

# Protection of the Environment Operations Amendment Act 2005 No 96

[2005-96]



New South Wales

## Status Information

### Currency of version

Repealed version for 24 November 2005 to 3 July 2007 (accessed 12 December 2024 at 10:55)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by Sch 5 to the [Statute Law \(Miscellaneous Provisions\) Act 2007 No 27](#) with effect from 4.7.2007.

### 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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# Protection of the Environment Operations Amendment Act 2005 No 96



New South Wales

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# Protection of the Environment Operations Amendment Act 2005 No 96



New South Wales

An Act to make miscellaneous amendments to the *Protection of the Environment Operations Act 1997* and other Acts and a regulation relating to penalties, regulation of waste, land pollution, water pollution, smoke pollution from residences, green offsets, environment protection licences, reports and other matters; and for other purposes.

## 1 Name of Act

This Act is the *Protection of the Environment Operations Amendment Act 2005*.

## 2 Commencement

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

## 3 Amendment of *Protection of the Environment Operations Act 1997 No 156*

The *Protection of the Environment Operations Act 1997* is amended as set out in Schedule 1.

## 4 Amendment of other Acts and regulation

The Acts and regulation specified in Schedule 2 are amended as set out in that Schedule.

## Schedule 1 Amendment of *Protection of the Environment Operations Act 1997*

(Section 3)

### [1] Section 3 Objects of Act

Insert “, recovery” after “re-use” in section 3 (d) (iii).

### [2] Section 6 Appropriate regulatory authority

Omit the note to the section. Insert instead:

**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).

**[3] Section 45 Matters to be taken into consideration in licensing functions**

Omit “being or likely to be caused” from section 45 (c).

Insert instead “caused or likely to be caused”.

**[4] Section 45 (e)**

Insert “green offset scheme, green offset works or” before “tradeable emission scheme”.

**[5] Section 45 (f1)**

Insert after section 45 (f):

(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,

**[6] Section 47 Licensing requirement—scheduled development work**

Omit the penalty provision at the end of section 47 (1). Insert instead:

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.

**[7] Section 48 Licensing requirement—scheduled activities (premises-based)**

Omit the penalty provision at the end of section 48 (2). Insert instead:

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.

**[8] Section 49 Licensing requirement—scheduled activities (not premises- based)**

Omit the penalty provision at the end of section 49 (2). Insert instead:

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.

**[9] Section 50 Timing of licensing of development requiring consent under EP&A Act**

Insert “or varied (other than on the initiative of the EPA)” after “granted” where firstly occurring in section 50 (2).

**[10] Section 50 (4)**

Insert “, and includes approval to carry out a project under Part 3A of that Act” after “1979” in the definition of **development consent**.

**[11] Section 57 Licence fees**

Insert “in accordance with the notice” before “an additional amount” in section 57 (4).

**[12] Section 60 Requirement for further information**

Omit “(other than an application for the approval of the surrender of a licence)” from section 60 (1).

**[13] Section 64 Failure to comply with condition**

Omit the penalty provisions at the end of section 64 (1). Insert instead:

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.

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

Insert “, required” after “authorised” in section 66 (1) (a).

**[15] Section 66 (2)**

Omit the penalty provision at the end of the subsection. Insert instead:

Maximum penalty:

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

**[16] Section 66 (3)**

Omit “or by another person approved by that authority”.

Insert instead “, by another person approved by that authority or by a person prescribed by the regulations,”.

**[17] Section 66 (3) (a)**

Insert “, or any provisions of the regulations applicable to the activity or work authorised, required or controlled by the licence,” after “licence”.

**[18] Section 66 (3) (b) and (c)**

Insert “or any such regulations” after “conditions” wherever occurring.

**[19] Section 69**

Omit the section. Insert instead:

**69 Conditions relating to tradeable emission schemes, green offsets and other schemes involving economic measures**

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,

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

**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).

**[20] Section 70**

Omit the section. Insert instead:

## **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.

### **[21] Section 75 Conditions relating to waste**

Insert “storage,” before “handling” wherever occurring in section 75 (1) and (4) (a).

### **[22] Section 75 (1)**

Omit “reprocessing”. Insert instead “processing, recovery”.

### **[23] Section 75 (5) (d)**

Insert “recovery,” after “re-use,”.

### **[24] Section 76**

Omit the section. Insert instead:

## **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.

**[25] Section 78 Review of licences**

Omit “3” from section 78 (1). Insert instead “5”.

**[26] Section 78 (4) (a)**

Insert after section 78 (4):

(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.

**[27] Section 79 Suspension or revocation of licence by appropriate regulatory authority**

Insert after section 79 (3):

(3A) A licence may be revoked during the currency of a suspension.

**[28] Section 79 (5) (e1)**

Insert after section 79 (5) (e):

(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,

**[29] Section 80 Surrender of licence**

Insert after section 80 (1A):

(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.

**[30] Section 82 Minister may suspend or revoke licence if holder convicted of major pollution offence**

Omit the definition of ***major pollution offence*** from section 82 (2).



Insert instead:

**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).

**[31] Section 83 Fit and proper persons**

Omit section 83 (2) (c) and (d). Insert instead:

- (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.

**[32] Section 84 Date from which decision operates**

Omit section 84 (2). Insert instead:

- (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.

**[33] Section 84 (4)**

Omit the subsection.

**[34] Section 86 Notice for breach of licensing requirements**

Omit section 86 (2). Insert instead:

- (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.

**[35] Section 86 (3)**

Omit the penalty provision at the end of the subsection. Insert instead:

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.

**[36] Section 87 Putrescible waste landfill sites—licensing arrangements**

Omit section 87 (4) (c). Insert instead:

- (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*.

**[37] Section 88 Contributions by licensee of waste facilities**

Omit “re-using, recycling or reprocessing” from section 88 (1).

Insert instead “re-using, recovering, recycling or processing”.

**[38] Section 88 (3)**

Omit section 88 (3) and (4) and the penalty provision at the end of section 88 (4).

Insert instead:

- (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.

**[39] Section 88 (5) (a)**

Omit the paragraph. Insert instead:

- (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

**[40] Section 88 (5) (c)**

Omit “or reprocessed”. Insert instead “recovered or processed”.

**[41] Section 88 (7)**

Insert “or any unpaid portion of the contribution” after “unpaid contribution”.

**[42] Section 91 Clean-up by occupiers or polluters**

Omit the penalty provision at the end of section 91 (5). Insert instead:

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.

**[43] Section 94 Fee**

Omit section 94 (3). Insert instead:

- (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.

**[44] Section 94, note**

Insert at the end of the section:

**Note—**

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

**[45] Section 95 Meaning of environmentally unsatisfactory manner**

Insert “(including a condition of a surrender of a licence) or an exemption given under this Act or the regulations” after “licence” in section 95 (a).

**[46] Section 96 Preventive action**

Omit section 96 (3) (h). Insert instead:

- (h) action with respect to the transportation, collection, reception, re-use, recovery, recycling, processing, storage or disposal of any waste or other substance,

**[47] Section 96 (3) (j)**

Insert after section 96 (3) (i):

- (j) reviewing the carrying out of an activity.

**[48] Section 96 (3A)**

Insert after section 96 (3):

- (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.

**[49] Section 97 Offence**

Omit the penalty provision at the end of the section. Insert instead:

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.

**[50] Section 99**

Omit the section. Insert instead:

**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.

**[51] Section 100 Fee**

Omit section 100 (3). Insert instead:

- (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.

**[52] Section 100, note**

Insert at the end of the section:

**Note—**

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

**[53] Section 102 Offence**

Omit the penalty provision at the end of the section. Insert instead:

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.

**[54] Section 107 Charge on land subject to compliance cost notice**

Insert after section 107 (7):

- (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.

**[55] Section 110 Revocation or variation**

Insert after section 110 (4):

- (5) A fee is not payable for the variation of an environment protection notice under this Chapter.

**[56] Section 112 Obstruction of persons**

Omit the penalty provision at the end of the section. Insert instead:

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.

**[57] Section 113 False or misleading statements in reports**

Omit the penalty provision at the end of the section. Insert instead:

Maximum penalty:

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

**[58] Section 115 Disposal of waste—harm to environment**

Omit the definition of **waste** from section 115 (3).

**[59] Section 119**

Omit the section. Insert instead:

**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.

**[60] Section 123**

Omit the section. Insert instead:

**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.

**[61] Section 132**

Omit the section. Insert instead:

**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.

**[62] Part 5.4, Division 3**

Insert after Division 2 of Part 5.4:

## **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.

### **[63] Section 141**

Omit the section. Insert instead:

### **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.

### **[64] Part 5.6, heading**

Omit “**pollution: waste**”. Insert instead “**pollution and waste**”.

### **[65] Part 5.6, Division 1, heading**

Insert before section 142:

Division 1 **Preliminary**

**[66] Part 5.6, Division 2**

Insert after section 142:

## **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.

- (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.

#### **[67] Part 5.6, Division 3, heading**

Insert before section 143:

Division 3 **Waste offences**

#### **[68] Section 143 Unlawful transporting or depositing of waste**

Omit section 143 (1). Insert instead:

- (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.

**[69] Section 143 (4), definition of “waste”**

Omit the definition.

**[70] Sections 144 and 144AA**

Omit section 144. Insert instead:

**144 Use of land as waste facility without lawful authority**

- (1) A person who is the owner or occupier of any land and who uses the land, or causes or permits the land 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.

- (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 land concerned as a waste facility.

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

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

Maximum penalty:

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

- (2) It is a defence in any proceedings against a person for an offence under this section 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.

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

**[71] Section 145 Littering generally**

Omit the penalty provision at the end of section 145 (1). Insert instead:

Maximum penalty: 20 penalty units.

**[72] Section 146 Owners and drivers of motor vehicles and trailers involved in littering**

Omit section 146 (7) (b). Insert instead:

- (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.

**[73] Section 148 Pollution incidents causing or threatening material harm to be notified**

Insert after section 148 (3):

- (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, as soon as practicable after being notified or otherwise becoming aware of the incident, notify the appropriate regulatory authority of the incident and all relevant information about it.

**[74] Section 148 (7)**

Insert after section 148 (6):

(7) **Odour not required to be reported** This section does not extend to a pollution incident involving only the emission of an odour.

**[75] Section 152 Offence**

Omit the penalty provision at the end of the section. Insert instead:

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.

**[76] Section 155 Sale of motor vehicles**

Omit the penalty provision at the end of the section. Insert instead:

Maximum penalty:

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

**[77] Section 156 Sale of motor vehicles without anti-pollution devices**

Omit the penalty provision at the end of the section. Insert instead:

Maximum penalty:

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

**[78] Section 157 Adjustment etc of anti-pollution devices and motor vehicles**

Omit the penalty provision at the end of the section. Insert instead:

Maximum penalty:

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

**[79] Section 158 Service or repair of motor vehicles**

Omit the penalty provision at the end of the section. Insert instead:

Maximum penalty:

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

**[80] Section 159 Sale of motor vehicles not serviced, maintained or adjusted as prescribed**

Omit the penalty provision at the end of the section. Insert instead:

Maximum penalty:

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

**[81] Section 162 Minister's power to prohibit use of motor vehicles in certain circumstances**

Omit the penalty provision at the end of section 162 (5). Insert instead:

Maximum penalty:

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

**[82] Part 5.8, Division 3 Unleaded petrol**

Omit the Division.

**[83] Section 167 Control equipment**

Omit the penalty provision at the end of section 167 (4). Insert instead:

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.



**[84] Section 169 Offences by corporations**

Omit section 169 (1) (a).

**[85] Section 169 (4)**

Omit “intention” wherever occurring. Insert instead “state of mind”.

**[86] Section 169 (5)**

Insert after section 169 (4):

(5) 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.

**[87] Section 198A**

Insert after section 198:

**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.

**[88] Section 203 Power of authorised officers to require answers**

Insert after section 203 (4):

(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.

**[89] Section 203A**

Insert after section 203:

**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.

**[90] Section 204 Power of authorised officers to demand name and address**

Insert after section 204 (2):

- (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.

**[91] Section 205 Definitions**

Insert after paragraph (c) of the definition of **authorised officer**:

, and

- (d) extends, in sections 206 and 208, in relation to vessels situated within marine parks, to a marine park ranger appointed under section 35A of the *Marine Parks Act 1997* authorised by the Marine Parks Authority for the purposes of those sections.

**[92] Section 206 Power to inspect and test**

Omit “(not exceeding 1 litre)” from section 206 (2) (f).

**[93] Section 208 Stopping of vehicles and vessels for inspection or testing**

Insert at the end of section 208 (1) (b):

, or

(c) to move the vehicle or vessel to a suitable place for inspection or testing.

**[94] Section 208 (2)**

Insert “(other than a direction to move the vehicle or vessel to a suitable place for inspection or testing at a later time)” after “such a direction”.

**[95] Section 208 (2A)**

Insert after section 208 (2):

(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.

**[96] Section 211 Offences**

Omit the penalty provision at the end of the section. Insert instead:

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.

**[97] Section 212C Actions by incorrect regulatory authority**

Omit “, in good faith,” from section 212C (1).

**[98] Section 212E**

Insert after section 212D:

## **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.

### **[99] Section 213 Application of Chapter**

Insert after section 213 (2) (b):

- (c) *Environmentally Hazardous Chemicals Act 1985* and the regulations under that Act.

### **[100] Section 213 (3)**

Insert after section 213 (2):

- (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.

### **[101] Section 216 Time within which summary proceedings may be commenced**

Insert after paragraph (c) of the definition of **prescribed offence** in section 216 (6):

- (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

### **[102] Section 218A**

Insert after section 218:

#### **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.

**[103] Sections 237A and 237B**

Insert after section 237:

**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.

**[104] Section 248 Orders regarding costs and expenses of investigation**

Omit the definition of **costs and expenses** from section 248 (3). Insert instead:

**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.

**[105] Section 249 Orders regarding monetary benefits**

Omit “not exceeding the court’s estimation of” from section 249 (1).

Insert instead “the court is satisfied, on the balance of probabilities, represents”.

**[106] Section 250 Additional orders**

Insert “(including the circumstances of the offence)” after “offence” wherever occurring in section 250 (1) (a) and (b).

**[107] Section 250 (1) (e)-(h)**

Insert after section 250 (1) (d):

- (e) order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified environmental 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.

**[108] Section 250 (1)**

Omit “or (d)”. Insert instead “, (d), (e) or (h)”.

**[109] Section 250 (5)**

Insert after section 250 (4):

- (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.

**[110] Part 8.4, heading**

Insert “**or enforce undertakings**” after “**environment**”.

**[111] Section 253A**

Insert after section 253:

### **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.
- (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.

### **[112] Section 261 Certificate evidence of certain matters**

Insert after section 261 (2) (o):

- (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 Director-General was delegated to a specified person under section 21 of the *Protection of the Environment Administration Act 1991* during a specified period.

**[113] Section 262 Evidence of analysts**

Omit section 262 (3). Insert instead:

- (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.

**[114] Section 264 Noise control notices relating to premises**

Omit section 264 (1) (b). Insert instead:

- (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.

**[115] Section 267**

Omit the section. Insert instead:

**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.

**[116] Sections 267A and 267B**

Insert after section 267:

**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.

**[117] Section 271**

Omit the section. Insert instead:

**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.

**[118] Section 278 Restrictions on noise abatement directions**

Insert “(other than a direction given by an authorised officer appointed by the EPA)” after “direction” wherever occurring.

**[119] Section 285 Exemption for fire brigades and other emergency services**

Omit “bush fire brigade” from section 285 (1).

Insert instead “rural fire brigade”.

**[120] Section 285 (1)**

Omit “officially”.

**[121] Section 285 (3)**

Insert after section 285 (2):

- (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](#).

**[122] Section 287 Appeals regarding licence applications and licences**

Insert after section 287 (1):

- (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 decision appealed against.

**[123] Section 288 Appeals regarding notices under section 86 relating to work at premises**

Insert at the end of the section:

- (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.

**[124] Section 289 Appeals against prevention notices**

Insert after section 289 (1):

- (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.

**[125] Section 290 Appeals regarding noise**

Insert after section 290 (1):

- (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.

**[126] Section 293 Schemes for economic measures**

Insert “, or a green offset scheme, as referred to in Part 9.3B” after “Part 9.3A” in section 293 (4).

**[127] Section 294A Exercise of functions by Minister and EPA**

Omit “Part 9.3A”. Insert instead “Parts 9.3A and 9.3B”.

**[128] Section 295 Regulations**

Omit “are set out in Part 9.3A” from the note to the section.

Insert instead “and green offsets are set out in Parts 9.3A and 9.3B, respectively”.

**[129] Part 9.3B**

Insert after Part 9.3A:

## **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*.

### **[130] Section 300 Amount of financial assurances**

Insert after section 300 (2):

- (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.

### **[131] Section 301 Guidelines about financial assurances**

Insert “and in relation to the calculation of the amount of financial assurances required” after “assurances”.

### **[132] Section 308 Public register**

Omit “the following” from section 308 (2).

Insert instead “such of the following matters as are applicable to the regulatory authority”.

**[133] Section 319 Disclosure of information**

Insert “this State,” before “the Commonwealth” in section 319 (1) (e).

**[134] Section 319 (2A)**

Insert after section 319 (2):

(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.

**[135] Section 319 (3) (a)**

Insert “, or formerly required,” after “required”.

**[136] Section 319A Continuing effect of notices and conditions**

Insert “, or a condition of a licence imposed,” after “notice given” in section 319A (1).

**[137] Section 319A (1)**

Insert “or condition” after “the notice” wherever occurring.

**[138] Section 319A (3) and (4)**

Insert “or a condition of a licence” after “notice” wherever occurring.

**[139] Section 320A False representations as to EPA approval, use or recommendation and licences**

Insert “or represents that the person holds a licence that permits certain activities” after “EPA” in section 320A (1).

**[140] Section 323 Regulations**

Insert after section 323 (5):

(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.

**[141] Schedule 1 Schedule of EPA-licensed activities**

Omit “**Composting and related reprocessing**” from Part 1.

Insert instead “**Composting and related processing**”.

**[142] Schedule 1, Part 1**

Omit “, processing or reprocessing” from the item relating to mineral processing or metallurgical works.

Insert instead “or processing”.

**[143] Schedule 1, Part 2**

Omit “, processing or reprocessing” from the item relating to mobile waste processing.

Insert instead “or processing”.

**[144] Schedule 1, Part 3, Division 2 (1)**

Omit the definitions of *recycling* and *reprocessing*.

**[145] Schedule 2 Regulation-making powers**

Omit “reprocessing, recycling” from clause 5 (1) and (3) wherever occurring.

Insert instead “processing, recovery, recycling, re-use”.

**[146] Schedule 2, clause 5 (6)**

Omit the subclause. Insert instead:

(6) Prohibiting or regulating the storage, processing, recovery, recycling, re-use or disposal of any waste.

**[147] Schedule 2, clause 7**

Insert “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)” after “EPA”.

**[148] Schedule 2, clause 9A**

Insert after clause 9:

**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.

### [149] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

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

### [150] Schedule 5, clause 6

Omit the clause.

### [151] Schedule 5

Insert at the end of the Schedule with appropriate Part and clause numbering:

## Part Provisions consequent on enactment of **Protection of the Environment Operations Amendment Act 2005**

### Definition

In this Part:

**amending Act** means the *Protection of the Environment Operations Amendment Act 2005*.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

### **[152] Dictionary**

Insert in alphabetical order:

***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.

### **[153] Dictionary**

Insert in alphabetical order:

***green offset scheme***—see section 295O.

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

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

### **[154] Dictionary, definition of “land pollution”**

Omit the definition. Insert instead:

***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.

**[155] Dictionary**

Insert in alphabetical order:

**marine park** has the same meaning as in the [Marine Parks Act 1997](#).

**[156] Dictionary, definition of “pollution incident”**

Omit the definition. Insert instead:

**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.

**[157] Dictionary, definition of “waste”**

Omit the definition. Insert instead:

**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.

**[158] Dictionary, definition of “waste facility”**

Omit “reprocessing”. Insert instead “processing”.

## Schedule 2 Amendment of other Acts and regulation

(Section 4)

### 2.1 Environmentally Hazardous Chemicals Act 1985 No 14

**[1] Section 55 Power to order contravention to be remedied**

Omit the section.

**[2] Section 56 Proceedings for offences**

Omit the section.

**[3] Section 57 Restraint etc of breaches of this Act**

Omit the section.

### 2.2 Pesticides Act 1999 No 80

**[1] Section 116 Exemption for fire brigades and other emergency services**

Omit “officially” from section 116 (1).

**[2] Section 116 (3)**

Insert after section 116 (2):

(3) In this section:

***accredited rescue unit*** has the same meaning as it has in the *State Emergency and Rescue Management Act 1989*.

**[3] Section 118A**

Insert after section 118:

#### **118A Continuing effect of notices, orders and conditions**

- (1) A notice given or order made, or a condition of a licence or certificate of competency, under this Act or the regulations that specifies a time by which, or a period within which, it must be complied with continues to have effect until it is complied with even though the time has passed or the period has expired.
- (2) A notice or order that does not specify a time by which, or period within which, the notice or order must be complied with continues to have effect until the notice or order is complied with.
- (3) This section does not apply to the extent that any requirement under a notice or

order is revoked or a condition of a licence or certificate of competency is revoked.

- (4) Nothing in this section affects the powers of the Environment Protection Authority with respect to the enforcement of a notice or order.
- (5) This section extends to a condition of a licence or a certificate of competency in force on the commencement of this section.

**[4] Schedule 2 Savings and transitional provisions**

Omit “this Act” from clause 1 (1). Insert instead:

this Act and the following Acts:

*Protection of the Environment Operations Amendment Act 2005* (but only to the extent that it amends this Act)

**[5] Schedule 2, clause 1 (2)**

Omit “this Act”. Insert instead “the Act concerned”.

## **2.3 Protection of the Environment Operations (General) Regulation 1998**

**[1] Clause 30 Penalty for late payment of administrative fee**

Omit “, and the increased amount becomes payable when notice is given under section 57 (4) of the default in payment and the requirement to pay the increased amount” from clause 30 (2).

**[2] Clause 32 Penalty for late payment of load-based fee**

Omit “, and the increased amount becomes payable when notice is given under section 57 (4) of the default in payment and the requirement to pay the increased amount” from clause 32 (2).

**[3] Clause 63 Additional matters to be included in public register: sec 308**

Insert after clause 63 (d):

- (e) any information relating to actual load, agreed load or weighted load of an assessable pollutant reported by a licensee in an annual return to the appropriate regulatory authority,
- (f) details or summaries of undertakings given under section 253A of the Act,
- (g) details or summaries of load reduction agreements entered into in accordance

with clause 25.

- (2) In this clause **actual load**, **agreed load** and **weighted load** have the same meaning as in Part 2.1.

## **2.4 Sydney Olympic Park Authority Act 2001 No 57**

### **Section 47 Appropriate regulatory authority**

Omit the section.