

# Protection of the Environment Operations Act 1997 No 156

[1997-156]



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**  
[Protection of the Environment Operations Amendment \(Illegal Waste Disposal\) Act 2013 No 60](#), Sch 1 [1] (not commenced — to commence on 1.8.2015)
- **See also**  
[Electricity Network Assets \(Authorised Transactions\) Bill 2015](#)  
[Statute Law \(Miscellaneous Provisions\) Bill 2015](#)

### 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, recovery 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 regulations have prescribed the Marine Parks Authority and certain other authorities as the appropriate regulatory authorities for certain non-scheduled activities in certain areas. By virtue of this Act, the marine authority is given jurisdiction in connection with noise control notices and noise abatement directions relating to vessels (see sections 263 and 275).

## 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 2012 prevails** The provisions of, or made under, the *Marine Pollution Act 2012* (except Part 8), 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 caused 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 green offset scheme, green offset works or 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),
- (f1) in relation to an activity or work that causes, is likely to cause or has caused water pollution:
  - (i) the environmental values of water affected by the activity or work, and
  - (ii) the practical measures that could be taken to restore or maintain those environmental values,
- (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:

- (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.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

- (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:

(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.

#### **Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

#### **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:

- (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.

**Note—**

An offence against subsection (2) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (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 or varied (other than on the initiative of the EPA) 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*, and includes approval to carry out a project or infrastructure under Part 3A or Part 5.1 of that Act.

**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 in accordance with the notice 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 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:

- (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.

**Note—**

An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (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, certification or provision of information, and related offences**

- (1) **Monitoring** The conditions of a licence may require:
- (a) monitoring by the holder of the licence of the activity or work authorised, required 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:

- (a) in the case of a corporation—\$1,000,000, or
- (b) in the case of an individual—\$250,000.

(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, by another person approved by that authority or by a person prescribed by the regulations, as correct and that states all or any of the following:

- (a) the extent to which the conditions of the licence, or any provisions of the regulations applicable to the activity or work authorised, required or controlled by the licence, have or have not been complied with,
- (b) particulars of any failure to comply with the conditions or any such regulations,
- (c) the reasons for any failure to comply with the conditions or any such regulations,
- (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.

(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.

**Note—**

An offence against subsection (2) or (4) committed by a corporation is an offence attracting special executive

liability for a director or other person involved in the management of the corporation—see section 169.

### **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 schemes for economic measures and environmental monitoring programs**

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

- (a) tradeable emission schemes, or
- (b) green offset schemes or works, or
- (c) other schemes involving economic measures, or
- (d) environmental monitoring programs,

as referred to in Part 9.3, 9.3A, 9.3B or 9.3C.

**Note—**

Conditions relating to tradeable emission schemes or green offset schemes or works may also be attached to licences by the regulations (see Parts 9.3A and 9.3B).

### **70 Conditions for financial assurances**

The conditions of a licence, including the conditions of the suspension, revocation or

surrender of a licence, may require the holder or former 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, storage, handling, transportation, treatment, processing, recovery, 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 storage, 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, recovery, 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, including the conditions of the suspension, revocation or surrender of a licence, may require:



- (a) the holder of the licence to submit to the appropriate regulatory authority a closure plan in relation to the premises to which the licence applies or applied, and
  - (b) the last licensee to implement a closure plan approved by the appropriate regulatory authority.
- (2) A closure plan in relation to premises that is required to be submitted to an appropriate regulatory authority under the conditions of a licence must:
- (a) specify the steps taken (or to be taken) in closing, stabilising or rehabilitating the premises and the time-frame for doing so, and
  - (b) provide for a post-closure monitoring and maintenance program, and
  - (c) identify any proposed future uses of the premises, and
  - (d) 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 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 5 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.
- (4A) The EPA must audit, on an industry wide or regional basis, compliance with licence requirements under this Act and whether such requirements reflect best practice in relation to the matters regulated by the licences.
- (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.
- (3A) A licence may be revoked during the currency of a suspension.
- (4) The appropriate regulatory authority is not required to give the holder of a licence notice of the authority's intention to suspend or revoke the licence (whether with or without conditions imposed under section 81) before giving a notice under subsection (2).
- (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,
  - (e1) the holder is liable to pay a contribution in respect of waste under section 88 and has failed to pay the contribution 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.
- (1B) Without limiting the grounds for refusal, an appropriate regulatory authority may refuse an application for surrender of a licence relating to a scheduled activity if it is of the opinion that:
- (a) there will be an ongoing environmental impact arising from the activity after the activity ceases to be carried on, and
  - (b) it is appropriate to manage that impact through conditions of the licence.
- (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) (Repealed)

### **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 \$1,000,000 or more (in the case of a corporation) or \$250,000 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) the person's record of compliance with the environment protection legislation,
- (d) if the person is a body corporate, the record of compliance with the environment protection legislation of any director or other person concerned in the management of the body corporate,
- (e) whether, in the opinion of the appropriate regulatory authority, the management of the activities or works that are or are to be authorised, required or regulated under the relevant licence are not or will not be in the hands of a technically competent person,
- (f) whether, in the opinion of the appropriate regulatory authority, the person is of good repute, having regard to character, honesty and integrity,
- (g) if the person is a body corporate, whether, in the opinion of the appropriate regulatory authority, a director or other person concerned in the management of the body corporate is of good repute, having regard to character, honesty and integrity,
- (h) whether the person, in the previous 10 years, has been convicted in New South Wales or elsewhere of an offence involving fraud or dishonesty,
- (i) if the person is a body corporate, whether a director or other person concerned in the management of the body corporate has, in the previous 10 years, been convicted in New South Wales or elsewhere of an offence involving fraud or dishonesty,
- (j) whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
- (k) if the person is an individual, whether he or she is or was a director or person concerned in the management of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years,

- (l) if the person is a body corporate, whether the body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years,
  - (m) whether the person has demonstrated to the EPA the financial capacity to comply with the person's obligations under the licence or the proposed licence,
  - (n) whether the person is in partnership, in connection with activities that are subject to a licence or licence application, with a person whom the appropriate regulatory authority does not consider to be a fit and proper person under this section,
  - (o) any other 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) If an appeal is made against a decision of the appropriate regulatory authority to vary, suspend or revoke a licence, to approve or refuse the surrender of a licence subject to conditions, or to attach any new conditions to, or vary any conditions of, a suspension, revocation or surrender of a licence and the Land and Environment Court directs that the decision is stayed, the decision does not operate until the stay ceases to have effect or the Land and Environment Court confirms the decision or the appeal is withdrawn, 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) (Repealed)

## **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 operates from the day the notice is given or from such later day as the notice specifies.
- (2A) If an appeal is made against a notice under this section and the Land and Environment Court directs that the notice is stayed, the notice does not operate until the stay ceases to have effect or the Land and Environment Court confirms the notice or the appeal is withdrawn, whichever first occurs.
- (3) A person who contravenes the requirements of a notice under this section is guilty of an offence.

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.

### **Note—**

An offence against subsection (3) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

## **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) any matters the authority thinks necessary to facilitate the implementation of a waste strategy in force under the [Waste Avoidance and Resource Recovery Act 2001](#).
- (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 facility**

- (1) This section applies to waste facilities that are required to be licensed under this Chapter, but it does not apply to a facility that the EPA determines is used solely for the purposes of re-using, recovering, recycling or processing waste other than liquid waste.
- (2) The occupier of a waste facility to which this section applies 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) An occupier who fails to pay the whole or any part of the contribution payable by the occupier under this section:
- (a) in the manner (if any) prescribed by the regulations or as otherwise directed by the EPA by notice in writing given to the occupier, or
  - (b) within the time or at such intervals as prescribed by the regulations, or within the time or at such intervals as may be otherwise directed by the EPA by notice in writing given to the occupier,

is guilty of an offence.

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.
- (4) (Repealed)
- (5) The regulations may:
- (a) provide for contributions to be calculated on such basis (including such estimates), and in accordance with such factors, as may be specified or described 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, recovered or processed), 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 or any unpaid portion of the 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.

(8) In this section, **liquid waste** has the same meaning as it has in Schedule 1.

## **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 owner or 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:

- (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.

**Note—**

An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

## 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:

- (a) extend the time for payment of the fee, on the application of a person to whom subsection (2) applies, or
  - (b) waive payment of the whole or any part of the fee, on the authority's own initiative or on the application of a person to whom subsection (2) applies.
- (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.

**Note—**

Section 110 (5) provides that a fee is not payable for the variation of an environment protection notice under this Chapter.

## **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 (including a condition of a surrender of a licence) or an exemption given under this Act or the regulations, 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, re-use, recovery, recycling, processing, storage or disposal of any waste or other substance,
  - (i) preparing and carrying out a plan of action to control, prevent or minimise pollution or waste,
  - (j) reviewing the carrying out of an activity.
- (3A) **Water pollution considerations** The appropriate regulatory authority, when determining the action to be specified in a notice relating to an activity that causes, is likely to cause or has caused water pollution, must consider:
- (a) the environmental values of water affected by the activity, and
  - (b) the practical measures that could be taken to restore or maintain those environmental values, and
  - (c) 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 section.
- (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:

(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.

### **Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

## **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 notices or variations**

(1) A prevention notice, or a variation of a prevention notice, operates from the day the notice or notice of the variation is given or from such later day as the notice specifies.

(2) If an appeal is made against a prevention notice or the variation of a prevention notice and the Land and Environment Court directs that the notice is stayed, the notice or variation does not operate until the stay ceases to have effect or the Land and Environment Court confirms the notice or the appeal is withdrawn, 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:

(a) extend the time for payment of the fee, on the application of a person to whom subsection (2) applies, or

(b) waive payment of the whole or any part of the fee, on the authority's own initiative or on the application of a person to whom subsection (2) applies.

- (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.

**Note—**

Section 110 (5) provides that a fee is not payable for the variation of an environment protection notice under this Chapter.

## **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:

- (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.

### Note—

An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

## 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 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.
- (8) **Recovery of costs relating to charge** A regulatory authority or public authority that lodges or registers a compliance cost notice under section 106 may, by notice in writing, require the person to whom the compliance cost notice was given to pay all or

any of the reasonable costs and expenses incurred by the authority in respect of the lodgment or registration of the compliance cost notice and the registration of any resulting charge (including the costs of discharging the charge). The regulatory authority or public authority may recover any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

## **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 Minister or by the regulatory authority or public authority that gave it.
- (5) A fee is not payable for the variation of an environment protection notice under this Chapter.

### **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:

- (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.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

### **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:

- (a) in the case of a corporation—\$1,000,000, or
- (b) in the case of an individual—\$250,000.

**Note—**

An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

## 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.

**Note—**

An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (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.

#### 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.

**Note—**

An offence against subsection (1) or (2) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

## **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.

**Note—**

An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

(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 \$5,000,000 for an offence that is committed wilfully or \$2,000,000 for an offence that is committed negligently, or
- (b) in the case of an individual—to a penalty not exceeding \$1,000,000 or 7 years' imprisonment, or both, for an offence that is committed wilfully or \$500,000 or 4 years' imprisonment, or both, for an offence that is committed negligently.

## **Part 5.3 Water pollution**

### **120 Prohibition of pollution of waters**

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

**Note—**

An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.



(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 \$1,000,000 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 \$250,000 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.

(1A) Subsection (1) applies only to emissions (**point source emissions**) released from a chimney, stack, pipe, vent or other similar kind of opening or release point.

(2) 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 if:

- (a) in the case of point source emissions—neither a standard of concentration nor a rate has been prescribed for the emissions for the purposes of subsection (1), or
- (b) the emissions are not point source emissions.

(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 \$1,000,000 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 \$250,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the

offence continues.

**Note 1—**

An offence against section 124, 125, 126 or 128 committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

**Note 2—**

An offence against section 129 committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

## **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.

## **Division 3 Domestic air pollution**

### **135A Definitions**

In this Division:

**chimney** means a chimney, flue, pipe or other similar means of conveying smoke emitted inside residential premises to the outside.

**excessive smoke** means the emission of a visible plume of smoke from a chimney for a continuous period of not less than 10 minutes, including a period of not less than 30 seconds when the plume extends at least 10 metres from the point at which the smoke is emitted from the chimney.

**residential premises** means premises used wholly or partly as a residence.

### **135B Smoke abatement notices**

- (1) If it appears to an authorised officer of an appropriate regulatory authority that is a local authority that excessive smoke is being, or has at any time within the past 7 days been, emitted from a chimney on or in residential premises, the officer may give the person whom the officer believes to be the occupier of the premises a smoke abatement notice directing the person to ensure that excessive smoke is not emitted from the chimney at any time after 21 days following the giving of the notice.
- (2) A smoke abatement notice is to be in writing.
- (3) A smoke abatement notice ceases to have effect 6 months after the day on which it is given or when it is revoked, whichever occurs first.
- (4) This section does not apply to a chimney that is in or on an incinerator or is used only in relation to smoke originating from outside a residence.

### **135C Contravention of smoke abatement notices**

- (1) A person to whom a smoke abatement notice has been given must not, without reasonable excuse, fail to comply with the notice while the notice remains in force.

Maximum penalty: 30 penalty units.

- (2) A smoke abatement notice does not prevent the emission of smoke that is not excessive smoke.
- (3) In any proceedings for an offence under this section, a document signed by the authorised officer of an appropriate regulatory authority who issued a smoke abatement notice certifying that the officer had, at a specified time and place:
  - (a) observed a plume of smoke being emitted from a chimney on or in premises specified in the certificate for a continuous period of not less than 10 minutes, and
  - (b) observed during that period a plume of smoke extending at least 10 metres from the point at which the smoke was emitted from the chimney for a period of not less than 30 seconds,

is evidence of the matters so certified, unless the contrary is proved.

### **135D Revocation of smoke abatement notices**

A smoke abatement notice may be revoked by the appropriate regulatory authority for which the person who gave the notice is an authorised officer.

## **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 \$1,000,000 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 \$250,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues.

**Note—**

An offence against section 136, 137, 139 or 140 committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

## **Part 5.6 Land pollution and waste**

### **Division 1 Preliminary**

#### **142 Definition**

In this Part:

**land** does not include waters.

### **Division 2 Land pollution**



#### **142A Pollution of land**

- (1) A person who pollutes land is guilty of an offence.

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.

#### **Note—**

An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (2) In this section:

***pollute land*** includes cause or permit any land to be polluted.

#### **142B Defence of authority conferred by regulation**

- (1) The regulations may, for the purposes of this Division, regulate the carrying out of an activity that pollutes land.
- (2) It is a defence in proceedings for an offence under this Division 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.

#### **142C Defence of authority conferred by licence**

It is a defence in proceedings for an offence under this Division 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 land were not contravened.

#### **142D Defences relating to pesticides and fertilisers and other substances**

- (1) It is a defence in proceedings for an offence under this Division if the person establishes that the substance placed in or on, or otherwise introduced into or onto, land is any of the following:
- (a) a pesticide (within the meaning of the [Pesticides Act 1999](#)) placed in or on, or otherwise introduced into or onto the land, in the course of being used within the

meaning of that Act,

- (b) a fertiliser, liming material or trace element product within the meaning of the *Fertilisers Act 1985* that may lawfully be sold as such,
- (c) non-hazardous agricultural or crop waste, including stock feed made solely from such waste,
- (d) manure,
- (e) virgin excavated natural material,
- (f) biosolids or any other substances prescribed by the regulations for the purposes of this section.

(2) Words and expressions used in this section have the meanings prescribed by the regulations.

#### **142E Defences relating to unlicensed landfills**

It is a defence in proceedings for an offence under this Division if the person establishes that a substance was placed in or on, or otherwise introduced into or onto, land that was an unlicensed landfill site notified to the EPA in accordance with, and operated in accordance with, any requirements of the regulations.

### **Division 3 Waste offences**

#### **143 Unlawful transporting or depositing of waste**

(1) **Offence** If a person transports waste to a place that cannot lawfully be used as a waste facility for that waste, or causes or permits waste to be so transported:

- (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:

- (a) in the case of a corporation—\$1,000,000, or
- (b) in the case of an individual—\$250,000.

#### **Note—**

An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

(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.

#### **144 Use of place as waste facility without lawful authority**

- (1) A person who is the owner or occupier of any place and who uses the place, or causes or permits the place to be used, as a waste facility without lawful authority is guilty of an offence.

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.

#### **Note—**

An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (2) In any proceedings for an offence under this section the defendant bears the onus of proving that there is lawful authority to use the place concerned as a waste facility.

#### **144AA False or misleading information about waste**

- (1) A person who supplies information about waste to another person in the course of dealing with the waste, being information that is false or misleading in a material respect, is guilty of an offence.

It is a defence in any proceedings against a person for an offence under this subsection if the person establishes that the person took all reasonable steps to ensure that the information was not false or misleading in a material respect.

Maximum penalty:

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

#### **Note—**

An offence under subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

- (2) A person who supplies information about waste to another person in the course of dealing with the waste, being information that the person knows is false or misleading in a material respect, is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$500,000, or

(b) in the case of an individual—\$240,000 or imprisonment for 18 months, or both.

(2A) If the court is satisfied that a person charged with an offence under subsection (2) is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1), the court may find the person guilty of the offence under subsection (1), and the person is liable to punishment accordingly.

(2B) Proceedings for an offence under subsection (2) may not be dealt with before the Local Court despite section 215.

(3) In this section, information is taken to be supplied to a person **in the course of dealing with waste** if it is supplied:

(a) in the course of an activity relating to the sale or disposal of waste, or

(b) in the course of an activity relating to the storage, transport, handling, deposit, transfer, processing, recycling, recovery, re-use or use of the waste.

(4) In this section, **information about waste** means information about any of the following:

(a) the type, classification, characteristics, composition or quantity of the waste,

(b) the actual or proposed storage, transport, handling, deposit, transfer, disposal, processing, recycling, recovery, re-use or use of the waste,

(c) the hazards or potential harm to the environment or human health associated with the waste or an activity referred to in paragraph (b).

(5) In this section, **information** includes a record containing information.

(5A) In this section, **supply information** includes cause or permit information to be supplied.

(6) Proceedings for an offence against this section may be instituted only by the EPA.

#### **144AB Repeat waste offenders**

(1) For the purposes of this section, a **waste offence** is an offence against any of the following provisions of this Act:

(a) section 120 (1) (where waters are polluted by waste),

(b) section 142A (1),

(c) section 143 (1),

(d) section 144 (1).

(2) A person commits an offence against this section if the person is an individual who:

- (a) has been convicted of a waste offence, and
- (b) commits a waste offence on a separate subsequent occasion within 5 years after that conviction.

Maximum penalty: The maximum monetary penalty provided by this Act for the commission of the waste offence by an individual or imprisonment for 2 years, or both.

- (3) A reference in this section to a conviction for a waste offence includes a conviction before or after the commencement of this section and a conviction for an offence against this section.
- (4) If the court is satisfied that a person charged with an offence against this section is not guilty of that offence but is satisfied on the evidence that the person is guilty of the waste offence to which the charge relates, the court may find the person guilty of the waste offence, and the person is liable to punishment accordingly.
- (5) Proceedings for an offence against this section may not be dealt with before the Local Court despite section 215.

**144AC Use of approved GPS tracking device required by EPA for waste transportation vehicles**

- (1) The EPA may, by notice in writing, require a person who is engaged in the transportation of waste to ensure that:
  - (a) approved GPS tracking devices are installed, used and maintained, in the manner specified in the notice, on any motor vehicles that are used by the person (or an employee, subcontractor or agent of the person) to transport waste, and
  - (b) such devices are not tampered with.
- (2) A person who does not comply with a notice given to the person under subsection (1) is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
  - (b) in the case of an individual—100 penalty units.
- (3) In this section:

***approved GPS tracking device*** means a device of a kind approved by the EPA that uses the Global Positioning System to keep track of the location of a motor vehicle.

**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: 20 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 prosecutor within 28 days after service of the summons or court attendance notice 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 composition and quantity of litter, 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.

#### **146F Application of Part to State waters**

This Part extends to State waters within the meaning of the *Marine Pollution Act 2012*, but not so as to make a person liable to be punished for both:

- (a) an offence under this Part, and
- (b) an offence under the *Marine Pollution Act 2012* or the regulations under that Act.

### **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, immediately after the person becomes aware of the incident, notify each relevant 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, immediately 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 each relevant authority.
- (3A) **Duty of employer to notify** Without limiting subsection (2), an employer who is notified of an incident under subsection (3) or who otherwise becomes aware of a pollution incident which is related to an activity of the employer, must, immediately after being notified or otherwise becoming aware of the incident, notify each relevant authority of the incident and all relevant information about it.
- (4) **Duty of occupier of premises to notify** The occupier of the premises on which the incident occurs must, immediately after the occupier becomes aware of the incident, notify each relevant 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, immediately, 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.

(7) (Repealed)

(8) **Meaning of “relevant authority”** In this section:

**relevant authority** means any of the following:

- (a) the appropriate regulatory authority,
- (b) if the EPA is not the appropriate regulatory authority—the EPA,
- (c) if the EPA is the appropriate regulatory authority—the local authority for the area in which the pollution incident occurs,
- (d) the Ministry of Health,
- (e) the WorkCover Authority,
- (f) Fire and Rescue NSW.

#### **149 Manner and form of notification**

- (1) If the regulations prescribe the manner or form of notifying pollution incidents under section 148, 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 section 148.

#### **150 Relevant information to be given**

- (1) The relevant information about a pollution incident required under section 148 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, if known,
  - (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, if known,

(f) other information prescribed by the regulations.

- (2) The information required by this section is the information known to the person notifying the incident when the notification is required to be given.
- (3) If the information required to be included in a notice of a pollution incident by subsection (1) (c), (d) or (e) is not known to that person when the initial notification is made but becomes known afterwards, that information must be notified in accordance with section 148 immediately after it becomes known.

### **151 Incidents not required to be reported**

- (1) A person is not required to notify a pollution incident under section 148 if the person is aware that the incident has already come to the notice of each person or authority required to be notified.
- (2) A person is not required to notify a pollution incident under section 148 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.

### **151A EPA may require other notification of pollution incidents**

- (1) This section applies to the occupier of premises where a pollution incident has occurred in the course of an activity so that material harm to the environment is caused or threatened.
- (2) The EPA may direct a person to whom this section applies to notify such other persons of the incident as the EPA requires.
- (3) The direction is not required to be given in writing.
- (4) The direction may specify the manner or form of notifying the pollution incident and the information that must be provided.
- (5) The direction may require that an initial verbal notification be followed by written notification.
- (6) A person must not fail to comply with a direction given under this section.
- (7) (Repealed)
- (8) If a direction under this section is given to a person who is carrying out an activity, is engaged as an employee in carrying out an activity, or is the employer of such a person, the obligations under this section are in addition to, and not in derogation of, the obligations under section 148 (except as provided by section 151 (1)).

## **152 Offence**

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

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.

### **Note—**

An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

## **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 5.7A 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.

### **Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

### **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.

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

- (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.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

### **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.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

### **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.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

## **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:

(a) in the case of a corporation—\$1,000,000, or

(b) in the case of an individual—\$250,000.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

### **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:

(a) in the case of a corporation—\$1,000,000, or

(b) in the case of an individual—\$250,000.

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

### **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:

- (a) in the case of a corporation—\$1,000,000, or
- (b) in the case of an individual—\$250,000.

### **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:

- (a) in the case of a corporation—\$1,000,000, or
- (b) in the case of an individual—\$250,000.

### **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:

- (a) in the case of a corporation—\$1,000,000, or
- (b) in the case of an individual—\$250,000.

## 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 a vehicle of a kind capable of being registered within the meaning of the [Road Transport Act 2013](#)) 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 a vehicle of a kind capable of being registered within the meaning of the [Road Transport Act 2013](#).

## 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) (Repealed)

(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) (Repealed)
- (c) having the vehicle inspected by an authorised officer or a person authorised by such an officer, or
- (c1) having the vehicle tested or inspected by a person approved by the EPA for the purposes of section 207 (2) (c), or
- (d) returning from having any such work done or vehicle tested or inspected, without contravening subsection (4).

(7) (Repealed)

## **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:

(a) in the case of a corporation—\$1,000,000, or

(b) in the case of an individual—\$250,000.

### **Division 3**

**163, 164 (Repealed)**

### **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 Act 2013](#):

(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 Roads and Maritime Services.

(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 Act 2013* and any other Act, not to be registered under that Act.

### **166 Prohibition on registration**

(1) The EPA, by notice in writing to Roads and Maritime Services:

(a) may prohibit the registration under the *Road Transport Act 2013* 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:

(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.

**Note—**

An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.

**Note—**

**control equipment** is defined in the Dictionary.

**168 Ancillary offences**

(1) 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.

(2) A person does not commit an offence because of this section for any act or omission that is an offence under section 169B.

**169 Liability of directors etc for offences by corporation—offences attracting special executive liability**

(1) If a corporation contravenes, whether by act or omission, a provision of this Act attracting special executive liability, 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) (Repealed)
- (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.

(1A) For the purposes of this section, each of the following provisions attract **special executive liability**:

- (a) section 49 (2),
- (b) section 64 (1),
- (c) section 66 (2) or (4),

- (d) section 102,
- (e) section 113,
- (f) section 115 (1),
- (g) section 116 (1) or (2),
- (h) section 117 (1),
- (i) section 120 (1),
- (j) section 124,
- (k) section 125,
- (l) section 126,
- (m) section 128,
- (n) section 142A (1),
- (o) section 143 (1),
- (p) section 144 (1),
- (q) section 152.

- (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), (5) (Repealed)

**169A Liability of directors etc for offences by corporation—offences attracting executive liability generally**

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation:
  - (a) section 47 (1),
  - (b) section 48 (2),
  - (c) section 86 (3),
  - (d) section 91 (5),

- (e) section 97,
- (f) section 112,
- (g) section 129,
- (h) section 136,
- (i) section 137,
- (j) section 139,
- (k) section 140,
- (l) section 144AA (1),
- (m) section 153A,
- (n) section 153B (2),
- (o) section 153D,
- (p) section 153E,
- (q) section 153F,
- (r) section 155,
- (s) section 156,
- (t) section 167 (4).

(2) A person commits an offence against this section if:

- (a) a corporation commits an executive liability offence, and
- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
- (c) the person:
  - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
  - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,



- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**169B Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an offence referred to in section 169 or 169A.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal

liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

### **169C Evidence as to state of mind of corporation**

- (1) 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 state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the **state of mind** of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **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:

- (a) the appropriate regulatory authority reasonably suspects:
  - (i) that the holder of the licence has on one or more occasions contravened this Act, the regulations or the conditions of the licence, and
  - (ii) that the contravention or contraventions have caused, are causing or are likely to cause, harm to the environment, or
- (b) the appropriate regulatory authority reasonably suspects that an activity has been or is being carried out by the holder of the licence in an environmentally unsatisfactory manner (within the meaning of section 95).

### **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,
  - (b3) *Snowy Mountains Cloud Seeding Act 2004* 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, who is not a police officer, is to be provided with an identification card as an authorised officer or enforcement officer by the regulatory or other 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 to the person the officer's identification card, issued in accordance with this section, or, in the case of a police officer, the officer's police identification.
- (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.

#### **198A Power to disable intruder alarms**

- (1) An authorised officer may turn off or otherwise disable a building intruder alarm or a motor vehicle intruder alarm that is or has been sounding in breach of this Act or the regulations.
- (2) In this section:

**motor vehicle intruder alarm** means a device that:

- (a) incorporates or connects to a sounding device, and
- (b) on being triggered, causes the sounding device to emit sound,

being a device that is attached to or forms part of the motor vehicle for use as an intruder alarm, whether or not the device is also designed to be used for any other purpose.

#### **199 Search warrants**

- (1) **Application for search warrant** An authorised officer under this Act may apply to an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) for the issue of a search warrant if the authorised officer under this Act 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 officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) 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 under this Act named in the warrant:
  - (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under this Part.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.

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

***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.
- (5) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (6) The place and time at which a person may be required to attend under subsection (5) is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

### **203A Recording of evidence**

- (1) An authorised officer may cause any questions and answers to questions given under this Part to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.
- (3) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

## 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.
- (2A) **Proof of name and address** An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence under section 211 to fail to comply with any such request.
- (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 Magistrate or court officer to be dealt with according to law.
- (4) **Bail** A Magistrate or court officer before whom a person is taken under subsection (3) may make a bail decision under the [Bail Act 2013](#) in respect of the person.
- (4A) If the person has not been charged with an offence, the [Bail Act 2013](#) applies as if the person were accused of an offence.
- (4B) For the purpose of applying the [Bail Act 2013](#), a court officer has the same functions as an authorised justice under that Act.
- (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.
- (6) In this section:

**court officer** means an authorised officer under the [Criminal Procedure Act 1986](#).

## 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, and
- (d) extends, in sections 206 and 208, in relation to vessels situated within marine parks and aquatic reserves, to an authorised officer appointed under the [Marine Estate Management Act 2014](#) authorised by the relevant Ministers (within the meaning of that Act) 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 of any such substance for testing.

**207 Power to require articles to be tested or inspected**

- (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 or inspected, 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 or inspected 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 or inspected by or in the presence of an authorised officer, or
  - (c) to be tested or inspected at a place approved by the EPA by a person approved by the EPA.
- (3) Any such notice may be revoked or varied by a further notice given by an authorised officer.
- (4) The regulations may make provision for or with respect to the approval by the EPA of:
  - (a) the places at which articles are to be tested or inspected for the purposes of this section, and
  - (b) the persons who may carry out any such testing or inspection.
- (5) Without limiting subsection (4), the regulations may make provision for or with respect to the following:
  - (a) the issue, transfer, conditions, variation, surrender, review, suspension or revocation of an approval (including applications for the issue, transfer, variation or surrender of approvals) for the purposes of this section,
  - (b) the maximum fee that may be charged with respect to the testing or inspection of an article under subsection (2) (c).

## **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, or
  - (c) to move the vehicle or vessel to a suitable place for inspection or testing.
- (2) If a vehicle or vessel has been stopped in compliance with such a direction (other than a direction to move the vehicle or vessel to a suitable place for inspection or testing at a later time), 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.

(2A) If a direction is given to move a vehicle or vessel to a suitable place for inspection or testing and the inspection or testing is not to take place at the time, the direction must be given by notice in writing specifying the time, date and place for the inspection or testing.

(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 7.6A Seizure of motor vehicles or vessels used to commit repeat**

## **waste offences**

### **210A Definitions**

(1) In this Part:

**repeat waste offence** means an offence against section 144AB, and includes any such offence that there are reasonable grounds for believing has been committed.

(2) A power conferred by this Part to seize a motor vehicle or vessel includes a power to remove the motor vehicle or vessel from the place where it is found and to secure the motor vehicle or vessel from interference.

### **210B Seizure of motor vehicles or vessels used to commit repeat waste offences**

(1) The EPA may seize a motor vehicle or vessel that the EPA has reason to believe has been used for the purpose of committing a repeat waste offence.

(2) The State, the EPA or any other person is not liable for a seizure under this Part for which there was reasonable cause.

### **210C Forfeiture of motor vehicles or vessels by order of court**

(1) The Land and Environment Court may order the forfeiture of a motor vehicle or vessel that has been seized under this Part in connection with a repeat waste offence if the Court convicts a person of the offence.

(2) The Land and Environment Court is not to order the forfeiture of the motor vehicle or vessel if it is satisfied that the motor vehicle or vessel was used without the authority of its owner or that its owner did not have reasonable cause to suspect that the motor vehicle or vessel would be used to commit the offence.

(3) To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of the provision of this Act that provides for the maximum monetary penalty that may be imposed by a court in proceedings for a repeat waste offence.

### **210D Return of seized motor vehicle or vessel**

(1) If any motor vehicle or vessel has been seized under this Part in connection with a repeat waste offence and:

(a) proceedings for the offence are not commenced in the Land and Environment Court within 28 days after the seizure, or

(b) any such proceedings are commenced but are dismissed without a conviction for the offence, or

(c) the Land and Environment Court convicts a person of the offence but does not order the forfeiture of the motor vehicle or vessel,

the EPA must return the motor vehicle or vessel to its owner.

- (2) If a person disputes the seizure of a motor vehicle or vessel under this Part, the EPA may allow the motor vehicle or vessel to be delivered to the person disputing the seizure, subject to the person giving security to pay its value to the EPA should it be forfeited.
- (3) The EPA may, at any time, return a motor vehicle or vessel seized under this Part to its owner on such conditions (if any) as the EPA thinks fit. This subsection has effect whether forfeiture has taken place or not.
- (4) A motor vehicle or vessel that is seized is returned to its owner for the purposes of this Part if it is returned to the person who owns it or to a person from whose possession it was seized.
- (5) If the owner of the motor vehicle or vessel or any such person has died, the motor vehicle or vessel may be returned to the legal personal representative of the owner or person.

#### **210E Forfeited motor vehicles or vessels become the property of the State**

- (1) A motor vehicle or vessel ordered by the Land and Environment Court to be forfeited under this Part (or the proceeds of sale of any such motor vehicle or vessel) becomes the property of the State.
- (2) Any such motor vehicle or vessel may (subject to the regulations) be sold or disposed of in such manner as the EPA thinks fit.

### **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):

- (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.

## **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:
  - (a) the authority that gave the notice, or
  - (b) the authorised officer who gave the notice, or
  - (c) another authorised officer who is a member of staff of the authority that appointed the officer who gave the notice.

### **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 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).

### **212E Extraterritorial exercise of functions**

- (1) The Minister may enter into an arrangement with a Minister of another State or Territory providing for the exercise, in another State or Territory, by authorised officers or by officers of that State or Territory of functions under this Act or the regulations.
- (2) An authorised officer or an officer of another State or Territory may, in accordance with any such arrangement, exercise functions under this Act, but only to the extent that the matters concerned relate to the environment of this State.

## **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,
  - (c) *Environmentally Hazardous Chemicals Act 1985* 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.

- (3) **Limitation** Sections 217 (2) and 218 do not extend to proceedings under the *Environmentally Hazardous Chemicals Act 1985* or the regulations under that Act.

### **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 the Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If any such proceedings are brought in the Local Court, the maximum monetary penalty that the Court may impose for the offence is 1,000 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 court attendance notice 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 court attendance notice 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 [Criminal Procedure Act 1986](#) 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 (Use of place as waste facility without lawful authority), or
- (c1) an offence under section 142A (Pollution of land) or 144AA (False or misleading information about waste), or
- (c2) an offence arising under the *Environmentally Hazardous Chemicals Act 1985* to which this Chapter extends by virtue of section 213, 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.

### **218A Agents may institute proceedings**

Proceedings that may be instituted under section 217 or 218 may also be instituted on behalf of an appropriate regulatory authority or any other authority or person specified in those sections by an agent of the authority or person appointed for that purpose.

### **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 the 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.

### **237A Recovery of costs of registering charge on land**

- (1) A person (including a public authority) who registers a charge on land to which a restraining order applies under section 236 may, by notice in writing, require the

defendant to pay all or any of the reasonable costs and expenses incurred by the person in respect of the lodgment and registration of the charge (including the costs of discharging the charge).

- (2) The person may recover from the defendant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

### **237B Recovery of costs of lodging caveat**

- (1) A person (including a public authority) who lodges a caveat in respect of land to which a restraining order applies under section 237 may, by notice in writing, require the defendant to pay all or any of the reasonable costs and expenses incurred by the person in respect of the lodgment and registration of the caveat (including the costs of withdrawal of the caveat).
- (2) The person may recover from the defendant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

### **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) The 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 [Civil Procedure Act 2005](#). 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 the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).
- (3) In this section:

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

  - (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
  - (b) of transporting, storing or disposing of evidence,

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 the court is satisfied, on the balance of probabilities, represents 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.
- (2A) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.
- (3) In this section:

**monetary benefits** means monetary, financial or economic benefits.

**the court** does not include the 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 (including the circumstances of 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 (including the circumstances 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,
  - (e) order the offender to pay a specified amount to the Environmental Trust established under the [Environmental Trust Act 1998](#), or a specified organisation, for the purposes of a specified project for the restoration or enhancement of the environment or for general environmental purposes,
  - (f) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,



- (g) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (h) if the EPA is a party to the proceedings, order the offender to provide a financial assurance, of a form and amount specified by the court, to the EPA, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment.

The Local Court is not authorised to make an order referred to in paragraph (c), (d), (e) or (h).

- (1A) Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a **restorative justice activity**) that the offender has agreed to carry out. However, the Local Court is not authorised to make an order under this subsection.
- (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.
- (5) **Financial assurances** Sections 302–307 apply to a financial assurance provided by an offender under an order made under this section in the same way as they apply to a financial assurance given by a holder of a licence under a condition of a licence under Part 9.4.

## 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 or enforce undertakings**

### **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.

### **253A Enforcement of undertakings**

- (1) The EPA may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the EPA has a function under this Act.
  - (1A) Without limiting subsection (1), an undertaking that the EPA may accept under that subsection includes an undertaking to carry out a restorative justice activity.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the EPA. The consent of the EPA is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The EPA may apply to the Land and Environment Court for an order under subsection (4) if the EPA considers that the person who gave the undertaking has breached any of its terms.
- (4) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
  - (d) an order suspending or revoking any environment protection licence held by the person,

- (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to the environment caused by the breach,
- (f) an order requiring the person to make good any actual or likely harm to the environment caused by the breach,
- (g) any other order the Court considers appropriate.

## Part 8.5 Evidentiary provisions

### 254 Definitions

In this Part:

**designated officer** means an officer of the EPA designated in writing by the Chairperson 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 Chairperson 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 Chairperson 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,
  - (p) that a person was or was not appointed by the EPA as an analyst under this Act during a specified period,
  - (q) that information required to be furnished to a regulatory authority or authorised officer pursuant to this Act or the regulations was or was not received,
  - (r) that a document is a copy of part of, or an extract from, a register kept under this Act,
  - (s) that an amount is payable under this Act or the regulations by a specified person and has not been paid,
  - (t) that a person was served with a notice under this Act or the regulations,
  - (u) that a specified function of the EPA or Chairperson was delegated to a specified person under section 21 of the *Protection of the Environment Administration Act 1991* during a specified period.
- (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, on receipt of a container containing a sample submitted to the analyst by an authorised officer or any other person, the container was sealed and the seal securing the container was unbroken is admissible in evidence in any proceedings under this Act or the regulations as evidence:
  - (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the one obtained by the authorised officer or other person, and
  - (c) that the sample had not been tampered with before it was received by the analyst.
- (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 or proposes to carry on an activity at any premises or who uses or operates or proposes to use or operate 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 Commencement of operation of noise control notices**

- (1) A noise control notice operates from the day the notice is given or from such later day as the notice specifies.
- (2) If an appeal is made against a noise control notice and the Land and Environment Court directs that the notice is stayed, the notice does not operate until the stay ceases to have effect or the Land and Environment Court confirms the notice or the appeal is withdrawn, whichever first occurs.

### **267A Fee**

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

Maximum penalty (subsection (7)): 200 penalty units.

### **267B Compliance costs**

- (1) The appropriate regulatory authority that gives a noise control notice to a person may, by notice in writing (in this section referred to as a **compliance cost notice**), require the person to pay all or any reasonable costs 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) A regulatory authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (3) If the person given a compliance cost notice complies with the notice but was not the person who caused the noise, 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 noise.

## **Division 2 Noise abatement orders—Local Court**

### **268 Issue of noise abatement orders**

- (1) The occupier of any premises may apply to the Local Court for an order under this section.
- (2) The application is to be commenced by the issue of an application notice that alleges that the occupier's occupation of premises is affected by offensive noise.
- (3) The respondent to the application may be a person alleged to be making or contributing to the noise or the occupier of premises from which the noise is alleged to be emitted.
- (4) 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 either or both of the following orders:
  - (a) an order directing the respondent to abate the offensive noise within the time specified in the order,
  - (b) an order directing the respondent to prevent a recurrence of the offensive noise.
- (5) Part 4 of the *Local Court Act 2007* applies to an application under this section.

### **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 Commencement of operation of noise abatement order**

- (1) A noise abatement order operates from the day the order is made or from such later day as the order specifies.
- (2) If an appeal is made against a noise abatement order and the Land and Environment Court directs that the order is stayed, the order does not operate until the stay ceases to have effect or the Land and Environment Court confirms the order or the appeal is withdrawn, whichever first occurs.

### **272 Revocation or variation of noise abatement orders**

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

### **273 Costs**

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

### **274 (Repealed)**

## **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 (other than a direction given by an authorised officer appointed by the EPA) 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 (other than a direction given by an authorised officer appointed by the EPA) 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 any other person who is an **authorised officer** within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**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 rural fire brigade, the State Emergency Service or other accredited rescue unit.
- (2) This section has effect despite anything in this Act.
- (3) In this section:

**accredited rescue unit** has the same meaning as it has in the [State Emergency and Rescue Management Act 1989](#).

**rural fire brigade** has the same meaning as it has in the [Rural Fires Act 1997](#).

### **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.

(1A) The lodging of an appeal:

(a) in the case of an appeal against a decision to suspend or revoke a licence (whether with or without conditions)—does not operate to stay the decision appealed against, and

(b) in the case of an appeal against any other decision—does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.

(1B) For the avoidance of doubt, the Land and Environment Court has no jurisdiction to make an order staying a decision referred to in subsection (1A) (a).

(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**

- (1) 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.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice appealed against.

**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.
- (1A) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice appealed against.
- (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.

**289A Appeals regarding notices under section 144AC relating to use of approved GPS tracking devices**

- (1) A person given a notice under section 144AC 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.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice appealed against.

**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.
- (1A) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice or order appealed against.
- (2) Parts 2, 3 and 5 of the *Crimes (Local Courts Appeal and Review) Act 2001* (as applied by section 70 of the *Local Court Act 2007*) 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 the 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, or a green offset scheme, as referred to in Part 9.3B.
- (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 Parts 9.3A and 9.3B, 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 and green offsets are set out in Parts 9.3A and 9.3B, respectively.

### **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 9.3B Green offsets**

### **295M Definitions**

In this Part:

**licensed activity** means an activity authorised or controlled by a licence.

**participant** in a green offset scheme means:

- (a) a person who holds a green offset credit created under the scheme, or
- (b) a person who holds a licence that is subject to a condition that requires or authorises the person to participate in or contribute to the scheme, or a licence of a prescribed kind, or
- (c) a person (other than the holder of a licence) who arranges, implements or manages the scheme.

**participant** in green offset works means:

- (a) a person who holds a licence that is subject to a condition that requires or authorises the person to implement or arrange the works, or
- (b) a person (other than the holder of a licence) who implements or manages the works.

### **295N Licence conditions**

- (1) A condition of a licence may be imposed in relation to a green offset scheme or work even though:
  - (a) the scheme or work does not relate to the licensed premises, or
  - (b) the scheme or work does not relate to harm arising from the activity authorised or controlled by the licence,so long as the harm arises from the same kind of licensed activities and relates to the same types of pollutants or impacts that arise from the activity authorised or controlled by the licence.
- (2) The appropriate regulatory authority may not impose any such condition on a licence unless it is satisfied of the following:
  - (a) that the pollutants or impacts of the activity may not be otherwise prevented, controlled, abated or mitigated in a cost effective way by other measures under

the licence,

- (b) that the proposed green offset scheme or work is likely to result in at least the same or a more beneficial effect on the environment than the use of such other measures,
  - (c) that the effects and benefits of the proposed green offset scheme or work may be reliably estimated or ascertained by the authority,
  - (d) that the effects of the proposed green offset scheme or work are likely to occur wholly or partly in an area affected by the pollutants or impacts that arise from the activity,
  - (e) that the effects and benefits of the proposed green offset scheme or work are likely to last at least until the relevant impact of the activity is offset.
- (3) The regulations may, for the purpose of giving effect to a green offset scheme or works, impose conditions on licences.
  - (4) 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.
  - (5) This section does not prevent a condition from being attached to a licence by an appropriate regulatory authority in the manner provided by Chapter 3.

**Note—**

Under section 69, conditions may be imposed on licences implementing or otherwise relating to green offset schemes and green offset works.

**2950 Green offset schemes**

- (1) A green offset scheme is a scheme established for any or all of the following purposes:
  - (a) to carry out a specified program for the restoration or enhancement of the environment that is related to a licensed activity,
  - (b) to prevent, control, abate, mitigate or otherwise offset any harm to the environment arising (wholly or partly) from any licensed activity,
  - (c) to make good any environmental damage arising (wholly or partly) from a licensed activity.
- (2) A green offset scheme may include any or all of the following elements:
  - (a) contractual agreements or other arrangements between the person who arranges or implements or manages a green offset scheme and other participants in the scheme,



- (b) the creation of a market for entitlements to participate in a green offset scheme,
  - (c) the creation of green offset credits,
  - (d) the initial sale or allocation and further sale or allocation of green offset credits,
  - (e) provision for the holding of green offset credits by participants,
  - (f) the payment of contributions to the scheme for works under the scheme,
  - (g) the implementation of works by participants in the scheme,
  - (h) the payment of administrative costs relating to the scheme,
  - (i) the rights and duties of participants in the scheme,
  - (j) the trading of green offset credits or of any entitlements conferred by them (including restrictions on trading and any other dealings),
  - (k) safeguards against anti-competitive behaviour by participants in the scheme,
  - (l) the alteration, suspension, cancellation or forfeiture of green offset credits, or other rights or entitlements under the scheme,
  - (m) provision for a register of green offset credits and participants and for the circumstances in which register information may be disclosed.
- (3) A green offset scheme may include elements other than those mentioned in this section.
- (4) A green offset scheme may, subject to any applicable licence conditions:
- (a) be arranged or implemented or managed by the holder of a licence or another person, and
  - (b) involve both participants who are licence holders and who are not licence holders.

**295P Green offset works**

- (1) Green offset works are works established by or on behalf of the holder of a licence for any or all of the following purposes:
- (a) to prevent, control, abate, mitigate or otherwise offset any harm to the environment arising (wholly or partly) from any licensed activity,
  - (b) to make good any environmental damage arising (wholly or partly) from a licensed activity.
- (2) Green offset works may include any or all of the following elements:
- (a) contractual agreements or other arrangements between the holder of a licence

and a person who implements or manages the works,

(b) the implementation or arrangement of works by participants,

(c) the payment of administrative costs relating to the works,

(d) the rights and duties of participants in the works.

(3) Green offset works may form part of a green offset scheme.

(4) Green offset works may include elements other than those mentioned in this section.

(5) Green offset works may, subject to any applicable licence conditions, be implemented or managed by the holder of a licence or another person.

### **295Q Regulations relating to green offsets**

(1) The regulations may make provision for or with respect to green offset schemes or works, including provision for or with respect to the following matters:

(a) any of the elements referred to in section 295O or 295P,

(b) requirements for agreements or other arrangements relating to green offset schemes or works,

(c) criteria for activities that may be covered by a green offset scheme or works,

(d) inspection of premises at which a green offset scheme or works are carried out,

(e) the functions of a manager of a green offset scheme or works and accountability requirements for managers.

(2) The regulations must make provision for or with respect to the following matters:

(a) if appropriate criteria and methodologies are available, the criteria and methodologies for determining whether green offset schemes or works meet required outcomes specified in licence conditions,

(b) evaluation, on a periodic basis, of green offset schemes or works and publication of such evaluations.

(3) A green offset regulation is not repealed by the operation of Part 3 of the *Subordinate Legislation Act 1989*.

(4) A green offset 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 referred to in section 295O or 295P.

(5) 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.

- (6) 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 any relevant green offset scheme operates or relevant green offset works are located, 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.
- (7) For the purposes of this section, a **green offset regulation** is a regulation that contains only the following provisions:
  - (a) provisions that relate to green offset schemes or works (including any ancillary, consequential, savings or transitional provisions),
  - (b) provisions that deal with the citation and commencement of the regulation, or other provisions of a machinery nature.
- (8) This section does not limit the generality of section 295.

**295R Action that may be taken by EPA in relation to green offset schemes or works**

- (1) The regulations may authorise the EPA, or a person exercising functions under a green offset 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 green offset credits, or any entitlement that they confer,
  - (b) order the forfeiture of green offset credits to the EPA,
  - (c) cancel or suspend a person's right to participate in a green offset scheme, or impose conditions or other restrictions on the right.
- (2) The EPA may appoint a person to manage a green offset scheme or works on behalf of the EPA.
- (3) The EPA may manage or participate in a green offset scheme, including by holding, creating and trading in green offset credits, and may manage or participate in green offset works.

**295S Administrative costs**

- (1) The regulations may require participants in a green offset 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 regulations may require participants in green offset works to pay to the EPA a contribution towards the following:
- (a) the costs of management and administration of the works (including payment for services provided by any person or body providing or managing the works),
  - (b) the costs of ensuring compliance with the works,
  - (c) any other costs relating to the works.
- (3) The regulations may:
- (a) require a person to continue to make a contribution referred to in this section in respect of a green offset credit that has been forfeited until the 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.
- (4) The EPA is not required to pay a contribution referred to in this section.
- (5) This section does not apply to contributions for works under green offset schemes.

#### **295T Payment of contributions**

- (1) A contribution payable under this Part is recoverable by the EPA as a debt in a court of competent jurisdiction.
- (2) The regulations may provide for matters concerning the payment of a contribution payable under this Part.
- (3) The regulations may authorise the payment of a contribution payable under this Part 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).

#### **295U Green Offsets Fund**

- (1) There is to be established in the Special Deposits Account an account called the Green Offsets 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 for green offset schemes paid by the holders of licences, and
  - (b) all contributions paid by participants in a green offset scheme or works under a regulation referred to in section 295S, and
  - (c) the proceeds of any auction or other sale of credits, or any entitlement conferred by them, under a green offset scheme, and
  - (d) the proceeds of investment of money in the Fund, and
  - (e) any gift or bequest of money for the purposes of the Fund, and
  - (f) 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 green offset schemes, including management and administration of schemes and payment for works under the scheme and services provided by any person or body exercising functions under the scheme, and
  - (b) the costs of green offset works, including management of works and payment for services by any person or body providing or managing the works, and
  - (c) the costs of ensuring compliance with green offset schemes or the provision of green offset works, and
  - (d) such other costs relating to green offset schemes or works as the EPA directs to be paid out of the Fund.
- (5) 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).
- (6) A separate account is to be established in the Fund for each green offset scheme.
- (7) 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.
- (8) This section does not apply to or in respect of contributions, proceeds, money or costs payable in respect of a green offset scheme implemented or managed by a public authority and approved for the purposes of this subsection by the EPA.

- (9) The EPA may not approve a green offset scheme for the purposes of subsection (8) unless it is satisfied that appropriate provision is made for managing and auditing the funds of the scheme.

**295V 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 green offset scheme or in relation to green offset works 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 green offset schemes, and
  - (b) to exercise any other functions conferred on them by the EPA or by the regulations in connection with green offset schemes or works.
- (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.

**295W 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 on behalf of the EPA, in connection with the operation of a green offset scheme or works.
- (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 green offset credits, or other entitlements, are traded under a green offset 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.

**295X Application of [Duties Act 1997](#)**

A green offset credit, or any other entitlement, created under a green offset scheme is not dutiable property for the purposes of the [Duties Act 1997](#).

## Part 9.3C Environmental monitoring

### 295Y Environmental monitoring programs

- (1) The EPA may, on its own initiative, and must, at the direction of the Minister, investigate the need for a program (referred to in this Part as an **environmental monitoring program**) to monitor the impact on the environment and human health of activities or works authorised or controlled by licences, including pollution resulting from those activities or works.
- (2) If, after completing an investigation, the EPA is satisfied that an environmental monitoring program is required, it may develop and implement such a program.
- (3) If a proposed environmental monitoring program relates to licensed activities or works within the portfolio responsibility of the Minister for Primary Industries or the Minister for Transport, the Minister is to consult with that Minister about the development and implementation of the proposed program.
- (4) The EPA may enter into an arrangement with a person or body in respect of the exercise, by the person or body on behalf of the EPA, of the EPA's functions in relation to an environmental monitoring program.
- (5) The regulations may make provision for or with respect to environmental monitoring programs, including the requirements for the EPA to review and report on any such program.
- (6) The EPA is to obtain, and take into consideration, advice from one or more independent persons or bodies with relevant technical and health expertise as to the cost effectiveness of any environmental monitoring program.

### 295Z Environmental monitoring levies

- (1) The regulations may require a specified licence holder, or a specified class of licence holders, to pay to the EPA a contribution towards the costs of environmental monitoring programs (referred to in this Part as an **environmental monitoring levy**).
- (2) The amount of the environmental monitoring levy (or the manner in which it is to be calculated) and other matters concerning its payment, including interest payable for late payment, are to be set out in the regulations.
- (3) An environmental monitoring levy is recoverable by the EPA as a debt in a court of competent jurisdiction.
- (4) For the purposes of this Part, the **costs of environmental monitoring programs** include:
  - (a) the costs of investigating the need for, and the development, implementation,

operation and administration of, environmental monitoring programs (including any costs incurred by the EPA before the commencement of this Part), and

- (b) payments by the EPA for services provided by a person or body exercising functions in relation to environmental monitoring programs on behalf of the EPA.

#### **295ZA Environmental Monitoring Fund**

- (1) There is to be established in the Special Deposits Account an account called the Environmental Monitoring Fund (the **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) The following are to be paid into the Fund:
  - (a) any environmental monitoring levy paid by a licence holder,
  - (b) money advanced by the Treasurer for payment into the Fund,
  - (c) the proceeds of investment of money in the Fund,
  - (d) any gift or bequest of money for the purposes of the Fund,
  - (e) any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund.
- (4) The following are to be paid out of the Fund:
  - (a) the costs of environmental monitoring programs,
  - (b) such other costs relating to environmental monitoring programs as the EPA directs to be paid out of the Fund,
  - (c) the refund, in accordance with the regulations, of an environmental monitoring levy paid by a licence holder.
- (5) A separate account is to be established in the Fund for each environmental monitoring program.
- (6) The money in the Fund may be invested:
  - (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power on the EPA to invest the money, in any other manner approved by the Treasurer.

### **Part 9.3D Pollution incidents—analysis of risk**



### **295ZB Definition**

In this Part:

**relevant person**, in relation to a pollution incident, means:

- (a) the occupier of the premises at or from which the EPA reasonably suspects that the pollution incident occurred or is occurring, or
- (b) the person who is reasonably suspected by the EPA of having caused the pollution incident.

### **295ZC Conduct of health risk analysis**

- (1) If the EPA reasonably suspects that a pollution incident has occurred or is occurring, the EPA may request that the Chief Health Officer of the Ministry of Health undertake an analysis of the risk created by that incident to the health of any person or group of persons.
- (2) The Chief Health Officer may undertake such an analysis.
- (3) If such an analysis is undertaken, the Director-General of the Ministry of Health may, by notice in writing, require any or all of the relevant persons in relation to the pollution incident to pay any or all of the reasonable costs and expenses incurred by the Chief Health Officer in connection with that analysis.
- (4) The Chief Health Officer may make use of the staff or facilities of the Ministry of Health, or engage agents or consultants, for the purposes of carrying out an analysis under this section.

### **295ZD Conduct of environmental risk analysis**

- (1) If the EPA reasonably suspects that a pollution incident has occurred or is occurring, the EPA may undertake an analysis of:
  - (a) the nature and extent of the pollution incident, including actual or likely harm to the environment, and
  - (b) the actual or likely pollution resulting from the pollution incident.
- (2) If the EPA undertakes such an analysis, the EPA may, by notice in writing, require any or all of the relevant persons in relation to the pollution incident to pay any or all of the reasonable costs and expenses incurred by the EPA in connection with that analysis.
- (3) The EPA may engage agents or consultants for the purposes of carrying out an analysis under this section.

### **295ZE Recovery of costs of analysis**

- (1) If the Director-General of the Ministry of Health or the EPA issues a notice requiring payment under this Part, the Director-General or the EPA, as the case requires, may recover any unpaid amount specified in the notice as a debt in a court of competent jurisdiction.
- (2) The reasonable costs and expenses incurred by the Chief Health Officer of the Ministry of Health or the EPA in connection with an analysis are not recoverable if the person to whom a notice has been issued under this Part establishes to the satisfaction of the court that the nature and extent of the analysis conducted by the Chief Health Officer or the EPA was not reasonably necessary to respond to the potential public health or environmental concerns arising out of the pollution incident or was not otherwise in the public interest.

### **295ZF Recovery from responsible persons**

If the person given a notice requiring payment under this Part complies with the notice but was not the person who caused the pollution incident, the amount of the payment 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.

### **295ZG General provisions**

A notice may be given, and action may be taken, under this Part:

- (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 Part 4.2 with respect to the pollution incident.

## **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.

- (3) **Costs of assessment** The appropriate regulatory authority may require the holder or former holder of a licence who is required to give a financial assurance to provide to the authority an independent assessment of the cost of the relevant work or program for which the assurance is required.

### **301 Guidelines about 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 and in relation to the calculation of the amount of financial assurances required.

### **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 sections 169–169B, 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 such of the following matters as are applicable to the regulatory authority:
  - (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,
  - (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,
  - (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,
  - (j1) details of each penalty notice issued 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 this State, 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.

(2A) A person cannot be required:

(a) to produce in any court any document or other thing that has come into the person's possession, custody or control because of, or in the course of, the exercise of the person's functions under this Act or the *Protection of the Environment Administration Act 1991*, or

(b) to disclose to any court any information obtained in the exercise of the person's functions under this Act,

if the EPA certifies in writing that it is not in the public interest that the document or thing be produced or the information be disclosed.

(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, or formerly 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 and conditions**

(1) A notice given, or a condition of a licence imposed, under this Act or the regulations

that specifies a time by which, or period within which, the notice or condition must be complied with continues to have effect until the notice or condition 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 or a condition of a licence is revoked.
- (4) Nothing in this section affects the powers of a regulatory authority with respect to the enforcement of a notice or a condition of a licence.

### **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 information under section 72 of the *Government Information (Public Access) Act 2009*.
- (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 and licences**

- (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 or represents that the person holds a licence that permits certain activities.

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.
- (5A) Despite subsection (5), a condition of a licence may be inconsistent with a requirement of the same kind in a regulation, but only to the extent that the condition imposes a more stringent requirement than the regulation.
- (6) Section 12 of the *Food Act 2003* 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 Scheduled activities

(Section 5)

### Note—

Parts 1 and 2 of this Schedule list the activities that are scheduled activities for the purposes of this Act (see sections 48 and 49). Part 3 defines various words and expressions that are used in Parts 1 and 2.

## Part 1 Premises-based activities

### 1 Application of Part

- (1) For the purposes of section 48, any activity that is declared by this Part to be a scheduled activity is taken to be an activity for which a licence is required for the premises at which it is carried out (the activity is **premises-based**).

### Note—

Section 48 (2) provides that the occupier of premises at which such an activity is carried out is guilty of an offence unless he or she holds a licence that authorises the activity to be carried out at those premises.

- (2) However, such an activity is not premises-based if it is carried out by means of mobile plant.

### Note—

But see clause 47 by operation of which activities carried out by means of mobile plant are declared for the purposes of section 49.

### 2 Agricultural processing

- (1) This clause applies to the following activities:

**dairy processing**, meaning the processing of dairy produce as part of the production of milk, evaporated or condensed milk, buttermilk, cream, cheese, butter, ice-cream or similar products.

**general agricultural processing**, meaning the processing of agricultural produce (otherwise than as part of the manufacture of beer, wine, spirits, vinegar, acetic acid or similar products), but excluding:

(a) dairy processing and grape processing, and

(b) the processing of agricultural produce by means of mobile processing operations.

**grape processing**, meaning the processing of grapes (otherwise than by distilling) as part of the manufacture of wine, spirits, vinegar, acetic acid or similar products.

(2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

(3) In this clause:

**agricultural produce** includes seeds, fruit, vegetables and other plant material, but excludes dairy produce and grapes.

**process** includes crush, juice, grind, gin, mill, separate, wash, sort, coat, roll, press, steam, flake, comb, homogenise and pasteurise.

#### Table

Column 1 Activity	Column 2 Criteria
dairy processing	capacity to process more than 30 megalitres of dairy produce per year
general agricultural processing	capacity to process more than 30,000 tonnes of agricultural produce per year
grape processing	capacity to process more than 30,000 tonnes of grapes per year

### 3 Aquaculture and mariculture

(1) This clause applies to **aquaculture** and **mariculture**, each meaning the commercial production of marine, estuarine or freshwater organisms, including aquatic animals and plants but excluding oysters, being an activity that involves:

(a) supplemental feeding in tanks or artificial waterbodies, and

(b) the discharge of effluent, liquid sludge or other waste water into natural waterbodies, including discharge by means of a pipe, drain, drainage depression, canal or other form of conveyance.

(2) Each activity to which this clause applies is declared to be a scheduled activity.

(3) In this clause, **natural waterbody** includes any river, stream, lake, lagoon, swamp, wetland or watercourse (including any natural watercourse that has been artificially modified) or tidal waters (including the sea).

#### 4 (Repealed)

#### 5 Brewing and distilling

- (1) This clause applies to the activities of **brewing** and **distilling**, each meaning the production of alcohol or alcoholic products (otherwise than for the manufacture of wine, vinegar, acetic acid or similar products).
- (2) Each activity to which this clause applies is declared to be a scheduled activity if it has a capacity to produce more than 30 tonnes of alcohol or alcoholic products per day or 10,000 tonnes of alcohol or alcoholic products per year.

#### 6 Cement or lime works

- (1) This clause applies to the following activities:

**cement or lime handling**, meaning the handling of cement, fly ash, powdered lime (other than agricultural lime) or any other similar dry cement products.

**cement or lime production**, meaning the production of cement or lime:

- (a) by heating argillaceous or calcareous materials to produce cement clinkers, grinding clinkers or slags, or
- (b) by hydrating quicklime.

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

#### Table

##### Column 1

##### Activity

cement or lime handling

cement or lime production

##### Column 2

##### Criteria

capacity to handle more than 150 tonnes of cement or lime per day or 30,000 tonnes of cement or lime per year

capacity to produce more than 150 tonnes of cement or lime per day or 30,000 tonnes of cement or lime per year

#### 7 Ceramic works

- (1) This clause applies to the following activities:

**ceramic waste generation**, meaning ceramics production or glass production that involves having on site any prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).

**ceramics production**, meaning the production of ceramics (other than glass), including products such as bricks, tiles, pipes, pottery goods or refractories manufactured through a firing process.

**glass production**, meaning the production of glass by melting.

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
ceramic waste generation	involves having on site at any time more than 5 tonnes of prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne)
ceramics production	capacity to produce more than 150 tonnes of ceramics per day or 15,000 tonnes of ceramics per year
glass production	capacity to produce more than 150 tonnes of glass per day or 15,000 tonnes of glass per year

**8 Chemical production**

- (1) This clause applies to the following activities:

**agricultural fertiliser (inorganic) production**, meaning the commercial production of, or research into, inorganic (other than phosphate) plant fertilisers.

**agricultural fertiliser (phosphate) production**, meaning the commercial production of, or research into, phosphate plant fertilisers.

**ammonium nitrate production**, meaning the commercial production of, or research into, ammonium nitrate for any purpose, including fertilisers or explosives.

**battery production**, meaning the commercial production of, or research into, batteries containing acid or alkali and metal plates.

**carbon black production**, meaning the commercial production of, or research into, carbon black.

**chemical production waste generation**, meaning the commercial production of, or research into, any chemical substance that involves having on site any prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).

**dangerous goods production**, meaning the commercial production, blending, recovering or using of, or research into, dangerous goods (other than toxic substances, explosives or radioactive substances).

**explosives production**, meaning the commercial production of, or research into, explosives for industrial, extractive and mining purposes or for the production of ammunition, fireworks or fuel propellants, but not including:

- (a) ammonium nitrate production, or
- (b) the production of explosives for mining purposes, when carried out at a mine.

**paints/polishes/adhesives production**, meaning the commercial production of, or research into, paints, paint solvents, pigments, dyes, printing inks, industrial polishes, adhesives or sealants.

**pesticides and related products production**, meaning the commercial production (otherwise than by simple blending) of, or research into, pesticides, fungicides, herbicides, rodenticides, nematocides, miticides, fumigants or related products.

**pesticides and related products (toxic substances) production**, meaning the commercial production (otherwise than by simple blending) of, or research into, pesticides, fungicides, herbicides, rodenticides, nematocides, miticides, fumigants or related products that are toxic substances.

**petrochemical production**, meaning the commercial production of, or research into, petrochemicals and petrochemical products.

**pharmaceutical and veterinary products production**, meaning the commercial production of, or research into, pharmaceutical or veterinary products that are toxic substances.

**plastic resins production**, meaning the commercial production of, or research into, synthetic plastic resins.

**plastics reprocessing**, meaning the reprocessing of plastics otherwise than by simple melting and reforming.

**rubber products/tyres production**, meaning the commercial production of, or research into, rubber products or rubber tyres (including tyre retreading).

**soap and detergents production**, meaning the commercial production (otherwise than by simple blending) of, or research into, soaps or detergents (including any domestic, institutional or industrial soaps or detergent activity).

**soap and detergents (toxic substances) production**, meaning the commercial production of, or research into, soaps or detergents that contain toxic substances (including any domestic, institutional or industrial soaps or detergent activity).

***synthetic rubber production***, meaning the commercial production of, or research into, synthetic rubber.

***toxic substance production***, meaning the commercial production, blending, recovering or using of, or research into, toxic substances, but not including:

- (a) pesticides and related products (toxic substances) production, or
- (b) pharmaceutical and veterinary products production, or
- (c) soap and detergents (toxic substances) production.

(2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
agricultural fertiliser (inorganic) production	capacity to produce more than 20,000 tonnes of inorganic (other than phosphate) plant fertilisers per year
agricultural fertiliser (phosphate) production	capacity to produce more than 20,000 tonnes of phosphate plant fertilisers per year
ammonium nitrate production	capacity to produce more than 20,000 tonnes of ammonium nitrate per year
battery production	capacity to produce more than 30 tonnes of batteries (calculated by the weight of their metal content) per year
carbon black production	capacity to produce more than 5,000 tonnes of carbon black per year
chemical production waste generation	involves having on site at any time more than 5 tonnes of prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne)
dangerous goods production	capacity to produce, blend, recover or use more than 1,000 tonnes of dangerous goods per year
explosives production	any capacity to produce explosives
paints/polishes/adhesives production	capacity to produce more than 5,000 tonnes of paints, paint solvents, pigments, dyes, printing inks, industrial polishes, adhesives or sealants per year



pesticides and related products production	capacity to produce more than 2,000 tonnes of pesticides and related products per year
pesticides and related products (toxic substances) production	capacity to produce more than 1 tonne of pesticides and related products (toxic substances) per year
petrochemical production	capacity to produce more than 2,000 tonnes of petrochemicals per year
pharmaceutical and veterinary products production	capacity to produce more than 1 tonne of pharmaceutical and veterinary products per year
plastic resins production	capacity to produce more than 2,000 tonnes of plastic resins per year
plastics reprocessing	capacity to reprocess more than 5,000 tonnes of plastics per year
rubber products/tyres production	capacity to produce more than 5,000 tonnes of rubber products or tyres per year
soap and detergents production	capacity to produce more than 5,000 tonnes of soap and detergents per year
soap and detergents (toxic substances) production	capacity to produce more than 100 tonnes of soap and detergents per year
synthetic rubber production	capacity to produce more than 2,000 tonnes of synthetic rubber per year
toxic substance production	capacity to produce, blend, recover or use more than 1 tonne of toxic substances per year

## 9 Chemical storage

(1) This clause applies to the following activities:

**general chemicals storage**, meaning the storage or packaging in containers, bulk storage facilities or stockpiles of any chemical substance classified as a dangerous good in the *Transport of Dangerous Goods Code*, other than the following:

- (a) petroleum or petroleum products,
- (b) radioactive substances within the meaning of the [Radiation Control Act 1990](#).

**on-site generated chemical waste storage** means the storage of any chemical substance produced on site that is prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).

**petroleum products storage**, meaning the storage or packaging of petroleum or petroleum products in containers, bulk storage facilities or stockpiles.

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
general chemicals storage	capacity to store more than 20 tonnes (pressurised gases), 200 tonnes (liquefied gases) or 2,000 tonnes (chemicals in any other form)
on-site generated chemical waste storage	involves storing on site at any time more than 5 tonnes of any chemical substance produced on site that is prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne)
petroleum products storage	capacity to store more than 200 tonnes (liquefied gases) or 2,000 tonnes (chemicals in any other form)

**9A (Repealed)**

**10 Coal works**

- (1) This clause applies to **coal works**, meaning any activity (other than coke production) that involves storing, loading or handling coal (whether at any coal loader, conveyor, washery or reject dump or elsewhere) at an existing coal mine or on a separate coal industry site.
- (2) The activity to which this clause applies is declared to be a scheduled activity if:
- (a) it has a capacity to handle more than 500 tonnes per day of coal, or
  - (b) it has a capacity to store more than 5,000 tonnes of coal (not including storage within a closed container or building).

**11 Coke production**

- (1) This clause applies to **coke production**, meaning the production of coke from coal (including by quenching, cutting, crushing or grinding).
- (2) The activity to which this clause applies is declared to be a scheduled activity if:
- (a) it has a capacity to handle more than 500 tonnes per day of coke or coal, or
  - (b) it has a capacity to store more than 5,000 tonnes of coke or coal (not including storage within a closed container or building).

## 12 Composting

- (1) This clause applies to **composting**, meaning the aerobic or anaerobic biological conversion of organics into humus-like products:
  - (a) by methods such as bioconversion, biodigestion or vermiculture, or
  - (b) by size reduction of organics by shredding, chipping, mulching or grinding.
- (2) The activity to which this clause applies is declared to be a scheduled activity if:
  - (a) where it takes place inside the regulated area, or takes place outside the regulated area but receives organics from inside the regulated area (whether or not it also receives organics from outside the regulated area):
    - (i) it has on site at any time more than 200 tonnes of organics received from off site, or
    - (ii) it receives from off site more than 5,000 tonnes per year of non-putrescible organics or more than 200 tonnes per year of putrescible organics, or
  - (b) where it takes place outside the regulated area and does not receive organics from inside the regulated area:
    - (i) it has on site at any time more than 2,000 tonnes of organics received from off site, or
    - (ii) it receives from off site more than 5,000 tonnes per year of non-putrescible organics or more than 200 tonnes per year of putrescible organics.
- (3) For the purposes of this clause, 1 cubic metre of organics is taken to weigh 0.5 tonnes.

## 13 Concrete works

- (1) This clause applies to **concrete works**, meaning the production of concrete products, but does not include the production of pre-mixed concrete (concrete batching).
- (2) The activity to which this clause applies is declared to be a scheduled activity if it has a capacity to produce more than 30,000 tonnes per year of concrete products.

## 14 Container reconditioning

- (1) This clause applies to **container reconditioning**, meaning:
  - (a) the receiving from off site of containers (including metal, plastic or glass drums, bottles, cylinders or intermediate bulk containers) previously used for the transport or storage of and containing residual quantities of:
    - (i) substances of Class 1, 3, 4, 5 or 8 within the meaning of the *Transport of*

*Dangerous Goods Code, or*

(ii) substances to which Division 6.2 of the *Transport of Dangerous Goods Code* applies, and

(b) the reconditioning, recovering, treating or storing of such containers.

(2) The activity to which this clause applies is declared to be a scheduled activity if it involves having more than 100 such containers on site at any time.

### **15 Contaminated soil treatment**

(1) This clause applies to ***contaminated soil treatment***, meaning the on site or off site treatment of contaminated soil (including, in either case, incineration or storage of contaminated soil but excluding excavation for treatment at another site).

(2) The activity to which this clause applies is declared to be a scheduled activity if:

(a) in any case, it has the capacity to treat more than 1,000 cubic metres per year of contaminated soil received from off site, or

(b) where it treats contaminated soil originating exclusively on site, it has a capacity:

(i) to incinerate more than 1,000 cubic metres per year of contaminated soil, or

(ii) to treat (otherwise than by incineration) and store more than 30,000 cubic metres of contaminated soil, or

(iii) to disturb more than an aggregate area of 3 hectares of contaminated soil.

### **15A Contaminated groundwater treatment**

(1) This clause applies to ***contaminated groundwater treatment*** meaning the treatment of contaminated water.

(2) The activity to which this clause applies is declared to be a scheduled activity if it has the capacity to treat more than 100 megalitres per year of contaminated water.

### **16 Crushing, grinding or separating**

(1) This clause applies to ***crushing, grinding or separating***, meaning the processing of materials (including sand, gravel, rock or minerals, but not including waste of any description) by crushing, grinding or separating them into different sizes.

(2) The activity to which this clause applies is declared to be a scheduled activity if it has a capacity to process more than 150 tonnes of materials per day or 30,000 tonnes of materials per year.

## 17 Electricity generation

(1) This clause applies to the following activities:

**electricity works (wind farms)**, meaning the generation of electricity by means of wind turbines.

**general electricity works**, meaning the generation of electricity by means of electricity plant that, wherever situated, is based on, or uses, any energy source other than wind power or solar power.

**metropolitan electricity works (gas turbines)**, meaning the generation of electricity by means of electricity plant:

(a) that is based on, or uses, a gas turbine, and

(b) that is situated in the metropolitan area or in the local government area of Port Stephens, Maitland, Cessnock, Singleton, Wollondilly or Kiama.

**metropolitan electricity works (internal combustion engines)**, meaning the generation of electricity by means of electricity plant:

(a) that is based on, or uses, an internal combustion engine, and

(b) that is situated in the metropolitan area or in the local government area of Port Stephens, Maitland, Cessnock, Singleton, Wollondilly or Kiama.

(1A) However, this clause does not apply to the generation of electricity by means of electricity plant that is emergency stand-by plant operating for less than 200 hours per year.

(2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

### Table

**Column 1**

**Column 2**

**Activity**

**Criteria**

	is the subject of an approval granted under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> before the repeal of that Part (or under that Part as continued on after that repeal by or under Schedule 6A to that Act), or
electricity works (wind farms)	is the subject of a development consent (being a consent that relates to State significant development) granted by the Minister under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> (including by operation of clause 89 of Schedule 6 to that Act), or

**Note—**

This criteria covers development consent granted before 1 August 2005 (before the commencement of Part 3A of the *Environmental Planning and Assessment Act 1979*) and development consent granted after 1 October 2011 (after the repeal of that Part).

	was being carried out immediately before 1 December 2012 with a capacity to generate more than 30 megawatts of electrical power
general electricity works	capacity to generate more than 30 megawatts of electrical power
metropolitan electricity works (gas turbines)	capacity to burn more 20 megajoules of fuel per second
metropolitan electricity works (internal combustion engines)	capacity to burn more than 3 megajoules of fuel per second

## 18 Energy recovery

(1) This clause applies to the following activities:

**energy recovery from general waste**, meaning the receiving from off site of, and the recovery of energy from, any waste (other than hazardous waste, restricted solid waste, liquid waste or special waste).

**energy recovery from hazardous and other waste**, meaning the receiving from on site or off site of, and the recovery of energy from, hazardous waste, restricted solid waste, liquid waste or special waste.

(2) However, this clause does not apply to any of the following:

(a) the processing of contaminated soil,

- (b) container reconditioning,
  - (c) the recovery of gases that are dangerous goods of Class 2 within the meaning of the *Transport of Dangerous Goods Code*.
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if:
- (a) it meets the criteria set out in Column 2 of that Table, and
  - (b) an exemption granted under Part 9 of the *Protection of the Environment Operations (Waste) Regulation 2014* exempts the person carrying out the activity from the requirements of section 48 (2) as they apply to waste disposal (thermal treatment).
- (4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
energy recovery from general waste	involves processing more than 200 tonnes per year of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste)
energy recovery from hazardous and other waste	involves having on site at any time more than 200 kilograms of hazardous waste, restricted solid waste, liquid waste or special waste

**19 Extractive activities**

- (1) This clause applies to the following activities:
- land-based extractive activity**, meaning the extraction, processing or storage of extractive materials, either for sale or re-use, by means of excavation, blasting, tunnelling, quarrying or other such land-based methods.
  - water-based extractive activity**, meaning the extraction of extractive materials, either for sale or re-use, by means of dredging or other such water-based methods.
- (2) In this clause, **extractive materials** means clay, sand, soil, stone, gravel, rock, sandstone or similar substances that are not minerals within the meaning of the *Mining Act 1992*.
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

**Table**

**Column 1**

**Column 2**

**Activity**

**Criteria**

land-based extractive activity

involves the extraction, processing or storage of more than 30,000 tonnes per year of extractive materials

water-based extractive activity

involves the extraction of more than 30,000 cubic metres per year of extractive materials

**20 Helicopter-related activities**

- (1) This clause applies to a **helicopter-related activity**, meaning the landing, taking-off or parking of helicopters (including the use of terminals and the use of buildings for the parking, servicing or maintenance of helicopters), being an activity:
- (a) that has an intended use of more than 30 flight movements per week (where take-off and landing are separate flight movements), and
  - (b) that is conducted within 1 kilometre of a dwelling not associated with the landing, taking-off or parking of helicopters,
- but not including an activity that is carried out exclusively for the purposes of emergency aeromedical evacuation, retrieval or rescue.
- (2) The activity to which this clause applies is declared to be a scheduled activity.

**21 Irrigated agriculture**

- (1) This clause applies to **irrigated agriculture**, meaning the irrigation activity of an irrigation corporation within the meaning of the [Water Management Act 2000](#), but not including the irrigation activity of individual irrigators in the area of operations of any such irrigation corporation.
- (2) The activity to which this clause applies is declared to be a scheduled activity.

**22 Livestock intensive activities**

- (1) This clause applies to the following activities:
- animal accommodation**, meaning the accommodation of animals for the purposes of sale, auction or exchange or for transportation by road, rail or ship.
- bird accommodation**, meaning the accommodation of birds for commercial production.
- cattle, sheep or horse accommodation**, meaning the accommodation of cattle, sheep or horses in a confinement area for rearing or fattening (wholly or substantially)



on prepared or manufactured feed (excluding facilities for drought or similar emergency relief).

**dairy animal accommodation**, meaning the accommodation of animals for milk production.

**pig accommodation**, meaning the accommodation of pigs for commercial production.

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
animal accommodation	capacity to handle more than 50,000 cattle or 200,000 animals of any type (including cattle) per year
bird accommodation	capacity to accommodate more than 250,000 birds at any time
cattle, sheep or horse accommodation	capacity to accommodate more than 1,000 head of cattle, 4,000 sheep or 400 horses at any time
dairy animal accommodation	capacity to accommodate more than 800 animals at any time
pig accommodation	capacity to accommodate more than 2,000 pigs or 200 breeding sows at any time

**23 Livestock processing activities**

- (1) This clause applies to the following activities:

**general animal products production**, meaning the manufacture of products derived from the slaughter of animals occurring in plants producing products such as hides, adhesives, pet food, gelatine, fertiliser or meat products.

**greasy wool or fleece processing**, meaning the scouring, topping or carbonising of greasy wool or fleeces.

**rendering or fat extraction**, meaning the manufacture of products derived from the slaughter of animals occurring in rendering or fat extraction plants.

**slaughtering or processing animals**, meaning the slaughtering or processing of animals (including poultry and fish).

**tanneries or fellmongeries**, meaning the manufacture of products derived from the slaughter of animals occurring in tanneries or fellmongeries (that is, operations that process animal skins or other animal products to produce leather or other similar products).

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
general animal products production	capacity to produce more than 5,000 tonnes of animal products per year
greasy wool or fleece processing	capacity to process more than 200 tonnes of wool or fleece per year
rendering or fat extraction	capacity to produce more than 200 tonnes of tallow, fat or their derivatives or proteinaceous matter per year
slaughtering or processing animals	capacity to slaughter or process more than 750 tonnes live weight per year
tanneries or fellmongeries	capacity to process more than 2 tonnes of skins or hides per year

**24 Logging operations**

- (1) This clause applies to the following activities:

**access road construction**, meaning the construction of new access roads in connection with timber-getting in a compartment in a State forest or Crown timber land (within the meaning of the [Forestry Act 2012](#)).

**timber-getting**, meaning the cutting and removal of timber (being sawlogs or pulplogs) from a compartment in a State forest or Crown timber land (within the meaning of the [Forestry Act 2012](#)).

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

- (3) In this clause:

**land west of the Great Dividing Range** means the area shown on the map entitled “*Land west of the Great Dividing Range*”, published by the EPA and as in force from time to time, copies of which are held in the offices of the EPA.

**Note—**

A copy of the map is available on the EPA's website ([www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).

**Table**

Column 1	Column 2
Activity	Criteria
access road construction	when carried out otherwise than in a compartment in a timber plantation or on land west of the Great Dividing Range
timber-getting	<p>when carried out otherwise than in a compartment in a timber plantation or on land west of the Great Dividing Range where:</p> <p>(a) at least 20% of the compartment has a slope greater than 18 degrees above or below the horizontal, and</p> <p>(b) at least 30 timber stems (at least 40 centimetres in diameter at breast height) are removed from each hectare of the compartment when averaged over the net harvestable area of the compartment</p>

**25 Marinas and boat repairs**

(1) This clause applies to the following activities:

**boat construction/maintenance (dry/floating docks)**, meaning the use of dry docks or floating docks for the construction, repair and maintenance of vessels.

**boat construction/maintenance (general)**, meaning the use of facilities (whether water-based or land-based) for the construction, repair and maintenance of vessels (other than dry docks, floating docks and facilities not having frontage to a waterway).

**boat mooring and storage**, meaning the use of 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 and facilities not having frontage to a waterway).

(2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

(3) In this clause, **waterway** means any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea).

**Table**

<b>Column 1</b> <b>Activity</b>	<b>Column 2</b> <b>Criteria</b>
boat construction/maintenance (dry/floating docks)	capacity to handle vessels 25 metres or longer
boat construction/maintenance (general)	capacity to handle more than 5 vessels longer than 5 metres (excluding rowing boats, dinghies and other small craft) at any time
boat moorings and storage	capacity to handle more than 80 vessels (excluding rowing boats, dinghies and other small craft) at any time

## 26 Metallurgical activities

(1) This clause applies to the following activities:

**aluminium production (alumina)**, meaning the refinement or processing of mainly alumina to produce aluminium products.

**aluminium production (scrap metal)**, meaning the refinement or processing of mainly scrap aluminium to produce aluminium products.

**iron or steel production (iron ore)**, meaning the refinement or processing of mainly iron ore to produce iron or steel products.

**iron or steel production (scrap metal)**, meaning the refinement or processing of mainly scrap iron or steel to produce iron or steel products.

**metal coating**, meaning the coating of metal by any method (including spray painting, powder coating, enamelling, electroplating, anodising and galvanising, but not the coating of metal on vehicles or vessels).

**metal processing**, meaning the processing of metals by heating, rolling, melting or casting metal otherwise than in the course of some other activity to which this clause applies.

**metal waste generation**, meaning any activity that involves:

- (a) the refinement, processing or coating of metal, and
- (b) having on site any prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).

**non-ferrous metal production (ore concentrates)**, meaning the refinement or processing of mainly ore concentrates (including copper, zinc and lead ores, but not iron ore or alumina) to produce non-ferrous metal products.

***non-ferrous metal production (scrap metal)***, meaning the refinement or processing of mainly scrap metal (including copper, zinc and lead, but not iron, steel or aluminium) to produce non-ferrous metal products.

***scrap metal processing***, meaning the crushing, grinding, shredding or sorting (but not smelting) of scrap metal of any kind.

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
aluminium production (alumina)	capacity to process more than 10,000 tonnes of alumina per year
aluminium production (scrap metal)	capacity to process more than 10,000 tonnes of scrap metal per year
iron or steel production (iron ore)	capacity to process more than 10,000 tonnes of iron ore per year
iron or steel production (scrap metal)	capacity to process more than 10,000 tonnes of scrap metal per year
metal coating	capacity to process more than 10,000 tonnes of metal per year
metal processing	capacity to process more than 10,000 tonnes of metal per year
metal waste generation	involves having on site at any time more than 5 tonnes of prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne)
non-ferrous metal production (ore concentrates)	capacity to process more than 10,000 tonnes of ore concentrates per year
non-ferrous metal production (scrap metal)	capacity to process more than 10,000 tonnes of scrap metal per year
scrap metal processing	capacity to process more than 150 tonnes of scrap metal per day or 30,000 tonnes per year (if not carried out wholly indoors) or 50,000 tonnes per year (if carried out wholly indoors)

## 27 Mineral processing

(1) This clause applies to the following activities:

**mineral processing**, meaning the processing, or the commercial production or extraction, of ores (using methods including chemical, electrical, magnetic, gravity or physical-chemical).

**mineral waste generation**, meaning mineral processing that involves having on site any prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).

(2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

### Table

Column 1	Column 2
Activity	Criteria
mineral processing	capacity to process more than 150 tonnes of ore per day
mineral waste generation	involves having on site at any time more than 5 tonnes of prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne)

## 28 Mining for coal

(1) This clause applies to **mining for coal**, meaning the mining, processing or handling of coal (including tailings and chitter) at underground mines or open cut mines.

(2) The activity to which this clause applies is declared to be a scheduled activity if:

- (a) it has a capacity to produce more than 500 tonnes of coal per day, or
- (b) it has disturbed, is 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 or coal (including tailings and chitter).

## 29 Mining for minerals

(1) This clause applies to **mining for minerals**, meaning the mining, processing or handling of minerals (within the meaning of the [Mining Act 1992](#)), other than coal, at

mines.

- (2) The activity to which this clause applies is declared to be a scheduled activity if it has disturbed, is disturbing or will disturb a total surface area of more than 4 hectares of land (or, in the case of a gold mine, more than 1 hectare of land) by:
- (a) clearing or excavating, or
  - (b) constructing dams, ponds, drains, roads, railways or conveyors, or
  - (c) storing or depositing overburden, ore or its products or tailings.

### 30 Paper or pulp production

- (1) This clause applies to the following activities:

**paper or pulp production**, meaning the manufacturing of paper, paper pulp or pulp products.

**paper or pulp waste generation**, meaning a paper or pulp activity that involves having on site any prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

#### Table

Column 1	Column 2
Activity	Criteria
paper or pulp production	capacity to produce more than 30,000 tonnes per year (or, where 90% or more of the raw material used is recycled material and no bleaching or de-inking occurs, 70,000 tonnes per year) of paper, paper pulp or pulp products
paper or pulp waste generation	involves having on site at any time more than 5 tonnes of prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne)

### 31 Petroleum exploration, assessment and production

- (1) This clause applies to **petroleum exploration, assessment and production**, meaning the following:
- (a) exploratory activities to identify petroleum reserves,
  - (b) any testing or sampling carried out in relation to that exploration,

(c) the production of petroleum.

(2) However, this clause does not apply to any of the following activities if the activity is carried out on land other than land in an environmentally sensitive area of State significance:

(a) geological mapping and airborne surveying,

(b) sampling and coring using hand-held equipment,

(c) geophysical (including seismic) surveying and downhole logging,

(d) accessing of areas by vehicle that does not involve the construction of an access way such as a track or road,

(e) soil sampling by machinery,

(f) constructing, maintaining or using equipment to monitor subsidence, noise, groundwater or the weather,

(g) constructing, maintaining or using roads consistent with best practice industry standards as outlined in the document entitled *Managing urban stormwater: Soils and construction (Volume 2C: Unsealed roads)*, published by the Department of Environment and Climate Change, dated January 2008,

(h) recovering, obtaining or removing coal seam gas in the course of coal mining.

(3) The activity to which this clause applies is declared to be a scheduled activity.

(4) In this clause:

**environmentally sensitive area of State significance** has the same meaning as in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

**petroleum** has the same meaning as in the *Petroleum (Onshore) Act 1991*.

### 31A Petroleum products and fuel production

(1) This clause applies to **petroleum products and fuel production**, meaning the production 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) by any means including by refining, fermentation, esterification or blending.

**Note—**

Refining may occur in the processing of crude petroleum or shale oil, fermentation in the production of ethanol, esterification in the production of biodiesel and blending in the production of lubricants and fuels.

(2) However, this clause does not apply to the activity of blending a fuel with ethanol or



biodiesel if that activity is carried on at a petroleum fuel storage terminal, and the occupier of those premises is, at the time that activity is carried on, the holder of an environment protection licence that authorises the activity of petroleum products storage (within the meaning of clause 9 of this Schedule).

- (3) The activity to which this clause applies is declared to be a scheduled activity if there is capacity to produce more than 100 tonnes of petroleum products per year.

### **32 Printing, packaging and visual communications**

- (1) This clause applies to **printing, packaging and visual communications waste generation**, meaning any printing, packaging or visual communications activity that involves having on site any prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).
- (2) The activity to which this clause applies is declared to be a scheduled activity if it involves having on site at any time more than 5 tonnes of prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne).

### **33 Railway systems activities**

- (1) This clause applies to **railway systems activities**, meaning:
- (a) the installation, on site repair, on site maintenance or on site upgrading of track, including the construction or significant alteration of any ancillary works, or
  - (b) the operation of rolling stock on track.
- (2) However, this clause does not apply to any of the following:
- (a) an activity in a railway workshop (including the use of fuel burning equipment),
  - (b) re-fuelling of rolling stock,
  - (c) an activity at a railway fuel depot,
  - (d) repair, maintenance or upgrading of track away from the track site,
  - (e) an activity at a railway station building (including platforms and offices),
  - (f) loading of freight into or onto, and unloading of freight from, rolling stock,
  - (g) an activity at a freight depot or centre,
  - (h) operation of signalling, communication or train control systems.
- (3) The activity to which this clause applies is declared to be a scheduled activity.
- (4) For the purposes of subclause (1) (b), rolling stock that is operated on track is taken to be operated by the occupier of the land on which the track is situated.

**Note—**

Consequently, it is the occupier of that land, not the person having control of the rolling stock, that is required to be licensed under section 48 in respect of the operation of the rolling stock.

(5) In this clause:

**ancillary works** means any of the following:

- (a) over track structures,
- (b) earthworks,
- (c) cuttings,
- (d) drainage works,
- (e) track support,
- (f) fencing,
- (g) tunnels,
- (h) bridges,
- (i) level crossings.

**track** means railway track that forms part of, or consists of, a network of more than 30 kilometres of track, other than railway track that is used solely by railway vehicles that are themselves used solely for heritage purposes.

### 34 Resource recovery

(1) This clause applies to the following activities:

**recovery of general waste**, meaning the receiving of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste) from off site and its processing, otherwise than for the recovery of energy.

**recovery of hazardous and other waste**, meaning the receiving of hazardous waste, restricted solid waste or special waste (other than asbestos waste or waste tyres) from off site and its processing, otherwise than for the recovery of energy.

**recovery of waste oil**, meaning the receiving of waste oil from off site and its processing, otherwise than for the recovery of energy.

**recovery of waste tyres**, meaning the receiving of waste tyres from off site and their processing, otherwise than for the recovery of energy.

(2) However, this clause does not apply to the recovery of stormwater or the processing of any of the following:

- (a) contaminated soil,
  - (b) contaminated groundwater,
  - (c) sewage within a sewage treatment system (whether or not that system is licensed).
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if:
- (a) it meets the criteria set out in Column 2 of that Table, and
  - (b) either:
    - (i) less than 50% by weight of the waste received in any year requires disposal after processing, or
    - (ii) an exemption granted under Part 9 of the *Protection of the Environment Operations (Waste) Regulation 2014* exempts the person carrying out the activity from the requirements of section 48 (2) as they apply to waste disposal (application to land), waste disposal (thermal treatment), waste processing (non-thermal treatment) and waste storage.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
recovery of general waste	if the premises are in the regulated area: <ul style="list-style-type: none"> <li>(a) involves having on site at any time more than 1,000 tonnes or 1,000 cubic metres of waste, or</li> <li>(b) involves processing more than 6,000 tonnes of waste per year</li> </ul> if the premises are outside the regulated area: <ul style="list-style-type: none"> <li>(a) involves having on site at any time more than 2,500 tonnes or 2,500 cubic metres of waste, or</li> <li>(b) involves processing more than 12,000 tonnes of waste per year</li> </ul>
recovery of hazardous and other waste	involves having on site at any time more than 200 kilograms of waste
recovery of waste oil	involves processing more than 20 tonnes of waste oil per year or having on site at any time more than 2,000 litres of waste oil

recovery of waste tyres

involves having on site at any time (other than in or on a vehicle used to transport the tyres to or from the premises) more than 5 tonnes of waste tyres or 500 waste tyres, or  
involves processing more than 5,000 tonnes of waste tyres per year

### 35 Road construction

- (1) This clause applies to **road construction**, meaning the construction, widening or re-routing of roads, but does not apply to the maintenance or operation of any such road.
- (2) The activity to which this clause applies is declared to be a scheduled activity if it results in the existence of 4 or more traffic lanes (other than bicycle lanes or lanes used for entry or exit) for at least:
  - (a) where the road is classified, or proposed to be classified, as a freeway or tollway under the [Roads Act 1993](#):
    - (i) 1 kilometre of their length in the metropolitan area, or
    - (ii) 5 kilometres of their length in any other area, or
  - (b) where the road is classified, or proposed to be classified, as a main road (but not a freeway or tollway) under the [Roads Act 1993](#):
    - (i) 3 kilometres of their length in the metropolitan area, or
    - (ii) 5 kilometres of their length in any other area.

### 36 Sewage treatment

- (1) This clause applies to **sewage treatment**, meaning the operation of sewage treatment systems (including the treatment works, pumping stations, sewage overflow structures and the reticulation system) that involve the discharge or likely discharge of wastes or by-products to land or waters.
- (2) The activity to which this clause applies is declared to be a scheduled activity if it has a processing capacity that exceeds:
  - (a) 2,500 persons equivalent, as determined in accordance with guidelines established by an EPA Gazettal notice, or
  - (b) 750 kilolitres per day,whichever is the greater.

### 37 Shipping in bulk

- (1) This clause applies to **shipping in bulk**, meaning the operation of wharves and associated facilities for the bulk loading or unloading of agricultural crop products, rock, ores, minerals or chemicals into or from vessels (except where they are contained in shipping containers).
- (2) The activity to which this clause applies is declared to be a scheduled activity if the facilities have a capacity to handle:
  - (a) more than 500 tonnes of agricultural crop products, rock, ores, minerals or chemicals per day, or
  - (b) more than 50,000 tonnes of agricultural crop products, rock, ores, minerals or chemicals per year.

### 38 Sterilisation activities

- (1) This clause applies to **sterilisation activities**, meaning the sterilisation of products or equipment by means that include the use of ethylene oxide.
- (2) The activity to which this clause applies is declared to be a scheduled activity if it involves the use of more than one tonne of ethylene oxide per year.

### 39 Waste disposal (application to land)

- (1) This clause applies to **waste disposal by application to land**, meaning the application to land of waste received from off site, including (but not limited to) application by any of the following methods:
  - (a) spraying, spreading or depositing on the land,
  - (b) ploughing, injecting or mixing into the land,
  - (c) filling, raising, reclaiming or contouring the land.
- (2) However, this clause does not apply to an activity that involves any of the following:
  - (a) sites inside the regulated area that, over any period of time, receive from off site a total of no more than 200 tonnes of the following waste (and no other waste):
    - (i) building and demolition waste only,
    - (ii) building and demolition waste mixed with virgin excavated natural material,
  - (b) sites outside the regulated area that, over any period of time, receive from off site a total of no more than 200 tonnes of the following waste (and no other waste):
    - (i) building and demolition waste only,

- (ii) building and demolition waste mixed with virgin excavated natural material, being waste generated inside the regulated area,
- (c) sites outside the regulated area that, over any period of time, receive from off site a total of no more than 20,000 tonnes of the following waste (and no other waste):
  - (i) building and demolition waste only,
  - (ii) building and demolition waste mixed with virgin excavated natural material, being waste generated outside the regulated area,
- (d) sites that receive from off site no more than 5 tonnes of waste tyres per year or 500 waste tyres in total over any period (and no other waste),
- (e) sites where only virgin excavated natural material is received from off site and applied to land,
- (f) sites that are outside the regulated area, but only if:
  - (i) the site is owned by and operated by or on behalf of a local council, and
  - (ii) the site was in existence immediately before 28 April 2008 and was not required to be licensed before that date, and
  - (iii) details required under clause 47 of the *Protection of the Environment Operations (Waste) Regulation 2005* were provided, in relation to the site, before 28 April 2008, and
  - (iv) the site receives from off site less than 5,000 tonnes per year of waste, and
  - (v) that waste has been generated outside the regulated area and consists only of general solid waste (putrescible), general solid waste (non-putrescible), clinical and related waste, asbestos waste, grease trap waste or waste tyres (or any combination of them).
- (3) The activity to which this clause applies is declared to be a scheduled activity.
- (4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

#### **40 Waste disposal (thermal treatment)**

- (1) This clause applies to the following activities:

***thermal treatment of general waste***, meaning the receiving of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste) from off site and its processing by thermal treatment.

***thermal treatment of hazardous and other waste***, meaning the receiving of

hazardous waste, restricted solid waste, liquid waste or special waste from off site and its processing by thermal treatment.

- (2) However, this clause does not apply to the treatment of any of the following:
- (a) contaminated soil,
  - (b) contaminated groundwater,
  - (c) sewage within a sewage treatment system (whether or not that system is licensed).
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.
- (4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
thermal treatment of general waste	involves processing more than 200 tonnes of waste per year
thermal treatment of hazardous and other waste	involves having on site at any time more than 200 kilograms of waste (other than clinical and related waste), or involves having on site at any time any quantity of clinical and related waste

**41 Waste processing (non-thermal treatment)**

- (1) This clause applies to the following activities:

***non-thermal treatment of general waste***, meaning the receiving of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste) from off site and its processing otherwise than by thermal treatment.

***non-thermal treatment of hazardous and other waste***, meaning the receiving of hazardous waste, restricted solid waste or special waste (other than asbestos waste or waste tyres) from off site and its processing otherwise than by thermal treatment.

***non-thermal treatment of liquid waste***, meaning the receiving of liquid waste (other than waste oil) from off site and its processing otherwise than by thermal treatment.

***non-thermal treatment of waste oil***, meaning the receiving of waste oil from off site and its processing otherwise than by thermal treatment.

***non-thermal treatment of waste tyres***, meaning the receiving of waste tyres from off site and their processing otherwise than by thermal treatment.

(2) However this clause does not apply to the processing of any of the following:

- (a) stormwater,
- (b) contaminated soil,
- (c) contaminated groundwater,
- (d) sewage within a sewage treatment system (whether or not that system is licensed).

(2A) The activity of non-thermal treatment of liquid waste is declared to be a scheduled activity if it meets the criteria for that activity set out in Column 2 of the Table to this clause.

(3) Each other activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if:

- (a) it meets the criteria set out in Column 2 of that Table, and
- (b) 50% or more by weight of the total amount of waste received per year requires disposal after processing.

(4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
non-thermal treatment of general waste	if the premises are in the regulated area: <ul style="list-style-type: none"> <li>(a) involves having on site at any time more than 1,000 tonnes or 1,000 cubic metres of waste, or</li> <li>(b) involves processing more than 6,000 tonnes of waste per year</li> </ul> if the premises are outside the regulated area: <ul style="list-style-type: none"> <li>(a) involves having on site at any time more than 2,500 tonnes or 2,500 cubic metres of waste, or</li> <li>(b) involves processing more than 12,000 tonnes of waste per year</li> </ul>



non-thermal treatment of hazardous and other waste	involves having on site at any time more than 200 kilograms of waste (other than clinical and related waste), or involves having on site at any time any quantity of clinical and related waste
non-thermal treatment of liquid waste	involves having on site at any time more than 200 kilograms of liquid waste (other than clinical and related waste), or involves having on site at any time any quantity of liquid waste that is clinical and related waste
non-thermal treatment of waste oil	involves having on site at any time more than 2,000 litres of waste oil, or involves processing more than 20 tonnes of waste oil per year
non-thermal treatment of waste tyres	involves having on site at any time (other than in or on a vehicle used to transport the tyres to or from the premises) more than 5 tonnes of waste tyres or 500 waste tyres, or involves processing more than 5,000 tonnes of waste tyres per year

## 42 Waste storage

- (1) This clause applies to **waste storage**, meaning the receiving from off site and storing (including storage for transfer) of waste.
- (2) However, this clause does not apply to any of the following:
  - (a) the storage of stormwater,
  - (b) the storage of up to 60 tonnes at any time of any of the following kinds of waste (but not when accompanied by any other kind of waste):
    - (i) drilling mud,
    - (ii) grease trap waste,
    - (iii) waste lead acid batteries,
    - (iv) waste oil,
  - (c) the storage of sewage within a sewage treatment system,
  - (d) the storage and transfer of liquid waste that is generated and treated on site prior to sewer discharge, or lawful discharge to waters.

- (3) The activity to which this clause applies is declared to be a scheduled activity if:
- (a) more than 5 tonnes of hazardous waste, restricted solid waste, liquid waste or special waste (other than waste tyres) is stored on the premises at any time, or
  - (b) more than 5 tonnes of waste tyres or 500 waste tyres is stored on the premises at any time (other than in or on a vehicle used to transport the tyres to or from the premises), or
  - (c) more than the following amounts of waste (other than waste referred to in paragraph (a) or (b)) are stored on the premises at any time:
    - (i) in the case of premises in the regulated area—more than 1,000 tonnes or 1,000 cubic metres,
    - (ii) in the case of premises outside the regulated area—more than 2,500 tonnes or 2,500 cubic metres, or
  - (d) more than the following amounts of waste (other than waste referred to in paragraph (a) or (b)) is received per year from off site:
    - (i) in the case of premises in the regulated area—6,000 tonnes,
    - (ii) in the case of premises outside the regulated area—12,000 tonnes.
- (4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

#### **43 Wood or timber milling or processing**

- (1) This clause applies to **wood or timber milling or processing**, meaning the sawing, machining, milling, chipping, pulping or compressing of timber or wood (otherwise than at a joinery, builders' supply yard or home improvement centre).
- (2) The activity to which this clause applies is declared to be a scheduled activity if:
- (a) in the case of an activity that burns waste (otherwise than as fuel), it has a capacity to process more than 6,000 cubic metres of timber (or timber products) per year, or
  - (b) in any other case, it has a capacity to process more than 50,000 cubic metres of timber (or timber products) per year.

#### **44 Wood preservation**

- (1) This clause applies to **wood preservation**, meaning the treating or preserving timber with pesticides (within the meaning of the [Pesticides Act 1999](#)).
- (2) The activity to which this clause applies is declared to be a scheduled activity if it has a capacity to process more than 10,000 cubic metres of timber per year.

## Part 2 Activities not premises-based

### 45 Application of Part

For the purposes of section 49, any activity that is declared by this Part to be a scheduled activity is taken to be an activity for which a licence is required, but where no licence is required for the premises at which it is carried out (the activity is **not premises-based**).

**Note—**

Section 49 (2) provides that a person who carries on such an activity is guilty of an offence unless he or she holds a licence that authorises him or her to carry on that activity.

### 46 (Repealed)

### 47 Mobile waste processing

- (1) This clause applies to **mobile waste processing**, meaning an activity:
  - (a) that involves the processing of hazardous waste, liquid waste or restricted solid waste (or any combination of them), and
  - (b) that is carried out, for business or commercial purposes, by means of mobile plant.
- (2) The activity to which this clause applies is declared to be a scheduled activity.

### 48 Transportation of trackable waste

- (1) This clause applies to the following activities:
  - (a) **transportation of category 1 trackable waste**, meaning the transportation of category 1 trackable waste within New South Wales,

**Note—**

This activity covers any transportation of category 1 trackable waste within New South Wales, whether or not the transportation of the waste is confined to New South Wales.

- (b) **transportation of category 2 trackable waste**, meaning the transportation of category 2 trackable waste from New South Wales to a participating State, into New South Wales from a participating State or through New South Wales from one participating State to another.
- (2) However, this clause does not apply to the transportation of waste that is excluded from the application of Part 4 of the [Protection of the Environment Operations \(Waste\) Regulation 2014](#) (**the Waste Regulation**) by clause 41 of that Regulation.
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.
- (4) In this clause:

**category 1 trackable waste** and **category 2 trackable waste** have the same meanings as in the Waste Regulation.

**participating State** has the same meaning as in Part 4 of the Waste Regulation.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Criteria</b>
transportation of category 1 trackable waste	involves the transportation of more than 200 kilograms of category 1 trackable waste in any load
transportation of category 2 trackable waste (other than tyres)	involves the transportation of more than 200 kilograms of category 2 trackable waste in any load

## **Part 3 Definitions**

### **Division 1 Waste classifications**

#### **49 Definitions of waste classifications**

(1) In this Schedule:

**general solid waste (non-putrescible)** means waste (other than special waste, hazardous waste, restricted solid waste, general solid waste (putrescible) or liquid waste) that includes any of the following:

- (a) glass, plastic, rubber, plasterboard, ceramics, bricks, concrete or metal,
- (b) paper or cardboard,
- (c) household waste from municipal clean-up that does not contain food waste,
- (d) waste collected by or on behalf of local councils from street sweeping,
- (e) grit, sediment, litter and gross pollutants collected in, and removed from, stormwater treatment devices or stormwater management systems, that has been dewatered so that it does not contain free liquids,
- (f) grit and screenings from potable water and water reticulation plants that has been dewatered so that it does not contain free liquids,
- (g) garden waste,
- (h) wood waste,
- (i) waste contaminated with lead (including lead paint waste) from residential

- premises or educational or child care institutions,
- (j) containers, having previously contained dangerous goods, from which residues have been removed by washing or vacuuming,
  - (k) drained oil filters (mechanically crushed), rags and oil absorbent materials that only contain non-volatile petroleum hydrocarbons and do not contain free liquids,
  - (l) drained motor oil containers that do not contain free liquids,
  - (m) non-putrescible vegetative waste from agriculture, silviculture or horticulture,
  - (n) building cavity dust waste removed from residential premises, or educational or child care institutions, being waste that is packaged securely to prevent dust emissions and direct contact,
  - (o) synthetic fibre waste (from materials such as fibreglass, polyesters and other plastics) being waste that is packaged securely to prevent dust emissions, but excluding asbestos waste,
  - (p) virgin excavated natural material,
  - (q) building and demolition waste,
  - (r) asphalt waste (including asphalt resulting from road construction and waterproofing works),
  - (s) biosolids categorised as unrestricted use, or as restricted use 1, 2 or 3, in accordance with the criteria set out in the *Biosolids Guidelines*,
  - (t) cured concrete waste from a batch plant,
  - (u) fully cured and set thermosetting polymers and fibre reinforcing resins,
  - (v) fully cured and dried residues of resins, glues, paints, coatings and inks,
  - (w) anything that is classified as general solid waste (non-putrescible) pursuant to an EPA Gazettal notice,
  - (x) anything that is classified as general solid waste (non-putrescible) pursuant to the Waste Classification Guidelines,
  - (y) any mixture of anything referred to in paragraphs (a)-(x).

**general solid waste (putrescible)** means waste (other than special waste, hazardous waste, restricted solid waste or liquid waste) that includes any of the following:

- (a) household waste containing putrescible organics,

- (b) waste from litter bins collected by or on behalf of local councils,
- (c) manure and nightsoil,
- (d) disposable nappies, incontinence pads or sanitary napkins,
- (e) food waste,
- (f) animal waste,
- (g) grit or screenings from sewage treatment systems that have been dewatered so that the grit or screenings do not contain free liquids,
- (h) anything that is classified as general solid waste (putrescible) pursuant to an EPA Gazettal notice,
- (i) anything that is classified as general solid waste (putrescible) pursuant to the Waste Classification Guidelines,
- (j) a mixture of anything referred to in paragraphs (a)-(i).

**hazardous waste** means waste (other than special waste or liquid waste) that includes any of the following:

- (a) anything that is classified as:
  - (i) a substance of Class 1, 2, 5 or 8 within the meaning of the *Transport of Dangerous Goods Code*, or
  - (ii) a substance to which Division 4.1, 4.2, 4.3 or 6.1 of the *Transport of Dangerous Goods Code* applies,
- (b) containers, having previously contained:
  - (i) a substance of Class 1, 3, 4, 5 or 8 within the meaning of the *Transport of Dangerous Goods Code*, or
  - (ii) a substance to which Division 6.1 of the *Transport of Dangerous Goods Code* applies,from which residues have not been removed by washing or vacuuming,
- (c) coal tar or coal tar pitch waste (being the tarry residue from the heating, processing or burning of coal or coke) comprising more than 1% (by weight) of coal tar or coal tar pitch waste,
- (d) lead-acid or nickel-cadmium batteries (being waste generated or separately collected by activities carried out for business, commercial or community services purposes),

- (e) lead paint waste arising otherwise than from residential premises or educational or child care institutions,
- (f) anything that is classified as hazardous waste pursuant to an EPA Gazettal notice,
- (g) anything that is classified as hazardous waste pursuant to the Waste Classification Guidelines,
- (h) a mixture of anything referred to in paragraphs (a)-(g).

**liquid waste** means any waste (other than special waste) that includes any of the following:

- (a) anything that:
  - (i) has an angle of repose of less than 5 degrees above horizontal, or
  - (ii) becomes free-flowing at or below 60°C or when it is transported, or
  - (iii) is generally not capable of being picked up by a spade or shovel,
- (b) anything that is classified as liquid waste pursuant to an EPA Gazettal notice.

**restricted solid waste** means any waste (other than special waste, hazardous waste or liquid waste) that includes any of the following:

- (a) anything that is classified as restricted solid waste pursuant to the Waste Classification Guidelines,
- (b) anything that is classified as restricted solid waste pursuant to an EPA Gazettal notice.

**special waste** means any of the following:

- (a) clinical and related waste,
- (b) asbestos waste,
- (c) waste tyres,
- (d) anything that is classified as special waste pursuant to an EPA Gazettal notice.

(2) Despite subclause (1), in this Schedule, any waste that is classified as one of the following classes of waste, in accordance with an immobilised contaminants approval granted under Part 10 of the [Protection of the Environment Operations \(Waste\) Regulation 2014](#), is taken to be waste of that class:

- (a) general solid waste (non-putrescible),
- (b) general solid waste (putrescible),

- (c) hazardous waste,
- (d) restricted solid waste,
- (e) special waste.

## Division 2 Other definitions

### 50 Other definitions

(1) In this Schedule:

**animal waste** includes dead animals and animal parts and any mixture of dead animals and animal parts.

**asbestos** means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

**asbestos waste** means any waste that contains asbestos.

**Australian Explosives Code** means the document entitled *Australian Code for the Transport of Explosives by Road and Rail*, published by the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government and as in force from time to time.

**biosolids** means the organic product that results from sewage treatment processes (sometimes referred to as sewage sludge).

**Biosolids Guidelines** means the document entitled *Environmental Guidelines: Use and Disposal of Biosolids Products*, published by the EPA and as in force from time to time, copies of which are held in the offices of the EPA.

**Note—**

A copy of the guidelines is available on the EPA's website ([www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).

**building and demolition waste** means unsegregated material (other than material containing asbestos waste or liquid waste) that results from:

- (a) the demolition, erection, construction, refurbishment or alteration of buildings other than:
  - (i) chemical works, or
  - (ii) mineral processing works, or
  - (iii) container reconditioning works, or
  - (iv) waste treatment facilities, or



- (b) the construction, replacement, repair or alteration of infrastructure development such as roads, tunnels, sewage, water, electricity, telecommunications and airports,

and includes materials such as:

- (c) bricks, concrete, paper, plastics, glass and metal, and
- (d) timber, including unsegregated timber, that may contain timber treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP),

but does not include excavated soil (for example, soil excavated to level off a site prior to construction or to enable foundations to be laid or infrastructure to be constructed).

**clinical and related waste** means:

- (a) clinical waste, or
- (b) cytotoxic waste, or
- (c) pharmaceutical, drug or medicine waste, or
- (d) sharps waste.

**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.

**coal** includes any other carbonaceous material.

**coal seam gas** means petroleum that:

- (a) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is

methane, and

(b) is in a gaseous state at standard temperature and pressure, and

(c) is extracted from coal beds.

**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, where **harm to the environment** includes any direct or indirect alteration of the environment that has the effect of degrading the environment.

**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.

**dangerous goods** has the same meaning as it has in the *Transport of Dangerous Goods Code*.

**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 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 mariculture, 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.

**electricity plant** includes all associated water storage, ash recovery and waste management facilities.

**EPA Gazettal notice** means a notice that has been published in the Gazette by the EPA, copies of which are held in the offices of the EPA.

**Note—**

A copy of each EPA Gazettal notice is available on the EPA's website ([www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).

**excluded material** means contaminated soil, grease trap waste, waste stored prior to its lawful discharge to a sewer or waters, septic tank waste, stormwater or recoverable oil or oil and water mixture.

**explosives** has the same meaning as it has in the *Australian Explosives Code*.

**food waste** means waste from the manufacture, preparation, sale or consumption of food but does not include grease trap waste.

**garden waste** means waste that consists of branches, grass, leaves, plants, loppings, tree trunks, tree stumps and similar materials, and includes any mixture of those materials.

**grease trap waste** means any grease, oil, solids, water or other matter:

- (a) that results from the preparation or manufacturing of food, and
- (b) that is collected in a grease trap in the usual course of the operation of the grease trap.

**manure** includes any mixture of manure and biodegradable animal bedding (such as straw).

**metropolitan area** means 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.

**mobile plant** means any equipment or machinery that:

- (a) is capable of carrying on any one or more of the activities referred to in Part 1 of this Schedule, and
- (b) is capable of moving under its own motive power or being transported, and
- (c) is operated at a particular site on a temporary basis only (that is, for a total period of not more than 6 months in any 12-month period),

but does not include rolling stock.

**natural organic fibrous materials** means bagasse, peat, seed hulls and husks, straw and the like, and includes any mixture of those materials.

**on site**—see subclause (2).

**organics** means natural organic fibrous materials of waste and non-waste origin, including:

- (a) putrescible organics (such as meat, fish, poultry, fruit, vegetable and their cooked or processed products, biosolids and animal materials), and
- (b) non-putrescible organics (such as timber, garden trimmings, agricultural, forestry and crop materials, and natural fibrous organic and vegetative materials),

but does not include:

- (c) human-made organic chemicals (such as solvents, industrial, agricultural, mining, household chemical cleaning agents and personal care products), or
- (d) naturally occurring organic chemicals that have been refined and concentrated by human activity (such as oil, petrol, diesel and coal tar).

**pharmaceutical, drug or medicine waste** means waste:

- (a) that has been generated by activities carried out for business or commercial purposes, and
- (b) that consists of pharmaceutical or other chemical substances specified in the Poisons List made under section 8 of the *Poisons and Therapeutic Goods Act 1966*.

**regulated area** means the area comprising the local government areas of Ashfield, City of Auburn, Ballina, Bankstown City, Bellingen, Blacktown City, Blue Mountains City, Botany Bay City, Burwood, Byron, Camden, Campbelltown City, Canada Bay, Canterbury City, Cessnock City, Clarence Valley, Coffs Harbour City, Dungog, Fairfield City, Gloucester, Gosford City, Great Lakes, Greater Taree City, Hawkesbury City, Holroyd City, Hornsby, Hunter's Hill, Hurstville City, Kempsey, Kiama, City of Kogarah, Ku-ring-gai, Kyogle, Lake Macquarie City, Lane Cove, Leichhardt, Lismore City, Liverpool City, Maitland City, Manly, Marrickville, Mosman, Muswellbrook, Nambucca, Newcastle City, North Sydney, Parramatta City, Penrith City, Pittwater, Port Macquarie-Hastings, Port Stephens, Randwick City, Richmond Valley, Rockdale City, Ryde City, Shellharbour City, Shoalhaven City, Singleton, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Tweed, Upper Hunter Shire, Warringah, Waverley, Willoughby City, Wingecarribee, Wollondilly, Wollongong City, Woollahra and Wyong.

**rolling stock** means:

- (a) railway vehicles used or intended to be used to transport passengers or freight for reward, or
- (b) railway vehicles used or intended to be used to maintain railway track and equipment (whether or not for reward),

but does not include railway vehicles that are used solely for heritage purposes.

**sharps** means those things:

- (a) that have sharp points or edges capable of cutting, piercing or penetrating the skin (such as needles, syringes with needles or surgical instruments), and
- (b) that are designed for the purpose of cutting, piercing or penetrating the skin, and
- (c) that have the potential to cause injury or infection.

**sharps waste** means any waste collected from designated sharps waste containers

used in the course of business, commercial or community service activities, being waste resulting from the use of sharps for any of the following purposes:

- (a) human health care by health professionals and other health care providers,
- (b) medical research or work on cadavers,
- (c) veterinary care or veterinary research,
- (d) skin penetration or the injection of drugs or other substances for medical or non-medical reasons,

but does not include waste that has been treated on the site where it was generated (and to a standard specified in an EPA Gazettal notice) or waste that has been treated by a method approved in writing by the Secretary of the Ministry of Health.

**thermal treatment** means the processing of wastes by burning, incineration, thermal oxidation, gasification, pyrolysis, plasma or other thermal treatment processes.

**toxic substance** has the same meaning as it has in the *Transport of Dangerous Goods Code*.

**Transport of Dangerous Goods Code** means the document called the *Australian Code for the Transport of Dangerous Goods by Road and Rail (7th edition)* approved by the Ministerial Council for Road Transport and published by the Commonwealth Government from time to time.

**virgin excavated natural material** means natural material (such as clay, gravel, sand, soil or rock fines):

- (a) that has been excavated or quarried from areas that are not contaminated with manufactured chemicals, or with process residues, as a result of industrial, commercial, mining or agricultural activities, and
- (b) that does not contain any sulfidic ores or soils or any other waste,

and includes excavated natural material that meets such criteria for virgin excavated natural material as may be approved for the time being pursuant to an EPA Gazettal notice.

**Waste Classification Guidelines** means the document entitled *Waste Classification Guidelines*, published by the EPA and as in force from time to time, copies of which are held in the offices of the EPA.

**Note—**

A copy of the guidelines is available on the EPA's website ([www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).

**waste tyres** means used, rejected or unwanted tyres, including casings, seconds,

shredded tyres or tyre pieces.

**wood waste** means sawdust, timber offcuts, wooden crates, wooden packaging, wooden pallets, wood shavings and similar materials, and includes any mixture of those materials, but does not include wood treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP).

- (2) 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.

## 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 testing and inspection of articles, and requiring articles to be tested or inspected,

for the purpose of:

- (a) determining whether they comply with the requirements of this Act or the regulations, and
  - (b) without limiting paragraph (a), 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.
- (3A) The testing and inspection of vehicles or vessels, and requiring vehicles or vessels to be tested or inspected, for the purpose of determining whether they comply with the requirements of this Act or the regulations.
- (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, processing, recovery, recycling, re-use 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, processing, recovery, recycling, re-use 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 storage, processing, recovery, recycling, re-use or disposal of any waste.

#### **5A Local council waste reduction and environmental sustainability scheme**

- (1) The establishment and administration of a scheme for recycling, resource recovery and other reduction of waste by, and improving the environmental sustainability practices and services of, local councils.
- (2) The making of payments to local councils in accordance with the scheme from money appropriated by Parliament for that purpose.
- (3) Requirements that must be met by local councils to be eligible to receive payments under the scheme.

#### **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 and other appropriate regulatory authorities (including, but not limited to, the administrative costs of services provided under this Act and the costs associated with the functions of the EPA and other appropriate regulatory authorities under this Act).

## **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.

#### **9A Establishment of scheme for independent certification of load-based licences**

- (1) Requiring a person who holds a licence which requires the payment of a load-based fee to obtain independent certification of compliance with this Act, the regulation or licence conditions where the licence requires the holder of the licence to submit an annual return.
- (2) Prescribing a scheme for any such independent certification and in particular (but not limited to):
  - (a) the persons or classes of persons who may provide independent certification for the purposes of the scheme and the qualifications or experience that those persons or classes of persons are required to have, and
  - (b) the standards or methods to be used, or other requirements in respect of, determining compliance, and
  - (c) the information to be provided to the EPA following independent certification and the manner or form in which it is to be provided, and
  - (d) the general nature, requirements and operation of the scheme.

#### **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)

*Protection of the Environment Operations Amendment Act 2005*—to the extent it amends this Act

*Protection of the Environment Legislation Amendment Act 2011*—to the extent it amends this Act

any other Act that amends 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:
- 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
  - 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 (Repealed)**

#### **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 Environment 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.

## **Part 11 Provisions consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2004](#)**

### **27 Surrender of licences**

Fees relating to any surrendered licence (including a licence that was surrendered before the repeal of section 80 (3) by the [Statute Law \(Miscellaneous Provisions\) Act 2004](#)) may be refunded or waived in accordance with this Act and the regulations.

## **Part 12 Provisions consequent on enactment of [Protection of the Environment Operations Amendment Act 2005](#)**

### **28 Definition**

In this Part:

**amending Act** means the [Protection of the Environment Operations Amendment Act 2005](#).

## **29 Review of licences**

- (1) This clause applies to licences in force at the commencement of the amendment to section 78 (1) by the amending Act, being licences that had been reviewed under that section before that commencement.
- (2) A licence is to be reviewed under section 78 not later than 5 years after the date of the last review before that commencement and, after that, at intervals not exceeding 5 years after each review.

## **30 Appeals**

Sections 84 (2), 86 (2), 99 (1), 267 (1) and 271 (1), as substituted by the amending Act, and sections 86 (2A), 287 (1A), 288 (2), 289 (1A) and 290 (1A), as inserted by the amending Act, apply only to appeals in respect of which a decision was made, a notice was issued or an order was made after the commencement of those subsections.

## **31 Recovery of costs**

- (1) Section 107 (8), as inserted by the amending Act, applies only where a compliance cost notice is issued after the commencement of that subsection (whether or not the compliance cost notice relates to costs and expenses incurred before that commencement).
- (2) Section 237A, as inserted by the amending Act, applies only where the restraining order to which the charge relates was made after the commencement of that section (whether or not the restraining order relates to proceedings commenced before that commencement).
- (3) Section 237B, as inserted by the amending Act, applies only where the restraining order to which the caveat relates was made after the commencement of that section (whether or not the restraining order relates to proceedings commenced before that commencement).
- (4) Sections 267A and 267B, as inserted by the amending Act, apply only where the noise control notice is issued after the commencement of those sections.

## **32 Proceedings instituted by agents**

Any proceedings instituted under section 217 or 218 by an agent of, or a person appointed by, an appropriate regulatory authority or any other authority or person before the commencement of section 218A are as valid as they would have been if instituted after that commencement.

## **33 Continuing licence conditions**

Section 319A, as amended by the amending Act, extends to conditions of a licence in force on the commencement of the amendments.

### 34 Existing licence conditions

Section 323 (5A), as inserted by the amending Act, extends to a condition that was attached to a licence before the commencement of that subsection.

## 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.

## Part 14 Provisions consequent on enactment of **Protection of the Environment Legislation Amendment Act 2014**

### 38 Definition

In this Part:

**amending Act** means the *Protection of the Environment Legislation Amendment Act 2014*.

### 39 Orders for restorative justice

- (1) Section 250, as amended by the amending Act, extends to proceedings that were initiated, but not determined, before the commencement of the amendment to that section.
- (2) Proceedings are not determined for the purposes of subclause (1) even if all that remains to be completed is the sentencing of an offender.

### 40 Stay of decisions on appeal

Section 287 (1A), as in force before its substitution by the amending Act, continues to apply to appeals lodged before that substitution.

## 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.

**Chairperson** means the Chairperson of the EPA appointed under Division 3 of Part 5 of the [Protection of the Environment Administration Act 1991](#).

**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*.

**environmental values of water** means the environmental values of water specified in the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000*, published by the Australian and New Zealand Environment and Conservation Council and the Agriculture and Resource Management Council of Australia and New Zealand, as in force from time to time.

**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.

**green offset scheme**—see section 2950.

**green offset works**—see section 295P.

**Green Offsets Fund** means the Fund established under section 295U.

**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** or **pollution of land** means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:

- (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or
- (b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.

**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 and Maritime Administration Act 1995](#) or the Maritime Authority of NSW.

**marine park** has the same meaning as it has in the [Marine Estate Management Act 2014](#).

**motor vehicle** has the same meaning as it has in the [Road Transport Act 2013](#).

**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 Act 2013](#).

**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, unit of rolling stock 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 or is likely to be a leak, spill or other escape or deposit 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 a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.

**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 2012](#), and
- (c) a national park, state conservation 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.

**restorative justice activity**—see section 250 (1A).

**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.

**unit of rolling stock** means a vehicle designed to run on rails, but does not include a vehicle designed to operate both on and off rails when the vehicle is not operating on rails.

**vessel** means any kind of vessel used in navigation.

**waste** 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, processing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
- (e) any substance prescribed by the regulations to be waste.

A substance is not precluded from being waste for the purposes of this Act merely because it is or may be processed, recycled, re-used or recovered.

**waste facility** means any premises used for the storage, treatment, processing, 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.