

# ENVIRONMENT PROTECTION ACT 1993

Reprint No. 1—1.5.95	[Whole Act]
Reprint No. 2—1.7.95	[New Part 3 and Appendices]
Reprint No. 3—4.4.96	[New Parts 1, 2, 3, 5, Schedules and Appendices]
Reprint No. 4—2.1.97	[New Part 6 and Appendices]
Reprint No. 5—2.3.97	[New Parts 5, 6 and Appendices]
Reprint No. 6—27.3.97	[New Schedules and Appendices]
Reprint No. 7—1.5.97	[New Parts 3, 15 and Appendices]
Reprint No. 8—2.7.97	[New Parts 6, 8, 9, 10, 15, Schedules and Appendices]
Reprint No. 9—29.7.99	[New Part 1 and Appendices]
Reprint No. 10—2.4.01	[New Parts 1, 15 and Appendices]
Reprint No. 11—14.6.01	[New Part 6 and Appendices]
Reprint No. 12—28.6.01	[New Schedules and Appendices]
Reprint No. 13—11.10.01	[New Schedules and Appendices]
Reprint No. 14—1.7.02	[New Schedules and Appendices]
Reprint No. 15—10.4.03	[Whole Act replaced]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]



South Australia

**ENVIRONMENT PROTECTION ACT 1993**

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An Act to provide for the protection of the environment; to establish the Environment Protection Authority and define its functions and powers; to repeal the Beverage Container Act 1975, the Clean Air Act 1984, the Environmental Protection Council Act 1972, the Marine Environment Protection Act 1990, the Noise Control Act 1977, and the Waste Management Act 1987; to amend the Water Resources Act 1990, the Environment, Resources and Development Court Act 1993 and the Development Act 1993; and for other purposes.

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*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **10 April 2003**.*

*Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.*

**ENVIRONMENT PROTECTION ACT 1993**

being

Environment Protection Act 1993, No. 76 of 1993  
[Assented to 27 October 1993]<sup>1</sup>

as amended by

Parliamentary Committees (Miscellaneous) Amendment Act 1994 No. 18 of 1994 [Assented to 12 May 1994]<sup>2</sup>  
Environment Protection (Variation of Act, Schedule 1) Regulations 1994 No. 181 of 1994 [*Gaz.* 27 October 1994, p. 1329]<sup>3</sup>

National Environment Protection Council (South Australia) Act 1995 No. 1 of 1995 [Assented to 2 March 1995]<sup>4</sup>

Environment Protection (Variation of Act, Schedule 1) Regulations 1995 No. 33 of 1995 [*Gaz.* 13 April 1995, p. 1441]<sup>3</sup>

Petroleum Products Regulation Act 1995 No. 30 of 1995 [Assented to 27 April 1995]<sup>5</sup>

Environment Protection (Forum Replacement) Amendment Act 1995 No. 100 of 1995 [Assented to 14 December 1995]<sup>6</sup>

Development (Major Development Assessment) Amendment Act 1996 No. 63 of 1996 [Assented to 15 August 1996]<sup>7</sup>

Environment Protection (Miscellaneous) Amendment Act 1997 No. 11 of 1997 [Assented to 27 March 1997]<sup>8</sup>

Statutes Amendment (Water Resources) Act 1997 No. 35 of 1997 [Assented to 19 June 1997]<sup>9</sup>

Electricity Corporations (Restructuring and Disposal) Act 1999 No. 36 of 1999 [Assented to 1 July 1999]<sup>10</sup>

Development (System Improvement Program) Amendment Act 2000 No. 88 of 2000 [Assented to 21 December 2000]<sup>11</sup>

Statutes Amendment (Avoidance of Duplication of Environmental Procedures) Act 2001 No. 16 of 2001 [Assented to 17 May 2001]<sup>12</sup>

Environment Protection (Variation of Act, Schedule 1) Regulations 2001 No. 161 of 2001 [*Gaz.* 28 June 2001, p. 2498]<sup>13</sup>

Environment Protection (Variation of Act, Schedule 1—Railways) Regulations 2001 No. 229 of 2001 [*Gaz.* 11 October 2001, p. 4470]<sup>14</sup>

Aquaculture Act 2001 No. 66 of 2001 [Assented to 6 December 2001]<sup>15</sup>

**Statutes Amendment (Environment Protection) Act 2002 No. 43 of 2002 [Assented to 5 December 2002]<sup>16</sup>**

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

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- <sup>1</sup> Came into operation (except Sched. 2 clause 4(c)) 1 May 1995: *Gaz.* 27 April 1995, p. 1563; Sched. 2 clause 4(c) came into operation 27 October 1995 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).
- <sup>2</sup> Came into operation 1 May 1995, being the day on which the Environment Protection Act 1993 came into operation: *Gaz.* 12 May 1994, p. 1188.
- <sup>3</sup> Came into operation 1 May 1995: reg. 2.
- <sup>4</sup> Came into operation 2 March 1997 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).
- <sup>5</sup> Came into operation 1 July 1995: *Gaz.* 1 June 1995, p. 2529.
- <sup>6</sup> Came into operation 4 April 1996: *Gaz.* 4 April 1996, p. 1886.
- <sup>7</sup> Came into operation 2 January 1997: *Gaz.* 2 January 1997, p. 4.
- <sup>8</sup> S. 5 came into operation 1 May 1995: s. 2(1); remainder of Act came into operation 1 May 1997: *Gaz.* 1 May 1997, p. 1666.
- <sup>9</sup> Part 3 (ss. 5-20) came into operation 2 July 1997: *Gaz.* 26 June 1997, p. 3052.
- <sup>10</sup> Sched. 4 (cls. 18 & 19) came into operation 29 July 1999: *Gaz.* 29 July 1999, p. 528.
- <sup>11</sup> Sched. 1 (cl. 1) came into operation 2 April 2001: *Gaz.* 29 March 2001, p. 1436.
- <sup>12</sup> Part 3 (s. 5) came into operation 14 June 2001: *Gaz.* 14 June 2001, p. 2221.
- <sup>13</sup> Came into operation 28 June 2001: reg. 2.
- <sup>14</sup> Came into operation 11 October 2001: reg. 2.
- <sup>15</sup> Schedule (cl. 1) came into operation 1 July 2002: *Gaz.* 27 June 2002, p. 2681.
- <sup>16</sup> **Part 2 (ss. 4-22) came into operation 10 April 2003: *Gaz.* 10 April 2003, p. 1670.**

N.B. The amendments effected to this Act by the *River Murray Act 2003* have not been brought into operation.

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**Environment Protection Act 1993**

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**Short title**

1. This Act may be cited as the *Environment Protection Act 1993*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

"**activity**" includes the storage or possession of a pollutant;

"**air**" includes any layer of the atmosphere;

"**amenity value**" of an area includes any quality or condition of the area that conduces to its enjoyment;

"**appointed member**", in relation to the Board, means a member appointed by the Governor;

"**associate**"—*see subsection (2)*;

"**authorised officer**" means a person appointed to be an authorised officer under Division 1 of Part 10;

"**the Authority**" means the Environment Protection Authority established under Division 1 of Part 3;

"**beverage container approval**" means an approval for the purposes of Division 2 of Part 8;

"**Board**" means the Board of the Environment Protection Authority established as the governing body of the Authority under Division 1 of Part 3;

"**business**" includes a business not carried on for profit or gain and any activity undertaken by government or a public authority;

"**Chief Executive**" of the Authority means the person for the time being holding or acting in the office of Chief Executive of the Authority under Division 1 of Part 3;

"**clean-up authorisation**" means a clean-up authorisation issued under Division 4 of Part 10;

"**clean-up order**" means a clean-up order issued under Division 4 of Part 10;

"**coastal waters of the State**" means any part of the sea that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

"**condition**" includes a limitation;

"**contravene**" includes fail to comply with;

"**council**" means a municipal or district council;

"**director**" of a body corporate includes a person occupying or acting in the position of a director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position, and includes any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to act;

"**document**" means a paper or record of any kind, including a disk, tape or other article from which information is capable of being reproduced (with or without the aid of another article or device);

"**domestic activity**" means an activity other than an activity undertaken in the course of a business;

"**environment**" means land, air, water, organisms and ecosystems, and includes—

- (a) human-made or modified structures or areas; and
- (b) the amenity values of an area;

"**environmental authorisation**" means a works approval, licence or exemption;

"**environmental harm**"—*see section 5*;

"**environmental nuisance**" means—

- (a) any adverse effect on an amenity value of an area that—
  - (i) is caused by noise, smoke, dust, fumes or odour; and
  - (ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or
- (b) any unsightly or offensive condition caused by waste;

"**environment performance agreement**" means an environment performance agreement entered into under Part 7;

"**environment protection order**" means an environment protection order issued under Division 2 of Part 10;

"**environment protection policy**" means an environment protection policy made under Part 5;

"**the Environment, Resources and Development Court**" means the Court of that name established under the *Environment, Resources and Development Court Act 1993*;

"**exemption**" means an exemption under Part 6 from the application of a specified provision of this Act;

"**the general environmental duty**" means the duty under Part 4;

"**information discovery order**" means an information discovery order issued under Division 3 of Part 10;

"**injury**" includes illness;

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"**land**" means, according to context—

- (a) land as a physical entity, including land covered with water; or
- (b) any legal estate or interest in, or right in respect of, land;

"**licence**" means a licence under Part 6 to undertake a prescribed activity of environmental significance;

"**mandatory provisions**" of an environment protection policy—*see Part 5*;

"**marine waters**" means the coastal waters of the State or any part of the sea that is within the limits of the State, and includes any estuary or tidal waters;

"**material environmental harm**" —*see section 5*;

"**national environment protection measure**" means a national environment protection measure made under the prescribed national scheme laws;

"**noise**" includes vibration;

"**occupier**", in relation to a place, includes a licensee and the holder of any right at law to use or carry on operations at the place, but does not include a mortgagee in possession unless the mortgagee assumes active management of the place;

"**officer**", in relation to a body corporate, means—

- (a) a director of the body corporate; or
- (b) the chief executive officer of the body corporate; or
- (c) a receiver or manager of any property of the body corporate or a liquidator of the body corporate,

and includes, in relation to a contravention or alleged contravention of this Act by the body corporate, an employee of the body corporate with management responsibilities in respect of the matters to which the contravention or alleged contravention related;

"**owner**" of land means—

- (a) if the land is unalienated from the Crown—the Crown; or
- (b) if the land is alienated from the Crown by grant in fee simple—the owner (at law or in equity) of the estate in fee simple; or
- (c) if the land is held from the Crown by lease or licence—the lessee or licensee;  
or
- (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase;

"**place**" includes any land, water, premises or structure;

"**pollutant**" means—

- (a) any solid, liquid or gas (or combination thereof) including waste, smoke, dust, fumes and odour; or
- (b) noise; or
- (c) heat; or
- (d) anything declared by regulation to be a pollutant;

"**pollute**" means—

- (a) discharge, emit, deposit or disturb pollutants; or
- (b) cause or fail to prevent the discharge, emission, depositing, disturbance or escape of pollutants,

and "**pollution**" has a corresponding meaning;

"**prescribed activity of environmental significance**" means an activity specified in Schedule 1 as amended from time to time by regulation;

"**the prescribed national scheme laws**" means—

- (a) the prescribed law of the Commonwealth; and
- (b) the prescribed law of this State; and
- (c) the laws of other States or Territories of the Commonwealth corresponding to the prescribed law of this State,

under which national environment protection measures may be made;

"**public authority**" includes a Minister, statutory authority or council;

"**related body corporate**" has the same meaning as in the *Corporations Law*;

"**repealed environment law**" means an Act or provision repealed by this Act;

"**sell**" includes—

- (a) supply on a gratuitous basis for commercial promotional purposes; and
- (b) offer or display for sale or such supply;

"**serious environmental harm**"—*see section 5*;

"**spouse**" includes putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*);

"**vehicle**" includes any vessel or aircraft;

"**waste**" includes any solid, liquid or gas (or combination thereof) that is left over, surplus or an unwanted by-product from any business or domestic activity, whether of value or not;

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"**water**" includes water underground;

"**works approval**" means a works approval under Part 6 to carry out works in respect of a building, structure, plant or equipment for use for a prescribed activity of environmental significance.

(2) For the purposes of this Act, a person is an **associate** of another if—

- (a) they are partners; or
- (b) one is a spouse, parent or child of another; or
- (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
- (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the body corporate or other entity; or
- (f) they are related bodies corporate; or
- (g) a relationship of a prescribed kind exists between them; or
- (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(3) For the purposes of subsection (2), a **beneficiary** of a trust includes an object of a discretionary trust.

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.*

**Responsibility for pollution**

**4.** For the purposes of this Act, the occupier or person in charge of a place or vehicle at or from which a pollutant escapes or is discharged, emitted or deposited will be taken to have polluted the environment with the pollutant (but without affecting the liability of any other person in respect of the escape, discharge, emission or depositing of the pollutant).

**Environmental harm**

**5.** (1) For the purposes of this Act, **environmental harm** is any harm, or potential harm, to the environment (of whatever degree or duration), and includes an environmental nuisance.

(2) For the purposes of this Act, **potential harm** includes risk of harm and future harm.

(3) For the purposes of this Act, the following provisions are to be applied in determining whether environmental harm is **material environmental harm** or **serious environmental harm**:

- (a) environmental harm is to be treated as material environmental harm if—
  - (i) it consists of an environmental nuisance of a high impact or on a wide scale; or

- (ii) it involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm (not being merely an environmental nuisance) that is not trivial; or
  - (iii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$5 000;
- (b) environmental harm is to be treated as serious environmental harm if—
- (i) it involves actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale; or
  - (ii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$50 000.

(4) For the purposes of subsection (3), **loss** includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent or mitigate the environmental harm and to make good resulting environmental damage.

(5) For the purposes of this Act, environmental harm is caused by pollution—

- (a) whether the harm is a direct or indirect result of the pollution; and
- (b) whether the harm results from the pollution alone or from the combined effects of the pollution and other factors.

#### **Act binds Crown**

**6.** (1) This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

(2) No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this Act.

#### **Interaction with other Acts**

**7.** (1) Subject to this section, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

(2) This Act does not apply to circumstances to which the *Environment Protection (Sea Dumping) Act 1984* applies.

(3) This Act is subject to—

- (a1) the *Electricity Corporations (Restructuring and Disposal) Act 1999*; and
- (a) the *Pulp and Paper Mills Agreement Act 1958*; and
- (b) the *Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964*; and
- (c) the *Roxby Downs (Indenture Ratification) Act 1982*.



(4) This Act does not apply in relation to—

- (a) petroleum exploration activity undertaken under the *Petroleum Act 1940* or the *Petroleum (Submerged Lands) Act 1982*; or
- (b) wastes produced in the course of an activity (not being a prescribed activity of environmental significance) authorised by a lease or licence under the *Mining Act 1971*, the *Petroleum Act 1940* or the *Roxby Downs (Indenture Ratification) Act 1982* when produced and disposed of to land and contained within the area of the lease or licence; or
- (c) wastes produced in the course of an activity (not being a prescribed activity of environmental significance) authorised by a lease under the *Mining Act 1971* when disposed of to land and contained within the area of a miscellaneous purposes licence under that Act adjacent to the area of the lease.

**Civil remedies not affected**

**8.** The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.

**Territorial and extra-territorial application of Act**

**9.** (1) This Act extends in application to the coastal waters of the State and the air above and land beneath those waters.

(2) Where—

- (a) a person causes a pollutant to come within the State or causes environmental harm within the State, by conduct engaged in outside the State; and
- (b) the conduct would, if engaged in within the State, constitute an offence against this Act,

the person is guilty of that offence as if the conduct were engaged in by the person within the State.

(3) For the purposes of subsection (2)—

- (a) a reference to **the State** includes a reference to the coastal waters of the State and the air above and land beneath those waters; and
- (b) a reference to **engaging in conduct** includes a reference to failure to act.

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**Part 2—Objects of Act**

**Objects of Act**

10. (1) The objects of this Act are—

- (a) to promote the following principles ("**principles of ecologically sustainable development**"):
  - (i) that the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while—
    - (A) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
    - (B) safeguarding the life-supporting capacity of air, water, land and ecosystems; and
    - (C) avoiding, remedying or mitigating any adverse effects of activities on the environment;
  - (ii) that proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement; and
- (b) to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development, and—
  - (i) to prevent, reduce, minimise and, where practicable, eliminate harm to the environment—
    - (A) by programmes to encourage and assist action by industry, public authorities and the community aimed at pollution prevention, clean production and technologies, reduction, re-use and recycling of material and natural resources, and waste minimisation; and
    - (B) by regulating, in an integrated, systematic and cost-effective manner—
      - activities, products, substances and services that, through pollution or production of waste, cause environmental harm; and
      - the generation, storage, transportation, treatment and disposal of waste; and
  - (ii) to co-ordinate activities, policies and programmes necessary to prevent, reduce, minimise or eliminate environmental harm and ensure effective environmental protection, restoration and enhancement; and
  - (iii) to facilitate the adoption and implementation of environment protection measures agreed on by the State under intergovernmental arrangements for greater uniformity and effectiveness in environment protection; and

- (iv) to apply a precautionary approach to the assessment of risk of environmental harm and ensure that all aspects of environmental quality affected by pollution and waste (including ecosystem sustainability and valued environmental attributes) are considered in decisions relating to the environment; and
- (v) to require persons engaged in polluting activities to progressively make environmental improvements (including reduction of pollution and waste at source) as such improvements become practicable through technological and economic developments; and
- (vi) to allocate the costs of environment protection and restoration equitably and in a manner that encourages responsible use of, and reduced harm to, the environment with polluters bearing an appropriate share of the costs that arise from their activities, products, substances and services; and
- (vii) to provide for monitoring and reporting on environmental quality on a regular basis to ensure compliance with statutory requirements and the maintenance of a record of trends in environmental quality; and
- (viii) to provide for reporting on the state of the environment on a periodic basis; and
- (ix) to promote—
  - (A) industry and community education and involvement in decisions about the protection, restoration and enhancement of the environment; and
  - (B) disclosure of, and public access to, information about significant environmental incidents and hazards.

(2) The Minister, the Authority and all other bodies and persons involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.

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**Part 3—Authority, conference and Fund**

**Division 1—Environment Protection Authority**

**Establishment of Authority**

11. (1) The *Environment Protection Authority* is established.

(2) The Authority—

(a) is a body corporate with perpetual succession and a common seal; and

(b) is capable of suing and being sued in its corporate name; and

(c) is capable of acquiring, holding or dealing with real or personal property in its corporate name; and

(d) has the functions and powers assigned or conferred under this Act.

(3) The Authority is an instrumentality of the Crown and holds its property on behalf of the Crown.

(4) In the exercise of its powers, functions or duties, the Authority is subject to the direction of the Minister except in relation to—

(a) the making of a recommendation or report to the Minister; or

(b) the performance of its functions under Part 6; or

(c) the enforcement of this Act.

(5) Any direction given to the Authority by the Minister must be in writing.

\* \* \* \* \*

**Functions of Authority**

13. (1) The Authority has the following functions:

(a) to prepare draft environment protection policies;

(b) to conduct regular reviews of environment protection policies, regulations and other measures and practices under this Act to ensure that they are adequate and effective to secure the objects of this Act;

(c) to contribute to the development of national environment protection measures and ensure their effective application in this State;

(d) to facilitate the pursuit of the objects of this Act by Commonwealth, State and local government bodies, the private sector and the public;

(e) to authorise activities of environmental significance through an authorisation system aimed at the control and minimisation of pollution and waste;

(f) to conduct investigations for the purpose of assessing compliance with this Act or conditions of licences under this Act;

- (g) to institute or supervise environmental monitoring and evaluation programmes;
  - (h) to provide advice and assistance in relation to the development and implementation of best environmental management practices and for that purpose encourage and, where necessary, undertake or require environmental audits, emergency planning, environment improvement programmes, environment performance agreements, and similar measures;
  - (i) to conduct and promote programmes and projects for the protection, restoration or enhancement of the environment;
  - (j) to provide advice to the Minister in relation to the administration and enforcement of this Act and in relation to other legislation that has, or may have, an impact on the environment;
  - (k) to administer and enforce this Act and perform any other functions assigned to the Authority by or under any other Act.
- (2) In performing its functions, the Authority should consult—
- (a) with other agencies of the State, agencies of the Commonwealth and of the other States and Territories of the Commonwealth, and intergovernmental agencies, that have functions corresponding to those of the Authority; and
  - (b) with local government and relevant industry, environment and community organisations.

#### **Powers of Authority**

**14.** The Authority may, for the purpose of performing its functions, exercise any powers that are necessary or expedient for, or incidental to, the performance of its functions and in particular may—

- (a) obtain expert or technical advice from a person on such terms and conditions as the Authority thinks fit; and
- (b) if the Chief Executive of the Authority is declared under section 13 of the *Public Sector Management Act 1995* to have the powers and functions of Chief Executive of an administrative unit of the Public Service, make use of the services of the administrative unit's employees and of its facilities; and
- (c) with the approval of a council, make use of the services of officers or employees of that council.

#### **Chief Executive**

**14A.** (1) The office of Chief Executive of the Authority is established.

(2) The Chief Executive is, subject to the control and direction of the Board, responsible for giving effect to the policies and decisions of the Board.

(3) The Chief Executive will be appointed by the Governor, on conditions determined by the Governor, for a term, not exceeding 7 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(4) The Governor may appoint a person (on terms and conditions determined by the Governor) to act in the office of Chief Executive of the Authority.

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- (5) A person appointed to act in the office of the Chief Executive under subsection (4)—
  - (a) may act in that office during a temporary absence of the Chief Executive or while the office of the Chief Executive is temporarily vacant; and
  - (b) has, while so acting, all the powers, duties and functions of the Chief Executive.

**Board of Authority**

**14B.** (1) The *Board of the Environment Protection Authority* is established as the governing body of the Authority.

(2) The Board is to consist of not less than seven and not more than nine members.

(3) The Chief Executive of the Authority is a member of the Board *ex officio* and the remaining members of the Board will be appointed by the Governor.

(4) The Minister must consult with prescribed bodies, in accordance with the regulations, in relation to the selection of persons for appointment under this section.

(5) The Board's membership must include persons who together have, in the Governor's opinion, the following attributes:

- (a) qualifications and experience relevant to environmental protection and management or natural resources management;
- (b) practical knowledge of, and experience in, industry, commerce or economic development;
- (c) practical knowledge of, and experience in, environmental conservation and advocacy on environmental matters on behalf of the community;
- (d) practical knowledge of, and experience in, the reduction, re-use, recycling and management of waste or the environmental management industry;
- (e) legal qualifications and experience in environmental law;
- (f) qualifications and experience relevant to management generally and public sector management;
- (g) practical knowledge of, and experience in, local government.

(6) At least one member of the Board must be a woman and one a man.

(7) The Chief Executive of the Authority will chair meetings of the Board.

(8) The Governor may appoint a suitable person to be deputy of a member of the Board (other than the Chief Executive) and a person so appointed may act in the place of the member of whom he or she has been appointed deputy during any absence of that member.

**Terms and conditions of office**

**15.** \* \* \* \* \*

(2) An appointed member of the Board is to be appointed for a term, not exceeding two years, specified in the instrument of appointment and is, on the expiration of a term of office, eligible for re-appointment.

(3) An appointed member of the Board is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

(4) The Governor may remove an appointed member of the Board from office for—

- (a) misconduct; or
- (b) neglect of duty; or
- (c) incapacity to carry out satisfactorily the duties of his or her office; or
- (d) failure to carry out satisfactorily the duties of his or her office.

(5) An appointed member of the Board neglects his or her duty if the member fails to attend three consecutive meetings without the leave of the Board.

(6) The office of an appointed member of the Board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is removed from office by the Governor under subsection (4).

(7) On the office of an appointed member of the Board becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

### **Proceedings of Board**

**16.** (1) The Board must meet at least 12 times in each calendar year or more frequently where necessary for the performance of its functions.

(2) The Chief Executive of the Authority must preside at meetings of the Board.

(3) A quorum of the Board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.

(4) Subject to subsection (3), the Board may act notwithstanding vacancies in its membership or a defect in appointment of a member.

(5) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.

(6) Each member present at a meeting of the Board has one vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(7) A telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present.

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(8) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—

- (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Board; and
- (b) a majority of the members express their concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(9) The Board must have accurate minutes kept of its proceedings and make them available to all members of the Board.

(10) A person who is not a member of the Board may be present during a meeting with the consent of the Board but not otherwise.

(11) Subject to this Act, the Board may determine its own procedures.

**Board may establish committees and subcommittees**

**17.** (1) The Board—

- (a) must establish the committees or subcommittees required by the regulations; and
- (b) may establish such other committees or subcommittees as the Board thinks fit,

to advise the Authority on any aspect of its functions, or to assist the Authority in the performance of its functions.

(2) A committee or subcommittee established under subsection (1) may, but need not, consist of, or include, members of the Board.

(3) The procedures to be observed in relation to the conduct of business of a committee or a subcommittee of the Board will be—

- (a) as prescribed by regulation; or
- (b) insofar as the procedure is not prescribed by regulation—as determined by the Board; or
- (c) insofar as the procedure is not prescribed by regulation or determined by the Board—as determined by the relevant committee or subcommittee.

**Conflict of interests**

**18.** (1) A member of the Board or a committee or subcommittee established by the Board who has a direct or indirect pecuniary or personal interest in a matter decided or under consideration by the Board or committee or subcommittee—

- (a) must disclose the nature of the interest to the Board or committee or subcommittee; and
- (b) must not take part in any deliberations or decisions of the Board or committee or subcommittee on the matter.

Penalty: Division 6 fine or Division 6 imprisonment.



(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the Board.

## Division 2—Round-table conference

### Round-table conference

19. (1) The Authority must, on an annual basis (or with such greater frequency as the Authority may determine), hold a round-table conference in accordance with this section for the purpose of assisting the Authority and the Minister to assess the views of interested bodies and persons on such matters related to—

- (a) the operation of this Act; or
- (b) the protection, restoration or enhancement of the environment within the scope of this Act,

as the Authority may determine.

(2) The Authority must endeavour to ensure that those persons invited by the Authority to attend a round-table conference represent a wide range of interests and expertise in relation to the matters to be considered and include representatives of the community, industry and relevant environmental and professional organisations.

(3) Subject to this section, round-table conferences will—

- (a) be held at such times; and
- (b) consist of such number of persons; and
- (c) be conducted according to such procedures,

as the Authority may determine.

(4) The Chief Executive of the Authority or, if the Chief Executive is unable to attend, a member of the Board must be present at a round-table conference.

(5) The Chief Executive of the Authority, or his or her nominee, will preside at a round-table conference.

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## Division 3—Environment Protection Fund

### Environment Protection Fund

24. (1) The *Environment Protection Fund* is established.

(2) The Fund must be kept as directed by the Treasurer.

(3) The Fund is to consist of the following money:

- (a) the prescribed percentage of fees (other than expiation fees) paid under this Act;

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- (b) expiation fees and the prescribed percentage of penalties recovered in respect of offences against this Act (other than expiation fees or penalties to which a council is entitled);
- (c) any money required to be paid into the Fund by way of a financial assurance under Division 5 of Part 6;
- (d) any amount paid to the Authority, or the value of anything forfeited to the Authority, as a result of exercise of the power of seizure under Division 1 of Part 10;
- (e) the prescribed percentage of money paid to the Authority by way of a levy under Part 15;
- (ea) any amount paid to the Authority that is required under Part 15 to be paid into the Fund;
- (f) any money appropriated by Parliament for the purposes of the Fund;
- (g) any money paid into the Fund at the direction or with the approval of the Minister and the Treasurer;
- (h) any money received by way of grant, gift or bequest for the purposes of the Fund;
- (i) any income from investment of money belonging to the Fund;
- (j) any money paid into the Fund under any other Act.

(4) The Fund may be applied by the Minister or by the Authority with the approval of the Minister (without further appropriation than this subsection)—

- (a) in making any payment required in connection with a financial assurance under Division 5 of Part 6; or
- (b) in making any payment required by the terms of an environment performance agreement under Part 7; or
- (c) in making payments for or towards the cost of action taken to deal with an environmental emergency or its effects; or
- (d) for the purposes of education and training programmes in relation to the protection, restoration or enhancement of the environment; or
- (e) for the purposes of any investigations, research, pilot programmes or other projects relating to the protection, restoration or enhancement of the environment; or
- (f) towards the costs of administration of this Act.

\* \* \* \* \*

(6) The Authority may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

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## Part 4—General environmental duty

### General environmental duty

**25.** (1) A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm.

(2) In determining what measures are required to be taken under subsection (1), regard is to be had, amongst other things, to—

- (a) the nature of the pollution or potential pollution and the sensitivity of the receiving environment; and
- (b) the financial implications of the various measures that might be taken as those implications relate to the class of persons undertaking activities of the same or a similar kind; and
- (c) the current state of technical knowledge and likelihood of successful application of the various measures that might be taken.

(3) In any proceedings (civil or criminal), where it is alleged that a person failed to comply with the duty under this section by polluting the environment, it will be a defence—

- (a) if—
  - (i) maximum pollution levels were fixed for the particular pollutant and form of pollution concerned by mandatory provisions of an environment protection policy or conditions of an environmental authorisation held by the person, or both; and
  - (ii) it is proved that the person did not by so polluting the environment contravene the mandatory provisions or conditions; or
- (b) if—
  - (i) an environment protection policy or conditions of an environmental authorisation provided that compliance with specified provisions of the policy or with specified conditions of the authorisation would satisfy the duty under this section in relation to the form of pollution concerned; and
  - (ii) it is proved that the person complied with the provisions or with such conditions of an environmental authorisation held by the person.

(4) Failure to comply with the duty under this section does not of itself constitute an offence, but—

- (a) compliance with the duty may be enforced by the issuing of an environment protection order; and
- (b) a clean-up order or clean-up authorisation may be issued, or an order may be made by the Environment Resources and Development Court under Part 11, in respect of non-compliance with the duty.

## Part 5—Environment protection policies

### Division 1—General

#### Interpretation

26. In this Division—

- (a) a reference to a **draft environment protection policy** includes a reference to a draft amendment to, or a draft revocation of, an environment protection policy previously made under this Division;
- (b) a reference to an **environment protection policy** includes a reference to an amendment to, or a revocation of, an environment protection policy previously made under this Division.

#### Nature and contents of environment protection policies

27. (1) Environment protection policies may be made in accordance with this Division for any purpose directed towards securing the objects of this Act.

(2) An environment protection policy may do one or more of the following according to its terms:

- (a) set out matters to be taken into account by the Authority—
    - (i) in determining matters required to be determined by the Authority under Part 6 in relation to environmental authorisations or applications for environmental authorisations;
    - (ii) in determining matters required to be determined by the Authority under Part 6 in relation to applications for development authorisations referred to the Authority under the *Development Act 1993*;
    - (iii) in determining any other specified matters required to be determined by the Authority for the purposes of this Act;
  - (b) set out controls or requirements ("**mandatory provisions**") to be enforceable as offences under Division 2;
  - (c) set out policies that may be given effect to by the issuing of environment protection orders under Part 10.
- (3) Where an environment protection policy contains a mandatory provision, the policy—
- (a) must declare whether contravention of the mandatory provision will be a category A, category B or category C offence for the purposes of Division 2; and
  - (b) may contain provisions that—
    - (i) prevent the granting of an exemption under Part 6 from compliance with the mandatory provision; or
    - (ii) specify the circumstances in which such an exemption may be granted or the conditions that must be attached to it, or both.

- (4) The provisions of an environment protection policy may—
- (a) be of general application or limited application;
  - (b) make different provisions according to the matters or circumstances to which they are expressed to apply;
  - (c) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a body specified in the policy, as in force from time to time or as in force at a specified time;
  - (d) provide that a matter or thing is to be determined according to the discretion of the Authority.

**Normal procedure for making policies**

**28.** (1) This section sets out the normal procedure to be followed in making environment protection policies.

(2) The Authority may prepare draft environment protection policies.

(3) The Authority must, before commencing to prepare a draft environment protection policy, cause an advertisement to be published in the *Gazette* and in a newspaper circulating generally in the State giving notice of its intention to prepare the draft policy and describing the general purpose of the proposed policy.

(3a) Where a committee or subcommittee of the Board is established under this Act to advise the Authority in relation to the preparation or contents of a draft environment protection policy, the Authority must obtain and consider the advice of the committee or subcommittee in relation to the policy.

(4) The Authority must, when it has prepared a draft environment protection policy, prepare a report containing—

- (a) an explanation of the purpose and effect of the draft policy; and
- (b) a summary of any background and issues relevant to the draft policy and of the analysis and reasoning applied in formulating the policy.

(5) The Authority must, after preparation of the draft policy and related report, refer that policy and report—

- (a) to any body prescribed for the purposes of this section; and
- (b) to any public authority whose area of responsibility is, in the opinion of the Authority, particularly affected by the policy.

(6) The Authority must also, after preparation of the draft policy and related report, cause an advertisement to be published in the *Gazette* and in a newspaper circulating generally in the State—

- (a) giving notice of places at which the draft policy and the report, or copies of the draft policy and the report, are to be available for inspection and, if copies are to be available for purchase, of places at which copies may be purchased; and

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- (b) inviting interested persons to make written submissions in relation to the draft policy within a period specified in the advertisement (being not less than two months from the date of publication of the advertisement); and
- (c) stating that the submissions will be available for inspection by interested persons as provided by subsection (8); and
- (d) subject to subsection (7), appointing a place and time at which a public hearing will be commenced by the Authority in which interested persons may appear to be heard in relation to the draft policy and the submissions.

(7) The Authority may, in relation to any particular draft policy, with the approval of the Minister, dispense with the requirement for the holding of a public hearing if satisfied that it is not warranted in the circumstances.

(8) Where written submissions are made in response to an advertisement published under subsection (4), a copy of those submissions must be made available for inspection by interested persons during ordinary business hours at the principal office of the Authority from the end of the period specified for the making of submissions until the Authority reports to the Minister on the draft policy under subsection (11).

(9) At the time and place appointed for a public hearing under subsection (6)(d), any interested person may appear and make submissions to the Authority that are relevant to the draft policy or the written submissions relating to the draft policy.

(10) The Authority must consult with and consider the advice of—

- (a) any body prescribed for the purposes of this section; and
- (b) any public authority to whom the draft policy has been referred,

on the provisions of the draft policy, on all matters raised as a result of public consultation under this section and on any alterations that the Authority proposes should be made to the draft policy.

(11) The Authority must then report to the Minister and the Minister may, after taking into account the report and any recommendations of the Authority on the matter—

- (a) approve the draft policy; or
- (b) alter the draft policy and approve the draft policy as altered; or
- (c) decline to approve the draft policy.

(12) A draft policy approved by the Minister under subsection (11) may be referred to the Governor and the Governor may, by notice in the *Gazette*—

- (a) declare the draft to be an authorised environment protection policy under this Act; and
- (b) fix a day on which it will come into operation.

**National environment protection measures automatically operate as policies**

**28A.** (1) When a national environment protection measure comes into operation under the prescribed national scheme laws, the measure comes into operation as an environment protection policy under this Division.

(2) An environment protection policy that comes into operation by virtue of subsection (1) is to be treated as a policy that—

- (a) is to be taken into account by the Authority in determining any matters under this Act (or under the *Development Act 1993*) to which the policy has relevance; and
- (b) may be given effect to by the issuing of environment protection orders under Part 10.

(3) An environment protection policy that comes into operation by virtue of subsection (1) cannot be varied or revoked except—

- (a) by a further national environment protection measure made under the prescribed national scheme laws; or
- (b) by an environment protection policy made under this Division that makes more stringent provision for the protection of the environment.

(4) Where an environment protection policy that comes into operation by virtue of subsection (1) is inconsistent with an environment protection policy made under this Division, the former prevails to the extent of the inconsistency except to the extent that the latter makes more stringent provision for the protection of the environment.

#### **Simplified procedure for making certain policies**

**29.** (1) Where the Minister is satisfied that a draft environment protection policy refers to or incorporates without substantial modification the whole or part of a standard or other document prepared by a body prescribed for the purposes of this section—

- (a) the normal procedure for making environment protection policies does not apply in relation to the draft policy; and
- (b) the Minister may refer the draft policy directly to the Governor.

(1a) Where the Minister considers that, in consequence of the making or amendment of a national environment protection measure, it is necessary or desirable to amend or revoke an environment protection policy made under this Division—

- (a) the normal procedure for amending or revoking environment protection policies made under this Division does not apply in relation to the draft amendment or revocation of the policy; and
- (b) the Minister may refer the draft policy directly to the Governor.

(1b) Subsection (1a) does not apply in relation to an amendment or revocation of an environment protection policy that would have the effect of relaxing requirements for the protection of the environment, taking into account the provisions of the relevant national environment protection measure.

(2) The Governor may, on reference of a draft policy under this section, by notice in the *Gazette*—

- (a) declare the draft to be an authorised environment protection policy under this Act; and
- (b) fix a day on which it will come into operation.

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**Reference of policies to Parliament**

**30.** (1) When the Governor declares a draft environment protection policy to be an authorised environment protection policy under this Act, the Minister must—

- (a) within 14 days, refer the policy to the Environment, Resources and Development Committee of the Parliament; and
- (b) within 14 sitting days, cause the policy to be laid before both Houses of Parliament.

(2) If the Environment, Resources and Development Committee, after receipt of the policy under subsection (1), resolves to suggest an amendment to the policy, the Governor may, on the recommendation of the Minister, by notice in the *Gazette*, proceed to make such an amendment.

(3) If either House of Parliament passes a resolution disallowing the policy, the policy ceases to have effect.

(4) If an amendment suggested by resolution under subsection (2) has been made to the policy by the Governor under that subsection, a resolution may nevertheless be passed under subsection (3) disallowing the policy as amended.

(5) A resolution is not effective for the purposes of subsection (3) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the policy was laid before the House.

(6) Where a policy that revokes the whole or part of another policy is disallowed, the policy or part sought to be revoked revives.

(7) Where a policy is disallowed by resolution of either House, notice of the resolution must forthwith be published in the *Gazette*.

**Interim policies**

**31.** (1) If the Governor is of the opinion that it is necessary for the proper administration of this Act that a draft environment protection policy should come into operation without delay, the Governor may declare, by notice in the *Gazette*, that the policy will come into operation on an interim basis on a day specified in the notice (being the day of publication in the *Gazette* of an advertisement concerning the draft policy and related report in accordance with the normal procedure, or any later day).

(2) Where a notice has been published under subsection (1), the policy comes into operation on the day specified in the notice.

(3) The Minister must, as soon as practicable after the publication of a notice under subsection (1), prepare a report on the matter and cause copies of the report to be laid before both Houses of Parliament.

(4) A policy that has come into operation under this section ceases to operate—

- (a) if the Governor, by notice published in the *Gazette*, terminates the operation of the policy; or
- (b) if either House of Parliament passes a resolution disallowing the policy after copies of the policy have been laid before both Houses of Parliament in accordance with the normal procedure; or



- (c) if the policy has not been authorised by the Governor in accordance with the normal procedure within 12 months from the day on which it came into operation; or
- (d) if the policy is superseded by another policy that comes into operation under this Division.

(5) If a policy ceases to operate by virtue of subsection (4)(b) or (c), notice of the cessation must forthwith be published in the *Gazette*.

(6) If a policy that revokes the whole or part of another policy ceases to operate by virtue of subsection (4)(a), (b), or (c), the policy or part sought to be revoked revives.

#### **Certain amendments may be made without following normal procedure**

**32.** (1) The Minister may, by notice in the *Gazette*, amend an environment protection policy—

- (a) in order to correct an error in the policy; or
- (b) in order to make a change of form (not involving a change of substance) in the policy; or
- (c) if the policy itself or the regulations provide that a change of a specified kind may be made to the policy by amendment under this section—in order to make a change of that kind.

(2) An amendment under this section comes into operation on the day fixed in the notice of the amendment.

#### **Availability and evidence of policies**

**33.** (1) Copies of each environment protection policy and of each standard or other document referred to in an environment protection policy must be kept available for inspection and purchase by the public during ordinary office hours at the principal office of the Authority.

(2) In any legal proceedings, evidence of the contents of an environment protection policy or of a standard or other document referred to in an environment protection policy may be given by production of a document certified by the Authority as a true copy of the policy, standard or other document.

### **Division 2—Contravention of mandatory provisions**

#### **Offence to contravene mandatory provisions of policy**

**34.** (1) A person who intentionally or recklessly contravenes a mandatory provision of an environment protection policy is guilty of an offence.

Penalty:

- (a) For a category A offence if the offender—
  - (i) is a body corporate—\$250 000;
  - (ii) is a natural person—\$120 000 or Division 5 imprisonment, or both;
- (b) For a category B or C offence—Division 3 fine.

(2) A person who contravenes a mandatory provision of an environment protection policy is guilty of an offence.

Penalty:

- (a) For a category A offence if the offender—
  - (i) is a body corporate—\$120 000;

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- (ii) is a natural person—Division 1 fine;
- (b) For a category B offence—Division 6 fine;
- (c) For a category C offence—Division 9 fine.

Expiation fee:

- (a) For a category B offence—Division 6 fee;
- (b) For a category C offence—Division 9 fee.

(3) For the purposes of this section, contravention of a mandatory provision of an environment protection policy is a category A offence, category B offence or category C offence if the policy declares that such contravention will be an offence of that category.

(4) If in proceedings for an offence against subsection (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

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## Part 6—Environmental authorisations and development authorisations

### Division 1—Requirement for works approval

#### Requirement for works approval

35. (1) Subject to this section, a person must not carry out works for—

- (a) the construction or alteration of a building or structure for use for a prescribed activity of environmental significance; or
- (b) the installation or alteration of any plant or equipment for use for a prescribed activity of environmental significance,

except as authorised by an environmental authorisation in the form of a works approval under this Part.

Penalty:

If the offender is a body corporate—\$120 000.

If the offender is a natural person—Division 1 fine.

(2) A works approval is not required under subsection (1) for—

- (a) works in respect of a building, structure, plant or equipment for use for an activity that is authorised by a licence under this Part; or
- (b) works for which development authorisation is required under the *Development Act 1993*.

### Division 2—Requirement for licence

#### Requirement for licence

36. A person must not undertake a prescribed activity of environmental significance except as authorised by an environmental authorisation in the form of a licence under this Part.

Penalty:

If the offender is a body corporate—\$120 000.

If the offender is a natural person—Division 1 fine.

### Division 3—Exemptions

#### Exemptions

37. Subject to this Part and the regulations, a person may obtain an environmental authorisation in the form of an exemption exempting the person from the application of a specified provision of this Act in respect of a specified activity.

### Division 4—Grant, renewal, conditions and transfer of environmental authorisations

#### Applications for environmental authorisations

38. (1) An application for an environmental authorisation must be made to the Authority in such manner and form as is determined by the Authority and must be accompanied by the prescribed application fee.

(2) The Authority may, as it considers appropriate, accept a single application from an applicant in respect of different activities of the applicant or activities of the applicant at different locations or may require separate applications.

(3) An application for an exemption may be combined with an application for some other environmental authorisation.

(4) Where the Authority requires further information to determine the application, the Authority may, by notice in writing served on the applicant no later than two months after the application is made, require the applicant to furnish further specified information in writing.

(5) Where further information is required in respect of an application, the application is to be taken not to have been duly made until the information is furnished as required by the Authority.

#### **Notice and submissions in respect of applications for environmental authorisations**

**39.** (1) Subject to this section, the Authority must, on receipt of an application for the grant of an environmental authorisation—

- (a) cause public notice of the application to be published in a newspaper circulating generally in the State; and
- (b) in the public notice invite interested persons to make written submissions in relation to the application within a period specified in the notice (being not less than 14 days from the date of publication of the notice).

(1a) The Authority must, on receipt of an application for an environmental authorisation that would authorise an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, give notice of the application to the authority under that Act to whom an application for a permit for that activity would otherwise have to be made inviting the authority to make written submissions in relation to the application within a period specified in the notice (being not less than 14 days after the notice is given to the authority).

(1b) Subsection (1a) does not apply in relation to an activity—

- (a) to which section 64(1a) applies; or
- (b) that is development for the purposes of the *Development Act 1993* and that is authorised by a development authorisation under that Act.

(2) The Authority must, if it considers it appropriate in the circumstances, cause the public notice to be published, in addition, in a local newspaper circulating in the area in which activity would be undertaken pursuant to the environmental authorisation if it were granted.

(3) No public notice is required in respect of—

- (a) an application for an exemption from the application of a provision of Division 3 of Part 8; or
- (b) an application for a licence to conduct a waste transport business (category B) as described in Part A of Schedule 1.

#### **Grant of environmental authorisations**

**40.** (1) Subject to this Act, the Authority may grant an environmental authorisation to a person who has made due application for the authorisation and paid the authorisation fee prescribed or determined under the regulations.

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(2) The Authority must, by notice in writing served on the applicant, advise the applicant of its decision on the application and, in the case of a decision refusing a works approval or licence, state in the notice the reasons for the refusal.

(3) Where the Authority grants an exemption under this Part, the Authority must forthwith cause notice of the exemption to be published in the *Gazette*.

**Authorisations may be held jointly**

**41.** (1) An environmental authorisation may be held jointly by two or more persons.

(2) Where an environmental authorisation is held jointly by two or more persons, those persons are jointly and severally liable where any civil or criminal liability attaches to the holder of the authorisation under this Act.

**Time limit for determination of applications**

**42.** (1) If the Authority has not advised an applicant for an authorisation of its decision on the application within the prescribed period after the application is made, the applicant may, after giving 14 days notice in writing to the Authority, apply to the Environment, Resources and Development Court for an order requiring the Authority to make its decision on the application within a time fixed by the Court.

(2) If an application for an authorisation involves an activity that requires a related approval under the *Development Act 1993* and that approval has not been obtained at the time that the application is made under this Act, the time period under subsection (1) will not commence until approval is obtained under the *Development Act 1993*.

**Term and renewal of environmental authorisations**

**43.** (1) Subject to this Act, an environmental authorisation remains in force for a term determined by the Authority and specified in the authorisation on its grant or renewal.

(2) An application for the renewal of an environmental authorisation must be made to the Authority in such manner and form as is determined by the Authority and must be accompanied by the prescribed application fee.

(3) An application for renewal must be made not less than the prescribed number of days before the date of expiry of the environmental authorisation.

(4) The Authority may, in its discretion, grant a late application for renewal provided that the applicant pays the prescribed late application fee.

(5) Subject to any condition of the authorisation excluding or limiting the right of renewal under this section, an environmental authorisation must be renewed by the Authority on due application under this section and payment of the authorisation fee prescribed or determined under the regulations.

(6) The Authority may, of its own initiative and without application by the holder of an environmental authorisation, renew the authorisation if the Authority is satisfied that it is necessary for the protection or restoration of the environment that the holder of the authorisation continue to be bound by conditions of the authorisation.

(7) The Authority may renew an authorisation on a late application or under subsection (6) despite the fact that the authorisation has expired and, in that event, the renewal has effect from the end of the term for which the authorisation was previously granted or renewed.

**Applicants may lodge proposed environment improvement programmes**

**44.** (1) Subject to this section, an applicant under this Part may lodge with the Authority a proposed environment improvement programme to be carried out by the applicant.

(2) A proposed environment improvement programme may—

(a) be lodged in association with an application for—

(i) an exemption from compliance with the general environmental duty under Part 4 in relation to a specified activity; or

(ii) an exemption from specified mandatory provisions of an environment protection policy; and

(b) consist of a programme (the carrying out of which may be required by conditions of the exemption) setting out action to be taken within specified periods to achieve compliance with the general environmental duty in relation to that activity, or with the mandatory provisions, as the case may be.

(3) A proposed environment improvement programme may—

(a) be lodged in association with an application for the grant or renewal of a licence; and

(b) consist of a programme (the carrying out of which may be required by conditions of the licence) setting out action to be taken within specified periods—

(i) to achieve compliance with specified mandatory provisions of an environment protection policy that are to come into operation on a specified future day; or

(ii) for the protection, restoration or enhancement of the environment beyond standards required by or under this Act.

**Conditions**

**45.** (1) The Authority may impose conditions of an environmental authorisation with respect to such matters as are contemplated by this Act or as the Authority considers necessary or expedient for the purposes of this Act.

(2) The Authority may impose a condition of an environmental authorisation, or vary or revoke a condition previously imposed by the Authority, by notice in writing to the person holding the authorisation.

(3) The Authority may impose or vary a condition of an environmental authorisation—

(a) on the granting or renewal of the authorisation; or

(b) at any time—

(i) with the consent of the person holding the authorisation; or

(ii) where the Authority considers that it is necessary to impose or vary the condition in consequence of—

(A) contravention of this Act by the person holding the authorisation; or

(B) risk of material or serious environmental harm; or

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- (C) the making or amendment of an environment protection policy; or
  - (D) the making or amendment of a national environment protection measure; or
- (iii) as provided by a condition of the authorisation or a provision of this Act or the regulations under this Act.

(4) The Authority may revoke a condition at any time.

(5) The holder of an environmental authorisation must not contravene a condition of the authorisation.

**Penalty:**

If the offender is a body corporate—\$120 000.

If the offender is a natural person—Division 1 fine.

**Notice and submissions in respect of proposed variations of conditions**

**46.** (1) Subject to this section, if the Authority proposes to vary the conditions of an environmental authorisation, the Authority must first—

- (a) give notice in writing of the proposed variation to the holder of the authorisation—
  - (i) setting out the reasons for the proposed variation; and
  - (ii) inviting the holder of the authorisation to make written submissions in relation to the proposed variation within a period specified in the notice (being not less than 14 days from the day on which the notice is given to the holder); and
- (b) cause public notice of the proposed variation to be published in a newspaper circulating generally in the State—
  - (i) setting out the reasons for the proposed variation; and
  - (ii) inviting interested persons to make written submissions in relation to the proposed variation within a period specified in the notice (being not less than 14 days from the date of publication of the notice).

(1a) Subject to this section, if the Authority proposes to vary the conditions of an environmental authorisation that authorises an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Authority must first give notice to the authority under that Act to whom an application for a permit for that activity would otherwise have to be made that—

- (a) sets out the reasons for the proposed variation; and
- (b) invites the authority to make written submissions in relation to the proposal within a period specified in the notice (being not less than 14 days after the notice is given to the authority).

(2) The Authority must, if it considers it appropriate in the circumstances, cause the public notice to be published, in addition, in a local newspaper circulating in the area in which activity is or is to be undertaken pursuant to the environmental authorisation.

(3) Notice of a proposed variation is not required to be given to the holder of the environmental authorisation if—

- (a) the proposed variation is to be made with consent of the holder; or
- (b) the proposed variation consists of the revocation of a condition.

(4) Public notice under subsection (1)(b) and notice under subsection (1a) are not required if the proposed variation does not result in any relaxation of the requirements imposed for the protection or restoration of the environment by or under this Act on the holder of the environmental authorisation.

(5) No notice is required in respect of—

- (a) a proposed variation of conditions of an exemption from a provision of Division 3 of Part 8; or
- (b) a proposed variation of conditions of a licence to conduct a waste transport business (category B) as described in Part A of Schedule 1; or
- (c) a proposed variation to be made to correct an error or make a change of form (not involving a change of substance); or
- (d) a proposed variation of a kind prescribed by regulation.

(6) For the purposes of this section, a reference to the **variation of conditions** includes a reference to the revocation of a condition or the imposition of a condition or further condition after the grant of the authorisation.

#### **Criteria for grant and conditions of environmental authorisations**

**47.** (1) In determining—

- (a) whether to grant or refuse an environmental authorisation; or
- (b) what should be the term or conditions of an environmental authorisation,

the Authority must—

- (c) have regard to, and seek to further, the objects of this Act; and
- (d) have regard to the general environmental duty; and
- (e) have regard to any relevant environment protection policy, and, in relation to an application for exemption from mandatory provisions of an environment protection policy, give effect to any provisions of the policy governing the granting of such exemptions; and
- (f) have regard to any relevant reports, assessments, environmental impact statement, public environmental report, development report, Assessment Report, development authorisation or other document or requirement under the *Development Act 1993*; and
- (g) have regard to any relevant environment improvement programme or environment performance agreement or any such proposed programme or agreement; and



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- (h) have regard to any public submissions made to the Authority under this Part that are relevant to the matters to be determined; and
  - (i) in relation to any proposed variation of the conditions of an environmental authorisation, have regard to any submissions made by the holder of the authorisation to the Authority under this Part; and
  - (j) where an authority under the *Water Resources Act 1997* has made submissions to the Authority in response to an invitation under section 39(1a) or 46(1a), have regard to those submissions.
- (2) Despite subsection (1) but subject to subsections (3) and (4), where a person—
- (a) has been granted—
    - (i) a works approval authorising works for the purposes of a prescribed activity of environmental significance; or
    - (ii) a development authorisation under Division 1 of Part 4 of the *Development Act 1993* authorising a development for the purposes of a prescribed activity of environmental significance on each application in respect of that development referred to the Authority in accordance with that Division; or
    - (iii) a development authorisation under Division 2 of Part 4 of the *Development Act 1993* authorising a development or project for the purposes of a prescribed activity of environmental significance; and
  - (b) has complied with the conditions (if any) of the works approval or development authorisation imposed by or at the direction of the Authority,

the Authority may not, on due application for such a licence, refuse to grant a licence authorising the person to undertake that prescribed activity of environmental significance.

(2a) If an application for an environmental authorisation involves an activity that requires a related approval under the *Development Act 1993*, the Authority must defer its determination of the application under this Act until a relevant development authorisation is obtained under the *Development Act 1993* and the Authority receives notification of that development authorisation (and any conditions) from the applicant (and if an application for a development authorisation is refused under that Act then, subject to the regulations, the Authority must refuse the application for environmental authorisation under this Act).

(3) The Authority may refuse an environmental authorisation if the Authority is not satisfied that the applicant is a suitable person to be granted the authorisation.

(4) In particular, without limiting the effect of subsection (3), the Authority may refuse an environmental authorisation—

- (a) if the applicant has contravened this Act or any prescribed Act, or has held an environmental authorisation or other authority that has been cancelled or suspended under this Act or any such prescribed Act; or

- (b) if the applicant is a body corporate and a director of the body corporate—
  - (i) has contravened this Act or any prescribed Act, or has held an environmental authorisation or other authority that has been cancelled or suspended under this Act or any such prescribed Act; or
  - (ii) is or has been the director of another body corporate that has contravened this Act or any prescribed Act, or has held an environmental authorisation or other authority that has been cancelled or suspended under this Act or any such prescribed Act; or
- (c) on any ground prescribed by regulation.

(5) For the purposes of subsection (4), any Act including an Act that has been repealed or an Act of a place other than this State may be declared by regulation to be a prescribed Act.

### Annual fees and returns

**48.** (1) This section—

- (a) applies to an environmental authorisation granted or renewed for a term of two years or more; and
- (b) does not apply to an environmental authorisation of a prescribed class.

(2) The holder of an environmental authorisation must—

- (a) in each year lodge with the Authority, before the date prescribed for that purpose, an annual return containing the information required by the Authority by condition of the authorisation or by notice in writing; and
- (b) in each year (other than a year in which the authorisation is due to expire) pay to the Authority, before the date prescribed for that purpose, the annual authorisation fee prescribed or determined under the regulations.

(3) Where an annual authorisation fee is to be determined by the Authority under the regulations, the Authority must, not less than one month before the date prescribed for payment of the fee, notify the holder of the authorisation of the fee so determined.

(4) Where the holder of an authorisation fails to lodge the annual return or pay the annual authorisation fee in accordance with subsection (2), the Authority may, by notice in writing, require the holder to make good the default and, in addition, to pay to the Authority the amount prescribed as a penalty for default.

(5) An annual authorisation fee (including any penalty for default) payable under this section is recoverable by the Authority as a debt due to the Authority.

(6) In this section—

"holder" of an environmental authorisation includes the holder of an authorisation that has been suspended.

### Transfer of environmental authorisations

**49.** (1) Subject to this section and any condition of the authorisation excluding or limiting the right of transfer under this section, the Authority must approve the transfer of an environmental authorisation on due application under this section.

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(2) The Authority may refuse to approve the transfer of an authorisation if the Authority is not satisfied that the proposed transferee is a suitable person to hold the authorisation.

(3) In particular, without limiting the effect of subsection (2), the Authority may refuse to approve the transfer of an authorisation—

- (a) if the proposed transferee has contravened this Act or any prescribed Act, or has held an environmental authorisation or other authority that has been cancelled or suspended under this Act or any such prescribed Act; or
- (b) if the proposed transferee is a body corporate and a director of the body corporate—
  - (i) has contravened this Act or any prescribed Act, or has held an environmental authorisation or other authority that has been cancelled or suspended under this Act or any such prescribed Act; or
  - (ii) is or has been the director of another body corporate that has contravened this Act or any prescribed Act, or has held an environmental authorisation or other authority that has been cancelled or suspended under this Act or any such prescribed Act; or
- (c) on any ground prescribed by regulation.

(4) For the purposes of subsection (3), any Act including an Act that has been repealed or an Act of a place other than this State may be declared by regulation to be a prescribed Act.

(5) An application for approval of the transfer of an environmental authorisation must be made to the Authority in such manner and form as is determined by the Authority and must be accompanied by the prescribed fee.

(6) Where the Authority requires further information to determine the application, the Authority may, by notice in writing served on the applicant no later than one month after the application is made, require the applicant to furnish further specified information in writing.

(7) Where further information is required in respect of an application, the application is to be taken not to have been duly made until the information is furnished as required.

(8) If the Authority has not advised an applicant for the transfer of an authorisation of its decision on the application within two months after the application is made, the applicant may, after giving 14 days notice in writing to the Authority, apply to the Environment, Resources and Development Court for an order requiring the Authority to make its decision on the application within a time fixed by the Court.

**Death of person holding environmental authorisation**

**50.** Where the person holding an environmental authorisation dies, a person approved by the Authority is to be taken to hold that authorisation (on the same conditions as were applicable to the deceased) as from the date of the death until the expiration of six months from that date, or until such later day as may be fixed by the Authority.

**Avoidance of duplication of procedures etc**

**50A.** (1) The purpose of this section is to provide for the avoidance of unnecessary duplication of procedures and compliance requirements under the Commonwealth Act and this Act where an activity requires environmental authorisation under this Act and approval under the Commonwealth Act.

- (2) Despite any other provision of this Act, the Authority may—
- (a) accept a Commonwealth Act document as an application, notice or other document for the purposes of this Act if (subject to subsection (5)) the document complies with the requirements of this Act; and
  - (b) direct that a procedure taken under the Commonwealth Act in relation to a Commonwealth Act document that has been accepted by the Authority under paragraph (a) will be taken to have fulfilled the requirement for a procedure in relation to the relevant document under this Act if the requirements of this Act in relation to the procedure have been complied with; and
  - (c) instead of the Authority, or some other person, preparing a plan, report, statement, assessment or other document under this Act, adopt or accept the whole or part of a document (whether a plan, report, statement, assessment or other document of the same kind or not) used, or to be used, for the purposes of the Commonwealth Act as the document required under this Act if (subject to subsection (5)) the document has been prepared in compliance with this Act and complies with the requirements of this Act.
- (3) To avoid doubt, where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which an environmental authorisation is required under this Act, the Authority may, when considering an application for an environmental authorisation, or for the variation of an environmental authorisation, for the activity, use information and other material provided to the Commonwealth Minister under the Commonwealth Act for the purpose of deciding whether to give his or her approval to the controlled action under that Act.
- (4) Where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which an environmental authorisation is required under this Act, the Authority—
- (a) must, if the Commonwealth Minister has given his or her approval to the controlled action, consider whether the conditions (if any) to be imposed on the authorisation should be consistent with the conditions (if any) attached to the Commonwealth Minister's approval under the Commonwealth Act;
  - (b) may impose a condition on the authorisation that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Commonwealth Act.
- (5) A document accepted or adopted under subsection (2)—
- (a) may be in a form that does not comply with the requirements of this Act; and
  - (b) may include information or other material that is irrelevant for the purposes of this Act.
- (6) Once a document is accepted or adopted under subsection (2) or a direction has been given in relation to a procedure under subsection (2)(b), the document or procedure will not be invalid or ineffective for the purposes of this Act because a court, tribunal or other authority has decided that it is invalid or ineffective for the purposes of the Commonwealth Act.

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(7) In this section—

"**assessment report**" means—

- (a) an assessment report as defined in the Commonwealth Act by reference to section 84(3), 95, 100 or 105 of that Act; or
- (b) a report under section 121 of the Commonwealth Act;

"**Commonwealth Act**" means the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth;

"**Commonwealth Act document**" means—

- (a) a referral under section 68, 69 or 71 of the Commonwealth Act; or
- (b) information given by a person to the Minister under the Commonwealth Act under section 86 of that Act; or
- (c) information and invitation published by a proponent under section 93 of the Commonwealth Act; or
- (d) guidelines prepared under section 97 or 102 of the Commonwealth Act; or
- (e) a draft report prepared under section 98 of the Commonwealth Act; or
- (f) a finalised report prepared under section 99 of the Commonwealth Act; or
- (g) a draft statement prepared under section 103 of the Commonwealth Act; or
- (h) a finalised statement prepared under section 104 of the Commonwealth Act; or
- (i) an assessment report.

**Division 5—Special conditions****Conditions requiring financial assurance to secure compliance with Act**

**51.** (1) Subject to this section, the Authority may, by conditions of an environmental authorisation, require the holder of the authorisation to lodge with the Authority a financial assurance in the form of a bond (supported by a guarantee, insurance policy or other security approved by the Authority), or a specified pecuniary sum, the discharge or repayment of which is conditional on the holder of the authorisation—

- (a) not committing any contravention of this Act of a specified kind during a specified period; or
- (b) taking specified action within a specified period to achieve compliance with this Act.

(2) The Authority may not impose conditions requiring the lodgement of a bond or pecuniary sum unless satisfied—

- (a) that imposition of the conditions is justified in view of the degree of risk of environmental harm associated with the activities that may be undertaken pursuant to the environmental authorisation or the likelihood of action being required to make good resulting environmental damage; or
- (b) that—
  - (i) the holder of the authorisation has on one or more occasions contravened this Act in relation to the activity undertaken pursuant to the authorisation; and
  - (ii) the imposition of the conditions is justified in view of the nature of the contravention, or the nature, number or frequency of the contraventions; or
- (c) as to any other matters prescribed by regulation.

(3) The Authority may not, by conditions under subsection (1), require the lodgment of a bond or a pecuniary sum of an amount greater than the amount that, in the opinion of the Authority, represents the total of the likely costs, expenses, loss and damage that might be incurred or suffered by persons as a result of failure by the holder of the authorisation to satisfy the conditions of discharge or repayment of the bond or pecuniary sum.

(4) A pecuniary sum lodged with the Authority in accordance with conditions under subsection (1) must be paid into the Environment Protection Fund, and the amount of the pecuniary sum that has not been repaid or forfeited to the Fund must, on satisfaction of the conditions of repayment, be repaid to the holder of the authorisation together with an amount representing interest calculated in accordance with the regulations.

(5) Where the holder of an authorisation fails to satisfy the conditions of discharge or repayment of a bond or pecuniary sum lodged with the Authority, the Authority—

- (a) may determine that the whole or part of the amount of the bond or pecuniary sum is forfeited to the Environment Protection Fund;
- (b) may apply from the Fund any money so forfeited in payments for or towards the costs, expenses, loss or damage incurred or suffered by the Crown, a public authority or other person as a result of the failure by the holder of the authorisation;
- (c) may, in the case of a pecuniary sum, on the expiry or termination of the authorisation and when satisfied that there is no reasonable likelihood of any or further valid claims in respect of costs, expenses, loss or damage incurred or suffered as a result of the failure of the holder of the authorisation, repay any amount of the pecuniary sum that has not been repaid or forfeited to the Fund.

#### **Conditions requiring tests, monitoring or audits**

**52.** (1) Subject to this section, the Authority may, by conditions of an environmental authorisation, require the holder of the authorisation to do either or both of the following:

- (a) to carry out specified tests and environmental monitoring relating to the activity undertaken pursuant to the authorisation and to make specified reports to the Authority on the results of such tests and monitoring;

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- (b) to comply with the requirements of an environmental audit and compliance programme to the satisfaction of the Authority.

(2) An environmental audit and compliance programme may contain requirements of the following kinds:

- (a) requirements for a comprehensive evaluation of the performance of the holder of the authorisation in endeavouring to achieve compliance with this Act, including evaluation of the management practices, production processes and technical systems and equipment adopted or used by the holder of the authorisation;
- (b) requirements as to the qualifications of the person undertaking the evaluation process;
- (c) requirements as to reporting of the results of the evaluation process to the Authority;
- (d) requirements as to implementation of changes to management practices, production processes, technical systems or equipment or other matters recommended by the person undertaking the evaluation process or otherwise determined by the Authority to be appropriate in light of the results of the evaluation process.

(3) The Authority may not impose conditions requiring the conduct of an environmental audit and compliance programme unless the Authority is satisfied—

- (a) that the holder of the authorisation has on one or more occasions contravened this Act in relation to the activity undertaken pursuant to the authorisation; and
- (b) that the imposition of the conditions is justified in view of the nature of the contravention, or the nature, number or frequency of the contraventions.

**Conditions requiring preparation and publication of plan to deal with emergencies**

**53.** The Authority may, by conditions of an environmental authorisation—

- (a) require the holder of the authorisation to prepare to the satisfaction of the Authority a plan of action to be taken in the event of emergencies that might foreseeably arise out of the activity undertaken pursuant to the authorisation and involve the risk of material or serious environmental harm; and
- (b) specify the inquiries to be made prior to the preparation of the plan; and
- (c) specify the qualifications of the person who may be appointed or engaged by the holder of the authorisation to conduct the inquiries and prepare the plan; and
- (d) require the holder of the authorisation to publish the approved plan or an outline of the plan in a manner specified in the conditions.

**Conditions requiring environment improvement programme**

**54.** (1) The Authority may, by conditions of an environmental authorisation, require the holder of the authorisation—

- (a) to develop to the satisfaction of the Authority an environment improvement programme containing requirements of a kind specified by the Authority in accordance with this section; and
- (b) to comply with the requirements of the environment improvement programme as developed by the holder of the authorisation and approved by the Authority.

- (2) An environment improvement programme may contain requirements of the following kinds:
- (a) requirements specifying action to be taken within specified periods by the holder of the authorisation to achieve compliance with the general environmental duty under Part 4 in relation to the activity undertaken pursuant to the authorisation;
  - (b) where mandatory provisions of an environment protection policy that apply to the activity undertaken pursuant to the authorisation are to come into operation on a specified future day—requirements specifying action to be taken within specified periods by the holder of the authorisation to achieve compliance with the mandatory provisions on or before that day;
  - (c) requirements specifying action to be taken within specified periods by the holder of the authorisation to give effect to non-mandatory provisions of an environment protection policy.

## **Division 6—Suspension, cancellation and surrender of environmental authorisations**

### **Suspension or cancellation of environmental authorisations**

**55.** (1) The Authority may, if satisfied that—

- (a) the holder of an environmental authorisation obtained the authorisation improperly; or
- (b) the holder of an environmental authorisation has contravened a requirement imposed by or under this Act in connection with an activity undertaken pursuant to the authorisation; or
- (c) in the case of an environmental authorisation of a prescribed class—the holder of the authorisation, or, if the holder is a body corporate, a director of the body corporate, has been guilty of misconduct (whether in this State or elsewhere) of a prescribed kind; or
- (d) the holder of an environmental authorisation has ceased to undertake the activity authorised by the authorisation,

suspend the authorisation or cancel the authorisation and, if the Authority thinks fit, impose a disqualification under this section.

(2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Authority.

(3) A disqualification under this section may disqualify the holder of the cancelled authorisation, or, if the holder is a body corporate, any director of the body corporate, from obtaining any environmental authorisation, or an environmental authorisation of a specified kind, permanently or for a specified period, or until the fulfilment of specified conditions, or until further order of the Authority.

(4) Before the Authority acts under this section, the Authority must—

- (a) notify the holder of the environmental authorisation in writing of its proposed action specifying the reasons for the proposed action; and
- (b) allow the holder of the authorisation at least 14 days within which to make submissions to the Authority in relation to the proposed action.



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**Surrender of environmental authorisations**

**56.** (1) An environmental authorisation may be surrendered with the approval of the Authority.

(2) The Authority may, on application for approval of the surrender of an environmental authorisation—

- (a) approve the surrender of the authorisation; or
- (b) if satisfied that it is necessary for the protection or restoration of the environment—
  - (i) impose further conditions of the authorisation; and
  - (ii) approve the surrender of the authorisation on the holder of the authorisation satisfying the Authority that the conditions have been fulfilled or that satisfactory arrangements have been made for their fulfilment.

**Division 7—Criteria for decisions of Authority in relation to development applications**

**Criteria for decisions of Authority in relation to development applications**

**57.** Where an application for development authorisation is referred to the Authority under the *Development Act 1993*, the Authority must, in determining—

- (a) whether or not to concur in the granting of the application for development authorisation; or
- (b) whether or not to direct the refusal of the application or to direct the imposition of conditions of any development authorisation granted on the application and, if so, what conditions should be imposed; or
- (c) what response should be made to the development assessment authority,

have regard to, and seek to further, the objects of this Act and have regard to the general environmental duty and any relevant environment protection policies.

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## Part 7—Voluntary audits and environment performance agreements

### Protection for information produced in voluntary environmental audits

**58.** (1) A person may apply to the Authority to obtain the protection of this section in respect of a proposed voluntary environmental audit programme.

(2) The application may be made by lodging with the Authority a detailed outline of action proposed to be taken by the person for the evaluation of the person's performance in endeavouring to achieve compliance with this Act, including evaluation of the management practices, production processes and technical systems and equipment adopted or used by the person.

(3) On application by a person under this section, the Authority may, in its discretion, issue to the person a determination conferring the protection of this section in respect of a report of the results of the audit programme but subject to such conditions as the Authority thinks fit, which may include—

- (a) conditions limiting the kinds of information that may be included in the report; and
- (b) conditions requiring that the report be compiled and kept in a specified manner and form; and
- (c) conditions requiring the person to lodge with the Authority evidence (supported, if the Authority so requires, by statutory declaration) as to the time of completion of the audit programme and as to the compilation and keeping of the report.

(4) Despite any other provisions of this Act but subject to this section and compliance with the conditions of the determination, a report defined in a determination of the Authority issued to a person under this section—

- (a) is not admissible in evidence against the person in any proceedings under this Act or any other proceedings for the enforcement of this Act; and
- (b) may not be seized or obtained without the person's consent by the Authority, an authorised officer or any other person for any purpose connected with the administration or enforcement of this Act.

(5) A person to whom a determination has been issued under this section in respect of a report of the results of an audit programme must not claim the protection of this section based on that determination in respect of any information knowing that the information may not, in accordance with the conditions of the determination, be included in the report of the results of the audit programme.

Penalty: Division 2 fine.

(6) This section does not limit or derogate from—

- (a) the obligation of the holder of an environmental authorisation to comply with conditions of the authorisation (imposed under Division 5 of Part 6) requiring reporting of the results of tests or monitoring or reporting of the results of an environmental audit and compliance programme; or
- (b) the obligation of a person under Part 9 to notify the Authority of an incident causing or threatening serious or material environmental harm.

### Environment performance agreements

**59.** (1) Subject to this section, the Authority may enter into an environment performance agreement with any other person or persons (including a Minister or public authority).

(2) An environment performance agreement entered into under this section—

- (a) must be in writing and duly executed by the parties to the agreement; and
- (b) may contain terms providing for any matter that the Authority considers appropriate for securing the objects of this Act, including terms—
  - (i) binding a party other than the Authority to undertake programmes of any kind directed towards protection, restoration or enhancement of the environment; or
  - (ii) binding the Authority to provide financial or other assistance of any kind to the other party or parties or any of them; or
  - (iii) providing a party other than the Authority with remission of rates or taxes.

(3) The Authority may not enter into an environment performance agreement under this section except with the prior approval of the Minister.

(4) An environment performance agreement may not—

- (a) make provision for remission of any rates or taxes payable to the Crown except with the prior approval of the Treasurer; or
- (b) make provision for remission of any rates or taxes payable to a council except with the prior approval of the council,

but any provision for remission of rates or taxes made by an environment performance agreement in accordance with this section will have effect according to its terms and notwithstanding the provisions of any other Act.

(5) Subject to this section, an environment performance agreement may not have effect to relieve a party to the agreement from any duty under this or any other Act, and any obligations imposed under such an agreement have effect in addition to and not in derogation of the requirements imposed by or under this or any other Act.

(6) Subject to subsection (5), an environment performance agreement entered into under this section has effect as a contract binding on the parties to the agreement.

### Registration of environment performance agreements in relation to land

**60.** (1) Subject to this section, where an environment performance agreement under this Part relates to land, a party to the agreement may, if the agreement so provides, lodge a copy of the agreement with the Registrar-General, and, in that event, the Registrar-General must register the agreement in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as he or she thinks fit.

(2) An environment performance agreement may not be registered under this section in relation to land except with the consent of all persons (not being party to the agreement) who have a registered interest in or caveat over the land.

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(3) While an environment performance agreement remains registered under this section in relation to land, the agreement is binding on each owner and occupier from time to time of the land as if the owner or occupier were a party to the agreement.

(4) While an environment performance agreement remains registered under this section in relation to land, an owner or occupier of the land who ceases to own or occupy the land must notify the Authority in writing of the name and address of the new owner or occupier.

Penalty: Division 6 fine.

(5) On the termination of an environment performance agreement that is registered under this section in relation to land, the Authority must lodge with the Registrar-General a document executed by the Authority certifying as to the termination of the agreement and, in that event, the Registrar-General must cancel the registration of the agreement and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as he or she thinks fit.

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**Part 8—Special environment protection provisions**

**Division 1—Water quality in water protection areas**

**Interpretation**

**61.** (1) In this Division—

"**lake**" means a natural lake and includes a natural lagoon, swamp, marsh or spring;

"**owner**" in relation to a vessel or aircraft includes a person who has, or is entitled to, possession or control of the vessel or aircraft;

"**surface water**" means water in a watercourse or lake and includes—

(a) water in a dam, reservoir or artificial lake that is situated in a water protection area; and

(b) floodwaters that have overflowed the banks of a watercourse or lake;

"**underground water**" means—

(a) water occurring naturally below ground level;

(b) water pumped, diverted or released into a well for storage underground;

"**watercourse**" means—

(a) a river, creek or other natural watercourse (whether modified or not);

(b) an artificial channel (but not a channel declared by regulation to be excluded from the ambit of this definition);

"**water protection area**" means a part of the State for the time being declared by proclamation to be a water protection area;

"**Water Resources Minister**" means the Minister for the time being administering the *Water Resources Act 1997*.

(2) A pollutant floating on the surface of water will be taken to have entered the water.

(3) A pollutant that enters surface or underground water in a water protection area of the State will be taken to have degraded the water if the quality of the water is detrimentally affected as the pollutant disperses through or over it notwithstanding that, as dispersion continues, the detrimental effect may be reduced to a negligible level.

(4) For the purposes of this Division a pollutant in a vehicle, or that has entered water from a vehicle, will be taken to be on the land, or to have entered the water from the land, on which the vehicle is standing or moving.

**Proclamation of water protection areas**

**61A.** (1) The Governor may, by proclamation made on the recommendation of the Authority, declare any part of the State to be a water protection area and may by subsequent proclamation, vary or revoke such a proclamation.

(2) The Authority must consult the Water Resources Minister and the Minister for the time being administering the *Waterworks Act 1932* before making a recommendation to the Governor under subsection (1).

#### **Appointment of authorised officers by the Water Resources Minister**

**62.** (1) The Water Resources Minister may, after consultation with the Authority, appoint pursuant to Part 10 Division 1 a person who is an authorised officer under the *Water Resources Act 1997* to be an authorised officer under this Act.

(2) The Water Resources Minister may, at any time, revoke an appointment made by him or her, or vary or revoke a condition specified in the instrument of appointment or impose a further condition.

#### **Water Resources Minister may exercise Authority's enforcement powers**

**63.** (1) The Water Resources Minister may, after consultation with the Authority, exercise such powers of the Authority under Part 10 as the Water Resources Minister considers necessary for the protection of the quality of surface or underground water within a water protection area.

(2) The provisions of this Act apply in relation to the exercise of a power by the Water Resources Minister under subsection (1) as if a reference to the Authority includes a reference to the Water Resources Minister.

#### **Certain matters to be referred to Water Resources Minister**

**64.** (1) Where an application of a kind prescribed by subsection (1a) is made under Part 6 for an environmental authorisation in respect of an activity to be undertaken in a water protection area (except a water protection area, or part of a water protection area, excluded from the operation of this section by regulation)—

- (a) the application must be referred to the Water Resources Minister together with a copy of any relevant information provided by the applicant; and
- (b) subject to subsection (2), the Authority must not make a decision on the application until it receives a response from the Water Resources Minister.

(1a) The following kinds of applications are prescribed for the purposes of subsection (1):

- (a) an application for an environmental authorisation to drain or discharge any solid, liquid or gaseous material directly or indirectly into a well that is a prescribed well under the *Water Resources Act 1997*;
- (b) an application for an environmental authorisation in respect of any activity that might, in the opinion of the Authority, create a significant risk of environmental harm to a water resource within the meaning of the *Water Resources Act 1997*.

(1b) Subsection (1a) does not apply in relation to an activity that is development for the purposes of the *Development Act 1993* and that is authorised by a development authorisation under that Act.

(2) If a response is not received from the Water Resources Minister within the period prescribed by regulation, it will be presumed that the Water Resources Minister does not wish to make a response, but the period prescribed will, if the Water Resources Minister notifies the Authority of the need for such extension, be extended by a period of time equal to the time taken by the applicant to furnish further information in compliance with a requirement under subsection (3).

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(3) Where the Water Resources Minister requires further information before giving a response under this section, the Water Resources Minister may, by notice in writing served on the applicant no later than two months after the application was made, require the applicant to furnish further specified information in writing.

(4) The Water Resources Minister may require any further information required under subsection (3) to be verified by statutory declaration.

(5) Where further information is required under this section in respect of an application, the application is to be taken not to have been duly made for the purposes of Part 6 until the information is furnished as required by the Water Resources Minister.

(6) The regulations may—

(a) provide that the Authority must not make a decision on an application referred to the Water Resources Minister under this section—

(i) without having regard to the response of the Water Resources Minister; or

(ii) without the concurrence of the Water Resources Minister (which concurrence may be given on such conditions as the Water Resources Minister thinks fit);

(b) empower the Water Resources Minister to direct the Authority—

(i) to refuse the application; or

(ii) if the Authority decides to grant the application—to impose such conditions as the Water Resources Minister thinks fit,

(and the Authority must comply with any such direction).

(7) Where the Authority acting by direction of the Water Resources Minister refuses an application or imposes conditions in respect of an environmental authorisation, the Authority must notify the applicant that the application was refused, or the conditions imposed, by direction under this section.

(8) Where a refusal or condition referred to in subsection (7) is appealed against to the Environment, Resources and Development Court under this Act, the Water Resources Minister will be a party to the appeal.

(9) The Water Resources Minister may, by notice in writing, instruct the Authority to refer an application of a kind referred to in subsection (1) in respect of an activity that is to be undertaken in the catchment area of a catchment water management board to the board instead of to the Minister and in that event references to the Water Resources Minister in this section and in a regulation made under this section will be taken to be references to the board.

**Action by Minister in case of unauthorised release of pollutant**

**64A.** (1) Where the Minister knows of, or has reason to suspect, the unauthorised entry of a pollutant into surface or underground water in a water protection area and is of the opinion that the pollutant has degraded or is likely to degrade the water, the Minister may, by notice served on the owner or occupier of the land, or the owner of the vessel or aircraft, from which the pollutant entered the water, direct the owner or occupier of the land or the owner of the vessel or aircraft to take such action as the Minister specifies in the notice—

(a) to prevent further entry of a pollutant into the water or any other water;

- (b) to remove a pollutant that has entered the water from the water or from land on which the pollutant has been deposited.

(2) A person on whom a notice has been served is entitled to enter any land in order to comply with the notice.

(3) If the person on whom a notice has been served fails to comply with the notice, the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

(4) In an emergency the Minister is not obliged to serve notice under subsection (1) but may enter the land, vessel or aircraft and take such action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due to the Minister by the owner and occupier of the land or the owner of the vessel or aircraft.

**Risk of escape of pollutant from land etc**

**64B.** (1) Where the Minister is of the opinion that precautions should be taken to ensure that a pollutant on or under any land or on any vessel or aircraft does not enter any surface or underground water in a water protection area, the Minister may by notice served on the owner or occupier of the land or the owner of the vessel or aircraft direct him or her to take such action (to be specified in the notice) as the Minister considers necessary or desirable.

- (2) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty:

If the offender is a body corporate—\$120 000

If the offender is a natural person—\$75 000.

(3) Where a person on whom a notice has been served fails to comply with the notice, the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

**Delegation of powers under ss. 64A and 64B**

**64C.** (1) The Minister may delegate any of his or her powers under section 64A or 64B to any person or body.

- (2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the Minister to exercise any of those powers; and

(d) is revocable at will by the Minister.



**Environment Protection Act 1993****Costs to be a charge on land**

**64D.** (1) Where costs are a debt due by a person to the Minister or to a delegate of the Minister under section 64A(3) or (4) or 64B(3)—

- (a) the Minister or delegate may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister or delegate on any land owned by the person in relation to which the costs are due under section 64A or 64B.

(2) A charge imposed on land by this section has priority over—

- (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
- (b) any other charge on the land other than a charge registered prior to service of the notice referred to in subsection (1)(a) on the owner of the land.

**Division 2—Beverage containers****Interpretation**

**65.** In this Division—

"**beverage**" means—

- (a) brandy, gin, rum, whisky, cordials containing spirits, wine, cider, perry, mead, ale, porter, beer or any other spiritous, malt, vinous or fermented liquors; or
- (b) any carbonated soft drink or waters; or
- (c) any other liquid intended for human consumption by drinking declared by regulation to be a beverage for the purposes of this Division;

"**category A container**" means a container of a class approved under this Division as category A containers;

"**category B container**" means a container of a class approved under this Division as category B containers;

"**collection area**", in relation to containers of a particular class, means an area comprising a part of the State approved under this Division as a collection area for containers of that class;

"**collection depot**", in relation to containers of a particular class, means a collection depot approved under this Division for containers of that class;

"**container**" means a container of any kind made for the purpose of containing a beverage, being a container that when filled with the beverage is sealed for the purposes of storage, transport and handling prior to its sale or delivery for the use or consumption of its contents;

"**glass container**" means a container made of glass whether alone or in combination with any other substance or thing;

"**refund amount**", in relation to a container of a particular class, means an amount prescribed as the refund amount for containers of that class;

"**refund marking**", in relation to a container, means marking or labelling the container by any method (including embossment) with a statement of, and other marks or features as to, the refund amount for the container;

"**retailer**" means a person whose business is or includes that of selling a beverage for the purpose of the use or consumption of that beverage and, in the case of such sale by means of a vending machine, includes the owner of that vending machine unless the owner has let out the machine on hire to some other person, in which case the expression includes that other person;

"**spirit-based beverage**" means a beverage that—

- (a) contains any spirit; and
- (b) contains less than the prescribed percentage of alcohol;

"**wine-based beverage**" means a beverage that—

- (a) contains wine; and
- (b) contains less than the prescribed percentage of alcohol.

#### **Division not to apply to certain containers**

**66.** This Division does not apply to glass containers made for the purpose of containing wine or spiritous liquor other than glass containers made for the purpose of containing a wine-based beverage or spirit-based beverage.

#### **Exemption of certain containers by regulation**

**67.** The Governor may, by regulation, exempt containers of a specified class from the application of this Division, or specified provisions of this Division, either unconditionally or subject to conditions specified in the regulations.

#### **Approvals, markings etc required before sale or supply of beverages in containers**

**68.** (1) A retailer must not sell a beverage in a container unless—

- (a) the Authority has approved a class of containers to which the container belongs as category A containers or category B containers or both; and
- (b) the Authority has approved the refund marking for a class of containers to which the container belongs and the container bears the refund marking so approved.

Penalty: Division 7 fine.

Expiation Fee: Division 7 fee.

(2) A person must not—

- (a) supply a beverage in a container to a retailer for sale by the retailer; or
- (b) sell a beverage in a container for consumption,

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unless the requirements of subsection (1) have been satisfied in respect of a class of containers to which the container belongs.

Penalty: Division 6 fine.  
Expiation Fee: Division 6 fee.

(3) A retailer must not sell a beverage in a category B container unless—

- (a) the retailer's premises are situated within a collection area for which a collection depot has been approved by the Authority for containers of a class to which the container belongs; and
- (b) if the retailer has been requested by the Authority, by notice in writing, to do so—the retailer has a sign (in a form specified by the Authority) prominently displayed in the retailer's premises so as to be readily visible to purchasers stating the location of the collection depots so approved.

Penalty: Division 7 fine.  
Expiation fee: Division 7 fee.

(4) In proceedings for an offence against subsection (3), an allegation in the complaint that specified premises were not at a specified time situated within a collection area for which a collection depot had been approved by the Authority for containers of a specified class is, in the absence of proof to the contrary, proof of the matters so alleged.

**Grant, variation or revocation of approvals**

**69.** (1) An application for an approval for the purposes of this Division must be made to the Authority in such manner and form as is determined by the Authority and must be accompanied by the prescribed fee.

(2) An applicant for an approval must, if so required by the Authority, provide the Authority with such further information as it may require to determine the application.

(3) The Authority may refuse to grant an approval in respect of a class of containers unless satisfied that proper arrangements have been made under which empty containers of that class would, after being returned in consideration of payment of refund amounts under this Division, be aggregated and reused or their materials recycled or otherwise disposed of in a manner that the Authority considers appropriate having regard to the objects of this Act and any relevant environment protection policy.

(4) If the Authority refuses an application for an approval, the Authority must give written notice to the applicant of the reasons for the refusal.

(5) An approval—

- (a) must be notified in the *Gazette*; and
- (b) is subject to such conditions as the Authority considers appropriate and specifies in the notice of approval.

(6) The Authority may, by notice in the *Gazette*, vary an approval, or vary or revoke any condition of an approval, or impose a condition or further condition.

(7) The Authority must, on application by the person for the time being operating a collection depot, by notice in the *Gazette*, revoke the approval of the depot.

(8) The Authority may, by notice in the *Gazette*, revoke an approval in respect of a class of containers if satisfied that a condition of the approval has been contravened in respect of containers of that class.

(9) A notice under subsection (7) or (8) varying or revoking an approval or the conditions of an approval, or imposing a condition or further condition of an approval—

- (a) has effect from the date of publication of the notice or a future date specified in the notice; and
- (b) may contain requirements or provisions of a transitional nature (which will have effect according to their terms) as to the operation of this Division in relation to containers held by retailers for sale, or sold but remaining to be returned as empty containers under this Division.

**Retailers to pay refund amounts for certain empty category A containers**

**70.** (1) Subject to subsection (2), a retailer who sells a beverage in category A containers of a particular class must not refuse or fail, or permit a person acting on the retailer's behalf to refuse or fail—

- (a) to accept delivery of empty containers of that class that bear the refund marking approved by the Authority for containers of that class; or
- (b) in respect of each such container, to pay to the person delivering that container the refund amount for that container.

Penalty: Division 7 fine.

Expiation Fee: Division 7 fee.

(2) A retailer is not required by subsection (1) to accept delivery of any container that is in an unclean condition.

(3) In proceedings for an offence against subsection (1), an allegation in the complaint that the retailer sells beverages in containers of a particular class is, in the absence of proof to the contrary, proof of the matter so alleged.

**Collection depots to pay refund amounts for certain empty category B containers**

**71.** (1) Subject to subsection (2), the person operating or in charge of a collection depot must not refuse or fail, or permit a person acting on his or her behalf, to refuse or fail—

- (a) to accept delivery of empty category B containers of a class for which the collection depot is approved, being containers that bear the refund marking approved by the Authority for containers of that class; or
- (b) in respect of each such container, to pay to the person delivering that container the refund amount for that container.

Penalty: Division 7 fine.

Expiation Fee: Division 7 fee.

(2) A person is not required by subsection (1) to accept delivery of any container that is in an unclean condition.

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**Certain containers prohibited**

72. (1) In this section—

"prohibited container" means—

- (a) a sealed container (commonly known as a "ring pull container") that is wholly or mainly constructed of metal (whether or not of more than one kind of metal) and capable of being opened, without the aid of any instrument, by the removal of portion of the container in such a manner as results or may result in severance from the body of the container of the portion so removed; or
- (b) a sealed glass container of a prescribed kind in which the contents are held under pressure; or
- (c) a plastic container of a class prescribed as prohibited containers.

(2) The Governor may not make a regulation prescribing a class of plastic containers as prohibited containers for the purposes of paragraph (c) of the definition of "**prohibited container**" in subsection (1) unless satisfied that an effective system of recovery, recycling, reprocessing or reuse of the containers—

- (a) is not assured in advance of introduction of the containers to the market; or
- (b) has not been established or maintained following the introduction of the containers to the market.

(3) A retailer must not sell a beverage in a prohibited container.

Penalty: Division 7 fine.

(4) A person must not—

- (a) supply a beverage in a prohibited container to a retailer for sale by the retailer; or
- (b) sell a beverage in a prohibited container for consumption.

Penalty: Division 6 fine.

**Evidentiary provisions**

73. In proceedings for an offence against this Division, an allegation in the complaint that—

- (a) a specified liquid was a beverage; or
- (b) a specified container was a glass container,

is, in the absence of proof to the contrary, proof of the matter so alleged.

**Division 3—Ozone protection**

**Interpretation**

74. In this Division—

"the Commonwealth Act" means the *Ozone Protection Act 1989* of the Commonwealth, as amended from time to time;

"prescribed substance" means—

- (a) any substance referred to in Schedule 1 of the Commonwealth Act other than a substance excluded by regulation under this Act; or
- (b) any substance prescribed by regulation under this Act;

"service" a product means service, maintain or repair the product, and includes commission or decommission the product by putting a prescribed substance into, or removing it from, the product;

"use" includes recycle.

### Prohibition of manufacture, use etc of prescribed substances

**75.** Subject to the regulations and any exemption under Part 6, a person must not—

- (a) manufacture; or
- (b) store; or
- (c) sell; or
- (d) use; or
- (e) service; or
- (f) dispose of or allow the escape of,

a prescribed substance or any product containing a prescribed substance.

Penalty:

If the offender is a body corporate—Division 1 fine.

If the offender is a natural person—Division 3 fine.

### Authority may prohibit sale or use of certain products

**76.** (1) The Authority may, by notice in the *Gazette*, prohibit the sale or use within this State of any products, or products of a specified class, that have been manufactured inside or outside of this State by a process involving the use of a prescribed substance.

(2) The Authority may, by notice in the *Gazette*, vary or revoke a notice under this section.

(3) A person who contravenes a notice under this section is guilty of an offence.

Penalty:

If the offender is a body corporate—Division 1 fine.

If the offender is a natural person—Division 3 fine.

### Labelling of certain products

**77.** A manufacturer of products of a prescribed class that contain a prescribed substance must not sell, or supply the products for sale, unless the products are labelled in accordance with the regulations.

Penalty:

If the offender is a body corporate—Division 1 fine.

If the offender is a natural person—Division 3 fine.

**Requirement for grant of exemptions in certain cases**

78. If an applicant for an exemption under Part 6 from the application of a provision of this Division is the holder of a licence or exemption under the Commonwealth Act, the Authority must grant an exemption under that Part to the applicant that is consistent with the terms of that licence or exemption.

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## Part 9—General offences

### Causing serious environmental harm

**79.** (1) A person who causes serious environmental harm by polluting the environment intentionally or recklessly and with the knowledge that environmental harm will or might result is guilty of an offence.

Penalty:

If the offender is a body corporate—\$2 000 000.

If the offender is a natural person—\$500 000 or Division 4 imprisonment or both.

(2) A person who by polluting the environment causes serious environmental harm is guilty of an offence.

Penalty:

If the offender is a body corporate—\$500 000.

If the offender is a natural person—\$250 000.

(3) If in proceedings for an offence against subsection (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

### Causing material environmental harm

**80.** (1) A person who causes material environmental harm by polluting the environment intentionally or recklessly and with the knowledge that environmental harm will or might result is guilty of an offence.

Penalty:

If the offender is a body corporate—\$500 000.

If the offender is a natural person—\$250 000 or Division 5 imprisonment or both.

(2) A person who by polluting the environment causes material environmental harm is guilty of an offence.

Penalty:

If the offender is a body corporate—\$250 000.

If the offender is a natural person—\$150 000.

(3) If in proceedings for an offence against subsection (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the latter offence.

### Alternative finding

**81.** If in proceedings for an offence against this Part of causing serious environmental harm the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part of causing material environmental harm, the court may find the defendant guilty of the latter offence.

### Causing environmental nuisance

**82.** A person who causes an environmental nuisance by polluting the environment intentionally or recklessly and with the knowledge that an environmental nuisance will or might result is guilty of an offence.

Penalty: Division 3 fine.



**Notification of incidents causing or threatening serious or material environmental harm**

**83.** (1) Where an incident occurs so that serious or material environmental harm from pollution is caused or threatened in the course of an activity undertaken by a person, the person must, as soon as reasonably practicable after becoming aware of the incident, notify the Authority of the incident, its nature, the circumstances in which it occurred and the action taken to deal with it.

Penalty:

If the offender is a body corporate—\$250 000.

If the offender is a natural person—\$150 000.

(2) For the purposes of subsection (1)—

(a) a person is not required to notify the Authority of such an incident if the person has reason to believe that the incident has already come to the notice of the Authority or any officer engaged in the administration or enforcement of this Act; but

(b) a person is required to notify the Authority of such an incident despite the fact that to do so might incriminate the person or make the person liable to a penalty.

(3) Any notification given by a person in compliance with this section is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

**Defence where alleged contravention of Part**

**84.** (1) In any proceedings (criminal or civil) where it is alleged that a person contravened this Part, it will be a defence—

(a) if—

(i) maximum pollution levels were fixed for the particular pollutant and form of pollution concerned in the alleged contravention by mandatory provisions of an environment protection policy or conditions of an environmental authorisation held by the person, or both; and

(ii) it is proved that the person did not by so polluting the environment contravene the mandatory provisions or conditions; or

(b) if—

(i) an environment protection policy or conditions of an environmental authorisation provided that compliance with specified provisions of the policy or with specified conditions of the authorisation would satisfy the general environmental duty in relation to the form of pollution concerned in the alleged contravention; and

(ii) it is proved that the person complied with the provisions or with such conditions of an authorisation held by the person; or

(c) if it is proved that the pollution resulted in actual or potential harm only to that person or that person's property, or to some other person or some other person's property with that other person's consent.

(1a) Subsection (1)(c) does not apply where the property harmed comprises water occurring naturally at ground level or water in an underground aquifer.

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(2) The defences provided by this section are in addition to and do not derogate from the general defence under Part 15.

## Part 10—Enforcement

### Division 1—Authorised officers and their powers

#### Appointment of authorised officers

**85.** (1) The Authority may, with the approval of the Minister, appoint persons to be authorised officers for the purposes of this Act.

(2) All members of the police force are authorised officers for the purposes of this Act.

(3) A council may, after consultation with the Authority, appoint as authorised officers specified officers or employees of the council, or officers or employees of the council of a specified class.

(4) An appointment—

(a) may be made subject to conditions specified in the instrument of appointment; and

(b) is, in the case of an appointment by a council or other appointment of a prescribed class, subject to conditions prescribed by regulation.

(5) The Authority or a council may, at any time, revoke an appointment made by the Authority or council, or vary or revoke a condition specified in the instrument of such an appointment or impose a further such condition.

#### Identification of authorised officers

**86.** (1) An authorised officer, other than a member of the police force, must be issued with an identity card in a form approved by the Authority—

(a) containing the person's name and a photograph of the person; and

(b) stating that the person is an authorised officer for the purposes of this Act.

(2) Where the powers of an authorised officer have been limited by conditions under this Division or Division 1 of Part 8, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.

(3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—

(a) in the case of an authorised officer who is a member of the police force and is not in uniform—his or her certificate of authority; or

(b) in the case of an authorised officer who is not a member of the police force—his or her identity card.

#### Powers of authorised officers

**87.** (1) Subject to this Division, an authorised officer may—

(a) enter and inspect any place or vehicle for any reasonable purpose connected with the administration or enforcement of this Act;

(b) with the authority of a warrant issued under this Division or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any place or vehicle;

- (c) give directions with respect to the stopping or movement of a vehicle as reasonably required in connection with the administration or enforcement of this Act;
- (d) take samples of any substance or thing from any place or vehicle for analysis as reasonably required in connection with the administration or enforcement of this Act;
- (e) require any person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act;
- (f) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information;
- (g) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;
- (h) examine or test any plant, equipment, vehicle or other thing for the purpose of determining whether a provision of this Act is being or has been complied with, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
- (i) seize and retain, or issue a seizure order in respect of, anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;
- (j) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (k) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- (l) require a person holding or required to hold an environmental authorisation to produce it for inspection;
- (m) give any directions reasonably required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration or enforcement of this Act.

(2) An authorised officer may not exercise the power of entry under this section in respect of premises except where—

- (a) the premises are business premises being used at the time in the course of business; or
- (b) the authorised officer reasonably suspects that—
  - (i) a contravention of this Act has been, is being, or is about to be, committed in the premises; or
  - (ii) something may be found in the premises that has been used in, or constitutes evidence of, a contravention of this Act.

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- (3) An authorised officer may not exercise the power to enter or inspect a vehicle except—
- (a) in relation to a vehicle of a class prescribed by regulation; or
  - (b) where the authorised officer reasonably suspects that—
    - (i) a contravention of this Act has been, is being, or is about to be, committed in relation to the vehicle; or
    - (ii) something may be found in or on the vehicle that has been used in, or constitutes evidence of, a contravention of this Act.

(4) Where—

- (a) a person whose native language is not English is suspected of having committed an offence against this Act; and
- (b) the person is not reasonably fluent in English,

the following provisions apply:

- (c) the person is entitled to be assisted by an interpreter during any questioning conducted by an authorised officer in the course of an investigation of the suspected offence;
- (d) where it appears that the person may be entitled to be assisted by an interpreter, an authorised officer must not proceed with any questioning, or further questioning, until the person has been informed of the right to an interpreter;
- (e) if the person requests the assistance of an interpreter, an authorised officer must not proceed with any questioning, or further questioning, until an interpreter is present.

(5) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

(6) An authorised officer may require an occupier of any place or a person apparently in charge of any plant, equipment, vehicle or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.

(7) Where a person gives assistance to an authorised officer as required under subsection (6), the person must, if he or she so requires, be reimbursed by the authorised officer or the Authority for any reasonable costs and expenses incurred in giving the assistance.

**Issue of warrants**

**88.** (1) Where, on the application of an authorised officer, a justice is satisfied that there are reasonable grounds to believe—

- (a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or
- (b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act,

the justice may issue a warrant in respect of the place or vehicle authorising an authorised officer, with such assistants as he or she consider necessary, to use reasonable force to break into or open any part of, or anything in or on, the place or vehicle as specified in the warrant.

(2) An application for the issue of a warrant may be made either personally or by telephone.

(3) The grounds of an application for a warrant must be verified by affidavit.

(4) An application for the issue of a warrant may not be made by telephone unless in the opinion of the applicant a warrant is urgently required and there is insufficient time to make the application personally.

(5) Where an application for the issue of a warrant is made by telephone, the following provisions apply:

(a) the applicant must inform the justice of his or her name and identify himself or herself as an authorised officer, and the justice, on receiving that information, is entitled to assume, without further inquiry, that the applicant is an authorised officer;

(b) the applicant must inform the justice of the grounds on which he or she seeks the issue of the warrant;

(c) if it appears to the justice from the information furnished by the applicant that there are proper grounds for the issue of a warrant, the justice must inform the applicant of the facts on which he or she relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;

(d) if the applicant gives such an undertaking, the justice may then make out and sign a warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant;

(e) the warrant will be taken to have been issued, and will come into force, when signed by the justice;

(f) the justice must inform the applicant of the terms of the warrant;

(g) the applicant must, as soon as practicable after the issue of the warrant, forward to the justice an affidavit verifying the facts referred to in paragraph (c).

(6) A justice by whom a warrant is issued must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Environment, Resources and Development Court.

(7) An authorised officer who executes a warrant must, as soon as practicable after execution of the warrant—

(a) prepare a notice in the prescribed form containing—

(i) his or her own name and a statement that he or she is an authorised officer under this Act; and

(ii) the name of the justice who issued the warrant and the date and time of its issue; and

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- (iii) a description of the place or vehicle to which the warrant relates and of the authority conferred by the warrant; and
- (b) give the notice to the occupier or person apparently in charge of the place or vehicle in respect of which the warrant was issued or leave it for him or her in a prominent position on the place or vehicle.

(8) A warrant, if not executed at the expiration of one month from the date of its issue, then expires.

**Provisions relating to seizure**

**89.** (1) A seizure order under this Division—

- (a) must be in the form of a written notice served on the owner or person in control of the thing to which the order relates; and
- (b) may be varied or revoked by further such written notice.

(2) Where a seizure order is issued under this Division, a person who removes or interferes with the thing to which the order relates without the approval of the Authority before an order is made under subsection (3)(b) in respect of the thing or the seizure order is discharged under subsection (3)(c) is guilty of an offence.

Penalty: Division 6 fine.

(3) Where a thing has been seized or made subject to a seizure order under this Division the following provisions apply:

- (a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless the Authority, on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Authority thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
- (b) where proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure or the issuing of the seizure order and the defendant is convicted or found guilty of the offence, the court may—
  - (i) order that it be forfeited to the Authority; or
  - (ii) where it has been released pursuant to paragraph (a) or is the subject of a seizure order—order that it be forfeited to the Authority or that the person to whom it was released or the defendant pay to the Authority an amount equal to its market value at the time of its seizure or the issuing of the seizure order, as the court thinks fit;
- (c) where—
  - (i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure or the issuing of the seizure order; or

- (ii) proceedings have been so instituted and—
  - (A) the defendant is found not guilty of the offence; or
  - (B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then—

- (iii) in the case of a thing seized—the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Authority (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure; or
- (iv) in the case of a thing subject to a seizure order—the order is discharged.

(4) In subsection (3)—

"**the prescribed period**" means six months or such longer period as the Environment, Resources and Development Court may, on application by the Authority, allow.

#### **Offence to hinder etc authorised officers**

**90.** (1) A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Division; or
- (d) when required by an authorised officer under this Division to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Penalty: Division 6 fine.

(2) A person who assaults an authorised officer, or a person assisting an authorised officer in the exercise of powers under this Act, is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment, or both.

#### **Self-incrimination**

**91.** (1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this Division on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.



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(2) If compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

**Offences by authorised officers etc**

**92.** (1) An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Penalty: Division 6 fine.

**Division 2—Environment protection orders**

**Environment protection orders**

**93.** (1) The Authority may issue an environment protection order under this Division—

- (a) for the purpose of securing compliance with—
  - (i) the general environmental duty; or
  - (ii) mandatory provisions of an environment protection policy; or
  - (iii) a condition of an environmental authorisation; or
  - (iv) a condition of a beverage container approval; or
  - (v) any other requirement imposed by or under this Act; or
- (b) for the purpose of giving effect to an environment protection policy.

(2) An environment protection order—

- (a) must be in the form of a written notice served on the person to whom the notice is issued;
- (b) must—
  - (i) specify the person to whom it is issued (whether by name or a description sufficient to identify the person);

- (ii) if the order is issued for the purpose of securing compliance with the general environmental duty—state the purpose and specify the environmental harm that it is directed towards preventing or minimising;
  - (iii) if the order is issued for the purpose of securing compliance with mandatory provisions of an environment protection policy, a condition or any other requirement imposed by or under this Act—state the purpose and specify the mandatory provisions, condition or requirement;
  - (iv) if the order is issued for the purpose of giving effect to an environment protection policy—state the purpose and specify the policy;
- (c) may impose any requirement reasonably required for the purpose for which the order is issued including one or more of the following:
- (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Authority;
  - (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
  - (iii) a requirement that the person take specified action within a specified period;
- (d) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.

(2a) Where a proposed environment protection order (except an emergency environment protection order) or a proposed variation of an environment protection order would require the undertaking of an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Water Resources Act 1997* to whom an application for a permit for the activity would otherwise have to be made inviting the authority to make written submission in relation to the proposal within a period specified in the notice.

(2b) The period of the notice referred to in subsection (2a) must be—

- (a) in the case of an order to confirm an emergency environment protection order—at least 24 hours;
- (b) in all other cases—at least 14 days.

(3) An authorised officer may, if of the opinion that urgent action is required for the protection of the environment, issue an emergency environment protection order imposing requirements of a kind referred to in subsection (2)(c) as reasonably required for the protection of the environment.

(4) An emergency environment protection order may be issued orally, but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to appeal to the Environment, Resources and Development Court against the order.

(5) Where an emergency environment protection order is issued to a person, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written environment protection order issued by the Authority and served on the person.

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(6) The Authority or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other environment protection order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.

(7) The Authority may, by written notice served on a person to whom an environment protection order has been issued, vary or revoke the order.

(8) A person to whom an environment protection order is issued must comply with the order.

Penalty:

- (a) If the order was issued for the purpose of securing compliance with a requirement imposed by or under this Act and a penalty is fixed by this Act for contravention of that requirement—that penalty;
- (b) If the order was issued in relation to a domestic activity for the purpose of securing compliance with the general environmental duty, or giving effect to an environment protection policy—Division 9 fine;
- (c) In any other case—Division 6 fine.

Expiation Fee:

- (a) If the order was issued for the purpose of securing compliance with a requirement imposed by or under this Act and an expiation fee is fixed by this Act for contravention of that requirement—that expiation fee;
- (b) If the order was issued in relation to a domestic activity for the purpose of securing compliance with the general environmental duty, or giving effect to an environment protection policy, in relation to a domestic activity—Division 9 fee;
- (c) In any other case—Division 6 fee.

(9) A person must not hinder or obstruct a person complying with an environment protection order.

Penalty: Division 6 fine.

**Registration of environment protection orders in relation to land**

**94.** (1) Where an environment protection order has been issued under this Division, the Authority may do either or both of the following:

- (a) if the order was issued in relation to an activity carried on on land—apply to the Registrar-General for registration of the order in relation to that land;
- (b) apply to the Registrar-General for registration of the order in relation to land owned by the person to whom the order was issued.

(2) The application must—

- (a) define the land to which it relates; and
- (b) state that registration of the environment protection order in relation to the land—
  - (i) will, by virtue of subsection (4), result in the order becoming binding on each owner and occupier from time to time of the land; or

- (ii) is to operate as the basis for a charge on the land, as provided by this Division, securing payment to the Authority of costs and expenses incurred in the event of non-compliance with the requirements of the order,

or both, as the case may require.

(3) The Registrar-General must on—

- (a) application by the Authority under subsection (1); and
- (b) lodgement of a copy of the environment protection order,

register the order in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as he or she thinks fit.

(4) Where—

- (a) an environment protection order has been issued in relation to an activity carried on on land; and
- (b) the order is registered under this section in relation to the land,

the following provisions apply:

- (c) the order is binding on each owner and occupier from time to time of the land and this Division (including subsection (1)(b)) applies as if the order had been issued to each such person;
- (d) an owner or occupier of the land who ceases to own or occupy the land must, as soon as reasonably practicable, notify the Authority in writing of the name and address of the new owner or occupier.

(5) An owner or occupier who fails to comply with subsection (4)(d) is guilty of an offence.

Penalty: Division 6 fine.

(6) The Registrar-General must, on application by the Authority, cancel the registration of an environment protection order in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as he or she thinks fit.

(7) The Authority may, if it thinks fit, apply to the Registrar-General for cancellation of the registration of an environment protection order in relation to land, and must do so—

- (a) on revocation of the order; or
- (b) on full compliance with the requirements of the order; or
- (c) where the Authority takes action under this Division to carry out the requirements of the order—on payment to the Authority of the amount recoverable by the Authority under this Division in relation to the action so taken.

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**Action on non-compliance with environment protection order**

**95.** (1) If the requirements of an environment protection order are not complied with, the Authority may take any action required by the order.

(2) Any action to be taken by the Authority under subsection (1) may be taken on the Authority's behalf by authorised officers or by other persons authorised by the Authority for the purpose.

(3) Where a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:

- (a) the Authority must issue the person with an instrument of authority;
- (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
- (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
- (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.

(4) The reasonable costs and expenses incurred by the Authority in taking action under this section may be recovered by the Authority as a debt from the person who failed to comply with the requirements of the environment protection order.

(5) Where an amount is recoverable from a person by the Authority under this section—

- (a) the Authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the Authority on any land owned by the person in relation to which the environment protection order is registered under this Division.

(6) A charge imposed on land by this section has priority over—

- (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
- (b) any other charge on the land other than a charge registered prior to registration of the environment protection order in relation to the land.

**Division 3—Power to require or obtain information**

**Information discovery orders**

**96.** (1) The Authority may issue an information discovery order under this Division for the purpose of obtaining information reasonably required by the Authority for the administration or enforcement of this Act.

(2) An information discovery order may be issued to any person who the Authority reasonably suspects has knowledge of matters, or has possession or control of a document dealing with matters, in respect of which information is required by the Authority.

(3) An information discovery order—

- (a) must be in the form of a written notice served on the person to whom it is issued;
- (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person);
- (c) may require information, as specified in the order, to be furnished to the Authority in such manner and within such period as is specified in the order;
- (d) must state the purpose for which the information is required;
- (e) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.

(4) The Authority may, by written notice served on the person to whom an information discovery order has been issued, vary or revoke the order.

(5) A person to whom an information discovery order is issued must comply with the order.

Penalty: Division 5 fine.

**Obtaining of information on non-compliance with order or condition of environmental authorisation**

97. (1) If a person—

- (a) fails to furnish information as required by—
  - (i) an information discovery order; or
  - (ii) a condition of an environmental authorisation; or
- (b) being required by such an order or condition to furnish information, furnishes information that is inaccurate or incomplete,

the Authority may take such action as is reasonably required to obtain the information.

(2) Any action to be taken by the Authority under subsection (1) may be taken on the Authority's behalf by authorised officers or by other persons authorised by the Authority for the purpose.

(3) Where a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:

- (a) the Authority must issue the person with an instrument of authority;
- (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
- (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;

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- (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.

(4) The reasonable costs and expenses incurred by the Authority in taking action under this section may be recovered by the Authority as a debt from the person whose failure gave rise to the action.

**Admissibility in evidence of information**

**98.** (1) A person is required to furnish information in compliance with—

- (a) an information discovery order; or
- (b) a condition of an environmental authorisation,

despite the fact that such compliance might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with an information discovery order or a condition of an environmental authorisation might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or information (as distinct from the contents of the document or the information); or
- (b) in any other case—the information furnished in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

**Division 4—Action to deal with environmental harm**

**Clean-up orders**

**99.** (1) Where the Authority is satisfied that a person has caused environmental harm by a contravention of this Act or a repealed environment law, the Authority may issue a clean-up order to the person requiring the person to take specified action within a specified period to make good any resulting environmental damage.

(2) A clean-up order—

- (a) must be in the form of a written notice served on the person to whom it is issued;
- (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person);
- (c) must specify the contravention alleged to have caused the environmental harm;
- (d) may include requirements for action to be taken to prevent or mitigate further environmental harm;
- (e) may include requirements for monitoring and reporting to the Authority the effectiveness of action taken in pursuance of the order;
- (f) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.

(2a) Where a proposed clean-up order (except an emergency clean-up order) or a proposed variation of a clean-up order would require the undertaking of an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Water Resources Act 1997* to whom an application for a permit for the activity would otherwise have to be made inviting the authority to make written submission in relation to the proposal within a period specified in the notice.

(2b) The period of the notice referred to in subsection (2a) must be—

- (a) in the case of an order to confirm an emergency clean-up order—at least 24 hours;
- (b) in all other cases—at least 14 days.

(3) Where an authorised officer is satisfied that a person has caused environmental harm by a contravention of this Act or a repealed environment law and is of the opinion that urgent action is required, the authorised officer may issue an emergency clean-up order containing requirements of a kind referred to in the preceding provisions of this section.

(4) An emergency clean-up order may be issued orally, but, in that event, the person to whom it is issued must be advised forthwith of the person's right to appeal to the Environment, Resources and Development Court against the order.

(5) Where an emergency clean-up order is issued to a person, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written clean-up order issued by the Authority and served on the person.

(6) The Authority or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other clean-up order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.

(7) The Authority may, by written notice served on a person to whom a clean-up order has been issued, vary or revoke the order.

(8) A person to whom a clean-up order is issued must comply with the order.

Penalty:

If the offender is a body corporate—\$120 000.

If the offender is a natural person—Division 1 fine.

### Clean-up authorisations

**100.** (1) Where the Authority is satisfied that a person has caused environmental harm by a contravention of this Act or a repealed environment law, the Authority may (whether or not a clean-up order has been issued to the person) issue a clean-up authorisation under which authorised officers or other persons authorised by the Authority for the purpose may take specified action on the Authority's behalf to make good any resulting environmental damage.

(2) A clean-up authorisation—

- (a) must be in the form of a written notice;
- (b) must specify the person alleged to have caused the environmental harm (whether by name or a description sufficient to identify the person);



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- (c) must specify the contravention alleged to have caused the environmental harm;
- (d) may include authorisation for action to be taken to prevent or mitigate further environmental harm.

(3) The Authority must, as soon as practicable after issuing a clean-up authorisation, serve a copy of the authorisation on the person alleged to have caused the environmental harm.

(4) The Authority may, by notice in writing, vary or revoke a clean-up authorisation and must, as soon as practicable after doing so, serve a copy of the notice on the person alleged to have caused the environmental harm.

(5) Where a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:

- (a) the Authority must issue the person with an instrument of authority;
- (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
- (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
- (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.

**Registration of clean-up orders or clean-up authorisations in relation to land**

**101.** (1) Where a clean-up order has been issued under this Division, the Authority may do either or both of the following:

- (a) if the order was issued to a person requiring action to be taken in relation to land owned or occupied by the person—apply to the Registrar-General for registration of the order in relation to that land;
- (b) apply to the Registrar-General for registration of the order in relation to land owned by the person to whom the order was issued.

(2) Where a clean-up authorisation has been issued under this Division, the Authority may apply to the Registrar-General for registration of the authorisation in relation to land owned by the person whose contravention gave rise to the issuing of the authorisation.

(3) An application under this section must—

- (a) define the land to which it relates; and
- (b) in the case of—
  - (i) an application for registration of a clean-up order—state that registration of the order in relation to the land—
    - (A) will, by virtue of subsection (5), result in the order becoming binding on each owner and occupier from time to time of the land; or

(B) is to operate as the basis for a charge on the land, as provided by this Division, securing payment to the Authority of costs and expenses incurred in the event of non-compliance with requirements of the order,

or both, as the case may require; or

(ii) an application for registration of a clean-up authorisation—state that registration of the authorisation in relation to the land is to operate as the basis for a charge on the land, as provided by this Division, securing payment to the Authority of costs and expenses incurred in taking action in pursuance of the authorisation.

(4) The Registrar-General must on—

(a) application by the Authority under subsection (1) or (2); and

(b) lodgement of a copy of the clean-up order or clean-up authorisation,

register the order or authorisation in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as he or she thinks fit.

(5) Where—

(a) a clean-up order has been issued to a person requiring action to be taken in relation to land owned or occupied by the person; and

(b) the order is registered under this section in relation to the land,

the following provisions apply:

(c) the order is binding on each owner and occupier from time to time of the land and this Division (including subsection (1)(b)) applies as if the order had been issued to each such person;

(d) an owner or occupier of the land who ceases to own or occupy the land must, as soon as reasonably practicable, notify the Authority in writing of the name and address of the new owner or occupier.

(6) An owner or occupier who fails to comply with subsection (5)(d) is guilty of an offence.

Penalty: Division 6 fine.

(7) The Registrar-General must, on application by the Authority, cancel the registration of a clean-up order or clean up authorisation in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as he or she thinks fit.

(8) The Authority may, if it thinks fit, apply to the Registrar-General for cancellation of the registration of a clean-up order or clean-up authorisation in relation to land, and must do so—

(a) on revocation of the order or authorisation; or

- (b) in relation to—
  - (i) an order—
    - (A) on full compliance with the requirements of the order; or
    - (B) where the Authority takes action under this Division to carry out the requirements of the order—on payment to the Authority of the amount recoverable by the Authority under this Division in relation to the action so taken; or
  - (ii) an authorisation—on payment to the Authority of the amount recoverable by the Authority under this Division in relation to the action taken in pursuance of the authorisation.

**Action on non-compliance with clean-up order**

**102.** (1) If the requirements of a clean-up order are not complied with, the Authority may take any action required by the order.

(2) Any action to be taken by the Authority under subsection (1) may be taken on the Authority's behalf by authorised officers or by other persons authorised by the Authority for the purpose.

(3) Where a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:

- (a) the Authority must issue the person with an instrument of authority;
- (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
- (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
- (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.

**Recovery of costs and expenses incurred by Authority**

**103.** (1) Where action has been taken by the Authority on non-compliance with the requirements of a clean-up order, the Authority may recover the reasonable costs and expenses incurred by the Authority in taking that action as a debt from the person who failed to comply with those requirements.

(2) Where action has been taken by the Authority in pursuance of a clean-up authorisation, the Authority may recover the reasonable costs and expenses incurred by the Authority in taking that action as a debt from the person whose contravention gave rise to the issuing of the authorisation.

(3) Where an amount is recoverable from a person by the Authority under this section—

- (a) the Authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and

- (b) the amount together with any interest charge so payable is until paid a charge in favour of the Authority on any land owned by the person in relation to which the clean-up order or clean-up authorisation is registered under this Division.
  
- (4) A charge imposed on land by this section has priority over—
  - (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
  - (b) any other charge on the land other than a charge registered prior to registration of the clean-up order or clean-up authorisation in relation to the land.

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## Part 11—Civil remedies

### Civil remedies

**104.** (1) Applications may be made to the Environment, Resources and Development Court for one or more of the following orders:

- (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action;
- (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;
- (c) if a person has caused environmental harm by a contravention of this Act or a repealed environment law—an order requiring the person to take specified action to make good any resulting environmental damage and, if appropriate, to take specified action to prevent or mitigate further environmental harm;
- (d) if the Authority or any other public authority has incurred costs or expenses in taking action to prevent or mitigate environmental harm caused by a contravention of this Act or a repealed environment law, or to make good resulting environmental damage—an order against the person who committed the contravention for payment of the reasonable costs and expenses incurred in taking that action;
- (e) if a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
- (f) if the Court considers it appropriate to do so, an order against a person who has contravened this Act for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court;
- (g) an order for enforcement of the provisions of an environment performance agreement.

(2) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—

- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial harm or damage if the first-mentioned person engages in conduct of that kind.

(3) The power of the Court to make an order requiring a person to take specified action may be exercised—

- (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
  - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of substantial harm or damage if the first-mentioned person refuses or fails to take that action.
- (4) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—
- (a) any environmental harm or detriment to the public interest resulting from the contravention; and
  - (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
  - (c) any other matter it considers relevant.
- (5) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a Judge of the Court.
- (6) The power of the Court to make an order for enforcement of an environment performance agreement includes any power to make orders or provide relief that the District Court has in relation to a contract.
- (7) An application under this section may be made—
- (a) by the Authority; or
  - (b) by any person whose interests are affected by the subject matter of the application; or
  - (c) by any other person with the leave of the Court.
- (8) Before the Court may grant leave for the purposes of subsection (7)(c), the Court must be satisfied that—
- (a) the proceedings on the application would not be an abuse of the process of the Court; and
  - (b) there is a real or significant likelihood that the requirements for the making of an order under subsection (1) on the application would be satisfied; and
  - (c) it is in the public interest that the proceedings should be brought.
- (9) If an application is made by a person other than the Authority—
- (a) the applicant must serve a copy of the application on the Authority within three days after filing the application with the Court; and
  - (b) the Court must, on application by the Authority, join the Authority as a party to the proceedings.

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(10) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).

(11) An application may be made *ex parte* and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant leave to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(12) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).

(13) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(14) An interim order—

- (a) may be made on an *ex parte* application; and
- (b) may be made whether or not the proceedings have been referred to a conference; and
- (c) will be made subject to such conditions as the Court thinks fit; and
- (d) will not operate after the proceedings in which it is made are finally determined.

(15) Where the Court makes an order requiring the respondent to take any specified action to make good any environmental damage or to prevent or mitigate further environmental harm, the provisions of Division 4 of Part 10 relating to—

- (a) registration of a clean-up order in relation to land; and
- (b) the taking of action by the Authority on non-compliance with a clean-up order; and
- (c) the recovery of costs and expenses by the Authority,

apply in relation to the Court's order in the same way as in relation to a clean-up order issued by the Authority under that Division.

(16) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for an environmental authorisation that should have been but was not made, or to remedy any other default.

(17) The Court may order an applicant in proceedings under this section—

- (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
- (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (18).

(18) If, on an application under this section alleging a contravention of this Act or a repealed environment law, the Court is satisfied—

- (a) that the respondent has not contravened this Act or a repealed environment law; and
- (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
- (c) that in the circumstances it is appropriate to make an order under this provision,

the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.

(19) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.

(20) Proceedings under this section based on a contravention of this Act or a repealed environment law may be commenced at any time within three years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.

(21) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(22) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.



## Part 12—Emergency authorisations

### Emergency authorisations

**105.** (1) The Authority or an authorised officer may issue an authorisation in writing to a person authorising an act or omission that might otherwise constitute a contravention of this Act if the Authority or authorised officer is satisfied—

- (a) that circumstances of urgency exist such that it is not practicable for the person to obtain an exemption; and
- (b) that authorisation of the act or omission is justified by the need to protect life, the environment or property.

(2) An authorisation under this section may be issued subject to such conditions as the Authority or authorised officer considers appropriate and specifies in the authorisation.

(3) A person incurs no criminal liability in respect of an act or omission authorised under this section.

(4) A person who would, but for an authorisation under this section, be guilty of an offence of contravening a provision of this Act is, despite the authorisation, to be taken to have contravened that provision for the purposes of—

- (a) any civil proceedings under this Act in respect of the contravention; and
- (b) the issuing or enforcement of a clean-up order or clean-up authorisation under this Act in respect of the contravention.

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**Part 13—Appeals to Court**

**Appeals to Court**

**106.** (1) The following appeals may be made to the Environment, Resources and Development Court:

- (a) a person who applied for a works approval or licence may appeal to the Court against a decision of the Authority—
  - (i) refusing to grant the approval or licence; or
  - (ii) determining the term of the approval or licence; or
  - (iii) imposing a condition of the approval or licence;
- (b) an applicant for the transfer of a works approval or licence may appeal to the Court against a decision of the Authority to refuse to approve the transfer;
- (c) the holder of a works approval or licence may appeal to the Court against a decision of the Authority—
  - (i) determining the term of the approval or licence on application for its renewal; or
  - (ii) varying or imposing a condition of the approval or licence or determining a matter in relation to such a condition (including a matter relating to a financial assurance lodged with the Authority); or
  - (iii) suspending or cancelling the approval or licence or imposing a disqualification on the holder; or
  - (iv) refusing to approve the surrender of the approval or licence;
- (d) a person to whom an environment protection order, information discovery order or clean-up order has been issued by the Authority or an authorised officer may appeal to the Court against the order or any variation of the order.

(2) An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.

(3) Subject to this section, an appeal must be made—

- (a) in the case of an appeal against an environment protection order, information discovery order or clean-up order or variation of such an order—within 14 days after the order is issued or the variation is made;
- (b) in any other case—within two months after the making of the decision.

(4) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.

(5) An appeal must be referred in the first instance to a conference under section 16 of the *Environment Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).

**Operation and implementation of decisions or orders subject to appeal**

**107.** (1) Subject to subsection (2), the making of an appeal to the Environment, Resources and Development Court against a decision or order does not affect the operation of the decision or order or prevent the taking of action to implement the decision or order.

(2) The Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision or order appealed against if the Court is satisfied that it is appropriate to do so having regard to—

(a) the possible environmental consequences and the interests of any persons who may be affected by the appeal; and

(b) the need to secure the effectiveness of the hearing and determination of the appeal.

(3) An order under this section—

(a) may be varied or revoked by the Court by further order;

(b) is subject to such conditions as are specified in the order;

(c) has effect until—

(i) the end of the period of operation (if any) specified in the order; or

(ii) the decision of the Court on the appeal comes into operation,

whichever is the earlier.

(4) The Court must not make an order under this section unless each party to the appeal has been given a reasonable opportunity to make submissions in relation to the matter.

**Powers of Court on determination of appeals**

**108.** The Environment, Resources and Development Court may, on hearing an appeal under this Part—

(a) confirm, vary or reverse any decision or order appealed against;

(b) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;

(c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

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**Part 14—Public register****Public register**

109. (1) The Authority must keep a register in accordance with this section.

(2) The register is to be in a form determined by the Authority.

(3) The Authority must record in the register the following:

- (a) such information as the Authority considers appropriate relating to each application for an environmental authorisation, each application for development authorisation referred to the Authority under the *Development Act 1993* and each application for approval of a transfer of an environmental authorisation;
- (b) each determination of the Authority made in respect of an application referred to in paragraph (a);
- (c) the name and address of each person holding an environmental authorisation and each person granted a development authorisation on an application referred to the Authority under the *Development Act 1993*;
- (d) the locations at which activities are or are proposed to be undertaken pursuant to environmental authorisations or pursuant to development authorisations referred to the Authority under the *Development Act 1993*;
- (e) the conditions of each environmental authorisation and the conditions of each development authorisation imposed at the direction of the Authority;
- (f) details of any suspension, cancellation or surrender of an environmental authorisation or any disqualification imposed in relation to an environmental authorisation;
- (g) details of beverage container approvals and applications for beverage container approvals;
- (h) details of incidents causing or threatening serious or material environmental harm that come to the notice of the Authority;
- (i) details of any environment protection order, clean-up order or clean-up authorisation issued under this Act and of any consequent action taken by the person to whom such an order was issued or by the Authority;
- (j) details of prosecutions and other enforcement action under this Act;
- (k) details of civil proceedings before the Environment, Resources and Development Court under this Act;
- (l) such other information as is prescribed.

(4) The Authority must ensure that information required to be recorded in the register is recorded in the register as soon as practicable, but, in any event, within three months, after the information becomes available to the Authority.

(5) The register must be kept available for inspection, on payment of the prescribed fee, by members of the public during ordinary office hours at the principal office of the Authority.

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(6) A member of the public may, on payment of the prescribed fee, obtain a copy of any part of the register.

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**Part 15—Miscellaneous****Constitution of Environment, Resources and Development Court**

**110.** The following provisions apply in respect of the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Act:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Presiding Member of the Court so determines, be constituted of a Judge and one commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
  - (i) in a case where only one commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
  - (ii) in any other case—at least one commissioner,

is a commissioner who has been specifically designated by the Governor as a person who has expertise in environmental protection and management.

**Annual reports by Authority**

**111.** (1) The Authority must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act during the period of 12 months that ended on the preceding 30 June.

(2) The Authority must include in the report—

- (a) an audited statement of the income and expenditure of the Environment Protection Fund, together with details of the items of income and expenditure of the Fund, for the period to which the report relates; and
- (b) any direction given to the Authority by the Minister during the period to which the report relates.

(3) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days after his or her receipt of the report.

**State of environment reports**

**112.** (1) The Authority must prepare and publish at least every five years a report on the state of the environment.

(2) The report must be delivered to the Minister who must cause a copy of the report to be laid before each House of Parliament within 12 sitting days after his or her receipt of the report.

(3) The report must—

- (a) include an assessment of the condition of the major environmental resources of South Australia; and
- (b) identify significant trends in environmental quality based on an analysis of indicators of environmental quality; and

- (c) review significant programmes, activities and achievements of public authorities relating to the protection, restoration or enhancement of the environment; and
- (d) review the progress made towards achieving the objects of this Act; and
- (e) identify any significant issues and make any recommendations that, in the opinion of the Authority, should be drawn to the attention of the Minister.

(4) The public authorities of the State must co-operate in furnishing to the Authority any information required by the Authority for inclusion in the report.

#### **Waste depot levy**

**113.** (1) The holder of a licence to conduct a waste depot must pay the prescribed levy to the Authority in respect of waste received at the depot.

(2) Differential levies may be prescribed for the purposes of subsection (1).

(3) The levy must be paid at such intervals and in such manner as the Authority by notice in writing directs.

(4) Where the holder of a licence fails to pay a levy as required under this section, the Authority may, by notice in writing, require the holder to make good the default and, in addition, to pay to the Authority the amount prescribed as a penalty for default.

(5) A levy (including any penalty for default) payable by a person under this section is recoverable by the Authority as a debt due to the Authority and is, until paid, a charge on any land owned by the person.

(6) In this section—

"**waste depot**" means a waste depot as described in Part A of Schedule 1.

#### **Waste facilities operated by Authority**

**114.** (1) The Authority may, with the approval of the Minister and subject to such conditions as the Minister may impose, carry on operations for the collection, storage, treatment and disposal of domestic and rural waste chemicals and containers.

(2) The Authority does not require a licence or other authorisation under any other provisions of this Act in order to carry on operations referred to in subsection (1) and compliance with the conditions of the Minister's approval will be taken to constitute compliance with the other provisions of this Act.

#### **Delegations**

**115.** (1) The Authority may, by instrument executed by the Authority, delegate to a specified public authority or other person or committee of persons, or the person for the time being holding or assigned to a specified office or position, any power or function of the Authority under this Act.

(2) A delegation under this section may be given subject to conditions specified in the instrument of delegation.

(3) A delegation under this section is revocable at will and does not prevent the Authority from acting in any matter.

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**Waiver or refund of fees and payment by instalments**

**116.** The Authority may, in cases of a kind approved by the Minister—

- (a) waive the payment of, or refund, the whole or part of a fee otherwise required to be paid to the Authority under this Act; or
- (b) allow the payment of a fee by instalments.

**Notices, orders or other documents issued by Authority or authorised officers**

**117.** (1) A notice, order or other document to be issued or executed by the Authority must—

- (a) be under the common seal of the Authority affixed in accordance with this section; or
- (b) be signed on behalf of the Authority by a person or persons in accordance with authority conferred under this section.

(2) The common seal of the Authority must not be affixed to a document except in pursuance of a decision of the Board, and the affixing of the seal must be attested by the signatures of two members of the Board.

(3) The Authority may, by instrument under its common seal, authorise a member of the Board, an authorised officer or a Public Service employee assigned to assist the Authority to execute documents on behalf of the Authority.

(4) An authority under subsection (3) may be given—

- (a) subject to conditions specified in the instrument of authority;
- (b) so as to authorise two or more persons to execute documents jointly.

(5) A notice or other document to be issued by an authorised officer must be signed by the authorised officer and state his or her name and that he or she is an authorised officer under this Act.

**Service**

**118.** (1) A notice, order or other document required or authorised by this Act to be given to or served on a person by the Authority or the Minister or an authorised officer may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice, order or other document required or authorised to be given to or served on a person may—

- (a) if the person is the holder of an environmental authorisation—be given to or served on the person—
  - (i) by posting it to the person at the address last provided to the Authority by the person for that purpose; or



- (ii) by transmitting it to the person by facsimile transmission to the number last provided to the Authority by the person for that purpose; or
- (b) if the person is a company—be given to or served on the person in accordance with section 220 of the *Corporations Law*.

**False or misleading information**

**119.** A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Penalty: Division 5 fine.

**Statutory declarations**

**120.** Where a person is required by or under this Act to furnish information to the Authority, the Authority may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Authority.

**False reports calling for action by Authority**

**120A.** (1) A person who makes a false report to the Authority or to a person engaged in the administration of this Act is guilty of an offence if—

- (a) the person knows the report is false; and
- (b) the report is of a kind that would reasonably call for investigation or action by the Authority.

Penalty: Division 5 fine.

(2) Where a person is convicted of an offence against subsection (1), the court must, on application by the Authority, order the convicted person to pay to the Authority the reasonable costs and expenses incurred by the Authority in carrying out an investigation or taking other action as a result of the false report.

**Confidentiality**

**121.** A person must not divulge any information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—

- (a) as authorised by or under this Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration or enforcement of this Act; or
- (d) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.

Penalty: Division 5 fine.

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**Immunity from personal liability**

**122.** (1) No personal liability attaches to a member of the Board, an authorised officer or any other person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) Subject to subsection (3), a liability that would, but for subsection (1), lie against a person lies instead against the Crown.

(3) A liability that would, but for subsection (1), lie against an authorised officer who is an officer or employee of a council lies instead against the council.

**Continuing offences**

**123.** (1) Where an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence; and
- (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

**General criminal defence**

**124.** (1) It will be a defence to a charge of an offence against this Act, including—

- (a) an offence by a body corporate or a natural person where conduct or a state of mind is imputed to the body or person under this Part; and
- (b) an offence by an officer of a body corporate under this Part,

if it is proved that the alleged offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the commission of the offence or offences of the same or a similar nature.

(2) Without limiting the effect of subsection (1), the defence provided by that subsection includes the defence that the act or omission alleged to constitute the offence was justified by the need to protect life, the environment or property in a situation of emergency and that the defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.

(3) Where a body corporate or other employer seeks to establish the defence provided by this section by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this Act, that proof must be accompanied by proof—

- (a) that proper systems and procedures were also in place whereby any such contravention or risk of such contravention of this Act that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and
- (b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.

(4) A person who would, but for the defence provided by this section, be guilty of an offence of contravening a provision of this Act is, despite that defence, to be taken to have contravened that provision for the purposes of—

- (a) any civil proceedings under this Act in respect of the contravention; and
- (b) the issuing or enforcement of any clean-up order or clean-up authorisation under this Act in respect of the contravention; and
- (c) the making by a court of an order under section 133 in proceedings for an offence in respect of the contravention.

#### **Notice of defences**

**125.** A person who intends to rely on the general defence under this Part or any other defence under this Act may only do so if the person gives notice in writing of that intention to the Authority—

- (a) in relation to a charge of a summary offence—within 28 days after the summons to answer to the charge is served on the person; or
- (b) in relation to a charge of a minor indictable offence where the charge is to be dealt with in the same way as a charge of a summary offence—not less than 28 days before the date for hearing of the charge; or
- (c) in any other case—within seven days after the person is committed for trial.

#### **Proof of intention etc for offences**

**126.** Subject to any express provision in this Act to the contrary, it will not be necessary to prove any intention or other state of mind in order to establish the commission of an offence against this Act.

#### **Imputation in criminal proceedings of conduct or state of mind of officer, employee etc**

**127.** (1) For the purposes of proceedings for an offence against this Act—

- (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate;
- (b) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person.

(2) Where—

- (a) a natural person is convicted of an offence against this Act; and

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- (b) the person would not have been convicted of the offence but for the operation of subsection (1),

the person is not liable to be punished by imprisonment for the offence.

(3) For the purposes of this section, a reference to **conduct** or **acting** includes a reference to failure to act.

**Statement of officer evidence against body corporate**

**128.** In proceedings for an offence against this Act by a body corporate, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

**Criminal liability of officers of body corporate**

**129.** (1) Where a body corporate commits an offence against this Act, a person who is an officer of the body corporate is—

- (a) subject to the general defence under this Part, guilty of an offence; and
- (b) subject to subsection (2), liable to the same penalty as may be imposed for the principal offence when committed by a natural person.

(2) Where an officer of a body corporate is convicted of an offence under subsection (1), the officer is not liable to be punished by imprisonment for the offence.

(3) Where a body corporate commits an offence of contravening a provision of this Act, an officer of the body corporate who knowingly promoted or acquiesced in the contravention is also guilty of an offence against that provision.

(4) An officer of a body corporate may be prosecuted and convicted of an offence pursuant to subsection (1) or (3) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

**Reports in respect of alleged contraventions**

**130.** Where a person reports to the Authority an alleged contravention of this Act, the Authority must, at the request of the person, advise the person as soon as practicable of the action (if any) taken or proposed to be taken by the Authority in respect of the allegation.

**Commencement of proceedings for summary offences**

**131.** (1) Proceedings for a summary offence against this Act may only be commenced by an authorised officer.

(2) Proceedings for a summary offence against this Act may be commenced at any time within three years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged commission of the offence.

(3) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(4) Where proceedings for a summary offence against this Act are commenced by an authorised officer who is an officer or employee of a council, any penalty imposed in respect of the offence is payable to and may be retained by the council.

### **Offences and Environment, Resources and Development Court**

**132.** Offences constituted by this Act lie within the criminal jurisdiction of the Environment, Resources and Development Court.

### **Orders by court against offenders**

**133.** (1) Where, in proceedings for an offence against this Act, the court finds the defendant guilty of a contravention of this Act that resulted in environmental harm, the court may, in addition to any penalty it may impose, do one or more of the following:

- (a) order the person to take specified action to make good any resulting environmental damage and, if appropriate, to take specified action to prevent or mitigate further environmental harm;
- (b) order the person to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit;
- (c) order the person to take specified action to publicise the contravention and its environmental and other consequences and any other orders made against the person;
- (d) order the person to pay—
  - (i) to any public authority that has incurred costs or expenses in taking action to prevent or mitigate the environmental harm or to make good any resulting environmental damage; and
  - (ii) to any person who has suffered injury or loss or damage to property as a result of the contravention, or incurred costs or expenses in taking action to prevent or mitigate such injury, loss or damage,

the reasonable costs and expenses so incurred, or compensation for the injury, loss or damage so suffered, as the case may be, in such amount as is determined by the court.

(1a) Where a person is convicted of an offence against this Act, the court may, in addition to any penalty it may impose, order the convicted person to pay to the Authority an amount not exceeding the court's estimation of the amount of the economic benefit acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence.

(1b) For the purposes of subsection (1a), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of commission of an offence if commission of the offence can be attributed (in whole or in part) to that delay or avoidance.

(2) The court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(3) An amount paid to the Authority in accordance with an order under subsection (1a) must be paid into the Environment Protection Fund.

### **Appointment of analysts**

**134.** The Authority may, with the approval of the Minister, appoint a person to be an analyst for the purposes of this Act.

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**Recovery of technical costs associated with prosecutions**

**135.** Where a person is convicted of an offence against this Act, the court must, on application by the Authority or the Minister, order the convicted person to pay to the Authority or the Minister the reasonable costs and expenses incurred by the Authority or the Minister in the taking of any samples or the conduct of tests, examinations or analyses in the course of the investigation and prosecution of the offence.

**Assessment of reasonable costs and expenses**

**136.** For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Authority or some other public authority or person in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

**Recovery from related bodies corporate**

**137.** Where—

- (a) an amount is payable by a body corporate pursuant to this Act or an order of a court made under this Act; and
- (b) at the time of the contravention giving rise to that liability, that body and another body were related bodies corporate,

the related bodies corporate are jointly and severally liable to make the payment.

**Enforcement of charge on land**

**138.** (1) If any default is made in payment of an amount that is, by virtue of this Act, a charge on land in favour of the Authority or the Minister, the Authority or the Minister has the same powers in respect of the land charged as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.

(2) This section and the other provisions of this Act relating to registration by the Registrar-General and the priority of charges apply notwithstanding the provisions of the *Real Property Act 1886*.

**Evidentiary provisions**

**139.** (1) In any proceedings, a certificate executed by the Authority or the Minister certifying as to a matter relating to—

- (a) an environmental authorisation or other authorisation under this Act; or
- (b) the appointment or non-appointment of a person as an authorised officer or an analyst or otherwise under this Act; or
- (c) a delegation or authority under this Act; or
- (d) a notice, order, requirement or direction of the Authority or the Minister under this Act; or
- (e) any other decision of the Authority or the Minister; or

- (f) the receipt or non-receipt by the Authority or the Minister of a notification or information required to be given or furnished to the Authority or the Minister under this Act,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(2) In any proceedings for the recovery of reasonable costs and expenses incurred by the Authority or some other public authority under this Act, a certificate executed by the Authority or other public authority detailing the costs and expenses and the purpose for which they were incurred constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(3) An allegation in a complaint that specified matter was a pollutant constitutes proof, in the absence of proof to the contrary, of the matters so alleged.

(4) In any proceedings for an offence against this Act where it is alleged that the defendant caused an environmental nuisance by the emission of noise, smoke, dust, fumes or odour, evidence by an authorised officer that he or she formed the opinion based on his or her own senses—

- (a) that noise, smoke, dust, fumes or odour was emitted from a place occupied by the defendant and travelled to a place occupied by another person; and
- (b) that the level, nature or extent of the noise, smoke, dust, fumes or odour within the place occupied by the other person was such as to constitute an unreasonable interference with the person's enjoyment of the place,

constitutes proof, in the absence of proof to the contrary, that the defendant caused an environmental nuisance by the emission of the noise, smoke, dust, fumes or odour.

(5) In any proceedings, a certificate executed by a person appointed by the Authority as an analyst for the purposes of this Act and setting out details as to an analysis carried out by or under the direction of the person and the results of the analysis constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(6) An apparently genuine document purporting to be an authorisation, notice, order, certificate or other document, or a copy of an authorisation, notice, order, certificate or other document, issued or executed—

- (a) by the Authority or the Minister or an authorised officer under this Act; or
- (b) by a public authority for the purpose of recovering costs and expenses incurred by the public authority under this Act; or
- (c) by an analyst appointed by the Authority for the purposes of this Act,

will be accepted as such in the absence of proof to the contrary.

### Regulations

**140.** (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) vary the provisions of Schedule 1;

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- (b) exempt classes of persons or activities from the application of this Act or specified provisions of this Act, either unconditionally or subject to specified conditions;
- (c) prescribe forms for the purposes of this Act;
- (d) prescribe fees, or provide for the Authority to determine fees, to be paid in respect of any matter under this Act and provide for the recovery of those fees;
- (e) authorise the release or publication of information of a specified kind obtained in the administration of this Act;
- (f) prescribe fines (not exceeding a division 6 fine) for contravention of a regulation.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) make different provision according to the matters or circumstances to which they are expressed to apply;
- (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Authority.

(4) A regulation under this Act may prescribe differential fees for the purposes of this Act or may provide for fees to be determined by reference to factors related to the quality and quantity of pollution caused or likely to be caused by the persons liable to pay the fees or by reference to other factors.

(5) A regulation under this Act may make provisions of a savings or transitional nature consequent on the enactment of this Act or the commencement of specified provisions of this Act or specified regulations or environment protection policies under this Act.

(6) A provision referred to in subsection (5) may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(7) To the extent to which a provision referred to in subsection (5) 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 Crown), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the Crown) in respect of anything done or omitted to be done before the date of its publication.

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**Schedule 1—Prescribed activities of environmental significance**

**Part A—Activities**

**1. Petroleum and Chemical**

**(1) Chemical Storage and Warehousing Facilities:** the storage or warehousing of chemicals or chemical products that are, or are to be, stored or kept in bulk or in containers having a capacity exceeding 200 litres at facilities with a total storage capacity exceeding 1 000 cubic metres.

**(2) Chemical Works:** the conduct of—

(a) works with a total processing capacity exceeding 100 tonnes per year involving either or both of the following operations:

(i) manufacture (through chemical reaction) of any inorganic chemical, including sulphuric acid, inorganic fertilisers, soap, sodium silicate, lime or other calcium compound;

(ii) manufacture (through chemical reaction) or processing of any organic chemical or chemical product or petrochemical, including the separation of such materials into different products by distillation or other means; or

(b) works with a total processing capacity exceeding 5 000 tonnes per year involving operations for salt production.

**(3) Coke Works:** the production, quenching, cutting, crushing and grading of coke.

**(4) Oil Refineries:** the conduct of works at which crude petroleum oil or shale oil is refined, or where lubricating oil is produced.

**(5) Petroleum Production, Storage or Processing Works or Facilities:** the conduct of works or facilities—

(a) at which petroleum products are stored in tanks with a total storage capacity exceeding 2 000 cubic metres; or

(b) with a total petroleum production rate exceeding 20 tonnes per hour.

**(6) Wood Preservation Works:** the conduct of works for the treatment or preservation of timber by chemicals (including chemicals containing copper, chromium, arsenic or creosote), but excluding the treatment or preservation of timber by primary producers for their own primary production purposes and not for supply to others.

**2. Manufacturing and Mineral Processing**

**(1) Abrasive Blasting:** the cleaning of materials by the abrasive action of any metal shot or mineral particulate propelled in a gaseous or liquid medium (otherwise than solely by using blast cleaning cabinets less than 5 cubic metres in volume or totally enclosed automatic blast cleaning units).

**(2) Hot Mix Asphalt Preparation:** the conduct of works at which crushed or ground rock aggregates are mixed with bituminous or asphaltic materials for the purposes of producing road building mixtures.

**(3) Cement Works:** the conduct of works for the use of argillaceous and calcareous materials in the production of cement clinker or the grinding of cement clinker.

**(4) Ceramic Works:** the conduct of works for the production of any products such as bricks, tiles, pipes, pottery goods, refractories, or glass that are manufactured or are capable of being manufactured in furnaces or kilns fired by any fuel, being works with a total capacity for the production of such products exceeding 100 tonnes per year.

**(5) Concrete Batching Works:** the conduct of works for the production of concrete or concrete products that are manufactured or are capable of being manufactured by the mixing of cement, sand, rock, aggregate or other similar materials, being works with a total capacity for production of such products exceeding 0.5 cubic metres per production cycle.

**(6) Drum Reconditioning:** the conduct of drum reconditioning works, including associated storage facilities.

**(7) Ferrous and Non-ferrous Metal Melting:** the melting of ferrous or non-ferrous metal in a furnace or furnaces that alone or in aggregate have the capacity to melt in excess of 500 kilograms of metal during the normal cycle of operation.

**(8) Metallurgical Works:** the conduct of works at which ores are smelted or reduced to produce metal.

**(9) Mineral Works:** the conduct of works for processing mineral ores, sands or earths to produce mineral concentrates.

**(10) Pulp or Paper Works:** the conduct of works at which paper pulp or paper is manufactured or is capable of being manufactured, being works with a total capacity for production of such products exceeding 100 tonnes per year.

**(11) Scrap Metal Recovery:** the conduct of works at which scrap metals are treated in any type of fuel burning equipment or electrically heated furnaces or are disintegrated by mechanical means for recovery of metal, but excluding commercial printing establishments at which type metal is melted or re-melted in thermostatically controlled pots for the purpose of type casting.

**(12) Surface Coating:** the conduct of—

- (a) works for metal finishing, in which metal surfaces are prepared or finished by means of electroplating, electrolyse plating, anodising (chromating, phosphating and colouring), chemical etching or milling, or printed circuit board manufacture, being works producing more than 5 kilolitres per day of effluent; or
- (b) works for hot dip galvanising; or
- (c) works for spray painting and powder coating with a capacity to use more than 100 litres per day of paint or 10 kilograms per day of dry powder.

**(13) Wood Processing Works:** the conduct of works (other than works at a builders supply yard or a home improvement centre) at which timber is sawn, cut, chipped, compressed, milled or machined, being works with a total processing capacity exceeding 4 000 cubic metres per year.

**(14) Maritime Construction Works:** the conduct of works for the construction or repair of ships, vessels or floating platforms or structures, being works with the capacity to construct or repair ships, vessels or floating platforms or structures of a mass exceeding 80 tonnes.

**(15) Vehicle Production:** the conduct of works for the production of motor vehicles, being works with a production capacity exceeding 2 000 motor vehicles per year.

### 3. Waste Treatment and Disposal

**(1) Incineration:** the conduct of works for incineration by way of thermal oxidation using fuel burning equipment, being—

- (a) works for the destruction of chemical wastes (including halogenated organic compounds); or
- (b) works for the destruction of medical wastes produced by hospitals, or by pathology, medical, dental or veterinary practices or laboratories, or of cytotoxic wastes, or for the destruction of quarantine wastes; or
- (c) works for the cremation of bodies; or

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- (d) works for the destruction of solid municipal waste; or
- (e) works for the disposal of solid trade waste with a processing capacity exceeding 100 kilograms per hour.

**(2) Sewage Treatment Works or Septic Tank Effluent Disposal Schemes:** the conduct of—

- (a) works that involve the discharge of treated or untreated sewage or septic tank effluent to marine waters; or
- (b) works that involve the discharge of treated or untreated sewage or septic tank effluent to land or waters in a water protection area (as declared under Part 8 of this Act), being works with a peak loading capacity designed for more than 100 persons per day; or
- (c) works that involve the discharge of treated or untreated sewage or septic tank effluent to land or waters (other than land or waters referred to in paragraph (a) or (b)), being works with a peak loading capacity designed for more than 1 000 persons per day.

**(3) Waste or Recycling Depots:** the conduct of a depot for the reception, storage, treatment or disposal of waste other than—

- (a) temporary storage at the place at which the waste (not being tyres or tyre pieces) is produced while awaiting transport to another place; or
- (b) storage, treatment or disposal of domestic waste at residential premises; or
- (c) receipt or storage by a council or hospital of medical waste produced in the course of—
  - (i) medical practice other than—
    - (A) the practice of pathology; or
    - (B) medical practice at a hospital; or
  - (ii) dental practice other than at a hospital; or
  - (iii) nursing practice other than at a hospital; or
  - (iv) operating a nursing home; or
  - (v) veterinary practice; or
  - (vi) operating a hospital with a capacity of less than 40 beds; or
  - (vii) operating an immunisation clinic; or
- (d) receipt or storage by a pharmacy of medical waste produced in the course of a domestic activity; or
- (e) the handling of waste solely for recycling or reuse where—
  - (i) the waste handled does not consist of or include—
    - (A) beverage containers bearing refund marking under Division 2 of Part 8; or
    - (B) substances or things listed in Part B of this Schedule; or
    - (C) waste oil in quantities exceeding 5 000 litres per year; or
    - (D) waste lead acid batteries in quantities exceeding 500 batteries per year; or
    - (E) waste tyres or tyre pieces in quantities exceeding 5 tonnes per year; and

- (ii) the quantities of waste handled do not exceed 100 tonnes per year; or
- (f) the handling and disposal of waste tyres or tyre pieces in a manner approved by the Authority; or
- (g) a depot approved as a collection depot for beverage containers under Division 2 of Part 8; or
- (h) the handling for charitable or non-profit purposes only of beverage containers bearing refund marking under Division 2 of Part 8; or
- (i) a depot that the Authority is satisfied will be conducted for such limited purposes that requirement of an environmental authorisation under Part 6 would not be justified.

**(4) Activities Producing Listed Wastes:** an activity in which any of the substances or things listed in Part B of this Schedule are produced as or become waste other than any of the following activities:

- (a) a domestic activity;
- (b) an activity in which the waste produced is lawfully disposed of to a sewer;
- (c) an activity consisting only of storing or distributing goods;
- (d) building work;
- (e) carpentry or joinery;
- (f) retail pharmacy;
- (g) film processing;
- (h) dental practice;
- (i) plumbing or gas fitting;
- (j) dry cleaning;
- (k) primary or secondary school education;
- (l) agriculture or horticulture;
- (m) french polishing;
- (n) manufacturing jewellery;
- (o) medical practice, not being the practice of pathology;
- (p) painting or decorating;
- (q) panel beating and associated spray painting;
- (r) operation of a nursing home;
- (s) veterinary practice;
- (t) operation of an immunisation clinic;
- (u) operation of a hospital with a capacity of less than 40 beds;
- (v) an activity producing waste oil at a rate of less than 50 000 litres per year;

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- (w) an activity authorised by a lease or licence under the *Mining Act 1971*, the *Petroleum Act 1940* or the *Roxby Downs (Indenture Ratification) Act 1982* where the waste is disposed of to land and contained within the area of the lease or licence;
- (x) an activity authorised by a lease under the *Mining Act 1971* where the waste is disposed of to land and contained within the area of a miscellaneous purposes licence under that Act adjacent to the area of the lease;
- (y) an activity that the Authority is satisfied will involve the production of waste in such quantities or circumstances that requirement of an environmental authorisation under Part 6 would not be justified.

**(5) Waste transport business (category A):** the collection or transport for fee or reward of—

- (a) waste substances or things listed in Part B of this Schedule; or
- (b) liquid waste (not being such waste lawfully disposed of to a sewer) arising from any commercial or industrial premises or from any teaching or research institution.

**(6) Waste transport business (category B):** the collection or transport for fee or reward of—

- (a) waste from domestic premises where the waste is collected or transported for or on behalf of a council; or
- (b) solid waste from any commercial or industrial premises or from any teaching or research institution (other than building or demolition waste); or
- (c) septic tank effluent; or
- (d) waste soil containing substances or things listed in Part B of this Schedule in a concentration above that naturally occurring in soil in the area.

#### 4. Activities in Specified Areas

**(1) Brukunga Mine Site:** the management of the abandoned Brukunga mine site and associated acid neutralisation plant situated adjacent to Dawesley Creek in the Mount Lofty Ranges.

**(2) Discharge of Stormwater to Underground Aquifers:** discharge of stormwater from a catchment area exceeding 1 hectare to an underground aquifer by way of a well or other direct means where the stormwater drains to the aquifer from—

- (a) land or premises situated in the area of the City of Mount Gambier or the Western Industrial Zone of the area of the District Council of Mount Gambier (as defined in the relevant Development Plan under the *Development Act 1993*), being land or premises on which a business is carried on; or
- (b) a stormwater drainage system in the area of the City of Mount Gambier or the Western Industrial Zone in the area of District Council of Mount Gambier (as defined in the relevant Development Plan under the *Development Act 1993*);
- (c) a stormwater drainage system in Metropolitan Adelaide as defined in the *Development Act 1993*.

#### 5. Animal Husbandry and Other Activities

**(1) Cattle Feedlots:** carrying on an operation for holding in a confined yard or area and feeding principally by mechanical means or by hand—

- (a) not less than an average of 500 cattle per day over any period of 12 months; or
- (b) where the yard or area is situated in a water protection area (as declared under Part 8 of this Act)—not less than an average of 200 cattle per day over any period of 12 months,

but not including any such operation carried on at an abattoir, slaughterhouse or saleyard or for the purpose only of drought or other emergency feeding.

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**(3) Saleyards:** the commercial conduct of yards at which cattle, sheep or other animals are gathered or confined for the purpose of their sale, auction or exchange, including associated transport loading facilities, being yards with a throughput exceeding 50 000 sheep equivalent units per year [sheep equivalent units: 1 sheep or goat = 1 unit, 1 pig (< 40kg) = 1 unit, 1 pig (> 40kg) = 4 units, 1 cattle (< 40kg) = 3 units, 1 cattle (40—400kg) = 6 units, 1 cattle (> 400kg) = 8 units].

**(4) Piggeries:** the keeping or husbandry in confined or roofed structures of—

- (a) 5 000 or more pigs at any one time; or
- (b) where the structures are situated in a water protection area (as declared under Part 8 of this Act)—500 or more pigs at any one time.

## 6. Food Production and Animal and Plant Product Processing

**(1) Abattoirs, Slaughterhouses or Poultry Processing Works:** the conduct of slaughtering works for commercial purposes for the production of meat or meat products for human or animal consumption, being—

- (a) works with a rate of production exceeding 100 tonnes per year of sheep, beef or pork meat or meat products; or
- (b) works with a rate of production exceeding 200 tonnes per year of poultry or poultry meat products.

**(2) Breweries:** the conduct of works for the production of beer by infusion, boiling or fermentation, being works with a beer production capacity exceeding 5 000 litres per day.

**(3) Composting Works:** the conduct of works at which mushroom or other compost is produced or is capable of being produced at a rate exceeding 200 tonnes per year.

**(4) Fish Processing:** the conduct of works for scaling, gilling, gutting, filleting, freezing, chilling, packing or otherwise processing fish (as defined in the *Fisheries Act 1982*) for sale, but excluding—

- (a) works with a processing output of less than 100 tonnes per year where waste water is disposed of to a sewer or septic tank effluent disposal system; or
- (b) works with a processing output of less than 2 tonnes per year where waste water is disposed of otherwise than to a sewer or septic tank effluent disposal system; or
- (c) processing of fish only in the course of a business of selling fish by retail.

**(5) Milk Processing Works:** the conduct of works at which milk is separated, evaporated or otherwise processed for the manufacture of evaporated or condensed milk, cheese, butter, ice cream or other similar dairy products, being works at which milk is processed at a rate exceeding 5 000 000 litres per year.

**(6) Produce Processing Works:** the conduct of works for processing any agricultural crop material being—

- (a) works for the processing of agricultural crop material by deep fat frying, roasting or drying through the application of heat with a processing capacity exceeding 30 kilograms per hour; or
- (b) works at which more than 10 000 000 litres of waste water is generated and disposed of otherwise than to a sewer or septic tank effluent disposal system.

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**(7) Rendering or Fat Extraction Works:** the conduct of works at which animal, fish or grease trap wastes or other matter is processed or is capable of being processed by rendering or extraction or by some other means to produce tallow or fat or their derivatives or proteinaceous matter, being works with a total processing capacity exceeding 250 kilograms per hour.

**(8) Curing or Drying Works:** the conduct of works at which meat, fish or other edible products are smoked, dried or cured by the application of heat or smoke with a total processing capacity exceeding 250 kilograms per hour.

**(9) Tanneries or Fellmongeries:** the conduct of works for the commercial preservation or treatment of animal skins or hides being works processing more than 5 tonnes of skins or hides per year, but excluding—

- (a) the processing of skins or hides by primary producers in the course of primary production activities outside township areas; or
- (b) the processing of skins or hides in the course of taxidermy.

**(10) Woolscouring or Wool Carbonising Works:** the conduct of works for the commercial cleaning or carbonising of wool, but excluding cleaning or carbonising of wool in the course of handicraft activities where the wool is further processed for sale by retail.

**(11) Wineries or Distilleries:** the conduct of works for the processing of grapes or other produce to make wine or spirits, but excluding—

- (a) works that are outside the Mount Lofty Ranges Water Protection Area (as declared under Part 8 of this Act) at which 500 tonnes or less of grapes or other produce are processed per year; or
- (b) works that are inside the Mount Lofty Ranges Water Protection Area (as declared under Part 8 of this Act) at which 50 tonnes or less of grapes or other produce are processed per year; or
- (c) works for bottling only.

**7. Materials Handling and Transportation**

**(1) Bulk Shipping Facilities:** the conduct of facilities for bulk handling of agricultural crop products, rock, ores, minerals, petroleum products or chemicals to or from any wharf or wharf side facility (including sea-port grain terminals), being facilities handling or capable of handling these materials into or from vessels at a rate exceeding 100 tonnes per day.

**(2) Railway Operations:** the conduct of any of the following activities associated with a railway:

- (a) the construction or operation of rail infrastructure; and
- (b) the operation of rolling stock on a railway; and
- (c) other activities conducted on railway land,

but excluding—

- (d) any activities associated with—
  - (i) a railway with a track gauge that is less than 600mm; or
  - (ii) a railway in a mine which is underground or predominantly underground and used in connection with the performance of mining operations; or
  - (iii) a slipway; or
  - (iv) a crane-type runway; or
  - (v) a railway used solely for the purposes of horse-drawn trams; or

- (vi) a railway used solely for the purposes of static displays; or
- (vii) a railway at an amusement park used solely for the purposes of an amusement structure under Schedule 2 of the *Occupational Health, Safety and Welfare Act 1986*; or
- (e) any activity that is excluded from the ambit of the definition of "**development**" under clause 13 of Schedule 3 of the *Development Regulations 1993*; or
- (f) an activity that the Authority is satisfied will be conducted for such limited purposes or which such limited impact that requirement of an environmental authorisation under Part 6 would not be justified.

In this subclause—

"**rail infrastructure**" means infrastructure associated with the operation of a railway and includes (but is not limited to) railway track, associated track structures, over or under track structures, supports, tunnels, bridges, stations, platforms, train control systems, signalling systems, communication systems, electric traction infrastructure and buildings, but does not include any workshop or repair facility;

"**railway**" means a guided system designed for the movement of rolling stock which has the capability of transporting passengers, freight or both on a railway track, together with its infrastructure and associated sidings or crossing, or passing loops, and includes a railway in a marshalling yard or a passenger or freight terminal;

"**railway land**" means—

- (a) land within a rail corridor or rail reserve, including any associated sidings; and
- (b) railway yards; and
- (c) other land over which a railway track passes;

"**rolling stock**" means a vehicle (whether or not self-propelled) that operates on or uses a railway track, but does not include a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track.

**Examples—**

A locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon.

**(3) Crushing, Grinding or Milling:** processing (by crushing, grinding, milling or separating into different sizes by sieving, air elutriation or in any other manner) of—

- (a) chemicals or rubber at a rate in excess of 100 tonnes per year; or
- (b) agricultural crop products at a rate in excess of 500 tonnes per year, but excluding non-commercial processing for on farm use; or
- (c) rock, ores or minerals at a rate in excess of 1 000 tonnes per year, but excluding—
  - (i) processing on a mining lease area, or processing of material from a mining lease area on adjacent land subject to a miscellaneous purposes licence, under the *Mining Act 1971*; and
  - (ia) processing on the area of a private mine (within the meaning of section 19 of the *Mining Act 1971*), or processing of material from a private mine on adjacent land subject to a miscellaneous purposes licence under the *Mining Act 1971*; and
  - (ib) processing of sand, gravel, stone, shell, shale, clay or soil as authorised under any statute other than this Act or the *Mining Act 1971*; and
  - (ii) processing of wet sand.



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**(4) Dredging:** removing solid matter from the bed of any marine waters or inland waters by any digging or suction apparatus, but excluding works carried out for the establishment of a visual aid to navigation and any lawful fishing or recreational activity.

**(5) Coal Handling and Storage:** the handling of coal or carbonaceous material by any means or the storage of coal, coke or carbonaceous reject material at facilities with a total handling capacity exceeding 100 tonnes per day or a storage capacity exceeding 5 000 tonnes.

**(6) Earthworks Drainage:** the conduct of earthworks operations in the course of which more than 100 kilolitres of waste water containing suspended solids in a concentration exceeding 25 milligrams per litre is discharged directly or indirectly to marine waters or inland waters.

**(7) Extractive Industries:** the conduct of operations involving extraction, or extraction and processing (by crushing, grinding, milling or separating into different sizes by sieving, air elutriation or in any other manner), of sand, gravel, stone, shell, shale, clay or soil, being operations with an extraction production rate exceeding 100 000 tonnes per year.

**8. Other**

**(1) Aerodromes:** the conduct of facilities for commercial or charter aircraft take-off and landing, being facilities used for more than 20 000 flight movements per year.

**(2) Fuel Burning:** the conduct of works or facilities involving the use of fuel burning equipment, including flaring (other than flaring at petroleum production, storage or processing works or facilities that do not have a total storage capacity or total production rate exceeding the levels respectively specified in clause 1(5)) or incineration, where the equipment alone or in aggregate is capable of burning combustible matter—

- (a) at a rate of heat release exceeding 5 megawatts; or
- (b) at a rate of heat release exceeding 500 kilowatts and the products of combustion are used—
  - (i) to stove enamel; or
  - (ii) to bake or dry any substance that on heating releases dust or air impurities.

**(3) Helicopter Landing Facilities:** the conduct of facilities designed for the arrival and departure of helicopters, but excluding—

- (a) facilities at an aerodrome licensed under Part 6; or
- (b) facilities at which helicopter arrivals or departures take place on not more than 10 days per year; or
- (c) facilities that are situated more than 1 kilometre from residential premises not associated with the facilities; or
- (d) facilities at the site of an activity authorised under the *Mining Act 1971*, the *Petroleum Act 1940*, the *Petroleum (Submerged Lands) Act 1982* or the *Roxby Downs (Indenture Ratification) Act 1982*.

**(4) Marinas and Boating Facilities:** the conduct of—

- (a) facilities comprising pontoons, jetties, piers or other structures (whether on water or land) designed or used to provide moorings or dry storage for 50 or more powered vessels at any one time; or
- (b) works for the repair or maintenance of vessels with the capacity to handle 5 or more vessels at any one time or vessels 12 metres or more in length.

**(5) Motor Racing or Testing Venues:** the conduct of facilities designed and used for motor vehicle competitions or motor vehicle speed or performance trials, but excluding facilities that are situated more than 200 metres from residential premises not associated with the facilities.

**(6) Shooting Ranges:** the conduct of facilities for shooting competitions, practice or instruction (being shooting involving the propulsion of projectiles by means of explosion), but excluding indoor facilities or facilities that are situated more than 200 metres from residential premises not associated with the facilities.

**(7) Discharges to Marine or Inland Waters:** the conduct of operations involving discharges into marine waters or inland waters where—

- (a) the discharges—
  - (i) raise the temperature of the receiving waters by more than 2 degrees Celsius at any time at a distance of 10 metres or more from the point of discharge; or
  - (ii) contain antibiotic or chemical water treatments; and
- (b) the total volume of the discharges exceeds 50 kilolitres per day.

### Part B—Listed wastes

Acids and acidic solutions  
Adhesives (excluding solid inert polymeric materials)  
Alkali metals and alkaline earth metals  
Alkalis and alkaline solutions  
Antimony and antimony compounds and solutions  
Arsenic and arsenic compounds and solutions  
Asbestos  
Barium compounds and solutions  
Beryllium and beryllium compounds  
Boron and boron compounds  
Cadmium and cadmium compounds and solutions  
Calcium carbide  
Carbon disulphide  
Carcinogens teratogens and mutagens  
Chlorates  
Chromium compounds and solutions  
Copper compounds and solutions  
Cyanides or cyanide solutions and cyanide complexes  
Cytotoxic wastes  
Dangerous substances within the meaning of the *Dangerous Substances Act 1979*  
Distillation residues  
Fluoride compounds  
Halogens  
Heterocyclic organic compounds containing oxygen, nitrogen or sulphur  
Hydrocarbons and their oxygen, nitrogen and sulphur compounds (including oils)  
Isocyanate compounds (excluding solid inert polymeric materials)  
Laboratory chemicals  
Lead compounds and solutions  
Lime sludges or slurries  
Manganese compounds  
Medical waste consisting of—

- (a) a needle, syringe with needle, surgical instrument or other article that is discarded in the course of medical\*, dental or veterinary practice or research and has a sharp edge or point capable of inflicting a penetrating injury on a person who comes into contact with it; or
- (b) human tissue, bone, organ, body part or foetus; or
- (c) a vessel, bag or tube containing a liquid body substance; or
- (d) an animal carcass discarded in the course of veterinary or medical\* practice or research; or

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- (e) a specimen or culture discarded in the course of medical\*, dental or veterinary practice or research and any material that has come into contact with such a specimen or culture; or
- (f) any other article or matter that is discarded in the course of medical\*, dental or veterinary practice or research and that poses a significant risk to the health of a person who comes into contact with it.

\* **"medical practice"** includes the practice of pathology and the operation of an immunisation clinic.

Mercaptans

Mercury compounds and equipment containing mercury

Nickel compounds and solutions

Nitrates

Organic halogen compounds (excluding solid inert polymeric materials)

Organic phosphates

Organic solvents

Organometallic residues

Oxidising agents

Paint sludges and residues

Perchlorates

Peroxides

Pesticides (including herbicides and fungicides)

Pharmaceutical wastes and residues

Phenolic compounds (excluding solid inert polymeric materials)

Phosphorus and its compounds

Polychlorinated biphenyls

Poisons within the meaning of the *Drugs Act 1908*

Reactive chemicals

Reducing agents

Selenium and selenium compounds and solutions

Silver compounds and solutions

Solvent recovery residues

Sulphides and sulphide solutions

Surfactants

Thallium and thallium compounds and solutions

Vanadium compounds

Zinc compounds and solutions

## Schedule 2—Repeals, amendments and transitional provisions

### Acts repealed

1. The following Acts are repealed:

the *Beverage Container Act 1975*  
the *Clean Air Act 1984*  
the *Environmental Protection Council Act 1972*  
the *Marine Environment Protection Act 1990*  
the *Noise Control Act 1977*  
the *Waste Management Act 1987*.

### Amendment of Water Resources Act

2. The *Water Resources Act 1990* is amended—

(a) by inserting after the definition of "**committee**" in section 4(1) the following definition:

**"the Court"** means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

(b) by striking out from section 4(1) the definition of "**the Tribunal**";

(c) by striking out subsection (2) of section 4;

(d) by striking out from section 8 "the Tribunal";

(e) by striking out Division 4 of Part 3 and the heading to that Division;

(f) by striking from section 30(3) "Subject to subsection (4), a" and substituting "A";

(g) by striking out subsection (4) of section 30;

(h) by striking out the heading to Division 1 of Part 5;

(i) by striking out subsections (3) and (5) of section 41;

(j) by inserting after section 41 the following section:

#### **Application of Part**

**41A.** This Part applies only in relation to a water protection area.;

(k) by striking out subsection (1) of section 42;

(l) by striking out the heading to Division 2 of Part 5;

(m) by striking out sections 43, 44 and 45;

(n) by striking out subsections (1) and (2) of section 46 and substituting the following subsection:

(1) The Governor may, by regulation, prohibit, restrict or regulate an act or activity in a water protection area or a part of a water protection area if of the opinion that it is necessary or desirable to do so to protect any surface or underground water.;

(o) by striking out sections 47 to 54 and the headings to Divisions 3 and 4 of Part 5;

(p) by striking out from section 70 "Tribunal" wherever occurring and substituting, in each case, "Court";

(q) by striking out paragraph (c) of section 70(1);

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- (r) by striking out from section 71 "Tribunal" wherever occurring and substituting, in each case, "Court";
- (s) by inserting after section 71 the following section:

**Constitution of Environment, Resources and Development Court**

**71A.** The following provisions apply in respect of the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Part:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Presiding Member of the Court so determines, be constituted of a Judge and one commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
- (i) the commissioner's appointment was on the basis that he or she has, in the opinion of the Governor, wide practical knowledge of, and experience in, the use, conservation or management of water resources; and
- (ii) the commissioner has been designated by the Governor, by instrument in writing, as a commissioner for the purposes of the Court's jurisdiction under this Part.;
- (t) by striking out subsection (2) of section 77;
- (u) by striking out subsections (1) and (2) of section 78;
- (v) by striking out paragraphs (b) and (c) of section 79(1);
- (w) by inserting after clause 10 of Schedule 3 the following clause:

**11.** A reference in any other Act to the Water Resources Appeal Tribunal is, on and after the commencement of clause 2 of Schedule 2 of the *Environment Protection Act 1993*, to be read as a reference to the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*.

**Amendment of Environment, Resources and Development Court Act**

**3.** The *Environment, Resources and Development Court Act 1993* is amended—

- (a) by inserting after section 28 the following sections:

**Restraining orders**

**28A.** (1) The Court may make an order (a "restraining order") preventing or restricting dealing with property of a respondent or defendant in proceedings before the Court if—

- (a) the proceedings appear to have been brought on reasonable grounds; and
- (b) the property may be required to satisfy an order that has been, or may be, made in the proceedings; and
- (c) there is a substantial risk that the respondent or defendant will dispose of the property before the order is made, or before it can be enforced.

(2) A restraining order must be served as directed by the Court.

(3) A person who deals with property subject to a restraining order except as permitted by the order commits a contempt of Court.

(4) The Court may vary or revoke a restraining order at any time.

(5) If it appears to a Court that grounds for making a restraining order exist but the Court requires further evidence to identify property in relation to which the order could be effectively made, the Court may summons the respondent or defendant, or issue a warrant to have the respondent or defendant arrested and brought before the Court, for examination on that subject.

**Mediation and conciliation**

**28B.** (1) If it appears to the Court at the commencement or during the course of proceedings, or to the member of the Court presiding at a conference under section 16, that there would be a reasonable likelihood of settling matters in dispute between the parties by doing so, the Court or member may, with the consent of the parties, appoint a mediator to endeavour to achieve a negotiated settlement of the matters.

(2) The Court may during the course of proceedings, if it appears that there would be a reasonable likelihood of settling matters in dispute between the parties, itself endeavour to achieve a negotiated settlement of the matters.

(3) Except with the consent of the parties, any processes of mediation on conciliation under this section will be conducted in private.

(4) Any settlement to which counsel for or any other representative of a party agrees in processes under this section is binding on the party.

(5) Subject to subsection (7), the Court may record any settlement reached under this section and make a determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to a settlement.

(6) Evidence of anything said or done in the course of processes under this section is inadmissible in proceedings before the Court except by consent of all parties to the proceedings.

(7) The Court—

(a) must not accept a settlement that appears to be inconsistent with a relevant Act (but may adjourn the proceedings to enable the parties to explore the possibility of varying the settlement to comply with a relevant Act); and

(b) may decline to accept a settlement on the basis that the settlement may materially prejudice any person who was not a participant in the processes leading to the settlement but who has a direct or material interest in the matter.

(8) Where the Court appoints a mediator, or itself endeavours to achieve a settlement, under this section, the member or members comprising the Court are not disqualified from continuing to sit for the purpose of hearing and determining the proceedings.

(9) A mediator appointed under this section has the same privileges and immunities as a member of the Court and such of the powers of the Court as the Court may delegate.

**Alternative orders**

**28C.** Although a particular form of order is sought by an applicant in proceedings before the Court, the Court may make any other form of order that it considers more appropriate to the circumstances of the case.

(b) by inserting in section 39(1) "to give an undertaking as to the payment of" after "costs or";

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- (c) by inserting in section 39(4) "or an undertaking," after "further security,";
- (d) by inserting in section 39(5) after "security" (twice occurring), in each case, ", or the giving of an undertaking,".

**Amendment of Development Act**

4. The *Development Act 1993* is amended—

- (a) by inserting after the definition of "**document**" in section 4(1) the following definition:

**"Environment Protection Authority"** means the Environment Protection Authority established under the *Environment Protection Act 1993*;

- (b) by striking out from section 38(2) "The following" and substituting "Subject to subsection (2a), the following";
- (c) by inserting after subsection (2) of section 38 the following subsection:

(2a) The assignment of a form of development to Category 1 under subsection (2)(a) cannot extend to a particular development if that development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*;

- (d) by striking out subsection (6) of section 38 and substituting the following subsection:

(6) Except as otherwise provided by the regulations, the subject matter of—

(a) any notice required under this section; or

(b) any representations under this section; or

(c) any appeal against a decision on a Category 3 development by a person entitled to be given notice of the decision under subsection (12),

must be limited to the following:

(d) what should be the decision of the relevant authority as to provisional development plan consent;

(e) in a case where a prescribed body is empowered to direct that the application be refused, or that conditions be imposed in relation to the development—what should be the decision of the prescribed body in response to the application;

- (e) by striking out from section 38(7) "submissions" and substituting "representations";

- (f) by striking out paragraphs (a) and (b) of section 38(10) and substituting the following paragraphs:

(a) in the case of a Category 2 development—the relevant authority may, in its absolute discretion, allow a person who made a representation to appear personally or by representative before it to be heard in support of the representation; and

(b) in the case of a Category 3 development—the relevant authority must allow a person who made a representation and who, as part of that representation, indicated an interest in appearing before the authority, a reasonable opportunity to appear personally or by representative before it to be heard in support of the representation.;

- (g) by striking out subsections (14) and (15) of section 38 and substituting the following subsections:
- (14) An appeal against a decision on a Category 3 development by a person who is entitled to be given notice of the decision under subsection (12) must be commenced within 15 business days after the date of the decision.
- (15) If an appeal is lodged against a decision on a Category 3 development by a person who is entitled to be given notice of the decision under subsection (12)—
- (a) the applicant for the relevant development authorisation must be notified by the Court of the appeal and will be a party to the appeal; and
- (b) in a case where the decision of a prescribed body in response to the application for the development authorisation could be a subject matter of such an appeal—the prescribed body will be a party to the appeal.;
- (h) by inserting after paragraph (b) of the definition of "**environmental impact statement**" in section 46(1) the following paragraph:
- (ba) where the development or project involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the extent to which the expected effects of the development or project are consistent with—
- (i) the objects of the *Environment Protection Act 1993*; and
- (ii) the general environmental duty under that Act; and
- (iii) any relevant environment protection policies under that Act.;
- (i) by inserting in section 46(4) "and, in relation to a development or project that involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, consult with the Environment Protection Authority" after "require";
- (j) by inserting before paragraph (a) of section 46(5) the following paragraph:
- (aa) must, where the environmental impact statement relates to a development or project that involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, refer the statement to the Environment Protection Authority.;
- (k) by striking out from section 46(8)(a) "and any" and substituting "by the Environment Protection Authority or by any";
- (l) by inserting in section 46(9)(c) "the Environment Protection Authority or by" after "provided by";
- (m) by inserting after paragraph (c) of section 48(8) the following paragraph:
- (ca) where the development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*—
- (i) the objects of the *Environment Protection Act 1993*; and
- (ii) the general environmental duty under the *Environment Protection Act 1993*; and
- (iii) any relevant environment protection policies under the *Environment Protection Act 1993*; and;



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(n) by striking out from section 85(15) all words after "under this" and substituting the following:

section—

(a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;

(b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (16).;

(o) by striking out from section 86(1)(b) the passage in brackets and substituting "subject to the limitations imposed by that section".

**Transitional provisions**

5. (1) Despite the provisions of Part 6, the Authority must grant works approvals and licences (to have effect from the commencement of this Act) as required to enable persons to carry on activities lawfully carried on by those persons immediately before the commencement of this Act.

(2) Where a person would (despite being the holder of the appropriate works approval or licence, if any) be prohibited from carrying on an activity on the commencement of this Act that the person was lawfully carrying on immediately before that commencement, the Authority must, despite the provisions of Part 6, grant that person an exemption from that prohibition to have effect from that commencement.

(3) The Authority is not required to grant a works approval, licence or exemption except on application and payment of the appropriate application fee and authorisation fee under Part 6, but the Authority may, in cases of a kind approved by the Minister, dispense with the requirement for applications and payment of fees.

(3a) An application for the granting of a works approval, licence or exemption as referred to in subclause (3) must be lodged with the Authority no later than six months after the commencement of this Act.

(4) A works approval, licence or exemption granted pursuant to this clause has effect for a term determined by the Authority and subject to this Act and any conditions of the approval, licence or exemption imposed by the Authority under Part 6.

(5) Public notice is not required to be given under Part 6 in respect of an application for the grant of a works approval, licence or exemption pursuant to this clause.

(6) Where the Minister is satisfied that a draft environment protection policy makes provisions designed to preserve as nearly as practicable the effect of provisions made by or under repealed environment laws—

(a) the normal procedure for making environment protection policies under Part 5 does not apply in relation to the draft policy; and

(b) the Minister may refer the draft policy directly to the Governor.

(7) The Governor may, on reference of a draft policy under subclause (6), by notice in the *Gazette*—

(a) declare the draft to be an authorised environment protection policy under Part 5; and

(b) fix the day of commencement of this Act as the day on which the policy comes into operation.

(8) The Authority must grant approvals under Division 2 of Part 8 (to have effect from the commencement of this Act and without any requirement for applications) as required to enable persons to carry on activities lawfully carried on by those persons under the *Beverage Container Act 1975* immediately before the commencement of this Act.

(9) An approval granted pursuant to subclause (8) has effect subject to Division 2 of Part 8 and any conditions of the approval specified by the Authority in the notice of approval under that Division.

(10) A proclamation declaring part of the State to be a water protection area under Part 5 of the *Water Resources Act 1990* that was in force immediately before the repeal of that Part will be taken to have been made under section 61A.

**Transitional provisions on repeal of Water Resources Act 1990**

**6.** (1) Where the Minister is satisfied that a draft environment protection policy makes provisions designed to preserve as nearly as practicable the effect of provisions made by or under the *Water Resources Act 1990*—

(a) the normal procedure for making environment protection policies under Part 5 does not apply in relation to the draft policy; and

(b) the Minister may refer the draft policy directly to the Governor.

(2) The Governor may, on reference of a draft policy under subclause (1), by notice in the *Gazette*—

(a) declare the draft to be an authorised environment protection policy under Part 5; and

(b) fix the day on which the policy comes into operation.

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**APPENDIX 1****LEGISLATIVE HISTORY**

*(entries in bold type indicate amendments incorporated since the last reprint)*

<b>Section 3(1):</b>	<b>definition of "appointed member" amended by 100, 1995, s. 3(a); 43, 2002, s. 4(a)</b> <b>definition of "Board" inserted by 43, 2002, s. 4(b)</b> <b>definition of "Chief Executive" inserted by 43, 2002, s. 4(c)</b> definition of "the Forum" repealed by 100, 1995, s. 3(b)
<b>Section 7(2)(b) and (c):</b>	<b>repealed by 43, 2002, s. 5</b>
Section 7(3):	amended by 36, 1999, Sched. 4 (cl. 19)
Section 10(2):	amended by 100, 1995, s. 4
Part 3 heading:	substituted by 100, 1995, s. 5
<b>Section 12:</b>	amended by 11, 1997, s. 3; <b>repealed by 43, 2002, s. 6</b>
<b>Section 13(1):</b>	<b>substituted by 43, 2002, s. 7</b>
<b>Section 14:</b>	<b>amended by 43, 2002, s. 8</b>
<b>Sections 14A and 14B:</b>	<b>inserted by 43, 2002, s. 9</b>
<b>Section 15(1):</b>	<b>repealed by 43, 2002, s. 10(a)</b>
<b>Section 15(2):</b>	<b>amended by 43, 2002, s. 10(b)</b>
<b>Section 15(3) - (7):</b>	<b>amended by 43, 2002, s. 10(c)</b>
<b>Section 16(1):</b>	<b>substituted by 43, 2002, s. 11(a)</b>
<b>Section 16(2) and (3):</b>	<b>substituted by 43, 2002, s. 11(b)</b>
<b>Section 16(4) - (11):</b>	<b>amended by 43, 2002, s. 11(c)</b>
<b>Section 17(1):</b>	<b>substituted by 43, 2002, s. 12(a)</b>
<b>Section 17(2) and (3):</b>	<b>amended by 43, 2002, s. 12(b)</b>
<b>Section 18(1) and (3):</b>	<b>amended by 43, 2002, s. 13</b>
	Division 2 of Part 3 comprising ss. 19 - 23 and heading repealed and s. 19 and heading inserted in its place by 100, 1995, s. 6
<b>Section 19(4) and (5):</b>	<b>substituted by 43, 2002, s. 14</b>
<b>Section 24(3):</b>	<b>amended by 30, 1995, Sched. 4 cl. (a); 43, 2002, s. 15</b>
Section 24(4):	amended by 30, 1995, Sched. 4 cl. (b)
Section 24(5):	repealed by 100, 1995, s. 7
<b>Section 28(3a):</b>	inserted by 100, 1995, s. 8(a); <b>substituted by 43, 2002, s. 16</b>
Section 28(5):	substituted by 100, 1995, s. 8(b)
Section 28(6):	amended by 100, 1995, s. 8(c)
Section 28(10):	amended by 100, 1995, s. 8(d)
Section 28A:	inserted by 1, 1995, Sched. 2 cl. 1(a)
Section 29(1a) and (1b):	inserted by 1, 1995, Sched. 2 cl. 1(b)
Section 29(2):	amended by 1, 1995, Sched. 2 cl. 1(c)
Section 31(1):	substituted by 100, 1995, s. 9
Section 39(1a) and (1b):	inserted by 35, 1997, s. 5
Section 42:	redesignated as s. 42(1) by 63, 1996, s. 12(a)
Section 42(2):	inserted by 63, 1996, s. 12(a)
Section 45(3):	amended by 1, 1995, Sched. 2 cl. 1(d)
Section 46(1a):	inserted by 35, 1997 s. 6(a)
Section 46(4):	amended by 35, 1997, s. 6(b)
Section 47(1):	amended by 63, 1996, s. 12(b); 35, 1997, s. 7
Section 47(2a):	inserted by 63, 1996, s. 12(c)
Section 50A:	inserted by 16, 2001, s. 5
Section 61:	substituted by 35, 1997, s. 8
Section 61A:	inserted by 35, 1997, s. 9
Section 62:	substituted by 35, 1997, s. 10
Section 64(1):	amended by 35, 1997, s. 11(a), (b)
Section 64(1a) and (1b):	inserted by 35, 1997, s. 11(c)
Section 64(9):	inserted by 35, 1997, s. 11(d)
Sections 64A - 64D:	inserted by 35, 1997, s. 12

<b>Section 79(1):</b>	<b>amended by 43, 2002, s. 17(a), (b)</b>
<b>Section 79(2):</b>	<b>amended by 43, 2002, s. 17(c)</b>
<b>Section 80(1):</b>	<b>amended by 43, 2002, s. 18(a), (b)</b>
<b>Section 80(2):</b>	<b>amended by 43, 2002, s. 18(c)</b>
<b>Section 83(1):</b>	<b>amended by 43, 2002, s. 19</b>
Section 84(1a):	inserted by 35, 1997, s. 13
Section 93(2a) and (2b):	inserted by 35, 1997, s. 14
Section 99(2a) and (2b):	inserted by 35, 1997, s. 15
Section 110:	amended by 88, 2000, Sched. 1 cl. 1
<b>Section 117(2):</b>	<b>amended by 43, 2002, s. 20(a)</b>
<b>Section 117(3):</b>	<b>amended by 43, 2002, s. 20(b)</b>
Section 118(1):	amended by 35, 1997, s. 16
Section 120A:	inserted by 11, 1997, s. 4
<b>Section 122(1):</b>	<b>amended by 43, 2002, s. 21</b>
<b>Section 133(1a) and (1b):</b>	<b>inserted by 43, 2002, s. 22(a)</b>
<b>Section 133(3):</b>	<b>inserted by 43, 2002, s. 22(b)</b>
Section 135:	amended by 35, 1997, s. 17
Section 138(1):	amended by 35, 1997, s. 18
Section 139(1):	amended by 35, 1997, s. 19(a)
Section 139(6):	amended by 35, 1997, s. 19(b)
Section 140(8):	repealed by 18, 1994, Sched. cl. 2
Schedule 1	
Part A	
clause 1(1):	amended by Regulation No. 181 of 1994, reg. 4(a)
clause 1(2):	substituted by Regulation No. 181 of 1994, reg. 4(b)
clause 1(6):	amended by Regulation No. 181 of 1994, reg. 4(c)
clause 2(12):	amended by Regulation No. 181 of 1994, reg. 4(d)
clause 2(14) and (15):	inserted by 181, 1994, reg. 4(e)
clause 3(2):	substituted by Regulation No. 181 of 1994, reg. 4(f); amended by 161, 2001, reg. 4(a)
clause 3(3):	substituted by Regulation No. 181 of 1994, reg. 4(f)
clause 3(4):	amended by Regulation No. 181 of 1994, reg. 4(g)
clause 4:	substituted by Regulation No. 181 of 1994, reg. 4(h)
clause 5 heading:	amended by 66, 2001, Sched. cl. 1(a)
clause 5(1):	substituted by Regulation No. 181 of 1994, reg. 4(i); amended by 161, 2001, reg. 4(b)
clause 5(2):	amended by Regulation No. 181 of 1994, reg. 4(j); repealed by 66, 2001, Sched. cl. 1(b)
clause 5(3):	amended by Regulation No. 181 of 1994, reg. 4(k)
clause 5(4):	inserted by Regulation No. 181 of 1994, reg. 4(l); amended by 33, 1995, reg. 4(a), (b); 161, 2001, reg. 4(c)
clause 6(1):	substituted by Regulation No. 181 of 1994, reg. 4(m)
clause 6(4):	amended by Regulation No. 181 of 1994, reg. 4(n); 33, 1995, reg. 4(c)
clause 6(5):	amended by Regulation No. 181 of 1994, reg. 4(o)
clause 6(6):	substituted by Regulation No. 181 of 1994, reg. 4(p)
clause 6(9):	amended by Regulation No. 181 of 1994, reg. 4(q)
clause 6(10):	amended by Regulation No. 181 of 1994, reg. 4(r)
clause 6(11):	inserted by Regulation No. 181 of 1994, reg. 4(s); amended by 161, 2001, reg. 4(d)
clause 7(2):	substituted by Regulation No. 229 of 2001, reg. 4
clause 7(3):	amended by Regulation No. 181 of 1994, reg. 4(t), (u)
clause 7(4):	amended by Regulation No. 181 of 1994, reg. 4(v)
clause 7(6) and (7):	inserted by Regulation No. 181 of 1994, reg. 4(w)
clause 8(1):	amended by Regulation No. 181 of 1994, reg. 4(x)
clause 8(2):	amended by Regulation No. 181 of 1994, reg. 4(y)
clause 8(3) and (4):	substituted by Regulation No. 181 of 1994, reg. 4(z)
clause 8(5):	amended by Regulation No. 181 of 1994, reg. 4(aa)
clause 8(6):	amended by Regulation No. 181 of 1994, reg. 4(ab)
clause 8(7):	inserted by Regulation No. 181 of 1994, reg. 4(ac)
Schedule 2	

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Clause 5(3a):	inserted by 11, 1997, s. 5
Clause 5(10):	inserted by 35, 1997, s. 20(a)
Clause 6:	inserted by 35, 1997, s. 20(b)

**APPENDIX 2**

**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*