misleading.

Clause 67 provides that the conditions of a licence may require the holder of the licence to comply with the requirements of a mandatory environmental audit program.

Clause 68 provides that the conditions of a licence may require the holder to undertake studies into any aspect of the environmental impact of the work or activity authorised or controlled by the licence or to develop a pollution reduction program or comply with such a program determined by the appropriate regulatory authority.

Clause 69 provides that the conditions of a licence may relate to tradeable emission schemes or other schemes involving economic measures.

Clause 70 provides that the conditions of a licence may require the holder to provide financial assurances.

Clause 71 provides that the conditions of a licence may require the holder to carry out remediation work in connection with the activities or works authorised or controlled by the licence.

Clause 72 provides that the conditions of a licence may require the holder to take out and maintain a policy of insurance for the payment of costs for clean-up action and any claims for compensation or damages resulting from pollution in connection with the activity or work authorised or controlled by the licence.

Clause 73 provides that a condition of a licence may provide that an authorisation is not to take effect until a specified time, or until a financial assurance is provided.

Clause 74 provides that a condition of a licence may require the holder to enter into or arrange for a positive covenant under section 88E of the *Conveyancing Act 1919* and to arrange for its registration.

Clause 75 provides that a condition of a licence may require the holder to provide information relating to dealing with waste, prepare an environmental waste management plan and comply with any industry waste reduction plan (within the meaning of the *Waste Minimisation and Management Act 1995*). The proposed section also provides that conditions may be imposed relating to waste received at licensed premises, the storage, handling, treatment and processing of waste and the transportation of waste.

Clause 76 provides for conditions relating to the post-closure requirements for waste facilities or other licensed premises.

Part 3.6 Duration and review of licences

Clause 77 provides that a licence remains in force until it is suspended, revoked or surrendered, and, while it remains in force, it is subject to any variations made to it.

Clause 78 requires a review of each licence at least once every 3 years after the issue of the licence.

Part 3.7 Suspension, revocation and surrender of licences

Clause 79 gives the appropriate regulatory authority the power to suspend or revoke a licence by notice in writing given to the holder of the licence. The proposed section also outlines the procedure which must be followed in

suspending or revoking a licence and lists some reasons why a licence may be suspended or revoked.

Clause 80 provides for the surrender of a licence upon the written application of the licence holder.

Clause 81 provides that a licence may be suspended or revoked, or the surrender of a licence may be approved, unconditionally or subject to conditions as imposed by the appropriate regulatory authority.

Clause 82 gives the Minister the power to, by notice in writing, revoke or suspend the licence of a person who is convicted of a major pollution offence. The proposed section defines a major pollution offence as an offence the commission of which has caused or is likely to cause harm to the environment.

Part 3.8 Miscellaneous

Clause 83 deals with the criteria which the appropriate regulatory authority may take into consideration in determining whether an applicant is a fit and proper person.

Clause 84 provides that the decision of the appropriate regulatory authority regarding a licence operates from the date of the decision or another date specified by the appropriate regulatory authority. The proposed section also makes special provision for the operation of a decision to vary, suspend or revoke a licence.

Clause 85 deals with the situation where the holder of a licence dies.

Clause 86 provides that the appropriate regulatory authority may, by notice in writing given to the occupier of any premises who carries out work at those premises in contravention of proposed Part 3.2, require the occupier to remove that work or to restore the premises to their previous state.

Clause 87 deals with licensing arrangements for waste facilities that are required to be licensed, that are landfill sites and that are used for the purposes of the disposal of putrescible waste.

Clause 88 requires the occupier of waste facilities that are required to be licensed under the proposed Chapter to pay to the EPA a contribution as prescribed by the regulations. The proposed section also provides that the EPA may direct the manner in which the contribution is to be paid and the regulations may provide for the amounts payable and other surrounding matters.

Chapter 4 Environment protection notices

Part 4.1 Preliminary

Clause 89 defines *clean-up notice*, *compliance cost notice*, *prevention notice* and *prohibition notice*.

Clause 90 states that environment protection notices consist of clean-up notices, prevention notices and prohibition notices.

Part 4.2 Clean-up notices

Clauses 91–93 provide that the polluter, the occupier of premises suspected of causing a pollution incident or a public authority may be directed by the appropriate regulatory authority or by the EPA to take such clean-up action as is specified in a clean-up notice. Failure to comply with a clean-up notice by an occupier of premises or a polluter is an offence. Clean-up directions may be given orally or by notice in writing.

Clause 94 enables a regulatory authority to recover the administrative costs of preparing and giving clean-up notices.

Part 4.3 Prevention notices

Clause 95 provides that an activity is carried on in an *environmentally unsatisfactory manner* if certain listed factors exist.

Clause 96 provides that when the appropriate regulatory authority reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner, it may direct the occupier of the premises on which the activity is being carried out or the person carrying on the activity to take such action as is specified in the prevention notice.

Clause 97 provides that it is an offence to fail to comply with such a prevention notice.

Clause 98 provides that if a person does not comply with a prevention notice, the appropriate regulatory authority may take action to cause the notice to be complied with.

Clause 99 outlines the time at which a prevention notice begins to operate.

Clause 100 enables a regulatory authority to recover the administrative costs of preparing and giving prevention notices.

Part 4.4 Prohibition notices

Clause 101 provides that, on recommendation by the EPA, the Minister may direct a polluter or the occupier of premises suspected of causing a pollution incident to cease carrying on the activity which is causing the pollution.

Clause 102 provides that it is an offence to fail to comply with such a prohibition notice.

Clause 103 provides that if a person does not comply with a prohibition notice, the EPA may take action to cause the notice to be complied with.

Part 4.5 Compliance cost

Clauses 104 and **105** provide that the cost of causing a clean-up notice, prevention notice or prohibition notice to be complied with (in cases where a person fails to comply with the notice) is recoverable from the person who was the subject of the notice. Such costs may be specified in a compliance cost notice, and any amounts unpaid are recoverable as a debt in court.

Clause 106 provides that a compliance cost notice may be registered in relation to any land owned by the person who is the subject of that notice.

Clause 107 creates, on registration of a compliance cost notice under proposed section 106, a charge on the land in relation to which the notice is registered to secure the payment to the regulatory authority of the amount specified in the notice.

Part 4.6 Miscellaneous

Clause 108 provides that more than one notice under a provision of the proposed Chapter may be given to the same person.

Clause 109 provides that notices may be issued in respect of matters occurring outside the State which affect the environment of this State.

Clause 110 provides that a notice given under the proposed Chapter may be revoked or varied by a subsequent notice or notices, by modification of its terms and specifications or by extending the time for compliance.

Clause 111 gives a regulatory authority or public authority (by its employees, agents or contractors) the power to enter any premises for the purpose of exercising its functions under the proposed Chapter.

Clause 112 makes it an offence to wilfully delay or obstruct a person carrying out any action in compliance with an environment protection notice

or a public authority taking clean-up action under proposed Part 4.2 or a regulatory authority that is taking action under proposed sections 98 or 103.

Clause 113 makes it an offence to make a false or misleading statement in any report required under the proposed Chapter and lodged with a regulatory authority.

Chapter 5 Environment protection offences

Part 5.1 Classification of offences

Clause 114 provides that tier 1 offences are offences under Part 5.2, tier 2 offences are all other offences under the proposed Act or the regulations and tier 3 offences are tier 2 offences that may be dealt with by way of penalty notice.

Part 5.2 Tier 1 offences

This Part deals with those offences classified as tier 1 offences.

Clause 115 provides that it is an offence to dispose of waste in a manner that harms or is likely to harm the environment. The clause also provides that it is a defence if the waste was disposed of with lawful authority.

Clause 116 provides that it is an offence to cause any substance to leak, spill or otherwise escape in a manner that harms or is likely to harm the environment. The clause also provides that it is a defence if the leak, spill or other escape was caused with lawful authority.

Clause 117 provides that it is an offence to cause any controlled substance (within the meaning of the *Ozone Protection Act 1989*) to be emitted into the atmosphere in contravention of the regulations under that Act and in a manner that harms or is likely to harm the environment.

Clause 118 provides that it is a defence for tier 1 offences if it is established that the commission of the offence was due to causes over which the person had no control and that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

Clause 119 provides that the maximum penalty for a person convicted of committing a tier 1 offence is \$1,000,000, in the case of a corporation, and \$250,000 or 7 years imprisonment or both, in the case of an individual.

Part 5.3 Water pollution

Clause 120 prohibits the polluting of any waters, the causing of waters to be polluted and the permitting of waters to be polluted.

Clause 121 provides that the regulations may regulate the carrying out of an activity that pollutes waters, thus providing an exception to the general prohibition.

Clause 122 provides that it is also a defence to contravening the general prohibition if the polluter establishes that the pollution was regulated by an environment protection licence and the conditions of that licence were not contravened.

Clause 123 outlines the maximum penalties for persons convicted of committing an offence under this Part.

Part 5.4 Air pollution

Division 1 General

Clauses 124–126 provide that it is an offence for the occupier of premises to operate a plant in or on those premises, carry out maintenance work on such a plant, or deal with materials in or on those premises in such a manner as to cause air pollution from those premises.

Clause 127 provides that to prove that air pollution was caused from premises, it is sufficient to prove that air pollution was caused on the premises.

Clause 128 provides that the occupier of premises must not carry on any activity, or operate any plant, in or on the premises in such a manner as to cause or permit the emission of air impurities in excess of the standard of concentration and/or the rate prescribed by the regulations in respect of any such activity.

Clause 129 provides that it is an offence for the occupier of licensed premises to cause or permit the emission of any offensive odour from those premises. The clause also provides that it is a defence if the odour was emitted in accordance with the conditions of a relevant environment protection licence or if the only persons affected were persons engaged in the management or operation of the premises.

Clause 130 provides for the prevailing of certain proposed sections in this Part over other sections.

Clause 131 provides that the proposed Division does not apply to residential premises.

Clause 132 outlines the maximum penalties for persons convicted of committing an offence under this Division.

Division 2 Air pollution from fires

Clause 133 allows the EPA to prohibit the burning of fires by order published in a daily newspaper or broadcast by radio or television. Such an order may be limited in any way specified and has effect for such period as specified.

Clause 134 allows an authorised officer to, by notice in writing, direct a person to extinguish a fire if the officer is of the opinion that the fire is prohibited or air pollution from the fire is injurious to the health of any person or is causing or is likely to cause serious discomfort to any person.

Clause 135 makes it an offence to fail to comply with an order or notice under the proposed Division.

Part 5.5 Noise pollution

Clause 136 makes it an offence to sell an article of a class prescribed by the regulations, if, when in use or operation, the article emits noise that is in excess of the prescribed level.

Clause 137 makes it an offence to sell an article of a class prescribed by the regulations if the article is not fitted in the prescribed manner with noise control equipment, or if the noise control equipment with which it is fitted has not been maintained in accordance with the regulations. It is a defence if the person took all reasonable steps to ensure that the equipment was maintained as required by the regulations.

Clause 138 provides that it is a defence if the person establishes that the offence was committed in the course of the person's employment by another person or that on the sale of the article, the person was paid by way of commission by a person other than the owner of the article.

Clause 139 makes it an offence to operate any plant (other than control equipment) in such a manner as to cause the emission of noise from premises if that noise was caused by the occupier's failure to maintain the plant in an efficient condition or operate the plant in a proper and efficient manner.

Clause 140 makes it an offence to deal with materials in such a manner as to cause the emission of noise from the premises if that noise was caused by the occupier's failure to deal with the materials in a proper and efficient manner.

Clause 141 outlines the maximum penalties for persons convicted of committing an offence under the proposed Part.

Part 5.6 Land pollution

Clause 142 defines *land* and *relevant public authority*.

Clause 143 makes it an offence to transport waste to land that cannot lawfully be used as a waste facility.

Clause 144 makes it an offence to permit land to be used as a waste facility if it cannot lawfully be used for that purpose.

Clause 145 makes it an offence to litter. The clause also provides for certain defences.

Clause 146 places liability on the driver or the owner of a motor vehicle from which litter is deposited in a public place. The clause provides for exceptions for passenger vehicles, stolen vehicles, situations where the owner is not the driver, and situations where the driver is not the offender.

Part 5.7 Duty to notify pollution incidents

Clause 147 describes *material harm* to the environment as harm involving actual or potential harm to the health or safety of human beings or to ecosystems or harm resulting in actual or potential loss or property damage of more than \$10,000.

Clause 148 provides for notification to be given to the appropriate regulatory authority of any pollution incident occurring in the course of an activity which causes or threatens the environment with material harm.

Clause 149 provides that the manner or form of the notification may be prescribed by the regulations.

Clause 150 outlines the relevant information required to be given about any pollution incident. This includes the time, date, nature, duration and location of the incident.

Clause 151 provides that notification is not required if the person is aware that the incident has already come to the notice of the person or authority required to be notified, or if the incident is an ordinary result of action required to be taken to comply with an environment protection licence, an environment protection notice or other requirement of the proposed Act.

Clause 152 makes it an offence to contravene this Part and outlines the maximum penalties for doing so.

Clause 153 requires a person to give notification of a pollution incident even though that notification might incriminate the person or make the person liable to a penalty. However, such notification is not admissible in evidence against the person for an offence or for the imposition of a penalty.

Part 5.8 Motor vehicles

Division 1 Preliminary

Clause 154 defines the terms *authorised officer*, *excessive air impurities*, *mass*, *petrol*, *prescribed anti-pollution device* and *unleaded petrol*. The clause also describes when a motor vehicle *emits excessive air impurities*.

Division 2 Sale and maintenance of motor vehicles

Clause 155 makes it an offence to sell a motor vehicle that emits excessive air impurities.

Clause 156 makes it an offence to sell a motor vehicle that is required to be fitted with a prescribed anti-pollution device, but that is not fitted in the prescribed manner with such a device.

Clause 157 makes it an offence to remove, disconnect or impair an anti-pollution device fitted to a motor vehicle. The clause also makes it an offence to make any adjustment or modification to an anti-pollution device, or any part of a motor vehicle, that results in the emission of excessive air impurities by the motor vehicle.

Clause 158 makes it an offence to service or repair a motor vehicle in a manner prohibited by the regulations.

Clause 159 makes it an offence to sell a motor vehicle that is required to be serviced, maintained or adjusted in a specified manner, but that has not been serviced, maintained or adjusted in that manner.

Clause 160 outlines the defences to the offences in this Division.

Clause 161 provides that an authorised officer may, by notice in writing to the owner of a motor vehicle which the officer reasonably suspects emits excessive air impurities, direct the owner to service or repair the vehicle. The clause also provides that it is an offence to use the vehicle unless the notice has been complied with. However, the vehicle may be driven for limited purposes.

Clause 162 outlines the Minister's power to prohibit, by written order, the use of all or any class of motor vehicles, in any area specified in the order and at all times, or during particular times, as are specified.

Division 3 Unleaded petrol

Clause 163 makes it an offence to sell petrol as unleaded petrol if it does not comply with the requisite description of unleaded petrol.

Clause 164 makes it an offence to sell a motor vehicle which, when in operation using unleaded petrol, does not meet the prescribed road octane requirement when tested.

Division 4 Registration of motor vehicles

Clause 165 provides that the EPA may, by notice in writing to the owner of the motor vehicle, suspend the vehicle's registration under the *Traffic Act 1909*, if the vehicle has not been presented for inspection in accordance with the requirements of a notice under the proposed Act or if it is in such a condition that its sale or use would constitute an offence.

Clause 166 provides that the EPA may, by notice in writing to the RTA, prohibit the registration of a particular vehicle if it is satisfied that the vehicle is in such a condition that the sale or use of the vehicle would constitute an offence. The EPA may also remove any such prohibition if, upon inspection and testing of the vehicle, it is satisfied that the vehicle is no longer in such a condition.

Part 5.9 General offences

Clause 167 provides that control equipment must be maintained and operated efficiently by the owner of the premises upon which the equipment is installed.

Clause 168 makes it an offence to attempt to commit or conspire to commit an offence, or to aid, abet, counsel or procure another person to commit an offence.

Clause 169 deals with offences by corporations.

Clause 170 provides that a person is guilty of an offence in respect of any act or omission occurring outside the State if any substance has been caused to come into the State, if that substance causes or is likely to cause harm to the environment and if the act or omission would have constituted an offence if it had occurred within the State.

Chapter 6 Environmental audits

Part 6.1 Preliminary

Clause 171 sets out the relationship of this Chapter with the other provisions of the Act.

Clause 172 describes an environmental audit as a periodic documented evaluation of any activity, to provide information to the managers of the activity to enable them to assess the activity's compliance with environmental laws, codes of practice and policies and determine whether any improvements may be made to the way the activity is carried on.

Clause 173 provides that regulations may be made in relation to the accreditation of environmental auditors and the carrying out of environmental audits by those auditors.

Part 6.2 Mandatory environmental audits

Clause 174 provides that mandatory environmental audits may be required under conditions of a licence and that those conditions must specify the purpose of the audit.

Clause 175 provides that an appropriate regulatory authority may only impose conditions requiring the undertaking of a mandatory environmental audit in certain circumstances involving a contravention of the licence.

Clause 176 provides that an audit report must be accompanied by a declaration from the holder of a licence certifying that the holder has provided truthful and all relevant information to the auditor and a declaration from the auditor certifying that the report is accurate and includes all relevant information.

Clause 177 provides that providing false or misleading information to an auditor, withholding relevant information from the auditor, including false or misleading information in an audit report, failing to include relevant information in an audit report and failing to retain any written documentation required to be prepared in connection with a mandatory audit are all offences under the proposed Act.

Clause 178 provides that a person must provide information in compliance of this Part even if the information might incriminate the person.

Clause 179 provides that the information provided in connection with a mandatory environmental audit may be taken into consideration and/or used

by the appropriate regulatory authority. The information may also be admissible in evidence in any prosecution of the holder of a licence for any offence.

Part 6.3 Voluntary environmental audits

Clause 180 outlines the nature of a voluntary environmental audit.

Clauses 181 and **182** provide that documents prepared for the sole purpose of a voluntary environmental audit are *protected documents* in the sense that they are not admissible in evidence against any person in any proceedings connected with the administration or enforcement of the environment protection legislation, and may not be inspected or otherwise obtained by any authority or person for any purpose connected with the administration or enforcement of that legislation.

Clause 183 provides that documents may cease to be *protected documents* if the person relying on the protection uses any of the documents in any proceedings connected with the administration or enforcement of the environment protection legislation (except proceedings undertaken for the purposes of establishing that a document is a *protected document*).

Chapter 7 Investigation

Part 7.1 Preliminary

Clause 184 outlines the purposes for which powers may be exercised under this Chapter.

Clause 185 provides that this Chapter does not affect any function under any other Chapter of the Act or under any other Act nor conditions that can be attached to an environment protection licence.

Clause 186 extends the Chapter to the enforcement of the *Waste Minimisation and Management Act 1995* and the *Ozone Protection Act 1989*.

Part 7.2 Authorised officers

Clause 187 provides for the appointment by the EPA or any other regulatory authority of a person as an authorised officer.

Clause 188 outlines the scope of the authority of such an authorised officer.

Clause 189 provides that every authorised officer will be given an identification card by the appointing authority.

Part 7.3 Powers to require information or records

Clauses 190–195 provide that the EPA, other regulatory authorities and authorised officers may, by notice in writing served on a person, require the person to provide required information and records. Any such notice must specify the manner in which and a time within which information and records are required to be furnished. The person will only be required to furnish records that are in that person's possession or that are within the person's power to obtain lawfully.

Part 7.4 Powers of entry and search of premises

Clauses 196 and 197 provide that authorised officers may enter certain premises, by themselves or with the aid of police officers. Permission from the occupier or a search warrant is necessary for entry to residential premises.

Clause 198 outlines the actions which authorised officers may undertake after entering the premises.

Clause 199 outlines the procedure for obtaining search warrants.

Clause 200 provides that the owner or occupier of premises being entered may be required to provide reasonable assistance and facilities to the authorised officer.

Clauses 201 and 202 provide that care must be taken in the exercise of a power to enter or search any premises, and any damage caused must be compensated.

Part 7.5 Powers to question and to identify persons

Clauses 203 and 204 outline the powers of authorised officers to require certain persons to answer questions and provide their name and address. Failure to provide such information may result in arrest.

Part 7.6 Powers with respect to vehicles, vessels and other articles

Clauses 205–210 outline the power of authorised officers to inspect and test any article, take possession of any article to measure its noise level or its noise emission characteristics, require the owner or person in possession of an article to have the article tested, stop a vehicle for inspection or testing and require information about an article.

Part 7.7 General

Clause 211 outlines as offences failing to comply with a requirement made under this Chapter, providing false and misleading information, wilfully delaying or obstructing an authorised officer and impersonating an authorised officer.

Clause 212 provides that a person must be warned that failure to comply with a requirement under this Chapter to furnish a record or information or to answer a question is an offence, and provides that the person is not excused from complying on the ground of self-incrimination. The clause however makes information or the answer to a question inadmissible in proceedings against a natural person if the person objects or is not warned of his or her right to object.

Chapter 8 Criminal and other proceedings

Part 8.1 Preliminary

Clause 213 applies the Chapter to proceedings under the proposed Act and extends the Chapter to proceedings under the *Waste Minimisation and Management Act 1995* and the *Ozone Protection Act 1989*.

Part 8.2 Proceedings for offences

Division 1 Proceedings for offences generally

Clauses 214 and **215** outline the proceedings to be undertaken in relation to offences under the proposed Act or the regulations.

Clause 216 outlines the time within which summary proceedings may be commenced.

Division 2 Who may institute proceedings for offences

Clauses 217–221 outline the authorities and other persons who may institute proceedings in relation to offences against the proposed Act or the regulations (except by way of the issue of a penalty notice).

Division 3 Penalty notices (tier 3 offences)

Clause 222 defines a *penalty notice offence* as an offence against the proposed Act or the regulations that is prescribed by the regulations (but is not a tier 1 offence).

Clause 223 defines a *penalty notice* as a notice informing a person that the penalty payable may be paid within the time specified in the notice and to the person specified in the notice, otherwise the offence will be dealt with by a court.

Clause 224 deals with service of penalty notices.

Clause 225 outlines the consequences if a penalty is paid in accordance with this Division.

Clause 226 defines an *authorised officer*.

Clause 227 provides that the regulations may prescribe the penalty payable, but any such penalty may not exceed \$1,500 nor the maximum penalty that may be imposed by a court on a conviction for the offence.

Clause 228 provides that penalty notices may be withdrawn. The clause also provides that any amount that was payable under the notice ceases to be payable and any amount that has already been paid is repayable to the person.

Clause 229 provides that the Division does not limit the operation of this or any other Act in relation to proceedings undertaken for offences.

Division 4 Restraining orders

Clauses 230–240 outline the nature of restraining orders, the procedure for applying for and the making of restraining orders in relation to the defendant's property. A restraining order if registered is a charge on the defendant's property.

Division 5 Sentencing

Clauses 241 and 242 specify the matters to be taken into account in sentencing and set out other sentencing powers of the court.

Part 8.3 Court orders in connection with offences

Clauses 243–249 provide that a court may order a person who is found to have committed an offence to take such steps as are specified in the order to stop any harm to the environment caused by the commission of the offence, to make good any resulting environmental damage or to prevent the continuance or recurrence of the offence. If a public authority or a person has, directly or indirectly, by reason of the commission of the offence, incurred costs and expenses, the court may order the offender to repay those costs and

expenses or pay compensation. The court may also order an offender to pay any costs and expenses of investigation and a penalty of an amount not greater than the amount of any monetary benefits acquired by the offender as a result of the commission of the offence.

Clause 250 provides that the court may make additional orders regarding an offence, fix a period for compliance and impose any other necessary requirements. If the order is to publicise or notify specified persons of the offence, the offender will be liable for any associated costs.

Clause 251 makes it an offence to fail to comply with an order under this Part.

Part 8.4 Civil proceedings to restrain breaches of Act or harm to environment

Clause 252 provides that the EPA may bring proceedings in the Land and Environment Court for an order to restrain a breach or threatened breach of the proposed Act or the regulations.

Clause 253 provides for “third-party appeals” by enabling any person to bring proceedings in the Land and Environment Court for an order to restrain a breach or threatened breach of any Act or statutory rule that is causing or is likely to cause harm to the environment.

Part 8.5 Evidentiary provisions

Clause 254 defines the terms *designated officer*, *information* and *instrument*.

Clause 255 deals with proof of threshold tests for scheduled activities.

Clause 256 provides that proof of a lawful or reasonable excuse lies on the defendant.

Clause 257 provides that the occupier of premises at or from which any pollution occurs is presumed to have caused the pollution, unless the contrary is established.

Clause 258 provides that the holder of a licence under the proposed Act in respect of any premises during a particular time is taken to be the occupier of the premises during that time.

Clause 259 provides that no proof is required of the appointment of any staff of the EPA, a local authority or the appointment of the marine authority.

Clause 260 deals with the admissibility of documentary evidence.

Clause 261 provides that certain signed documents certifying certain matters are admissible as evidence and are prima facie evidence of the matters so certified.

Clause 262 deals with the appointment of appropriately qualified persons as analysts and the admissibility of certificates prepared by such analysts in evidence.

Part 8.6 Noise—special provisions

Clauses 263–283 continue provisions relating to noise control notices by regulatory authorities, noise abatement orders by courts and noise abatement directions by police and other authorised officers. The clauses also set out the powers of police officers to deal with complaints of offensive noise.

Chapter 9 Miscellaneous

Part 9.1 Exemptions

Clause 284 provides that the EPA may exempt any person or class of persons from any specified provisions of the proposed Act or the regulations, and outlines the circumstances in which the EPA may do so.

Clause 285 provides that acts or omissions committed by members of a fire brigade, a bush fire brigade, the State Emergency Service or other officially accredited rescue units are exempt from the proposed Act.

Clause 286 provides that the regulations may provide for exemptions.

Part 9.2 Appeals

Clauses 287–291 deal with appeals regarding licence applications and licences, notices under clause 86, prevention notices, noise control notices and decisions made under the regulations.

Clause 292 deals with the determination of appeals.

Part 9.3 Economic measures

Clause 293 provides that the EPA may develop and implement schemes involving economic measures as a means of achieving cost-effective environmental regulation.

Clause 294 outlines the elements of a tradeable emission scheme.

Clause 295 provides that the regulations may make provision in respect of schemes involving economic measures.

Part 9.4 Financial assurances

Clauses 296 and **297** outline the purpose of the Part and define the *conditions* of an environment protection licence.

Clauses 298–301 deal with financial assurances. The conditions of an environmental protection licence may require the holder of the licence to provide such a financial assurance, but before such a condition is imposed, the regulatory authority must have regard to certain matters. The amount of the financial assurance must not be greater than the total cost of carrying out the relevant work or program.

Clauses 302–304 provide that a regulatory authority may carry out any work or program covered by any financial assurance if the holder of the licence fails to do so, and it may recover the costs of that work by making a claim on or realising the financial assurance or part of it. The requirement to provide financial assurance lapses once the regulatory authority is satisfied that the work for which the financial assurance was required has been satisfactorily carried out.

Clause 305 deals with the liability of a regulatory authority and any parties which carry out work under its supervision or at its direction.

Clause 306 provides that a financial assurance may be called on and used without affecting the liability of the holder of the licence to any penalty for an offence or any other action that might be taken in relation to any circumstance to which the assurance relates.

Clause 307 provides that the Land and Environment Court has jurisdiction to determine disputes about calling on or using a financial assurance.

Part 9.5 Public register

Clauses 308 and **309** provide that each regulatory authority is required to keep a public register which records details of the processing of licence applications (including the granting of any licences), copies of any environment protection notice or noise control notice issued by that authority and certain other information. A copy of the register is to be available for public inspection.

Part 9.6 Formal inquiries

Clauses 310–314 provide for the conduct of inquiries by the EPA into any matter relating to protection of the environment. Such inquiries are to be held in public and in accordance with procedures outlined in this Part. At the end of such an inquiry, a report is to be prepared and made public.

Part 9.7 Other miscellaneous provisions

Clause 315 provides that the proposed Act binds the Crown.

Clause 316 deals with the resolution of disputes between the EPA and public authorities.

Clause 317 provides that if, in the opinion of the Governor, the environment is harmed or is likely to be harmed because of the failure of a public body to exercise a statutory function or because of the manner in which the body exercises such a function, the Governor may, by proclamation, appoint another person to exercise those functions.

Clause 318 provides that it is an offence to disclose any information relating to any industrial, agricultural or commercial secrets or working processes and obtained in connection with the administration or execution of the proposed Act or the regulations. The clause authorises the EPA to disclose certain information which does not constitute a trade secret or working process.

Clause 319 outlines the methods by which any notice or instrument may be served on a person.

Clause 320 outlines the effect of the proposed Act on other rights, remedies and proceedings.

Clause 321 empowers the making of regulations for the purposes of the proposed Act, including the specific regulation-making powers set out in Schedule 2.

Clause 322 effects the repeal of the Acts set out in Schedule 3.

Clause 323 is a formal provision giving effect to the amendment of the Acts and regulations set out in Schedule 4.

Clause 324 is a formal provision giving effect to the savings, transitional and other provisions set out in Schedule 5.

Clause 325 provides for a review of the proposed Act after 5 years.

Schedule 1 Schedule of EPA-licensed activities

The Schedule lists the activities for which an environment protection licence is required.

Schedule 2 Regulation-making powers

The Schedule contains specific regulation-making powers for the purposes of the proposed Act.

Schedule 3 Repeals

The Schedule repeals the following Acts:

Clean Air Act 1961 No 69

Clean Waters Act 1970 No 78

Pollution Control Act 1970 No 95

Noise Control Act 1975 No 35

Environmental Offences and Penalties Act 1989 No 150

Schedule 4 Amendments

The Schedule amends a number of Acts, including the following:

Environmental Planning and Assessment Act 1979

The Act is amended:

- (a) to continue the proposed provisions relating to integrated development on the commencement of the environmental licensing provisions, and
- (b) to ensure public consultation for matters requiring an environmental licence that are not designated development by declaring that they are advertised development, and
- (c) to make other minor and consequential amendments.

Protection of the Environment Administration Act 1991

The Act is amended:

- (a) to extend the time for preparation of state of the environment reports from every 2 years to every 3 years, and
- (b) to enable the Minister to direct the EPA to refer to the Minister for determination the environmental licensing function of the EPA with respect to a particular matter, and
- (c) to provide for the appointment of one of the appointed members of the Board as Deputy Chairperson of the Board instead of the Director-General of the EPA holding that office, and

- (d) to enable the Board of the EPA to appoint committees to assist it in the exercise of its functions, and
- (e) to make consequential and other minor changes.

Subordinate Legislation Act 1989

The Act is amended to exclude regulations that implement protection of the environment policies (and certain other matters) from the regulatory impact provisions of the Act as a result of similar requirements imposed in connection with the preparation of those policies (or other matters).

Schedule 5 Savings, transitional and other provisions

The Schedule contains relevant savings, transitional and other provisions consequent on the enactment of the proposed Act.

Dictionary

The Dictionary contains definitions of words and expressions used in the proposed Act.