

Protection of the Environment Operations Act 1997 No 156

[1997-156]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)
 - [Courts Legislation Miscellaneous Amendments Act 2002 No 99](#) (not commenced — to commence on 7.7.2003)
 - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
- **See also**
 - [Food Bill 2003](#)

Authorisation

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Protection of the Environment Operations Act 1997 No 156



New South Wales

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Protection of the Environment Operations Act 1997 No 156



New South Wales

An Act to protect the environment; to replace other environment protection legislation; and for other purposes.

Chapter 1 Preliminary

1 Name of Act

This Act is the *Protection of the Environment Operations Act 1997*.

2 Commencement

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

3 Objects of Act

The objects of this Act 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 provide increased opportunities for public involvement and participation in environment protection,
- (c) to ensure that the community has access to relevant and meaningful information about pollution,
- (d) to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:
 - (i) pollution prevention and cleaner production,
 - (ii) the reduction to harmless levels of the discharge of substances likely to cause harm to the environment,
 - (ia) the elimination of harmful wastes,
 - (iii) the reduction in the use of materials and the re-use or recycling of materials,

- (iv) the making of progressive environmental improvements, including the reduction of pollution at source,
- (v) the monitoring and reporting of environmental quality on a regular basis,
- (e) to rationalise, simplify and strengthen the regulatory framework for environment protection,
- (f) to improve the efficiency of administration of the environment protection legislation,
- (g) to assist in the achievement of the objectives of the *Waste Avoidance and Resource Recovery Act 2001*.

4 Definitions

Expressions used in this Act have the meanings set out in the Dictionary at the end of this Act.

5 Scheduled activities

- (1) **Listing of activities** The activities listed in Schedule 1 are ***scheduled activities*** for the purposes of this Act.
- (2) **Limitations** If Schedule 1 so provides, a specified activity is a scheduled activity for the purposes of this Act only in specified circumstances, or only in specified areas or only under specified conditions.
- (3) **Change in listings** The regulations may amend or replace Schedule 1. The regulations may contain provisions of a savings or transitional nature consequent on the amendment or replacement of Schedule 1.

6 Appropriate regulatory authority

- (1) **EPA** The EPA is the appropriate regulatory authority for the purposes of this Act, except as provided by this section.
- (2) **Local councils and other local authorities** A local authority is the appropriate regulatory authority for non-scheduled activities in its area, except in relation to:
 - (a) the exercise of functions under Chapter 3 (Environment protection licences), or
 - (b) premises defined in an environment protection licence as the premises to which the licence applies, and all activities carried on at those premises, or
 - (c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise, or
 - (d) a matter for which a public authority (other than the local authority) is declared under subsection (3) to be the appropriate regulatory authority.

- (3) **Public authorities declared by regulation** A public authority is the appropriate regulatory authority for a matter for which it is declared to be the appropriate regulatory authority by the regulations (subject to such conditions or limitations as are specified in the regulations). The regulations under this subsection:
- (a) may declare a local authority to be the appropriate regulatory authority in respect of non-scheduled activities excluded under subsection (2), but
 - (b) may not declare any public authority to be the appropriate regulatory authority for activities carried on by that public authority.
- (4) **Limitation to local area** A function conferred or imposed by or under this Act on a local authority, in its capacity as the appropriate regulatory authority or otherwise, may be exercised only in or in relation to the local authority's area.

Note—

The marine authority is given jurisdiction in connection with noise control notices and noise abatement directions relating to vessels—see sections 263 and 275. Police officers are also given powers in connection with noise and certain other matters.

7 General relationship with other Acts

- (1) **Other Acts not affected** Nothing in this Act affects any of the provisions of any other Act or any statutory rules, or takes away any powers vested in any person or body by any other Act or statutory rules.
- (2) **This Act generally prevails** However (subject to subsection (3)):
- (a) this Act prevails over any other Act or statutory rule to the extent of any inconsistency, and
 - (b) a regulation made under this Act prevails over any other statutory rule to the extent of any inconsistency.
- (3) **Marine Pollution Act 1987 prevails** The provisions of or made under the *Marine Pollution Act 1987* (except Part 4), in their application to State waters within the meaning of that Act, prevail over this Act, to the extent of any inconsistency.

8 Notes

Notes in the text of this Act do not form part of this Act.

Chapter 2 Protection of the environment policies

Part 2.1 Introduction

9 Definitions

In this Chapter:

environment protection goal means a goal:

- (a) that relates to desired environmental outcomes, and
- (b) that guides the formulation of strategies for the management of human activities that affect the environment.

environment protection guideline means a guideline that gives guidance on possible means for achieving desired environmental outcomes.

environment protection protocol means a protocol that relates to the process to be followed in measuring environmental characteristics to determine:

- (a) whether a particular standard or goal is being met or achieved, or
- (b) the extent of the difference between the measured characteristic of the environment and a particular standard or a particular goal.

environment protection standard means a standard that consists of identifiable or quantifiable characteristics of the environment against which environmental quality can be assessed.

impact statement means an impact statement prepared by the EPA relating to a draft policy.

policy means a protection of the environment policy.

Note—

The Dictionary defines a **protection of the environment policy** as a protection of the environment policy made by the Governor under this Chapter and in force. The abbreviation PEPs is used in headings to refer to those policies.

10 Purpose of PEPs

Protection of the environment policies may be made for the purpose of declaring policies to be observed with respect to protecting the environment in New South Wales and, in particular, for the purpose of:

- (a) furthering the objectives of the EPA as set out in section 6 of the [Protection of the Environment Administration Act 1991](#),
- (b) managing the cumulative impact on that environment of existing and future human activities.

11 Contents of PEPs

- (1) A policy must specify one or more of the following:
 - (a) an environment protection goal,

- (b) an environment protection standard,
 - (c) an environment protection guideline,
 - (d) an environment protection protocol.
- (2) A policy containing an environment protection goal may specify a program by which that goal is to be achieved, and performance indicators by which the achievement of that goal is to be measured.
- (3) A policy may be made for the purpose of implementing in New South Wales a national environment protection measure.

Note—

National environment protection measure is defined in the Dictionary.

- (4) A policy may be made in respect of the following:
- (a) the whole or any part of the State,
 - (b) the environment generally or any part of it,
 - (c) any activity that may impact, or has impacted, on the environment,
 - (d) any form of pollution,
 - (e) any aspect of waste,
 - (f) any kind of technology or process,
 - (g) any kind of chemical or other substance that may impact, or has impacted, on the environment,
 - (h) any matter in respect of which national environment protection measures may be made.

Part 2.2 Draft policies

12 Preparation of draft PEP

- (1) The EPA may from time to time prepare draft policies in accordance with this Chapter.
- (2) The Minister may direct the EPA to prepare a draft policy about a particular matter in accordance with this Chapter. The EPA must comply with the direction.

13 General considerations in preparing draft PEP

- (1) In preparing a draft policy, the EPA must take into consideration:
 - (a) the environmental, economic and social impact of the policy, and

- (b) the simplicity, efficiency and effectiveness of the administration of the policy, and
- (c) any environmental planning instruments that the EPA considers relevant (including any such draft instruments that are publicly available and are still current), and
- (d) any national environment protection measures that the EPA considers relevant (including any such draft measures that are publicly available and are still current), and
- (e) the principles of environmental policy set out in the Intergovernmental Agreement on the Environment, as in force for the time being, and
- (f) any regional environmental differences within New South Wales.

(2) The EPA may take other matters into consideration.

Part 2.3 General procedure for preparing draft policies

14 Application of Part

This Part applies to the preparation of a draft policy, except where Part 2.4 applies.

15 EPA to give notice of intention to prepare draft PEP

- (1) If the EPA intends or is directed to prepare a draft policy, the EPA must publish a notice:
 - (a) stating that the EPA intends or has been directed to prepare a draft policy, and
 - (b) specifying the subject of the draft policy.
- (2) The notice must:
 - (a) be published in the Gazette, and
 - (b) also be published, on at least 2 occasions, in a newspaper circulating in the State, and
 - (c) if it is intended that the policy will specifically affect only a particular region of the State—also be published, on at least 2 occasions, in a newspaper circulating in the region.

16 EPA to prepare draft PEP and impact statement

- (1) The EPA:
 - (a) may prepare a draft of the policy, and
 - (b) if it does so, must prepare an impact statement relating to the draft policy.
- (2) The impact statement is to include all of the following:

- (a) the desired environmental outcomes,
- (b) the reasons for the policy and the environmental impact of not making the policy,
- (c) a statement of the alternative methods of achieving the desired environmental outcomes and the reasons why those alternatives have not been adopted,
- (d) an identification and assessment of the economic and social impact on the community (including industry) of making the policy,
- (e) a statement of the manner in which any regional environmental differences in New South Wales have been addressed in the development of the policy,
- (f) the intended date for the making of the policy,
- (g) the timetable (if any) for the implementation of the policy,
- (h) the transitional arrangements (if any) in relation to the policy.

17 Public consultation on draft PEP and impact statement

(1) Before a policy is made, the EPA must publish a notice:

- (a) stating how copies of the draft policy and the impact statement may be obtained, and
- (b) inviting submissions to the EPA on the draft policy, or on the impact statement, within a specified period.

The notice must be published at least 30 days after the day on which section 15 (2) has been fully complied with.

(2) The notice must:

- (a) be published in the Gazette, and
- (b) also be published, on at least 2 occasions, in a newspaper circulating in the State, and
- (c) if it is intended that the policy will specifically affect only a particular region of the State—also be published, on at least 2 occasions, in a newspaper circulating in the region.

(3) The period specified in the notice must end not less than 3 months after the day on which subsection (2) has been fully complied with.

18 Other consultation during preparation of draft PEP

During the preparation of a draft policy, the EPA is to consult with such public authorities, organisations or persons as the Minister directs and may consult with such others as the

EPA thinks appropriate.

19 EPA to consider impact statement and submissions

- (1) In proceeding with a draft policy, the EPA is to take into consideration the following, in addition to the matters referred to in Part 2.2:
 - (a) the impact statement that relates to the policy,
 - (b) any submissions it receives that relate to the policy or to the impact statement.
- (2) Accordingly, the EPA may make appropriate alterations to the draft policy.

20 Submission of draft PEP to Minister

- (1) Having completed all the steps required by this Part in relation to a draft policy, the EPA:
 - (a) in the case of a draft policy that the Minister has, under Part 2.2, directed the EPA to prepare—must submit a copy of the draft policy to the Minister with a recommendation as to whether or not it be made, or
 - (b) in the case of a draft policy that is not the subject of such a direction—may submit a copy of the draft policy to the Minister with a recommendation that it be made.
- (2) The copy of a draft policy submitted to the Minister under this section is to be accompanied by a report by the EPA about all relevant submissions made in accordance with this Part and any consultation undertaken by the EPA in connection with the draft policy.

Part 2.4 Special procedure for preparing draft policies

21 Application of Part

This Part applies to the preparation of a draft policy where the Minister so directs in accordance with this Part.

22 Directions

- (1) **Direction regarding implementation of national measure** A direction can be given if the Minister is satisfied that the policy will, if made, implement a national environment protection measure.
- (2) **Direction regarding minor amendments** A direction can be given if the Minister is satisfied that the policy will, if made, amend or remake another policy in order to correct an obvious error in the other policy or to clarify the intention of the other policy.
- (3) **Direction regarding interim policies** A direction can be given if the Minister is satisfied

that there are special reasons why the policy should be made without delay. The direction must set out those special reasons.

Note—

Part 2.6 provides that a policy the subject of such a direction may only be made for a period of 12 months or less and must include the special reasons set out in the direction. Under that Part, a further interim policy may not be made within 12 months after the expiry or repeal of an interim policy if it is the same in substance as the expired or repealed policy.

- (4) **Consequential, machinery or minor matters** A direction given under this section extends to matters dealt with in the policy that are of a consequential, machinery or minor nature (including for example the name and commencement of the policy, and transitional arrangements).
- (5) **Revocation of direction** The Minister may revoke a direction given under this section.

23 Effect of direction

A draft policy that is the subject of a direction under this Part can be prepared without the need to comply with Part 2.3.

24 Submission of draft PEP to Minister

- (1) Having finalised a draft policy that is the subject of a direction under this Part, the EPA must submit a copy of the draft policy to the Minister with a recommendation as to whether or not it be made.
- (2) The copy of the draft policy is to be accompanied by a report by the EPA about any consultation undertaken by the EPA in connection with the draft policy and any submissions made to the EPA about the draft policy.

Part 2.5 Making policies

25 Recommendation for making PEP

After a draft policy has been submitted to the Minister under this Chapter, the Minister may recommend to the Governor the making of a policy:

- (a) in accordance with the draft policy as submitted, or
- (b) in accordance with the draft policy and such alterations as the Minister thinks fit.

26 Making of PEP

The Governor may make a policy in accordance with a recommendation under this Part.

Part 2.6 Interim policies

27 Interim PEPs

- (1) A policy that is based on a draft policy that is the subject of a direction under section 22 (3) is an ***interim policy***.
- (2) An interim policy must include a statement that it is the result of such a direction and must include the special reasons set out in the direction for which the direction was given.
- (3) An interim policy expires at the end of the period of 12 months after it is published in the Gazette, or a shorter period specified in the policy, unless it is sooner repealed.
- (4) An interim policy, being the same in substance as an interim policy that has expired or been repealed, may not be made within 12 months after the expiry or repeal of the earlier policy.
- (5) If an interim policy amends or repeals another policy, the expiry or repeal of the interim policy has the effect of restoring the other policy, as it was immediately before it was amended or repealed, as if the interim policy had not been made. The restoration of the other policy takes effect on the day that the interim policy expires or is repealed.

Part 2.7 Implementing policies

28 Implementing PEPs—action under this Act and other environment protection legislation

Any relevant policies must be taken into consideration:

- (a) by the EPA or other regulatory authority when making a decision under Chapter 3 on whether to issue a licence or when making a decision under that Chapter about a licence, and
- (b) by the EPA or other regulatory authority when making a decision under Chapter 4 on whether to issue an environment protection notice or when making a decision under that Chapter about such a notice, and
- (c) by the EPA when making a decision under Part 9.1 on whether to grant an exemption or when making a decision under that Part about an exemption, and
- (d) by the EPA when exercising any other licensing or regulatory environment protection function under the environment protection legislation.

29 Implementing PEPs—action under [Environmental Planning and Assessment Act 1979](#)

Any relevant policies must be taken into consideration:

- (a) by a local council when preparing a local environmental plan or development control

plan under the *Environmental Planning and Assessment Act 1979*, and

- (b) by the Director-General of the Department of Urban Affairs and Planning when preparing a regional environmental plan under that Act, and
- (c) by the Minister administering that Act when making a local environmental plan or regional environmental plan under that Act, when recommending the making of a State environmental planning policy under that Act or when giving directions under section 117 of that Act, and
- (d) by a consent authority when determining a development application under that Act, and
- (e) by a determining authority when consideration is being given under Part 5 of that Act to the likely impact of an activity on the environment, and
- (f) by the Minister administering that Act when approving under Division 4 of Part 5 of that Act the carrying out of an activity.

30 Implementing PEPs—action by public authorities

- (1) A policy must be taken into consideration by a public authority when exercising statutory or other functions, if the public authority is required to do so by that or another policy.
- (2) Such a requirement can be made as regards:
 - (a) a specified public authority, or a specified class of public authorities, or public authorities generally, and
 - (b) a specified function, or a specified class of functions, or functions generally.
- (3) This section does not limit the other provisions of this Part.

31 Discretions and functions of public authorities

- (1) This Part does not operate to exclude a statutory discretion of a public authority, but the public authority must take the policy into consideration.
- (2) This Part does not operate to authorise any action by a public authority that is inconsistent with any statutory or other legal obligation of the public authority.

32 Definition of “public authority”

In this Part, **public authority** includes a Minister (including the Minister administering this Act or any portion of it), and also includes the EPA.

Part 2.8 Miscellaneous

33 Amendment or repeal of PEPs

- (1) A policy may be amended or repealed by another policy prepared and made in accordance with the relevant procedures set out in this Chapter.
- (2) Section 30 of the *Interpretation Act 1987* applies to a policy in the same way as it applies to a statutory rule.

34 Publication and commencement of PEPs

- (1) A policy:
 - (a) is to be published in the Gazette, and
 - (b) takes effect on the day on which it is so published or, if a later day is specified in the policy for that purpose, on the later day so specified.
- (2) Neither the whole nor any part of a policy is invalid merely because (without statutory authority) the policy is published in the Gazette after the day on which one or more of its provisions is or are expressed to take effect. In that case, that or those provisions take effect from the day the policy is published in the Gazette, instead of from the earlier day.

35 Machinery matters for which PEPs may make provision

A policy may do any one or more of the following:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind,
- (c) authorise any matter or thing to be determined according to the discretion of the EPA or any other person,
- (d) refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the policy, as in force at a particular time or from time to time.

36 PEPs not to create offences

A policy may not create an offence for a contravention of the policy.

37 Judicial notice and validity of PEPs

- (1) Judicial notice is to be taken of a policy and of the date of its publication in the Gazette.

- (2) It is to be presumed, in the absence of evidence to the contrary, that all conditions precedent and preliminary steps necessary to the making of a policy under this Act have been complied with and performed.
- (3) The validity of a policy may not be questioned in any legal proceedings except those commenced in the Land and Environment Court by any person within 3 months after the date of its publication in the Gazette.

38 Failure to comply with procedural requirements

If:

- (a) there has been a failure to comply with a particular procedural requirement of this Act in preparing or making a policy, but
- (b) despite that failure there has been substantial compliance with the procedural requirements of this Act for preparing and making the policy,

the failure does not invalidate the policy.

39 Copies of PEPs to be available to public

- (1) A copy of every policy is to be available for public inspection, without charge, at the principal office of the EPA during ordinary office hours.
- (2) A copy of every policy is to be available for purchase from the EPA.
- (3) Failure to comply with any provision of this section does not affect the validity or operation of a policy.

40 Abandonment of draft PEP

- (1) Subject to any directions of the Minister, the EPA may decide at any time not to proceed with a draft policy.
- (2) The Minister may decline to recommend the making of a policy submitted to the Minister under this Chapter.

41 [Subordinate Legislation Act 1989](#) does not apply to PEPs

A policy is not a statutory rule for the purposes of the [Subordinate Legislation Act 1989](#).

Chapter 3 Environment protection licences

Part 3.1 Introduction

42 Environment protection licences

Environment protection licences may be issued and otherwise dealt with in accordance with this Chapter.

43 Types of licences

Environment protection licences may be issued for the following purposes:

- (a) to authorise the carrying out of scheduled development work at any premises, as required under section 47,
- (b) to authorise the carrying out of scheduled activities at any premises, as required under section 48,
- (c) to authorise the carrying out of scheduled activities not related to premises, as required under section 49,
- (d) to control the carrying out of non-scheduled activities for the purpose of regulating water pollution resulting from any such activity, as referred to in section 122.

Note—

Scheduled activities for which a licence is required are set out in Schedule 1. Scheduled development work for which a licence is required is defined in section 47 (being generally work on premises, at which scheduled activities are not carried on, that is designed to enable scheduled activities to be carried on at the premises). This Act permits (but does not require) a licence to be issued for a non-scheduled activity—compliance with the conditions of the licence provides a defence to the offence of polluting waters under section 120.

44 Integration of licensing

- (1) Licences may be issued or varied so as to cover either or both scheduled development work or scheduled activities.
- (2) Licences with respect to scheduled development work or scheduled activities may regulate all forms of pollution (including water pollution) resulting from that work or those activities.
- (3) Licences with respect to non-scheduled activities may also regulate any form of pollution in addition to water pollution resulting from those activities.
- (4) Licences authorising or controlling an activity carried on at any premises may also regulate pollution resulting from any other activity carried on at the premises to which the licence applies.

45 Matters to be taken into consideration in licensing functions

In exercising its functions under this Chapter, the appropriate regulatory authority is required to take into consideration such of the following matters as are of relevance:

- (a) any protection of the environment policies,
- (b) the objectives of the EPA as referred to in section 6 of the *Protection of the Environment Administration Act 1991*,
- (c) 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,

- (d) the practical measures that could be taken:
 - (i) to prevent, control, abate or mitigate that pollution, and
 - (ii) to protect the environment from harm as a result of that pollution,
- (e) any relevant tradeable emission scheme or other scheme involving economic measures, as referred to in Part 9.3,
- (f) whether the person concerned is a fit and proper person (as referred to in section 83),
- (g) in connection with a licence application relating to the control of the carrying out of non-scheduled activities for the purpose of regulating water pollution—whether the applicant is the appropriate person to hold the licence having regard to the role of the applicant in connection with the carrying out of those activities,
- (h) in connection with a licence application—any documents accompanying the application,
- (i) in connection with a licence application—any relevant environmental impact statement, or other statement of environmental effects, prepared or obtained by the applicant under the *Environmental Planning and Assessment Act 1979*,
- (j) in connection with a licence application—any relevant species impact statement prepared or obtained by the applicant under the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*,
- (k) in connection with a licence application, any waste strategy in force under the *Waste Avoidance and Resource Recovery Act 2001*,
- (l) in connection with a licence application:
 - (i) any public submission in relation to the licence application received by the appropriate regulatory authority under this Act, and
 - (ii) any public submission that has been made under the *Environmental Planning and Assessment Act 1979*, in connection with the activity to which the licence application relates, and that has been received by the appropriate regulatory authority,
- (m) if the appropriate regulatory authority is not the EPA—any guidelines issued by the EPA to the authority relating to the exercise of functions under this Chapter.

46 Operation of this Chapter

This Chapter has effect in addition to and does not derogate from the requirements of any other Act, except as expressly provided in this or any other Act.

Part 3.2 Licences required for scheduled development work and scheduled activities

47 Licensing requirement—scheduled development work

- (1) **Offence** A person who is the occupier of any premises at which scheduled development work is carried out is guilty of an offence unless the person is, at the time that work is carried out, the holder of a licence that authorises that work to be carried out at those premises.

Maximum penalty:

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

- (2) **Provisions relating to offences** In proceedings for an offence arising under this section:

- (a) it is not necessary that it be established that the offence was committed on a particular day or on particular days, provided it is established that the offence was committed during a particular period, and
- (b) it is immaterial whether or not the work referred to in subsection (1) was or is completed.

- (3) **Meaning of scheduled development work** In this Act:

scheduled development work means work at any premises at which scheduled activities are not carried on that is designed to enable scheduled activities to be carried on at the premises. However, ***scheduled development work***:

- (a) also includes anything that is specified by the regulations as scheduled development work for the purposes of this Act, but
- (b) does not (despite the above) include anything that is specified by the regulations as not being scheduled development work for the purposes of this Act.

48 Licensing requirement—scheduled activities (premises-based)

- (1) **Application of section** This section applies to scheduled activities where Schedule 1 indicates that a licence is required for premises at which the activity is carried on.
- (2) **Offence** A person who is the occupier of any premises at which any such scheduled activity is carried on is guilty of an offence, unless the person is, at the time that activity is carried on, the holder of a licence that authorises that activity to be carried on at those premises.

Maximum penalty:

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

49 Licensing requirement—scheduled activities (not premises-based)

- (1) **Application of section** This section applies to 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.
- (2) **Offence** A person who carries on any such scheduled activity is guilty of an offence, unless the person is, at the time that activity is carried on, the holder of a licence that authorises that activity to be carried on.

Maximum penalty:

- in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
 - in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.
- (3) **Exception** A person engaged in carrying on an activity by the holder of a licence that authorises that activity is not required to hold a licence for that activity.

50 Timing of licensing of development requiring consent under EP&A Act

- (1) **Licensing of development controlled under EP&A Act** This section applies to development that cannot be carried out without development consent under the *Environmental Planning and Assessment Act 1979*. This development is called **controlled development** in this section.
- (2) **Licence to be concurrent** A licence that relates to controlled development must not be granted by the appropriate regulatory authority, unless development consent has been granted for the controlled development. However, this section does not prevent the consideration of a licence application by the appropriate regulatory authority before development consent is granted.
- (3) **Existing use** Without limiting the above, this section does not apply to the extent that development consent is not necessary under the *Environmental Planning and Assessment Act 1979* because of an existing use.
- (4) **Definitions** In this section:
development has the same meaning as in the *Environmental Planning and*

Assessment Act 1979.

development consent means consent under Part 4 of the *Environmental Planning and Assessment Act 1979*.

existing use has the same meaning as in Division 10 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

51 Integrated development

- (1) The issue of a licence in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 5 of Part 4 of that Act.
- (2) A decision by the appropriate regulatory authority on whether it will issue a licence, or on the general terms of a licence it proposes to issue, in relation to integrated development is subject to the provisions of this Chapter (including section 45).
- (3) A person to whom such a licence is issued after the commencement of this section cannot question the validity of the licence on the ground of failure to comply with any relevant provisions of that Act in any legal proceedings except those commenced in the Land and Environment Court by the person before the end of the period within which an appeal under section 287 can be lodged against the decision to issue the licence.

52 Commencement of licensing requirements

- (1) If, because of the enactment or the amendment or replacement of Schedule 1, it would become necessary for a person to be authorised by a licence to continue to carry out any work or activity, a licence is not required until the later of the following:
 - (a) the end of the prescribed period after the commencement of Schedule 1 or of the amendment or replacement,
 - (b) the relevant licence application (if any) made before the end of that period by the person has been finally determined.
- (2) The regulations may make provision excluding the issue of the licence from the application of Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (3) This section does not apply to any work or activity for which a licence or approval was required, under an Act repealed by this Act, immediately before its repeal.

Note—

Schedule 5 makes provision for licences under an Act repealed by this Act to be taken to be licences issued under this Act.

Part 3.3 Issue, transfer and variation of licences

53 Application for issue of licence

- (1) An application may be made to the appropriate regulatory authority for the issue of a licence.
- (2) An application must:
 - (a) be made in or to the effect of a form approved by the appropriate regulatory authority, and
 - (b) contain or be accompanied by such information as is required by the appropriate regulatory authority (as indicated in the form or in material accompanying the form), and
 - (c) be accompanied by the fee prescribed by the regulations.

54 Application for transfer of licence

- (1) An application may be made to the appropriate regulatory authority for the transfer of a licence to another person.

Note—

Section 59 requires the application to be made only with the consent in writing of the holder of the licence.

- (2) An application for the transfer of a licence must:
 - (a) be made in or to the effect of a form approved by the appropriate regulatory authority, and
 - (b) contain or be accompanied by such information as is required by the appropriate regulatory authority (as indicated in the form or in material accompanying the form), and
 - (c) be accompanied by the fee prescribed by the regulations.

55 Grant or refusal of application

- (1) The appropriate regulatory authority may grant or refuse an application for the issue or transfer of a licence. An application is granted by the issue or transfer of the licence concerned.
- (2) The appropriate regulatory authority must not refuse such an application unless before doing so:
 - (a) it has given notice to the applicant that it intends to do so, and
 - (b) it has specified in that notice the reasons for its intention to do so, and

- (c) it has given the applicant a reasonable opportunity to make submissions in relation to the matter, and
- (d) it has taken into consideration any such submissions by the applicant.

Note—

Section 287 enables appeals to be made in connection with licence applications within a specified period after the person is given notice of the decision concerned. The section provides that the person may appeal if the licence application is not determined within 60 days, and for the purposes of the appeal the licence application is taken to have been refused.

56 Premises to which licence applies

- (1) A licence is to specify the premises to which it applies.
- (2) The premises so specified are to be the whole of the premises at which the activities authorised or controlled by the licence (and ancillary activities) are carried on.
- (3) Premises may be so specified whether or not they comprise a single allotment of land.
- (4) This section does not apply to a licence required under section 49 that is not related to premises.

57 Licence fees

- (1) The holder of a licence must in each year pay to the appropriate regulatory authority, before the date prescribed by the regulations for the purpose, annual licence fees prescribed by or determined under the regulations.
- (2) The regulations may make provision for or with respect to the payment of annual licence fees by instalments.
- (3) If an annual licence fee is to be determined by the appropriate regulatory authority under the regulations, the appropriate regulatory authority must, not less than one month before the date prescribed for payment of the fee, notify the holder of the licence of the fee so determined.
- (4) If the holder of a licence fails to pay an annual licence fee in accordance with this section, the appropriate regulatory authority may, by notice in writing, require the holder to make good the default and, in addition, to pay to the appropriate regulatory authority an additional amount prescribed as a penalty for default.
- (5) If a fee or other amount due and payable under this Act or the regulations in relation to a licence is unpaid, the appropriate regulatory authority:
 - (a) may recover the fee or other amount from the current holder of the licence (or the last holder of the licence if the licence has ceased to be in force), or
 - (b) may recover that part of the fee or other amount that relates to a period for which

an earlier holder of the licence held the licence from that earlier holder,
as a debt.

- (6) This section does not apply to licences of a prescribed class or description.
- (7) Nothing in this section precludes the regulations from requiring payment of the first or other specified licence fee in respect of a shorter or longer period than 12 months. In that case, a reference in this Act to an annual fee is to be construed accordingly.

Note—

Schedule 2 contains regulation-making powers with respect to the amount of fees, including provision relating to the scheme known as “load-based licensing”.

58 Variation of licences

- (1) The appropriate regulatory authority may vary a licence (including the conditions of a licence).
- (2) A variation includes the attaching of a condition to a licence (whether or not any conditions have already been attached), the substitution of a condition, the omission of a condition or the amendment of a condition.
- (3) A licence may be varied on application by the holder of the licence or on the initiative of the appropriate regulatory authority.
- (4) A licence may be varied at any time during its currency, including on its being transferred to another person.
- (5) A licence is varied by notice in writing given to the holder of the licence.
- (6) If:
 - (a) the variation of a licence will authorise a significant increase in the environmental impact of the activity authorised or controlled by the licence, and
 - (b) the proposed variation has not, for any reason, been the subject of environmental assessment and public consultation under the *Environmental Planning and Assessment Act 1979*,the appropriate regulatory authority is to invite and consider public submissions before it varies the licence.

59 Restrictions on making applications

- (1) An application for the issue of a licence that relates to premises may be made only by or with the consent in writing of the occupier of the premises.
- (2) An application for the variation of a licence may be made only by or with the consent

in writing of the holder of the licence.

- (3) An application for the transfer of a licence may be made only with the consent in writing of the holder of the licence.

60 Requirement for further information

- (1) If a licence application (other than an application for the approval of the surrender of a licence) has been made, the appropriate regulatory authority may, by notice in writing given to the applicant, require the applicant to supply to the appropriate regulatory authority such further information as the appropriate regulatory authority considers necessary and relevant to the application and specifies in the notice.

- (2) In this section:

information includes plans and specifications.

61 Reasons to be given for grant or refusal of certain licence applications

- (1) If a licence application (other than an application for the approval of the surrender of a licence) is granted or refused, any person may make a written request to the appropriate regulatory authority for the reasons for the grant or refusal of the application and the appropriate regulatory authority is to provide a written statement of the reasons to the person.
- (2) The regulations may make provision with respect to any such statement of reasons, including:
 - (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and
 - (b) the matters to be set out in a statement of reasons, and
 - (c) the cases in which a statement of reasons is not required to be provided.
- (3) Without limiting subsection (2), a statement of reasons is not required to be provided to a person if the person has already been notified of the reasons under section 55.

62 Copyright

On an application being made under this Chapter, the applicant, if not entitled to copyright, is taken to have indemnified all persons using the application and supporting documents in accordance with this Act, against any claim or action in respect of breach of copyright.

Note—

Schedule 2 enables regulations to be made with respect to the amendment or variation of applications under this Chapter.

Part 3.4 Licence conditions

63 Conditions

- (1) A licence may be issued subject to conditions or unconditionally.

Note—

Section 58 deals with the variation of a licence so as to attach, substitute, omit or amend conditions.

- (2) A condition cannot be attached to a licence if compliance with the condition would result in a breach of a requirement made by or under this Act.
- (3) If the holder of a licence cannot meet any requirement made by or under this Act without contravening a condition of the licence, the holder is, by meeting the requirement, taken to comply with the condition.

64 Failure to comply with condition

- (1) **Offence** If any condition of a licence is contravened by any person, each holder of the licence is guilty of an offence.

Maximum penalty (except where it is an offence relating exclusively to noise):

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

Maximum penalty (where it is an offence relating exclusively to noise):

- in the case of a corporation—\$60,000 and, in the case of a continuing offence, a further penalty of \$6,000 for each day the offence continues, or
- in the case of an individual—\$30,000 and, in the case of a continuing offence, a further penalty of \$600 for each day the offence continues.

- (2) **Defence** The holder of a licence is not guilty of an offence against this section if the holder establishes that:

- (a) the contravention of the condition was caused by another person, and
- (b) that other person was not associated with the holder at the time the condition was contravened, and
- (c) the holder took all reasonable steps to prevent the contravention of the condition.

A person is associated with the holder for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.

- (3) **Application** This section extends to conditions to which the suspension, revocation or surrender of a licence is subject under section 81. For that purpose, a reference to the holder of the licence includes a reference to the former holder of the licence.

Part 3.5 Particular licence conditions

65 Part not exclusive

This Part contains examples of conditions that can be attached to a licence. Accordingly, nothing in this Part prevents other conditions being attached to a licence.

66 Conditions requiring monitoring and certification and relating to other matters

- (1) **Monitoring** The conditions of a licence may require:
- (a) monitoring by the holder of the licence of the activity or work authorised or controlled by the licence, including with respect to:
 - (i) the operation or maintenance of premises or plant, and
 - (ii) discharges from premises, and
 - (iii) relevant ambient conditions prevailing on or outside premises, and
 - (iv) anything required by the conditions of the licence, and
 - (b) the provision and maintenance of appropriate measuring and recording devices for the purposes of that monitoring, and
 - (c) the analysis, reporting and retention of monitoring data.

- (2) **False or misleading information** A holder of a licence who supplies information, or on whose behalf information is supplied, to the appropriate regulatory authority under the conditions of the licence is guilty of an offence if the information is false or misleading in a material respect.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

- (2A) **Conditions relating to certain information** The conditions of a licence may require the holder of a licence to supply to the appropriate regulatory authority information relating to a pollution incident to which Part 5.7 applies in addition to the information required under that Part.

- (3) **Certification** The conditions of a licence may require the holder of the licence to supply to the appropriate regulatory authority a statement that is certified by the holder or by another person approved by that authority as correct and that states all or any of the

following:

- (a) the extent to which the conditions of the licence have or have not been complied with,
- (b) particulars of any failure to comply with the conditions,
- (c) the reasons for any failure to comply with the conditions,
- (d) any action taken, or to be taken, to prevent any recurrence of that failure or to mitigate the effects of that failure,
- (e) the fee paid or payable in relation to the licence (including the manner of calculation of the fee or other specified aspect of the fee).

- (4) **False or misleading certificates** A person who gives a certificate for the purposes of a condition referred to in this section is guilty of an offence if any of the statements certified is false or misleading in a material respect.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

- (5) **Use of information or statements** Any information or statements supplied to the appropriate regulatory authority for the purposes of a condition referred to in this section may be taken into consideration by that authority and used for the purposes of this Act. Without limiting the above, any such information and statements are admissible in evidence in any prosecution of the holder of the licence for any offence against this Act or the regulations, whether or not the information or statements might incriminate that holder.

67 Conditions for mandatory environmental audits

The conditions of a licence may require the holder of the licence to comply with the requirements of a mandatory environmental audit program, in accordance with Chapter 6.

68 Conditions requiring pollution studies and reduction programs

- (1) The conditions of a licence may require the holder of the licence to undertake and submit to the appropriate regulatory authority studies into any aspect of the environmental impact of the activity or work authorised or controlled by the licence.
- (2) The conditions of a licence may require the holder of the licence:
 - (a) to develop and submit to the appropriate regulatory authority a pollution reduction program and to comply with the program as approved by the appropriate regulatory authority, or

(b) to comply with a pollution reduction program determined by the appropriate regulatory authority.

(3) A pollution reduction program may include but is not limited to requirements to carry out works or to install plant for the purpose of preventing, controlling, abating or mitigating pollution.

(4) The appropriate regulatory authority may approve a pollution reduction program with or without alterations.

69 Conditions relating to tradeable emission schemes and other schemes involving economic measures

The conditions of a licence may implement or otherwise relate to:

- (a) tradeable emission schemes, or
- (b) other schemes involving economic measures,

as referred to in Part 9.3.

Note—

Conditions relating to tradeable emission schemes may be attached to licences by the regulations (see Part 9.3A).

70 Conditions for financial assurances

The conditions of a licence may require the holder of the licence to provide financial assurances, as provided by Part 9.4.

71 Conditions for remediation work on premises

The conditions of a licence may require the holder of the licence to carry out remediation work in connection with the carrying out of the activities or works authorised or controlled by the licence.

72 Conditions for insurance cover

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

73 Conditions to take effect later

(1) The conditions of a licence may provide that an authorisation conferred by the licence or a variation of the licence is not to take effect until the end of a specified period or on the happening of a particular event or on the occurrence of a specified state of affairs.

(2) Without limiting the generality of the above, the conditions may provide that an authorisation or variation will not take effect until a financial assurance is provided in accordance with the condition.

(3) This section is subject to section 84 (Date from which decision operates).

74 Conditions for positive covenants

The conditions 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, for the purpose of ensuring that specified requirements of a condition run with the land concerned.

75 Conditions relating to waste

(1) **Information about waste** The conditions of a licence may require the holder of the licence to provide to the appropriate regulatory authority information relating to the creation, collection, handling, transportation, treatment, reprocessing, recycling, re-use or disposal of waste.

(2) **Environmental waste management plan** The conditions of a licence may require the holder of the licence to prepare, and comply with, an environmental waste management plan. Such a plan is to set out the manner in which the holder proposes to carry out the activity or work authorised or controlled by the licence in order to achieve the required environmental outcomes, and may include a closure plan as referred to in section 76.

Note—

A draft plan may be required to accompany a licence application—see section 53.

(3) (Repealed)

(4) **Waste received at premises** The conditions of a licence may include the following:

- (a) conditions relating to the handling or disposal of waste received at the premises to which the licence applies,
- (b) conditions requiring the holder of the licence to take only certain classes and quantities of waste at those premises, or requiring the holder to refuse to accept certain classes and quantities of waste at those premises,
- (c) conditions requiring the holder of the licence to provide incentives to encourage separation of waste delivered to those premises.

(5) **Other waste matters** The conditions of a licence may include the following:

- (a) conditions relating to the storage, handling, treatment and processing of waste,
- (b) conditions imposing responsibility on the holder of the licence for the proper

disposal of waste transported from the premises to which the licence applies,

- (c) conditions requiring the holder of the licence to report to the appropriate regulatory authority on any matters concerning waste transported from those premises,
- (d) conditions requiring the holder of the licence to implement a re-use, recycling or take-back and utilisation scheme in respect of any product or item manufactured or sold by the holder that creates waste.

(6) **Transporting waste** The conditions of a licence may include the following:

- (a) conditions relating to the construction, maintenance and cleaning of any container, vehicle or vessel used by the holder of the licence to transport waste,
- (b) conditions relating to the times during which, the routes along which, and the waste facilities to which, waste may be transported by the holder of the licence,
- (c) conditions imposing responsibility on the holder of the licence for the proper handling and disposal of waste transported by the holder.

76 Post-closure requirements for waste facilities or other licensed premises

- (1) The conditions of a licence (and, in particular, the conditions of the suspension, revocation or surrender of a licence under section 81) may require the last licensee to submit to the appropriate regulatory authority a closure plan in relation to the premises to which the licence applies or applied.
- (2) A closure plan must:
 - (a) in the case of a waste facility—be consistent with any environmental waste management plan relating to the facility, and
 - (b) specify the steps taken (or to be taken) in closing and stabilising the premises and the time-frame for doing so, and
 - (c) provide for a post-closure monitoring and maintenance program, and
 - (d) identify any proposed future uses of the premises, and
 - (e) comply with any other specified requirements relating to the plan.
- (3) The appropriate regulatory authority may approve the closure plan as submitted to it, or it may vary the plan before approving it.
- (4) In this section:

last licensee means the person who was the holder of a licence for any premises immediately before the licence ceased to be in force.

Part 3.6 Duration and review of licences

77 Duration of licence

- (1) Once a licence comes into force, the licence remains in force until it is suspended, revoked or surrendered.
- (2) The licence is, while it remains in force, subject to any variations made to the licence under this Act.

78 Review of licences

- (1) The appropriate regulatory authority is required to review each licence at intervals not exceeding 3 years after the issue of the licence.
- (2) The appropriate regulatory authority must give public notice of the licences that are to be reviewed as follows:
 - (a) a notice of the review of each licence is to be published in a newspaper circulating throughout the State,
 - (b) the notice is to be published not less than 1 month, and not more than 6 months, before the review of the licence is undertaken,
 - (c) the notice is to specify the activity or work to which the licence relates and the address of the premises (if any) at which it is carried out.
- (3) Any failure by the EPA to comply with the requirements of this section to review a licence is to be reported by the EPA to the Board of the EPA, and in the annual report of the EPA, together with a statement of reasons for the failure.
- (4) Any failure by a regulatory authority (other than the EPA) to comply with the requirements of this section to review a licence is to be reported to the EPA by that authority.
- (5) Any failure to comply with the requirements of this section cannot be the subject of proceedings under this Act.

Part 3.7 Suspension, revocation and surrender of licences

79 Suspension or revocation of licence by appropriate regulatory authority

- (1) The appropriate regulatory authority may suspend or revoke a licence during its currency.
- (2) A suspension or revocation of a licence is effected by notice in writing given to the holder of the licence.
- (3) A suspension may be for a specified period, or until the fulfilment of specified

conditions, or until further order of the appropriate regulatory authority.

- (4) The appropriate regulatory authority must not suspend or revoke a licence unless before doing so:
 - (a) it has given notice to the holder of the licence that it intends to do so, and
 - (b) it has specified in that notice the reasons for its intention to do so, and
 - (c) it has given the holder of the licence a reasonable opportunity to make submissions in relation to the proposed revocation or suspension, and
 - (d) it has taken into consideration any such submissions by the holder of the licence.
- (5) The reasons for suspending or revoking a licence may include (but are not limited to) the following:
 - (a) the holder of the licence has obtained the licence improperly,
 - (b) a condition of the licence has been contravened,
 - (c) the scheduled development work to which the licence relates has not been commenced or completed and the appropriate regulatory authority is of the opinion that it is no longer appropriate that the work be carried out or completed,
 - (d) the activities covered by the licence are completed or no longer being carried on,
 - (e) the holder has failed to pay the annual licence fee by the due date for its payment,
 - (f) in the opinion of the appropriate regulatory authority, the holder of the licence is no longer a fit and proper person (as referred to in section 83).
- (6) No fees are refundable on the suspension or revocation of a licence.

80 Surrender of licence

- (1) A licence may, on the written application of the holder of the licence, be surrendered with the written approval of the appropriate regulatory authority.
- (1A) If an application for approval of the surrender of a licence has been made, the appropriate regulatory authority may, by notice in writing given to the applicant, require the applicant to supply to the appropriate regulatory authority such further information as the appropriate regulatory authority considers necessary and relevant to the application and specifies in the notice.
- (2) If an application for the approval of the surrender of a licence is granted or refused, any person may make a written request to the appropriate regulatory authority for the reasons for the grant or refusal of the application and the appropriate regulatory

authority is to provide a written statement of the reasons to the person.

- (2A) The regulations may make provision with respect to any such statement of reasons, including:
- (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and
 - (b) the matters to be set out in a statement of reasons, and
 - (c) the cases in which a statement of reasons is not required to be provided.
- (3) No fees are refundable on the surrender of a licence.

81 Conditions of suspension, revocation or surrender

- (1) A licence may be suspended or revoked, or the surrender of a licence may be approved, unconditionally or subject to such conditions as the appropriate regulatory authority imposes.
- (2) Those conditions may include (but are not limited to) any conditions to which the licence was subject immediately before it was suspended, revoked or surrendered.
- (3) The appropriate regulatory authority may, by notice in writing given to the former holder of the licence, attach new conditions to, or vary or revoke any existing conditions of, the suspension, revocation or surrender of the licence.

Note—

Section 64 makes it an offence to breach conditions under this section.

82 Minister may suspend or revoke licence if holder convicted of major pollution offence

- (1) If the holder of a licence is convicted of a major pollution offence, the Minister may, by notice in writing given to the holder:
 - (a) revoke the licence, or
 - (b) suspend the licence for such period as the Minister thinks fit.
- (2) In this section:

major pollution offence means an offence the commission of which has caused or is likely to cause harm to the environment, being an offence punishable by a fine of \$250,000 or more (in the case of a corporation) or \$120,000 or more (in the case of an individual).

Part 3.8 Miscellaneous

83 Fit and proper persons

- (1) This section has effect in determining whether a person is a fit and proper person as referred to in section 45 (f) and section 79 (5) (f), but does not limit the generality of those sections.
- (2) The appropriate regulatory authority may take into consideration any or all of the following:
 - (a) that the person has contravened any of the environment protection legislation or other relevant legislation, or has held a licence or other authority that has been suspended or revoked under any of the environment protection legislation or other relevant legislation,
 - (b) that, if the person is a body corporate, a director of the body corporate:
 - (i) has contravened any of the environment protection legislation or other relevant legislation, or has held a licence or other authority that has been suspended or revoked under any of the environment protection legislation or other relevant legislation, or
 - (ii) is or has been the director of another body corporate that has contravened any of the environment protection legislation or other relevant legislation, or has held a licence or other authority that has been suspended or revoked under any of the environment protection legislation or other relevant legislation,
 - (c) whether the management of the activities or works that are or are to be authorised or regulated under the relevant licence are not or will not be in the hands of a technically competent person,
 - (d) any ground prescribed by the regulations.
- (3) A reference in subsection (2) to a director of a body corporate extends to a person involved in the management of the affairs of the body corporate.
- (4) Without limiting the generality of the above, the appropriate regulatory authority may disregard contraventions referred to in subsection (2) having regard to the seriousness of the contraventions, the length of time since they occurred, and other matters that appear relevant to the appropriate regulatory authority.
- (5) For the purposes of this section, **other relevant legislation** is any legislation declared by the regulations to be other relevant legislation for the purposes of this section. The regulations may so declare legislation that has been repealed or legislation of a place outside the State.

84 Date from which decision operates

- (1) A 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, except as provided by this section.
- (2) A decision of the appropriate regulatory authority to vary, suspend or revoke a licence, to approve the surrender of a licence subject to conditions, or to attach any new conditions to, or to vary any conditions of, a suspension, revocation or surrender of a licence, does not operate:
 - (a) until the period within which an appeal under this Act can be lodged by the appropriate person against the decision has expired without an appeal being lodged, or
 - (b) if such an appeal is lodged within that period by the appropriate person, until the Land and Environment Court confirms the decision or the appeal is withdrawn, or
 - (c) until the appropriate person notifies the appropriate regulatory authority in writing that no appeal is to be made against the decision,whichever first occurs.
- (3) A decision of the appropriate regulatory authority to approve the surrender of a licence without any condition operates from the time the authority notifies the licensee in writing of the decision.
- (4) In this section:

appropriate person, in relation to a decision of a regulatory authority, means any person who has a right to appeal against the decision (see section 287).

85 Death of licensee

- (1) If the holder of a licence dies, the legal personal representative of the holder or a person approved by the appropriate regulatory authority is taken to be the holder of the licence as if it had been transferred to the representative or person.
- (2) Subsection (1) does not prevent the suspension, revocation or surrender of the licence in accordance with this Act.

86 Notice for breach of licensing requirements

- (1) If the occupier of any premises carries out work at the premises in contravention of Part 3.2, the appropriate regulatory authority may, by notice in writing given to the occupier, require the occupier:
 - (a) to remove the work that has been carried out, or

(b) to restore the premises to their previous state,
within such time as may be specified in the notice.

(2) A notice under this section does not have any operation:

(a) until the period within which an appeal can be lodged under this Act by the occupier against the notice has expired, and

(b) if such an appeal is lodged within that period by the occupier, until the Land and Environment Court confirms the notice or the appeal is withdrawn.

(3) A person who contravenes the requirements of a notice under this section is guilty of an offence.

Maximum penalty:

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

87 Putrescible waste landfill sites—licensing arrangements

(1) This section applies to waste facilities:

(a) that are required to be licensed under this Chapter, and

(b) that are landfill sites (that is, they are used for the purpose of disposing of waste to land), and

(c) that are used for the purposes of the disposal of putrescible waste (that is, waste that is food or animal matter, including dead animals or animal parts, or unstable or untreated biosolids).

(2) More than one occupier can be required to hold a licence in respect of any such waste facility.

(3) A licence in respect of any such waste facility may be granted to a person other than a public authority only if a public authority holds a separate licence granted in respect of the facility (in this section called a **supervisory licence**).

(4) In issuing a supervisory licence, the appropriate regulatory authority is to impose conditions on the licence with respect to the following matters:

(a) the types and volumes of waste received at the waste facility,

(b) the design of the waste facility (being a waste facility established after the commencement of this section),

(c) the separation, re-use, reprocessing and recycling of waste received at the facility.

(5) (Repealed)

(6) An application by a public authority for a supervisory licence must specify the arrangements under which the public authority has the capacity to exercise control over the waste facility with respect to the matters referred to in subsection (4).

(7) The following things are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:

(a) anything done by the appropriate regulatory authority in exercising its functions under this section,

(b) anything done by the occupier of a waste facility to which this section applies for the purposes of complying with the conditions of the occupier's licence that are imposed by the appropriate regulatory authority under this section,

(c) anything done by a public authority holding a supervisory licence referred to in this section for the purpose of complying with the conditions of the licence that are imposed by the appropriate regulatory authority under this section,

but only if the thing is done before 1 July 2003.

(8) Things authorised to be done by subsection (7) are authorised only to the extent (if any) that they would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

88 Contributions by licensee of waste facilities

(1) This section applies to waste facilities that are required to be licensed under this Chapter, other than a facility that is used solely for the purposes of re-using, recycling or reprocessing waste as determined by the EPA.

(2) The occupier of any such waste facility is required to pay to the EPA in respect of all waste received at the facility such contribution as is prescribed by the regulations.

(3) The contribution payable by the occupier must be paid at such intervals, and in such manner, as the EPA may direct by notice in writing given to the occupier.

(4) An occupier who fails to pay any such contribution within the time so required by the EPA is guilty of an offence.

Maximum penalty:

- in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or

- in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

(5) The regulations may:

- (a) provide for contributions to be calculated on such basis, and in accordance with such factors, as may be specified in the regulations, and
- (b) provide for the exemption of specified occupiers, or specified classes of occupiers, from the requirement to pay contributions, and
- (c) provide for the exemption of specified wastes from the calculation of contributions (including for example wastes that are recycled, re-used, or reprocessed), and
- (d) provide for the payment of rebates to specified occupiers or specified classes of occupiers.

(6) Any contribution payable under this section becomes, if it is not paid in accordance with this section and the regulations, a debt due to the EPA that is recoverable in any court of competent jurisdiction.

(7) Interest is payable on any unpaid contribution under this section at such rate and calculated in such manner as may be prescribed by the regulations. Any such interest may be recovered in the same way as the contribution may be recovered.

Chapter 4 Environment protection notices

Part 4.1 Preliminary

89 Definitions

In this Chapter:

clean-up notice means a notice under Part 4.2.

compliance cost notice means a notice under Part 4.5.

prevention notice means a notice under Part 4.3.

prohibition notice means a notice under Part 4.4.

90 Classification of environment protection notices

Environment protection notices are of the following kinds:

- (a) clean-up notices,
- (b) prevention notices,
- (c) prohibition notices.

Note—

See also noise control notices under Part 8.6.

Part 4.2 Clean-up notices

91 Clean-up by occupiers or polluters

- (1) **Notices** The appropriate regulatory authority may, by notice in writing, do either or both of the following:
- (a) direct an occupier of premises at or from which the authority reasonably suspects that a pollution incident has occurred or is occurring,
 - (b) direct a person who is reasonably suspected by the authority of causing or having caused a pollution incident,

to take such clean-up action as is specified in the notice and within such period as is specified in the notice.

Note—

pollution incident and *clean-up action* are defined in the Dictionary.

- (2) **Notices by EPA in emergency** The EPA may, if it considers that it is necessary to do so because of an emergency, give the clean-up notice even if it is not the appropriate regulatory authority with respect to the pollution incident.
- (3) **Reports** The clean-up notice may require the person to whom the notice is given to furnish reports to the appropriate regulatory authority regarding progress on the carrying out of the clean-up action.
- (4) **Recovery by person given notice** If the person given a clean-up notice complies with the notice but was not the person who caused the pollution incident, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the pollution incident.
- (5) **Offence** A person who, without reasonable excuse, does not comply with a clean-up notice given to the person is guilty of an offence.

Maximum penalty:

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

92 Clean-up by public authorities

- (1) **Directions to public authorities to take clean-up action** If the EPA reasonably suspects that a pollution incident has occurred or is occurring, the EPA may, by notice in writing, direct a public authority to take such clean-up action as is specified in the notice. The public authority is authorised and required to take that action.
- (2) **Voluntary clean-up action by public authorities** If a public authority reasonably suspects that a pollution incident has occurred or is occurring, the public authority may take such clean-up action as it considers necessary. The public authority is authorised to take that action, whether or not it is directed to take clean-up action under subsection (1).
- (3) **Operation of section** Notices may be given, and action may be taken, under this section:
 - (a) whether or not the EPA is the appropriate regulatory authority with respect to the pollution incident, and
 - (b) whether or not a clean-up notice has been given under section 91, and (if such a notice has been given) whether or not the period specified in the notice under that section has ended.
- (4) **Taking of clean-up action** A public authority may take clean-up action under this section by itself or by its employees, agents or contractors.
- (5) **Definition** In this section:

public authority does not include a State owned corporation.

93 Clean-up directions may be given orally

- (1) **Oral directions** A regulatory authority may, instead of giving a direction under this Part by notice in writing, give the direction orally.
- (2) **Manner of giving oral direction** A direction that can be given orally under this Part by a regulatory authority can be given orally by a person who is acting under delegated or other authority from the authority.
- (3) **Reduction to writing** A direction given orally to a person ceases to have effect on the expiration of 72 hours from the time it was given unless confirmed by the regulatory authority who gave the direction orally by a written clean-up notice given to the person.
- (4) **Effect of oral direction** A direction given orally has the same effect as a direction given by notice in writing, and is taken to be a clean-up notice.

94 Fee

- (1) The purpose of this section is to enable a regulatory authority to recover the administrative costs of preparing and giving clean-up notices.
- (2) A person who is given a clean-up notice by a regulatory authority must within 30 days pay the prescribed fee to the authority.
- (3) The regulatory authority may on the application of a person to whom subsection (2) applies:
 - (a) extend the time for payment of the fee, or
 - (b) waive payment of the fee.
- (4) A person who does not pay the fee within the time provided under this section is guilty of an offence.

Maximum penalty: 200 penalty units.

Part 4.3 Prevention notices

95 Meaning of environmentally unsatisfactory manner

For the purposes of this Part an activity is carried on in an environmentally unsatisfactory manner if:

- (a) it is carried on in contravention of, or in a manner that is likely to lead to a contravention of, this Act, the regulations or a condition attached to an environment protection licence, or
- (b) it causes, or is likely to cause, a pollution incident, or
- (c) it is not carried on by such practicable means as may be necessary to prevent, control or minimise pollution, the emission of any noise or the generation of waste, or
- (d) it is not carried on in accordance with good environmental practice.

96 Preventive action

- (1) **Application of section** This section applies when the appropriate regulatory authority reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner at any premises or by any person (otherwise than at premises).
- (2) **Prevention notices** The appropriate regulatory authority may, by notice in writing, do either or both of the following:
 - (a) direct the occupier of the premises,

(b) direct the person carrying on the activity (whether or not at premises),

to take such action, as is specified in the notice and within such period (if any) as is specified in the notice, to ensure that the activity is carried on in future in an environmentally satisfactory manner.

(3) **Examples** The action to be taken may (without limitation) include any of the following:

(a) installing, repairing, altering, replacing, maintaining or operating control equipment or other plant,

(b) modifying, or carrying out any work on, plant,

(c) ceasing to use plant or altering the way plant is used,

(d) ceasing to carry on or not commencing to carry on an activity,

(e) carrying on an activity in a particular manner,

(f) carrying on an activity only during particular times,

(g) monitoring, sampling or analysing any pollution or otherwise ascertaining the nature and extent of pollution or the risk of pollution,

(h) action with respect to the transportation, collection, reception, treatment, re-use, reprocessing, storage and disposal of any waste,

(i) preparing and carrying out a plan of action to control, prevent or minimise pollution or waste.

(4) **Occupier's duty** If the occupier who is given a notice is not the person carrying on the activity, the notice is taken to require the occupier to take all available steps to cause the action to be taken.

(5) **Reports** A prevention notice may require the person to whom the notice is given to furnish reports to the appropriate regulatory authority regarding progress on carrying out the action required to be taken by the notice.

97 Offence

A person who does not comply with a prevention notice given to the person is guilty of an offence.

Maximum penalty:

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

98 Action in event of failure to comply

If a person does not comply with a prevention notice given to the person, the appropriate regulatory authority may take action to cause the notice to be complied with by itself or by its employees, agents or contractors.

99 Commencement of operation of prevention notice or variation of prevention notice

A prevention notice, or a variation of a prevention notice, does not operate:

- (a) until the period within which an appeal under this Act can be lodged against the notice or variation has expired without an appeal being lodged, or
- (b) if such an appeal is lodged within that period, until the Land and Environment Court confirms the notice or variation or the appeal is withdrawn, or
- (c) until the person who has the right to lodge such an appeal notifies the appropriate regulatory authority in writing that no appeal is to be made against the notice or variation,

whichever first occurs.

100 Fee

- (1) The purpose of this section is to enable a regulatory authority to recover the administrative costs of preparing and giving prevention notices.
- (2) A person who is given a prevention notice by a regulatory authority must within 30 days pay the prescribed fee to the authority.
- (3) The regulatory authority may on the application of a person to whom subsection (2) applies:
 - (a) extend the time for payment of the fee, or
 - (b) waive payment of the fee.
- (4) The fee is not payable during the currency of an appeal against the prevention notice.
- (5) If the decision of the Court on an appeal does not invalidate the prevention notice, the fee is payable within 30 days of the decision.
- (6) A person who does not pay the fee within the time provided under this section is guilty of an offence.

Maximum penalty: 200 penalty units.

Part 4.4 Prohibition notices

101 Prohibition on activities

- (1) **Application of section** This section applies where the EPA recommends to the Minister that a notice be given under this section because it is of the opinion that the emission or discharge of pollutants from (or within) any premises in which any activity is carried on:
- (a) is causing or is likely to cause such harm to the environment, or
 - (b) is or is likely to be so injurious to public health, or
 - (c) is causing or is likely to cause such discomfort or inconvenience to any persons not associated with the management or operation of the activity,
- that the giving of the notice is warranted.
- (2) **Notice** The Minister may, by notice in writing, do either or both of the following:
- (a) direct the occupier of the premises,
 - (b) direct the person carrying on the activity,
- to cease carrying on the activity, or any specified aspect of it, for such period as is specified in the notice.
- (3) **Occupier's duty** If the occupier who is given a notice is not the person carrying on the activity, the notice is taken to require the occupier to take all available steps to cause the activity to cease.
- (4) **Further notice** The Minister may give further notices on the expiry of the period of the earlier notice if the EPA recommends in accordance with this section that the further notices be given.

102 Offence

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

Maximum penalty:

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

103 Action in event of failure to comply

If a person does not comply with a prohibition notice given to the person, the EPA may take action to cause the notice to be complied with by itself or by its employees, agents or contractors.

Part 4.5 Compliance cost

104 Compliance cost notices

- (1) **Clean-up notice—monitoring or compliance costs** The appropriate regulatory authority that gives a clean-up notice under section 91 to a person may, by notice in writing, require the person to pay all or any reasonable costs and expenses incurred by the authority in connection with:
 - (a) monitoring action under the notice, and
 - (b) ensuring that the notice is complied with, and
 - (c) any other associated matters.
- (2) **Clean-up by public authority** A public authority that takes clean-up action under section 92 may, by notice in writing, require:
 - (a) the occupier of the premises at or from which the authority reasonably suspects that the pollution incident occurred, or
 - (b) the person who is reasonably suspected by the authority of having caused the pollution incident,or both, to pay all or any reasonable costs and expenses incurred by it in connection with the clean-up action.
- (3) **Prevention notice—monitoring or compliance costs** The appropriate regulatory authority (other than the EPA) that gives a prevention notice to a person may, by notice in writing, require the person to pay all or any reasonable costs and expenses incurred by the authority in connection with:
 - (a) monitoring action under the notice, and
 - (b) ensuring that the notice is complied with, and
 - (c) any other associated matters.
- (4) **Prevention notice or prohibition notice—non-compliance** A regulatory authority that takes action under section 98 because a prevention notice is not complied with or takes action under section 103 because a prohibition notice is not complied with may, by notice in writing, require the person to whom the notice was given to pay all or any reasonable costs and expenses incurred by it in taking the action.

Note—

See also section 608 of the *Local Government Act 1993* for charges for inspection of premises by a local council in the exercise of its functions as a regulatory authority.

105 Recovery of amounts

- (1) **Recovery of unpaid amounts** A regulatory authority or public authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (2) **Recovery by person given notice** If the person given a compliance cost notice complies with the notice but was not the person who caused the pollution or pollution incident, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the pollution or pollution incident.

106 Registration of compliance cost notices in relation to land

- (1) If a compliance cost notice has been given by a regulatory authority or a public authority to a person, the authority may apply to the Registrar-General for registration of the notice in relation to any land owned by the person.
- (2) An application under this section must define the land to which it relates.
- (3) The Registrar-General must, on application under this section and lodgment of a copy of the compliance cost notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.
- (4) If the notice relates to land under the provisions of the *Real Property Act 1900*, the notice is to be registered under that Act.

107 Charge on land subject to compliance cost notice

- (1) **Application of section** This section applies where a compliance cost notice is registered under section 106, on the application of a regulatory authority or public authority, in relation to particular land owned by a person.
- (2) **Creation of charge** There is created by force of this section, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment to the regulatory authority or public authority of the amount specified in the notice.
- (3) **When charge ceases to have effect** Such a charge ceases to have effect in relation to the land:
 - (a) on payment to the regulatory authority or public authority of the amount concerned, or

(b) on the sale or other disposition of the property with the written consent of the authority, or

(c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,

whichever first occurs.

(4) **Charge is subject to existing charges and encumbrances** Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the notice was registered.

(5) **Charge not affected by change of ownership** Such a charge is not affected by any change of ownership of the land, except as provided by subsection (3).

(6) **Registration of charge is notice** If:

(a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (3), taken to have notice of the charge.

(7) **Removal of charge** The regulations may make provision for or with respect to the removal of a charge under this section.

Part 4.6 Miscellaneous

108 Multiple notices

More than one notice under a provision of this Chapter may be given to the same person.

109 Extraterritorial application

A notice may be given under this Chapter to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment of this State.

109A (Repealed)

110 Revocation or variation

(1) A notice given under this Chapter may be revoked or varied by a subsequent notice or notices.

(2) A notice may be varied by modification of, or addition to, its terms and specifications.

- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by the regulatory authority that gave it.

111 Power to enter land

- (1) A regulatory authority or public authority may, by its employees, agents or contractors, enter any premises at any reasonable time for the purpose of exercising its functions under this Chapter.
- (2) For the purpose of entering or leaving any such premises, the power conferred by this section extends to entering other premises.
- (3) A power to enter premises conferred by this section authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
- (4) Entry may be effected under this section by an authority with the aid of such authorised officers or police officers as the authority considers necessary and with the use of reasonable force.

112 Obstruction of persons

A person who wilfully delays or obstructs:

- (a) a person who is carrying out any action in compliance with an environment protection notice, or another person authorised by the person to carry it out, or
- (b) a public authority that is taking clean-up action under Part 4.2, or another person authorised by the authority to carry it out, or
- (c) a regulatory authority that is taking action under section 98 or 103, or another person authorised by the authority to take the action,

is guilty of an offence.

Maximum penalty:

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

113 False or misleading statements in reports

A person who in a report required under this Chapter and lodged with a regulatory authority makes a statement that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

Chapter 5 Environment protection offences

Part 5.1 Classification of offences

114 Classification of offences

- (1) Tier 1 offences are the offences under Part 5.2.
- (2) Tier 2 offences are all other offences under this Act or the regulations.
- (3) Tier 3 offences are tier 2 offences that may be dealt with under Part 8.2 by way of penalty notice.

Part 5.2 Tier 1 offences

115 Disposal of waste—harm to environment

- (1) **Offence** If a person wilfully or negligently disposes of waste in a manner that harms or is likely to harm the environment:
 - (a) the person, and
 - (b) if the person is not the owner of the waste, the owner,are each guilty of an offence.
- (2) **Defence—lawful authority** It is a defence in any proceedings against a person for an offence under this section if the person establishes that the waste was disposed of with lawful authority.
- (3) **Definitions** In this section:

dispose of waste includes to dump, abandon, deposit, discard, reject, discharge or emit anything that constitutes waste, and also includes to cause or permit the disposal of waste.

owner of waste includes, in relation to waste that has been disposed of, the person who was the owner of the waste immediately before it was disposed of.

waste includes any unwanted or surplus substance (whether solid, liquid or gaseous). A substance is not precluded from being waste merely because it may be reprocessed, re-used or recycled.

116 Leaks, spillages and other escapes

- (1) If a person wilfully or negligently causes any substance to leak, spill or otherwise escape (whether or not from a container) in a manner that harms or is likely to harm the environment:
 - (a) the person, and
 - (b) if the person is not the owner of the substance, the owner,are each guilty of an offence.
- (2) If:
 - (a) the person in possession of the substance at the time of the leak, spill or other escape, or
 - (b) the owner of any container from which the substance leaked, spilled or escaped, or
 - (c) the owner of the land on which the substance or any such container was located at the time of the leak, spill or other escape, or
 - (d) the occupier of the land on which the substance or any such container was located at the time of the leak, spill or other escape,wilfully or negligently, in a material respect, caused or contributed to the conditions that gave rise to the commission of the offence under subsection (1), that person, owner or occupier is guilty of an offence.
- (3) A person may be proceeded against and convicted of an offence under subsection (2) whether or not a person has been proceeded against or convicted of an offence under subsection (1) in respect of the leak, spill or other escape.
- (4) It is a defence in any proceedings against a person for an offence under this section if the person establishes that the leak, spill or other escape was caused with lawful authority.
- (5) In this section:

container includes anything used for the purpose of storing, transporting or handling the substance concerned.

owner of a substance includes, in relation to a substance that has leaked, spilled or otherwise escaped, the person who was the owner of the substance immediately before it leaked, spilled or otherwise escaped.

117 Emission of ozone depleting substances

(1) If a person wilfully or negligently causes 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:

(a) the person, and

(b) if the person is not the owner of the substance, the owner,

are each guilty of an offence.

(2) In this section:

owner of a substance includes, in relation to a substance that has been emitted into the atmosphere, the person who was the owner of the substance immediately before it was emitted.

118 General defence for tier 1 offences

It is a defence in any proceedings against a person for an offence under this Part if the person establishes:

(a) that the commission of the offence was due to causes over which the person had no control, and

(b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

119 Maximum penalty for tier 1 offences

A person who is guilty of an offence under this Part is liable, on conviction:

(a) in the case of a corporation—to a penalty not exceeding \$1,000,000, or

(b) in the case of an individual—to a penalty not exceeding \$250,000 or 7 years imprisonment, or both.

Part 5.3 Water pollution

120 Prohibition of pollution of waters

(1) A person who pollutes any waters is guilty of an offence.

(2) In this section:

pollute waters includes cause or permit any waters to be polluted.

121 Defence of authority conferred by regulation

- (1) The regulations may, for the purposes of this Part, regulate the carrying out of an activity that pollutes waters.
- (2) It is a defence in proceedings against a person for an offence against this Part if the person establishes that:
 - (a) the pollution resulted from an activity regulated by such a regulation, and
 - (b) the requirements of that regulation were not contravened.

122 Defence of authority conferred by licence

It is a defence in proceedings against a person for an offence under this Part if the person establishes that:

- (a) the pollution was regulated by an environment protection licence held by the person or another person, and
- (b) the conditions to which that licence was subject relating to the pollution of waters were not contravened.

123 Maximum penalty for water pollution offences

A person who is guilty of an offence under this Part is liable, on conviction:

- (a) in the case of a corporation—to a penalty not exceeding \$250,000 and, in the case of a continuing offence, to a further penalty not exceeding \$120,000 for each day the offence continues, or
- (b) in the case of an individual—to a penalty not exceeding \$120,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues.

Part 5.4 Air pollution

Division 1 General

124 Operation of plant (other than domestic plant)

The occupier of any premises who operates any plant in or on those premises in such a manner as to cause air pollution from those premises is guilty of an offence if the air pollution so caused, or any part of the air pollution so caused, is caused by the occupier's failure:

- (a) to maintain the plant in an efficient condition, or
- (b) to operate the plant in a proper and efficient manner.

125 Maintenance work on plant (other than domestic plant)

The occupier of any premises who carries out maintenance work on any plant in or on those premises in such a manner as to cause air pollution from those premises is guilty of an offence if the air pollution so caused, or any part of the air pollution so caused, is caused by the occupier's failure to carry out that work in a proper and efficient manner.

126 Dealing with materials

(1) The occupier of any premises who deals with materials in or on those premises in such a manner as to cause air pollution from those premises is guilty of an offence if the air pollution so caused, or any part of the air pollution so caused, is caused by the occupier's failure to deal with those materials in a proper and efficient manner.

(2) In this section:

deal with materials means process, handle, move, store or dispose of the materials.

materials includes raw materials, materials in the process of manufacture, manufactured materials, by-products or waste materials.

127 Proof of causing pollution

To prove that air pollution was caused from premises, within the meaning of sections 124-126, it is sufficient to prove that air pollution was caused on the premises, unless the defendant satisfies the court that the air pollution did not cause air pollution outside the premises.

128 Standards of air impurities not to be exceeded

(1) The occupier of any 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 at any point specified in or determined in accordance with the regulations of air impurities in excess of:

(a) the standard of concentration and the rate, or

(b) the standard of concentration or the rate,

prescribed by the regulations in respect of any such activity or any such plant.

(2) Where neither such a standard nor rate has been so prescribed, the occupier of any premises must carry on any activity, or operate any plant, in or on the premises by such practicable means as may be necessary to prevent or minimise air pollution.

(3) A person who contravenes this section is guilty of an offence.

129 Emission of odours from premises licensed for scheduled activities

(1) The occupier of any premises at which scheduled activities are carried on under the

authority conferred by a licence must not cause or permit the emission of any offensive odour from the premises to which the licence applies.

- (2) It is a defence in proceedings against a person for an offence against this section if the person establishes that:
 - (a) the emission is identified in the relevant environment protection licence as a potentially offensive odour and the odour was emitted in accordance with the conditions of the licence directed at minimising the odour, or
 - (b) the only persons affected by the odour were persons engaged in the management or operation of the premises.
- (3) A person who contravenes this section is guilty of an offence.

130 Provisions prevail

- (1) Sections 124, 125 and 126 have effect despite anything contained in section 128 or 129.
- (2) Section 129 has effect despite anything contained in section 128.

131 Exclusion of residential premises

This Division does not apply to plant or materials, or the carrying on of an activity, in or on premises used only for residential purposes.

132 Maximum penalty for air pollution offences

A person who is guilty of an offence under this Division is liable, on conviction:

- (a) in the case of a corporation—to a penalty not exceeding \$250,000 and, in the case of a continuing offence, to a further penalty not exceeding \$120,000 for each day the offence continues, or
- (b) in the case of an individual—to a penalty not exceeding \$120,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues.

Division 2 Air pollution from fires

133 Prohibition by EPA of burning in open air or incinerators

- (1) This section applies if the EPA is of the opinion that weather conditions are such that the burning of fires in the open or in incinerators while those conditions persist will contribute or is likely to contribute to air pollution to such an extent that the making of an order under this section is warranted.
- (2) The EPA may, by order published in accordance with this section, prohibit,

unconditionally or conditionally, the burning of fires in the open or in all or any specified classes of incinerators.

- (3) An order under this section has effect for such period (not exceeding 7 days) as is specified in the order, but may be revoked by a further order under this section.
- (4) An order under this section must be:
 - (a) published in a daily newspaper circulating throughout the State not later than on the day on which the order is to take effect, or
 - (b) broadcast by radio or television throughout the area of the State to which it relates not later than on the eve of the day on which the order is to take effect.
- (5) An order under this section may be limited in any way specified in the order, including:
 - (a) to specified areas or classes of areas,
 - (b) to specified persons or classes of persons,
 - (c) to specified times or circumstances,
 - (d) to specified purposes or classes of purposes.
- (6) An order under this section has effect even though it prohibits burning that is permitted by any regulation relating to the burning of fires.

134 Directions by authorised officers concerning fires

- (1) This section applies if an authorised officer is of the opinion that a fire is burning in or on any premises and:
 - (a) the fire is prohibited by an order of the EPA under this Division or by the regulations, or
 - (b) air pollution from the fire is injurious to the health of any person or is causing or is likely to cause serious discomfort or inconvenience to any person.
- (2) The authorised officer may, by notice in writing given to:
 - (a) the occupier of the premises or person apparently in charge of the premises, or
 - (b) the person apparently in charge of the fire,direct the occupier or other person to whom the notice is given to extinguish the fire immediately.
- (3) The authorised officer may, by that notice, also direct the occupier or other person not to light or maintain a similar fire in or on the premises during such period (not

exceeding 48 hours) as is specified in the notice.

(4) A notice under this section may be revoked by a further notice under this section.

135 Offence

A person who, without reasonable excuse, does not comply with an order or notice under this Division is guilty of an offence.

Maximum penalty: 30 penalty units.

Part 5.5 Noise pollution

136 Sale of articles emitting more than prescribed noise

- (1) A person who, whether on the person's own behalf or on behalf of another person, sells any article of a class prescribed by the regulations for the purposes of this section is guilty of an offence if, when in use or operation, the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the prescribed level.
- (2) The articles that may be prescribed for the purposes of this section extend to plant, motor or other vehicles, vessels or other things of any description.

137 Sale of articles required to be fitted with noise control equipment

- (1) A person who, whether on the person's own behalf or on behalf of another person, sells any article of a class prescribed by the regulations for the purposes of this subsection is guilty of an offence if the article is not fitted in the prescribed manner with noise control equipment of a prescribed class.
- (2) A person who, whether on the person's own behalf or on behalf of another person, sells any article of a class prescribed by the regulations for the purposes of this subsection is guilty of an offence if the noise control equipment with which it is fitted has not been maintained in accordance with the regulations.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant took all reasonable steps to ensure that the equipment was maintained as required by the regulations.
- (4) The articles that may be prescribed for the purposes of this section extend to plant, motor or other vehicles, vessels or other things of any description.

138 Defence—sale of articles

It is a defence in any proceedings against a person for an offence under section 136 or 137 if the person establishes:

- (a) that the offence was committed by the person in the course of the person's

employment by another person, or

- (b) that on, or in the event of, the sale of the article to which the offence relates, the person received or was to be paid remuneration, by way of commission, from a person other than the owner of the article.

139 Operation of plant

The occupier of any premises who operates any plant (other than control equipment) at those premises in such a manner as to cause the emission of noise from those premises is guilty of an offence if the noise so caused, or any part of it, is caused by the occupier's failure:

- (a) to maintain the plant in an efficient condition, or
(b) to operate the plant in a proper and efficient manner.

140 Dealing with materials

- (1) The occupier of any premises who deals with materials in or on premises in such a manner as to cause the emission of noise from those premises is guilty of an offence if the noise so caused, or any part of it, is caused by the occupier's failure to deal with those materials in a proper and efficient manner.

- (2) In this section:

deal with materials means process, handle, move, store or dispose of the materials.

materials includes raw materials, materials in the process of manufacture, manufactured materials, by-products, or waste materials.

141 Maximum penalty for noise offences

A person who is guilty of an offence under this Part is liable, on conviction:

- (a) in the case of a corporation—to a penalty not exceeding \$60,000 and, in the case of a continuing offence, to a further penalty not exceeding \$6,000 for each day the offence continues, or
(b) in the case of an individual—to a penalty not exceeding \$30,000 and, in the case of a continuing offence, to a further penalty not exceeding \$600 for each day the offence continues.

Part 5.6 Land pollution: waste

142 Definition

In this Part:

land does not include waters.

143 Unlawful transporting of waste

(1) **Offence** If a person transports waste to a place that cannot lawfully be used as a waste facility for that waste:

- (a) the person, and
 - (b) if the person is not the owner of the waste, the owner,
- are each guilty of an offence.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

(2) **Proof of lawfulness** In any proceedings for an offence under this section the defendant bears the onus of proving that the place to which the waste was transported can lawfully be used as a waste facility for that waste.

(3) **Defence—owner of waste** It is a defence in any proceedings against an owner of waste for an offence under this section if the owner did not transport the waste and establishes:

- (a) that the commission of the offence was due to causes over which the owner had no control, and
- (b) that the owner took reasonable precautions and exercised due diligence to prevent the commission of the offence.

(3A) **Defence—approved notice** It is a defence in any proceedings for an offence under this section if the defendant establishes that:

- (a) an approved notice was, at the time of the alleged offence, given to the defendant by the owner or occupier of the place to which the waste was transported or was displayed at the place, and
- (b) the approved notice stated that the place could lawfully be used as a waste facility for the waste, and
- (c) the defendant had no reason to believe that the place could not lawfully be used as a waste facility for the waste.

(3B) However, it is not a defence in such proceedings for the defendant to establish that the defendant relied on the advice (other than advice in the form of an approved notice) given by the owner or occupier concerned to the effect that the place could, at the time of the alleged offence, be lawfully used as such a waste facility.

(3C) **Defence—waste not deposited** It is a defence in any proceedings for an offence under

this section if the defendant establishes that the waste transported by the defendant was not deposited by the defendant or any other person at the place to which it was transported.

(4) **Definitions** In this section:

approved notice means a notice, in a form approved by the EPA:

- (a) stating that the place to which the notice relates can lawfully be used as a waste facility for the waste specified in the notice, and
- (b) that contains a certification by the owner or occupier of the place that the statement is correct.

owner of waste includes, in relation to waste that has been transported, the person who was the owner of the waste immediately before it was transported.

waste includes any unwanted or surplus substance (whether solid, liquid or gaseous). A substance is not precluded from being waste merely because it may be reprocessed, re-used or recycled.

144 Permitting land to be used unlawfully as waste facility

- (1) A person who is the owner or occupier of any land that cannot lawfully be used as a waste facility and who permits the land to be used as a waste facility is guilty of an offence.

Maximum penalty:

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

- (2) In any proceedings for an offence under this section the defendant bears the onus of proving that the land concerned can lawfully be used as a waste facility.

Part 5.6A Littering

144A Definitions

In this Part:

advertising material means any paper product (including a leaflet, brochure or magazine), or other material thing, that contains advertising or promotional matter.

custodian of a place or vehicle means the person who owns the place or vehicle or who has the care, control or management of the place or vehicle.

depositing litter in or on a place includes:

- (a) dropping or throwing litter in, on, into or onto the place, or
- (b) leaving litter in or on the place, or
- (c) putting litter in such a location that it falls, descends, blows, is washed, percolates or otherwise escapes or is likely to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place, or
- (d) causing, permitting or allowing litter to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place.

litter includes:

- (a) any solid or liquid domestic or commercial refuse, debris or rubbish and, without limiting the generality of the above, includes any glass, metal, cigarette butts, paper, fabric, wood, food, abandoned vehicles, abandoned vehicle parts, construction or demolition material, garden remnants and clippings, soil, sand or rocks, and
- (b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place,

deposited in or on a place, whether or not it has any value when or after being deposited in or on the place.

open private place means:

- (a) a private place that is situated in or on land and that is not within a building on the land, or
- (b) a private place that is situated in or on waters.

vehicle means:

- (a) any thing that is capable of transporting a person, including an aeroplane, vessel, bicycle, bus, car, horse, train or tram, or
- (b) any trailer that is attached to any such thing,

and includes a motor vehicle.

145 Littering generally

- (1) **Offence of littering** A person who deposits litter in or on a public place or an open private place is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) **Application of this section** This section applies whether the place is in or on land or is in or on waters, but (without limiting subsection (5) (b)) does not apply to a place or class of places prescribed by the regulations as being excluded from this section.
- (3) **Exceptions: public places** Subsection (1) does not apply to a person who deposited the litter in or on a public place, if the person:
- (a) deposited the litter in or on the place:
 - (i) in a receptacle provided by the custodian of the place for the depositing of litter, and
 - (ii) in accordance with any conditions specified by the custodian, by means of a notice displayed on or in the vicinity of the receptacle, in relation to the depositing of litter in the receptacle, or
 - (b) placed a receptacle containing the litter in the place for the purpose of the litter being removed in the course of a litter removal service provided by the custodian of the place, or
 - (c) deposited the litter in the place:
 - (i) in response to an invitation contained in a notice published by the custodian of the place, and
 - (ii) in accordance with any conditions specified in the notice in relation to the depositing of litter in that place, or
 - (d) deposited the litter in the place with the express consent of the custodian of the place.
- (4) **Exceptions: open private places** Subsection (1) does not apply to a person who deposited the litter in or on an open private place, if the person:
- (a) deposited the litter in or on the place in any receptacle:
 - (i) that is provided for the deposit of litter, and
 - (ii) that is appropriate for litter of that size, shape, nature or volume, or
 - (b) at the relevant time was the custodian of the place or was acting with the express or implied consent of the custodian of the place.
- (5) **Exceptions: generally** Subsection (1) does not apply to a person who deposited the litter in or on a place, if the person:
- (a) deposited the litter in the place under an authority conferred by or under this or any other Act or any Commonwealth Act, or
 - (b) deposited the litter in accordance with any regulations made for the purposes of

this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.

145A Aggravated littering

- (1) **Aggravated littering** A person is guilty of the offence of aggravated littering under this section if the person commits an offence under section 145 in circumstances of aggravation.

Maximum penalty (instead of any penalty under section 145):

- in the case of a corporation—50 penalty units, or
- in the case of an individual—30 penalty units.

- (2) **Circumstances of aggravation** For the purposes of this section, ***circumstances of aggravation*** means circumstances in which the litter deposited by the alleged offender:

(a) caused or contributed to appreciable danger or harm to any persons, animals, premises or property, or

(b) was reasonably likely to cause or contribute to such danger or harm (whether or not any such danger or harm was actually caused),

because of the volume or kind of litter deposited, or the manner in which it was deposited, or the place in or on which it was deposited.

- (3) Without limiting subsection (2), a reference in that subsection to litter includes a reference to a lit cigarette.

- (4) For the purposes of this section, ***circumstances of aggravation*** also means circumstances in which the litter deposited by the alleged offender comprised or included a syringe. It is not necessary to establish, in relation to those circumstances, the matters referred to in subsection (2).

- (5) **Aggravation not proved** If the court is satisfied that a person charged with the offence of aggravated littering is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under section 145, the court may find the person guilty of the offence under that section, and the person is liable to punishment accordingly.

- (6) **Definition** In this section:

syringe means a hypodermic syringe, and includes anything designed for use or intended to be used as part of such a syringe, and also includes a needle designed for use or intended to be used in connection with such a syringe.

146 Owners and drivers of motor vehicles and trailers involved in littering

- (1) **Offence** If litter is deposited from a motor vehicle, or from a trailer attached to a motor vehicle, contrary to section 145 or 145A, the following are taken to be guilty of an offence under that section:
- (a) in the case of litter deposited from a motor vehicle—the driver of the motor vehicle,
 - (b) in the case of litter deposited from a motor vehicle—the owner of the motor vehicle,
 - (c) in the case of litter deposited from a trailer attached to a motor vehicle—the owner of the trailer.
- (2) **Only one person liable** Subsection (1) does not affect the liability of the actual offender but, if a penalty has been imposed or recovered from any person in relation to the offence (whether the actual offender, the driver or the owner), no further penalty may be imposed on or recovered from any other person. In this subsection, **penalty** includes a penalty under a penalty notice.
- (3) **Exception for passenger vehicles** Subsection (1) does not apply if:
- (a) the motor vehicle is a bus, taxi or other public transport vehicle and is being used at the time to convey a public passenger, and
 - (b) the litter was deposited by that passenger.
- (4) **Exception for stolen vehicles** Subsection (1) (b) does not apply if the motor vehicle was at the time a stolen motor vehicle or a motor vehicle illegally taken or used.
- (4A) **Exception for stolen trailers** Subsection (1) (c) does not apply if the trailer was at the time a stolen trailer or a trailer illegally taken or used.
- (5) **Exception for owner when not driver** Subsection (1) (b) or (c) does not apply if the owner was not in the motor vehicle, including the motor vehicle to which the trailer was attached, at the relevant time and:
- (a) gives notice in accordance with subsection (7) of the name and address of the person who was in charge of the motor vehicle at the relevant time, or
 - (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

A notice under this subsection is, in proceedings against the person named in the notice for an offence under this Part, evidence that the person was driving the motor vehicle at the relevant time.

- (6) **Exception for driver when not offender** Subsection (1) (a) does not apply if the driver:
- (a) gives notice in accordance with subsection (7) of the name and address of the passenger in the motor vehicle who deposited the litter, or
 - (b) satisfies the officer who gave the penalty notice for the offence or the court dealing with the offence (as the case requires) that the driver did not deposit the litter and did not know, and could not with reasonable diligence have ascertained, the name and address of the passenger who deposited the litter.

A notice under this subsection is, in proceedings against the person named in the notice for an offence under this Part, evidence that the person deposited the litter from the motor vehicle.

- (7) **Notice given by owner or driver** A notice for the purposes of subsection (5) or (6) must be verified by statutory declaration and:
- (a) if a penalty notice has been given for the offence—the notice must be given to an officer specified in the penalty notice for the purpose within 28 days after service of the penalty notice, or
 - (b) if a court is dealing with the offence—the notice must be given to the informant within 28 days after service of the summons for the offence.
- (8) **False statements** A person who makes a statement for the purposes of subsection (5) or (6) knowing that it is false is guilty of an offence.

Maximum penalty: 10 penalty units.

146A Depositing of advertising material

- (1) **Offence** A person must not deposit any advertising material in or on any place, other than:
- (a) in a receptacle that is provided for the deposit of mail, or
 - (b) in a receptacle that is provided for the deposit of newspapers, or
 - (c) under the door of any premises.
- Maximum penalty: 5 penalty units.
- (2) **Application of this section** This section applies whether the place is a public place or a private place, and whether the place is in or on land or is in or on waters, but does not apply to the deposit of any advertising material in or on a vehicle.
- (3) **Exceptions** This section does not apply to the deposit of:
- (a) any newspaper, or any material folded or inserted in a newspaper, or

- (b) anything that is of such a size, shape or volume that it is not possible or appropriate for it to be deposited in accordance with subsection (1) (a)–(c), or
- (c) anything in a place by a person who is the custodian of the place or is acting with the express consent of the custodian of the place, or
- (d) anything by a person who deposits it in accordance with any regulations made for the purposes of this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.

146B Advertising material not to be placed in or on vehicles

- (1) **Offence** A person must not deposit any advertising material in or on any vehicle.

Maximum penalty: 5 penalty units.

- (2) **Application of this section** This section applies whether the vehicle is situated in or on a public place or a private place.

- (3) **Exceptions** This section does not apply to the deposit of:

- (a) any material by a person who is the custodian of the vehicle or is acting with the express consent of the custodian of the vehicle, or
- (b) any material by a person who deposits it in accordance with any regulations made for the purposes of this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.

- (4) For the purposes of subsection (3) (a), a person is not the custodian of a vehicle parked at a parking station merely because the person is the custodian of the parking station. In this subsection, **parking station** means a place (such as a car park) provided for the parking of vehicles, and includes a place or place of a class prescribed by the regulations.

146C Offence to cause or ask person to commit offence

A person must not cause, ask, require or induce, or attempt to cause, ask, require or induce, another person to do anything that contravenes or would contravene section 146A or 146B.

Maximum penalty:

- in the case of a corporation—30 penalty units, or
- in the case of an individual—7 penalty units.

146D Littering reports

- (1) The EPA is required to furnish to the Minister a biennial report on littering.

- (2) The report is to contain estimates of the type of material that comprises litter deposited during the period concerned and the quantity (by weight and volume) of each such type of material, by reference to locations considered by the EPA to be places of significant littering activity.
- (3) The EPA must cause advertisements to be published setting out the proposed methodology to be used in compiling such reports and inviting comments from members of the public concerning the proposed methodology. The EPA must allow at least 30 days for such comments to be made, and must consider comments received within the time allowed.
- (4) The Minister is to cause a copy of each report to be laid before both Houses of Parliament within 30 sitting days after receiving the report.
- (5) If the Minister, after consideration of the report, is of the opinion that:
 - (a) the managers or other persons responsible for any of the locations referred to in subsection (2), or
 - (b) the producers of or other persons responsible for any products whose components or packaging comprise litter at any such locations,are not acting in a manner that minimises littering, the Minister may make recommendations aimed at improving litter avoidance strategies.

146E Restrictions on release of balloons

- (1) **Offence of releasing balloons** A person who releases 20 or more balloons at or about the same time is guilty of an offence if the balloons are inflated with a gas that causes them to rise in the air.

Maximum penalty (for a corporation or an individual): 10 penalty units.
- (2) **Offence of causing or permitting release of balloons** A person who causes or permits the release (whether by one or more than one person) of 20 or more balloons at or about the same time is guilty of an offence if the balloons are inflated with a gas that causes them to rise in the air.

Maximum penalty (for a corporation or an individual): 10 penalty units.
- (3) **Aggravated offence** A person is guilty of an aggravated offence under this subsection if the person commits an offence under subsection (1) or (2) and the number of balloons released is more than 100.

Maximum penalty (instead of any penalty under subsection (1) or (2)):
 - in the case of a corporation—55 penalty units, or
 - in the case of an individual—33 penalty units.

- (4) **Exceptions** Subsections (1)–(3) do not apply if:
- (a) the balloons are released unintentionally and without negligence, or
 - (b) the balloons are released inside a building or structure and do not make their way into the open air, or
 - (c) the balloons are hot air balloons that are recovered after landing, or
 - (d) the balloons are released for scientific (including meteorological) purposes.
- (5) **Aggravation not proved** If the court is satisfied that a person charged with an offence under subsection (3) is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1) or (2), the court may find the person guilty of the offence under subsection (1) or (2), and the person is liable to punishment accordingly.
- (6) **Evidence** In any proceedings under this section:
- (a) it is not necessary for the prosecutor to establish the exact number of balloons released, and
 - (b) evidence that a balloon rose in the air after being released is, in the absence of evidence to the contrary, evidence that the balloon was inflated with a gas that caused it to rise in the air.

Part 5.7 Duty to notify pollution incidents

147 Meaning of material harm to the environment

- (1) For the purposes of this Part:
- (a) harm to the environment is material if:
 - (i) it involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial, or
 - (ii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (or such other amount as is prescribed by the regulations), and
 - (b) loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment.
- (2) For the purposes of this Part, it does not matter that harm to the environment is caused only in the premises where the pollution incident occurs.

148 Pollution incidents causing or threatening material harm to be notified

- (1) **Kinds of incidents to be notified** This Part applies where a pollution incident occurs in the course of an activity so that material harm to the environment is caused or threatened.
- (2) **Duty of person carrying on activity to notify** A person carrying on the activity must, as soon as practicable after the person becomes aware of the incident, notify the appropriate regulatory authority of the incident and all relevant information about it.
- (3) **Duty of employee engaged in carrying on activity to notify** A person engaged as an employee in carrying on an activity must, as soon as practicable after the person becomes aware of the incident, notify the employer of the incident and all relevant information about it. If the employer cannot be contacted, the person is required to notify the appropriate regulatory authority.
- (4) **Duty of occupier of premises to notify** The occupier of the premises on which the incident occurs must, as soon as practicable after the occupier becomes aware of the incident, notify the appropriate regulatory authority of the incident and all relevant information about it.
- (5) **Duty on employer and occupier to ensure notification** An employer or an occupier of premises must take all reasonable steps to ensure that, if a pollution incident occurs in carrying on the activity of the employer or occurs on the premises, as the case may be, the persons engaged by the employer or occupier will, as soon as practicable, notify the employer or occupier of the incident and all relevant information about it.
- (6) **Extension of duty to agents and principals** This section extends to a person engaged in carrying on an activity as an agent for another. In that case, a reference in this section to an employee extends to such an agent and a reference to an employer extends to the principal.

149 Manner and form of notification

- (1) If the regulations prescribe the manner or form of notifying pollution incidents under this Part, the notification is to conform to the requirements of the regulations.
- (2) Without limiting subsection (1), the regulations:
 - (a) may require that verbal notification be followed by written notification, and
 - (b) may provide that notification to a designated person or authority is taken to be notification to the relevant person or authority under this Part.

150 Relevant information to be given

The relevant information about a pollution incident required under this Part consists of the following:

- (a) the time, date, nature, duration and location of the incident,
- (b) the location of the place where pollution is occurring or is likely to occur,
- (c) the nature, the estimated quantity or volume and the concentration of any pollutants involved,
- (d) the circumstances in which the incident occurred (including the cause of the incident, if known),
- (e) the action taken or proposed to be taken to deal with the incident and any resulting pollution or threatened pollution,
- (f) other information prescribed by the regulations.

151 Incidents not required to be reported

- (1) A person is not required to notify a pollution incident under this Part if the person is aware that the incident has already come to the notice of the person or authority required to be notified.
- (2) A person is not required to notify a pollution incident under this Part 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 or made under this Act.

152 Offence

A person who contravenes this Part is guilty of an offence.

Maximum penalty:

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

153 Incriminating information

- (1) A person is required to notify a pollution incident under this Part even though to do so might incriminate the person or make the person liable to a penalty.
- (2) Any notification given by a person under this Part is not admissible in evidence against the person for an offence or for the imposition of a penalty.
- (3) Subsection (2) does not apply to evidence obtained following or as a result of the notification.

Part 5.8 Motor vehicles

Division 1 Preliminary

154 Definitions

(1) In this Part:

authorised officer means an authorised officer appointed by the EPA.

excessive air impurities—see subsection (2).

mass—see subsection (3).

petrol includes a mixture of petrol and any other substance, other than a prescribed mixture or a mixture of a prescribed class or description.

prescribed anti-pollution device means a device specified or described in the regulations and described there as being a device designed or intended to minimise air pollution caused by motor vehicles.

unleaded petrol means petrol:

(a) that contains:

- (i) no lead or not more than the prescribed mass of lead per litre, and
- (ii) no phosphorus or not more than the prescribed mass of phosphorus per litre, and

(b) that has a research octane number within the prescribed range.

(2) For the purposes of this Part, a motor vehicle **emits excessive air impurities** if:

- (a) when in operation, it emits as determined in accordance with the regulations, air impurities in excess of the standard of concentration and the rate (or the standard of concentration or the rate) prescribed in respect of the class of motor vehicles to which the motor vehicle belongs, or
- (b) when tested in the prescribed manner, it emits air impurities in excess of the amount per test prescribed in respect of the class of motor vehicles to which the motor vehicle belongs.

(3) For the purposes of this Part, the **mass** of an element contained in a specific volume of a substance may be determined by reference to the mass of the element present as a constituent of a compound contained in that volume.

Division 2 Sale and maintenance of motor vehicles

155 Sale of motor vehicles

A person who, whether on the person's own behalf or on behalf of another person, sells a motor vehicle is guilty of an offence if it emits excessive air impurities.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

156 Sale of motor vehicles without anti-pollution devices

A person who, whether on the person's own behalf or on behalf of another person, sells a motor vehicle is guilty of an offence if:

- (a) the regulations require motor vehicles of the class to which it belongs to be fitted with prescribed anti-pollution devices, and
- (b) the vehicle is not fitted in the prescribed manner with such a device.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

157 Adjustment etc of anti-pollution devices and motor vehicles

(1) A person who:

- (a) removes, disconnects or impairs an anti-pollution device fitted to a motor vehicle, or
 - (b) causes or permits any such device to be removed, disconnected or impaired,
- is guilty of an offence.

(2) A person who:

- (a) adjusts or modifies an anti-pollution device fitted to a motor vehicle, or
- (b) adjusts or modifies any part of a motor vehicle, or
- (c) causes or permits any such device or part to be adjusted or modified,

is guilty of an offence if the adjustment or modification results in the emission of excessive air impurities by the motor vehicle.

(3) In this section:

anti-pollution device means a prescribed anti-pollution device, or any other device that is designed to minimise air pollution.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

158 Service or repair of motor vehicles

A person who:

- (a) services or repairs a motor vehicle, or
 - (b) causes or permits a motor vehicle to be serviced or repaired,
- in a manner prohibited by the regulations is guilty of an offence.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

159 Sale of motor vehicles not serviced, maintained or adjusted as prescribed

A person who, whether on the person's own behalf or on behalf of another person, sells a motor vehicle is guilty of an offence if:

- (a) the regulations require motor vehicles of the class to which it belongs to be serviced, maintained or adjusted in a specified manner, and
- (b) the vehicle has not been serviced, maintained or adjusted in that manner.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

160 Defences

(1) **Sale of motor vehicle** It is a defence to a prosecution for an offence under section 155, 156 or 159 if the defendant proves:

- (a) that the offence was committed by the defendant in the course of employment by another person, or
- (b) that upon, or in the event of, the sale of the motor vehicle, the defendant received or was to receive remuneration, by way of commission, from a person other than the owner of the motor vehicle.

- (2) **Sale of vehicle emitting excessive air impurities** It is a defence to a prosecution for an offence under section 155 if the defendant proves:
- (a) that the defendant took all reasonable and practicable steps to prevent the commission of the offence, and
 - (b) that no visible air impurities were emitted by the motor vehicle.
- (3) **Removal, adjustment, modification etc resulting in excessive air impurities** It is a defence to a prosecution for an offence under section 157 if the defendant proves that the removal, disconnection, impairment, adjustment or modification was done:
- (a) in order to service, repair or replace the anti-pollution device or the part of the motor vehicle concerned, or to improve its efficiency with respect to minimising air pollution, or
 - (b) as a temporary measure, in order to facilitate the service or repair of a motor vehicle, or
 - (c) in order to facilitate the use of a motor vehicle for motor racing or off-road motor sport (being a motor vehicle that immediately before that removal or other action was not registrable under the [Road Transport \(Vehicle Registration\) Act 1997](#)) and that the vehicle is to be used in that condition only in the competition itself.
- (4) **Adjustment or modification resulting in excessive air impurities** It is a defence to a prosecution for an offence under section 157 (2) if the defendant proves that, at the time the offence was committed:
- (a) the defendant did not know and could not reasonably be expected to have known that the motor vehicle emitted excessive air impurities, and
 - (b) no visible air impurities were emitted by the motor vehicle.
- (5) **Sale of vehicle required to be serviced as prescribed** It is a defence to a prosecution for an offence under section 159 if the defendant proves that the defendant took all reasonable steps to ensure that the motor vehicle was serviced, maintained or adjusted as required by the regulations.
- (6) **Sale of vehicle for use in competitive sport** It is a defence to a prosecution for an offence under section 155 or 156, if the defendant proves that the motor vehicle:
- (a) was constructed or has been modified solely for use in motor racing or off-road motor sport, and
 - (b) was not registrable under the [Road Transport \(Vehicle Registration\) Act 1997](#).

161 Notices

- (1) **Notice to repair** An authorised officer may, by notice in writing given to the owner of a

motor vehicle which the officer reasonably suspects emits excessive air impurities, direct the owner to cause it to be serviced or repaired, within a specified period of time, so that it no longer emits excessive air impurities.

- (2) **Notice regarding anti-pollution devices** An authorised officer may, by notice in writing given to the owner of a motor vehicle, direct the owner:
- (a) if the vehicle is not fitted with every prescribed anti-pollution device required by the regulations to be fitted to it—to cause it to be fitted with specified prescribed anti-pollution devices, or
 - (b) if any device fitted to the vehicle (being a prescribed anti-pollution device or any other device designed to minimise air pollution) has been removed, disconnected or impaired—to cause the device to be refitted, reconnected or repaired, or
 - (c) if any such device or any part of the vehicle has been so adjusted or modified that, as a result, the vehicle emits excessive air impurities—to cause the device or part to be readjusted or restored,

within a specified period of time.

- (3) **Revoking or varying notice** A notice given under this section in respect of a motor vehicle may be revoked or varied by an authorised officer by further notice in writing given to the owner of the vehicle.
- (4) **Offence** A person who uses a motor vehicle in respect of which a notice has been given under this section, or causes or permits it to be used, is guilty of an offence if at that time:
- (a) the person knows that the notice has been given, and
 - (b) the notice has not been revoked, and
 - (c) the period of time specified in the notice has expired, and
 - (d) the notice has not been complied with.

Maximum penalty: 60 penalty units.

- (5) **Affixing label to vehicle** If an authorised officer has given a notice under this section in respect of a motor vehicle, the authorised officer may affix to the windscreen of the vehicle or otherwise conspicuously affix to the vehicle a prescribed label.
- (6) **Driving permitted for limited purposes** A motor vehicle may be driven to a place for the purpose of:
- (a) having the work required by a notice under this section carried out, or
 - (b) having a label affixed under this section removed by (or with the authority of) an

authorised officer after the required work has been done or the notice has been revoked, or

(c) having the vehicle inspected by an authorised officer or a person authorised by such an officer, or

(d) returning from having any such work done or vehicle inspected,

without contravening subsection (4).

(7) **Removal of label** A person (other than an authorised officer or person acting with the authority of such an officer) who removes a prescribed label affixed to a motor vehicle under this section or obliterates or interferes with any such label is guilty of an offence.

Maximum penalty: 60 penalty units.

162 Minister's power to prohibit use of motor vehicles in certain circumstances

(1) **Ministerial orders** The Minister may, by written order, prohibit 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 may be so specified.

(2) **Purpose of order** The Minister may make such an order if satisfied that it is warranted in order to prevent or minimise harm to the environment or injury to public health.

(3) **Period of operation of order** Any such order has effect:

(a) on its publication in such manner as may be specified in the regulations, and

(b) for such period as may be specified in the order or, if no period is so specified, until it is revoked.

(4) **Publication of order** The regulations may provide for the publication of any such order by means of a newspaper or television, by the display of notices or by any other method specified in the regulations.

(5) **Offence** A person who contravenes any such order is guilty of an offence.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

Division 3 Unleaded petrol

163 Unleaded petrol to be genuine

A person who sells as unleaded petrol any petrol is guilty of an offence if (at the time it is

sold):

(a) it contains:

- (i) more than the prescribed mass of lead per litre, or
- (ii) more than the prescribed mass of phosphorus per litre, or

(b) it has a research octane number not within the prescribed range.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

164 Sale of certain motor vehicles prohibited

(1) A person who, whether on the person's own behalf or on behalf of another person, sells a motor vehicle of a prescribed class or description is guilty of an offence if the vehicle, when in operation using unleaded petrol, does not meet the prescribed road octane requirement when tested in accordance with the regulations.

Maximum penalty:

- in the case of a corporation—\$250,000, or
- in the case of an individual—\$120,000.

(2) It is a defence to a prosecution for an offence under this section, if the defendant proves:

- (a) that the offence was committed by the defendant in the course of employment by another person, or
- (b) that upon, or in the event of, the sale of the motor vehicle, the defendant received or was to receive remuneration, by way of commission, from a person other than the owner of the motor vehicle.

Division 4 Registration of motor vehicles

165 Suspension of registration

(1) The EPA may, by notice in writing to the owner of the motor vehicle, suspend the registration of a motor vehicle under the [Road Transport \(Vehicle Registration\) Act 1997](#):

- (a) if the motor vehicle has not been presented for inspection in accordance with the requirements of a notice under this Part or of any other provision of or made under this Act, or

- (b) if the motor vehicle is in such a condition that its sale or use in that condition would constitute an offence under this Act or the regulations.
- (2) The EPA may remove any such suspension if satisfied, after inspecting or testing the motor vehicle, that the sale or use of the motor vehicle would no longer constitute an offence under this Act or the regulations.
- (3) The EPA must give written notice of any suspension, or removal of suspension, to the Roads and Traffic Authority.
- (4) The suspension of registration of a motor vehicle takes effect when notice of the suspension is given to the owner of the motor vehicle or, if a later time is specified in the notice, at that later time.
- (5) The suspension of registration of a motor vehicle does not have effect while the vehicle is being taken to a place:
- (a) where repairs or other work required to comply with the requirements of a notice under this Part or of any other provision of or made under this Act are to be carried out, or
- (b) for the purpose of its being inspected or tested by (or with the authority of) an authorised officer,
- or is being taken directly from any such place to the place where the vehicle is usually kept.
- (6) While the registration of a motor vehicle is suspended under this section, the motor vehicle is taken, for the purposes of this Act, the *Road Transport (Vehicle Registration) Act 1997* and any other Act, not to be registered under that Act.

166 Prohibition on registration

- (1) The EPA, by notice in writing to the Roads and Traffic Authority:
- (a) may prohibit the registration under the *Road Transport (Vehicle Registration) Act 1997* of a particular motor vehicle if it is satisfied that the motor vehicle is in such a condition that the sale or use of the motor vehicle in that condition would constitute an offence under this Act or the regulations, and
- (b) may remove any such prohibition if, after inspecting or testing the motor vehicle concerned, it is satisfied that the motor vehicle is no longer in such a condition.
- (2) The EPA must give written notice of any prohibition, or removal of prohibition, to the owner of the motor vehicle.

Part 5.9 General offences

167 Control equipment

- (1) The occupier of any premises must maintain any control equipment installed at the premises in an efficient condition.
- (2) The occupier of any premises must operate any control equipment installed at the premises in a proper and efficient manner.
- (3) This section does not apply to any control equipment prescribed by the regulations as being excluded from this section.
- (4) An occupier of premises who contravenes this section is guilty of an offence.

Maximum penalty:

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

Note—

control equipment is defined in the Dictionary.

168 Ancillary offences

A person who:

- (a) aids, abets, counsels or procures another person to commit, or
- (b) attempts to commit, or
- (c) conspires to commit,

an offence under another provision of this Act or the regulations is guilty of an offence against that other provision and is liable, on conviction, to the same penalty applicable to an offence against that other provision.

169 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
 - (a) the corporation contravened the provision without the knowledge actual, imputed or constructive of the person, or

- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

170 Extra-territoriality

A person is guilty of a particular offence against this Act or the regulations in respect of any act or omission done or omitted by the person outside the State:

- (a) if the act or omission causes any substance to come into the State, and
- (b) if the substance causes harm or is likely to cause harm to the environment of the State, and
- (c) if (apart from this section) the act or omission would have constituted that offence if it had been done or omitted within the State.

Chapter 6 Environmental audits

Part 6.1 Preliminary

171 Relationship of this Chapter to other provisions

- (1) This Chapter does not affect other provisions of this Act, which provide for:
- (a) conditions on environment protection licences requiring:
 - (i) monitoring or testing, or
 - (ii) reporting on monitoring or testing, and
 - (b) functions exercisable by the appropriate regulatory authority or authorised officers for the purpose of auditing compliance with this Act, the regulations and conditions of licences.

- (2) This Chapter does not affect provisions of this or any other Act relating to pollution reduction programs or industry waste reduction programs.

172 Nature of environmental audit

An environmental audit is a documented evaluation of an activity (including an evaluation of management practices, systems and plant) for either or both of the following purposes:

- (a) to provide information to the persons managing the activity on compliance with legal requirements, codes of practice and relevant policies relating to the protection of the environment,
- (b) to enable those persons to determine whether the way the activity is carried on can be improved in order to protect the environment and to minimise waste.

173 Accreditation and regulation of environmental auditors

The regulations may make provision for or with respect to either or both of the following:

- (a) the accreditation of environmental auditors for the purposes of this Chapter,
- (b) the carrying out of environmental audits by environmental auditors.

Part 6.2 Mandatory environmental audits

174 Conditions for mandatory environmental audits

- (1) The conditions of a licence may require a mandatory environmental audit to be undertaken to the satisfaction of the appropriate regulatory authority.
- (2) Such a condition must specify the purpose of the audit.
- (3) Such a condition may require:
 - (a) appointment of an environmental auditor to undertake the audit, and
 - (b) approval by the appropriate regulatory authority of the environmental auditor before being appointed, and
 - (c) preparation of written documentation during the course of the audit, and
 - (d) preparation of an audit report, and
 - (e) production to the appropriate regulatory authority of the audit report.
- (4) Such a condition may:
 - (a) specify the format and level of detail required for the audit, or
 - (b) require the environmental auditor to submit the proposed format and level of detail to the appropriate regulatory authority for approval.

175 Circumstances in which mandatory environmental audit can be imposed

Conditions requiring the undertaking of a mandatory environmental audit may only be imposed if the appropriate regulatory authority reasonably suspects:

- (a) that the holder of the licence has on one or more occasions contravened this Act, the regulations or the conditions of the licence, and
- (b) that the contravention or contraventions have caused, are causing or are likely to cause, harm to the environment.

176 Certification of audit report

The audit report for a mandatory environmental audit is taken not to have been duly produced to the appropriate regulatory authority unless it is accompanied by:

- (a) a declaration signed by the holder of the licence certifying that the holder has not knowingly provided any false or misleading information to the environmental auditor and has provided all relevant information to the auditor, and
- (b) a declaration signed by the environmental auditor:
 - (i) setting out the auditor's qualifications, and
 - (ii) certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

177 Offences

- (1) **False or misleading information to auditor** A person who provides information to an environmental auditor in connection with a mandatory environmental audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (2) **Information not provided to auditor** The holder of a licence who fails to provide information to an environmental auditor in connection with a mandatory environmental audit being carried out in relation to the licence, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (3) **False or misleading information in audit report** An environmental auditor who includes information in an audit report produced to the appropriate regulatory authority in connection with a mandatory environmental audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (4) **Information not included in audit report** An environmental auditor who fails to provide information in an audit report produced to the appropriate regulatory authority in connection with a mandatory environmental audit, knowing the information to be materially relevant to the audit, is guilty of an offence.

(5) **Retention of audit documentation** The holder of a licence who:

- (a) fails to retain any written documentation required to be prepared by the holder in connection with a mandatory environmental audit for a period of at least 5 years after the audit report concerned was produced to the appropriate regulatory authority (or such other period as is prescribed by the regulations), or
- (b) fails to produce during that period any such documentation to the appropriate regulatory authority on request,

is guilty of an offence.

Maximum penalty:

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

178 Self-incriminatory information not exempt

Information must be supplied by a person in connection with a mandatory environmental audit, and this Part applies to any such information that is supplied, whether or not the information might incriminate the person.

179 Use of information

- (1) Any information in an audit report or other documentation supplied to the appropriate regulatory authority in connection with a mandatory environmental audit may be taken into consideration by the appropriate regulatory authority and used for the purposes of this Act.
- (2) Without limiting the above, any such information is admissible in evidence in any prosecution of the holder of a licence for any offence (whether under this Act or otherwise).

Part 6.3 Voluntary environmental audits

180 Nature of voluntary environmental audit

- (1) A voluntary environmental audit is an environmental audit commissioned or carried out or being carried out voluntarily, whether or not in relation to activities licensed under this Act.
- (2) An environmental audit is not voluntary if there is a contemporaneous requirement for a mandatory environmental audit in relation to the same or substantially the same activity.

181 Protected documents

- (1) Documents prepared for the sole purpose of a voluntary environmental audit are protected documents for the purposes of this Act.
- (2) Such documents include the final report of the audit and any documents prepared during the course of the audit, so long as the documents are prepared for the sole purpose of the audit.
- (3) Without affecting the generality of the above, documents are not protected if they are prepared wholly or partly in connection with monitoring that is required by any conditions attached to a licence or by an environment protection notice.

182 Nature of protection

- (1) A protected document:
 - (a) is not admissible in evidence against any person in any proceedings connected with the administration or enforcement of the environment protection legislation, and
 - (b) may not be inspected, copied, seized or otherwise obtained by the EPA, any other regulatory authority, any authorised officer or any other person for any purpose connected with the administration or enforcement of the environment protection legislation,and the EPA or any such authority, officer or other person may not, for any such purpose, require a person to answer any question or provide any information about the existence of the document or about what it contains.
- (2) The onus of establishing that a document is a protected document lies on the person asserting that it is protected.
- (3) A court may inspect any document that is claimed to be a protected document for the purpose of determining whether it is or is not a protected document.
- (4) The regulations may prescribe procedures for making and determining claims that a document is a protected document.

183 Lifting of protection

- (1) Documents prepared in relation to a voluntary environmental audit cease to be protected if the person asserting or relying on the protection uses or relies on (or attempts to use or rely on) the whole or any part of one or more of the documents, whether directly or indirectly, in any proceedings connected with the administration or enforcement of the environment protection legislation.
- (2) This section does not apply where the person is using or relying on (or attempting to

use or rely on) a document for the purpose of establishing that the document is protected.

Chapter 7 Investigation

Part 7.1 Preliminary

184 Purposes for which powers under Chapter may be exercised

Powers may be exercised under this Chapter for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or any environment protection licence, notice or requirement issued or made under this Act,
- (b) for obtaining information or records for purposes connected with the administration of this Act,
- (c) generally for administering this Act and protecting the environment.

185 Effect on other functions

- (1) Nothing in this Chapter affects any function under any other Chapter of this Act or under any other Act.
- (2) Nothing in this Chapter limits conditions that can be attached to an environment protection licence.

186 Extension of Chapter to other environment protection legislation

This Chapter extends to the exercise of powers in connection with the following legislation:

- (a) *Waste Avoidance and Resource Recovery Act 2001* and the regulations under that Act,
- (b) *Ozone Protection Act 1989* and the regulations under that Act,
 - (b1) *Pesticides Act 1999* and the regulations under that Act,
 - (b2) *Radiation Control Act 1990* and the regulations under that Act,
- (c) any repealed provision of any Act or regulation amended or repealed by this Act, in respect to offences committed against the Act or regulation before its repeal or in respect of any other matter that continues to have any force or effect (except as provided by or by regulations under Schedule 5),
- (d) any provision of the *Pesticides Act 1978* in respect of offences committed under that Act (before its repeal by the *Pesticides Act 1999*) or in respect of any other matter that continues to have any force or effect (except as provided by regulations under

Schedule 5 or under Schedule 2 to the *Pesticides Act 1999*).

Accordingly, a reference in this Chapter to this Act or the regulations includes a reference to each of those Acts or regulations.

Part 7.2 Authorised officers and enforcement officers

187 Appointment of authorised officers

- (1) The EPA may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.
- (2) Any other regulatory authority may appoint any officer or employee of the authority (including a class of such officers or employees) as an authorised officer for the purposes of this Act.
- (2A) In addition, a regulatory authority that is a local council may appoint any officer or employee of another local council (including a class of such officers or employees) as an authorised officer for the purposes of this Act in respect of the appointing local council's area.

- (3) In this section:

employee of an authority includes a person whose services are used by the authority and who is, in respect of those services, subject to the direction and control of the authority.

188 Scope of authority

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (2) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.
- (3) The authorisation of an authorised officer appointed by a regulatory authority other than the EPA is limited to matters concerning the functions of the regulatory authority under this Act.
- (4) Despite subsection (3) and any other provision of this Chapter, an authorised officer of a regulatory authority may exercise powers under this Chapter (other than under Part 7.6) for the purpose of determining whether a matter concerns the functions of the regulatory authority.

189 Identification

- (1) Every authorised officer or enforcement officer is to be provided with an identification

card as an authorised officer or enforcement officer by the regulatory authority that appointed the officer.

- (2) In the course of exercising the functions of an authorised officer or enforcement officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce the officer's identification card to the person.
- (3) It is sufficient compliance with subsection (2) if an enforcement officer, acting in the capacity of an enforcement officer, who is also an authorised officer produces his or her identification card as an authorised officer.

189A Powers of enforcement officers

An enforcement officer has, in respect of any of the officer's responsibilities or functions as an enforcement officer under this Act or the regulations, the functions of an authorised officer under this Chapter (other than section 204 (2) and Part 7.6) and this Chapter applies accordingly.

Part 7.3 Powers to require information or records

190 Application of Part

This Part applies whether or not a power of entry under Part 7.4 is being or has been exercised.

191 Requirement to provide information and records (EPA)

- (1) The EPA may, by notice in writing given to a person, require the person to furnish to it such information or records (or both) as it requires by the notice in connection with any matter relating to its responsibilities or functions under this Act.
- (2) This section is not limited to matters in respect of which the EPA is the appropriate regulatory authority.

192 Requirement to provide information and records (other regulatory authorities)

- (1) A regulatory authority (other than the EPA) may, by notice in writing given to a person, require the person to furnish to it such information or records (or both) as it requires by the notice in connection with any matter relating to its responsibilities or functions under this Act.
- (2) This section is limited to matters in respect of which the authority is the appropriate regulatory authority.

193 Requirement to provide information and records (authorised officers)

- (1) An authorised officer may, by notice in writing given to a person, require the person to

furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter within the responsibilities and functions of the regulatory authority that appointed the officer.

- (2) In the case of authorised officers appointed by the EPA, this section is not limited to matters in respect of which the EPA is the appropriate regulatory authority.

194 Manner, time etc for compliance

A notice under this Part must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

195 Provisions relating to records

- (1) A notice under this Part may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The body or person to whom any record is furnished under this Part may take copies of it.
- (3) If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

Part 7.4 Powers of entry and search of premises

196 Powers of authorised officers to enter premises

- (1) An authorised officer may enter:
 - (a) any premises at which the authorised officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and
 - (b) any premises at or from which the authorised officer reasonably suspects pollution has been, is being or is likely to be caused—at any time, and
 - (c) any other premises—at any reasonable time.
- (2) A power to enter premises conferred by this Act authorises entry by foot or by means of a motor vehicle or other vehicle, or by an aircraft, or in any other manner.
- (3) Entry may be effected under this Act by an authorised officer with the aid of such authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 199.

197 Entry into residential premises only with permission or warrant

This Part does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 199.

198 Powers of authorised officers to do things at premises

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Chapter, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
 - (a) examine and inspect any works, plant, vehicle, aircraft or other article,
 - (b) take and remove samples,
 - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
 - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
 - (e) require records to be produced for inspection,
 - (f) examine and inspect any records,
 - (g) copy any records,
 - (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
 - (h1) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
 - (i) do any other thing the authorised officer is empowered to do under this Chapter.
- (3) The power to seize anything connected with an offence includes a power to seize:
 - (a) a thing with respect to which the offence has been committed, and
 - (b) a thing that will afford evidence of the commission of the offence, and
 - (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

199 Search warrants

- (1) **Application for search warrant** An authorised officer may apply to an authorised justice for the issue of a search warrant if the authorised officer believes on reasonable grounds that:
 - (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
 - (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.
- (2) **Issue of search warrant** An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:
 - (a) to enter the premises, and
 - (b) to exercise any function of an authorised officer under this Part.
- (3) **Application of [Search Warrants Act 1985](#)** Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) **Definition** In this section:

authorised justice has the same meaning as in the [Search Warrants Act 1985](#).

matter or a thing connected with an offence means:
 - (a) matter or a thing with respect to which the offence has been committed, or
 - (b) matter or a thing that will afford evidence of the commission of an offence, or
 - (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

offence includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

Note—

premises is defined in the Dictionary.

199A Authorised officers may request assistance

A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Part if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

200 Assistance to be given to authorised officers

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Part in connection with any premises.
- (2) The EPA or other regulatory authority that appointed the authorised officer may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

201 Care to be taken

In the exercise of a power of entering or searching premises under this Part, the authorised officer must do as little damage as possible.

202 Compensation

The EPA or other regulatory authority that appoints an authorised officer must compensate all interested parties for any damage caused by the authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

Part 7.5 Powers to question and to identify persons

203 Power of authorised officers to require answers

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) The EPA or any other regulatory authority may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) In the case of authorised officers appointed by the EPA, subsection (1) is not limited to matters in respect of which the EPA is the appropriate regulatory authority.

204 Power of authorised officers to demand name and address

- (1) **Name and address to be given if offence suspected** An authorised officer may require a

person whom the authorised officer suspects on reasonable grounds to have offended or to be offending against this Act or the regulations to state his or her full name and residential address.

- (2) **Name and address to be given in connection with noise** If an authorised officer forms the opinion on reasonable grounds that a noise control notice or a noise abatement direction may be issued under Part 8.6 against a person, the authorised officer may require the person to state the person's full name and residential address.
- (3) **Power of arrest** A person who, being required to do so under this section:
- (a) refuses to state his or her name or residential address, or
 - (b) states a name or residential address that in the opinion of the authorised officer is false,
- may without any other warrant than this Act be apprehended by the authorised officer and taken before a justice of the peace to be dealt with according to law.
- (4) **Bail** A justice of the peace before whom a person is taken under subsection (3) may grant the person bail in accordance with the [Bail Act 1978](#) as if the person were accused of an offence.
- (5) **Maximum penalty** The maximum penalty for an offence under section 211 in connection with a requirement under this section is 100 penalty units despite anything to the contrary in that section.

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

205 Definitions

In this Part:

article includes any plant, motor or other vehicle, aircraft vessel or other thing of any description.

authorised officer:

- (a) means, except in sections 206 and 208, only an authorised officer appointed by the EPA, and
- (b) extends, in sections 206 and 208, to a police officer, and
- (c) extends, in sections 206 and 208, in relation to vessels only, to an officer or employee of the marine authority authorised by the authority for the purposes of those sections.

205A Application of Part

Nothing in this Part limits the functions that may be exercised under any other Part of this

Chapter.

206 Power to inspect and test

- (1) An authorised officer may, for the purposes of this Chapter, inspect and test any article.
- (2) The authorised officer may, for the purposes of any such inspection or testing:
 - (a) enter the article, and
 - (b) enter in accordance with this Act the premises where the article is located, and
 - (c) operate the article, and
 - (d) take photographs or video films of the article, and
 - (e) inspect or test any substance being carried by the article or in any container on the article (including in a fuel tank), and
 - (f) take a sample (not exceeding 1 litre) of any such substance for testing.

207 Power to require articles to be tested

- (1) An authorised officer may, by notice in writing, require the owner or person in possession of an article specified in the notice to have the article tested, within the time so specified, for the purpose of determining whether the article complies with the requirements of this Act or the regulations.
- (2) Any such notice may require the article:
 - (a) to be tested at a specified place (being a place within 80 kilometres of the owner's or person's residence or place of business), or
 - (b) to be tested by or in the presence of an authorised officer.
- (3) Any such notice may be revoked or varied by a further notice given by an authorised officer.

208 Stopping of vehicles and vessels for inspection or testing

- (1) The driver or person in charge of a vehicle or vessel that is being used in any place must, for the purpose of enabling an authorised officer to inspect or test it under this Part, comply with any reasonable direction by an authorised officer:
 - (a) to stop the vehicle or vessel (being a direction given by displaying a sign or by any other reasonable method), or
 - (b) relating to facilitating the inspection or testing of the vehicle or vessel by an authorised officer.

- (2) If a vehicle or vessel has been stopped in compliance with such a direction, inspection and testing of it under this section must be carried out:
 - (a) at or as near as practicable to the place where the direction to stop the vehicle or vessel is given, and
 - (b) as soon as practicable, and in any case within one hour, after the vehicle or vessel is stopped in accordance with the direction.
- (3) The maximum penalty for an offence under section 211 in connection with a requirement under this section is 30 penalty units despite anything to the contrary in that section.
- (4) In this section, **vehicle** includes aircraft.

209 Power to seize articles (other than vehicles or vessels) to test for noise

- (1) An authorised officer may take possession of an article (other than a vehicle or vessel) and take it to a place approved by the EPA for the purpose of measuring its noise level or its noise emission characteristics.
- (2) An authorised officer who takes possession of an article under this section must provide the person from whom it is taken with a receipt that:
 - (a) specifies the make, model and serial number of the article, or any other information that will identify the article, and
 - (b) specifies the time and date of issue of the receipt, and
 - (c) specifies a date (being a date not more than 21 days after the date of issue) on or before which the article will be returned, and
 - (d) is signed by the authorised officer issuing it.
- (3) The authorised officer must return the article to its owner, or to the person from whose possession it was taken, on or before the date specified in the receipt for its return.

210 Power to require information about articles

The EPA may, by notice under Part 7.3, require:

- (a) the owner of an article, or
- (b) the person by whom articles of a specified class or description were manufactured, assembled, imported, sold or supplied for sale,

to furnish it with information relating to any such article.

Part 7.7 General

211 Offences

- (1) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under this Chapter is guilty of an offence.
- (2) A person who furnishes any information or does any other thing in purported compliance with a requirement made under this Chapter, knowing that it is false or misleading in a material respect is guilty of an offence.
- (3) A person who wilfully delays or obstructs an authorised officer in the exercise of the authorised officer's powers under this Chapter is guilty of an offence.
- (4) A person who impersonates an authorised officer is guilty of an offence.

Maximum penalty (subject to sections 204 and 208):

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

212 Provisions relating to requirements to furnish records, information or answer questions

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Chapter to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Chapter to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Chapter is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Chapter) if:
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

- (4) **Records admissible** Any record furnished by a person in compliance with a requirement under this Chapter is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) **Further information** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Chapter is not inadmissible on the ground:
 - (a) that the record or information had to be furnished or the answer had to be given, or
 - (b) that the record or information furnished or answer given might incriminate the person.
- (6) **Requirement to state name and address** This section extends to a requirement under this Chapter to state a person's name and address.

212A Revocation or variation

- (1) A notice given under this Chapter may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by the authority or person that gave it.

212B Extraterritorial application

A notice may be given under this Chapter to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter affects the environment of this State.

212C Actions by incorrect regulatory authority

- (1) This section applies if a regulatory authority or an authorised officer of the authority, in good faith, exercises functions under this Act or the regulations relating to an activity or work that:
 - (a) is not authorised or controlled by an environment protection licence, and
 - (b) in relation to which the authority is not the appropriate regulatory authority.
- (2) A regulatory authority must, as soon as practicable after becoming aware of any such exercise of functions, notify the appropriate regulatory authority in writing of the functions so exercised and of any such functions that it proposes to continue to exercise or to cease to exercise in relation to the matter.

- (3) A regulatory authority or an authorised officer of the authority may (but is not required to), if notice is given in accordance with subsection (2), continue to exercise functions under this Act or the regulations relating to the activity or work until:
 - (a) directed to do otherwise by the appropriate regulatory authority, or
 - (b) an environment protection licence is granted in respect of the activity or work concerned.
- (4) The appropriate regulatory authority may, by notice in writing, direct a regulatory authority (including its authorised officers) not to exercise functions under this Act or the regulations in relation to an activity or work if it becomes aware that the other authority or an authorised officer of that authority is exercising, or has exercised, functions of the appropriate regulatory authority in relation to that activity or work.
- (5) A direction given by the appropriate regulatory authority or the grant of a licence does not affect any proceedings already commenced by the other regulatory authority or an officer of that authority in respect of the activity or work and, for that purpose, this section and section 212D apply as if the direction had not been given or the licence had not been granted.
- (6) For the purposes of this Act and the regulations and any proceedings, a regulatory authority or an authorised officer of that authority who exercises a function as referred to in subsection (1), or who continues to exercise a function in accordance with subsection (3), is taken to be the appropriate regulatory authority or an authorised officer of the appropriate regulatory authority in relation to the activity or work concerned and this Act applies accordingly.

212D Appropriate regulatory authority may continue to exercise functions

- (1) If a regulatory authority (including an authorised officer) is required to cease to exercise functions, or ceases to exercise functions, under section 212C (3) or (4), the appropriate regulatory authority or an authorised officer of that authority may continue to exercise any functions commenced by the other regulatory authority or an authorised officer, as if the functions had been exercised by the appropriate regulatory authority or an authorised officer of that authority.
- (2) For the purposes of this Act and the regulations and any proceedings, any function previously exercised by the other regulatory authority (including an authorised officer) relating to the activity or work concerned is taken to have been exercised by the appropriate regulatory authority (or an authorised officer of that authority) and this Act applies accordingly.
- (3) Without limiting subsection (2), any notice or direction given by the other authority or an authorised officer of the authority may be enforced, or varied or revoked, as if it had been given by the appropriate regulatory authority or an authorised officer of that

authority.

- (4) A notice issued by the other authority or an authorised officer of the authority is taken to be varied, to the extent of any inconsistency, if a subsequent inconsistent notice is issued by or on behalf of the appropriate regulatory authority or an authorised officer of that authority.
- (5) Nothing in this section affects the right of the other regulatory authority to recover a fee, charge or cost under this Act in relation to a notice given while exercising functions as referred to in section 212C (1) or (3).

Chapter 8 Criminal and other proceedings

Part 8.1 Preliminary

213 Application of Chapter

- (1) **Proceedings under this Act** This Chapter applies to proceedings in connection with this Act.
- (2) **Extension to other environment protection legislation** This Chapter extends to proceedings in connection with the following legislation:
 - (a) *Waste Avoidance and Resource Recovery Act 2001* and the regulations under that Act,
 - (b) *Ozone Protection Act 1989* and the regulations under that Act.

Accordingly, a reference in this Chapter to this Act or the regulations includes a reference to each of those Acts or regulations.

Part 8.2 Proceedings for offences

Division 1 Proceedings for offences generally

214 Proceedings for tier 1 offences

- (1) Proceedings for an offence arising under Part 5.2 may be dealt with:
 - (a) summarily before the Land and Environment Court in its summary jurisdiction, or
 - (b) on indictment before the Supreme Court.
- (2) If any such proceedings are brought in the Land and Environment Court, the maximum period of imprisonment that the Court may impose for the offence is 2 years, despite any other provision of this Act.

215 Proceedings for other offences

- (1) Proceedings for an offence arising under this Act or the regulations (other than under Part 5.2) may be dealt with:
 - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If any such proceedings are brought in a Local Court, the maximum monetary penalty that the Court may impose for the offence is 200 penalty units, despite any other provision of this Act.

216 Time within which summary proceedings may be commenced

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
 - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
 - (b) in any other case—within but not later than 12 months after that date.
- (2) Proceedings for an offence under this Act or the regulations may also be commenced:
 - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer, or
 - (b) in any other case—within but not later than 12 months after that date.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the information or application, unless the contrary is established.
- (4) This section applies only to proceedings that are to be dealt with summarily.
- (5) This section applies despite anything in the *Justices Act 1902* or any other Act.
- (6) In this section:

authorised officer means any person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.

evidence of an offence means evidence of any act or omission constituting the offence.

prescribed offence means:

- (a) an offence arising under Part 5.2, or
- (b) an offence arising under Part 3.2, or
- (c) an offence arising under section 143 (Unlawful transporting of waste) or 144 (Permitting land to be used unlawfully as waste facility), or
- (d) an offence against this Act that is declared by the regulations to be a prescribed offence for the purposes of this section.

relevant authorised officer means:

- (a) in relation to proceedings for an offence instituted by or with the consent of the EPA or a member of the staff of the EPA—any authorised officer who is a member of the staff of the EPA, or
- (b) in relation to proceedings for an offence instituted by or with the consent of a local authority or an officer or employee of such an authority—any authorised officer who is an officer or employee of that authority, or
- (c) in relation to proceedings for an offence instituted by any other person—any authorised officer.

Division 2 Who may institute proceedings for offences

217 EPA or other appropriate regulatory authority may institute proceedings

- (1) **EPA** Proceedings for an offence against this Act or the regulations may be instituted by the EPA.
- (2) **Other appropriate regulatory authority** Any such proceedings may also be instituted by the appropriate regulatory authority, if it is not the EPA, in connection with a matter for which it is the appropriate regulatory authority.

218 Other authorities who may also institute proceedings

- (1) **Local authority—offences other than excluded offences** A local authority may institute proceedings for any offence against this Act or the regulations (other than an excluded offence).
- (2) **Water Supply Authority** A Water Supply Authority (within the meaning of the [Water Management Act 2000](#)) may institute proceedings for a water pollution offence (other than an excluded offence).
- (3) **Marine authority** The marine authority may institute proceedings for a noise pollution offence referred to in subsection (6) (d) or (e).

- (4) **Police officers** Police officers may institute proceedings for:
- (a) a noise pollution offence, or
 - (b) a littering offence, or
 - (c) an offence against the regulations relating to the operation of a motor vehicle (being an offence prescribed for the purposes of this subsection).
- (5) **Applicant for noise abatement order** A person who was the applicant for a noise abatement order may institute proceedings for an offence against section 269 of contravening the order.
- (6) **Excluded offences** For the purposes of this section, an offence is an **excluded** offence if it is an offence (other than a littering offence) committed in relation to:
- (a) scheduled activities, or
 - (b) activities or work authorised or controlled by an environment protection licence, or
 - (c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise, or
 - (d) in the case of a noise pollution offence—a vessel in navigable waters, or
 - (e) in the case of a noise pollution offence—premises used in connection with vessels and situated adjacent to, or partly or wholly over, navigable waters,
- or it is any other offence prescribed by the regulations as an excluded offence.

- (7) **Other definitions** In this section:

littering offence means an offence arising under Part 5.6A.

noise pollution offence means an offence arising under Part 5.5, 8.6 or any other provision prescribed for the purposes of this definition.

water pollution offence means an offence arising under Part 5.3 or any other provision prescribed for the purposes of this definition.

219 Other persons may institute proceedings with leave of Land and Environment Court

- (1) Any person may institute proceedings in the Land and Environment Court for an offence against this Act or the regulations if the Court grants the person leave to bring the proceedings.
- (1A) An appropriate regulatory authority (other than the EPA) and any person or authority referred to in section 218 may institute proceedings in the Land and Environment Court for an offence against this Act or the regulations, if the Court grants the authority leave to bring the proceedings.

- (1B) Nothing in section 217 or 218 limits the operation of this section.
- (2) The Land and Environment Court is not to grant leave unless satisfied that:
- (a) the EPA has decided not to take any relevant action (as defined in subsection (3)) in respect of the act or omission constituting the alleged offence or has not made a decision on whether to take such action within 90 days after the person or authority requested the EPA to institute the proceedings, and
 - (b) the EPA has been notified of the proceedings, and
 - (c) the proceedings are not an abuse of the process of the Court, and
 - (d) the particulars of the offence disclose, without any hearing of the evidence, a prima facie case of the commission of the offence.
- (3) Relevant action for the purposes of subsection (2) is not limited to the institution of criminal proceedings, but includes action under this Act to require the defendant to prevent, control, abate or mitigate any harm to the environment caused by the alleged offence or to prevent the continuance or recurrence of the alleged offence.

220 Officers and employees of authorities

- (1) If an authority is authorised by this Division to institute proceedings for an offence, the proceedings may also be instituted by an officer or employee of the authority with the written consent of:
- (a) the authority, or
 - (b) such member, officer or employee of the authority as may be authorised by the authority for the purposes of this Division.
- (2) In this section:
- employee** of an authority includes a person whose services are used by the authority and who is, in respect of those services, subject to the direction and control of the authority.

221 Penalty notices and related proceedings

- (1) This Division does not affect the power to issue a penalty notice under Division 3 or the taking of enforcement proceedings in relation to the penalty notice or in relation to the offence to which the penalty notice relates.
- (2) Enforcement proceedings include proceedings under Part 3 or 4 of the *Fines Act 1996*, including, in particular, proceedings taken under section 37 of that Act in respect of the offence to which the penalty notice relates, where the person concerned elects to have the matter dealt with by a court.

(3) Proceedings referred to in subsection (2) in respect of the offence to which the penalty notice relates may be instituted:

(a) by a person who is an enforcement officer within the meaning of section 226 in relation to the class of offence concerned, or

(b) if such an enforcement officer is an officer or employee of a public authority—by the public authority, or by an officer or employee of the public authority under section 220.

(4) In this section:

employee of an authority includes a person whose services are used by the authority and who is, in respect of those services, subject to the direction and control of the authority.

Division 3 Penalty notices (tier 3 offences)

222 Penalty notice offences

For the purposes of this Division, a **penalty notice offence** is an offence against this Act or the regulations that is prescribed by the regulations for the purposes of this Division, other than an offence arising under Part 5.2 (Tier 1 offences).

223 What is a penalty notice?

A **penalty notice** is a notice to the effect that, if the person served with the notice does not wish to have a specified penalty notice offence dealt with by a court, the person may pay the penalty prescribed under section 227 for the offence:

(a) within the time specified in the notice (being 28 days from the date on which the notice was served), and

(b) to the person specified in the notice.

224 Service of penalty notices

(1) An enforcement officer may serve a penalty notice on a person if it appears to the enforcement officer that the person has committed a penalty notice offence.

(2) A penalty notice may be served personally or by post.

(3) The regulations may authorise a penalty notice also to be served by leaving the notice on a vehicle or at other premises in respect of which the offence was committed.

225 Consequences of paying penalty in accordance with penalty notice

(1) If the penalty prescribed for an alleged offence is paid in accordance with this Division, no person is liable to any further proceedings for the alleged offence.

- (2) Payment in accordance with this Division is not to be regarded as an admission of liability for the purposes of, nor is it in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

226 Enforcement officers

- (1) In this Division, a reference to an **enforcement officer**, in relation to an offence, is a reference to a person belonging to a class of officers or employees prescribed by the regulations in relation to the offence.
- (2) A person who is an officer or employee of a public authority cannot be an enforcement officer in relation to an offence alleged to have been committed by the authority.
- (3) Only an officer or employee of the EPA can be an enforcement officer in relation to:
 - (a) an offence (other than a littering offence) alleged to have been committed in relation to activities or work authorised or controlled by an environment protection licence, or
 - (b) an offence (other than a littering offence) alleged to have been committed in relation to activities carried on by the State or a public authority.
- (4) In this section, **littering offence** means an offence arising under Part 5.6A.

227 Penalty payable

- (1) The regulations may prescribe the penalty payable under a penalty notice in respect of a penalty notice offence.
- (2) Any such penalty may not exceed the maximum penalty that may be imposed by a court on a conviction for the offence.
- (3) The regulations may prescribe different penalties for the same penalty notice offence.

228 Withdrawal of penalty notice

- (1) An enforcement officer belonging to the same class of officers as the enforcement officer by whom a penalty notice has been served:
 - (a) may withdraw the notice within 28 days after the date on which the notice was served, and
 - (b) must withdraw the notice immediately if directed to do so by the EPA.
- (2) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section:
 - (a) The amount that was payable under the notice ceases to be payable.

- (b) Any amount that has been paid under the notice is repayable to the person by whom it was paid.
- (c) Further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.

229 Effect on other provisions

This Division does not limit the operation of this or any other Act in relation to proceedings that may be taken in relation to offences.

Division 4 Restraining orders

230 Application of Division

- (1) This Division applies where:
 - (a) proceedings have been commenced against a person for an offence against this Act or the regulations and, as a result of those proceedings, the person may be required to pay an amount referred to in section 246, or
 - (b) proceedings have been commenced against a person under section 247.

- (2) In this Division:

the defendant means the person referred to in subsection (1) (a) or (b).

231 Nature of restraining order

A restraining order is an order of a court directing that any property of the defendant is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order.

232 Application for restraining order

- (1) The person bringing the proceedings (as referred to in section 230) may apply for a restraining order in relation to property of the defendant.
- (2) An application under this section may be made:
 - (a) in the case of proceedings taken before a Local Court—to the Land and Environment Court, and
 - (b) in the case of other proceedings—to the court before which the proceedings are brought.
- (3) On an application under this section:
 - (a) the court may, if it thinks fit, require the person making the application to give

notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and

- (b) a person to whom the court requires notice to be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

233 Making of restraining order

On an application under section 232, the court may make a restraining order in relation to the defendant's property, if it is satisfied (on the information contained in or accompanying the application) that:

- (a) the defendant has committed the relevant offence, and
- (b) amounts are or are likely to be payable under section 246 or 247, and
- (c) it is appropriate to make an order under this section in the circumstances of the case.

234 Undertakings

The court may refuse to make a restraining order if the person making the application refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making or operation of the order.

235 Ancillary orders

- (1) A court that makes a restraining order may make any ancillary orders that the court considers appropriate.
- (2) Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following:
 - (a) an order for the examination on oath of:
 - (i) the defendant, or
 - (ii) another person,before the court, or an officer of the court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,
 - (b) an order varying the restraining order in respect of the property to which it relates,
 - (c) an order varying any conditions to which the restraining order was subject.
- (3) An ancillary order may be made on application:

- (a) by the applicant for the restraining order, or
 - (b) by the defendant, or
 - (c) with the leave of the court, by any other person.
- (4) Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.

236 Charge on property subject to restraining orders

(1) **Creation of charge** If:

- (a) a court has made a restraining order in respect of particular property or all of the property of the defendant, and
 - (b) the court orders the payment of an amount referred to in section 246 or 247,
- there is created by force of this section, on the making of the order referred to in paragraph (b), a charge on all the property to which the restraining order applies to secure the payment to a public authority or person of the amount referred to in section 246 or 247.

(2) **When charge ceases to have effect** Such a charge ceases to have effect in respect of the property:

- (a) on payment by the defendant to the public authority or person of the amount concerned, or
- (b) on the sale or other disposition of the property with the consent of the court, or
- (c) on the sale of the property to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,

whichever first occurs.

(3) **Charge is subject to existing charges and encumbrances** Such a charge is subject to every charge or encumbrance to which the property was subject immediately before the order referred to in subsection (1) (b) was made and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.

(4) **Charge not affected by change of ownership** Such a charge is not affected by any change of ownership of the property, except as provided by subsection (2).

(5) **Registration of charge is notice** If:

- (a) such a charge is created on property of a particular kind and the provisions of any

law of the State provide for the registration of title to, or charges over, property of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the property after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.

- (6) **Charge on RP land not effective until registered** If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

237 Registration of restraining orders

- (1) If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept under those provisions.
- (2) If the particulars of a restraining order are so recorded, a person who afterwards deals with the property is, for the purposes of section 236 (2), taken to have notice of the charge created by this Act on the making of the order.
- (3) If a restraining order applies to land under the provisions of the *Real Property Act 1900*, a caveat may be lodged under that Act in relation to the order.

238 Contravention of restraining orders

- (1) **Offence** A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence.

Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 2 years, or both.

- (2) **Application for order setting aside disposition of or dealing with property** If:

- (a) a restraining order is made against property, and
- (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and
- (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,

the person who applied for the restraining order may apply to the court that made the restraining order for an order that the disposition or dealing with the property be set aside.

- (3) **Order setting aside disposition or dealing** If an application is made under subsection (2), the court may make an order:
- (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
 - (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

239 Court may revoke restraining order

- (1) The court that made a restraining order may revoke the order, on application made to it by the person in relation to whose property it was made.
- (2) The court may refuse to revoke the order if the person does not:
 - (a) give security satisfactory to the court for the payment of any amount referred to in section 246 or 247 that may be imposed on or ordered to be paid by the person under this Act in respect of the person's conviction for the offence, or
 - (b) give undertakings satisfactory to the court concerning the person's property.
- (3) Subsection (2) does not limit the discretion of the court to revoke or refuse to revoke a restraining order.

240 Time when restraining order ceases to be in force

If, after a restraining order was made in reliance on the charging of a person with an offence against this Act or the regulations:

- (a) the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal—the restraining order ceases to be in force when the charge is withdrawn, or
- (b) the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal—the restraining order ceases to be in force when the acquittal occurs.

Division 5 Sentencing

241 Matters to be considered in imposing penalty

- (1) In imposing a penalty for an offence against this Act or the regulations, the court is to take into consideration the following (so far as they are relevant):
 - (a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence,

- (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
- (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,
- (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
- (e) whether, in committing the offence, the person was complying with orders from an employer or supervising employee.

(2) The court may take into consideration other matters that it considers relevant.

Division 6 Continuing offences

242 Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

Part 8.3 Court orders in connection with offences

243 Operation of Part

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

not a punishment for the purposes of that section).

(3) **Definitions** In this Part:

the court means the court that finds the offence proved.

the offender means the person who is found to have committed the offence.

244 Orders generally

- (1) **Orders may be made** One or more orders may be made under this Part against the offender.
- (2) **Orders are additional** Orders may be made under this Part in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) **Other action not required** Orders may be made under this Part regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

245 Orders for restoration and prevention

The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):

- (a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence, or
- (b) to make good any resulting environmental damage, or
- (c) to prevent the continuance or recurrence of the offence.

246 Orders for costs, expenses and compensation at time offence proved

- (1) The court may, if it appears to the court that:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
 - (ii) making good any resulting environmental damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) A Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

247 Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
 - (ii) making good any resulting environmental damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

248 Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that a regulatory authority has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the regulatory authority the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*. An order made by a Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970*.
- (3) In this section:

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

and expenses in taking any sample or conducting any inspection, test, measurement or analysis during the investigation of the offence.

249 Orders regarding monetary benefits

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount not exceeding the court's estimation of the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) In this section:

monetary benefits means monetary, financial or economic benefits.

the court does not include a Local Court.

250 Additional orders

- (1) **Orders** The court may do any one or more of the following:
 - (a) order the offender to take specified action to publicise the offence and its environmental and other consequences and any other orders made against the person,
 - (b) order the offender to take specified action to notify specified persons or classes of persons of the offence and its environmental and other consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
 - (c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,
 - (d) order the offender to carry out a specified environmental audit of activities carried on by the offender.

A Local Court is not authorised to make an order referred to in paragraph (c) or (d).

- (2) **Machinery** The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) **Failure to publicise or notify** If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:

(a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender, and

(b) the failure to comply with the order.

(4) **Cost of publicising or notifying** The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

251 Offence

A person who fails to comply with an order under this Part (except an order under section 246, 247 or 248) is guilty of an offence.

Maximum penalty:

- in the case of a corporation—\$120,000 for each day the offence continues, or
- in the case of an individual—\$60,000 for each day the offence continues.

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

252 Remedy or restraint of breaches of this Act or regulations

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.
- (3) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (4) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (6) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (7) Without limiting the powers of the Court under this section, an order under this section may suspend any environment protection licence.

(8) In this section:

breach includes a threatened or apprehended breach.

253 Restraint of breaches of an Act or statutory rules that harm the environment

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

Note—

Statutory rule is defined in section 21 of the [Interpretation Act 1987](#).

- (2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).
- (3) A person (other than the EPA or a member of the staff of the EPA) who brings any such proceedings is required to give a copy of the application to the EPA as soon as practicable after the application is made. The EPA is entitled to become a party to those proceedings.
- (4) If the Court is satisfied that a breach, or a threatened or apprehended breach, will, unless restrained by order of the Court, be committed or be likely to be committed, it may make such orders as it thinks fit to restrain the breach or other conduct of the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed.
- (5) Without limiting the powers of the Court under this section, an order under this section may suspend any environment protection licence.

Part 8.5 Evidentiary provisions

254 Definitions

In this Part:

designated officer means an officer of the EPA designated in writing by the Director-General of the EPA for the purposes of this Part.

information relating to an offence includes an application referred to in section 41 of the [Land and Environment Court Act 1979](#).

instrument includes a notice, order or written direction.

255 Evidence of threshold tests for scheduled activities

(1) In a case where there is a numerical or other threshold to be met for the purposes of

determining whether activities are scheduled activities:

- (a) the question of whether the threshold was met is not relevant for the purposes of any proceedings under this Act, once it is established that an environment protection licence was in force in respect of the activities at the relevant time, and
- (b) it is immaterial for the purposes of those proceedings that the licence was not at that or any other time, or ever, needed.

- (2) This section does not apply to licences that are only issued to regulate water pollution resulting from non-scheduled activities.

256 Onus of proof of certain matters

- (1) In any proceedings under this Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.
- (2) In any proceedings for an offence under Part 5.6A, the onus of proving an exception under section 145 (3)-(5), 146A (3), 146B (3) or 146E (4) lies with the defendant, but nothing in this subsection affects the construction or operation of any other provision of this Act.

257 Occupier of premises responsible for pollution from premises

- (1) In any proceedings under this Act, the occupier of premises at or from which any pollution occurs is taken to have caused the pollution, unless it is established that:
 - (a) the pollution was caused by another person, and
 - (b) the other person was not associated with the occupier at the time the pollution occurred, and
 - (c) the occupier took all reasonable steps to prevent the pollution.

A person is associated with the occupier for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the occupier.

- (2) Subsection (1) does not prevent proceedings being taken under this Act against the person who actually caused the pollution.

258 Evidence relating to occupier of premises

- (1) In any proceedings under this Act, no proof is required (until evidence is given to the contrary) of the fact that a person is, or at any relevant time was, the occupier of any premises to which the proceedings relate.
- (2) In any proceedings under this Act, the holder of a licence under this Act in respect of

any premises at a particular time or period is taken to be the occupier of the premises at that time or during that period.

259 Proof of certain appointments not required

In any proceedings under this Act no proof is required (until evidence is given to the contrary) of:

- (a) the appointment of the Director-General of the EPA or any member of the staff of the EPA, or
- (b) the appointment of the general manager or any officer or employee of a local authority, or
- (c) the appointment of the marine authority.

260 Documentary evidence generally

Any instrument purporting:

- (a) to be an instrument issued, made or given for the purposes of this Act, and
- (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

is admissible in any proceedings under this Act and (in the absence of evidence to the contrary) is to be taken to be such an instrument and to have been so signed.

261 Certificate evidence of certain matters

- (1) A document signed by the Director-General of the EPA or a designated officer and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The matters referred to in subsection (1) are as follows:
 - (a) that an instrument, a copy of which is set out in or annexed to the document, being an instrument purporting:
 - (i) to be issued, made or given for the purposes of this Act, and
 - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,was issued, made or given on a specified day,
 - (b) that a person was or was not, at a specified time or during a specified period, the holder of a specified licence or a licence of a specified kind,

- (b1) that specified premises were or were not, at a specified time or during a specified period, the subject of a specified licence or a licence of a specified kind,
 - (c) that a licence was or was not, at a specified time or during a specified period, subject to specified conditions,
 - (d) that a licence was, at a specified time, revoked or suspended for a specified period or was revoked or suspended subject to specified conditions,
 - (e) that, at a specified time, the surrender of a licence was approved or was approved subject to specified conditions,
 - (f) that a condition was, at a specified time, revoked or varied in a specified manner or that a new condition was, at a specified time, attached to a licence or to the revocation, suspension or surrender of a licence,
 - (g) that a person was or was not, at a specified time or during a specified period, an authorised officer or enforcement officer,
 - (h) that a person was or was not, at a specified time or during a specified period, a member of staff of the EPA, the Department of Health, the marine authority or a local authority,
 - (i) that an exemption was or was not given under this Act in relation to any specified matter,
 - (j) that any such exemption was or was not, at a specified time or during a specified period, in force or subject to specified conditions,
 - (k) that any exemption was or was not, or that any such conditions were or were not, varied or revoked at a specified time,
 - (l) that any consent necessary for bringing proceedings for an offence arising under this Act or a regulation under this Act has been duly given,
 - (m) that an order, a copy of which is set out in or annexed to the certificate, was for the purposes of section 133 or 162 published in a specified manner and on a specified day,
 - (n) that premises are within an area to which an order under section 133 applies, a copy of which order is set out in or annexed to the certificate,
 - (o) that a register kept under this Act shows that specified premises were, at a specified time or during a specified period, within a specified classification referred to in regulations under this Act.
- (3) For the purposes of a certificate referred to in subsection (2) (g) in respect of an authorised officer or enforcement officer, a designated officer who may give the

certificate includes the appropriate regulatory authority that appointed the authorised officer or enforcement officer or an officer of that authority who is appointed by that authority for the purposes of this subsection.

262 Evidence of analysts

- (1) The EPA may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.
- (2) A certificate of such an analyst stating the result of an analysis or examination is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (3) A certificate of such an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed and signed by an authorised officer is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and that the sample has not been tampered with since the authorised person signed and sealed the container.
- (4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

Part 8.6 Noise—special provisions

Division 1 Noise control notices—regulatory authorities

263 Definition of “appropriate regulatory authority”

For the purposes of this Division, the marine authority is the ***appropriate regulatory authority*** in relation to:

- (a) vessels in navigable waters, and
- (b) premises used in connection with vessels and situated adjacent to, or partly or wholly over, navigable waters.

264 Noise control notices relating to premises

- (1) This section applies to:
 - (a) the person who is the occupier of any premises, or
 - (b) the person who carries on an activity at any premises or who uses or operates an article at any premises.
- (2) The appropriate regulatory authority may, by notice in writing given to such a person, prohibit the person from causing, permitting or allowing:

(a) any specified activity to be carried on at the premises, or

(b) any specified article to be used or operated at the premises,

or both, in such a manner as to cause the emission from the premises at all times or on specified days, or between specified times on all days or on specified days, of noise that, when measured at any specified point (whether within or outside the premises), is in excess of a specified level.

(3) If, in a noise control notice, there is no reference to the times or days during or on which the prohibition imposed by the notice is to operate, the prohibition operates at all times.

(4) Nothing in this section affects the power under this Act to attach conditions to an environment protection licence.

265 Offence to contravene noise control notice

(1) A person who contravenes a noise control notice is guilty of an offence.

(2) A person is not guilty of an offence unless it is established that the alleged offence resulted in the emission, from the premises to which the alleged offence relates, of noise that was able to be detected or perceived outside those premises without the aid of an instrument, machine or device.

Maximum penalty:

- in the case of a corporation—\$60,000 and, in the case of a continuing offence, a further penalty of \$6,000 for each day the offence continues, or
- in the case of an individual—\$30,000 and, in the case of a continuing offence, a further penalty of \$600 for each day the offence continues.

266 Revocation or variation of noise control notices

A noise control notice may be revoked or varied by the appropriate regulatory authority by a further notice under this Division.

267 Delayed operation of noise control notices

A noise control notice (including any notice varying such a notice) has no force:

- (a) until the period within which an appeal under this Act can be lodged against the notice has expired without an appeal being lodged, and
- (b) if such an appeal is lodged within that period, until the court confirms the notice or the appeal is withdrawn.

Division 2 Noise abatement orders—Local Court

268 Issue of noise abatement orders

- (1) The occupier of any premises may make a complaint to a justice of the peace alleging that the occupier's occupation of the premises is affected by offensive noise.
- (2) The justice may summon the person alleged to be making or contributing to the noise, or the occupier of the premises from which the noise is alleged to be emitted, before a Local Court. The person or occupier is called ***the defendant*** in this section.
- (3) If the Local Court is satisfied (on the balance of probabilities) that the alleged offensive noise exists, or that although abated it is likely to recur on the same premises, the Local Court may make an order directing either or both of the following:
 - (a) directing the defendant to abate the offensive noise within the time specified in the order,
 - (b) directing the defendant to prevent a recurrence of the offensive noise.

269 Contravention of noise abatement order

A person who contravenes a noise abatement order is guilty of an offence.

Maximum penalty: 30 penalty units.

270 Restrictions on noise abatement orders

- (1) A noise abatement order has no force in so far as it is directed to:
 - (a) the State or a person acting on behalf of the State, or
 - (b) a public authority or a person in the capacity of a member, officer or employee of a public authority, or
 - (c) a person or body prescribed by the regulations for the purposes of this paragraph.
- (2) A noise abatement order has no force in so far as it would have the result of affecting:
 - (a) any activity carried on by or for the State or a public authority, or
 - (b) any scheduled activity, or any other activity or work that is the subject of an environment protection licence, or
 - (c) any activity of a class or description prescribed by the regulations for the purposes of this paragraph.

271 Operation of noise abatement orders

- (1) A noise abatement order takes effect when it is made or at a later time specified in the order.

- (2) However, if an appeal is lodged, the order is suspended until the appeal is dealt with or withdrawn.

272 Revocation or variation of noise abatement orders

A noise abatement order may be revoked or varied by a Local Court.

273 Costs

A Local Court may award costs against any party in proceedings under this Division.

274 Local Court having jurisdiction

- (1) The jurisdiction of a Local Court under this Division may only be exercised by the Local Court for the relevant district appointed under section 6 of the *Local Courts Act 1982*.
- (2) The relevant district is the district in which the premises from which the noise is alleged to be emitted is situated.

Division 3 Noise abatement directions—police and other authorised persons

275 Definition of “authorised person”

In this Division:

authorised person means:

- (a) in any case—an authorised officer or a police officer, or
- (b) in relation to vessels in navigable waters—an officer or employee of the marine authority authorised by the marine authority for the purposes of this Division.

276 Issue of noise abatement directions

If it appears to an authorised person that offensive noise is being, or has at any time within the past 7 days been, emitted from any premises, the authorised person may:

- (a) direct the person whom the authorised person believes to be the occupier of the premises to cause the emission of the offensive noise to cease, or
- (b) direct any person whom the authorised person believes to be making or contributing to the making of the noise to cease making or contributing to the making of offensive noise,

or both.

277 Contravention of noise abatement directions

- (1) A person to whom a noise abatement direction has been given under section 276 (a)

must not, without reasonable excuse, while the direction remains in force:

- (a) fail to cause the emission of the offensive noise from the premises to cease promptly, or
- (b) at any time within 28 days following the time at which the direction was given (or such shorter period as is specified in the direction), cause or permit offensive noise to be emitted from the premises.

(2) A person to whom a noise abatement direction has been given under section 276 (b) must not, without reasonable excuse, while the direction remains in force:

- (a) fail to promptly cease making or contributing to the making of the offensive noise, or
- (b) at any time within 28 days following the time at which the direction was given (or such shorter period as is specified in the direction), make or contribute to the making of offensive noise that is emitted from the premises.

(3) A noise abatement direction does not prevent the emission of noise that is not offensive noise.

(4) A person who contravenes this section is guilty of an offence.

Maximum penalty: 30 penalty units.

278 Restrictions on noise abatement directions

(1) A noise abatement direction has no force in so far as it is directed to:

- (a) the State or a person acting on behalf of the State, or
- (b) a public authority or a person in the capacity of a member, officer or employee of a public authority, or
- (c) a person or body prescribed by the regulations for the purposes of this paragraph.

(2) A noise abatement direction has no force in so far as it would have the result of affecting:

- (a) any activity carried on by or for the State or a public authority, or
- (b) any scheduled activity, or any other activity or work that is the subject of an environment protection licence, or
- (c) any activity of a class or description prescribed by the regulations for the purposes of this paragraph.

279 Revocation of noise abatement directions

A noise abatement direction may be revoked by the person who gave (or could have given) the direction or by a person of a class prescribed by the regulations.

Division 4 Police powers regarding noise

280 Powers of entry by police by warrant

- (1) **Complaint for and issue of warrant** On complaint being made by a police officer to a Magistrate that:
 - (a) the police officer has been denied entry to any specified premises, and
 - (b) the police officer believes that:
 - (i) offensive noise is being emitted from the premises or offensive noise has, within the past 7 days, been emitted from the premises, and
 - (ii) it is necessary for a police officer to enter the premises immediately in order to give a noise abatement direction in relation to offensive noise emitted from the premises or to investigate whether a noise abatement direction has been contravened,

the Magistrate may, if satisfied that there are reasonable grounds for that belief, by warrant, authorise and require the police officer to enter the premises and to give a noise abatement direction or investigate whether a noise abatement direction has been contravened.

- (2) **Manner of making complaint** The complaint may be made by a police officer to the Magistrate in person or by telephone and may be made directly to the Magistrate or, where in all the circumstances it is impracticable to make the complaint directly, by causing the complaint to be transmitted by another police officer by either of those means.
- (3) **Indirect complaint** The fact that the complaint is made to the Magistrate by a police officer who causes the complaint to be transmitted by another police officer to the Magistrate does not, if the Magistrate is of the opinion that it is in all the circumstances impracticable to communicate directly with the police officer making the complaint, prevent the Magistrate being satisfied as to the matters specified in subsection (1).
- (4) **How warrant granted** The Magistrate grants the warrant by stating the terms of the warrant.
- (5) **Magistrate to make record** The Magistrate who grants the warrant is required to cause a record to be made in writing in the prescribed form of:

- (a) the name of the police officer who was the complainant, and
 - (b) where the complaint was transmitted by a police officer on behalf of the complainant—the name of the police officer who transmitted the complaint, and
 - (c) the details of the complaint, including the name of any person who is alleged to have informed the police as to the offensive noise the subject of the warrant and the grounds relied on by the Magistrate to grant the warrant, and
 - (d) the terms of the warrant (which must include the address of the premises the subject of the warrant), and
 - (e) the date and time the warrant was granted.
- (6) **Execution of warrant** The warrant is to be executed as soon as practicable after it is granted, but not later than 24 hours after it is granted, and may be executed by day or night.
- (7) **Use of reasonable force** A police officer may use reasonable force (whether by breaking open doors or otherwise) for the purpose of entering premises in executing the warrant.
- (8) **Use of assistants** A police officer may execute the warrant with the aid of such assistants as the police officer considers appropriate.
- (9) **Warrant not invalidated by minor defects** The warrant is not invalidated by any defect, other than a defect that affects the substance of the warrant in a material particular.
- (10) **Police officer to make record** The police officer who was the complainant is required to make a record in triplicate in the prescribed form containing the following particulars:
- (a) the address of the premises the subject of the warrant,
 - (b) the name of the Magistrate who granted the warrant,
 - (c) the name of the police officer,
 - (d) the time at which the warrant was granted.
- (11) **How police record to be dealt with** The copies of the record made under subsection (10) are to be dealt with as follows:
- (a) the first copy is, on entry to the premises the subject of the warrant or as soon as practicable afterwards, if a person who appears to reside at the premises and to be of or above the age of 18 years is present, to be furnished to such a person together with a statement in the prescribed form and containing a summary of the nature of the warrant and the powers given by the warrant,
 - (b) the second and third copies are to be endorsed with:

- (i) the name of the person (if any) who informed the police as to the offensive noise the subject of the warrant, and
- (ii) a notation as to whether any premises were entered under the warrant and, if so, the time of entry and the action taken at the premises,
- (c) the second copy is to be forwarded to the Director-General of the Attorney General's Department or any other officer designated by that Director-General,
- (d) the third copy is to be retained by the police officer authorised to enter the premises under the warrant, to be dealt with in such manner as may be prescribed by the regulations.

(12) **Definitions** In this section:

Magistrate includes a justice of the peace employed in the Attorney General's Department.

telephone includes a radio or another communication device.

281 Powers of police after entry by warrant

- (1) **Limited powers** If a police officer enters any premises under a warrant granted under section 280 for the purpose of giving a noise abatement direction or investigating whether a noise abatement direction has been contravened, the police officer may:
- (a) take only such action at the premises as is reasonably necessary:
 - (i) to give the noise abatement direction or investigate whether such an offence has been committed, and
 - (ii) to exercise any power under subsection (2) or any lawful power to arrest a person, and
 - (b) remain at the premises only as long as is reasonably necessary to take that action.
- (2) **Giving of names and addresses may be required** If a police officer believes on reasonable grounds that offensive noise is being emitted from any premises or offensive noise has, within the past 7 days, been emitted from any premises, the police officer may require any person:
- (a) whom the police officer believes on reasonable grounds to be the occupier of the premises or to be, or to have been, causing or contributing to the emission of the offensive noise, and
 - (b) to whom the police officer has given an oral or written warning of that person's obligation to furnish the information under this Act,

to furnish the police officer with that person's name and address and with the name and address of the occupier of the premises if that person is not the occupier.

(3) **Offences** A person:

- (a) who refuses or fails to comply with a requirement under subsection (2), or
 - (b) who, in purported compliance with a requirement under subsection (2), furnishes information that the person knows is false or misleading in a material particular,
- is guilty of an offence.

Maximum penalty: 30 penalty units.

(4) **Defence** A person is not guilty of an offence arising under subsection (3) (a) if the person proves that, in so far as the requirement was not complied with, the person was not capable of complying with it.

282 Police powers to seize equipment

- (1) This section applies if a noise abatement direction is in force and the person to whom the direction is given is contravening the direction.
- (2) A police officer may seize or secure any equipment that is being used to contravene the direction. The police officer may not do so unless the person in charge of the equipment has been warned that the continued use of the equipment may lead to its seizure.
- (3) If any such equipment is seized, the police officer is to issue the person from whom it is seized with a receipt that identifies the equipment, states the time and date of seizure, identifies the police officer seizing the equipment and notifies the procedure for the return of the equipment.
- (4) Unless it is returned or released earlier at the discretion of a police officer, any equipment that is seized or secured under this section must be returned or released within 28 days.
- (5) A person is not entitled to any compensation for damage caused to equipment that is seized or secured under this section if the damage occurred as a result of the police officer being obstructed or hindered in seizing or securing the equipment.

283 Other police powers not affected

Nothing in this Division limits any other power that a police officer may have under this or any other Act or at common law to enter or remain at any premises.

Chapter 9 Miscellaneous

Part 9.1 Exemptions

284 Exemptions by EPA in emergencies and other situations

- (1) **Exemptions** The EPA may exempt any person or class of persons from any specified provision or provisions of this Act or the regulations, in the circumstances referred to in subsection (2).
- (2) **Situations where exemptions may be granted** An exemption may be granted in:
 - (a) an emergency (including, for example, fires, floods and fuel shortages), or
 - (b) circumstances where:
 - (i) the EPA is satisfied that it is not practicable to comply with the relevant provision or provisions, by implementing operational changes to plant or practices, and
 - (ii) the EPA is satisfied that non-compliance with the provision or provisions will not have any significant adverse effect on public health, property or the environment, and
 - (iii) the Board of the EPA approves the granting of the exemption.
- (3) **Applications** If the regulations prescribe the manner in which an exemption is to be applied for, the exemption must be applied for in that manner.
- (4) **Publication and commencement** An exemption:
 - (a) is effected by order made by the EPA and published in the Gazette, and
 - (b) takes effect from the date the order is published in the Gazette or a later date specified in the order, and
 - (c) has effect for the period specified in the order.
- (5) **Emergency exemption** In the case of an exemption granted in an emergency, the order may take effect when it is made or on a later date specified in the order. The order is to be published in the Gazette as soon as practicable after it is made.
- (6) **Conditions** An exemption may be unconditional or may be subject to conditions specified in the order.
- (7) **Revocation, variation or renewal** An exemption may be revoked, varied or renewed by a further order made and published in accordance with this section.
- (8) **Term** An exemption may not be granted or renewed so as to have effect for a total

period exceeding 5 years. A further exemption granted within 5 years after the expiry of an earlier exemption (being a further exemption that is the same in substance as the earlier exemption) is to be treated as a renewed exemption for the purposes of this subsection.

- (9) **Reasons for exemption** If an exemption is granted, any person may make a written request to the EPA for the reasons for the exemption and the EPA is to provide a written statement of the reasons to the person. The regulations may make provision with respect to any such statement of reasons, including:
- (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and
 - (b) the matters to be set out in a statement of reasons, and
 - (c) the cases in which a statement of reasons is not required to be provided.

285 Exemption for fire brigades and other emergency services

- (1) A person is not guilty of an offence against this Act or the regulations for any act or omission if it was done or omitted in good faith as a member of a fire brigade, a bush fire brigade, the State Emergency Service or other officially accredited rescue unit.
- (2) This section has effect despite anything in this Act.

286 Exemptions by regulation

- (1) The regulations may exempt, or provide for the exemption of:
 - (a) any person or class of persons, or
 - (b) any premises or class of premises, or
 - (c) any area or class of areas, or
 - (d) any activity or class of activities, or
 - (e) any other matter or thing or class of matters or things,

from any specified provision or provisions of this Act or the regulations, in such circumstances (if any) and subject to such conditions (if any) as may be specified or referred to in the regulations.

- (2) The power to make regulations under this section is not limited by section 284.

Part 9.2 Appeals

287 Appeals regarding licence applications and licences

- (1) Any person:

- (a) who makes a licence application and who is aggrieved by any decision of the appropriate regulatory authority with respect to the application, or
- (b) who is or was the holder of a licence and who is aggrieved by any decision of the appropriate regulatory authority with respect to the licence,

may, within 21 days (or such other period as is prescribed instead by the regulations) after being given notice of the decision of that authority, appeal to the Land and Environment Court against the decision.

- (2) An appeal under this section extends to a decision to refuse the licence application, to impose conditions on the issue of a licence, to vary the conditions of a licence, to revoke or suspend a licence, to refuse to approve the surrender of a licence, to impose conditions on a revocation, suspension or surrender of a licence or to attach any new conditions to, or to vary any conditions of, a suspension, revocation or surrender of a licence.

Note—

The Dictionary defines **licence application** to mean an application for the issue, transfer or variation of a licence or for approval of the surrender of a licence.

- (3) For the purposes of this section, a licence application is taken to have been refused:
 - (a) in the case of an application for a variation of a licence about which the appropriate regulatory authority is required to invite and consider public submissions under section 58 (6), if the application is not granted within 90 days after it is duly made, or
 - (b) in the case of an application for a licence relating to controlled development, if the application is not granted within 60 days after it is duly made or within 30 days after development consent is granted for the controlled development, whichever is the later, or
 - (c) in any other case, if the application is not granted within 60 days after it is duly made.
- (4) The period commencing when an applicant is duly required under this Act to provide additional information within a specified period for the purposes of determining a licence application and ending when that information is provided or the specified period ends (whichever occurs first) is not to be taken into account in determining whether a licence application is taken to have been refused.
- (5) Nothing in this section prevents the determination of a licence application under this Act after the end of a period referred to in subsection (3).
- (6) There is no appeal under this section against a condition that is imposed on a licence, or varied or revoked, by the regulations.

Note—

Section 93B of the *Environmental Planning and Assessment Act 1979* provides that, in the case of integrated development under that Act involving a licence application, the Court is under the same obligation as the appropriate regulatory authority with respect to the issue of the licence in accordance with the previous general terms of any approval by that authority.

288 Appeals regarding notices under section 86 relating to work at premises

A person given a notice under section 86 may, within 21 days (or such other period as is prescribed instead by the regulations) after being given the notice, appeal to the Land and Environment Court against the notice.

289 Appeals against prevention notices

- (1) A person served with a prevention notice may, within 21 days (or such other period as is prescribed instead by the regulations) after being served with the notice, appeal to the Land and Environment Court against the notice.
- (2) There is no appeal against a decision of an appropriate regulatory authority to extend the time for complying with a prevention notice.
- (3) For the purposes of this section, a **prevention notice** is a notice under Part 4.3, and includes a notice that varies such a prevention notice.

290 Appeals regarding noise

- (1) Any person:
 - (a) given a noise control notice, or
 - (b) against whom a noise abatement order is made,may appeal to the Land and Environment Court against the notice or order within 21 days (or such other period as is prescribed instead by the regulations) after service of the notice or the making of the order.
- (2) Parts 5, 5A and 5B of the *Justices Act 1902* do not apply to a noise abatement order.

291 Appeals regarding decisions under the regulations

The regulations may make provision for or with respect to the making of appeals to the Land and Environment Court or a Local Court against a decision made under the regulations.

292 Determination of appeals

- (1) A court to which an appeal is made under this Act may hear and determine the appeal.
- (2) The decision of the court on an appeal under this Act is final and binding on the

appellant and the person or body whose decision or notice is the subject of the appeal.

Part 9.3 Economic measures

293 Schemes for economic measures

- (1) The EPA may develop and implement schemes involving economic measures as a means of achieving cost-effective environmental regulation or environment protection.
- (2) The EPA may approve of the development and implementation of such a scheme by other regulatory authorities.
- (3) Without limiting the above, such a scheme may involve measures that provide an economic incentive for avoiding or minimising harm to the environment when carrying out an activity.
- (4) An example of such a scheme is a tradeable emission scheme, as referred to in Part 9.3A.
- (5), (6) (Repealed)

293A Alteration, suspension or termination of a scheme

- (1) The EPA may alter, suspend or terminate a scheme referred to in section 293 or any part of such a scheme.
- (2) Before taking any such action, the EPA must:
 - (a) cause notice of its intention to do so to be published in the Gazette and in a newspaper circulating throughout the State or in the locality in which the scheme operates, and
 - (b) in that notice, invite the public to make submissions on the proposed alteration, suspension or termination, and
 - (c) allow a period of not less than 21 days for the receipt of those submissions.
- (3) The EPA must take into account any submission received within that period in deciding whether to proceed with the alteration, suspension or termination.
- (4) The EPA may alter the scheme or part of the scheme without complying with subsections (2) and (3) if it considers that:
 - (a) the alteration is not significant, or
 - (b) the alteration is necessary because of an emergency.
- (5) The EPA may suspend the scheme or part of the scheme without complying with

subsections (2) and (3) if it considers that:

(a) the suspension is required urgently in order to protect the environment, public health, property, or the integrity of the scheme, or

(b) the suspension is necessary because of an emergency.

(6) The EPA may terminate the scheme or part of the scheme without complying with subsections (2) and (3) if it considers that the termination is necessary because of an emergency.

294 Liability of Crown

(1) The Crown does not incur any liability (including liability for compensation) for any loss (including a loss in entitlements or in the value of entitlements) incurred as a consequence of any of the following:

(a) the implementation, alteration, suspension or termination of a scheme referred to in section 293 or of any part of such a scheme,

(b) the alteration, suspension, cancellation or forfeiture of any rights or entitlements under such a scheme.

(2) In this section:

compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes any officer, employee or agent of the Crown.

294A Exercise of functions by Minister and EPA

In exercising their functions under this Part and Part 9.3A, the Minister and the EPA are to have regard to the objects of this Act, particularly section 3 (d).

295 Regulations

The regulations may make provision for or with respect to any of the following:

(a) the development or implementation of schemes involving economic measures,

(b) the alteration, suspension or termination of such a scheme or of any part of such a scheme.

Note—

More specific regulation-making powers for tradeable emission schemes are set out in Part 9.3A.

Part 9.3A Tradeable emission schemes

295A Definitions

In this Part:

participant in a tradeable emission scheme means:

- (a) a person who holds a tradeable emission permit or credit created under the scheme, or
- (b) a person who holds a licence that authorises the person to carry out any activity that is regulated under the scheme or a licence of a kind prescribed by the regulations as being a licence to which the scheme applies (whether or not the person holds a tradeable emission permit or credit).

tradeable emission scheme means a scheme referred to in section 295B.

295B Tradeable emission schemes

- (1) A tradeable emission scheme may include any or all of the following elements:
 - (a) the creation of a market for entitlements to emit a particular pollutant or pollutants,
 - (b) monitoring and reporting levels of pollution and emission of pollutants,
 - (c) the creation of tradeable emission permits or credits,
 - (d) the initial sale or allocation and further sale or allocation of tradeable emission permits or credits,
 - (e) provision for the holding of tradeable emission permits or credits by members of the public,
 - (f) the rights and duties of participants in the scheme,
 - (g) the trading of tradeable emission permits or credits or of any entitlement conferred by them (including restrictions on trading and any other dealings),
 - (h) safeguards against anti-competitive behaviour by participants in the scheme,
 - (i) the alteration, suspension, cancellation or forfeiture of tradeable emission permits or credits, or other rights or entitlements under the scheme.
- (2) A tradeable emission scheme must include:
 - (a) a limit on total emissions of the pollutant or pollutants to which the scheme applies, or
 - (b) a scheme to offset pollution, or
 - (c) a program for the surrender of tradeable emission permits or credits over time, or

(d) a combination of any or all of the elements referred to in paragraphs (a)-(c).

(3) A tradeable emission scheme may include elements other than those mentioned in this section.

295C Regulations relating to tradeable emission schemes

(1) The regulations may make provision for or with respect to tradeable emission schemes, including provision for or with respect to any of the elements referred to in section 295B.

(2) A tradeable emission scheme regulation is not repealed by the operation of Part 3 of the *Subordinate Legislation Act 1989*.

(3) A tradeable emission scheme regulation may be periodically reviewed by the Minister, in accordance with a timetable set out in the regulation. Any such review must include a review of the operation of the elements of the scheme referred to in section 295B (2).

(4) The Minister is to ensure that the public is given an opportunity to make submissions with respect to the review, and that any submissions with respect to the review that are received within the period allowed for the receipt of submissions are appropriately considered.

(5) In order to give the public an opportunity to make submissions with respect to the review, the Minister must:

(a) cause notice of the review to be published in the Gazette and in a newspaper circulating throughout the State or in the locality in which the scheme operates, and

(b) in that notice, invite the public to make submissions with respect to the review, and

(c) allow a period of not less than 21 days for the receipt of those submissions.

(6) For the purposes of this section, a **tradeable emission scheme regulation** is a regulation that contains only the following provisions:

(a) provisions that relate to a tradeable emission scheme (including any ancillary, consequential, savings or transitional provisions), and

(b) provisions that deal with the citation and commencement of the regulation, or other provisions of a machinery nature.

(7) This section does not limit the generality of section 295.

295D Licence conditions

- (1) The regulations may, for the purpose of giving effect to a tradeable emission scheme, impose conditions on licences.
- (2) Conditions of a licence that are imposed by the regulations for the purposes of this Part cannot be substituted, omitted, amended or revoked by a regulatory authority.
- (3) (Repealed)
- (4) This section does not prevent conditions with respect to a tradeable emission scheme from being attached to a licence by an appropriate regulatory authority in the manner provided for by Chapter 3.

295E Imposition of penalties for contravention of scheme

- (1) If the EPA is satisfied that a participant in a tradeable emission scheme has caused a pollutant to be emitted in contravention of the scheme on one or more occasions, the EPA may, subject to the regulations, require the participant to pay a penalty to the EPA.
- (2) The penalty is to be the amount prescribed by, or calculated in accordance with, the regulations.
- (3) Without limiting subsection (2), the regulations may provide for the penalty to be calculated on the basis of the following (or a combination of the following):
 - (a) the quantity of pollutant emitted by the participant in contravention of the scheme, as estimated by the EPA,
 - (b) the amount of monetary, financial or other economic benefits obtained by the participant as a result of contravening the scheme, as estimated by the EPA.
- (4) The EPA is required to give written notice to a participant of:
 - (a) any penalty the participant is required to pay under this section, and
 - (b) the time within which the penalty is to be paid.
- (5) If the participant fails to pay the penalty, within the time specified by the EPA in the notice, the EPA may:
 - (a) cancel, suspend, or order the forfeiture of, any tradeable emission permits or credits held by the participant, in accordance with the regulations, or
 - (b) take any other action against the person (such as suspending the person from participating in the scheme) that is authorised by the regulations.
- (6) This section does not prevent proceedings being taken against a participant for an

offence against this Act or the regulations arising as a result of a contravention of a tradeable emission scheme.

- (7) The EPA may take any other action authorised by the regulations (as referred to in section 295F) in addition to or instead of imposing a penalty under this section.

295F Other action that may be taken by EPA

- (1) The regulations may authorise the EPA, or a person exercising functions under a tradeable emission scheme on behalf of the EPA, to do any or all of the following, in the circumstances set out in the regulations:
- (a) cancel or suspend tradeable emission permits or credits, or any entitlement that they confer,
 - (b) order the forfeiture of tradeable emission permits or credits to the EPA,
 - (c) cancel or suspend a person's right to participate in the scheme, or impose conditions or other restrictions on any such right.
- (2) Without limiting subsection (1), the regulations may authorise such action to be taken:
- (a) for one or more contraventions of the scheme, or
 - (b) for a failure to pay any penalty, contribution or other amount payable in connection with the scheme.

295G Participation in scheme by EPA

The EPA may participate in a tradeable emission scheme, including by holding and trading in tradeable emission permits and credits.

295H Cost recovery

- (1) The regulations may require participants in a tradeable emission scheme to pay to the EPA a contribution towards the following:
- (a) the costs of management and administration of the scheme (including payment for services provided by any person or body exercising functions under the scheme),
 - (b) the costs of ensuring compliance with the scheme,
 - (c) any other costs relating to the scheme.
- (2) The amount of the contribution (or the manner in which it is to be calculated) and other matters concerning its payment are to be set out in the regulations.
- (3) The contribution is recoverable by the EPA as a debt in a court of competent jurisdiction.

- (4) The regulations may authorise the payment of the contribution by instalments. If an instalment is not paid by the due date, the balance then becomes due and payable (together with any interest or other penalty for late payment prescribed by the regulations).
- (5) The regulations may:
 - (a) require a person to continue to make a contribution referred to in this section in respect of a tradeable emission permit or credit that has been forfeited until the permit or credit is sold or re-allocated, and
 - (b) exempt any person or class of persons from payment of a contribution referred to in this section.
- (6) The EPA is not required to pay a contribution referred to in this section.

295I Tradeable Emission Schemes Fund

- (1) There is to be established in the Special Deposits Account an account called the Tradeable Emission Schemes Fund.
- (2) Money in the Fund is under the control of the EPA and can be expended by the EPA only for the purposes authorised by this section.
- (3) There is to be paid into the Fund:
 - (a) all contributions paid by participants in a tradeable emission scheme under a regulation referred to in section 295H (Cost recovery), and
 - (a1) the proceeds of any auction or other sale of permits or credits, or any entitlement conferred by them, under a tradeable emission scheme, and
 - (b) the proceeds of investment of money in the Fund, and
 - (c) any gift or bequest of money for the purposes of the Fund, and
 - (d) any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund.
- (4) There may be paid out of the Fund:
 - (a) the costs of management and administration of tradeable emission schemes (including payment for services provided by any person or body exercising functions under the scheme), and
 - (b) the costs of ensuring compliance with tradeable emission schemes, and
 - (c) such other costs relating to tradeable emission schemes as the EPA directs to be paid out of the Fund.

- (4A) There may be paid out of the Fund to the Consolidated Fund any amount in the Fund that, in the opinion of the EPA, is in excess of the amounts required to meet the costs referred to in subsection (4).
- (5) A separate account is to be established in the Fund for each tradeable emission scheme.
- (6) If more than one account in the Fund is established under this Part, money in the accounts may be invested as a common pool. The proceeds of investments are to be distributed rateably among the accounts that contributed money to the common pool according to the amount contributed.

295J Exercise of scheme functions by other persons and bodies

- (1) The EPA may enter into agreements and other arrangements with a person or body in respect of the exercise of the functions of the EPA under a tradeable emission scheme by the person or body on behalf of the EPA.
- (2) The regulations may provide for the constitution of committees (as incorporated or unincorporated bodies):
 - (a) to provide advice on tradeable emission schemes, and
 - (b) to exercise any other functions conferred on them by the EPA or by the regulations in connection with tradeable emission schemes.
- (3) A matter or thing done or omitted to be done by such a committee, a member of the committee or a person acting under the direction of the committee does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act or the regulations, subject a member or a person so acting personally to any action, liability, claim or demand.

295K Liability for operation of scheme

- (1) The Crown does not incur any liability (including liability for compensation) in respect of anything done or omitted to be done in good faith by the EPA, or by a person exercising functions under a tradeable emission scheme on behalf of the EPA, in connection with the operation of a tradeable emission scheme.
- (2) Without limiting subsection (1), that subsection applies to anything done or omitted to be done in connection with the operation of any register or other system by which tradeable emission permits or credits, or other entitlements, are traded under a tradeable emission scheme.
- (3) This section does not limit the generality of section 294.
- (4) In this section:

compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes any officer, employee or agent of the Crown.

295L Application of *Duties Act 1997*

A tradeable emission permit or credit, or any other entitlement, created under a tradeable emission scheme is not dutiable property for the purposes of the *Duties Act 1997*.

Part 9.4 Financial assurances

296 Purpose of this Part

- (1) The purpose of this Part is to provide (by way of conditions of environment protection licences) financial assurances to secure or guarantee funding for or towards the carrying out of works or programs (such as remediation work or pollution reduction programs) required by or under a licence.
- (2) A financial assurance is not to operate as a mere penalty for a contravention of this Act, the regulations or the conditions of a licence.

297 Definition of “conditions” of licence

In this Part, a reference to the **conditions** of an environment protection licence includes a reference to the conditions of the suspension, revocation or surrender of such a licence.

298 Requiring financial assurances

- (1) **Condition for financial assurance** The conditions of an environment protection licence may require the holder or former holder of the licence to provide a financial assurance. The appropriate regulatory authority may require any such financial assurance to be provided before it issues, suspends or revokes the licence or before it approves of its surrender.
- (2) **Form of financial assurance** A financial assurance may be in one or more of the following forms:
 - (a) a bank guarantee,
 - (b) a bond,
 - (c) another form of security that the appropriate regulatory authority considers appropriate and specifies in the condition.
- (3) **Provision for use of financial assurance** A condition of a licence may provide for the procedures under which the financial assurance may be called on or used.

299 Restriction on requiring financial assurance

The appropriate regulatory authority cannot impose a condition on a licence requiring a financial assurance to be provided unless it is satisfied that the condition is justified having regard to:

- (a) the degree of risk of environmental harm associated with the activities under the licence, or
- (b) the remediation work that may be required because of activities under the licence, or
- (c) the environmental record of the holder or former holder of the licence or proposed holder of the licence, or
- (d) any other matters prescribed by the regulations.

300 Amount of financial assurances

- (1) **Determination of amount** The amount of a financial assurance is to be as determined by the appropriate regulatory authority.
- (2) **Limit on amount** However, the appropriate regulatory authority must not require financial assurances of an amount that exceeds the total cost of carrying out the relevant work or program. That total cost is the amount that, in that authority's opinion, represents a reasonable estimate of the total likely costs and expenses that may be incurred in carrying out the work or program required by or under this Act for which the financial assurance is required, including the likely costs and expenses of that authority in directing and supervising the carrying out of the work or program.

301 Guidelines about requiring financial assurances

The regulations may make provision for or with respect to guidelines to be observed in relation to the content of conditions of licences requiring financial assurances.

302 Carrying out of work or program when licensee fails to do so

- (1) The appropriate regulatory authority may carry out, or direct or supervise the carrying out by another person of, any work or program covered by any financial assurance required by the conditions of an environment protection licence if the holder or former holder of the licence fails, in the opinion of that authority, to carry out that work or program in accordance with the conditions of the licence.
- (2) The appropriate regulatory authority may do so by the use of contractors, consultants or otherwise.
- (3) The appropriate regulatory authority may enter, or authorise any other person to enter, the premises concerned to carry out the work or program.

303 Claim on or realising of financial assurance

- (1) The appropriate regulatory authority may recover or fund the reasonable costs or expenses of that authority or other person in carrying out any such work or program (including the likely costs and expenses of that authority in directing and supervising the carrying out of the work or program) by making a claim on or realising the financial assurance or part of it.
- (2) Before making the claim on or realising the financial assurance or part of it, the appropriate regulatory authority must give to the holder or former holder of the licence a written notice under this section.
- (3) The notice must:
 - (a) state details of the work or program carried out or proposed to be carried out, and
 - (b) state the amount of the financial assurance to be claimed or realised, and
 - (c) invite the person to make representations to the appropriate regulatory authority to show why the financial assurance should not be claimed or realised as proposed, and
 - (d) state the period (at least 30 days after the notice is given to the person) within which representations may be made.
- (4) The representations must be made in writing.
- (5) After the end of the period stated in the notice, the appropriate regulatory authority must consider any representations properly made by the person.
- (6) If the appropriate regulatory authority decides to make a claim on or realise the financial assurance or part of it, the appropriate regulatory authority must immediately give written notice to the holder or former holder of the licence of its decision and the reasons for the decision.
- (7) The appropriate regulatory authority must return any excess amounts to the holder or former holder of the licence or that person's successors.
- (8) If the amount of financial assurance claimed or realised by the appropriate regulatory authority is not sufficient to cover all the costs and expenses concerned, that authority may recover the excess from the holder or former holder of the licence as a debt in any court of competent jurisdiction.

304 Lapsing of financial assurance

The requirement to provide financial assurance lapses and no longer binds the holder or former holder of the licence if the appropriate regulatory authority is satisfied that the work or program for which the financial assurance was required has been satisfactorily

carried out and has given the holder or former holder of the licence written notice of the lapsing of the financial assurance.

305 Liability of appropriate regulatory authority, State and others

- (1) Anything done by or at the direction, or under the supervision, of the appropriate regulatory authority under section 302 (1) is taken to have been done by the holder or former holder of the licence.
- (2) The State, the Minister, the appropriate regulatory authority, the members of the Board of the EPA, any members of the staff of the appropriate regulatory authority and any persons engaged by or otherwise acting with the authority of the appropriate regulatory authority (or any of them):
 - (a) are not liable for anything done or omitted to be done in good faith in connection with a condition of a licence to which this Part applies or in carrying out or giving effect to this Part, and
 - (b) without affecting the generality of the above, are taken, for the purposes of section 169 (Offences by corporations), not to be concerned in the management of a corporation when doing or omitting to do anything in connection with such a condition or when carrying out or giving effect to this Part.

306 Financial assurance not to affect other action

A financial assurance may be called on and used, despite and without affecting:

- (a) any liability of the holder or former holder of the licence to any penalty for an offence for a contravention to which the assurance relates, and
- (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the assurance relates.

307 Disputes regarding call on or use of financial assurance

The Land and Environment Court has jurisdiction to determine disputes about calling on or using a financial assurance.

Part 9.5 Public register

308 Public register

- (1) Each regulatory authority is required to keep a public register in accordance with this section.
- (2) The regulatory authority must record in the register the following:
 - (a) details of each licence application made to that authority,

- (b) details of each decision of that authority made in respect of any such licence application,
 - (c) details of each licence issued by that authority,
 - (d) details of each variation of the conditions of any such licence,
 - (e) details of each decision of that authority to suspend, revoke or approve the surrender of any such licence (including details of any conditions to which it is subject),
 - (f) details of each certificate supplied in accordance with a condition of any such licence certifying compliance with the conditions of the licence,
 - (g) the date of completion of each review of any such licence by that authority under section 78,
 - (h) details of each environment protection notice or noise control notice issued by that authority,
 - (i) in the case of the EPA—details of any exemption granted under Part 9.1,
 - (j) details of convictions in prosecutions under this Act instituted by that authority,
 - (k) the results of civil proceedings before the Land and Environment Court under this Act by or against that authority,
 - (l) a summary of the conclusions of any audit report in connection with a mandatory environmental audit under Part 6.2 that is supplied to that authority,
 - (m) details of such other matters as are prescribed by the regulations (relating to licences or other matters under or relevant to this Act).
- (3) The register may be kept in any form determined by the appropriate regulatory authority. Different parts of the register may be kept in different forms.
- (4) The regulations may authorise the removal from the register of any matter concerning licence applications that were not granted, licences or notices that are no longer in force or exemptions granted by the EPA under Part 9.1, being exemptions that are no longer in force.
- (5) For the purposes of this section, **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.

309 Public availability of register

- (1) A copy of the public register is to be available for public inspection at the principal office of the regulatory authority and at such other places as that authority thinks fit.
- (2) A copy of any part of the register may be obtained by members of the public from the regulatory authority.
- (3) The regulations may prescribe any or all of the following:
 - (a) the means by which the register can be inspected,
 - (b) the hours when the register can be inspected and when copies can be obtained,
 - (c) fees for the inspection of the register,
 - (d) fees for copies of parts of the register.
- (4) The register can be inspected or copies can be obtained during ordinary office hours, and on payment of fees determined by the regulatory authority, in the absence of regulations prescribing these matters.

Part 9.6 Formal inquiries

310 Conduct of inquiries

- (1) **Subject-matter of inquiries** An inquiry may be conducted by the EPA under this Part into any matter relating to the protection of the environment.
- (2) **EPA may institute inquiry** The EPA may determine that such an inquiry be conducted.
- (3) **Minister may require inquiry** The Minister may require that such an inquiry be conducted.
- (4) **Matters to be examined** The EPA may determine the matters to be examined in the course of an inquiry under this Part, including an inquiry that the Minister has required to be conducted.
- (5) **Other powers not affected** Nothing in this section limits the power of the EPA to conduct an inquiry into any matter even though it has appointed another body or person to do so.

311 Person or body conducting inquiries

- (1) **Constitution of inquiry** The EPA may appoint any of the following to conduct an inquiry under this Part:
 - (a) a committee established under the *Protection of the Environment Administration Act 1991*,

(b) one or more members of the Board of the EPA or of any such committee,

(c) any other body, or any other person or persons, the EPA considers appropriate to conduct the inquiry.

(2) **Appointment of persons to assist inquiry** The EPA may appoint one or more persons to assist the inquiry.

(3) **Chairperson** The EPA may, where two or more persons are appointed to conduct the inquiry, appoint one of those persons to preside at any meeting of those persons for the purposes of the inquiry.

(4) **Remuneration** A person appointed by the EPA to conduct or assist the inquiry may be paid such remuneration and allowances (if any) as the Minister determines in respect of the person.

312 Procedures at inquiries

(1) **General procedure** The procedure to be followed at an inquiry under this Part is to be determined by the body or person conducting it, subject to this Act and the regulations.

(2) **Notice to provide information or produce documents** The body or person conducting the inquiry may, by notice in writing given to any person, require the person within such reasonable time as may be specified in the notice:

(a) to furnish to that body or person such information, and

(b) to produce to that body or person such documents in the person's possession or under the person's control,

as may be required for the purposes of the inquiry and as may be specified in the notice, whether generally or otherwise.

(3) **Notice to give evidence and produce documents** The body or person conducting the inquiry may, by notice in writing given to any person, require the person:

(a) to attend at a specified time and place before that body or person and thereafter from time to time as required by that body or person, and

(b) to give evidence concerning any matter the subject of the inquiry, and

(c) to produce all such documents in the person's possession or under the person's control as may be required for the purposes of the inquiry and as may be specified in the notice, whether generally or otherwise.

(4) **Mode of evidence** The body or person conducting the inquiry may require any such evidence to be given in writing or orally.

- (5) **Evidence may be given on oath** The body or person conducting the inquiry may, subject to section 13 of the *Oaths Act 1900*, require any such evidence to be given on oath, and for that purpose the person presiding may administer an oath.
- (6) **Written statement** The body or person conducting the inquiry may permit a person to give evidence by sending to the body or person a written statement, verified in such manner as the body or person allows.
- (7) **Offence of not complying with notice** A person who neglects or refuses to comply with the requirements of a notice given to the person under this section is guilty of an offence.
- Maximum penalty: 100 penalty units.
- (8) **Offence of false information or evidence** A person who:
- (a) furnishes any information pursuant to subsection (2) knowing that it is false or misleading in a material particular, or
 - (b) gives any evidence pursuant to subsection (3) knowing that it is false or misleading in a material particular,
- is guilty of an offence.
- Maximum penalty: 100 penalty units.
- (9) **Expenses** The regulations may prescribe expenses to be allowed to persons attending or giving evidence under this section.
- (10) **Nature of evidence** The body or person conducting the inquiry is not bound by the rules of evidence, and may be informed in such manner as the body or person thinks fit.
- (11) **Public interest immunity** Nothing in this Part affects any law relating to public interest immunity.
- (12) **Self-incrimination** Nothing in this Part affects any law relating to immunity of an individual from self-incrimination.

313 Public nature of inquiries

- (1) An inquiry under this Part is to be held in public.
- (2) Before the inquiry starts, the body or person conducting it is required to give notice, by advertisement in the Gazette and in such newspapers as the body or person thinks appropriate, of the intention to hold the inquiry, of its subject and of the time and place at which it is to start.
- (3) However, if the body or person conducting the inquiry is satisfied that it is desirable to

do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the body or person may do either or both of the following:

- (a) direct that the inquiry or any part of it take place in private and give directions as to the persons who may be present, or
 - (b) give directions prohibiting or restricting the publication of evidence given at the inquiry or of matters contained in documents provided for the inquiry.
- (4) A person who publishes any evidence or matter in contravention of any such direction of the body or person conducting the inquiry is guilty of an offence unless:
- (a) the publication of the evidence was made with the consent of the person who gave the evidence or the publication of the matter was made with the consent of the person who provided the document, or
 - (b) the evidence or matter has already been lawfully published, or
 - (c) the person became aware of the evidence or matter otherwise than by reason, directly or indirectly, of the giving of the evidence at the inquiry or the provision of the document at the inquiry, or
 - (d) the person had any other lawful excuse to do so.

Maximum penalty: 200 penalty units.

- (5) If evidence is given by written statement, the body or person conducting the inquiry is to make available to the public in such manner as the body or person thinks fit the contents of the statement. This does not apply to matter the publication of which, in the opinion of the body or person, would be contrary to the public interest because of its confidential nature or for any other reason.

314 Report of inquiry

- (1) **Report** The body or person conducting an inquiry under this Part is to prepare a report to the EPA of its findings and recommendations. The report is to be provided to the Minister by the EPA if the Minister directed that the inquiry be conducted.
- (2) **Report to be made public** The body or person conducting the inquiry is to make the report public, except so far as it contains evidence or matters protected from public disclosure under section 313 (3) (b) and (4).

Part 9.7 Other miscellaneous provisions

315 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative

power of Parliament permits, the Crown in all its other capacities.

316 Resolution of disputes between EPA and public authorities

- (1) If a dispute arises between the EPA and a public authority with respect to a decision of the EPA against which an appeal lies under Part 9.2, the EPA or the public authority may refer the dispute to the Premier for settlement in accordance with this section.
- (2) On the referral of a dispute to the Premier, the Premier may (but need not) appoint a person to hold an inquiry and make a report to the Premier with respect to the dispute.
- (3) The Premier may decline to deal with the dispute.
- (4) The Premier may make such orders with respect to the dispute as the Premier thinks fit.
- (5) Any such order may include the payment of any costs or expenses of or incidental to the holding of an inquiry under this section.
- (6) The EPA or public authority to which any such order is given must comply with the order.
- (7) An order by the Premier under this section is final and is taken to be the decision of the EPA.
- (8) If a dispute is referred to the Premier under this section, the public authority does not have a right of appeal to a court under this Act in respect of the dispute, unless the Premier declines to deal with the dispute.

317 Appointment of persons to exercise certain functions

- (1) This section applies to a public body, being:
 - (a) a local council, a county council or other local authority, or
 - (b) any other public body that:
 - (i) is constituted by or under an Act, and
 - (ii) is not subject to the control or direction of a Minister.

This section does not apply to a State owned corporation.

- (2) If, in the opinion of the Governor, the environment is harmed or is likely to be harmed because of:
 - (a) the failure or refusal of a public body to exercise a statutory function, or
 - (b) the manner in which the body exercises such a function,

the Governor may, by proclamation, appoint another person to exercise such functions of the body as are specified in the proclamation.

- (3) The person so appointed is taken, during the period of the appointment, to have the functions specified in the person's appointment and to have those functions to the exclusion of the body that would, but for the appointment, have those functions.
- (4) A proclamation under subsection (2), unless sooner revoked, ceases to have effect on the expiration of 21 sitting days of the Legislative Assembly after it is made.
- (5) The Governor may, by proclamation, revoke or amend the terms of an appointment under this section at any time before the proclamation ceases to have effect.
- (6) The regulations may make provision for or with respect to the functions of a person in connection with the person's appointment and, in particular, for or with respect to:
 - (a) the remuneration of the person, and
 - (b) the incurring of expenditure by the person, and
 - (c) requiring other persons to render all necessary assistance to the person in the exercise of a function specified in the person's instrument of appointment.

318 Exercise of local authority's licensing functions by EPA

- (1) In this section:

licensing function means a function of a local regulatory authority under this Act relating to a licence, including the function of determining whether to issue, transfer, amend, suspend or revoke a licence.

local regulatory authority means a regulatory authority other than the EPA.

- (2) The Minister may, if the Minister considers that it is expedient in the public interest to do so, direct a local regulatory authority in writing to refer to the EPA a specified licensing function in respect of a particular matter that the Minister considers is of State or regional significance.
- (3) The Minister may give a direction under this section whether or not the local regulatory authority intends to exercise the licensing function in respect of the matter.
- (4) The local regulatory authority must, as soon as practicable after receiving a direction under this section:
 - (a) refer to the EPA any application, report or other document or information in the possession of the authority that relates to the matter (including any document or information specified by the Minister in the direction), and
 - (b) notify the applicant or licensee concerned in the matter of the Minister's direction.

- (5) Whenever the Minister gives a direction under this section, the local regulatory authority ceases to have the licensing function in respect of the matter, unless the Minister refers the licensing function (or any aspect of that function) back to the authority.
- (6) The EPA may, after the Minister has given a direction under this section, exercise in the place of the local regulatory authority the licensing function in respect of the matter.
- (7) For the purpose of the EPA exercising a licensing function in respect of a matter:
 - (a) a reference to the local regulatory authority in any document is taken to be a reference to the EPA, and
 - (b) anything done by the local regulatory authority in the matter before the direction was given may be adopted by the EPA.
- (8) The determination of the EPA in the exercise of the licensing function is taken to have been done by the local regulatory authority.
- (9) The local regulatory authority is to give effect to the decision made by the EPA pursuant to a direction under this section. However, the decision does not limit the future exercise of a licensing function by the local regulatory authority in respect of the matter.

319 Disclosure of information

- (1) A person is guilty of an offence if the person discloses any information relating to any industrial, agricultural or commercial secrets or working processes obtained in connection with the administration or execution of this Act or the regulations, unless the disclosure:
 - (a) is made with the consent of:
 - (i) the person from whom the information was obtained, or
 - (ii) if the information relates to premises—the occupier of the premises, or
 - (iii) if the information relates to an activity—the person carrying on or proposing to carry on the activity, or
 - (b) is made in connection with the administration or execution of this Act or the regulations, or
 - (c) is made with the prior permission of the Minister, or
 - (d) is ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing or determination by that court, body or person of any matter, or

- (e) is made by a member of the staff of the EPA or other regulatory authority to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or Territory relating to the protection of the environment, or
- (f) is made by a member of the staff of the EPA or other regulatory authority to any person and its disclosure to that person is reasonably related to the prevention or amelioration of harm to the public, to any person or property or to the environment, or
- (g) is made under subsection (3), or
- (h) is made with other lawful excuse.

Maximum penalty: 200 penalty units.

- (2) The Minister is not to grant the permission referred to in subsection (1) (c) unless satisfied that to do so would be in the public interest.
- (3) The EPA or other regulatory authority may disclose the following information by publishing it in such manner as it considers appropriate:
 - (a) particulars required to be kept on the register under Part 9.5,
 - (b) the particulars of any notice given under any prescribed provision of the environment protection legislation,
 - (c) particulars of persons charged with or convicted of offences under the environment protection legislation,
 - (d) particulars of a kind prescribed by the regulations for the purposes of this subsection.
- (4) Subsection (3) does not authorise the EPA or other regulatory authority to disclose any information about industrial, agricultural or commercial secrets or working processes obtained from any premises except with the consent of the occupier of the premises.
- (5) Subsection (3) does not limit the information required to be recorded in a public register under Part 9.5.
- (6) A reference in this section to the administration or execution of this Act or the regulations includes a reference to the administration or execution of the [Waste Avoidance and Resource Recovery Act 2001](#) or of any other environment protection legislation prescribed by the regulations.

319A Continuing effect of notices

- (1) A notice given under this Act or the regulations that specifies a time by which, or period within which, the notice must be complied with continues to have effect until the notice is complied with even though the time has passed or the period has expired.
- (2) A notice that does not specify a time by which, or period within which, the notice must be complied with continues to have effect until the notice is complied with.
- (3) This section does not apply to the extent that any requirement under a notice is revoked.
- (4) Nothing in this section affects the powers of a regulatory authority with respect to the enforcement of a notice.

320 Disclosure of monitoring data

- (1) In this section, **monitoring data** means information supplied to the appropriate regulatory authority by the holder of a licence in relation to the monitoring of the following aspects of the activity or work authorised or controlled by the licence:
 - (a) discharges from premises,
 - (b) relevant ambient conditions prevailing on or outside premises,
 - (c) any other thing prescribed by the regulations.
- (2) The EPA or other regulatory authority may disclose monitoring data by publishing it in such manner as it considers appropriate.
- (3) The appropriate regulatory authority is to provide a person with access to any monitoring data specified by the person in a written request to the authority. Access is to be provided in the same form that access is required to be provided to documents under section 27 of the [Freedom of Information Act 1989](#).
- (4) Any such access to monitoring data may be refused if:
 - (a) the monitoring data is recorded in a public register under Part 9.5, or
 - (b) if the work involved in dealing with the request for access would, if carried out, substantially and unreasonably divert the authority's resources away from their use by the authority in the exercise of its functions, or
 - (c) if the monitoring data is contained in a document that is usually available for purchase.
- (5) Subsection (4) (b) does not permit an authority to refuse access to monitoring data without first endeavouring to assist the person to amend the request to enable access

to be given.

320A False representations as to EPA approval, use or recommendation

- (1) A person is guilty of an offence if the person, knowing it to be false or misleading, represents that any goods or services are approved, provided, recommended or used by the EPA.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

- (2) In this section:

represent includes cause or permit a representation to be made.

321 Service of notices

- (1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:

- (a) by delivering it personally to the person, or
- (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or
- (c) by posting it duly stamped and addressed to the person at the place last shown in the records of the appropriate regulatory authority as the person's place of residence or business, or
- (d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or
- (e) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
- (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.

- (2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

322 Effect of this Act on other rights, remedies and proceedings

- (1) This Act does not limit or affect any right, remedy or proceeding under any other Act or law.
- (2) No proceedings taken under this Act interfere with or lessen any right or remedy under any other Act or law, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.
- (3) A reference in this section to a right includes, for example, a right to restrict or prevent, or obtain damages in respect of, pollution.

323 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the matters set out in Schedule 2.
- (3) The regulations may create offences punishable by a penalty not exceeding:
 - (a) 200 penalty units in the case of an individual, or
 - (b) 400 penalty units in the case of a corporation.
- (4) The regulations may adopt any document (including for example a code of practice) as in force from time to time.
- (5) Nothing in this section limits or restricts the conditions that may be attached to a licence, but any such condition that is inconsistent with a regulation has no force or effect.
- (6) Section 88 of the [Food Act 1989](#) does not apply to regulations or other instruments made under this Act.
- (7) Without limiting the power to make regulations, the regulations may contain provisions of a savings or transitional nature consequent on the making of a regulation for the purposes of section 6 (3).

324 Repeals

The Acts specified in Schedule 3 are repealed.

325 (Repealed)

326 Savings, transitional and other provisions

Schedule 5 has effect.

327 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Schedule of EPA-licensed activities

(Section 5)

Part 1 Activities premises-based

The activities referred to in this Part are activities that are **premises-based** (ie the occupier of the premises at which the activity is carried on must be the holder of a licence authorising the activity to be carried on at those premises).

An activity referred to in this Part is not a premises-based activity if the activity is carried on by mobile plant.

Agricultural produce industries that process agricultural produce (including dairy products, seeds, fruit, vegetables or other plant material) and that crush, juice, grind, gin, mill or separate more than 30,000 tonnes of produce per year.

Aircraft (helicopter) facilities (including terminals, buildings for the parking, servicing or maintenance of helicopters, installations or movement areas) for the landing, taking-off or parking of helicopters (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue) if the facilities:

- (1) have an intended use of more than 30 flight movements per week (including taking-off or landing), and
- (2) are located within 1 kilometre of a dwelling not associated with the facilities.

Aquaculture or mariculture for the commercial production (breeding, hatching, rearing or cultivation) of marine, estuarine or freshwater organisms, including aquatic plants or animals (such as fin fish, crustaceans, molluscs or other aquatic invertebrates), but not including oysters, involving:

- (a) supplemental feeding in tanks or artificial waterbodies, and
- (b) the discharge of effluent, liquid sludge or other waste water into natural waterbodies (such as rivers, streams, lakes, lagoons, swamps, wetlands, watercourses (including natural watercourses that have been artificially modified) or tidal waters (including the sea)), whether or not the discharge is by means of a pipe, drain, drainage depression, canal or other artificial form of conveyance.

Bitumen pre-mix or hot-mix industries where crushed or ground rock is mixed with bituminous or asphaltic materials and that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year. This activity does not include works of a temporary nature exclusively providing product for a construction site and located on or adjacent to that site for a period of less than 12 months.

Breweries or distilleries that produce alcohol or alcoholic products and that have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per year.

Cement works (including works involving the production of quicklime) that:

- (1) use argillaceous and calcareous materials in the production of cement clinker, or
- (2) grind cement clinker with an intended processing capacity exceeding 150 tonnes per day or 30,000 tonnes per year, or
- (3) have an intended combined handling capacity exceeding 150 tonnes per day or 30,000 tonnes per year in bulk of cement, fly ash, powdered lime, or any other similar dry cement products.

Ceramic works with an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year of products such as bricks, tiles, pipes, pottery goods, refractories, or glass manufactured through a firing process.

Chemical industries or works for the commercial production of, or research into, chemical substances at:

- (1) the following industries or works:
 - (a) **agricultural fertiliser industries** that produce more than 20,000 tonnes per year of inorganic plant fertilisers, or
 - (b) **battery industries** that manufacture or reprocess batteries containing acid or alkali and metal plates and use or recover more than 30 tonnes of metal per year, or
 - (c) **carbon black industries** that manufacture more than 5,000 tonnes per year of carbon black, or
 - (d) **explosive or pyrotechnics industries** that manufacture explosives for purposes including industrial, extractive industries and mining uses, ammunition, fireworks, or fuel propellants (except the production of explosives at mines), or
 - (e) **paints, paint solvents, pigments, dyes, printing inks, industrial polishes, adhesives or sealants manufacturing industries** that manufacture more than 5,000 tonnes per year of products, or
 - (f) **petrochemical industries** that manufacture more than 2,000 tonnes per year of petrochemicals and petrochemical products, or
 - (g) **pesticides, fungicides, herbicides, rodenticides, nematocides, miticides, fumigants and related products industries** that:
 - (i) manufacture materials classified as toxic in the *Australian Dangerous Goods Code*, or

- (ii) manufacture more than 2,000 tonnes per year of products, or
- (h) **pharmaceutical or veterinary products industries** that manufacture or use materials classified as toxic in the *Australian Dangerous Goods Code*, or
- (i) **plastics industries** that:
 - (i) manufacture more than 2,000 tonnes per year of synthetic plastic resins, or
 - (ii) reprocess more than 5,000 tonnes of plastics per year other than by a simple melting and reforming process, or
- (j) **rubber industries or works** that:
 - (i) manufacture more than 2,000 tonnes per year of synthetic rubber, or
 - (ii) manufacture, retread, recycle or process more than 5,000 tonnes per year of rubber products or rubber tyres, or
- (k) **soap or detergent industries** (including domestic, institutional or industrial soaps or detergent industries) that manufacture:
 - (i) more than 100 tonnes per year of products containing substances classified as toxic in the *Australian Dangerous Goods Code*, or
 - (ii) more than 5,000 tonnes per year of any other products (excluding simple blending), or
- (2) industries or works, other than those in (1) above:
 - (a) that manufacture, blend, recover or use substances classified as explosive, toxic or radioactive in the *Australian Dangerous Goods Code*, or
 - (b) that manufacture or use more than 1,000 tonnes per year of substances classified (but other than as explosive, toxic or radioactive) in the *Australian Dangerous Goods Code*, or
 - (c) that crush, grind or mill more than 10,000 tonnes per year of chemical substances.

This designation of chemical industries or works does not include those where chemical substances listed in the NSW [Dangerous Goods \(General\) Regulation 1999](#) are stored in quantities below the licence level set out in that Regulation.

Chemical storage facilities that store or package chemical substances in containers, bulk storage facilities, stockpiles or dumps with a total storage capacity exceeding:

- (1) 20 tonnes of pressurised gas, or
- (2) 200 tonnes of liquefied gases, or
- (3) 2,000 tonnes of any chemical substances.

Coal mines that mine, process or handle coal and are:

- (1) underground mines, or

(2) open cut mines that:

- (a) have an intended production or processing capacity of more than 500 tonnes per day of coal or carbonaceous material, or
- (b) have disturbed, are disturbing or will disturb a total surface area of more than 4 hectares of land by:
 - (i) clearing or excavating, or
 - (ii) constructing dams, ponds, drains, roads, railways or conveyors, or
 - (iii) storing or depositing overburden, coal or carbonaceous material or tailings.

Coal works that store or handle coal or carbonaceous material (including any coke works, coal loader, conveyor, washery or reject dump) at an existing coal mine or on a separate coal industry site, and that:

- (1) have an intended handling capacity of more than 500 tonnes per day of coal or carbonaceous material, or
- (2) store more than 5,000 tonnes of coal or carbonaceous reject material except where the storage is within a closed container or building.

Composting and related reprocessing or treatment facilities (including facilities that mulch or ferment organic waste, or that are involved in the preparation of mushroom growing substrate, or in a combination of any such activities) that:

- (1) receive over 200 tonnes per year of animal waste, food waste, sludge or biosolids, or
- (2) receive over 5,000 tonnes per year of wood waste, garden waste, or natural fibrous material, or
- (3) receive any organic waste and are located within 500 metres of any residentially zoned land, or within 250 metres of a school or hospital or a dwelling not associated with the facility.

Concrete works that produce pre-mixed concrete or concrete products and have an intended production capacity of more than 30,000 tonnes per year of concrete or concrete products.

Contaminated soil treatment works for on-site or off-site treatment (including, in either case, incineration or storage of contaminated soil but excluding excavation for treatment at another site) that:

- (1) handle more than 1,000 cubic metres per year of contaminated soil not originating from the site on which the works are located, or
- (2) handle contaminated soil originating exclusively from the site on which the works are located and:
 - (a) incinerate more than 1,000 cubic metres per year of contaminated soil, or
 - (b) treat otherwise than by incineration and store more than 30,000 cubic metres of contaminated soil, or

(c) disturb more than an aggregate area of 3 hectares of contaminated soil.

For the purposes of this item, **contaminated soil** means soil that contains a substance at a concentration above the concentration at which the substance is normally present in soil from the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment. In this context, harm to the environment includes any direct or indirect alteration of the environment that has the effect of degrading the environment.

Crushing, grinding or separating works that:

- (1) process materials including sand, gravel, rock, minerals, slag, road base or demolition material (such as concrete, bricks, tiles, asphaltic material, metal or timber) by crushing, grinding or separating into different sizes, and
- (2) have an intended processing capacity of more than 150 tonnes per day or 30,000 tonnes per year.

Dredging works being works in which materials of more than 30,000 cubic metres per year are obtained from the bed, banks or foreshores of any waters. See also **Extractive industries**.

Drum or container reconditioning works that recondition, recycle or store:

- (1) packaging containers (including metal, plastic or glass drums, bottles or cylinders) previously used for the transport or storage of substances classified as poisonous or radioactive in the *Australian Dangerous Goods Code*, or
- (2) more than 100 metal drums per day, unless the works (including associated drum storage) are wholly contained within a building.

Electricity generating works (including associated water storage, ash and waste management facilities) that:

- (1) supply or are capable of supplying more than 30 megawatts of electrical power from energy sources (including coal, gas, bio-material or hydro-electric stations), but not including from solar powered generators, or
- (2) are within the metropolitan area of Sydney, Newcastle and Wollongong (being the area bounded by and including the local government areas of Newcastle, Maitland, Singleton, Hawkesbury, Blue Mountains, Wollondilly, Wollongong, Shellharbour and Kiama) and incorporate electricity generating plant (other than emergency standby plant that operates for less than 200 hours per year) and are based on or use:
 - (a) gas turbines, which burn or are capable of burning, in the aggregate, fuel at a rate of more than 20 megawatts on a net thermal energy basis, or
 - (b) internal combustion piston engines, which burn or are capable of burning, in the aggregate, fuel at a rate of more than 3 megawatts on a net thermal energy basis.

Extractive industries:

- (1) that obtain extractive materials by methods including excavating, dredging, blasting, tunnelling or quarrying or that store, stockpile or process extractive materials, and

- (2) that obtain, process or store for sale or re-use an intended quantity of more than 30,000 cubic metres per year of extractive material.

See also **Dredging works**.

Freeway or tollway construction, being the construction of new, re-routed or additional carriageways, that as a result will have:

- (1) physically separated carriageways for traffic moving in different directions, and
- (2) at least 4 lanes (other than lanes used for entry or exit), and
- (3) no access for traffic between interchanges,

for at least 1 kilometre of their length in the Metropolitan area or for at least 5 kilometres of their length in any other area.

The Metropolitan area is the area of Sydney, Newcastle, Central Coast and Wollongong bounded by and including the local government areas of Newcastle, Lake Macquarie, Wyong, Gosford, Hawkesbury, Blue Mountains, Penrith, Liverpool, Camden, Campbelltown, Wollongong and Shellharbour.

This item does not include maintenance of any such freeway or tollway.

Irrigated agriculture, being the irrigation activities of an irrigation corporation within the meaning of the *Irrigation Corporations Act 1994*, but not including the irrigation activities of individual irrigators in areas administered by any such irrigation corporation.

Livestock intensive industries being:

- (1) **feedlots** that are intended to accommodate in a confinement area and rear or fatten (wholly or substantially) on prepared or manufactured feed more than 1,000 head of cattle, 4,000 sheep or 400 horses (excluding facilities for drought or similar emergency relief), or
- (2) **piggeries** that are intended to accommodate more than 2,000 pigs or 200 breeding sows, or
- (3) **poultry farms** that are intended to accommodate, for commercial production, more than 250,000 birds, or
- (4) **dairies** that are intended to accommodate more than 800 animals in milk production, or
- (5) **saleyards** having an annual throughput exceeding 50,000 cattle or 200,000 animals of any type (including cattle) for the purposes of sale, auction or exchange or for transportation by road, rail or ship.

Livestock processing industries comprising commercial operations that:

- (1) slaughter animals (including poultry) with an intended processing capacity of more than 3,000 kilograms live weight per day, or
- (2) manufacture products derived from the slaughter of animals including:
 - (a) tanneries or fellmongeries, or

- (b) rendering or fat extraction plants with an intended production capacity of more than 200 tonnes per year of tallow, fat or their derivatives or proteinaceous matter, or
 - (c) plants with an intended production capacity of more than 5,000 tonnes per year of products including hides, adhesives, pet food, gelatine, fertiliser or meat products, or
- (3) scour, top or carbonise greasy wool or fleeces with an intended production capacity of more than 200 tonnes per year.

Logging operations carried out on State forests or Crown timber lands, being:

- (1) the cutting and removal of timber (being sawlogs or pulplogs) from a compartment, where:
 - (a) at least 20% of the compartment has a slope greater than 18 degrees, and
 - (b) at least 30 timber stems (at least 40 cm in diameter at breast height) are to be cut and removed from each hectare of the compartment when averaged over the net harvestable area of the compartment, or
- (2) the construction of new access roads within a compartment for cutting and removal of timber as referred to in paragraph (1), or
- (3) the construction of new access roads for hauling timber from more than one compartment.

This item does not include any activity on a timber plantation and does not include any activity west of the Great Dividing Range.

For the purposes of this item, the area west of the Great Dividing Range is to follow the boundaries of the relevant State Forests Management Areas and is to be as set out in a map published by the EPA.

Marinas and boat repair facilities comprising:

- (1) pontoons, jetties, piers or other structures (whether water-based or land-based) designed or utilised to provide moorings or dry storage (other than swing moorings) for 80 or more vessels (excluding rowing boats, dinghies or other small craft), or
- (2) works such as slipways, hoists or facilities for the repair and maintenance of vessels (other than boat repair facilities that are not adjacent to waters) at which 5 or more vessels (being vessels other than rowing boats, dinghies or other small craft) or any vessel 25 metres or longer is handled or capable of being handled at any one time.

For the purposes of this item, **waters** has the same meaning as it has in paragraph (a) of the definition of **waters** in the Dictionary to this Act.

Mineral processing or metallurgical works for the commercial production or extraction of ores (using methods including chemical, electrical, magnetic, gravity or physico-chemical) or the refinement, processing or reprocessing of metals involving smelting, casting, metal coating or metal products recovery that:

- (1) process into ore concentrates an intended capacity of more than 150 tonnes per day of material, or

- (2) smelt, process, coat, reprocess or recover an intended capacity of more than 10,000 tonnes per year of ferrous or non-ferrous metals, alloys or their ore-concentrates, or
- (3) crush, grind, shred, sort or store:
 - (a) more than 150 tonnes per day, or 30,000 tonnes per year, of scrap metal and are not wholly contained within a building, or
 - (b) more than 50,000 tonnes per year and are wholly contained within a building.

Mines that mine, process or handle minerals (being minerals within the meaning of the [Mining Act 1992](#) other than coal) and that have disturbed, are disturbing or will disturb a total surface area of more than 4 hectares of land associated with a mining lease or mineral claim or subject to a section 8 notice under the [Mining Act 1992](#) by:

- (1) clearing or excavating, or
- (2) constructing dams, ponds, drains, roads, railways or conveyors, or
- (3) storing or depositing overburden, ore or its products or tailings.

Paper, pulp or pulp products industries that manufacture paper, paper pulp or pulp products and that have an intended production capacity of more than:

- (1) 30,000 tonnes per year, or
- (2) 70,000 tonnes per year if at least 90% of the raw material used is recycled material and no bleaching or de-inking is undertaken.

Petroleum works that:

- (1) produce, other than in the course of exploratory activities, crude petroleum or shale oil, or
- (2) produce more than 5 petajoules per year of natural gas or methane, or
- (3) refine crude petroleum, shale oil or natural gas, or
- (4) manufacture more than 100 tonnes per year of petroleum products (including aviation fuel, petrol, kerosene, mineral turpentine, fuel oils, lubricants, wax, bitumen, liquefied gas and the precursors to petrochemicals, such as acetylene, ethylene, toluene and xylene), or
- (5) store petroleum and natural gas products with an intended storage capacity in excess of:
 - (a) 200 tonnes of liquefied gases, or
 - (b) 2,000 tonnes of any petroleum products, or
- (6) dispose of oil waste or petroleum waste or process or recover more than 20 tonnes of oil waste or petroleum waste per year.

Railway systems activities

- (1) A railway systems activity is any one or more of the following:

- (a) installation of track,
 - (b) on-site repair of track,
 - (c) on-site maintenance of track,
 - (d) on-site upgrading of track,
 - (e) construction or significant alteration of any of the following, but only if it is connected with an activity listed in paragraphs (a)-(d):
 - (i) over track structures,
 - (ii) cuttings,
 - (iii) drainage works,
 - (iv) track support,
 - (v) earthworks,
 - (vi) fencing,
 - (vii) tunnels,
 - (viii) bridges,
 - (ix) level crossings,
 - (f) operation of rolling stock on track.
- (2) The following activities are not railway systems activities:
- (a) activities in railway workshops (including the use of fuel burning equipment),
 - (b) re-fuelling of rolling stock,
 - (c) activities at railway fuel depots,
 - (d) repair, maintenance or upgrading of track away from the track site,
 - (e) activities at railway station buildings (including platforms and offices),
 - (f) loading of freight into or onto, and unloading of freight from, rolling stock,
 - (g) activities at freight depots or centres,
 - (h) operation of signalling, communication or train control systems.
- (3) In this clause:
- rolling stock** means:
- (a) rolling stock used or intended to be used to transport passengers or freight for reward, or

(b) rolling stock used or intended to be used to maintain track and equipment (whether or not for reward),

but does not include rolling stock used or intended to be used solely for heritage purposes.

track means railway track that forms part of, or consists of, a network of more than 30 kilometres of track and that is not solely used for heritage value rolling stock.

Note—

The Rail Infrastructure Corporation (RIC) manages and controls track on which the State Rail Authority (SRA) operates its rolling stock. The RIC is required to be licensed under section 48 of the Act as the occupier of the premises (the track) at which the SRA's railway activities are carried on. The SRA on the other hand is not required to be licensed because it is not the occupier of the track.

Similarly, where a private person or body manages and controls track (i.e. a private railway line) and allows other persons or bodies to operate their rolling stock on that track, the manager and controller of the track is required to be licensed under section 48 of the Act as the occupier of the premises (the track). In such a case, the operator of the rolling stock is not an occupier of the track.

Sewage treatment systems (including the treatment works, pumping stations, sewage overflow structures and the reticulation system) that have an intended processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day and that involve the discharge or likely discharge of wastes or by-products to land or waters.

Shipping facilities (bulk) for loading or unloading, in bulk, agricultural crop products, rock, ores, minerals or chemicals into or from vessels (but not where any material is wholly contained within a shipping container), being wharves or associated facilities with an intended capacity exceeding 500 tonnes per day or 50,000 tonnes per year.

Waste activities

(1) **Hazardous, industrial or Group A waste generation or storage**, being any activity that:

- (a) is carried on for business or other commercial purposes, and
- (b) involves the generating or storage of any one or more of the following types of waste:
 - (i) hazardous waste,
 - (ii) industrial waste,
 - (iii) Group A waste.

(2) The following activities are not waste activities for the purposes of this item:

- (a) the generating or on site storage of contaminated soil, recyclable oil or stabilised asbestos waste in bonded matrix,
- (b) the generating or on site storage of hazardous waste, industrial waste or Group A waste in or at a concrete batching plant,
- (c) the generating of not more than 10 tonnes per year, or the on site storage of less than 2 tonnes at any one time, of hazardous waste, industrial waste or Group A waste by any of the following:

- local authorities,
 - dry cleaners,
 - printers,
 - photographic and processing laboratories,
 - pharmacies,
 - hairdressers,
 - businesses carrying out any skin penetration procedure to which Part 3 of the *Public Health Regulation 1991* applies,
 - veterinary surgeons,
 - nursing homes,
 - funeral parlours,
 - painters,
 - builders,
 - machinery and vehicle repair and servicing workshops,
 - panel beaters,
 - jewellers,
 - educational institutions,
 - hotels, clubs, restaurants and related hospitality industries,
- (d) the generating of not more than 2 tonnes per year, or the on site storage of less than 500 kilograms at any one time, of hazardous waste, industrial waste or Group A waste by any of the following:
- dental or doctors surgeries,
 - hospitals, pathology laboratories or pre-term clinics,
 - farming operations,
 - landscaping or fire hazard reduction works (such as those carried out by local and public authorities),
- (e) the generating of not more than 10 tonnes per year, or the on site storage of less than 2 tonnes at any one time, of hazardous waste, industrial waste or Group A waste in the form of oil, paint, lacquer, varnish, resin, ink, dye, pigments, adhesives, hydrocarbons or emulsions,
- (f) the storage of no more than 40,000 litres at any one time of non-hazardous waste

hydrocarbon oil prior to its being burnt as fuel on the premises on which it was stored.

Waste facilities

(1) A waste facility that is of any one or more of the following classes:

- (a) **hazardous, industrial, Group A or Group B waste processing facilities**, being waste facilities that treat, process or reprocess hazardous waste, industrial waste, Group A waste or Group B waste (or any combination of those types of waste), **except those**:
 - (i) that only treat, process or reprocess sewage, or gases specified as Dangerous Goods Class 2 in the 6th edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, in force as at 1 January 1998, or
 - (ii) that only treat, process or reprocess waste that is generated on site,
- (b) **hazardous, industrial, Group A or Group B waste disposal facilities**, being waste facilities that dispose of hazardous waste, industrial waste, Group A waste or Group B waste (or any combination of those types of waste), **except those**:
 - (i) that only lawfully discharge waste into a sewer, or
 - (ii) that are located outside the Sydney metropolitan area or the extended regulated area and:
 - (A) where the only hazardous, industrial, Group A or Group B waste that is disposed of is asbestos waste, or
 - (B) are operated by a local authority and where the only hazardous, industrial, Group A or Group B waste that is disposed of is asbestos waste, liquid grease trap waste or clinical waste,
- (c) **used tyre processing or disposal facilities**, being waste facilities that:
 - (i) treat, process or dispose of more than 5,000 tonnes per year of used, rejected or unwanted tyres (including shredded tyres and tyre pieces), or
 - (ii) store such tyres at any one time in quantities of more than 50 tonnes,
- (d) **waste storage, transfer, separating or processing facilities**, being waste facilities that store or transfer, or recover by way of separating or processing, more than 30,000 tonnes of waste per year,
- (e) **waste incineration facilities**, being waste facilities that treat or process:
 - (i) any quantity of chemical waste, or
 - (ii) any quantity of cytotoxic waste, or
 - (iii) more than 25 tonnes per year of clinical waste, or
 - (iv) more than 25 tonnes per year of quarantine waste, or
 - (v) more than 1 tonne per hour of any other type of waste,

- (f) **landfill or application sites within the Sydney metropolitan or extended regulated areas**, being landfill or application sites that are located in the Sydney metropolitan area or the extended regulated area, **except those**:
 - (i) that receive only coal washery rejects or slags at a rate of not more than 20,000 tonnes per year, or
 - (ii) that are situated on residential premises, or on land used principally for farming operations, and only if the disposal of waste is carried out on site, or
 - (iii) that receive no more than 20,000 tonnes of inert waste only over any period of time, and only if the disposal of the waste is incidental or ancillary to the land being used for a purpose other than as a landfill or application site (eg the construction of buildings or roads or other similar types of infrastructure development),
 - (g) **landfill or application sites in environmentally sensitive areas**, being landfill or application sites that are located in an environmentally sensitive area described in Technical Appendix 8 of the Waste Guidelines, **except those**:
 - (i) that are within an environmentally sensitive area by reason only of being located within 250 metres of a residential zone or of a dwelling, school or hospital not associated with the landfill or application site and:
 - (A) receive only coal washery rejects or slags at a rate of not more than 20,000 tonnes per year, or
 - (B) were in operation as at 30 June 1997 and receive no more than 200 tonnes of waste per year, or
 - (ii) that are situated on residential premises, or on land used principally for farming operations, and only if the disposal of waste is carried out on site,
 - (h) **solid waste landfill or application sites**, being landfill or application sites that receive over 5,000 tonnes per year of solid waste or solid waste and inert waste,
 - (i) **coal washery rejects or slags landfill or application sites**, being landfill or application sites that receive over 20,000 tonnes per year of coal washery rejects or slags (or both),
 - (j) **large-scale landfill or application sites**, being landfill or application sites that receive over 20,000 tonnes per year of any waste.
- (2) For the purposes of this item, the following are taken not to be waste:
- (a) virgin excavated natural material,
 - (b) non-hazardous bulk agricultural or crop waste that is not putrescible,
 - (c) effluent.
- (3) The following premises are not waste facilities for the purposes of this item:
- (a) premises where coal washery rejects or slags (and no other type of waste) is disposed of

- on site,
- (b) premises where only coal washery rejects or slags are used solely for the purposes of road or railway construction,
 - (c) premises where biosolids (and no other type of waste) are disposed of on site,
 - (c1) premises on which:
 - (i) no more than 40,000 litres per annum of non-hazardous waste hydrocarbon oil is burnt as fuel, and
 - (ii) no other activity that would render the premises a waste facility is carried on,
 - (d) premises (other than premises in the extended regulated area, the local government area of Blue Mountains or Wollondilly or the Sydney metropolitan area) on which any one or more of the following types of organic waste (and no other type of waste) is applied to land for agricultural or environmental rehabilitation purposes:
 - (i) animal waste,
 - (ii) food waste,
 - (iii) natural organic fibrous materials waste,
 - (iv) wood waste,
 - (v) a type of waste specified in paragraph (d1) (i)–(vii),
 - (vi) any mixture of the types of wastes specified in subparagraphs (i)–(v),
 - (d1) premises (being premises in the extended regulated area, the local government area of Blue Mountains or Wollondilly or the Sydney metropolitan area) on which any one or more of the following types of organic waste (and no other type of waste) is applied to land for agricultural or environmental rehabilitation purposes:
 - (i) garden waste,
 - (ii) biosolids categorised as Unrestricted Use in accordance with the criteria set out in the Biosolids Guidelines,
 - (iii) biosolids categorised as Restricted Use 1, 2 or 3 in accordance with the criteria set out in the Biosolids Guidelines (but only if they are applied to the land in accordance with those Guidelines),
 - (iv) liquid food waste,
 - (v) manure,
 - (vi) treated grease trap waste from the preparation or manufacturing of food,
 - (vii) any mixture of the types of wastes specified in subparagraphs (i)–(vi),
 - (e) mines referred to in this Part, where the only waste disposed of on the premises is either

or both of the following:

- (i) tailings, waste rock or inert waste generated on the premises,
 - (ii) any other type of waste that is authorised, under the licence for the premises, to be disposed of on the premises,
- (f) electricity generating works referred to in this Part, where the only waste disposed of on the premises is either or both of the following:
- (i) ash generated on the premises,
 - (ii) any other type of waste that is authorised, under the licence for the premises, to be disposed of on the premises,
- (g) other premises referred to in this Part that are used solely for the purposes of disposing of any of the following types of waste:
- (i) non-hazardous tailings or waste rock generated on or at any mine,
 - (ii) non-hazardous ash generated from any electricity generating works.

Wood or timber milling or processing works (other than a joinery, builders' supply yard or home improvement centre) that saw, machine, mill, chip, pulp or compress timber or wood and that:

- (1) have an intended processing capacity of more than 6,000 cubic metres of timber (or timber products) per year and burn waste (other than as a source of fuel), or
- (2) have an intended processing capacity of more than 50,000 cubic metres of timber (or timber products) per year.

Wood preservation works that treat or preserve timber using chemical substances (containing copper, chromium, arsenic, creosote or any substance classified in the *Australian Dangerous Goods Code*) and that have an intended processing capacity of more than 10,000 cubic metres of timber per year.

Part 2 Activities not premises-based

The activities referred to in this Part are activities that are **not premises-based** (ie the person carrying on the activity must be the holder of a licence authorising the activity to be carried on, but not for the premises at which the activity is carried on).

Mobile plant scheduled activities—being the carrying on of any activity referred to in Part 1 of this Schedule (other than the activities described as waste activities or waste facilities) by mobile plant.

Mobile waste processing—being the treatment, processing or reprocessing of hazardous waste, industrial waste or Group A waste (or any combination of those types of waste) by mobile plant and that is carried on for business or commercial purposes.

Transporting of waste—being the activities of persons who transport any one or more of the following types of waste for fee or reward (including occupiers of waste facilities, and persons who

carry on waste activities, that are licensed under this Act and who transport any such waste to or from those facilities):

- (a) **transport of hazardous waste, industrial waste, Group A waste, Group B waste or Group C waste** (or of any combination of those types of waste) in loads exceeding 200 kilograms, except if it consists only of stabilised asbestos waste in bonded matrix,
- (b) **transport of used, rejected or unwanted tyres** (including shredded tyres and tyre pieces) in loads over 2 tonnes.

For the purposes of this item, the following are excluded:

- (a) persons who transport waste in their capacity as employees,
- (b) any waste that is transported in connection with an emergency situation or an accident.

Part 3 Interpretative provisions

Division 1 General interpretative provisions

For the purposes of this Schedule:

mobile plant means any equipment or machinery that:

- (a) is capable of carrying on any one or more of the activities referred to in this Schedule, and
- (b) is capable of moving under its own motive power or of being transported, and
- (c) is operated at a particular site on a temporary basis only (ie for a total period of not more than 6 months in any 12-month period at that site).

Note—

A non-premises-based activity that is carried on by mobile plant will revert to being a premises-based activity under Part 1 of this Schedule if the mobile plant is operated at the particular site for a total period of more than 6 months in any 12-month period.

Division 2 Special interpretative provisions relating to waste

- (1)** For the purposes of this Schedule (particularly in relation to the activities described as waste activities, waste facilities, mobile waste processors and transporters of waste):

animal waste includes dead animals and animal parts and any mixture of those materials, but does not include any animal waste that constitutes Group A waste, hazardous waste or industrial waste.

aqueous liquid waste means any liquid waste in which water constitutes more than 80% of the volume of liquid present.

asbestos waste means any waste that contains asbestos as defined in the Waste Guidelines.

biosolids means the organic product that results from sewage treatment processes (namely, the material referred to alternatively as sewage sludge).

Biosolids Guidelines means the document called *Environmental Guidelines: Use and Disposal of Biosolids Products* issued by the EPA and in force as at 31 December 1997.

clinical waste means any waste resulting from medical, nursing, dental, pharmaceutical, skin penetration or other related clinical activity, being waste that has the potential to cause injury, infection or offence, and includes waste containing any of the following:

- (a) human tissue (other than hair, teeth and nails),
- (b) bulk body fluids or blood,
- (c) visibly blood-stained body fluids, materials or equipment,
- (d) laboratory specimens or cultures,
- (e) animal tissue, carcasses, or other waste, from animals used for medical research,

but does not include any such waste that has been treated by a method approved in writing by the Director-General of the Department of Health.

controlled aqueous liquid waste means any liquid waste that is assessed and classified as controlled aqueous liquid waste in accordance with the Waste Guidelines, but does not include any of the types of waste specified in Part 3, 6 or 7 of the following Appendix.

cytotoxic waste means any substance contaminated with any residues or preparations that contain materials that are toxic to cells principally through their action on cell reproduction.

effluent means:

- (a) waste water from sewage collection or treatment plants, or
- (b) waste water from collection or treatment systems that are ancillary to processing industries involving livestock, agriculture, wood, paper or food, being waste water that is conveyed from the place of generation by means of a pipe, canal or other conventional method used in irrigation (but not by means of a tanker or truck), or
- (c) waste water from collection or treatment systems that are ancillary to intensive livestock, aquaculture or agricultural industries, being waste water that is released by means of a pipe, canal or other conventional method used in irrigation as part of day-to-day farming operations.

extended regulated area means the area comprising the local government areas of Cessnock, Gosford, Hawkesbury, Kiama, Lake Macquarie, Maitland, Newcastle, Port Stephens, Shellharbour, Shoalhaven, Wingecarribee, Wollongong and Wyong.

food waste means:

- (a) the by-products of any one or more of the following activities:
 - (i) the preparation or manufacturing of food (including beverages),
 - (ii) the processing of meat, poultry or fish, or
- (b) food that is unwanted or is no longer fit for the purpose for which it was intended (because, for

example, it is spoilt or past its use-by date),

but does not include any of the following:

- (c) grease trap waste,
- (d) packaging,
- (e) any food waste that constitutes Group A waste, hazardous waste or industrial waste.

garden waste means branches, grass, leaves, plants, loppings, tree trunks, tree stumps and the like, and includes any mixture of those materials, but does not include any garden waste that constitutes Group A waste, hazardous waste or industrial waste.

grease trap waste means any greases, oils, solids, water or other matter that has collected in a grease trap in the usual course of the operation of the grease trap.

Group A waste means any of the types of waste specified in Part 5 of the following Appendix.

Group B waste means any of the types of waste specified in Part 6 of the following Appendix.

Group C waste means any of the types of waste specified in Part 7 of the following Appendix.

hazardous waste means any liquid or non-liquid waste that is:

- (a) specified in Part 3 of the following Appendix, or
- (b) otherwise assessed and classified as hazardous waste in accordance with the procedures set out in the Waste Guidelines.

industrial waste means any non-liquid waste that is:

- (a) specified in Part 1 of the following Appendix, or
- (b) otherwise assessed and classified as industrial waste in accordance with the procedures set out in the Waste Guidelines.

inert waste means any non-liquid waste that is:

- (a) specified in Part 2 of the following Appendix, or
- (b) otherwise assessed and classified as inert waste in accordance with the procedures set out in the Waste Guidelines.

landfill or application site means a waste facility used for the purpose of disposing waste to land, including (but not limited to) disposal by any of the following methods:

- (a) spraying or spreading the waste on the land,
- (b) ploughing the waste into the land,
- (c) injecting the waste into the land,
- (d) mixing the waste into the land,

(e) depositing the waste on the land.

liquid food waste means food waste in liquid form, but does not include food waste to which liquid has been added.

manure includes any mixture of manure and biodegradable animal bedding (such as straw), but does not include any manure that constitutes Group A waste, hazardous waste or industrial waste.

natural organic fibrous materials waste means bagasse, peat, seed hulls and husks, straw and the like, and includes any mixture of those materials, but does not include any natural organic fibrous material that constitutes Group A waste, hazardous waste or industrial waste.

non-aqueous liquid waste means any liquid waste in which a liquid other than water constitutes more than 20% of the volume of liquid present.

non-liquid waste means any waste that:

- (a) has an angle of repose of more than 5 degrees, and
- (b) does not contain, or is not comprised of, any free liquids (as determined in accordance with the Waste Guidelines), and
- (c) does not contain, or is not comprised of, any liquids that are capable of being released when the waste is transported, and
- (d) does not become free-flowing at or below 60 degrees Celsius or when it is transported, and
- (e) is generally capable of being picked up by a spade or shovel.

on site—a reference to something being done in relation to waste on site is a reference to that thing being done only on the premises on which the waste was generated.

organic waste means any waste identified in the Waste Guidelines as organic waste.

putrescible waste means:

- (a) food waste, or
- (b) waste consisting of animal matter (including dead animals or animal parts), or
- (b1) grease trap waste, or
- (c) biosolids categorised as Stabilisation Grade C in accordance with the criteria set out in the Biosolids Guidelines.

recycling of waste means the processing of waste into a similar non-waste product.

reprocessing of waste means the processing of waste into a different non-waste product.

sharps waste means any waste resulting from medical, nursing, dental, veterinary, pharmaceutical, skin penetration or other related clinical activity, and that contains instruments or devices:

- (a) that have sharp points or edges capable of cutting, piercing or penetrating the skin (eg

needles, syringes with needles or surgical instruments), and

- (b) that are designed for such a purpose, and
- (c) that have the potential to cause injury or infection,

but does not include any such waste that has been treated by a method approved in writing by the Director-General of the Department of Health.

solid waste means any non-liquid waste that is:

- (a) specified in Part 4 of the following Appendix, or
- (b) otherwise assessed and classified as solid waste in accordance with the procedures set out in the Waste Guidelines.

Sydney metropolitan area means the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby and Woollahra.

treated grease trap waste means grease trap waste that has undergone treatment to remove material that can float, being treatment that includes (or is equivalent to) leaving the grease trap waste to settle by operation of gravity for at least 4 hours, so that only aqueous liquid waste and the settleable portions of the grease trap waste remain, but does not include any treated grease trap waste that constitutes Group A waste, hazardous waste or industrial waste.

treatment of waste means the processing of waste into a different type of waste.

virgin excavated natural material means the type of waste referred to in item 1 of Part 2 of the following Appendix.

Waste Guidelines means the document called *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-liquid Wastes* issued by the EPA and in force as at 1 July 1999.

wood waste means sawdust, timber offcuts, wooden crates, wooden packaging, wooden pallets, wood shavings and the like, and includes any mixture of those materials, but does not include:

- (a) any treated wood, or
- (b) any wood waste that constitutes Group A waste, hazardous waste or industrial waste.

(2) For the purposes of this Schedule, waste is applied to land **for agricultural purposes** only if:

- (a) the agricultural purpose is the dominant purpose of applying the waste, and
- (b) the application of the waste supplies nutriment (whether directly or indirectly) to the land and so maintains or improves (and is not likely to harm) the productivity, quality, development or reproductive capacity of vegetation on the land, and

(c) the application of the waste (taking into account the manner of its application) does not, and is not likely to, result in the deterioration of the land (for example, through soil structure degradation, salinisation, waterlogging, erosion or the build-up of heavy metals or other contaminants), and

(d) the application of the waste does not, and is not likely to, constitute a risk to public health.

(3) For the purposes of this Schedule, waste is applied to land **for environmental rehabilitation purposes** only if:

(a) the environmental rehabilitation purpose is the dominant purpose of applying the waste, and

(b) the application of the waste improves the ability of the soil to sustain vegetation on the land by directly or indirectly improving soil characteristics, and

(c) the application of the waste (taking into account the manner of its application) does not, and is not likely to, result in the deterioration of the land (for example, through soil structure degradation, salinisation, waterlogging, erosion or the build-up of heavy metals or other contaminants), and

(d) the application of the waste does not, and is not likely to, constitute a risk to public health.

Appendix Types of waste

Part 1 Types of industrial waste

(1) Stabilised asbestos waste in bonded matrix.

(2) Asbestos fibre and dust waste (eg waste resulting from the removal of thermal or acoustic insulating materials or from processes involving asbestos material, and dust from ventilation collection systems).

(3) Any non-liquid radioactive waste, being waste that:

(a) contains a substance that emits ionising radiation spontaneously, and

(b) has a specific activity ratio or a total activity ratio (as determined in accordance with the procedures set out in the Waste Guidelines) that is greater than one.

Part 2 Types of inert waste

(1) Virgin excavated natural material (eg clay, gravel, sand, soil and rock) that is not mixed with any other waste and that:

(a) has been excavated from areas that are not contaminated, as the result of industrial, commercial, mining or agricultural activities, with manufactured chemicals and that does not contain sulphidic ores or soils, or

(b) consists of excavated natural materials that meet such criteria as may be approved

by the EPA.

- (2)** Building and demolition waste (eg bricks, concrete, paper, plastics, glass, metal and timber), being material resulting from the demolition, erection, construction, refurbishment or alteration of buildings or from the construction, repair or alteration of infrastructure-type development such as roads, bridges, dams, tunnels, railways and airports, and which:
 - (a) is not mixed with any other type of waste, and
 - (b) does not contain any asbestos waste.
- (3)** Asphalt waste (eg resulting from road construction and waterproofing works).
- (4)** Biosolids categorised as Unrestricted Use, or as Restricted Use 1, in accordance with the criteria set out in the Biosolids Guidelines.
- (5)** Used, rejected or unwanted tyres (including shredded tyres or tyre pieces).
- (6)** Office and packaging waste (eg paper, plastics, glass, metal and timber) that is not mixed with any other type of waste.

Part 3 Types of hazardous waste

- (1)** Any waste that meets the criteria for assessment as dangerous goods under the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, and categorised as one of the following:
 - (a) explosives,
 - (b) gases (compressed, liquefied or dissolved under pressure),
 - (c) flammable solids (excluding garden waste, natural organic fibrous material and wood waste, and all physical forms of carbon such as activated carbon and graphite),
 - (d) flammable liquids,
 - (e) substances liable to spontaneous combustion (excluding garden waste, natural organic fibrous material and wood waste, and all physical forms of carbon such as activated carbon and graphite),
 - (f) substances which in contact with water emit flammable gases,
 - (g) oxidising agents and organic peroxides,
 - (h) toxic substances,

- (i) corrosive substances.
- (2)** Pharmaceuticals and poisons (being waste generated by activities carried out for business or other commercial purposes and that consists of pharmaceutical or other chemical substances specified in the Poisons List under the *Poisons and Therapeutic Goods Act 1966*).
- (3)** Clinical waste.
- (4)** Cytotoxic waste.
- (5)** Sharps waste.
- (6)** Any radioactive waste, being waste that:
 - (a) contains a substance that emits ionising radiation spontaneously, and
 - (b) has a specific activity greater than 100 becquerels per gram, and
 - (c) consists of, or contains more than, the prescribed activity of any radioactive element listed in Schedule 1 to the *Radiation Control Regulation 1993*.
- (7)** Any liquid radioactive waste, being waste that:
 - (a) contains a substance that emits ionising radiation spontaneously, and
 - (b) has a specific activity ratio or a total activity ratio (as determined in accordance with the procedures set out in the Waste Guidelines) that is greater than one.
- (8)** Any declared chemical waste that:
 - (a) is the subject of a chemical control order under the *Environmentally Hazardous Chemicals Act 1985*, and
 - (b) is not permitted to be disposed of to a landfill site because of such an order.
- (9)** Quarantine waste.

Part 4 Types of solid waste

- (1)** Municipal waste, being waste consisting of:
 - (a) household domestic waste that is set aside for kerb side collection or delivered by the householder directly to a waste facility, or
 - (b) other types of domestic waste (eg domestic clean-up and residential garden waste),
or
 - (c) local council generated waste (eg waste from street sweeping, litter bins and

parks).

- (2) Biosolids categorised as Restricted Use 2 or 3 in accordance with the criteria set out in the Biosolids Guidelines, manure and night soil.
- (3) Waste contaminated with lead from residential premises or educational or child care institutions.
- (4) Cleaned pesticide, biocide, herbicide or fungicide containers.
- (5) Drained and mechanically crushed oil filters, and rags and oil absorbent materials (not containing free liquids) from automotive workshops.
- (6) Disposable nappies, incontinence pads and sanitary napkins.
- (7) Food waste.
- (8) Vegetative waste generated from agriculture or horticulture.
- (9) Non-chemical waste generated from manufacturing and services (including metal, timber, paper, ceramics, plastics, thermosets and composites).

Part 5 Group A waste

- (1) Non-aqueous liquid waste.
- (2) Controlled aqueous liquid waste.

Part 6 Group B waste

- (1) Liquid food waste.
- (2) Liquid grease trap waste resulting from the preparation or manufacturing of food.

Part 7 Group C waste

Liquid waste from human waste storage facilities or waste treatment devices (within the meaning of the Waste Guidelines), including pump-out waste and septage.

Schedule 2 Regulation-making powers

(Section 323)

1 Discharge into sewers

Prohibiting or regulating the discharge of specified substances into sewers or any specified class of sewers.

2 Phosphates

- (1) Prohibiting or regulating the sale of products containing phosphates.

- (2) Regulating or reducing the pollution of waterways with phosphates.

3 Noise

- (1) Prohibiting or regulating the emission of noise from premises (whether or not those premises are a public place).
- (2) Prohibiting or regulating the making or emission of noise in public places.
- (3) Prohibiting the sale, use or operation of an article except in accordance with prescribed conditions relating to the emission of noise from the article when in use or operation, and in particular prohibiting the sale, use or operation of an article unless it is fitted with prescribed control equipment or noise labels.
- (4) Prohibiting the carrying on of any activity except in accordance with prescribed conditions relating to the emission of noise arising in the course of the carrying on of the activity.
- (5) Requiring, or empowering the EPA to require, the installation, maintenance, use or operation of noise barriers and control equipment.
- (6) The manner of installing, maintaining, using and operating noise barriers and control equipment.
- (7) The inspection of articles, and requiring articles to be tested, for the purpose of determining the level, nature, character or quality of the noise emitted by them or the noise that they are capable of emitting.
- (8) Preventing or controlling noise made by animals (including birds) at any premises, and in particular the giving of notices requiring the prevention or control of any such noise.

4 Vehicles and vessels

- (1) The issue of notices or giving directions setting out the conditions with which the owner of or person in charge of or having possession of, for sale or otherwise, a vehicle or vessel must comply before the vehicle or vessel may be sold, used or operated.
- (2) The affixing of notices or labels to vehicles or vessels.
- (3) The imposition of penalties for removing, obliterating or interfering with any notices or labels so affixed.
- (4) Other matters incidental to or necessary for prohibiting or regulating the sale, use or operation of vehicles or vessels that do not comply with the requirements of this Act or the regulations (including requirements with respect to the emission of excessive air impurities, the fitting and operation of pollution control devices and the use of fuels).

- (5) The application to vessels of the provisions of sections 165 and 166 relating to vehicles.
- (6) The liability of an owner of a motor vehicle or vessel for an offence under the regulations where an offence is committed with respect to or in connection with the motor vehicle or vessel (whether or not the act or omission concerned is committed or omitted by the owner), including the circumstances in which the owner is not liable.

5 Waste

- (1) The operation of waste facilities, and the treatment, storage, reprocessing, recycling or disposal of waste at waste facilities (whether or not they are required to be licensed under this Act).
- (2) The transportation of waste by persons (whether or not they are required to be licensed under this Act).
- (3) The collection, storage, creation, handling, reprocessing, recycling and disposal of waste.
- (4) The construction or maintenance of containers, vehicles and vessels used for the transportation of waste.
- (5) The provision of information relating to the operation of waste facilities or the transportation of waste (whether or not they are required to be licensed under this Act).
- (6) Prohibiting or regulating the treatment or disposal of waste.

6 Open fires or incinerators

The regulation or prohibition of the burning of fires in the open or in incinerators.

6A Fuel and fuel burning equipment

- (1) Prohibiting or regulating the sale, distribution, use, operation and maintenance of fuel burning equipment, and equipment for industrial plant, including control equipment.
- (2) Prohibiting or regulating the storage, sale, distribution or use of fuels and the sale, distribution, use, operation and maintenance of fuel tanks and other equipment used in connection with the sale or distribution of fuels.
- (3) Other matters incidental to or necessary for prohibiting or regulating the matters referred to in subclauses (1) and (2), including requirements with respect to the quality and composition of fuels, the emission of excessive air impurities and the fitting and control of pollution control devices.

6B Emission of air impurities

Requirements with respect to the emission of, and testing for, air impurities, including the methods for determining standards of concentration or rates of emission.

7 Fees for services

The payment of fees for services provided by the EPA.

8 Licences—generally

- (1) The issue, transfer, conditions, variation, surrender, review, suspension or revocation of licences.
- (2) Applications for the issue, transfer, variation or surrender of a licence (including the amendment of such applications).
- (3) Any matter that may be regulated by the conditions of a licence.
- (4) Imposing conditions on licences and revoking or varying conditions on licences (whether or not the conditions have been imposed by the regulations).

9 Load-based, administrative and other licence fees

- (1) Licence fees, including the following:
 - (a) the time at which, or the periods for or during which, fees are to be paid,
 - (b) the types of fees,
 - (c) the structure of fees,
 - (d) the payment of more than one type of fee,
 - (e) the payment of more than one annual fee,
 - (f) the payment of a combined fee or fees for two or more licences held by the same person or different persons,
 - (g) the basis on which a fee is to be calculated,
 - (h) the factors to be used or taken into consideration in calculating a fee, including:
 - (i) the activity in respect of which the licence is issued, or
 - (ii) the kinds of pollutants discharged,
 - (i) the provision of economic incentives to licensees to avoid or reduce harm to the environment from activities carried out by licensees,
 - (j) without limiting section 42, 68 or 69 of the *Interpretation Act 1987*, the application

or adoption of standards or tests, with or without modification, and as in force as at a particular time or from time to time as specified by the regulations, to be used in fee calculations for measuring the amounts of pollutants and assessing the discharge of pollutants,

- (k) the constitution, as an incorporated or unincorporated body, of bodies having functions relating to the review of licence fee calculations or aspects of those calculations,
 - (l) the determination of particular fees to be paid by particular licensees or applicants for licences,
 - (m) the creation and retention of records and information required for the calculation of fees,
 - (n) the provision to the appropriate regulatory authority by licensees and former licensees (including transferors of licences) of particulars relevant to the determination of a fee,
 - (o) the certification of particulars referred to in paragraph (n) and the persons who may certify the particulars, including the approval by the appropriate regulatory authority of persons or classes of persons as certifiers,
 - (p) the payment of fees by instalments,
 - (q) the payment of interest on unpaid fees, including the interest rate,
 - (r) penalties for late payment or underpayment of fees,
 - (s) the recovery of fees by the appropriate regulatory authority,
 - (t) the crediting of amounts held by the appropriate regulatory authority on behalf of a licensee towards the payment of a fee,
 - (u) the refund and waiver of fees, or particular types of fees, in whole or in part,
 - (v) discount schemes and the granting of discounts,
 - (w) rebate schemes and the payment of rebates.
- (2) Prescribing different fees according to specified factors or circumstances.
- (3) Imposing a licence fee despite the fact that the fee may comprise a tax.
- (4) Authorising the appropriate regulatory authority to refuse an application for a licence or for the transfer or surrender of a licence:
- (a) if any fee or other amount due and payable under this Act or the regulations in relation to the application or licence is unpaid, or

(b) if the applicant has previously defaulted in the payment of such a fee or other amount, or

(c) if, in its opinion, the applicant is or will be unwilling or is or will be unable to pay a fee or other amount that is or may become due and payable under this Act or the regulations in relation to the application or licence.

(5) Authorising the appropriate regulatory authority, if satisfied that any pollution would not be such as to warrant the payment of the fee for a licence, to remit in whole or in part the fee payable for the licence.

10 Recognition of licences issued outside the State

(1) Providing for the recognition (including automatic recognition) in this State of licences or other authorities issued by any other State or Territory that correspond or are similar to environment protection licences under this Act.

(2) Providing for the circumstances in which any such recognised licence or other authority is taken to be an environment protection licence issued under this Act.

11 Time restrictions

Prohibiting or regulating the carrying out of any activity, or the use or operation of any article, at any specified time for the purpose of preventing or limiting noise or other pollution.

12 Tests

(1) Prescribing tests for determining the extent of pollution (including the level, nature, character or quality of noise or other pollutants).

(2) Prescribing tests for determining whether this Act or the regulations are being complied with.

(3) Providing for the admissibility in evidence in proceedings of the results of those tests (including the admissibility of certificates relating to those results as conclusive or prima facie evidence of the matters certified).

13 Aquatic activities

Prohibiting or regulating swimming, boating or other aquatic activities in public areas.

14 Assistance etc to authorised officers

The assistance and facilities (including means of access, and the means of making examinations, inspections and tests) to be provided by occupiers of premises to enable authorised officers to exercise their functions under this Act.

15 General

- (1) The prevention, control, abatement or mitigation of pollution.
- (2) The furnishing by a local authority to the EPA of information relating to the exercise of the local authority's functions under this Act.

Schedule 3 Repeals

(Section 324)

Clean Air Act 1961 No 69

Clean Waters Act 1970 No 78

Environmental Offences and Penalties Act 1989 No 150

Noise Control Act 1975 No 35

Pollution Control Act 1970 No 95

Schedule 4 (Repealed)

Schedule 5 Savings, transitional and other provisions

(Section 326)

Part 1 Preliminary

1 Definition

In this Schedule:

commencement of this Act means, if this Act commences on different days, the day on which the relevant provision of this Act commences.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Pesticides Act 1999

Protection of the Environment Operations Amendment (Littering) Act 2000

Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000

Waste Avoidance and Resource Recovery Act 2001

Environment Protection Legislation Amendment Act 2002 (but only to the extent to which it amends this Act or regulations under this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions relating to protection of the environment policies

3 Application to previous impacts on environment

A protection of the environment policy extends (subject to the terms of the policy) to impacts on the environment caused before the commencement of this Act.

Part 3 Provisions relating to environment protection licences

4 Licences

A licence issued under any Act, or provision of any Act, repealed by this Act is taken to be a licence issued under this Act, subject to the regulations under this Schedule.

5 Applications for licences or other approvals

An application for or in respect of a licence or other approval under any Act, or provision of any Act, repealed by this Act is taken to be an application for or in respect of a corresponding licence or other approval under this Act, subject to the regulations under this Schedule.

6 Classification of waters

- (1) Any waters which, on the repeal of the *Clean Waters Act 1970*, were classified under that Act continue to have the classification they had on that repeal.
- (2) The standards applicable to the waters so classified are the standards prescribed by the regulations under that Act immediately before its repeal, subject to any variation of those standards by the regulations under this Act.
- (3) Any condition of an environment protection licence that is inconsistent with those standards does not have any force or effect.
- (4) The Land and Environment Court is not to decide an appeal under this Act relating to an environment protection licence in such a manner that its decision would be likely to

affect the condition of any waters so that those waters would not conform to their classification as continued under this clause.

- (5) This clause ceases to apply in respect of particular waters on a date to be appointed by proclamation, being a date after the making of a protection of the environment policy that sets environment protection standards for those waters.

7 Review of existing licences

For the purposes of section 78, the first review under this Act of a licence that is in force on the commencement of that section is to be undertaken (subject to the regulations under this Schedule) within 3 years after that commencement.

Part 4 Provisions relating to environment protection notices

8 Notices may be issued with respect to previous activities

An environment protection notice may be issued:

- (a) in the case of a clean-up notice—for pollution incidents occurring before as well as after the commencement of this Act, or
- (b) in the case of a prevention notice—for activities carried on before as well as after the commencement of this Act, or
- (c) in the case of prohibition notices—for the emission or discharge of pollutants after the commencement of this Act.

Part 5 Provisions relating to investigation

9 Authorised officers

A person appointed or authorised as an authorised officer under an Act or provision of an Act repealed by this Act and holding office on that repeal is taken to be appointed as an authorised officer under this Act, subject to the regulations under this Schedule.

Part 6 Provisions relating to criminal and other proceedings

10 Previous offences

The regulations under this Schedule may extend Chapter 8 (with modifications, if any) to proceedings in connection with any Act or regulation repealed by this Act (in respect of offences committed against the Act or regulation before its repeal or in respect of any other matter that continues to have any force or effect). Those regulations may also make provision for the continued operation of any such repealed Act or regulation to those proceedings. In this clause, a reference to a repealed Act or regulation includes a reference to a repealed provision of an Act or regulation.

Part 7 General

11 Saving of existing regulations and regulation-making powers

- (1) A regulation made under an Act repealed by this Act is, on that repeal, taken to be a regulation made under this Act to the extent that it may be made under this Act.
- (2) For the purposes of Part 3 of the *Subordinate Legislation Act 1989*, any such regulation made under the *Clean Waters Act 1970* or the *Pollution Control Act 1970* is taken to have been published on the repeal of that Act.
- (3) Until the end of the period of 3 years after the repeal of any Act by this Act, regulations may be made under this Act for or with respect to any matter that could have been prescribed by regulations under that Act (but for its repeal).
- (4) In this clause, a reference to the repeal of an Act by this Act includes a reference to the repeal of a provision of the *Waste Minimisation and Management Act 1995* by this Act.

12 Transitional arrangements pending commencement of integrated development amendments to *Environmental Planning and Assessment Act 1979*

- (1) This clause applies only if the substitution of Part 4 of the *Environmental Planning and Assessment Act 1979* (the EPA Act) by Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1997* has not commenced before the commencement of this Act, and so applies only until the commencement of the Schedule.
- (2) The consent authority under the EPA Act must forward a copy of a development application referred to in section 77 (3) of the EPA Act (and the documents that accompany the application) to the EPA, within 7 days of receiving the application, if the application is in respect of a scheduled activity.
- (3) The EPA is required to inform the consent authority under the EPA Act of the following within 30 days after receiving the copy of that development application:
 - (a) advice on the environment protection issues raised by the development application,
 - (b) advice on whether an application for an environment protection licence for the scheduled activity concerned is likely to be granted or refused.

Advice referred to in paragraph (b) need not be given if the EPA has insufficient information or time available to provide that advice.

- (4) The consent authority is required to take any such advice into consideration when determining the development application concerned.
- (5) The consent authority under the EPA Act must, at the time referred to in section 87 of

that Act, also forward copies of the submissions referred to in that section to the EPA if the application for development consent is in respect of a scheduled activity.

13 Existing notices, exemptions etc

A notice, direction, order, requirement or exemption given, issued or made under an Act, or a provision of an Act, repealed by this Act and in force on that repeal continues to have effect to the extent provided by the regulations under this Schedule.

14 General saving

Any thing done under an Act or a provision of an Act repealed by this Act that has any force or effect immediately before its repeal is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.

Part 8 Provisions consequent on enactment of [Protection of the Environment Operations Amendment \(Littering\) Act 2000](#)

15 EPA ceasing to be appropriate regulatory authority in relation to certain premises

- (1) A notice, direction or requirement that:
 - (a) was made, issued or given under this Act by the EPA in its capacity as appropriate regulatory authority because of section 6 (2) (c) as in force before the commencement of the amendment to section 6 (2) made by the [Protection of the Environment Operations Amendment \(Littering\) Act 2000](#) (or by an authorised officer of the EPA), and
 - (b) was made, issued or given under this Act before that commencement, and
 - (c) is in force on that commencement, and
 - (d) is not excluded from the operation of this clause by the regulations,continues to have effect for the purposes of this Act.
- (2) Any such notice, direction or requirement may be dealt with and enforced in accordance with this Act as in force before that commencement, as if the EPA were still the appropriate regulatory authority.
- (3) A compliance cost notice may be given, dealt with and enforced after that commencement in connection with any such notice, direction or requirement, as if the EPA were still the appropriate regulatory authority.

16 Local authority as appropriate regulatory authority in relation to certain premises

- (1) A notice, direction or requirement that:

(a) purported to have been made, issued or given under this Act by a local authority as appropriate regulatory authority before the commencement of the amendment to section 6 (2) made by the *Protection of the Environment Operations Amendment (Littering) Act 2000* (or by an authorised officer of the local authority), and

(b) was not validly made, issued or given, but would have been validly made, issued or given had that amendment been in force when it purported to have been made, issued or given, and

(c) is not excluded from the operation of this clause by the regulations,

is taken to have been validly made, issued or given under this Act at the time at which it purported to have been made, issued or given and to be valid at all relevant times since.

(2) Any such notice, direction or requirement may be dealt with and enforced in accordance with this Act, as if the local authority had always been the appropriate regulatory authority.

(3) A compliance cost notice may be given, dealt with and enforced after that commencement in connection with any such notice, direction or requirement, as if the local authority had always been the appropriate regulatory authority.

(4) Any proceedings purporting to be instituted by a local authority (or by an officer or employee of the local authority) before the commencement of the amendments to sections 6 (2) and 218 (6) made by the *Protection of the Operations Amendment (Littering) Act 2000* for an offence committed in relation to premises occupied by the State or by a public authority are taken to have been validly instituted.

Part 9 Provisions consequent on enactment of *Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000*

17 Compensation provisions

Section 293 (6) continues to apply in respect of any loss incurred before the repeal of that subsection by the *Protection of the Environment Operations Amendment (Tradeable Emission Schemes) Act 2000*, as if that subsection had not been repealed by that Act.

Part 10 Provisions consequent on enactment of *Environment Protection Legislation Amendment Act 2002*

18 Definition

In this Part:

2002 amending Act means the *Environment Protection Legislation Amendment Act 2002*.

19 Pollution incidents

- (1) Section 66 (2A), as inserted by the 2002 amending Act, applies to information provided under a licence condition before its commencement.
- (2) A licence condition of a kind referred to in section 66 (2A), as inserted by the 2002 amending Act, being a condition imposed before the commencement of section 66 (2A), is, for the purposes of section 66, taken to have been imposed under section 66 (2A).

20 Applications to surrender licences

Section 80, and the definition of **licence application** in the Dictionary, as amended by the 2002 amending Act, do not apply to or in respect of any application for the approval of the surrender of a licence made before the commencement of this clause.

21 Identification cards for enforcement officers

- (1) Section 189, as amended by the 2002 amending Act, does not apply to an enforcement officer or the authority that appointed the enforcement officer for a period of 6 months commencing on the commencement of the amendment.
- (2) It is sufficient compliance with section 189 (2), as amended by the 2002 amending Act, if an enforcement officer (acting in the capacity of an enforcement officer) who was, immediately before the commencement of the amendment of that section by the 2002 amending Act, an authorised officer produces the person's identification card as an authorised officer.

22 Mistaken exercise of power

Sections 212C and 212D, as inserted by the 2002 amending Act, apply to or in respect of a function exercised by an authority or an authorised officer before those sections commenced except where the exercise of the function relates to an offence for which proceedings commenced before that commencement.

23 Proceedings with leave of Land and Environment Court

The provisions of section 219 (1A) and (1B), as inserted by the 2002 amending Act, do not apply to or in respect of an offence arising out of an act or omission that occurred before the commencement of those provisions if proceedings for the offence are commenced before that commencement.

24 Continuing offences

Section 242, as inserted by the 2002 amending Act, applies to or in respect of an offence

arising out of a contravention of a requirement made before the commencement of that section if proceedings for the offence are commenced on or after that commencement.

25 Appeals

The provisions of section 287 (3)–(6), as inserted by the 2002 amending Act, do not apply to or in respect of licence applications made before the commencement of those provisions.

26 Notices given by authorities

Section 319A, as inserted by the 2002 amending Act, does not apply to or in respect of a notice issued before the commencement of that section.

Dictionary

In this Act:

activity means an industrial, agricultural or commercial activity or an activity of any other nature whatever (including the keeping of a substance or an animal).

air impurity includes smoke, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, mists, odours and radioactive substances.

air pollution means the emission into the air of any air impurity.

appropriate regulatory authority—see section 6.

authorised officer means a person appointed under Part 7.2 by an appropriate regulatory authority.

clean-up action, in relation to a pollution incident, includes:

- (a) action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident, and
- (b) ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution, and
- (c) preparing and carrying out a remedial plan of action.

It also includes (without limitation) action to remove or store waste that has been disposed of on land unlawfully.

control equipment means any apparatus or device used or designed:

- (a) to prevent, limit or regulate pollution (including any emission of noise), or
- (b) to monitor or to give warning of pollution (including any emission of noise), or
- (c) to give warning of any emission, leak, spill or other escape of substances causing pollution,

and includes any apparatus or device that, though not so used, is or would, if properly maintained and operated, be capable (without modification) of being so used, but does not include any apparatus or

device prescribed as excluded from this definition. An apparatus or device can be control equipment whether or not it is used for additional purposes or designed for other or additional purposes.

ecologically sustainable development has the same meaning as in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

enforcement officer—see section 226.

environment means components of the earth, including:

- (a) land, air and water, and
- (b) any layer of the atmosphere, and
- (c) any organic or inorganic matter and any living organism, and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

Note—

This definition follows that in the *Protection of the Environment Administration Act 1991*.

environment protection legislation has the same meaning as in the *Protection of the Environment Administration Act 1991*.

environment protection licence means a licence authorising the carrying out of scheduled development work or scheduled activities or controlling the pollution of water arising from non-scheduled activities, being a licence issued under Chapter 3 and in force.

environment protection notice means a clean-up notice, prevention notice or prohibition notice issued under Chapter 4 and in force.

environmental audit—see section 172.

environmental planning instrument means an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979*.

EPA means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991*.

exercise a function includes perform a duty.

function includes a power, authority or duty.

harm to the environment includes any direct or indirect alteration of the environment that has the effect of degrading the environment and, without limiting the generality of the above, includes any act or omission that results in pollution.

Intergovernmental Agreement on the Environment means the agreement made on 1 May 1992 between the Commonwealth, the States, the Australian Capital Territory, the Northern Territory and the Australian Local Government Association (a copy of which is set out in the Schedule to the *National Environment Protection Council (New South Wales) Act 1995*).

land pollution means the degradation of land because of the disposal of waste on the land.

licence means an environment protection licence.

licence application means an application for the issue, transfer, variation or surrender of a licence.

local authority means:

- (a) a local council (being the council of an area under the [Local Government Act 1993](#)), or
- (b) the Lord Howe Island Board in relation to Lord Howe Island, or
- (c) the Western Lands Commissioner in relation to the Western Division, except any part of the Western Division within the area of a local council, or
- (d) an authority prescribed by the regulations for the purposes of this paragraph for any place not covered above, or
- (e) an authority prescribed instead by the regulations for the purposes of this paragraph for any place wholly or partly covered above.

marine authority means the Minister administering the [Ports Corporatisation and Waterways Management Act 1995](#) or the Waterways Authority.

motor vehicle has the same meaning as it has in the [Road Transport \(General\) Act 1999](#).

national environment protection measure means a national environment protection measure made under the [National Environment Protection Council \(New South Wales\) Act 1995](#) and in force.

navigable waters means all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a fee or otherwise, but does not include flood waters that have temporarily flowed over the established bank of a watercourse.

noise includes sound and vibration.

noise pollution means the emission of offensive noise.

non-scheduled activity means an activity that is not a scheduled activity and is not scheduled development work.

occupier of premises means the person who has the management or control of the premises.

offensive noise means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a

time, or in other circumstances, prescribed by the regulations.

offensive odour means an odour:

- (a) that, by reason of its strength, nature, duration, character or quality, or the time at which it is emitted, or any other circumstances:
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a strength, nature, duration, character or quality prescribed by the regulations or that is emitted at a time, or in other circumstances, prescribed by the regulations.

open fire or **fire in the open** means any fire in which the products of combustion are not directed to the open air by a stack or chimney.

owner of a motor vehicle includes the responsible person for the vehicle within the meaning of the [Road Transport \(General\) Act 1999](#).

owner of waste or other substances does not include (in any provision under which a person commits an offence in the capacity of owner) a financial institution that is acting solely as a holder of a security interest in the waste or other substances. In that case, the person who has control of the waste or other substances is taken to be the owner.

penalty notice—see section 223 (What is a penalty notice?).

plant means any plant, equipment, apparatus, device, machine or mechanism, and includes any vessel, dredge, railway locomotive or crane, but does not include a motor vehicle.

pollution means:

- (a) water pollution, or
- (b) air pollution, or
- (c) noise pollution, or
- (d) land pollution.

pollution incident means an incident or set of circumstances during or as a consequence of which there is, has been or is likely to be a leak, spill or other escape of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which waste has been placed or disposed of on premises unlawfully, but it does not include an incident or set of circumstances involving only the emission of any noise or odour.

premises includes:

- (a) a building or structure, or
- (b) land or a place (whether enclosed or built on or not), or

(c) a mobile plant, vehicle, vessel or aircraft.

private place means any premises that are not a public place.

protection of the environment policy means a protection of the environment policy made by the Governor under Chapter 2 and in force.

public authority means a public or local authority constituted by or under an Act, and includes:

- (a) a government department, or
- (b) a statutory body representing the Crown, a State owned corporation or a local council, or
- (c) a member of staff or other person who exercises functions on behalf of a public authority.

public place includes:

- (a) a public place within the meaning of the [Local Government Act 1993](#), and
- (b) a State forest or flora reserve within the meaning of the [Forestry Act 1916](#), and
- (c) a national park, state recreation area, historic site, nature reserve, state game reserve or Aboriginal area within the meaning of the [National Parks and Wildlife Act 1974](#), and
- (d) a place that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place is ordinarily so open or used, and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons.

records includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

regulatory authority means the EPA, a local authority or a public authority prescribed for the purposes of section 6 (3).

remediation work means work for the remediation, rehabilitation or monitoring of any premises which are or have been the subject of an environment protection licence, being work that is required to be carried out by or under this Act:

- (a) while the premises are being used for the purposes to which the licence relates, or
 - (b) after the premises cease being used for the purpose to which the licence relates,
- or both.

scheduled activity means an activity listed in Schedule 1.

scheduled development work—see section 47.

sell includes:

- (a) sell by wholesale, retail, auction or tender, and
- (b) barter or exchange, and

- (c) supply for profit, and
- (d) offer for sale, receive for sale, have in possession for sale or expose or exhibit for sale, and
- (e) conduct negotiations for sale, and
- (f) consign or deliver for sale, and
- (g) cause or permit anything referred to above.

specify an act, matter or thing, includes:

- (a) describe the act, matter or thing, and
- (b) specify a class of acts, matters or things.

State includes the Government and the Crown.

substance includes matter or thing.

vessel means any kind of vessel used in navigation.

waste (unless specially defined) includes:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any substance prescribed by the regulations to be waste for the purposes of this Act.

A substance is not precluded from being waste for the purposes of this Act merely because it can be reprocessed, re-used or recycled.

waste facility means any premises used for the storage, treatment, reprocessing, sorting or disposal of waste (except as provided by the regulations).

water pollution or **pollution of waters** means:

- (a) placing in or on, or otherwise introducing into or onto, waters (whether through an act or omission) any matter, whether solid, liquid or gaseous, so that the physical, chemical or biological condition of the waters is changed, or
- (b) placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any refuse, litter, debris or other matter, whether solid or liquid or gaseous, so that the change in the condition of the waters or the refuse, litter, debris or other matter, either alone or together with any other refuse, litter, debris or matter present in the waters makes, or is likely to make, the waters unclean, noxious, poisonous or impure, detrimental to the health, safety, welfare

or property of persons, undrinkable for farm animals, poisonous or harmful to aquatic life, animals, birds or fish in or around the waters or unsuitable for use in irrigation, or obstructs or interferes with, or is likely to obstruct or interfere with persons in the exercise or enjoyment of any right in relation to the waters, or

- (c) placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any matter, whether solid, liquid or gaseous, that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

and, without affecting the generality of the foregoing, includes:

- (d) placing any matter (whether solid, liquid or gaseous) in a position where:

- (i) it falls, descends, is washed, is blown or percolates, or
(ii) it is likely to fall, descend, be washed, be blown or percolate,

into any waters, onto the dry bed of any waters, or into any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or

- (e) placing any such matter on the dry bed of any waters, or in any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted,

if the matter would, had it been placed in any waters, have polluted or have been likely to pollute those waters.

waters means the whole or any part of:

- (a) any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea), or
(b) any water stored in artificial works, any water in water mains, water pipes or water channels, or any underground or artesian water.