

# Protection of the Environment Administration Act 1991 No 60

[1991-60]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Biodiversity Conservation Act 2016 No 63](#) (not commenced)

### Authorisation

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

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New South Wales

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# Protection of the Environment Administration Act 1991 No 60



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**advisory committee** means an advisory committee established under Part 6.

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

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

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

**criminal or related proceedings** means any proceedings for an offence against the environment protection legislation or any proceedings under Division 4 of Part 8.2 and Part 8.4 of, or under Schedule 2A to, the *Protection of the Environment Operations Act 1997*.

**environment** means components of the earth, including:

- (a) land, air and water, and
- (b) any layer of the atmosphere, and

(c) any organic or inorganic matter and any living organism, and

(d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

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

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

This Act,

*Contaminated Land Management Act 1997,*

*Dangerous Goods (Road and Rail Transport) Act 2008,*

*Environmental Trust Act 1998,*

*Environmentally Hazardous Chemicals Act 1985,*

*Ozone Protection Act 1989,*

*Pesticides Act 1999,*

*Protection of the Environment Operations Act 1997,*

*Radiation Control Act 1990,*

*Recreation Vehicles Act 1983,*

*Waste Avoidance and Resource Recovery Act 2001.*

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

(a) a government department or administrative office, and

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

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) In this Act:

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

and duty, and

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

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

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

The objects of this Act are as follows:

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

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

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

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

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

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

- (1) The objectives of the Authority are:
  - (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development, and
  - (b) to reduce the risks to human health and prevent the degradation of the environment, by means such as the following:
    - promoting pollution prevention,
    - adopting the principle of reducing to harmless levels the discharge into the air, water or land of substances likely to cause harm to the environment,
    - minimising the creation of waste by the use of appropriate technology,
    - regulating the transportation, collection, treatment, storage and disposal of

waste,

- encouraging the reduction of the use of materials, encouraging the re-use and recycling of materials and encouraging material recovery,
- adopting minimum environmental standards prescribed by complementary Commonwealth and State legislation and advising the Government to prescribe more stringent standards where appropriate,
- setting mandatory targets for environmental improvement,
- promoting community involvement in decisions about environmental matters,
- ensuring the community has access to relevant information about hazardous substances arising from, or stored, used or sold by, any industry or public authority,
- conducting public education and awareness programs about environmental matters.

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

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

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

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
  - (ii) an assessment of the risk-weighted consequences of various options,
- (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
- (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:



- (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

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

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

- (1) The Authority has such environment protection and other functions as are conferred or imposed on it by or under the environment protection legislation or any other legislation.
- (2) The Authority has general responsibility for the following:
  - (a) ensuring that the best practicable measures are taken for environment protection in accordance with the environment protection legislation and other legislation,
  - (b) co-ordinating the activities of all public authorities in respect of those measures,
  - (c) inquiring into and reporting on the efficacy of those measures,
  - (d) reviewing the regulatory framework for environment protection and advising on its rationalisation and simplification,
  - (e) investigating and reporting on alleged non-compliance with environment protection legislation for the purposes of prosecutions or other regulatory action,
  - (f) establishing a database on the state of the environment,
  - (g) advising persons engaged in industry and commerce and other members of the community on environment protection,
  - (h) advising the Government on methods to ensure the integration of the Authority's pollution approvals and licensing processes with the development consent process so that the importance of environment protection is recognised.
- (3) Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Authority to exercise its functions.

**Note—**

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Authority makes use of) may be referred to as officers or employees, or members of staff, of the Authority. Section 47A of the *Constitution Act 1902* precludes the Authority from employing staff.

## **8 General powers of Authority**

The Authority may:

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

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

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

with respect to industry, commerce and public authorities.

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

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

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

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

## **12 Directions to public authorities**

- (1) The Authority may (subject to subsection (2)) from time to time:
  - (a) direct any public authority to do anything within the powers of the public authority which will, in the opinion of the Authority, contribute to environment protection, or
  - (b) direct any public authority to cease doing anything which, in the opinion of the Authority, adversely affects environment protection.
- (2) The Authority is required to consult with the public authority about any such direction.
- (3) If a dispute arises about any such direction, the Minister and the Minister responsible for the public authority (or, in the case of a local government authority, the mayor concerned) are to be notified of the dispute and given an opportunity to resolve the dispute.
- (4) If the dispute is not resolved, it may be referred by the Authority or the public authority to the Premier for settlement. The Premier must, before making any decision on the matter, appoint a person to make an assessment of or conduct a public inquiry into the matter. The report of that assessment or public inquiry is to be made available to the public by the Premier and, if the decision of the Premier on the dispute does not follow the recommendations in that report, the terms of the decision of the Premier are to be tabled by or on behalf of the Premier in each House of Parliament (within 14 sitting days of that House) and are to be included in the next available annual report of the Authority.
- (5) The decision of the Premier on a dispute is to be given effect to by the Authority and the public authority concerned.
- (6) If a public authority that is a local government authority fails to give effect to the decision of the Premier on a dispute, the Authority may give effect to the decision and may for that purpose carry out any work and give any directions as if it were the local government authority. The Authority is taken to be the local government authority when carrying out that work or giving those directions.
- (7) Any costs or expenses incurred by the Authority in giving effect to a decision as referred to in subsection (6) may be recovered by the Authority from the local government authority as a debt in a court of competent jurisdiction.
- (8) Any provision of any other Act for the settlement of disputes between public authorities by the Premier or a Minister does not apply to the settlement of a dispute to which this section applies.

### **12A Environmental assessment**

- (1) The Authority is not a determining authority within the meaning of Part 5 of the [Environmental Planning and Assessment Act 1979](#) in respect of an approval (within

the meaning of that Part) under the environment protection legislation that consists of the renewal of a licence or the renewal of a certificate of registration.

- (2) This section applies in respect of such an approval in force (or purporting to be in force) at the commencement of this section or granted after the commencement of this section.

## **Part 5 Management of the Environment Protection Authority**

### **Division 1 The Minister**

#### **13 Ministerial control**

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

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

- (1) In this section:

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

**licensing function** means a function of the Authority under the environment protection legislation relating to a licence, including the function of determining whether to issue, transfer, amend, suspend or revoke a licence.

- (2) The Minister may, if the Minister considers that it is expedient in the public interest to do so, direct the Authority in writing to refer to the Minister a specified licensing function in respect of a particular matter.
- (3) The Minister may give a direction under this section whether or not the Authority intends to exercise the licensing function in respect of the matter.
- (4) The Authority must, as soon as practicable after receiving a direction under this section:
  - (a) refer to the Minister any application, report or other document or information in the possession of the Authority that relates to the matter (including any document or information specified by the Minister in the direction), and
  - (b) notify the applicant or licensee concerned in the matter of the Minister's direction.
- (5) Whenever the Minister gives a direction under this section, the Authority ceases to have the licensing function in respect of the matter, unless the Minister refers the licensing function (or any aspect of that function) back to the Authority.
- (6) The Minister may, after giving a direction under this section, exercise in the place of the Authority the licensing function in respect of the matter.
- (7) For the purpose of the Minister exercising a licensing function in respect of a matter:
  - (a) a reference to the Authority in the environment protection legislation or other document is taken to be a reference to the Minister, and
  - (b) anything done by the Authority in the matter before the direction was given may be adopted by the Minister.

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

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

- (1) The Minister may make use of the services of the Chairperson and staff of the Authority for providing departmental advice on government policy and other matters relating to the administration of the environment protection legislation.

- (2) The exercise of the functions of the Chairperson and staff of the Authority under this section is not subject to the control or direction of the Board.

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

### **15 Establishment of Board**

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

### **16 Functions of Board**

- (1) The functions of the Board are as follows:
  - (a) to determine the policies and long-term strategic plans of the Authority,
  - (b) to oversee the effective, efficient and economical management of the Authority,
  - (c) to develop, and make available for public information, guidelines relating to the institution of criminal and related proceedings,
  - (d) to determine whether the Authority should institute proceedings for serious environment protection offences referred to in section 17,
  - (e) to advise the Minister on any matter relating to the protection of the environment (at the request of the Minister or on its own initiative).
- (2) The Board is not subject to the control and direction of the Minister in the exercise of any of its functions.
- (3) The Board is, on an annual basis, to provide the Minister with a statement that contains or addresses the following matters:

- (a) an assessment of the success of the Authority in reducing risks to human health and in preventing the degradation of the environment and whether the level of environmental protection achieved by the Authority is satisfactory in comparison with other Australian jurisdictions,
  - (b) an assessment of the performance by those industries regulated by the Authority in reducing risks to human health and in preventing the degradation of the environment, and the impact that those industries have on the environment,
  - (c) recommendations for improving the Authority's performance, and the performance of the industries regulated by the Authority, in relation to the matters referred to in paragraphs (a) and (b),
  - (d) such other matters as may be prescribed by the regulations.
- (4) The Minister must table a copy of the statement under this section in both Houses of Parliament within one month after the Minister receives it.
- (5) If a House of Parliament is not sitting when the Minister seeks to table a copy of the statement to it, the Minister may present copies of the statement to the Clerk of the House concerned.
- (6) The statement:
- (a) on presentation and for all purposes is taken to have been tabled in the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,
- on the first sitting day of the House after receipt of the statement by the Clerk.

## **17 Environmental Counsel to Board**

- (1) An Environmental Counsel to the Board is to be engaged by the Authority.
- (2) The Environmental Counsel is to be a practising barrister approved by the Minister and engaged for a period determined by the Minister.



- (3) The Environmental Counsel may advise the Board on any matter (whether or not in connection with the institution of criminal or related proceedings) referred to the Environmental Counsel.
- (4) The Board may not determine that the Authority institute proceedings for a serious environment protection offence unless the Environmental Counsel has advised the Board that (on the evidence disclosed in the brief to Counsel) there is evidence capable of establishing the commission of the offence.

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

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

For the purposes of this definition, an offence created by section 144AA (2) or 144AB of the *Protection of the Environment Operations Act 1997* is taken to be a tier 1 offence under that Act.

## **Division 3 The Chairperson of the Authority**

### **18 Chairperson of the Authority**

- (1) The Governor may appoint a Chairperson of the Authority.
- (2) The Chairperson may be appointed on a full-time or part-time basis.
- (3) The Chairperson has the functions conferred or imposed on the Chairperson by or under this or any other Act.

(4) Schedule 2A contains provisions relating to the Chairperson.

(5) (Repealed)

### **18A Acting Chairperson**

(1) The Minister may, from time to time, appoint a person to act in the office of the Chairperson during the illness or absence of the Chairperson or during a vacancy in the office of the Chairperson. The person, while so acting, has all the functions of the Chairperson and is taken to be the Chairperson (including as a member of the Board).

(2) The Minister may, at any time, remove a person from the office to which the person was appointed under this section.

(3) A person while acting under this section is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

### **19 Chairperson to manage and control affairs of Authority**

(1) The affairs of the Authority are to be managed and controlled by the Chairperson in accordance with the policies determined by the Board and any other decisions of the Board, but subject to any directions of the Minister under this Act.

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chairperson is taken to have been done by the Authority.

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

### **20 (Repealed)**

### **21 Delegation of functions**

(1) The Authority may delegate to an authorised person any of the functions of the Authority, other than this power of delegation.

(1A) The Chairperson may delegate to an authorised person any of the functions (other than this power of delegation) conferred or imposed on the Chairperson by or under the environment protection legislation or any other legislation.

(2) A delegate may sub-delegate to an authorised person any function delegated:

(a) by the Authority, if the delegate is authorised in writing to do so by the Authority,  
or

(b) by the Chairperson, if the delegate is authorised in writing to do so by the Chairperson.

(3) In this section, **authorised person** means:

- (a) a member of the staff of the Authority, or
- (b) a member of the staff of a Government agency of Victoria, Queensland, South Australia or the Australian Capital Territory which administers environment protection legislation, or
- (c) a council (within the meaning of the [Local Government Act 1993](#)), or
- (d) a person of a class prescribed by the regulations for the purposes of delegations from the Authority or the Chairperson or both.

## **Part 6 Advisory committees**

### **22-28C (Repealed)**

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

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

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

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

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

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

## **Part 7 Miscellaneous**

### **32 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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

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

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

### **34 Financial year**

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

### **34A Environment Protection Authority Fund**

- (1) There is established in the Special Deposits Account an account called the Environment Protection Authority Fund (***the Fund***).
- (2) Money in the Fund is under the control of the Authority and can be expended by the Authority only for the purposes authorised by this section.
- (3) There is to be paid into the Fund:
  - (a) any of the following money payable to the Authority under the *Protection of the Environment Operations Act 1997*:
    - (i) any fees with respect to environment protection licences, including fees for applications made for or with respect to those licences and annual licence fees (other than load-based fees),
    - (ii) any interest on outstanding amounts of any such fees (other than load-based fees),
    - (iii) any amounts required to be paid as a penalty for default under section 57 of that Act (other than with respect to load-based fees),
    - (iv) any fees with respect to clean-up notices, prevention notices or noise control notices,
    - (v) amounts specified in any compliance cost notices given under Chapter 4 or section 267B of that Act,
    - (vi) amounts specified in any notices given under section 107 or 295ZD of that Act, and
  - (b) any fees payable to the Authority under the following Acts:
    - (i) the *Contaminated Land Management Act 1997*,
    - (ii) the *Dangerous Goods (Road and Rail Transport) Act 2008*,

- (iii) the *Environmental Planning and Assessment Act 1979*,
  - (iv) the *Environmentally Hazardous Chemicals Act 1985*,
  - (v) the *Pesticides Act 1999*,
  - (vi) the *Radiation Control Act 1990*,
  - (vii) the *Waste Avoidance and Resource Recovery Act 2001*, and
- (b1) amounts payable to the Authority specified in notices given under section 34 of the *Contaminated Land Management Act 1997* and section 28 of the *Pesticides Act 1999*, and
- (c) the proceeds of the investment of money in the Fund, and
- (d) any other money appropriated by Parliament for the purposes of the Fund or required or authorised by law to be paid into the Fund.
- (4) There may be paid out of the Fund:
- (a) any money required by the Authority for the purposes of carrying out any of its functions, and
  - (b) any money required to meet administrative expenses incurred in relation to the Fund (including any administrative expenses incurred in relation to the collection and recovery of amounts payable into the Fund), and
  - (c) any money required or authorised by law to be paid from the Fund.
- (5) 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 Authority to invest the money, in any other manner approved by the Treasurer.

### **35 Personal liability**

- (1) A matter or thing done or omitted to be done by the Authority, the Board, an advisory committee, a member of the Board or an advisory committee, the Chairperson or any person acting under the direction of the Authority, the Board, an advisory committee or the Chairperson does not, if the matter or thing was done or omitted in good faith for the purpose of executing the environment protection legislation, subject the member, Chairperson or a person so acting personally to any action, liability, claim or demand.
- (2) (Repealed)

### **36 Seal of Authority**

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

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

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

(1) A document may be served on the Authority by leaving it at, or by sending it by post to:

- (a) the office of the Authority, or
- (b) if it has more than one office—any one of its offices.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

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

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

### **39 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **40 (Repealed)**

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

Schedule 4 has effect.

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

(Section 15 (4))

### **1 Definitions**

In this Schedule:

***appointed member*** means a member of the Board other than the Chairperson.

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

## **2 (Repealed)**

## **3 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (2) In the absence of an appointed member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (3) (Repealed)
- (4) A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

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

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

## **5 Remuneration**

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

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

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under this clause or under Part 6 of the [Government Sector Employment Act 2013](#), or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the

last of those meetings, the member is excused by the Board for having been absent from those meetings, or

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

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

## **7 Disclosure of pecuniary interests**

(1) If:

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

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

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

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

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

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



(4) If:

- (a) a matter being considered or about to be considered at a meeting of the Board relates to the institution of criminal or related proceedings against a person, and
- (b) a member has any personal or financial interest in the matter,

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

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

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

- (a) be present during any deliberation of the Board with respect to the matter, or
- (b) take part in any decision of the Board with respect to the matter.

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

- (a) be present during any deliberation of the Board for the purpose of making the determination, or
- (b) take part in the making by the Board of the determination.

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

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

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

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

(1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to an appointed member.

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

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

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

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

## **10 General procedure**

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

## **11 Quorum**

The quorum for a meeting of the Board is 3 members (one of whom must be the Chairperson).

## **12 Presiding member**

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

## **13 Voting**

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

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

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

ordinary meeting of the Board.

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

## 15 Committees of Board

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

## Schedule 2 Members and procedure of advisory committees

(Section 31 (3))

### 1 Definitions

In this Schedule:

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

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

### 2 Chairperson of advisory committee

- (1) (Repealed)
- (2) One of the members of an advisory committee is to be appointed by the Authority as Chairperson of the advisory committee. Any such appointment may be made at the time the person is appointed as a member or after that appointment.
- (3) The Authority may at any time remove a member from the office of Chairperson of an advisory committee.
- (4) A person who is a member and Chairperson of an advisory committee vacates the office of Chairperson if the person:
  - (a) is removed from that office under this clause, or
  - (b) resigns that office by instrument in writing addressed to the Authority, or
  - (c) ceases to be a member.

### **3 Deputies of members**

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

### **4 Terms of office**

Subject to this Schedule, a member (other than an ex-officio member) holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **5 Allowances**

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

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

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

or

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

(2) The Authority may remove a member from office at any time.

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

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

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

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

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

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

### **9 General procedure**

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

### **10 Quorum**

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

## **11 Presiding member**

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

## **12 Voting**

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

## **13 (Repealed)**

# **Schedule 2A Provisions relating to Chairperson of Authority**

(Section 18 (4))

## **1 Term of office**

The Chairperson holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **2 Employment and remuneration**

- (1) The employment of the Chairperson is (subject to this Schedule) to be governed by a contract of employment between the Chairperson and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the Chairperson (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):
  - (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

## **3 Vacancy in office**

- (1) The office of Chairperson becomes vacant if the holder:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or

- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is removed from office under clause 4.

(2) If the office of Chairperson becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **4 Removal from office**

- (1) The Governor may remove the Chairperson from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Chairperson cannot be removed from office under Part 6 of the [Government Sector Employment Act 2013](#).

#### **5 Chairperson not Public Service employee**

The office of Chairperson is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by clause 2).

### **Schedule 3 (Repealed)**

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

(Section 41)

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

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

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

this Act

[Protection of the Environment Administration Amendment \(Environmental Education\) Act 1998](#)

[Protection of the Environment Legislation Amendment Act 2011](#)

any 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 date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

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

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

- (1) The State Pollution Control Commission is abolished.
- (2) All public service staff attached to that Commission (and any other staff employed by that Commission), immediately before the abolition of that Commission, become public service staff attached to (and other staff employed by) the Authority.
- (3) On the abolition of that Commission, the following provisions have effect:
  - (a) the assets of that Commission vest in the Authority by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities of that Commission become by virtue of this clause the rights and liabilities of the Authority,
  - (c) all proceedings by or against that Commission that are pending immediately before the abolition are taken to be proceedings pending by or against the Authority,
  - (d) any act, matter or thing done or omitted to be done before the abolition by, to or in respect of that Commission is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Authority.
- (4) The operation of this clause is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or



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

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

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

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

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

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

(a) ceases to hold that office, and

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

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

section 6 (except subsection (1)),

sections 7, 8 and 9.

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

(1) The Ministry for the Environment is abolished.

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

### **5 Dissolution of advisory committees**

(1) The following committees are dissolved:

(a) the Technical Advisory Committee and any other Committee established under Part 4 of the *State Pollution Control Commission Act 1970*,

(b) the Clean Waters Advisory Committee established under Part 2 of the *Clean Waters Act 1970*.

(2) A person who, immediately before the dissolution of any such committee, held office

as a member of the committee:

(a) ceases to hold that office, and

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

(3) On the dissolution of any such committee, the assets, rights, liabilities and obligations of the Committee become the assets, rights, liabilities and obligations of the Authority.

## **6 Construction of certain references**

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

(a) a reference to the State Pollution Control Commission or the Ministry for the Environment is to be read as a reference to the Authority, and

(b) a reference to the Director of the State Pollution Control Commission or of the Ministry for the Environment is to be read as a reference to the Director-General of the Authority, and

(c) a reference to a member of the State Pollution Control Commission is to be read as a reference to a member of the Board of the Authority, and

(d) a reference to an officer or employee of the State Pollution Control Commission or the Ministry for the Environment is to be read as a reference to a member of the staff of the Authority.

## **7 Radioactive Substances Act 1957**

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

## **Part 3 Provisions consequent on enactment of Protection of the Environment Administration Amendment (Environmental Education) Act 1998**

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

(1) The Environmental Education Committee established under Part 6 is dissolved.

(2) A person who, immediately before the dissolution of the Environmental Education Committee, held office as a member of the Committee:

(a) ceases to hold that office, and

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

- (3) On the dissolution of the Environmental Education Committee, the assets, rights, liabilities and obligations of the Committee become the assets, rights, liabilities and obligations of the Authority.

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

### **9 Existing Board members**

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

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

## **Part 5 Provision consequent on enactment of [Protection of the Environment Legislation Miscellaneous Amendments Act 2017](#)**

### **10 Existing members of Consultation Forums or New South Wales Council on Environmental Education**

A person who, immediately before the repeal of Divisions 1–3 of Part 6 of this Act by the [Protection of the Environment Legislation Miscellaneous Amendments Act 2017](#), held office as a member of the Hunter Region Environment Protection Community Consultation Forum, the Illawarra Region Environment Protection Community Consultation Forum or the New South Wales Council on Environmental Education:

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