

Protection of the Environment Legislation Amendment Act 2011 No 63

[2011-63]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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New South Wales

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Protection of the Environment Legislation Amendment Act 2011 No 63



New South Wales

An Act to amend environment protection legislation to create the office of Chairperson of the Environment Protection Authority and to make further provision with respect to the notification and management of pollution incidents; and for other purposes.

1 Name of Act

This Act is the *Protection of the Environment Legislation Amendment Act 2011*.

2 Commencement

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

Schedule 1 Amendment of *Protection of the Environment Administration Act 1991 No 60*

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Chairperson means the Chairperson of the Authority appointed under section 18.

[2] Section 3 (1), definition of "Director-General"

Omit the definition.

[3] Sections 14, 19 (Chairperson to manage and control affairs of Authority), 21 (1A), (2) (b) and (3) (d), 24 (1) (a), 35 (1) and 36 and clause 1 (definition of "appointed member") of Schedule 1

Omit "Director-General" wherever occurring. Insert instead "Chairperson".

[4] Section 15 Establishment of Board

Omit section 15 (2) and (3). Insert instead:

- (2) The Board is to consist of 5 members, being:
 - (a) the Chairperson, and
 - (b) 4 part-time members appointed by the Governor on the recommendation of the Minister.
- (3) Of the part-time members:
 - (a) 1 is to have expertise in the area of environmental science, and
 - (b) 1 is to have expertise in environmental law, and
 - (c) 1 is to have expertise in corporate, financial and risk planning and management, and
 - (d) 1 is to have expertise in business.

[5] Section 16 Functions of Board

Insert after section 16 (a):

- (b) to oversee the effective, efficient and economical management of the Authority,

[6] Section 16 (2)-(6)

Insert at the end of section 16:

- (2) The Board is not subject to the control and direction of the Minister in the exercise of any of its functions.
- (3) The Board is, on an annual basis, to provide the Minister with a statement that contains or addresses the following matters:
 - (a) an assessment of the success of the Authority in reducing risks to human health and in preventing the degradation of the environment and whether the level of environmental protection achieved by the Authority is satisfactory in comparison with other Australian jurisdictions,
 - (b) an assessment of the performance by those industries regulated by the Authority in reducing risks to human health and in preventing the degradation of the environment, and the impact that those industries have on the environment,
 - (c) recommendations for improving the Authority's performance, and the performance of the industries regulated by the Authority, in relation to the matters referred to in paragraphs (a) and (b),

- (d) such other matters as may be prescribed by the regulations.
- (4) The Minister must table a copy of the statement under this section in both Houses of Parliament within one month after the Minister receives it.
- (5) If a House of Parliament is not sitting when the Minister seeks to table a copy of the statement to it, the Minister may present copies of the statement to the Clerk of the House concerned.
- (6) The statement:
 - (a) on presentation and for all purposes is taken to have been tabled in the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the statement by the Clerk.

[7] Part 5, Division 3, heading

Omit “**Director-General**”. Insert instead “**Chairperson**”.

[8] Sections 18 and 18A

Insert before section 19:

18 Chairperson of the Authority

- (1) The Governor may appoint a Chairperson of the Authority.
- (2) The Chairperson may be appointed on a full-time or part-time basis.
- (3) The Chairperson has the functions conferred or imposed on the Chairperson by or under this or any other Act.
- (4) The employment of the Chairperson is subject to Part 3.1 of the [Public Sector Employment and Management Act 2002](#), but is not subject to Chapter 1A of that Act.

- (5) The Governor may remove the Chairperson from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 77 of the *Public Sector Employment and Management Act 2002*.

18A Acting Chairperson

- (1) The Minister may, from time to time, appoint a person to act in the office of the Chairperson during the illness or absence of the Chairperson or during a vacancy in the office of the Chairperson. The person, while so acting, has all the functions of the Chairperson and is taken to be the Chairperson (including as a member of the Board).
- (2) The Minister may, at any time, remove a person from the office to which the person was appointed under this section.
- (3) A person while acting under this section is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

[9] Schedule 1 Provisions relating to members and procedure of the Board

Omit clauses 2 and 3 (3).

[10] Schedule 1, clause 11

Omit "6 members".

Insert instead "3 members (one of whom must be the Chairperson)".

[11] Schedule 1, clause 12

Omit the clause. Insert instead:

12 Presiding member

- (1) The Chairperson is to preside at a meeting of the Board.
- (2) The presiding member is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

[12] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Protection of the Environment Legislation Amendment Act 2011

[13] Schedule 4, Part 4

Insert after Part 3:

Part 4 Provision consequent on enactment of [Protection of the Environment Legislation Amendment Act 2011](#)

9 Existing Board members

A person who, immediately before the commencement of Schedule 1 [4] to the [Protection of the Environment Legislation Amendment Act 2011](#), held office as a member of the Board:

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

Schedule 2 Amendment of [Protection of the Environment Operations Act 1997 No 156](#)

[1] Section 66 Conditions requiring monitoring, certification or provision of information, and related offences

Insert after section 66 (5):

- (6) **Publication of results of monitoring** The holder of a licence subject to a condition referred to in subsection (1) (a) must, within 14 days of obtaining monitoring data as referred to in that subsection:
- (a) if the holder maintains a website that relates to the business or activity the subject of the licence—make any of the monitoring data that relates to pollution, and the licensee’s name, publicly and prominently available on that website in accordance with any requirements issued in writing by the EPA, or
 - (b) if the holder does not maintain such a website—provide a copy of any of the monitoring data that relates to pollution, to any person who requests a copy of the data, at no charge and in accordance with any requirements issued in writing by the EPA.

Maximum penalty:

- (a) in the case of a corporation—\$4,400, or
- (b) in the case of an individual—\$2,200.

- (7) **False or misleading publication of results** A person who makes available or provides

monitoring data in accordance with subsection (6) is guilty of an offence if the monitoring data is false or misleading in a material respect.

Maximum penalty:

- (a) in the case of a corporation—\$4,400, or
- (b) in the case of an individual—\$2,200.

[2]-[11] (Repealed)

[12] Part 5.7A

Insert after Part 5.7:

Part 5.7A Duty to prepare and implement pollution incident response management plans

153A Duty of licence holder to prepare pollution incident response management plan

The holder of an environment protection licence must prepare a pollution incident response management plan that complies with this Part in relation to the activity to which the licence relates.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

153B EPA may direct other persons to prepare pollution incident response management plan

- (1) The EPA may, in accordance with the regulations, require the occupier of premises at which industry is carried out to prepare a pollution incident response management plan that complies with this Part in relation to activities at the premises.
- (2) A person must not fail to comply with such a requirement.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing

offence, a further penalty of \$60,000 for each day the offence continues.

(3) The regulations may make provision for or with respect to:

- (a) the class or classes of premises, or industries carried out at premises, that may be the subject of a requirement to prepare a pollution incident response management plan, and
- (b) the circumstances in which some or all premises within those classes may be the subject of a requirement to prepare a pollution incident response management plan.

153C Information to be included in plan

A pollution incident response management plan must be in the form required by the regulations and must include the following:

- (a) the procedures to be followed by the holder of the relevant environment protection licence, or the occupier of the relevant premises, in notifying a pollution incident to:
 - (i) the owners or occupiers of premises in the vicinity of the premises to which the environment protection licence or the direction under section 153B relates, and
 - (ii) the local authority for the area in which the premises to which the environment protection licence or the direction under section 153B relates are located and any area affected, or potentially affected, by the pollution, and
 - (iii) any persons or authorities required to be notified by Part 5.7,
- (b) a detailed description of the action to be taken, immediately after a pollution incident, by the holder of the relevant environment protection licence, or the occupier of the relevant premises, to reduce or control any pollution,
- (c) the procedures to be followed for co-ordinating, with the authorities or persons that have been notified, any action taken in combating the pollution caused by the incident and, in particular, the persons through whom all communications are to be made,
- (d) any other matter required by the regulations.

153D Keeping of plan

A person who is required to prepare a pollution incident response management plan under this Part must ensure that it is kept at the premises to which the relevant environment protection licence relates, or where the relevant activity takes place,

and is made available in accordance with the regulations.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

153E Testing of plan

A person who is required to prepare a pollution incident response management plan under this Part must ensure that it is tested in accordance with the regulations.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

153F Implementation of plan

If a pollution incident occurs in the course of an activity so that material harm to the environment (within the meaning of section 147) is caused or threatened, the person carrying on the activity must immediately implement any pollution incident response management plan in relation to the activity required by this Part.

Maximum penalty:

- (a) in the case of a corporation—\$2,000,000 and, in the case of a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) in the case of an individual—\$500,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues.

[13], [14] (Repealed)

[15] Section 254 Definitions

Omit “Director-General of the EPA” from the definition of ***designated officer***.

Insert instead “Chairperson”.

[16] Section 259 Proof of certain appointments not required

Omit “Director-General of the EPA” from section 259 (a).

Insert instead “Chairperson”.

[17] Section 261 Certificate evidence of certain matters

Omit “Director-General of the EPA” from section 261 (1).

Insert instead “Chairperson”.

[18] Section 261 (2) (u)

Omit “Director-General”. Insert instead “Chairperson”.

[19] (Repealed)

[20] Section 308 Public register

Insert after section 308 (2) (d):

(d1) details of each mandatory environmental audit under Part 6.2 undertaken in relation to a licence issued by that authority,

(d2) details of each pollution study required by a condition of a licence issued by that authority,

(d3) details of each pollution reduction program required by a condition of a licence issued by that authority,

[21] Section 308 (2) (j1)

Insert after section 308 (2) (j):

(j1) details of each penalty notice issued by that authority,

[22] (Repealed)

[23] Schedule 5, Part 13

Insert after Part 12:

Part 13 Provisions consequent on enactment of **Protection of the Environment Legislation Amendment Act 2011**

35 Obligation to publish results of monitoring

(1) Subject to subclause (2), the obligation under section 66 (6) to publish results of monitoring does not apply to any monitoring conducted before the commencement of that subsection.

(2) A person who held an environment protection licence immediately before the

commencement of section 66 (6) does not commit an offence under that subsection during the first 3 months after that commencement.

36 Duties to prepare and implement pollution incident response management plans

A person who held an environment protection licence immediately before the commencement of Part 5.7A does not commit an offence under that Part during the first 6 months after that commencement.

37 Obligation to include matter on register

The obligation to include matter on the public register:

- (a) created by section 308 (2) (d1) applies only to mandatory environmental audits undertaken after the commencement of that paragraph, and
- (b) created by section 308 (2) (d2) applies only to pollution studies undertaken after the commencement of that paragraph, and
- (c) created by section 308 (2) (d3) applies only to pollution reduction programs undertaken after the commencement of that paragraph, and
- (d) created by section 308 (2) (j1) applies only to penalty notices issued after the commencement of that paragraph.

[24] Dictionary

Insert in alphabetical order:

Chairperson means the Chairperson of the EPA appointed under Division 3 of Part 5 of the *Protection of the Environment Administration Act 1991*.

Schedule 3 Consequential amendment of other legislation

3.1 Contaminated Land Management Act 1997 No 140

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Chairperson of the EPA means the Chairperson of the EPA appointed under Division 3 of Part 5 of the *Protection of the Environment Administration Act 1991*.

[2] Section 4 (1), definition of “Director-General”

Omit the definition.

[3] Section 69 Proof of certain matters not required

Omit “Director-General” from section 69 (a). Insert instead “Chairperson”.

[4] Sections 71 (1) and 92A (9)

Omit “Director-General” wherever occurring.

Insert instead “Chairperson of the EPA”.

3.2 Pesticides Act 1999 No 80

Sections 102, 105 (1) and 106 (1)

Omit “Director-General” wherever occurring.

Insert instead “Chairperson”.

3.3 Protection of the Environment Administration Regulation 2007

Clause 21 Inspection of register

Omit “Director-General” from clause 21 (2). Insert instead “Chairperson”.

3.4 Protection of the Environment Operations (General) Regulation 2009

[1] Clauses 43 (2) (a) and (b) (iv) and 95A (2)

Omit “Director-General” wherever occurring. Insert instead “Chairperson”.

[2]-[4] (Repealed)

3.5 Public Sector Employment and Management Act 2002 No 43

Schedule 2 Executive positions (other than non-statutory SES positions)

Insert at the end of Part 3:

Chairperson of the Environment Protection Authority

3.6 Radiation Control Act 1990 No 13

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Chairperson of the Authority means the Chairperson of the Authority appointed under Division 3 of Part 5 of the *Protection of the Environment Administration Act 1991*.

[2] Section 25 Proceedings for offences

Omit “Director-General” from section 25 (4). Insert instead “Chairperson”.

[3] Section 29 Radiation Advisory Council

Omit “Director-General” from section 29 (2) (a).

Insert instead “Chairperson of the Authority”.

3.7 Radiation Control Amendment Act 2010 No 91

[1] Schedule 1 Amendment of Radiation Control Act 1990 No 13

Omit the definitions of **Department** and **Director-General** from item [2].

[2] Schedule 1 [4]

Insert “and of the Chairperson of the Authority” after “Authority” in proposed section 5A (2).

[3] Schedule 1 [9]

Omit the item.

[4] Schedule 1 [20]

Omit “Director-General” from proposed section 36 (2).

Insert instead “Chairperson of the Authority”.

3.8 Radiation Control Regulation 2003

[1] Clauses 3 (definition of “approved”), 16 (1), 17 (3), 19 (1) and (3), 23 (1) and (3), 27 (1), 30 (1), 30Q (1) and (3), 31 (2)-(5) and 33 (1)

Omit “Director-General” wherever occurring. Insert instead “Chairperson”.

[2] Clause 3 (1), definition of “Director-General”

Omit the definition.