

# Protection of the Environment Administration Act 1991 No 60

[1991-60]



New South Wales

## Status Information

### Currency of version

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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**  
[Dangerous Goods \(Road and Rail Transport\) Act 2008 No 95](#) (not commenced — to commence on 1.5.2009)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Protection of the Environment Administration Act 1991 No 60



New South Wales

An Act to constitute the Environment Protection Authority and to make provision with respect to its general responsibilities and management; to amend various Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Protection of the Environment Administration Act 1991*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Authority** means the Environment Protection Authority constituted by this Act.

**Board** means the Board of the Authority established under this Act.

**criminal or related proceedings** means any proceedings for an offence against the environment protection legislation or any proceedings under Division 4 of Part 8.2 and Part 8.4 of the *Protection of the Environment Operations Act 1997*.

**Director-General** means the Director-General of the Environment Protection Authority holding office as such under Part 2 of the *Public Sector Management Act 1988*.

**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).

**environment protection** includes anything which furthers the objectives of the Authority as set out in section 6.

**environment protection legislation** means the following Acts (and the regulations and other instruments made under those Acts):

This Act,

*Contaminated Land Management Act 1997,*

*Environmental Trust Act 1998,*

*Environmentally Hazardous Chemicals Act 1985,*

*Ozone Protection Act 1989,*

*Pesticides Act 1999,*

*Protection of the Environment Operations Act 1997,*

*Radiation Control Act 1990,*

*Recreation Vehicles Act 1983,*

*Road and Rail Transport (Dangerous Goods) Act 1997,*

*Waste Avoidance and Resource Recovery Act 2001.*

**public authority** means a public or local authority constituted by or under any Act and includes:

(a) a government department or administrative office, and

(b) a member of staff or other person who exercises functions on behalf of a public authority.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority, responsibility and duty, and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes included in this Act do not form part of this Act.

#### **4 Objects of Act**

The objects of this Act are as follows:

- (a) to constitute the Environment Protection Authority,
- (b) to provide integrated administration for environment protection,
- (c) to require the Authority to perform particular tasks in relation to the quality of the environment, environmental audit and reports on the state of the environment.
- (d) (Repealed)

### **Part 2 Constitution of the Environment Protection Authority**

#### **5 Constitution of Authority**

- (1) There is constituted by this Act a body corporate with the corporate name of the Environment Protection Authority.
- (2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

### **Part 3 Objectives of the Environment Protection Authority**

#### **6 Objectives of the Authority**

- (1) The objectives of the Authority are:
  - (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, and
  - (b) to reduce the risks to human health and prevent the degradation of the environment, by means such as the following:
    - promoting pollution prevention,
    - adopting the principle of reducing to harmless levels the discharge into the air, water or land of substances likely to cause harm to the environment,
    - minimising the creation of waste by the use of appropriate technology,
    - regulating the transportation, collection, treatment, storage and disposal of waste,
    - encouraging the reduction of the use of materials, encouraging the re-use and recycling of materials and encouraging material recovery,
    - adopting minimum environmental standards prescribed by complementary Commonwealth and State legislation and advising the Government to

prescribe more stringent standards where appropriate,

- setting mandatory targets for environmental improvement,
- promoting community involvement in decisions about environmental matters,
- ensuring the community has access to relevant information about hazardous substances arising from, or stored, used or sold by, any industry or public authority,
- conducting public education and awareness programs about environmental matters.

(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,



- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

## **Part 4 General responsibilities etc of the Environment Protection Authority**

### **7 General functions of Authority**

- (1) The Authority has such environment protection and other functions as are conferred or imposed on it by or under the environment protection legislation or any other legislation.
- (2) The Authority has general responsibility for the following:
  - (a) ensuring that the best practicable measures are taken for environment protection in accordance with the environment protection legislation and other legislation,
  - (b) co-ordinating the activities of all public authorities in respect of those measures,
  - (c) inquiring into and reporting on the efficacy of those measures,
  - (d) reviewing the regulatory framework for environment protection and advising on its rationalisation and simplification,
  - (e) investigating and reporting on alleged non-compliance with environment protection legislation for the purposes of prosecutions or other regulatory action,
  - (f) establishing a database on the state of the environment,
  - (g) advising persons engaged in industry and commerce and other members of the community on environment protection,
  - (h) advising the Government on methods to ensure the integration of the Authority's pollution approvals and licensing processes with the development consent process so that the importance of environment protection is recognised.
- (3) The Authority cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Authority to exercise its functions.

### **8 General powers of Authority**

The Authority may:

- (a) formulate and promote plans for environment protection, and

- (b) publish reports and information on any aspect of environment protection, and
- (c) carry out or commission research into environment protection, and
- (d) co-ordinate the collection of information on environment protection which is published or supplied by public or other authorities, and
- (e) provide or promote the development of specialist guidance and technical advisory services relating to environment protection, and
- (f) invite and consider public submissions when it formulates environment protection plans, when it develops objectives, guidelines or policies under section 9 or when it issues, renews or amends licences under the environment protection legislation, and
- (g) make any register of particulars of any such licences in force available for public inspection and provide (on payment of any reasonable fee demanded by the Authority) copies of or extracts from any such register, and
- (h) make grants to industry, commerce, public authorities, educational institutions and such other persons who the Authority considers are acting in the public interest for the purpose of funding projects which assist or advance environment protection, and
- (i) make grants to groups of citizens incorporated for the purpose of representing the public interest in environment protection to enable them to obtain technical assistance in making submissions referred to in paragraph (f) or on other environment protection matters.

## **9 Powers of Authority relating to environmental quality**

- (1) The Authority is required to:
  - (a) develop environmental quality objectives, guidelines and policies to ensure environment protection, and
  - (b) monitor the state of the environment for the purpose of assessing trends and the achievement of environmental quality objectives, guidelines, policies and standards.
- (2) The Authority is required to develop a comprehensive scheme of environmental audit with respect to industry, commerce and public authorities.

## **10 State of the environment reports**

- (1) The Authority is required to make a report on the state of the environment every 3 years.
- (2) Each such report is to be given to the Minister and tabled in both Houses of Parliament.

- (3) A report on the state of the environment is to include the following matters:
- (a) an assessment of the status and conditions of the major environmental resources of New South Wales,
  - (b) an examination of environmental trends, including the implications for the environment and human health,
  - (c) a review of the programs and activities of public authorities and of the private sector related to environment protection,
  - (d) an examination of trends in economic analysis and of the costs and benefits (including economic evaluation) of environment protection,
  - (e) any general recommendations for future legislative or other action which the Authority considers appropriate to discharge its responsibilities with respect to environment protection,
  - (f) a statement on the performance of environmental education programs in the State as referred to in section 27 (1) (g).
- (4) The first report on the state of the environment is to be made not later than 31 October 1993.
- (5) The Authority is required to make, in its annual report for any year in which a report under subsection (1) is not made, a statement on any relevant matters concerning the state of the environment and on trends.

#### **11 Performance targets for public authorities**

- (1) The Authority may advise public authorities on performance targets for those public authorities relating to environment protection.
- (2) When exercising its public reporting functions under this or any other Act, the Authority may report on the achievement of performance targets set by public authorities, and is required to do so in respect of any public authority which has failed to publicly report on its achievement of those performance targets.

#### **12 Directions to public authorities**

- (1) The Authority may (subject to subsection (2)) from time to time:
  - (a) direct any public authority to do anything within the powers of the public authority which will, in the opinion of the Authority, contribute to environment protection, or
  - (b) direct any public authority to cease doing anything which, in the opinion of the Authority, adversely affects environment protection.
- (2) The Authority is required to consult with the public authority about any such direction.

- (3) If a dispute arises about any such direction, the Minister and the Minister responsible for the public authority (or, in the case of a local government authority, the mayor concerned) are to be notified of the dispute and given an opportunity to resolve the dispute.
- (4) If the dispute is not resolved, it may be referred by the Authority or the public authority to the Premier for settlement. The Premier must, before making any decision on the matter, appoint a person to make an assessment of or conduct a public inquiry into the matter. The report of that assessment or public inquiry is to be made available to the public by the Premier and, if the decision of the Premier on the dispute does not follow the recommendations in that report, the terms of the decision of the Premier are to be tabled by or on behalf of the Premier in each House of Parliament (within 14 sitting days of that House) and are to be included in the next available annual report of the Authority.
- (5) The decision of the Premier on a dispute is to be given effect to by the Authority and the public authority concerned.
- (6) If a public authority that is a local government authority fails to give effect to the decision of the Premier on a dispute, the Authority may give effect to the decision and may for that purpose carry out any work and give any directions as if it were the local government authority. The Authority is taken to be the local government authority when carrying out that work or giving those directions.
- (7) Any costs or expenses incurred by the Authority in giving effect to a decision as referred to in subsection (6) may be recovered by the Authority from the local government authority as a debt in a court of competent jurisdiction.
- (8) Any provision of any other Act for the settlement of disputes between public authorities by the Premier or a Minister does not apply to the settlement of a dispute to which this section applies.

## **12A Environmental assessment**

- (1) The Authority is not a determining authority within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of an approval (within the meaning of that Part) under the environment protection legislation that consists of the renewal of a licence or the renewal of a certificate of registration.
- (2) This section applies in respect of such an approval in force (or purporting to be in force) at the commencement of this section or granted after the commencement of this section.

## Part 5 Management of the Environment Protection Authority

### Division 1 The Minister

#### 13 Ministerial control

- (1) The Authority is, in the exercise of its functions, subject to the control and direction of the Minister.
- (2) However, the Authority is not subject to the control and direction of the Minister in respect of:
  - (a) any report or recommendation made to the Minister, or
  - (b) a state of the environment report under this Act (other than directions for the inclusion of additional information in any such report), or
  - (c) any decision to institute criminal or related proceedings.
- (3) A report of:
  - (a) any direction of the Minister for the inclusion of additional information in a state of the environment report under this Act, or
  - (b) any direction of the Minister under section 13A and the determination of the Minister with respect to the exercise of the licensing function concerned,is required to be tabled by or on behalf of the Minister in each House of Parliament (within 14 sitting days of that House) and is to be included in the next available annual report of the Authority.

#### 13A Exercise of EPA licensing functions by Minister

- (1) In this section:

**licence** means a licence, approval or other authority under the environment protection legislation.

**licensing function** means a function of the Authority under the environment protection legislation relating to a licence, including the function of determining whether to issue, transfer, amend, suspend or revoke a licence.
- (2) The Minister may, if the Minister considers that it is expedient in the public interest to do so, direct the Authority in writing to refer to the Minister a specified licensing function in respect of a particular matter.
- (3) The Minister may give a direction under this section whether or not the Authority intends to exercise the licensing function in respect of the matter.

- (4) The Authority must, as soon as practicable after receiving a direction under this section:
  - (a) refer to the Minister 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 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 Minister may, after giving a direction under this section, exercise in the place of the Authority the licensing function in respect of the matter.
- (7) For the purpose of the Minister exercising a licensing function in respect of a matter:
  - (a) a reference to the Authority in the environment protection legislation or other document is taken to be a reference to the Minister, and
  - (b) anything done by the Authority in the matter before the direction was given may be adopted by the Minister.

The determination of the Minister in the exercise of the licensing function is taken to have been done by the Authority.
- (8) However, an appeal to the Land and Environment Court against a decision of the Authority in the exercise of a licensing function that is conferred by the environment protection legislation does not lie if the decision is made by the Minister pursuant to a direction under this section.
- (9) The Authority is to give effect to the decision made by the Minister pursuant to a direction under this section. However, the decision does not limit the future exercise of a licensing function by the Authority in respect of the matter.

#### **14 Ministerial departmental support services**

- (1) The Minister may make use of the services of the Director-General and staff of the Authority for providing departmental advice on government policy and other matters relating to the administration of the environment protection legislation.
- (2) The exercise of the functions of the Director-General and staff of the Authority under this section is not subject to the control or direction of the Board.

## **Division 2 The Board of the Authority**

### **15 Establishment of Board**

- (1) There is to be a Board of the Authority.
- (2) The Board is to consist of 10 members, being:
  - (a) the Director-General, and
  - (b) 9 part-time members appointed by the Governor on the recommendation of the Minister.
- (3) Of the part-time members:
  - (a) 2 are to have experience in, or knowledge of, nature conservation or environment protection and are to be selected by the Minister from a panel of at least 6 nominees provided to the Minister by the Nature Conservation Council of New South Wales, and
  - (b) 2 are to have experience in, or knowledge of, environmental aspects of agriculture, industry or commerce and are to be selected by the Minister from panels of nominees provided to the Minister by peak industry and employer organisations, and
  - (c) 1 is to have expertise in the area of environmental science, and
  - (d) 1 is to have expertise in the area of environmental protection policy, and
  - (e) 1 is to have expertise in the area of regional environmental issues, and
  - (f) 1 is to have expertise in environmental law and is to be an academic employed at a New South Wales tertiary institution, and
  - (g) 1 is to have expertise in local government matters and is to be selected by the Minister from a panel of nominees provided to the Minister by the Local Government and Shires Associations of New South Wales.
- (4) Schedule 1 has effect with respect to the members and procedure of the Board.

### **16 Functions of Board**

The functions of the Board are as follows:

- (a) to determine the policies and long-term strategic plans of the Authority,
- (b) (Repealed)
- (c) to develop, and make available for public information, guidelines relating to the institution of criminal and related proceedings,

- (d) to determine whether the Authority should institute proceedings for serious environment protection offences referred to in section 17,
- (e) to advise the Minister on any matter relating to the protection of the environment (at the request of the Minister or on its own initiative).

### **17 Environmental Counsel to Board**

- (1) An Environmental Counsel to the Board is to be engaged by the Authority.
- (2) The Environmental Counsel is to be a practising barrister approved by the Minister and engaged for a period determined by the Minister.
- (3) The Environmental Counsel may advise the Board on any matter (whether or not in connection with the institution of criminal or related proceedings) referred to the Environmental Counsel.
- (4) The Board may not determine that the Authority institute proceedings for a serious environment protection offence unless the Environmental Counsel has advised the Board that (on the evidence disclosed in the brief to Counsel) there is evidence capable of establishing the commission of the offence.

The Authority is to ensure that any such brief to the Environmental Counsel contains all relevant evidence available to the Authority.

- (5) Nothing in this section prevents the Board from obtaining legal advice from any person. In particular, the Board may, if there is any dispute about the advice of the Environmental Counsel, obtain advice from the Attorney General and act on that advice for the purposes of subsection (4).
- (6) The determination of whether the Authority should institute proceedings for serious environment protection offences may not be delegated under this Act.
- (7) Criminal or related proceedings may not be challenged on the ground that they were instituted in contravention of this section.
- (8) In this section, **serious environment protection offence** means:
  - (a) a tier 1 offence (being an offence created by Part 5.2 of the *Protection of the Environment Operations Act 1997*), or
  - (b) a tier 2 offence (being any other offence created by that Act) which is designated as a serious environment protection offence for the purposes of this section by the prosecution guidelines developed by the Board under this Division, or
  - (c) an offence under Division 1 of Part 2 of the *Pesticides Act 1999*.



## **Division 3 The Director-General of the Authority**

### **18 (Repealed)**

### **19 Director-General to manage and control affairs of Authority**

- (1) The affairs of the Authority are to be managed and controlled by the Director-General in accordance with the policies determined by the Board and any other decisions of the Board, but subject to any directions of the Minister under this Act.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Director-General is taken to have been done by the Authority.

## **Division 4 Miscellaneous provisions relating to management**

### **20 (Repealed)**

### **21 Delegation of functions**

- (1) The Authority may delegate to an authorised person any of the functions of the Authority, other than this power of delegation.
- (1A) The Director-General may delegate to an authorised person any of the functions (other than this power of delegation) conferred or imposed on the Director-General by or under the environment protection legislation or any other legislation.
- (2) A delegate may sub-delegate to an authorised person any function delegated:
  - (a) by the Authority, if the delegate is authorised in writing to do so by the Authority, or
  - (b) by the Director-General, if the delegate is authorised in writing to do so by the Director-General.
- (3) In this section, **authorised person** means:
  - (a) a member of the staff of the Authority, or
  - (b) a member of the staff of a Government agency of Victoria, Queensland, South Australia or the Australian Capital Territory which administers environment protection legislation, or
  - (c) a council (within the meaning of the [Local Government Act 1993](#)), or
  - (d) a person of a class prescribed by the regulations for the purposes of delegations from the Authority or the Director-General or both.

## **Part 6 Consultation Forum, Council and advisory committees**

## Division 1 Preliminary

### 22 Definitions

In this Part:

**advisory committee** means an advisory committee established under Division 4.

**Consultation Forum** means an Environment Protection Community Consultation Forum established under Division 2.

**Council** means the New South Wales Council on Environmental Education established under Division 3.

## Division 2 Environment Protection Community Consultation Forums

### 23 Establishment of Consultation Forums

There is established by this Act:

- (a), (b) (Repealed)
- (c) the Hunter Region Environment Protection Community Consultation Forum, and
- (d) the Illawarra Region Environment Protection Community Consultation Forum.

### 24 Membership and procedure of Consultation Forums

(1) A Consultation Forum is to consist of:

- (a) the Director-General, or his or her nominee, who is to be Chairperson of the Consultation Forum, and
- (b) 12 members appointed by the Minister, of whom:
  - (i) 3 are to be representatives of industry (including, for the purposes of the Hunter Region Environment Protection Community Consultation Forum, 1 representative of the rural sector chosen from a panel of nominees provided to the Minister by the New South Wales Farmers' Association), and
  - (ii) 3 are to be representatives of non-government organisations whose charters include, as a primary aim, environment protection (including at least 1 representative chosen from a panel of nominees provided to the Minister by the Nature Conservation Council of New South Wales), and
  - (iii) 3 are to be representatives of authorities of the State, and
  - (iv) 3 are to be representatives of local government authorities or associations.

(2) The Minister may seek from relevant authorities or organisations nominations of

persons for appointment as members of a Consultation Forum.

- (3) Schedule 2 has effect with respect to the members and procedure of a Consultation Forum.

## **25 Function of Consultation Forums**

- (1) The function of a Consultation Forum is to advise the Authority on community concerns and attitudes about environmental protection.
- (2) Any advice given to the Authority by a Consultation Forum may be given either at the request of the Authority or without any such request.

## **Division 3 New South Wales Council on Environmental Education**

### **26 Establishment of Council**

There is established by this Act the New South Wales Council on Environmental Education.

### **27 Functions of Council**

- (1) The Council has the following functions:
  - (a) to advise the Government on key issues, trends and research requirements relating to environmental education,
  - (b) to co-ordinate the preparation of State-wide 3-year plans for environmental education (referred to in this Division as ***environmental education plans***) that:
    - (i) describe the proposed contributions of individual public authorities (other than local government authorities), the local government sector, community organisations and industry to environmental education, and
    - (ii) set out performance indicators for those contributions to ensure those contributions meet the specific needs of the community for environmental education,
  - (c) to consult with a wide range of interested community groups in the development of environmental education plans (for example, organisations of parents, organisations concerned with the protection of the environment, industry bodies, professional associations and organisations representing ethnic communities or Aboriginal persons and Torres Strait Islanders),
  - (d) if necessary, to establish working groups that are to advise the Council on key issues, or the special needs of groups in the community, relating to environmental education,
  - (e) to submit draft environmental education plans, through both the Minister and the Minister for Education and Training, to the Government for consideration, and in

doing so to report on issues raised during the consultation process referred to in paragraph (c),

- (f) to monitor progress on the implementation of environmental education plans against the performance indicators set out in the plans,
  - (g) to prepare statements on the performance of environmental education programs in the State for inclusion in the reports on the state of the environment required under section 10,
  - (h) to prepare advisory papers for environmental education providers to provide guidance so that their products, services and programs assist in furthering the principles of ecologically sustainable development and in meeting the cultural and other relevant needs of the community in relation to environmental education.
- (2) No later than 6 months after the substitution of this section by the *Protection of the Environment Administration Amendment (Environmental Education) Act 1998* (referred to in this section as the **substitution date**), the Council is to publish a discussion paper setting out:
- (a) the process to be followed for developing environmental education plans, and
  - (b) an outline of the proposed contents and structure of environmental education plans.
- (3) The first environmental education plan is to be submitted to the Government no later than one year after the substitution date.
- (4) The first statement under subsection (1) (g) is to be included in the report on the state of the environment that is first submitted after the substitution date.
- (5) An environmental education plan is to be tabled in each House of Parliament as soon as practicable after its submission to the Government.

## **28 Membership and procedure of Council**

- (1) The Council is to consist of an independent Chairperson, and eleven other members chosen from the categories referred to in subsection (5) (a)–(i). Those eleven other members are to be appointed by the Minister following consultation with the Minister for Education and Training.
- (2) The Chairperson is to provide strategic leadership, vision and corporate governance to the Council in the exercise of its functions.
- (3) The Chairperson is to possess relevant tertiary qualifications and have knowledge, skills or experience in 2 or more of the following:
  - (a) environmental education,

- (b) environmental sciences,
  - (c) education program planning,
  - (d) working with government departments and agencies and community and business groups,
  - (e) public relations and promotion,
  - (f) strong communication and interpersonal skills,
  - (g) capacity to equitably involve all relevant stakeholders,
  - (h) demonstrated skills in dealing with the media.
- (4) The Chairperson is to be appointed by the Minister as follows:
- (a) the Minister is to make a public call for nominations for the office of Chairperson,
  - (b) the Chairperson is to be selected on merit by a panel chosen by the Minister and consisting of the following:
    - (i) a senior officer of the Department of Education,
    - (ii) a senior officer of the Authority,
    - (iii) a person holding a senior university appointment in the field of environmental education,
    - (iv) an independent person to represent community interests.
- (5) The other eleven members of the Council are to be as follows:
- (a) two representatives of government departments and agencies within the administration of the Minister, one of whom is to be from the Authority,
  - (b) two representatives of government departments and agencies within the administration of the Minister for Education and Training, one of whom is to be from the TAFE Commission,
  - (c) a representative of government departments and agencies within the administration of the Minister for Urban Affairs and Planning,
  - (d) a representative of government departments and agencies within the administration of the Minister for Agriculture and the Minister for Land and Water Conservation,
  - (e) a representative of community-based organisations concerned with the protection of the environment chosen from a panel of nominees provided to the Minister by the Nature Conservation Council of New South Wales,

- (f) a representative of professional organisations concerned with environmental education chosen from a panel of nominees provided to the Minister by the Association for Environmental Education or by the Australian Association for Environmental Education Incorporated, or by a successor of either of those bodies,
  - (g) a representative of local government authorities or associations chosen from a panel of nominees provided to the Minister by the Local Government and Shires Associations of New South Wales,
  - (h) a representative of industry chosen from panels of nominees provided to the Minister by peak industry and employer organisations,
  - (i) a representative of universities in the State chosen from a panel of nominees provided to the Minister by the New South Wales Vice-Chancellors' Conference or by any other body that in the opinion of the Minister has replaced the Conference.
- (6) The Minister is to cause public notice to be given of the intention to call for nominations from the bodies referred to in subsection (2) (e), (f), (g), (h) and (i).
- (7) If a panel of nominees from which a member is to be chosen for appointment is not provided within the time and in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the person required to be chosen for appointment from a panel so provided. A person so appointed is taken to have been duly nominated.
- (10) Schedule 2 has effect with respect to the members and procedure of the Council.

#### **28A Relationship with other Acts**

Nothing in this Division affects the operation of the *Education Act 1990* or the *Technical and Further Education Commission Act 1990*.

#### **28B Review of Council's functions**

- (1) The Minister is to conduct a review of the effectiveness with which the Council exercises its functions.
- (2) The review is to be conducted as soon as possible after the period of 3 years from the commencement of this section.
- (3) The Minister is to cause a report of the results of that review to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

#### **28C Scope of "environmental education"**

For the purposes of this Division, **environmental education** is a process that:

- (a) seeks to give a person an understanding of the inter-relationship between the elements of the total environment, a positive attitude towards it and the skills that will

enable the person to actively promote its well-being, and

- (b) takes into account the particular needs of the person being educated, such as his or her age, cultural background and ability to learn, and
- (c) is a lifelong learning experience that integrates the activities of environmental education providers (such as, schools, TAFE establishments, universities, local government authorities, community organisations and industry), and
- (d) includes any process by which a person may be educated (for example, a course or a media awareness program).

## **Division 4 Advisory committees**

### **29 Establishment of advisory committees**

The Authority may from time to time, establish advisory committees and dissolve any such advisory committee.

### **30 Function of advisory committees**

The function of an advisory committee is to advise the Authority on such matters as the Authority determines.

### **31 Membership and procedure of advisory committees**

- (1) An advisory committee is to consist of such number of members as the Authority determines, but is not to consist of more than 9 members without the approval of the Minister.
- (2) The Authority is to ensure that the persons appointed as members of an advisory committee represent a range of interests and expertise appropriate to the functions of the committee.
- (3) Schedule 2 has effect with respect to the members and procedure of an advisory committee.

## **Part 7 Miscellaneous**

### **32 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.

### **33 Powers of Authority relating to property**

- (1) The Authority may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.

- (2) The Authority must not, except with the approval of the Minister, alienate, mortgage, charge or demise any of its land.
- (3) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the Authority has agreed.

#### **34 Financial year**

- (1) The financial year of the Authority is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

#### **35 Personal liability**

- (1) A matter or thing done or omitted to be done by the Authority, the Board, an advisory body, a member of the Board or an advisory body, the Director-General or any person acting under the direction of the Authority, the Board, an advisory body or the Director-General does not, if the matter or thing was done or omitted in good faith for the purpose of executing the environment protection legislation, subject the member, Director-General or a person so acting personally to any action, liability, claim or demand.
- (2) In this section, **advisory body** means an Environment Protection Community Consultation Forum established under Part 6, the New South Wales Council on Environmental Education or an advisory committee established under Part 6.

#### **36 Seal of Authority**

The seal of the Authority is to be kept by the Director-General and may be affixed to a document only:

- (a) in the presence of the Director-General or a member of the staff of the Authority authorised in that behalf by the Director-General, and
- (b) with an attestation by the signature of the Director-General or that member of the fact of the affixing of the seal.

#### **37 Service of documents on Authority**

- (1) A document may be served on the Authority by leaving it at, or by sending it by post to:
  - (a) the office of the Authority, or
  - (b) if it has more than one office—any one of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.



### **38 Recovery of charges etc by Authority**

Any charge, fee or money due to the Authority may be recovered by the Authority as a debt in a court of competent jurisdiction.

### **39 Regulations**

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.

### **40 (Repealed)**

### **41 Savings, transitional and other provisions**

Schedule 4 has effect.

## **Schedule 1 Provisions relating to members and procedure of the Board**

(Section 15 (4))

### **1 Definitions**

In this Schedule:

***appointed member*** means a member of the Board other than the Director-General.

***member*** means any member of the Board.

### **2 Chairperson and Deputy Chairperson of the Board**

- (1) Of the appointed members, one is to be appointed by the Governor as the Chairperson of the Board and another is to be appointed by the Governor as the Deputy Chairperson of the Board. Any such appointment may be made at the time the person is appointed as a member or after that appointment.
- (2) The Governor may at any time remove an appointed member from the office of Chairperson or Deputy Chairperson.
- (3) A person who is an appointed member and Chairperson or Deputy Chairperson of the Board vacates the office of Chairperson or Deputy Chairperson if the person:
  - (a) is removed from office by the Governor, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be an appointed member.

### **3 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (2) In the absence of an appointed member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (3) The deputy of an appointed member who is Chairperson or Deputy Chairperson of the Board does not (because of this clause) have the member's functions as Chairperson or Deputy Chairperson.
- (4) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

### **4 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **5 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **6 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been

absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove an appointed member from office at any time.

(3) Without limiting subclause (2), the Governor may remove an appointed member from office on the address of both Houses of Parliament or for a contravention of clause 7.

## **7 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Disclosures of the interests of members of the Board are required to be made in accordance with the regulations. For that purpose, the regulations may apply, with modifications, the provisions of the regulations under section 14A of the *Constitution Act 1902* relating to the disclosure of the interests of members of Parliament.

(4) If:

(a) a matter being considered or about to be considered at a meeting of the Board relates to the institution of criminal or related proceedings against a person, and

(b) a member has any personal or financial interest in the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(5) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Board.

(6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

(a) be present during any deliberation of the Board with respect to the matter, or

(b) take part in any decision of the Board with respect to the matter.

(7) For the purpose of the making of a determination by the Board under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination, or

(b) take part in the making by the Board of the determination.

(8) A contravention of this clause does not invalidate any decision of the Board.

### **8 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **9 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any

remuneration payable to the person under this Act as such a member.

- (3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **10 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **11 Quorum**

The quorum for a meeting of the Board is 6 members.

## **12 Presiding member**

- (1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson is to preside at a meeting of the Board.
- (1A) If the Chairperson and Deputy Chairperson of the Board are both absent from a meeting of the Board, another member elected by the members present to chair the meeting is to preside at the meeting.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **14 Transaction of business outside meetings or by telephone etc**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **15 Committees of Board**

- (1) The Board may appoint such committees as the Board considers appropriate to assist the Board in the exercise of its functions.
- (2) It does not matter if any or all of the members of a committee are not members of the Board.
- (3) The procedure of a committee of the Board is to be determined by the Board or (subject to any determination of the Board) by the committee.

## **Schedule 2 Members and procedure of Consultation Forum, Council and advisory committees**

(Sections 24 (3), 28 (5), 31 (3))

### **1 Definitions**

In this Schedule:

**advisory body** means a Consultation Forum, the Council or an advisory committee established under Part 6.

**Consultation Forum** means a Consultation Forum established under Part 6.

**Council** means the New South Wales Council on Environmental Education established under Part 6.

**ex-officio member** means a person who is a member of an advisory body by virtue of being the holder of a particular office.

**member** means any member of an advisory body.

### **2 Chairperson of advisory body**

- (1) This clause does not apply to a Consultation Forum or the Council.
- (2) One of the members of an advisory body is to be appointed by the Authority as Chairperson of the advisory body. Any such appointment may be made at the time the person is appointed as a member or after that appointment.

- (3) The Authority may at any time remove a member from the office of Chairperson of an advisory body.
- (4) A person who is a member and Chairperson of an advisory body vacates the office of Chairperson if the person:
  - (a) is removed from that office under this clause, or
  - (b) resigns that office by instrument in writing addressed to the Authority, or
  - (c) ceases to be a member.

### 3 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member of a Consultation Forum or the Council, and the Minister may revoke any such appointment.
- (2) The Authority may, from time to time, appoint a person to be the deputy of a member of an advisory body (other than a Consultation Forum or the Council), and the Authority may revoke any such appointment.
- (3) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (4) The deputy of a member who is Chairperson of an advisory body does not (because of this clause) have the member's functions as Chairperson.
- (5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

### 4 Terms of office

- (1) In this clause, **member** does not include an ex-officio member.
- (2) Subject to this Schedule:
  - (a) a member of the Council holds office for such period (not exceeding 3 years), and
  - (b) a member (other than a member of the Council) holds office for such period (not exceeding 2 years),as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **5 Allowances**

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

## **6 Vacancy in office of member**

- (1) The office of a member (other than an ex-officio member) becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister or the Authority, or
  - (d) is removed from office under this clause, or
  - (e) is absent from 4 consecutive meetings of the advisory body of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the advisory body or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the advisory body for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member (other than an ex-officio member) of a Consultation Forum or Council from office at any time and the Authority may remove a member of any other advisory body from office at any time.

## **7 Filling of vacancy in office of member**

If the office of a member (other than an ex-officio member) becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.



(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **9 General procedure**

The procedure for the calling of meetings of an advisory body and for the conduct of business at those meetings is, subject to this Act and the regulations and to any direction of the Minister or the Authority, to be as determined by the advisory body.

## **10 Quorum**

The quorum for a meeting of an advisory body is a majority of the members for the time being of the advisory body.

## **11 Presiding member**

- (1) The Chairperson of an advisory body or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the advisory body.
- (2) The person presiding at any meeting of an advisory body has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of an advisory body at which a quorum is present is the decision of the advisory body.

## **13 Minutes of meetings of Consultation Forum**

The Consultation Forum is required to keep minutes of proceedings at its meetings and to furnish to the Minister a copy of the minutes of each meeting within 14 days after the meeting was held.

## **Schedule 3 (Repealed)**

## **Schedule 4 Savings, transitional and other provisions**

(Section 41)

### **Part 1 Savings and transitional regulations**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Protection of the Environment Administration Amendment (Environmental Education) Act 1998*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (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 before the date of its publication.

### **Part 2 General provisions consequent on enactment of this Act**

#### **2 Abolition of the State Pollution Control Commission**

- (1) The State Pollution Control Commission is abolished.
- (2) All public service staff attached to that Commission (and any other staff employed by that Commission), immediately before the abolition of that Commission, become public service staff attached to (and other staff employed by) the Authority.
- (3) On the abolition of that Commission, the following provisions have effect:
- (a) the assets of that Commission vest in the Authority by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of that Commission become by virtue of this clause the rights and liabilities of the Authority,
  - (c) all proceedings by or against that Commission that are pending immediately before the abolition are taken to be proceedings pending by or against the Authority,

(d) any act, matter or thing done or omitted to be done before the abolition by, to or in respect of that Commission is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Authority.

(4) The operation of this clause is not to be regarded:

(a) as a breach of contract or confidence or otherwise as a civil wrong, or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(5) No attornment to the Authority by a lessee from that Commission is required.

### **3 Replacement of State Pollution Control Commission before its abolition by Board of Authority**

(1) This clause applies during any period after the commencement of section 15 and before the abolition of the State Pollution Control Commission.

(2) During the period to which this clause applies the State Pollution Control Commission is to be constituted by the members of the Board of the Authority. When acting as members of that Commission, Schedule 1 applies as if they were acting as members of the Board of the Authority.

(3) A person who, immediately before the commencement of section 15, held office as a member of that Commission:

(a) ceases to hold that office, and

(b) is not entitled to any remuneration or compensation because of the loss of that office.

(4) On the commencement of section 15, the following provisions of the *State Pollution Control Commission Act 1970* cease to have effect:

section 6 (except subsection (1)),

sections 7, 8 and 9.

### **4 Abolition of Ministry for the Environment**

(1) The Ministry for the Environment is abolished.

(2) All branches of that Ministry are removed from that Ministry and added to the group of public service staff attached to the Authority.

## 5 Dissolution of advisory committees

- (1) The following committees are dissolved:
  - (a) the Technical Advisory Committee and any other Committee established under Part 4 of the *State Pollution Control Commission Act 1970*,
  - (b) the Clean Waters Advisory Committee established under Part 2 of the *Clean Waters Act 1970*.
- (2) A person who, immediately before the dissolution of any such committee, held office as a member of the committee:
  - (a) ceases to hold that office, and
  - (b) is not entitled to any remuneration or compensation because of the loss of that office.
- (3) On the dissolution of any such committee, the assets, rights, liabilities and obligations of the Committee become the assets, rights, liabilities and obligations of the Authority.

## 6 Construction of certain references

In any other Act, in any instrument made under any Act or in any document of any kind:

- (a) a reference to the State Pollution Control Commission or the Ministry for the Environment is to be read as a reference to the Authority, and
- (b) a reference to the Director of the State Pollution Control Commission or of the Ministry for the Environment is to be read as a reference to the Director-General of the Authority, and
- (c) a reference to a member of the State Pollution Control Commission is to be read as a reference to a member of the Board of the Authority, and
- (d) a reference to an officer or employee of the State Pollution Control Commission or the Ministry for the Environment is to be read as a reference to a member of the staff of the Authority.

## 7 Radioactive Substances Act 1957

Until the repeal of the *Radioactive Substances Act 1957* by section 43 of the *Radiation Control Act 1990*, the environment protection legislation includes the *Radioactive Substances Act 1957* and the regulations and other instruments made under that Act.

## Part 3 Provisions consequent on enactment of Protection of the Environment Administration Amendment (Environmental Education)

## **Act 1998**

### **8 Dissolution of Environmental Education Committee**

- (1) The Environmental Education Committee established under Part 6 is dissolved.
- (2) A person who, immediately before the dissolution of the Environmental Education Committee, held office as a member of the Committee:
  - (a) ceases to hold that office, and
  - (b) is not entitled to any remuneration or compensation because of the loss of that office.
- (3) On the dissolution of the Environmental Education Committee, the assets, rights, liabilities and obligations of the Committee become the assets, rights, liabilities and obligations of the Authority.